

## FARMDRIVE

### TERMS AND CONDITIONS

#### 1 Definitions and interpretation

1.1 In these Terms and Conditions the following words and expressions (save where the context requires otherwise) bear the following meanings:

**“Credit Reference Bureau”** means a credit reference bureau duly licensed under the Banking Act (Cap 488, laws of Kenya) pursuant to the Banking (Credit Reference Bureau) Regulations of 2013, to among others, collect and facilitate the sharing of a borrower’s credit information;

**“Equipment”** means each and all equipment or tools necessary for Farmer to access the Network, including a mobile phone handset and SIM Card;

**“FarmDrive”** means FarmDrive Limited a private company limited by shares incorporated in Kenya with registration number CPR/2014/134165 and of P.O. Box 22323-00400 Nairobi, Kenya;

**“Digifarm”** is a solution developed by Safaricom Limited (“Safaricom”) with other partners to provide agricultural solutions to small scale farmers through a digital platform.

**“Farmer”** means a person undertaking any legal farming activities, and in whose name a Loan Account with FarmDrive is opened and set up;

**“Farmer Profile”** means a profile of a Farmer created by FarmDrive using the Farming Information;

**“Farming Information”** means all the data and information relating to a particular Farmer; and the farming activities undertaken by him/her including the size and location of the Farm, the type of crops grown, livestock kept, quantity of produce (crops, meat, milk, eggs et cetera as the case may be) harvested, the selling price of the produce, the market price of the produce. This information includes data and information provided by the Farmer to FarmDrive (primary data/information);

**“FarmDrive Score”** means a score or rating of Farmer by FarmDrive using FarmDrive’s proprietary algorithm based on a Farmer’s Farming Information, Personal Information and M-PESA Information;

**“IPRS”** means the Integrated Population Registration System set up and maintained by the Government of Kenya under the State Department responsible for Immigration Services and Registration of Persons;

**“Farm”** means the location including parcel of land that farming activities are undertaken by a Farmer;

**“Loan”** means the loan to purchase agricultural input, implement and/or equipment disbursed by FarmDrive to a Farmer in form of a transaction value code through a Short Messaging Service (SMS) over the Network.

**“Loan Account”** means an account opened by FarmDrive in the name of a Farmer in accordance with the terms and conditions in this Agreement;

**“M-PESA Service”** means the money transfer and payments service provided by Safaricom through the M-PESA System;

**“M-PESA System”** means the system operated by Safaricom in Kenya for the provision of the M-PESA Service using the Network;

**“Network”** means the mobile cellular network operated by Safaricom in Kenya;

**“Purpose”** means Farming business;

**“Loan Application”** means an instruction for a Loan received by FarmDrive from Farmer in accordance with this Agreement;

**“Services”** means the services set out in clause 3 that FarmDrive may offer you pursuant to this Agreement and as you may from time to time subscribe to and **“Service”** shall be construed accordingly;

**“SIM Card”** means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the Network and to use the M-PESA System;

“**Registration**” means the acceptance of these Terms and Conditions on the DigiFarm USSD flash message.

“**Facilitation Fee**” means the fees and charges to be paid by Farmer to **FarmDrive for the Services in accordance with Clause 7.2;**

“**Rollover Fee**” means the fees and charges to be paid by Farmer to FarmDrive in consideration for forbearing to demand immediate payment on an outstanding Loan in accordance with Clause 7.5;

“**We,**” “**our,**” and “**us,**” means FarmDrive and includes the successors, affiliates and assigns of FarmDrive;

“**You**” or “**your**” means the Farmer and includes the personal representatives, successors and assigns of the Farmer;

“**Farmer**” shall include both the masculine and the feminine gender, as well as juristic persons;

“**Parties**” means Farmer and FarmDrive, and “**Party**” means either of the Parties as the case may be.

Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

**2 The Agreement**

- 2.1 This agreement (“Terms and Conditions”) sets out the terms and conditions governing the Registration on FarmDrive, Loan Application, processing and granting of a Loan to Farmer by FarmDrive and repayment of a Loan by Farmer to FarmDrive. These Terms and Conditions shall be available on [www.safaricom.co.ke](http://www.safaricom.co.ke).
- 2.2 You should carefully read and understand these Terms and Conditions which will govern the provision of the Services and which will govern the use and operation of the Loan Account.
- 2.3 By applying for a Loan, you shall deemed to have read, understood and accepted these Terms and Conditions:

- 2.4 These Terms and Conditions shall take effect on the date of acceptance (in accordance with this Agreement) by Farmer.
- 2.5 These Terms and Conditions may be amended or varied by FarmDrive from time to time and the continued use of the Services and/or the operation of the Loan Account constitutes your agreement to be bound by the terms of any such amendment or variation.

**3 Duties of FarmDrive**

**FarmDrive shall provide the following services to Farmer:**

- 3.1 Creating Farmer’s Farmer Profile;
- 3.2 Generating FarmDrive Score;
- 3.3 Receiving and processing Loan Application; and
- 3.4 Rejecting Loan Application or granting Loans.
- 3.5 The above services, each and together, shall be referred to as the “Services” in this Agreement.
- 3.5.1 The Services are only available to the Farmers registered by FarmDrive.

**4 Duties of Farmer**

- 4.1.1 To provide accurate, true and correct information and/or data requested by FarmDrive for provision of the Services.
- 4.1.2 To repay Loan in a timely manner per the repayment schedule advised by FarmDrive prior to disbursement of the said Loan.
- 4.1.3 Provide to FarmDrive access to the Farm to enable FarmDrive collect and/or receive Farming Information.

**5 Eligibility for Loan**

- 5.1.1 You must have accepted these Terms and Conditions;

- 5.1.2 You must be at least 18 years old;
- 5.1.3 You must be a 'farmer' as provided for in this Agreement; and
- 5.1.4 You must be a subscriber of the Network and have a valid SIM Card.
- 5.2 Farmer hereby irrevocably consents to FarmDrive access to information and data about you for purposes of FarmDrive creating Farming Information.
- 5.3 You hereby irrevocably consent to FarmDrive developing and creating the Farmer's FarmDrive Score which score shall be used to assess whether or not Farmer qualifies for FarmDrive Loan, Farmer's ability to repay Loan and Loan limit.
- 5.4 You hereby agree and authorize FarmDrive to obtain and procure your personal information contained in the IPRS from the Government of Kenya or from any other government records and you further agree and consent to the disclosure and provision of such personal information by the Government of Kenya to FarmDrive.
- 5.5 You hereby agree and authorize Digifarm to request Safaricom for your personal information held by Safaricom pursuant to the agreement between you and Safaricom for the provision of Safaricom products and services and M-PESA Service including your phone number, name, date of birth, ID or Passport Number and such other information that will enable FarmDrive to identify you and comply with the regulatory "Know Your Customer" requirements (together the "Personal Information"). You also hereby agree and authorize Digifarm to request Safaricom for information relating to your use of the M-PESA Service and M-PESA System as Digifarm shall require for purposes of providing you the Services ("M-PESA Information"). You hereby consent to the disclosure of the Personal Information and the M-PESA Information by Safaricom to Digifarm and to the aforesaid use of the Personal Information and the M-PESA Information by Digifarm.

- 5.6 You hereby expressly consent and authorize FarmDrive to disclose, receive, record or utilize your Personal Information or information or data relating to your Loan Account and any details of your use of the Services:  
to Safaricom in connection with Digifarm;  
for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities;
- 5.7 FarmDrive reserves the right to request for further information from you pertaining to your application for a Loan at any time. Failure to provide such information within the time required by FarmDrive may result in FarmDrive declining to accept your application for a Loan.
- 5.8 FarmDrive shall notify you of the acceptance or rejection of your Loan Application via SMS on the Network.
- 5.9 FarmDrive reserves the right to reject your Loan Application for or to revoke the same at any stage at FarmDrive's sole discretion and without assigning any reason or giving any notice thereto.

## **6 Loan Application**

- 6.1 Upon successfully meeting the eligibility criteria defined in Clause 5 and submitting to FarmDrive information requested, Farmer may apply for Loan on DigiFarm in the manner set out/provided for on Digifarm and/or communicated to Farmer via SMS or on [www.safaricom.co.ke](http://www.safaricom.co.ke).
- 6.2 Where you apply for a loan from FarmDrive, your application shall be appraised according to the applicable loan appraisal processes of FarmDrive. FarmDrive reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a Loan.
- 6.3 Once the Loan Application has been appraised as per Clause 6.2, you shall receive an SMS from Digifarm via the Network with your loan limits and repayment period.

- 6.4 You may then select the Loan amount and it's respective repayment period.
- 6.5 Upon approval of your Loan Application, FarmDrive shall send you an SMS via the Network from DigiFarm with a transaction value code of the Loan in its sole discretion subject to a minimum amount of Kenya Shillings (*Kshs. 500*) or such other minimum or maximum amount as FarmDrive may from time to time in its sole discretion determine.
- 6.6 The transaction value code shall be displayed through an SMS to you subject to any deductions made on account of the applicable Facilitation Fee.
- 6.7 You shall only redeem this code at the DigiFarm depot which shall be notified to you from time to time.

## **7 Repayment**

- 7.1 You shall repay the Loan within 30, 60 90 days of receiving the transaction value code dependent on the Loan amount and it's respective repayment period.
- 7.2 In consideration of FarmDrive granting you the Loan, you shall pay FarmDrive the Facilitation Fees charged at 5% of the Loan for a 30 day Loan, 7.5% of the Loan for a 60 day Loan and 10% of the Loan for a 90 day Loan. The Facilitation Fee shall be paid by you in addition to the Loan.
- 7.3 Repayment of the Loan and the Facilitation Fees by you to FarmDrive shall be via M-PESA (PayBill 827324) (Account Number – Farmer's Mobile Number) only unless otherwise agreed by the FarmDrive in its discretion.
- 7.4 In the event that you do not repay the Loan and Facilitation Fee in full within *30, 60 or 90 day* (dependent on the Loan granted) of the date of disbursement of the Loan, FarmDrive will automatically roll over any outstanding amount in respect of the Loan. The Loan rollover period shall be for the same period

as the initial Loan repayment period, i.e. 30 day rollover period for a 30 day Loan, 60 day rollover period for a 60 day Loan, and 90 day rollover period for a 90 day Loan.

- 7.5 In consideration of FarmDrive forbearing to demand the immediate payment of the outstanding amount due in respect of your Loan and rolling over the same pursuant to Clause 7.4, you shall, in addition to paying the outstanding amount in respect of the Loan, pay to DigiFarm a rollover fee being 5 %, 7.5% and 10% dependent on the Loan amount ("Rollover Fee").
- 7.6 FarmDrive shall be entitled to terminate this Agreement and Account in accordance with the provisions of Clause 14 without prejudice to any of its rights accruing hereunder if you fail to repay the Loan and/or the Facilitation Fees due thereon within the stipulated period.
- 7.7 You hereby expressly consent and authorise FarmDrive to disclose, respond, advise, share, exchange and communicate the details or information pertaining to your Loan to Safaricom, Credit Reference Bureaus and any other relevant legal authority.
- 7.8 FarmDrive reserves the right to vary the terms of the Loan including the fees payable thereon from time to time, which variations shall be notified to you.

## **8 Irrevocable Authority of FarmDrive**

- 8.1 You hereby irrevocably authorize FarmDrive to act on all Loan Applications received from you (or purportedly from you) through the DigiFarm USSD and to hold you liable in respect thereof, notwithstanding that any such requests are not authorized by you or are not in accordance with any existing mandates given by you.
- 8.2 If you request FarmDrive to cancel any a Loan Application after it has been received by FarmDrive, FarmDrive shall have no obligation to do so but shall endeavour to.

- 8.3 FarmDrive shall be entitled to accept and to act upon any Loan Application, even if that Loan Application is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, FarmDrive believes that it can correct the incomplete or ambiguous information in the Loan Applications without any reference to you.
- 8.4 FarmDrive is authorized to effect such orders in respect of your Loan as may be required by any court order or competent authority or agency under the applicable laws.
- 8.5 In the event of any conflict between any terms of any Loan Application received by FarmDrive from you and these Terms and Conditions, these Terms and Conditions shall prevail.
- 8.6 You shall not at any time operate or use the Services in any manner that may be prejudicial to FarmDrive and/or the Digifarm platform.

**9 Warranties**

Farmer warrants that:

He has a right or license to use and or be on the Farm for purposes of farming.

All information provided by him to FarmDrive are true, materially accurate and a fair representation of the facts and matters thereof.

**10 Exclusion of Liability**

- 10.1 FarmDrive will not be liable for any losses or damage suffered by you as a result of or in connection with:
  - 10.1.1 failure, malfunction, interruption or unavailability of your Equipment, DigiFarm, the transaction value code, the Network, M-PESA System and/or M-PESA Service;
  - 10.1.2 unavailability of any farm inputs, implements and/or equipment and/or any defects thereof;
  - 10.1.3 rejection of any Loan Application;

- 10.1.4 your failure to give proper or complete instructions for payments or transfers relating to your Loan;
- 10.1.5 any fraudulent or illegal use of the Services, the Loan and/or the DigiFarm platform; and/or
- 10.1.6 your failure to comply with these Terms and Conditions and any document or information provided by FarmDrive concerning the use and operation of the Services.
- 10.2 FarmDrive shall not be responsible for any loss suffered by you should the Services be interfered with or be unavailable by reason of (a) the failure of any of your Equipment, or (b) any other circumstances whatsoever not within the FarmDrive’s control including, without limitation, force majeure or error, interruption, delays or terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.
- 10.3 If for any reason other than a reason mentioned in subparagraphs 11.1 or 11.2, the Services are interfered with or unavailable, FarmDrive’s sole liability under this Agreement in respect thereof shall be to re-establish the Services as soon as reasonably practicable.
- 10.4 Under no circumstances shall FarmDrive be liable to you for any loss of profit, anticipated savings, any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Services even where the possibility of such loss or damage is notified to FarmDrive.
- 10.5 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

**11 Intellectual Property Rights**

You acknowledge that the Intellectual Property Rights in Digifarm and any amendments, upgrades, enhancements thereto from time to time

and all associated documentation belong to Safaricom or in other persons that Safaricom has received licenses from.

You acknowledge that the Intellectual Property Rights in FarmDrive's proprietary algorithm, including any and all amendments, upgrades or enhancements thereto from time to time and all associated documentation that FarmDrive provides to you belong to and are owned unreservedly by FarmDrive. You shall not infringe any such intellectual property rights.

You shall not duplicate, reproduce or in any way tamper with Digifarm and FarmDrive's Intellectual Property Rights.

## **12 Indemnity**

12.1 In consideration of FarmDrive providing the Services, you undertake to indemnify FarmDrive and hold them harmless against any loss, charge, damage, expense, fee or claim which FarmDrive suffers or incurs or sustains thereby and you absolve FarmDrive from all liability for loss or damage which you may sustain from FarmDrive acting on your instructions or Loan Applications or in accordance with these Terms and Conditions.

12.2 The indemnity in clause 13.1 shall also cover the following:

12.2.1 All demands, claims, actions, losses and damages of whatever nature which may be brought against FarmDrive or which it may suffer or incur arising from its acting or not acting on any Loan Application or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond FarmDrive's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Loan Application received by FarmDrive.

12.2.2 Any loss or damage that may arise from your use, misuse, abuse or possession of any third party software, including

without limitation, any operating system, browser software or any other software packages or programs.

12.2.3 Any unauthorized access to the Services or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment.

12.2.4 Any loss or damage occasioned by the failure by you to adhere to these Terms and Conditions and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by FarmDrive as a consequence of any breach of these Terms and Conditions.

12.2.5 Any damages and costs payable by FarmDrive in respect of any claims against FarmDrive to compensate for loss where the particular circumstance is within your control.

## **13 Variation and Termination**

13.1 FarmDrive may at any time, upon notice to you, terminate or vary its (their) business relationship with you and in particular but without prejudice to the generality of the foregoing FarmDrive may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as it may determine.

13.2 Without prejudice to FarmDrive's rights under clause 14.1, FarmDrive (as applicable) may at its sole discretion suspend, temporarily or permanently your access to the Services

13.2.1 if you use the Services for unauthorized or unlawful purposes or where FarmDrive detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;

13.2.2 if your M-PESA Account is terminated for whatever reason;

- 13.2.3 if FarmDrive is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
- 13.2.4 if FarmDrive reasonably suspects or believes that you are in breach of these Terms and Conditions (including non-payment of any Loan amount due from you where applicable);
- 13.2.5 where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
- 13.2.6 to facilitate update or upgrade the contents or functionality of the Services from time to time;
- 13.2.7 where you remain inactive for any period of time determined by FarmDrive in its reasonable discretion;
- 13.2.8 If FarmDrive decides to suspend or cease the provision of the Services for commercial reasons or for any other reason as it may determine in its absolute discretion; or
- 13.3 **Consequences of Termination**
  - 14.4.1 Upon termination, you agree to pay to us immediately all amounts you owe us (Loan, Facilitation Fee and Rollover Fee).
  - 14.4.2 Termination shall however not affect any accrued rights and liabilities of either party.

**14 Information and data**

- 14.1 The Farming Information, Personal Information, M-PESA Information and all other information and data provided by the Farmer to FarmDrive shall remain at all times the property of the Farmer.
- 14.2 FarmDrive shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Farming Information, the Personal information, M-PESA Information and all the other information and data provided by the Farmer.

- 14.3 In the event of termination of this Agreement, FarmDrive shall when notified in writing to do so by the Farmer and within 60 days erase and instruct all its agents, partners, subcontractors and all other third parties, erase all Farming Information.
- 14.4 All the Farming Information, the Personal Information, M-PESA Information and all other information acquired by FarmDrive from the Farmer shall be used for purposes of the Services and as provided in these Terms and Conditions and shall not be further processed and disclosed without the consent of the Farmer unless it is expressly authorised in this Agreement.
- 14.5 You hereby expressly consent and authorize FarmDrive to disclose, receive, record or utilize your Farming Information or information or data relating to your use of the Services:
  - 14.5.1 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;
  - 14.5.2 to and from the FarmDrive's service providers, dealers, agents or any other company that may be or become FarmDrive's subsidiary or holding company for reasonable commercial purposes relating to the Services;
  - 14.5.3 to and from a Credit Reference Bureau;
  - 14.5.4 to FarmDrive's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
  - 14.5.5 to Safaricom in connection with the Services;
  - 14.5.6 for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and/or
  - 14.5.7 in business practices including but not limited to quality control, training and ensuring effective systems operation.

- 14.6 You agree that FarmDrive may disclose details relating to your use of the Services or to any third party including credit reference bureaus, if in FarmDrive's opinion such disclosure is necessary for the purposes of evaluating your creditworthiness or any transaction with or credit application made to FarmDrive or such third party for any lawful purpose.
- 14.7 You agree that FarmDrive may disclose details relating to your use of the Services or any other credit facility account including details of your default in servicing financial obligations on your Loan or any other credit facility account to any third party including credit reference bureaus for the purpose of evaluating your credit worthiness or for any other lawful purpose.

**15 Farmer Declaration**

In connection with your Loan Application with FarmDrive, you authorise FarmDrive to carry out credit checks with or obtain your credit information from, a credit reference bureau. In the event of the account going into default, you consent to your name, transaction and default details being forwarded to a credit reference bureau for listing. You acknowledge that this information may be used by Safaricom, banking institutions and other credit grantors in assessing your applications for credit.

**16 Miscellaneous**

- 16.1 These Terms and Conditions (as may be amended from time to time) form a legally binding agreement between you and FarmDrive.
- 16.2 This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person except that FarmDrive may assign or transfer their rights and liabilities hereunder at any time after giving you reasonable notice.
- 16.3 FarmDrive may with notice to you vary or amend these Terms and Conditions and the Facilitation Fees. Any such variations or

amendments may be published in posters, pamphlets or be available at [www.safaricom.co.ke](http://www.safaricom.co.ke), the DigiFarm platform and/or by any other means as determined by FarmDrive and any such variations and amendments shall take effect immediately upon publication.

- 16.4 No failure or delay by either yourself or FarmDrive in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.
- 16.5 The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 16.6 If any provision of these Terms and Conditions shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.

**17 Notices**

- 17.1 FarmDrive may send information concerning the Services or the Loan Account via SMS to your number.
- 17.2 You acknowledge that you have no claim against FarmDrive damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the Services.

**18 Dispute Resolution, Jurisdiction and Arbitration**

- 18.1 Any query, complaint and or dispute by the parties to this Agreement shall, in the first instance, be resolved by the parties conducting good faith discussions and negotiations between the Parties.
- 18.2 In the event such good faith discussions and negotiations do not resolve the query, complaint, dispute (together and individually referred to as "Dispute") within 30 days of either



party notifying the other and commencing discussions in 19.1 above, such Dispute shall be resolved through the Kenyan courts, which shall have exclusive jurisdiction to hear and determine the matter.

18.3 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.