

## TERMS AND CONDITIONS FOR THE JENGA JINA CAMPAIGN

### 1. THE AGREEMENT

- 1.1. This Agreement sets out the complete terms and conditions between you, NCBA Bank Kenya PLC (NCBA) and Safaricom for the Service (as hereinafter defined) and shall be binding on your personal representatives and assigns.
- 1.2. These terms and conditions and any amendments or variations thereto take effect on their date of publication.
- 1.3. These Terms are supplemental to the M-Pesa Terms and Conditions, M-Shwari Terms and Conditions and Fuliza Terms and Conditions. In the event of any inconsistency between these Terms and the M-Pesa Terms and Conditions or any other relevant Terms and Conditions, these Terms and Conditions shall prevail.

### 2. DEFINITIONS

In these terms and conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:

- 2.1. **"Agreement"** means these terms and conditions and any amendments that will be made from time to time.
- 2.2. **"Amount Due"** refers to any Facility amount, return, Charge that remains unpaid after the Facility Period.
- 2.3. **"Applicant"** means any person who, through the Opt-In Function, applies for enrolment or registration onto the Services and establishment of an Overdraw Limit.
- 2.4. **"Campaign"** means the Jenga Jina Initiative that will run for 120 days (the "Campaign Period").
- 2.5. **"Commencement Date"** means the date on which you accept these terms and conditions and opt into the Campaign.
- 2.6. **"Credit Reference Bureau"** or **"CRB"** means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013, as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of customer credit information.
- 2.7. **"Currency Equivalent"** means the Kenya shillings equivalent of the corresponding E-Value amount.
- 2.8. **"Customer"** or **"Client"** means any Applicant who has registered to use the Service and has accepted the terms of this Agreement.
- 2.9. **"Customer Care Centre"** means a Safaricom customer care centre.
- 2.10. **"Clients line(s)"** means an MSISDN belonging to the client and activated on M-Pesa. Registered on M-Shwari or has opted into Fuliza.
- 2.11. **"Data Protection Legislation"** means the General Data Protection Regulation (GDPR); or Data Protection Act, No. 24 of 2019 of Kenya; or any other legislation applicable to the protection of personal information in Kenya.
- 2.12. **"Event of Default"** refers to any of the circumstances set out in Clause 10 below.
- 2.13. **"E-Value"** means the electronic value issued by Safaricom, NCBA Bank Kenya PLC and transacted within M-Pesa and representing an entitlement to an equivalent amount of the cash monies.
- 2.14. **"Equipment"** includes your mobile phone handset, device, M-Pesa enabled SIM Card and/or other equipment which when used together enables you to access the Network.
- 2.15. **"Facility"** means any funds, overdraft (Fuliza) or M-Shwari advanced on your M-Pesa Account using your Mobile Number subject to the Central Bank of Kenya Guidelines.
- 2.16. **"Facility Term"** means the period agreed for full Repayment of the Facility from the date when the outstanding Facility was first advanced.
- 2.17. **"Fuliza"** means the M-Pesa account overdraw service, which allows M-Pesa subscribers to overdraw their M-Pesa accounts in order to complete transactions.
- 2.18. **"M-Shwari"** means the M-Shwari service offered by NCBA in partnership with Safaricom.
- 2.19. **"Government"** means the National Government, County Government or any other Government lawfully established under the laws of Kenya.
- 2.20. **"IPRS"** means the Integrated Population Registration System operated by the Government.
- 2.21. **"Know Your Customer"** also known as **KYC** refers to the customer due diligence obligations, information, items documentation and requirements prescribed by relevant laws of Kenya and as may be prescribed or recommended by the Government or Central Bank of Kenya from time to time.
- 2.22. **"M-Pesa"** or **"M-Pesa Service"** means the money transfer and payment service that is managed and operated exclusively by Safaricom in Kenya and licensed by the Central Bank of Kenya.

- 2.23. **"M-Pesa Client Credit Data"** means data relating to your credit and transactional activity within the M-Pesa System.
- 2.24. **"M-Pesa Client Data"** means an M-Pesa Client's KYC, as reflected in Safaricom's records from time to time.
- 2.25. **"M-Pesa System"** means the technical platform for the time being providing the M-Pesa Service.
- 2.26. **"MSISDN"** Mobile Subscriber Integrated Services Digital Network Number (Mobile Number).
- 2.27. **"NCBA"** means NCBA Bank Kenya PLC incorporated in Kenya as a limited liability company under the Companies Act and duly licensed as a bank under the Banking Act and includes affiliates or subsidiaries of NCBA as may from time to time be specified by NCBA to you.
- 2.28. **"Network"** means the mobile cellular network operated by Safaricom.
- 2.29. **"Opt-in Function"** means the proprietary menu option developed by Safaricom and available on USSD, or other M-Pesa Access Channels that enables Customers to apply to Safaricom to register for the Campaign.
- 2.30. **"Opt-out Function"** means the proprietary menu option developed by Safaricom and available on USSD, M-Pesa enabled SIM Cards and the Safaricom App that enables M-Pesa Subscribers to opt out of the Campaign.
- 2.31. **"Party"** refers to You, NCBA or Safaricom singularly.
- 2.32. **"Parties"** means You, NCBA and Safaricom jointly.
- 2.33. **"Personal Information"** means personal identifiable information as prescribed in the Data Protection Act which includes but is not limited to name, address, phone number, identification number and location data and such other information that will enable us to identify you and comply with the regulatory KYC requirements;
- 2.34. **"PIN"** means your personal identification number being the secret code used to access and operate your Equipment on the M-Pesa System including but not restricted to access and use of the Services and Campaign.
- 2.35. **"Recovery Expenses"** include any costs including legal fees incurred by us to recover Overdue Amounts.
- 2.36. **"Repayment"** means repayment of any amount due on Fuliza and M-Shwari.
- 2.37. **"Request"** means a request or instruction received by us from you or purportedly from you through the Network and the System and upon which we are authorized to act.
- 2.38. **"Safaricom"** means Safaricom PLC, a public limited company incorporated in Kenya under the Companies Act.
- 2.39. **"Services"** means Fuliza or M-Shwari.
- 2.40. **"SIM Card"** means the subscriber identity module which when used together with other prescribed Equipment enables a Customer to use the M-Pesa Service.
- 2.41. **"STK Menu"** means the M-Pesa STK menu embedded on the SIM Card and appearing on the M-Pesa user interface.
- 2.42. **"USSD"** means the USSD service provided by Safaricom.
- 2.43. **"We," "our," and "us,"** means Safaricom and NCBA and where applicable may include our affiliates, successors and assigns.
- 2.44. **"You" or "your"** means the Customer and includes the Customer's personal representatives and assigns.
- 2.45. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

### 3. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 3.1. Before opting-in or registering for the Campaign, you should carefully read and understand these terms and conditions as they govern the access, use and operation of the Campaign. These Terms and Conditions are available on [www.safaricom.co.ke](http://www.safaricom.co.ke) and [www.ke.ncbagroup.com](http://www.ke.ncbagroup.com). Where you are unable to read and understand these terms and conditions from an electronic device you are requested to collect a printed version from a Safaricom Shop.
- 3.2. If you do not agree with these terms and conditions, please click "Decline" on the Opt-in Function.
- 3.3. You will be deemed to have read, understood and accepted these terms and conditions:
- 3.3.1. upon clicking on the "Accept" option on the Opt-in screen requesting you to confirm that you have read, understood and agreed to abide by these terms and conditions; and or
- 3.3.2. by using or continuing to use and requesting for the Campaign.
- 3.4. By registering for the Campaign, you agree to comply with and be bound by these terms and conditions as amended and revised from time to time and you affirm that these terms and conditions are without prejudice to any other rights that we may have in law or otherwise regarding your registration, access and use of the Campaign.
- 3.5. We may from time to time vary or amend these terms and conditions and your continued access and use of the Campaign constitutes your acceptance to be bound by the terms of any such amendment or variation.

### 4. REGISTERING FOR THE CAMPAIGN

- 4.1. You are required to register for the Campaign through the designated M-Pesa Access Channel which is \*334# and select option 9, Jenga Jina.
- 4.2. You hereby agree and accept that upon the opting in to the Campaign with one Mobile Number (whether or not it is the primary number, as defined in the New Subscriber Registration Consent

Frequently Asked Questions), all other Mobile Numbers registered under your unique Identification Document shall be deemed to have opted in.

- 4.3. For the avoidance of doubt, you remain liable for all Mobile Numbers registered under your ID, as well as the Services and Facilities attached thereto.
- 4.4. You hereby agree and authorize us to exchange between Safaricom, CRB and NCBA, our Bank partners any of your Personal Information held by us in respect of provision of any service. Such Personal Information includes KYC and such other information that will enable us to identify you and comply with the regulatory "know your customer" requirements (together the "Customer Information").
- 4.5. You also hereby agree and authorize us to use information relating to your use of the M-Pesa service, M-Pesa System and other Safaricom products as we shall require for purposes of delivering the Services ("M-Pesa Information").
- 4.6. You hereby agree and authorize us to obtain and procure your Personal Information from the Government of Kenya's repositories, which, includes but is not limited to IPRS and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to us.
- 4.7. You hereby further acknowledge and authorize us to verify your Personal Information in our custody against the information received from the Government of Kenya repositories (including but not limited to IPRS) in your respect.
- 4.8. You hereby expressly consent and authorize us to disclose, receive, record or utilize your Personal Information or information or data relating to your account with respect to the Services and any details on your use of the and CRB for the purposes of this Campaign and other services as we shall advise you between the NCBA and Safaricom;
- 4.9. Our acceptance or decline of your application to register for the Campaign shall be communicated through Customer Nominated Number contact details provided by you. You acknowledge and accept that our acceptance of your application to register for the Campaign creates a separate and distinct additional contractual relationship between you and Safaricom outside the terms and conditions that apply to you for the use of other M-Pesa products from time to time.
- 4.10. Subject to Central Bank of Kenya regulations, we reserve the right to decline your request to register for the Campaign should you have a Facility taken after 30<sup>th</sup> April 2022.

## 5. YOUR REQUESTS

- 5.1. You hereby irrevocably authorize us to act on all Requests received by us using your M-Pesa PIN and

to hold you liable in respect thereof. We may nevertheless refuse to carry out any requests beyond the scope of the Campaign as offered from time to time.

- 5.2. We shall be deemed to have acted properly and to have fully performed all our obligations upon our compliance with the Request. We may ask for further information or confirmation (whether written or otherwise) from you before complying with a Request but shall not be obliged to comply with a Request in the absence of such further information or confirmation.
- 5.3. You can only cancel a Request by Requesting cancellation through the USSD Access Channel within a live or mid-air transaction.
- 5.4. You hereby authorize us to effect such orders and act on such instructions in respect of your M-Pesa Account as may be required by the Government or any court order or by a competent authority or agency under the applicable laws.

## 6. CAMPAIGN BENEFITS

- 6.1. Upon opting into the Campaign, you will receive a confirmation message via SMS.
- 6.2. By accepting these Terms and Conditions, you agree and admit that we reserve the exclusive right to update your record with CRB and issue to you a new credit score and offer a new loan limit at our sole discretion, and upon your meeting of the requirements stated herein. Your outstanding balance shall be discounted by up to, but not exceeding, sixty percent (60%) and as may be varied from time to time. You agree to make to make the corresponding payment in order to access the Campaign's benefits.
- 6.3. You may check your total outstanding balance on all your Mobile Numbers on the Services using the appropriate menu option provided on your Equipment through Safaricom USSD \*334#.
- 6.4. You may only opt out of the Campaign if you have accepted these Terms and Conditions, but you have not accepted the Facilities and the outstanding balances presented to you.
- 6.5. We reserve the right to opt you out of the Campaign at any point should you not meet the conditions of the Campaign or as soon as you repay the discounted outstanding balances as provided under these Terms and Conditions.
- 6.6. You hereby further agree and acknowledge that opting out of the Campaign shall mean that you agree to forfeit the benefits of the Campaign, the discount of up to 60%. You may opt out of the Campaign at any time before you have accepted the Facilities and outstanding balances presented to you, noting that such action will result in the reinstatement of your full outstanding balance, which shall immediately become due and owing. The foregoing notwithstanding, you may opt in to the Campaign at any point during the Campaign Period and enjoy the benefits.

## 7. **LOAN LIMIT**

- 7.1. Upon repayment of your outstanding loans, you will be subject to a credit review. NCBA reserves the right to assign you a new loan limit at its sole discretion. Should you be assigned a new loan limit, this limit shall remain subject to review and variation from time to time as we may determine. We shall notify you of any variation to the limit.
- 7.2. Should you go beyond the repayment period your loan limits will be suspended after 90 days and a record of this default will be created on CRB.

## 8. **CREDIT SCORING**

Your new limit will be awarded at the sole discretion of NCBA, as determined by your credit score. Your credit score will be assessed based on various factors including, but not limited to, your use of M-Pesa, the Services and your repayment history.

## 9. **EVENTS OF DEFAULT**

An event of default occurs:

- 9.1. Where you breach any term of this Agreement; and
- 9.2. Where you fail to settle the outstanding amount after opting into the Campaign.

## 10. **CONSEQUENCES OF DEFAULT**

- 10.1. At any time after an event of default has occurred, which is continuing, we may:
  - 10.1.1. terminate the Campaign as provided herein;
  - 10.1.2. declare any outstanding facility (inclusive all interest, fees and charges) and all other amounts outstanding under this Agreement is immediately due and payable, whereupon you shall be required to settle the Facility immediately;
  - 10.1.3. hold any of your funds standing in credit with NCBA as collateral and security for any amounts outstanding and due from you in respect of any Facility or Campaign. You hereby agree and confirm that we are entitled in our discretion to prevent or restrict you from withdrawing in whole or in part the funds in your account(s) for so long as and to the extent of the amount outstanding in respect of you facility without any notice to you and/or incurring any liability to you whatsoever in that connection; and
  - 10.1.4. have a right of lien and set off over funds held by you in any of your accounts with NCBA. We may, without notice, set off against any amount due from any other account whether current, loan, or loans or any other type of account. A right of lien and setoff shall exist over savings and mobile saving accounts.
- 10.2. The foregoing notwithstanding, NCBA may, upon notice to you, set off your account against any other

account or indebtedness in respect of which you are liable.

- 10.3. We may submit information concerning the default to Credit Reference Bureaus as required under the Banking Act or any other regulatory body.
  - 10.4. You shall meet and further reimburse us on demand (and on a full indemnity basis and from all liabilities arising from any delays or omissions occasioned by you) all costs, charges and expenses (including legal or recovery charges demanded from or incurred by us after giving a seven (7) days' notice) incurred by us in suing for or recovering any sum due to us under this Agreement or otherwise in protecting or enforcing our rights under this Agreement, save as may otherwise be directed by any competent court of law, and the "expenses" shall be deemed to include any sums which would be allowed to us in a taxation as between advocate and own client. The charges in this clause shall be as provided for in the Advocates Act, Auctioneers Act or any other prevailing law in the Republic of Kenya from time to time. Failure to pay these amounts on their due dates or on demand date as applicable, the bank reserves the right to debit the same together with any interest accrued on the amounts from any of your accounts.
  - 10.5. The exercise by us of any rights under this clause shall be without prejudice to any other rights or remedies (including but not limited to set-off) to which we are otherwise entitled (by operation of law, contract, or otherwise).
- ## 11. **IRREVOCABLE AUTHORITY**
- 11.1. You hereby irrevocably authorize us to act on all Requests received by us from you (or purportedly from you) through the M-Pesa Account 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.
  - 11.2. If you request us to cancel any transaction or instruction after a request has been received by us from you, we may at our absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
  - 11.3. We shall be entitled to accept and to act upon any request, even if that Request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, we believe that it can correct the incomplete or ambiguous information in the request without any reference to you being necessary.
  - 11.4. We are authorized to effect such orders in respect of your M-Pesa Account as may be required by any court order or competent authority or agency under the applicable laws.
  - 11.5. In the event of any conflict between any terms of any request received by us from you and these Terms and Conditions, these Terms and Conditions shall prevail.

## 12. LOSS OF EQUIPMENT AND UNAUTHORIZED TRANSACTIONS

- 12.1. If you lose your Equipment or you for any reason you believe that your PIN may have been accessed by an unauthorized person, you shall immediately notify the Safaricom Customer Care Centre for assistance.
- 12.2. Until and unless we receive your notice of loss or unauthorized access of the PIN as above we shall remain authorized to accept any Requests on your M-Pesa Account using your PIN.
- 12.3. You shall give us and any person acting on our behalf all necessary assistance in any investigations, all information as to the circumstances of the loss or possible misuse of your Equipment or PIN in order to enable us to take all reasonable steps mitigate the loss incurred or likely to be incurred as a result of loss of the Equipment or misuse or unauthorized access to your PIN.
- 12.4. You consent to the disclosure by us to third parties of such information as is relevant concerning your M-Pesa Account in connection with such loss of your Equipment or possible misuse or unauthorized access of your PIN.

## 13. CUSTOMER COMPLAINTS

- 13.1. Complaints shall be made by calling or sending an SMS. You can call 100 for prepaid, 200 for postpaid or 234, which is for M-Pesa support. Alternatively, you can visit any Safaricom shop or access the Self-service using USSD code \*456#.
- 13.2. We will take all reasonable measures within our means to resolve your complaints in accordance with the M-Pesa Service User Terms and Conditions. We will handle all complaints in accordance with our complaints handling procedures, which are available on request from any Safaricom Shop or the Safaricom Customer Care Centre. Where a notification regarding your complaint or any other matter is expected from us but not received, you are entitled to follow up on the complaint within a reasonable time after non-receipt of such notification.

## 14. FEES, CHARGES AND EXPENSES

- 14.1. Upon opting into the Campaign, you will be offered a discount of up to 60% of your outstanding loan balances on the Services.
- 14.2. The loan payable under the facility will be deducted from your M-Pesa Account via an STK push, which you will initiate in the USSD \*334# menu.
- 14.3. Except as may otherwise be notified, the Fee is inclusive of all applicable taxes including Value Added Tax at the prevailing rate.

## 15. TAXES

All Repayments are inclusive any taxes payable by you. You hereby irrevocably grant us permission to revise the Fee upon any changes to applicable taxes.

## 16. YOUR PERSONAL INFORMATION

- 16.1. You hereby expressly consent and authorize us to disclose, receive, record or utilize your customer information or information or data relating to your M-Pesa Account with respect to the Facilities granted under the Services and any details of your use of the Services:
  - 16.1.1. between NCBA and Safaricom for the purposes of this Campaign and other services as we shall advise you;
  - 16.1.2. to and from our service providers, dealers, agents or any other company that may be or become our affiliate or subsidiary or holding company for reasonable commercial purposes relating to the Services;
  - 16.1.3. to a Credit Reference Bureau;
  - 16.1.4. to independent debt-collection agencies;
  - 16.1.5. to our lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
  - 16.1.6. for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and
  - 16.1.7. in business practices including but not limited to quality control, training and ensuring effective systems operation.
- 16.2. You authorize us to disclose any information relating to your M-Pesa Account to any local, foreign or international law enforcement or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as we may deem necessary.
- 16.3. You authorize us to disclose, respond, advise exchange and communicate the details or information pertaining to your M-Pesa Account and or your Facility to third parties involved in the administration of your M-Pesa Account and Facilities, underwriting of insurance policies, updating of databases, or provision of user support.
- 16.4. You shall notify your nearest Safaricom Shop in writing of any changes to Customer Information and KYC or update the same through the Equipment on your STK Menu, or through the USSD. Until such notice is received, your Personal Information shall be deemed to be that which you provided in your application to register for the Services.

## 16.5. Collection of information

We are required by law to collect certain Personal Information and are legally obligated to deny you the Services if such information is not availed. Apart from the legal obligation mentioned above, we also need to collect your Personal Information for quality service delivery. Please note that although

this is voluntary, without such information we may not be able to provide quality service.

#### 16.6. Privacy

We are committed to respecting and protecting the privacy of the information we collect from you. Our privacy statement, as updated from time to time, explains how we treat your Personal Information, who we share your information with, and measures taken to protect your privacy when you use our Services. This can be found on Safaricom's Data Privacy Statement at <https://www.safaricom.co.ke/dataprivacystatement/>. If unable to access the link or this website, please reach us on any of our customer care channels to receive a copy.

#### 17. YOUR EQUIPMENT AND RESPONSIBILITIES

- 17.1. You shall at your own expense provide and maintain in safe and efficient operating order such Equipment necessary for the purpose of accessing the Services and the Campaign, by extension. You shall be responsible for ensuring the proper performance of your Equipment. We shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall we be responsible for any computer virus or related problems that may be associated with your access and use of the Services, the Campaign and Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and we shall not be responsible for losses or delays caused by any such service provider.
- 17.2. You shall follow all instructions, procedures and these terms and conditions and any other documents we may provide you concerning access and use of the Services, the Campaign and Equipment.
- 17.3. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your PIN secret and secure. You shall ensure that your PIN does not become known or come into possession of any unauthorized person. We shall not be liable for any disclosure of your PIN to any third party and you hereby agree to indemnify and hold us harmless from any loss and damage we may incur as a result of your intentional, negligent or reckless disclosure of the PIN.
- 17.4. You shall take all reasonable precautions to detect any unauthorized use of your Equipment, PIN and immediately notify us to enable us to take steps to protect your M-Pesa Account and M-Pesa Account respectively.
- 17.5. You shall immediately inform us through the Customer Care Centre in the event that:
  - 17.5.1. You have reason to believe that your PIN is or may be known to any person not

authorized to know the same and/or has been compromised; or

- 17.5.2. You have reason to believe that unauthorized use of the Campaign has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 17.6. You shall at all times follow the security procedures we notify you from time to time or such other procedures as may be applicable to the Campaign from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your responsibility to keep Personal Information confidential. In particular, you shall ensure that the Campaign are not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorized by you.

#### 18. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that the intellectual property rights in the Services (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that we provide to you are vested either in Safaricom or NCBA. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with any documentation or functionality on the Equipment, USSD, STK Menu or M-Pesa Business App without Safaricom's and NCBA's prior written consent.

#### 19. INDEMNITY

- 19.1. In consideration of Safaricom and NCBA complying with your instructions or Requests in relation to the M-Pesa Account, you undertake to indemnify us and hold us harmless against any loss, charge, damage, expense, fee or claim which we may suffer or incur or sustain thereby and you absolve us from all liability for loss or damage which you may sustain from us acting on your instructions or requests or in accordance with these Terms and Conditions.
- 19.2. The indemnity in clause 17.1 shall also cover All demands, claims, actions, losses and damages of whatever nature which may be brought against any of us or which we may suffer or incur arising from its acting or not acting on any Request 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 the our 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 Request received by us.

19.3. The Indemnity in Clause 17.1 shall also cover 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, any unauthorized access to your M-Pesa Account 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, 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 us as a consequence of any breach by these Terms and Conditions by you.

## 20. VARIATION AND TERMINATION OF RELATIONSHIP

20.1. We may at any time, upon notice to you, terminate or vary our business relationship with you and suspend or discontinue your registration and or access to the Campaign:

- 20.1.1. if you use the Services or Facility for unauthorized purposes or where we detect any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
- 20.1.2. if your M-Pesa Account or agreement with Safaricom is terminated for whatever reason;
- 20.1.3. if we are required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority to that effect or necessitating it;
- 20.1.4. if we reasonably suspect or believe that you are in breach of these terms and conditions or other terms and conditions relating to the Services (including non-payment of any amount due from you in any of the Services where applicable);
- 20.1.5. You are found to be using, holding or trading in Unregulated Currencies.
- 20.1.6. You are found to be trading or is part of businesses associated with using, holding or trading in Unregulated currencies, gambling and or betting.
- 20.1.7. You are found to be engaging in Forex trading or operating Foreign Exchange Bureaus without the prerequisite approvals from relevant statutory bodies including the Central Bank of Kenya and the Capital Markets Authority.
- 20.1.8. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of your safety or public access fees;

20.1.9. to facilitate update or upgrade the contents or functionality of the Services from time to time;

20.1.10. where your M-Pesa Account becomes inactive or dormant or is deemed abandoned in line with the Unclaimed Financial Assets Act;

20.1.11. if we decide to suspend or cease provision of the Services for commercial reasons or for any other reason as we may determine.

20.2. Termination shall not affect any accrued rights and liabilities of either party and, in particular, shall not affect your obligations to meet any liabilities incurred prior to such termination.

## 21. BREACH OF TERMS AND CONDITIONS

In the event of any breach of these terms and conditions, we may in circumstances where you fail to comply or fail procure compliance with the terms of a notice consequently served on you, require immediate repayment in full of the Facility and/or forthwith terminate the contractual relationship with you without any consequential liability to you or any other person.

## 22. EXCLUSION OF LIABILITY

22.1. We shall not be responsible for any loss suffered by you should the Campaign 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 our control including, without limitation, force majeure or error, interruption, delay or non-availability of the M-Pesa Account, terrorist or any enemy action, equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

22.2. We will not be liable for any losses or damage suffered by you as a result of or in connection with:

- 22.2.1. unavailability of sufficient funds in your M-Pesa Account;
- 22.2.2. failure, malfunction, interruption or unavailability of the M-Pesa Account, your Equipment, the Platform and/or Campaign;
- 22.2.3. the money in your M-Pesa Account being subject to legal process or other encumbrance restricting payments or transfers thereof;
- 22.2.4. your failure to give proper or complete instructions for payments or transfers relating to your M-Pesa Account;
- 22.2.5. contributory fraud/negligence/deficiency on your part leading to any fraudulent or illegal use of the Campaign, the M-Pesa Account and/or your Equipment and whereupon you fail to immediately report suspected or known breaches to the us; or
- 22.2.6. Your failure to comply with this Agreement and any document or information

provided by us concerning the use of the M-Pesa Account, the Services or the Campaign.

- 22.3. Under no circumstances shall we be liable to you 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 Campaign even where the possibility of such loss or damage is notified to us.
- 22.4. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

### 23. DISPUTE RESOLUTION AND JURISDICTION

- 23.1. You may contact the Safaricom Customer Care Centre to report any disputes, claims or discrepancies in your M-Pesa Account or in respect of the Campaign.
- 23.2. Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to a Kenyan court of competent jurisdiction.
- 23.3. To the extent permissible by law, the determination of the court shall be final, conclusive and binding upon the parties hereto.
- 23.4. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

### 24. ASSIGNMENT

- 24.1. You shall not be entitled to assign, transfer or dispose of any of your rights or obligations under this Agreement herein to any person without our prior written consent.
- 24.2. We may however assign, charge, subcontract or transfer the contract or any part of it to any person.
- 24.3. Any person who is not a party to these Terms shall not have any right to enforce any term of the agreement, which expressly or by implication confers a benefit on that person without our prior written agreement.

### 25. DEATH OR BANKRUPTCY

On your death or bankruptcy, your obligations shall remain in full force and effect until such a time as they shall be duly satisfied.

### 26. NOTICES

Without prejudice to any other clause in these terms and conditions, all notices concerning the Campaign may be sent via SMS to the Active Mobile Numbers associated with the Facility and shall be deemed received if we do not receive a delivery failure notice.

### 27. MISCELLANEOUS

- 27.1. These terms and conditions (as may be amended from time to time) form a legally binding agreement

binding on you and your personal representatives and successors.

- 27.2. This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.
- 27.3. We may vary or amend these terms and conditions at any time and without consultation to you provided that the Safaricom and its Bank partner shall upon reasonable notice, inform you of any such variations or amendments in advance of their intended commencement date and such notice and particulars of the variations including the amended version of these terms and conditions shall be published on the NCBA and Safaricom websites and may, additionally, be published in posters or pamphlets and availed at Safaricom's Agents outlets or in the daily newspapers or by any other means as we may determine.
- 27.4. No failure or delay by either yourself or on our part 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.
- 27.5. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 27.6. 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.
- 27.7. Any variations or amendments to these terms and conditions shall be binding upon you as fully as if the same were contained in these terms and conditions.
- 27.8. We reserve the right to defer delivery of the Services or to cancel this agreement between us, if we are prevented from or delayed in the carrying on of our business and our obligations under our contract due to circumstances beyond our reasonable control including, without limitation, acts of God, or acts of any government or government authority or agency, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes.
- 27.9. Your contractual relationship with us is governed in all respects by the Laws of Kenya and the parties submit to the exclusive jurisdiction of the Kenya courts.

Safaricom and NCBA are regulated by the Central Bank of Kenya for purposes of the Service.

You have the right to seek independent legal counsel in order to fully understand the implications and potential consequences of agreeing to these Terms and Conditions prior to "opting-in". You shall be deemed to have read,



understood and accepted to be bound by these Terms and conditions (which may be amended by Us from time to time) by selecting the "opt-in" option.