

TERMS AND CONDITIONS OF THE OKOA STIMA SERVICE

1. THE AGREEMENT

- 1.1. This Agreement sets out the complete Terms and Conditions (**Terms and Conditions**) which shall apply when you use the Okoa Stima Service by Safaricom and is available at Safaricom's website located at <http://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. "**Account**" means a validly registered Kenya Power account operated by the Customer;
 - 2.1.2. "**Customer**" means an M-PESA subscriber operating an Account with Kenya Power, such Customer may be a Prepaid Customer or a Postpaid Customer;
 - 2.1.3. "**Kenya Power**" means the Kenya Power and Lighting Company Limited a duly authorised electric energy/power transmitter and distributor operating within the Republic of Kenya;
 - 2.1.4. "**Loan**" or "**Loan Amount**" means the credit value of the Okoa Stima Loan;
 - 2.1.5. "**M-PESA**" means the money transfer and payments service provided by Safaricom through the M-PESA System;
 - 2.1.6. "**M-PESA Account**" means a record maintained by Safaricom corresponding with the amount of electronic money from time to time held by the Customer 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;
 - 2.1.7. "**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;
 - 2.1.8. "**M-PESA Subscriber**" means any person registered to use the M-PESA System to send or receive money or make payments;
 - 2.1.9. "**M-PESA System**" means the system operated by Safaricom in Kenya for the provision of the M-PESA Service using the Network;
 - 2.1.10. "**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;
 - 2.1.11. "**Network**" means Safaricom's mobile cellular network;
 - 2.1.12. "**Okoa Stima Loan**" means an amount borrowed by the Customer which permits a Customer to make payments for electricity on credit;
 - 2.1.13. "**Pay Bill**" means the accounts maintained by Kenya Power with Safaricom for purposes of receiving payments from Customers For purposes of this Agreement Pay Bill means Pay Bill Number 405050 (for Prepaid Customer payments) and Paybill Number 405051 (for Postpaid Customer payments);
 - 2.1.14. "**Preferred PIN**" means the personal identification number that uniquely identifies a You for purpose of use of the Service and created in accordance with clause 4.4. The preferred PIN is confidential to You and should not be disclosed to any other person;
 - 2.1.15. "**Prepaid Customer**" means a Customer who can only access electricity services from Kenya Power through a pay as you go model by way of purchasing electricity Tokens prior to using the service;

- 2.1.16. **"Postpaid Customer"** means a Customer who accesses electricity services from Kenya Power and pays for the electricity services utilized monthly in arrears or on such other period or duration as Kenya Power may appoint from time to time;
- 2.1.17. **"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;
- 2.1.18. **"Safaricom"** means Safaricom Limited, 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);
- 2.1.19. **"Service"** means the Safaricom Okoa Stima service offered by Safaricom in which Customers can make payments for electricity on credit, purchase Tokens on credit or make payments for Post Pay power Bills or purchase Tokens for Pre Pay electricity in accordance with these Terms and Conditions;
- 2.1.20. **"Service Period"** shall have the meaning provided under clause 6.2 of these Terms and Conditions;
- 2.1.21. **"SMS"** means a short message service;
- 2.1.22. **"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;
- 2.1.23. **"Token"** means a serial number issued by Kenya Power entitling a Prepaid Customer to program a Kenya Power meter system provided for such purpose to provide access to a predetermined value of kilowatt-hours at the applicable Kenya Power rate;
- 2.1.24. **"Trustee"** means the M-PESA Holding Company Limited;
- 2.1.25. **"USSD"** means the Unstructured Supplementary Service Data System;
- 2.1.26. **"USSD Designated Code"** means the USSD system code number *885# assigned by which the Customer may access the Service through Safaricom's Network;
- 2.1.27. **"USSD System"** means the USSD service in which the Customer may instruct Safaricom and operate the Services, the USSD System is accessed by dialling the USSD Designated Code;
- 2.1.28. **"We"** **"our"** and **"us"** or its variants means Safaricom and includes the successors and assigns of Safaricom; and
- 2.1.29. **"You"** or **"your"** or its variants means the Customer;
- 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 once you register for the Service. By using or continuing to use the Service, You are considered to have read, understood and accepted these Terms and Conditions.
- 3.2. 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 be a registered M-PESA Subscriber.
- 4.2. Access to the Service shall be through the USSD Designated code 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 the System Menu that will only be accessible to you through the USSD Designated Code.

- 4.4. To activate the Service, you must dial the USSD Designated Code and select the option made available on the System Menu for purposes of registering for the Services.
- 4.5. On the USSD System Menu, you will be required to accept these terms and conditions and create a personal identification number (PIN) for use of the Service.
- 4.6. Upon successful activation you will receive an SMS confirming your Preferred PIN created in accordance with clause 4.4.
- 4.7. In order to start purchasing Tokens, whether on credit or otherwise from your M-PESA Account, you will be required to register an Account for the Services.
- 4.8. You may register up to a maximum of three (3) Accounts for use with the Service.
- 4.9. You will be required to enter your Preferred PIN at all times before you can access the System Menu after first time access detailed in 4.3 above.

5. REQUESTING FOR AN OKOA STIMA LOAN

- 5.1. You may request for an Okoa Stima Loan by selecting and validating the option on the Service Menu made available for that purpose.
- 5.2. Without prejudice to the foregoing, you may only borrow up to the maximum value set out in Schedule 1 (Power Credit Eligibility and Issuance) unless otherwise notified by Safaricom.
- 5.3. Upon successful completion of the request, if you requested an Okoa Stima Loan as a Prepaid Customer, you will receive an SMS on awarding Tokens equivalent to the Loan Amount. In the case you made a request as a Postpaid Customer, you will receive an SMS advising that the respective Account has been credited with funds equivalent to the Loan Amount.

6. REPAYING THE LOAN

- 6.1. You will be solely responsible for ensuring that the Loan Amount is repaid in accordance with this clause 6.
- 6.2. You will be required to repay the Loan Amount within seven (7) calendar days from the date that you made a request for an Okoa Stima Loan.
- 6.3. To repay the Loan you will be required to select the Account for which you intends to repay the loan on the System Menu. The System Menu will notify you on the balance of the Loan Amount. You have the option of repaying part of the Loan Amount or repaying the full Loan Amount.
- 6.4. Upon successful completion of the re-payment Request made pursuant to clause 6.3, you will receive an SMS confirming that the payment has been received and the status of the Loan Amount.
- 6.5. 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 OKOA STIMA 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 due date.

8. FAILURE TO REPAY LOAN

- 8.1. We will use reasonable efforts to notify you of the outstanding Loan Amount prior to and on the expiry of the seven (7) days Service Period by way of SMS. Notwithstanding the foregoing, it is your responsibility to regularly check the status of your Loan Amount through the System Menu.

- 8.2. To qualify for a new Okoa Stima Loan, you will be required to repay the total Outstanding Loan within the Service Period.
- 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 twenty one (21) days from the date that you requested for an Okoa Stima Loan.
- 8.4. In addition to the above, in the event that you do not repay the Loan Amount within the twenty one (21) days, you will not be permitted to use the Service or access electricity through the Account until the Loan Amount is repaid.
- 8.5. You agree that following any action that we may take pursuant to this clause, you agree that such credit reference bureau that has received your credit information may reasonably act on such information to blacklist you from obtaining any loan or credit facilities (including those advanced by any third party) and that Kenya Power may reasonably act on such information to prevent you from using electricity services or purchase Tokens for any Account.

9. PURCHASING TOKENS AND PAYMENT OF POST PAID BILLS

- 9.1 A Prepaid Customer may also purchase Tokens by M-PESA through the System Menu option.
- 9.2 A Postpaid Customer may pay their outstanding Kenya Power Bill by M-PESA through the System Menu.
- 9.3 By confirming payment, you expressly authorise Safaricom to deduct the amount from your M-PESA Account and transfer such sums as part or full payment for an outstanding bill in the case of a Postpaid Customer or for Tokens in the case of a Prepaid Customer.
- 9.4 The pay bill charges set out under Schedule 2 (Transaction Charges) as amended from time to time, shall apply.
- 9.4 Upon successful completion of the purchase or bill payment, you will receive an SMS confirming the Token number (for Pre-pay Customer) or advising on the status of the Kenya Power bill on the respective Account in the case of a Post-pay Customer.

10. TRANSACTIONAL FEES

- 10.1 We reserve the right to charge you transactional fees for use of the Service as are set out in Schedule 2(Transaction Charges), and as may be varied by Safaricom from time to time. Where possible, we will give prior notice of a variation to the said charges.
- 10.2 Notice of such changes will be communicated on our Website or in any of the local dailies or other communication medium of our choice.

11. DISCLOSURE OF INFORMATION

- 11.1. 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:
 - 11.1.1. 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;
 - 11.1.2. to a Credit Reference Bureau;
 - 11.1.3. to a third party involved in the provision of the Services including but not limited to Kenya Power;
 - 11.1.4. to our lawyers, auditors, debt collectors or other professional advisors or to any court or arbitration tribunal for the purposes of any proceedings;
 - 11.1.5. for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and

- 11.1.6. for any business practices including but not limited to quality control, training and ensuring effective systems operation.
- 11.2. 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.
- 11.3. 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 11.1 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.

12. INDEMNITY AND EXCLUSION OF LIABILITY

- 12.1. 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 transaction 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.
- 12.2. 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.
- 12.3. 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:
 - 12.3.1 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;
 - 12.3.2 your failure use or to give proper or complete instructions using the USSD System;
 - 12.3.3 any fraudulent or illegal use of the Service, the USSD System, the M-PESA System and/or your mobile phone apparatus;
 - 12.3.4 any loss that may arise as a result of any negligence on your part including revealing your Preferred PIN to a third party
 - 12.3.5 your failure to comply with these Terms and Conditions; or
 - 12.3.6 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.
- 12.4. 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.
- 12.5. 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.
- 12.6. 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 or KES 2,500 whichever is less.

13. 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.

14. SUSPENSION AND TERMINATION

- 14.1. We may at any time, upon notice to you, suspend, terminate or vary our business relationship with you.
- 14.2. We may cancel credits which we have granted and require the repayment of outstanding debts immediately or otherwise upon notice.
- 14.3. We have a right to suspend the Services:
 - 14.3.1. if you use the Service for any unauthorized purposes;
 - 14.3.2. if we detect any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Service;
 - 14.3.3. 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;
 - 14.3.4. if we reasonably suspect or believe that you are in breach of these Terms and Conditions;
 - 14.3.5. if you fail to repay the Loan Amount accrued for more than 21 days.
 - 14.3.6. If required to do so to address technical problems or for reasons of ensuring safety;
 - 14.3.7. to facilitate update or upgrade the contents or functionality of the Service from time to time;
 - 14.3.8. where you remain inactive for any period of time that we may determine but in no event less than six (6) months; or
 - 14.3.9. 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.
- 14.4. You may opt out of the Service by deregistering an Account using the option made available for that purpose under the System Menu.
- 14.5. Termination shall however not affect any rights and responsibilities of either party that arose prior to termination.

15. NOTICES

- 15.1. We may communicate information concerning the Service to you via SMS or in such other publicly available medium including the Website or in the local dailies.
- 15.2. 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.

16. DISPUTE RESOLUTION

- 16.1. 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.

- 16.2. Any dispute regarding the Services that is not resolved by our customer care representatives may be referred to arbitration by a single arbitrator to be appointed by agreement between us. If we do not agree on the appointment of an arbitrator within sixty (60) days from the request for arbitration by a party then either one of us may apply to the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch) to appoint an arbitrator. Arbitration of the dispute will be conducted in Nairobi and in the English language and will be made following the Rules of Arbitration of the said Institute and the provisions of the Arbitration Act 1995 or the respective applicable law.
- 16.3. To the extent permitted by the law, the determination of the Arbitrator will be final, conclusive and binding on both parties.

17. GENERAL

- 17.1. 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.
- 17.2. These Terms and Conditions constitute together with the schedules constitute the entire agreement between us with respect to the Service.
- 17.3. We reserve the right to **solely** amend or review these Terms and Conditions from time to time as we introduces 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.
- 17.4. You may not assign any right or obligation that may arise under these terms and conditions without our consent.
- 17.5. 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.
- 17.6. 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.
- 17.7. Nothing in these Terms and Conditions shall be read as preventing any party from pursuing any other remedy available to it under law.

SCHEDULE 1 (POWER CREDIT ELIGIBILITY AND ISSUANCE)

- (i) Prepaid Customers will be eligible for a maximum of 1.5 times their last Token purchase value up to a maximum of KES 1,000.
- (ii) Postpaid customers will be eligible for a maximum of 1.5 times their last purchase value up to a maximum of KES 2, 500 subject to (vi) below.
- (iii) Prepaid customers may only obtain Tokens valued at units of KES 100, KES 200, KES 500, KES 800 and KES 1000.
- (iv) Postpaid Customers may specify the exact credit amount required subject to (ii) above
- (v) Postpaid Customers will be allowed to access credit that partially settles their bill however their accounts will still be in arrears and liable for disconnection if balance is not settled on time.
- (vi) Postpaid Customers will not be allowed to get credit which is greater than their bill value.

SCHEDULE 2 (TRANSACTION CHARGES)

- (i) Service charge of 10% of the Loan Amount is to be charged.
- (ii) M-PESA Pay Bill charges for purchase of Tokens or for settlement of bills from Kenya Power as below:

Transactional Band (KES)		Charges (KES)
10	49	3
50	99	5
100	9,999	17
10,000	19,999	28
20,000	34,999	50
35,000	49,999	83
50,000	70,000	182