

GENERAL TERMS AND CONDITIONS

SAFARICOM PLC

1. THE AGREEMENT

- 1.1. This Agreement sets out the complete Terms and Conditions (**Terms and Conditions**) which shall apply when You use the Mobile Trade Credit Service by Safaricom and is available at Safaricom's website located at www.safaricom.co.ke (the "**Website**").
- 1.2. Any amendments or variations made to these Terms and Conditions shall take effect on their date of publication or as otherwise provided in such amendment or variation and shall be posted on the Website.

2. DEFINITIONS AND INTERPRETATION

- 2.1. In these Terms and Conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:
 - 2.1.1 "**Calendar Week**" means any period of seven consecutive calendar days, including for the avoidance of doubt Friday, Saturday, and any public holidays.
 - 2.1.2 "**Customer**" means Small Scale Retailer.
 - 2.1.3 "**DSA**" means Dealer Sales Agent
 - 2.1.4 "Effective Date" means day of the pilot launch
 - 2.1.5 "**Lender**" means a limited liability company duly incorporated and carrying out the business of financial services or a duly authorized bank or financial institution licensed to operate within the Republic of Kenya;
 - 2.1.6 "**Loan**" or "**Loan Amount**" means the amount requested by the Small Scale Retailer on a credit basis to restock Safaricom Airtime in accordance with these Terms & Conditions;
 - 2.1.7 "**M-PESA**" means the money transfer and payments service provided by Safaricom through the M-PESA System;
 - 2.1.8 "**M-PESA Account**" means a record maintained by Safaricom corresponding with the amount of electronic money from time to time held by the Small Scale Retailer with Safaricom and represented by an equivalent amount of cash held by the Trustee in trust in accordance with the M-PESA Declaration of Trust and the M-PESA Customer Terms and Conditions;
 - 2.1.9 "**M-PESA Declaration of Trust**" means together the Declaration of Trust dated 23 January 2007 and the amendment deed dated 19 June 2008 executed by the Trustee under which the Trustee holds all amounts of cash received on the Customer's account on trust;
 - 2.1.10 "**M-PESA Subscriber**" means any person registered to use the M-PESA System to send or receive money or make payments;
 - 2.1.11 "**M-PESA System**" means the system operated by Safaricom in Kenya for the provision of the M-PESA Service using the Network;

- 2.1.12 "**MSISDN**" means the unique Mobile Subscriber Integrated Service Digital Network Number issued to a Safaricom subscriber and is used to identify the subscriber on Safaricom's Network;
- 2.1.13 "**Network**" means Safaricom's mobile cellular network;
- 2.1.14 "**Pilot Period**" means the fixed term right granted by Safaricom to the Small Scale Trader to trial, access, use, and/or benefit from the Services being..... calendar days starting from the Effective Date, after which period the Services, or access or use of the Services, will no longer be made available to Merchants.
- 2.1.15 "**Request**" means an instruction received by Safaricom from Your mobile phone handset and MSISDN and made via the USSD System and upon which Safaricom is authorized to act;
- 2.1.16 "**Safaricom**" means Safaricom PLC, a duly licensed converged telecommunications service provider incorporated in Kenya as a limited liability company under the Companies Act (Cap 486 of the Laws of Kenya);
- 2.1.17 "**Service**" means the Safaricom service offered by Safaricom in which Small Scale Traders can secure funds on credit and make payments to repay the funds advanced in accordance with these Terms and Conditions;
- 2.1.18 "**Service Period**" shall have the meaning provided under clause 6.2 of these Terms and Conditions;
- 2.1.19 "**SMS**" means a short message service;
- 2.1.20 "**STK**" means Sim Tool Kit;
- 2.1.21 "**System Menu**" means the USSD System menu accessible on the Network and through the Customer's MSISDN for purposes of issuing instructions and/or Requests to Safaricom in order to access the Service;
- 2.1.22 "**Trustee**" means the M-PESA Holding Company Limited;
- 2.1.23 "**USSD**" means the Unstructured Supplementary Service Data System;
- 2.1.24 "**USSD Designated Code**" means the USSD system code number assigned by which the Customer may access the Service through Safaricom's Network;
- 2.1.25 "**USSD System**" means the USSD service in which the Customer may instruct Safaricom and operate the Services, the USSD System is accessed by dialing the USSD Designated Code;
- 2.1.26 "**We**" "**our**" and "**us**" or its variants means Safaricom and includes the successors and assigns of Safaricom; and
- 2.1.27 "**You**" or "**Your**" or its variants means the Small Scale Trader;
- 2.2. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3. Headings in these Terms and Conditions are for convenience purposes only and they do not affect the interpretation of this Agreement.

3. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 3.1. These Terms and Conditions apply and shall take effect once You register for the Service ("Effective Date"). By using or continuing to use the Service, You are considered to have read, understood and accepted these Terms and Conditions and to be legally bound by these Terms and Conditions.
- 3.2. For the avoidance of doubt, Customers shall remain liable for all outstanding Loan Amounts not repaid prior to the end of the Pilot Period.
- 3.3. These Terms and Conditions may be amended or varied by Safaricom from time to time and Your continued use of the Service constitutes Your agreement to be bound by such amendment or variation.

4. REGISTERING FOR AND USING THE SERVICES

- 4.1. In order for You to use the Services, You must have a registered number on the Safaricom Network.
- 4.2. Access to the Service shall be through the USSD Designated code or any other designated channel (App/ Web/STK) on Safaricom's Network.
- 4.3. All instructions to Safaricom to activate an Account or for use of the Service shall be made electronically through USSD that will only be accessible to You through the USSD Designated Code or any other designated channel (App/ Web/STK)
- 4.4. To activate the Service, You must dial the USSD (App/ Web/STK) Designated Code and select the option made available on the System Menu for purposes of accessing the Services.
- 4.5. On the USSD (App/ Web/STK) System Menu, You will be required to accept these Terms and Conditions.
- 4.6. Upon successful activation, You will receive an SMS confirming successful registration and informing You of Your credit limit.
- 4.7. Upon completion of a successful Loan application request You will receive text messages confirming processing of the Loan application and verification of release of funds to the DSA.
- 4.8. You will be required to enter Your M-PESA PIN at all times before You can request or pay a loan.

5. REQUESTING FOR A MOBILE TRADE CREDIT LOAN

- 5.1. You may request for a Mobile Trade Credit Loan by selecting and validating the option on the Service Menu made available for that purpose. You can only apply for a Loan amount that is within Your approved limit.

- 5.2. Upon successful completion of the Loan application request, if You requested a Loan, You will receive an SMS advising that the money has been disbursed to the DSA. The DSA will then deliver the Airtime. In the case You made a request and Your Loan application was unsuccessful You will receive an SMS advising You on the reason for the rejection.
- 5.3 You can only request for a new Loan upon fully repaying any earlier Mobile Trade Credit Loan.

6. REPAYING THE LOAN

- 6.1. You will be solely responsible for ensuring that the Loan Amount is fully repaid in accordance with this clause 6. 4.
- 6.2. You will be required to repay the Loan Amount within one (1) Calendar Week from the disbursement date of Your Loan Amount ("Service Period"). If at the end of the Service Period You have not repaid the Loan, Your repayment period shall be extended by one (1) Calendar Week from the end of the Service Period ("Service Period Extension").
- 6.3. To repay the Loan during the Service Period or the Service Period Extension, You will be required to select whether You intend to settle the full Loan Amount or a partial repayment of the Loan Amount on the System Menu. You will then be prompted to confirm whether You will be repaying the partial or full Loan Amount from Your nominated M-PESA Account. The System Menu will notify You on the balance of the Loan Amount and prompt You to enter Your M-PESA PIN.
- 6.4 To repay the Loan during the Service Period Extension you must select the option for repayment of the full Loan Amount on the System Menu. You will then be prompted to confirm whether you will be paying the full Loan Amount from your M-PESA Account. The System Menu will notify You of the balance of the Loan Amount and prompt you to enter Your MPESA PIN.
- 6.5. Upon successful completion of the re-payment request made pursuant to clause 6.2 or 6.3, You will receive an SMS confirming that the re-payment has been received and the status of the Loan Amount including whether or not the Loan Amount has been fully repaid.
- 6.6. If Your M-PESA Account does not have sufficient funds to fulfil the re-payment Request then You will receive an SMS informing them You that the payment Request was unsuccessful.

7. CHECKING LOAN STATUS

- 7.1. You may check the balance of Your Loan Amount by selecting the option made available for that purpose on the System Menu.
- 7.2. You will receive a message on the System Menu, confirming the status of any Loan Amount outstanding and the repayment due date of such Loan Amount.

8. FAILURE TO REPAY LOAN

- 8.1. We will use reasonable efforts to notify You of the outstanding Loan Amount prior to expiry, upon the expiry, and after the expiry of the Service Period by way of text message notifications. Notwithstanding the foregoing, it is Your responsibility to ensure Your Loan is paid within the Service Period or Service Period Extension.

- 8.2. To qualify for a new Loan, You will be required to first repay in full the total outstanding Loan Amounts within that Loan's Service Period or Service Period Extension.
- 8.3. You agree that Safaricom or its partners engaged in the provision of the Service may forward Your credit information to a licensed credit reference bureau for blacklisting if You do not repay the balance of the Loan Amount within the Loan's Service Period, or Service Period Extension. Additionally, You agree that Safaricom may recruit a specialized loan recovery agency for the purpose of recovering any outstanding Loan Amount and/or transaction charges if You do not repay the Loan Amount within the applicable Service Period, or Service Period Extension.
- 8.4. In addition to the above, in the event that You do not repay the Loan Amount, before the expiry of any Service Period Extension, You will not be permitted to use, or have any access to, the Service until the Loan Amount is repaid in full.
- 8.5. You agree that following any action that we may take pursuant to this clause, that such credit reference bureau that has received Your credit information may reasonably act on such information to blacklist You from obtaining any futures Loans or other credit facilities (including those advanced by any third party) and that Safaricom may reasonably act on such information to prevent You from using any of its Services or products.

9. DISCLOSURE OF INFORMATION

- 9.1. By registering for the Service, You authorize us to reveal, receive, record or utilize Your information or data (including transaction data relating to M-PESA) relating to Your use of the Service:
 - 9.1.1. to any local or international law enforcement or competent regulatory or governmental agencies for purposes of aiding in the prevention, detection, investigation or prosecution of criminal activities or fraud;
 - 9.1.2. to a Credit Reference Bureau;
 - 9.1.3. to a third party involved in the provision of the Services and the Lender;
 - 9.1.4. to our lawyers, auditors, debt collectors, loan recovery agencies or other professional advisors or to any court or arbitration tribunal for the purposes of any proceedings;
 - 9.1.5. for reasonable commercial purposes connected to Your use of the Services, such as marketing and research related activities; and
 - 9.1.6. for any business practices including but not limited to quality control, training and ensuring effective systems operation.
- 9.2. You acknowledge that we may retain Your transaction data for a period of up to seven (7) years or as may be required by any law or regulation.
- 9.3. We respect Your privacy and at all times we will endeavour to ensure that that information shared with any third party in accordance with clause 9.1 is shared on confidential basis and strictly to the extent necessary for purposes provision of the Services or for any purpose set out under these Terms and Conditions.

10. INDEMNITY AND EXCLUSION OF LIABILITY

- 10.1. Access to the Service may be affected by factors outside our control such as system downtime or failure. Uninterrupted access may also arise as a result of scheduled or unscheduled periodic testing, repair, upgrade or maintenance and other factors. We will use all reasonable efforts to ensure that Your Loan Requests are processed in a timely manner and in accordance with the requirements of the law. Notwithstanding the foregoing, we do not make any representations or warranties as to continuous, uninterrupted or secure access to the Service.
- 10.2. In return for the provision of the Services by ourselves, You agree to protect us and absolve us against any law suits, losses, charge, damage, liability, expense (including legal fees), fee or claim that we may suffer, incur or otherwise as a result of our provision of the Services to You. The protection and absolution You provide also includes any claim made by a third party against us that may result from You being in breach of these terms and conditions.
- 10.3. While we will make every commercially reasonable effort to ensure that You receive proper Service, we will not be responsible to You or to any other person claiming under You for any losses or damage, regardless of the nature in connection with the following unless procured through our own wilful default or fraud:
 - 10.3.1 a failure, malfunction, interruption or unavailability of the USSD System, Your mobile phone apparatus, the Network or the M-PESA System or the unavailability or any delays in disbursement of the Loan Amount;
 - 10.3.2 Your failure use or to give proper or complete instructions using the USSD System;
 - 11.3.3 any fraudulent or illegal use of the Service, the USSD System, the M-PESA System and/or Your mobile phone apparatus;
 - 10.3.4 any loss that may arise as a result of any negligence on Your part including revealing Your Service PIN to a third party
 - 10.3.5 Your failure to comply with these Terms and Conditions; or
 - 10.3.6 other circumstances whatsoever not within our control including, without limitation, force majeure, error, interruption, delay or non-availability of the M-PESA System, the USSD System, terrorist or any enemy action, equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system, lack of available resources, strikes or labour disputes.
- 10.4. We will not be responsible for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Service even where the possibility of such loss or damage is notified to us.
- 10.5. We exclude any warranty and obligations that are implied by law and not set out in this Agreement to the extent that we are permitted by law.

- 10.6. In the event of any liability arising under these terms and conditions as a result of which we are found legally responsible You agree that our maximum aggregate liability to You or to any other person shall be limited to the Loan Amount outstanding at the time such liability arose.

11. INTELLECTUAL PROPERTY RIGHTS

You agree that the intellectual property rights in the USSD System, the M-PESA System, the Service (and any amendments, upgrades or enhancements made) and all associated documentation that we provide to You through the USSD System or the Service or otherwise are vested either in us or in other persons from whom we have a right to use and to sub-license the USSD System and/or the Service or the M-PESA System and the said documentation. You acknowledge those rights and You agree not to infringe such intellectual property rights. You will not duplicate, reproduce or in any way tamper with the M-PESA System, the USSD System or the Service and associated documentation without our prior written consent.

12. SUSPENSION AND TERMINATION

- 12.1. We may at any time, upon notice to You, suspend, terminate or vary our business relationship with You.
- 12.2. We may cancel credits or Loans which we have granted and require the repayment of outstanding debts or Loans immediately or otherwise upon notice.
- 12.3. We have a right to suspend the Services:
- 12.3.1. if You use the Service for any unauthorized purposes;
 - 12.3.2. if we detect any abuse/misuse, breach of content, fraud or attempted fraud relating to Your use of the Service;
 - 12.3.3. if we are required or requested to do so in order to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
 - 12.3.4. if we reasonably suspect or believe that You are in breach of these Terms and Conditions;
 - 12.3.5. if You fail to repay the Loan Amount accrued for more than the calendar days applied for.
 - 12.3.6. If required to do so to address technical problems or for reasons of ensuring safety;
 - 12.3.7. to facilitate update or upgrade the contents or functionality of the Service from time to time;
 - 12.3.8. if we decide to suspend or cease the provision of the Service for commercial reasons or for any other reason as we may reasonably determine.
- 12.4. You may opt out of the Service by deregistering an Account using the option made available for that purpose under the System Menu.

- 12.5. Termination shall however not affect any rights and responsibilities of either party that arose prior to termination, including repayment of any outstanding Loan Amount.

13. NOTICES

- 13.1. We may communicate information concerning the Service to You via SMS, text message notifications or in such other publicly available medium including our Website or in the local dailies.
- 13.2. You agree not to bring any claim against us for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the Service.

14. CUSTOMER CARE

You may contact us through our customer care centre lines or other customer care contacts provided on our Website to report any disputes, claims or discrepancies in the Service. Our customer care representatives shall handle the report in accordance with our standard complaint handling procedures.

15. GENERAL

- 15.1. If any clause or part of these terms and conditions is found to be in conflict with any applicable law such clause will be severed and subject to amendment, modification or deletion by us without affecting the validity or enforceability of the remaining terms and conditions.
- 15.2. These Terms and Conditions constitute together with the schedules constitute the entire agreement between us with respect to the Service.
- 15.3. We reserve the right to **solely** amend or review these Terms and Conditions from time to time as we introduce new functionalities to the Service or as may be required by law. Such amendments or variations will be notified to You on the Website and by Your continuing to operate the Service You shall be considered to have accepted those variations and amendments.
- 15.4. You may not assign any right or obligation that may arise under these terms and conditions without our consent.
- 15.5. You agree that our rights will not be lessened or restricted or denied because of any leniency or restraint extended by us to You by any delay in exercising or failure to exercise any of our rights unless provided to You in writing and signed by our duly authorised representative. No waiver by us of any breach of these terms and conditions by Yourself shall operate as a waiver of any subsequent breach.
- 15.6. No provision of this Agreement creates a partnership between us or makes You or us a commercial agent of the other for any purpose. Neither of us except where expressly provided in these terms and conditions has any authority or power to bind, to contract in the name of, or to create a liability for the other in any way or for any purpose.
- 15.7. Nothing in these Terms and Conditions shall be read as preventing any party from pursuing any other remedy available to it under law.