



TERMS AND CONDITIONS FOR THE REGISTRATION AND USE OF THE MOBILoAN SYSTEM/ACCOUNT

1. Agreement to the Terms And Conditions

- 1.1. This Agreement constitutes the Terms and Conditions (hereinafter referred to as the Terms and Conditions) applicable to the registration, access and use of the Mobiloan System (hereinafter referred to as Mobiloan) offered by Diamond Trust Bank Kenya Limited (DTB) and Mobile Financial Solutions Ltd (herein referred to as MFS) and of which a resultant virtual account has been opened by the customer.
- 1.2. These Terms and Conditions and any amendments or variations thereto shall come into force on the Effective Date.

2. Definitions & Interpretation

- 2.1. In this Agreement, the following words and expressions shall, unless inconsistent with or otherwise indicated by the context, have the following meanings and cognate expressions shall have corresponding meanings:
 - 2.1.1. **“Applicable Law”** means all laws, regulations, rules and regulatory guidance applicable to the operation of the Mobiloan Platform and “Applicable Laws” shall be construed accordingly;
 - 2.1.2. **“Contact Center”** means the Customer Care Center of MFS as may be notified to the Customer by the company from time to time;
 - 2.1.3. **“Court”** means the High Court of Kenya;
 - 2.1.4. **“Credit Limit”** means the maximum pre-approved amount that a customer can borrow on this service;
 - 2.1.5. **“Credit Reference Bureau”** means a credit reference bureau duly licensed under Banking Act pursuant to Banking (Credit Reference Bureau) Regulations 2008 to inter alia collect and facilitate the sharing of customer credit information;
 - 2.1.6. **“Customer”** means any person in whose name a Mobiloan Account is registered and is in existence with MFS; **“Distributor”** means any entity with which the Customer has entered into an agreement to supply specific products;
 - 2.1.7. **“Effective date”** means the date of the publication of these Terms and Conditions;
 - 2.1.8. **“Equipment”** means your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access the Network;
 - 2.1.9. **“E-money”** means the electronic monetary value depicted in your mobile money account representing an equal amount of cash;
 - 2.1.10. **“Force Majeure Event”** means any circumstance not within a party's reasonable control including, without limitation:
 - 2.1.10.1. acts of God, flood, drought, earthquake or other natural disaster;
 - 2.1.10.2. epidemic or pandemic;
 - 2.1.10.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 2.1.10.4. nuclear, chemical or biological contamination or sonic boom;
 - 2.1.10.5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
 - 2.1.10.6. collapse of buildings, fire, explosion or accident;
 - 2.1.10.7. non-performance by suppliers or subcontractors; and
 - 2.1.11. interruption or failure of utility service. **“Immediate Payment”** means voluntary instant repayment of loan advanced before the due date;
 - 2.1.12. **“Intellectual Property”** means patents, rights to inventions, copyright and [neighbouring and] related rights, [moral rights,] trademarks [and service marks], business names and domain names, goodwill and the right to sue for passing off [or unfair competition,] rights in designs, [rights in computer software,] database rights, topography rights, rights to use and protect the confidentiality of confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications



- and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- 2.1.13. **“IPRS”** means the Integrated Population Registration System set up and maintained by the Government of Kenya under the Ministry of State for Immigration and Registration of persons;
- 2.1.14. **“MOBILOAN Account”** means a loan account held by a Customer with MFS and financed by DTB and which is opened and operated in accordance with the additional terms and conditions herein contained;
- 2.1.15. **“MOBILOAN MENU”** means the MENU available on the mobile app .
- 2.1.16. **“Network”** means the mobile telephone network operated by various mobile networks in Kenya;
- 2.1.17. **“Prohibited Business”** means the production, distribution or sale of arms, ammunition, weapons, military equipment and/or pornography; any terrorist activity or the funding of any terrorist activity; or any other activity prohibited by law.
- 2.1.18. **“Parties”** means Diamond Trust Bank Kenya Limited (DTB) and Mobile Financial Solutions Ltd (MFS)
- 2.1.19. **“Request”** means a request or instruction received by MFS from you or purportedly from you through the Network and the System and upon which MFS is authorized to act;
- 2.1.20. **“Service”** shall include any form of financing services or products that MFS may offer you pursuant to this Agreement and as you may from time to time subscribe to and “Service” shall be construed accordingly;
- 2.1.21. **“SMS”** means short messaging service;
- 2.1.22. **“Subscriber”** means any person that uses a mobile telephone network operated in Kenya;
- 2.1.23. **“System”** means the MFS’s electronic financing and communications software enabling you to communicate with the MFS for purposes of the Services. The System and the services will for the purpose of this Agreement be accessed through the MOBILOAN system; and
- 2.1.24. **“Transaction Fees”** includes the interest fee, the penalty fee and any other fees and charges payable for the use of the Services as published on MFS’s website and/or the daily newspapers in Kenya or by such other means as MFS shall in its sole discretion determine.

1. Acceptance of the Terms and Conditions

- 1.1. Before applying to register for Mobiloan you should carefully read and understand these Terms and Condition which will govern the use and operation of Mobiloan.
- 1.2. If you do not agree with these Terms and Conditions, Please click “no” on the Mobiloan Menu.
- 1.3. You will be deemed to have read, understood and accepted these Terms and Conditions:
- 1.3.1. Upon clicking “Yes” option on the Mobiloan menu requesting you to confirm that you have read and accepted the Terms and Conditions and/or
- 1.3.2. Upon registration on Mobiloan and/or by using or continuing to use and operate the Mobiloan product.
- 1.4. By applying to register for Mobiloan, you agree to comply with and be bound by these Terms and Conditions for the time being and from time to time in force governing the operation of Mobiloan and affirm that these Terms and Conditions herein are without prejudice to any right that the Parties may have with respect to Mobiloan in law or otherwise.
- 1.5. By accepting these Terms you are accepting that:
- 1.5.1. The Parties may conduct any know your customer diligence, identity confirmation, fraud and credit checks which it deems necessary on you and for this purpose the Parties may seek confirmation of any details which you upload to the Mobiloan Platform from any third party (including any credit referencing agency in accordance with Applicable Laws), or Government Authority;



- 1.5.2. The Parties may periodically obtain your demographic, identification and historical transactional data from trade partners who deal directly or indirectly with you either in your individual capacity or through an organization related to yourself through ownership, management or otherwise;
- 1.5.3. The Parties may procure any credit history, obtain a credit rating for you from any credit reference agencies we use from time to time, or obtain any related data available on you from any third party or Government Authority as MFS in its sole discretion deems appropriate;
- 1.5.4. in the event of your account as a Borrower going into default, the Parties may forward your Personal Information and details of your default in servicing your loan to any credit reference agency for listing or collection, and you acknowledge that such information may be used by banking institutions and other credit grantors for the purpose of evaluating your credit history, credit worthiness, in assessing applications for credit made by you, for occasional debt tracing and fraud prevention purposes and for any other lawful purpose.
- 1.5.5. each time a loan is disbursed , details of the amount borrowed by you will be recorded. Your identity will not be disclosed to any other Mobiloan customer, except where it is necessary to do so for the recovery of amounts due and payable under any loan or to comply with any Applicable Law;
- 1.5.6. the Mobiloan Platform may automatically process payments in relation to repayments and credit principal and Transaction Fees and automatically deduct any fees or charges to the persons to whom those fees are due and payable; and
- 1.6. The Parties may record details of your borrowing history on the Mobiloan Platform and utilise such details to build up a credit history for you. Such details and credit history may at any time be shared with credit reference agencies we use from time to time, our Trade partners or any relevant Government Authority and you acknowledge that your credit history and information gathered from your use of the Mobiloan Platform may be used by banking institutions and other credit grantors for the purpose of evaluating your credit worthiness, in assessing applications for credit made by you, for occasional debt tracing and fraud prevention purposes and for any other lawful purpose.
- 1.7. You acknowledge and accept that the Parties offer Mobiloan only electronically and you agree to do business with the Parties and to operate Mobiloan only by electronic means via the MOBILOAN MENU, any query and complaint you may have relating to the services shall be addressed to MFS through their Contact Centre. For the avoidance of doubt, you acknowledge and accept that you will not be allowed or entitled to receive or demand the Services pertaining to Mobiloan at any branch or branches of MFS unless otherwise advised by MFS in its sole discretion.
- 1.8. The Parties reserve the right to vary, amend or replace all or any of these conditions at any time without prior notice. The parties shall notify the Account User of any changes made to these Conditions as soon as is practicable and by the most expedient means as determined by both Parties provided that failure to make such notification shall not invalidate the changes, especially when the same has been occasioned upon instruction by government, court, regulator or other competent authority.

2. Registering for Mobiloan

- 2.1. In order to operate a Mobiloan Account with the Parties, you must be 18 years of age and above, a registered and active Mobile Subscriber with a mobile service provider. The Parties reserve the right to verify with the IPRS the authenticity of your details.
- 2.2. You may register for Mobiloan solely by way of an electronic application made by using your mobile equipment via Mobiloan Menu.
- 2.3. You hereby agree and authorize the Parties to request IPRS for your personal information held by IPRS pursuant to the agreement between you and the Parties for the provision of Mobile Lending products and services and including your phone number, name, date of birth, ID or Passport Number and such other information that will enable the Parties to identify you and comply with the regulatory “Know Your Customer” requirements (together the “**Personal Information**”).



2.4. In order to register on the Mobiloan Platform you will need to meet the following criteria. The following criteria are not exhaustive and you may be required to produce further documentation or information at the time of such registration. Failure to provide such information within the time required by the Parties may result in the Parties declining to accept your application for a Mobiloan Account.

2.5. You must:

2.5.1. Operate a retail outlet;

2.5.2. be an individual;

2.5.3. not be operating in, own or otherwise be involved in any Prohibited Business.

2.6. You hereby agree and authorize the Parties to obtain and procure your Personal Information contained in the IPRS from the Government of Kenya and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to the Parties. You hereby further acknowledge and authorize the Parties to verify your Personal Information received from Mobile Network pursuant to Clause 2.3 against the information received from the Government of Kenya in your respect as contained in the IPRS.

2.7. Acceptance by the Parties of your application for a Mobiloan shall be done via SMS sent to the Mobile Phone Number associated with your Account.

2.8. the Parties reserve the right to decline your application for a Mobiloan Account or to revoke the same at any stage at the Parties' sole discretion and without assigning any reason or giving any notice thereto.

3. **Mobiloan Service**

As a registered Mobiloan Subscriber, you may, subject to these terms and conditions borrow money from the Parties as follows:

3.1.1. As a holder of a Mobiloan Account and having opted-in to view your credit limit, you may, subject to these terms and conditions apply for a loan using the request loan menu on your equipment. The transaction fees payable to Mobile Network for transactions effected in respect of your Account from time to time will apply to any transactions effected in respect of your Mobiloan Account using the system.

3.1.2. Where you apply for a loan from the Parties, your application shall be appraised according to the applicable loan appraisal processes of the Parties. the Parties reserve the right at their sole discretion and without assigning any reason to approve or decline your application for a loan.

3.1.3. Subject to approval of your application for a loan, the Parties shall disburse to you or your prescribed recipient a loan of an amount to be determined by the Parties in their sole discretion subject to a minimum amount of Kenya Shillings one thousand (Kshs1,000/=) and a maximum of your assigned credit limit or such other minimum or maximum amount as the Parties may from time to time in their sole discretion determine (the "Loan"). The cost of this facility will be 5% of the amount applied for, which DTB will deduct from the amount repaid by you.

3.1.4. The proceeds of the full Loan requested shall be credited into a prescribed distributor account within reasonable time of the Loan being approved and communication of the same being delivered to you via SMS.

3.1.5. You shall repay the Loan within the term agreed upon at the time of loan request. The loan terms shall be fourteen (14) calendar days from the date of disbursement of the loan.

3.1.6. In consideration of the Parties granting you the Loan, you shall pay interest on the loan at our prevailing interest rate on loans. The interest rate will be communicated to you at the time of borrowing. The Interest must be paid by you when you make your Loan repayment.

3.1.7. Transaction Fees are subject to change at any time at the Parties' sole discretion subject to a notice to you as soon as is practicable.



- 3.1.8. You shall make all payments due from you to the Parties in respect of the Loan and Transaction Fees using the Mobile Money Network System only unless otherwise permitted in writing by MFS.
- 3.1.9. In the event that you do not repay the Loan in full within fourteen (14) calendar days after the date of disbursement of the Loan, the Parties will automatically roll over any outstanding amount in respect of the Loan for a further period of fourteen (14) calendar days including any applicable charge incurred therein.
- 3.1.10. A loan default sum notification shall be sent to your Equipment requiring the immediate payment of the outstanding amount due in respect of your loan.
- 3.1.11. In consideration of the Parties forbearing to demand the immediate payment of the outstanding amount due in respect of your loan and rolling over the same pursuant to Clause 3.1.9, you shall, in addition to paying the outstanding amount in respect of the loan pay the Parties a roll over fee of 3% being a percentage of the outstanding amount in respect of the Loan.).
- 3.1.12. the Parties shall be entitled to terminate this Agreement and close your Mobiloan 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 Transaction Fees due thereon within ninety (90) calendar days of the disbursement of the Loan.
- 3.1.13. The Parties reserves the right to vary the terms of the Loan including the fees payable thereon from time to time having regard to the prevailing rules, regulations and the policies of the Parties. The Parties will notify the customer of such changes by way of SMS as soon as practicable
- 3.1.14. You hereby expressly consent and authorize the Parties to disclose, respond, advise exchange and communicate the details or information pertaining to your Mobiloan Account to Credit Reference Bureau.

4. Amendments to the Mobiloan Terms

- 4.1. We may vary these terms and conditions from time to time and at our sole discretion to accommodate:
 - 4.1.1. Mobiloan Customers' feedback;
 - 4.1.2. changes required by third party service providers;
 - 4.1.3. improvements in the Mobiloan Service;
 - 4.1.4. changes in Applicable Law; and
 - 4.1.5. decisions or orders of any court, ombudsman, arbitrator, regulator or any undertakings given in one of these contexts
- 4.2. A notification of any such change will be sent to you. We will always try to give notice by sms or email before making the change; however this may not always be possible. If you continue to use the Mobiloan Service after we have given you such notice you will be deemed to have accepted such amendments and the Mobiloan Terms, as amended.
- 4.3. We reserve the right at all times to suspend or terminate the Mobiloan Service at any time for the purposes of dealing with any technical defects (including but not limited to the Mobiloan Service becoming unavailable or subject to extensive delays) which may arise, making any improvements to the Mobiloan Service or for any other reason whatsoever. We will provide you with reasonable notice before we suspend or terminate the Mobiloan Service, unless the defect is urgent or we are forced to suspend or terminate the Mobiloan Service in an emergency.
- 4.4. In the unlikely event that the Mobiloan Service has been suspended or terminated in accordance with Clause 4.3, We will endeavour to repair or fix the defect or carry out the modification as soon as is reasonably practicable and We will not incur any liability for any direct or indirect loss (including loss of profit, sales, business or revenue, loss of business opportunity, goodwill or reputation or loss of



anticipated savings) or damage which you have incurred as a result of the suspension or termination of the Mobiloan Service.

5. Fees

- 5.1. You hereby agree to pay DTB the principal amount advanced to you.
- 5.2. You hereby agree to pay all Transaction Fees payable in connection with your use of the Services.
- 5.3. You shall pay to DTB and DTB is entitled to deduct from your payment:
 - 5.3.1. any Transaction Fees payable in respect of the Services;
 - 5.3.2. any legal charges including advocate and client costs incurred by the Parties in obtaining legal advice in connection with your Mobiloan Account and your dealings with the Parties or incurred by the Parties in any legal, arbitration or other proceedings arising out of any dealings in respect of your Mobiloan Account; and
 - 5.3.3. all other fees, expenses and taxes, duties, impositions and expenses incurred in complying with your requests.
- 5.4. You hereby agree to pay costs, charges and expenses incurred by the Parties in obtaining or attempting to obtain payment of any loan owed under your Mobiloan Account.
- 5.5. You hereby agree to make all payments towards your loan clearance through the officially communicated channels of MPESA Paybill. You acknowledge that any cash payments made by yourself to agents representing or purporting to represent the Parties shall be done at your own risk, and you indemnify the Parties from any liability related to such cash payments done by yourself.

6. Statements

- 6.1. You may request for a statement or activity report in respect of your Mobiloan account by contacting MFS's contact Centre. The Mini Statement shall be sent to you via email within reasonable time from the time the request is initiated by the customer.
- 6.2. Save for a manifest error, a Mobiloan Statement issued to you aforesaid in respect of your Mobiloan Account shall be conclusive evidence of the transactions carried out on your Mobiloan Account for the period covered in the Statement.

7. Irrevocable Authority of the Parties

- 7.1. It's your sole responsibility to familiarize yourself with the operating procedures for the service that will be provided by the Parties upon your registration to the Service. The Parties will not be liable for any losses incurred because of your errors either of commission and/or omission.
- 7.2. You hereby irrevocably authorize the Parties to act on all Requests received by the Parties from you (or purportedly from you) through the System 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.
- 7.3. If you request the Parties to cancel any transaction or instruction after a Request has been received by the Parties from you, the Parties may cancel such transaction or instruction upon sufficient proof provided by you that such transaction ought to be reversed.
- 7.4. The Parties 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, the Parties believe that it can correct the incomplete or ambiguous information in the Request without any reference to you being necessary.
- 7.5. The Parties are authorized to effect such orders in respect of your Mobiloan Account as may be required by any court order or competent authority or agency under the applicable laws of Kenya.



7.6. In the event of any conflict between any terms of any Request received by the Parties from you and these Terms and Conditions, these Terms and Conditions shall prevail.

8. Privacy and Data Protection

- 8.1. You hereby allow us to use your personal information for: statistical analysis; to develop and improve the Mobiloan Platform and related products; to update your records; to identify which of our, or others' products might interest you; to assess lending and insurance risks; to arrange, underwrite and administer insurance and handle claims; to identify, prevent, detect or tackle fraud, money laundering and other crime; to carry out regulatory checks; keeping you informed about your lending or borrowing and for market research.
- 8.2. If you provide false or inaccurate information or fraud is identified your details and such information will be passed to the relevant Government or regulatory Authorities.
- 8.3. Subject to clause 8.5, we will keep your personal information confidential and only give it to others:
- 8.3.1. if you ask us to or give us your permission to do so;
 - 8.3.2. to credit reference agencies to carry out credit checks, check your identity or to prevent fraud;
 - 8.3.3. to tell credit reference agencies that you have an account and how you run that account;
 - 8.3.4. to agents and subcontractors, acting for us, to use for the purpose of operating the Mobiloan Platform or obtaining payment or repayment pursuant to a Loan;
 - 8.3.5. to our trade partners from whom we initially obtained your demographic, identification or historical transactional data as mentioned in clause 1.5.2 to improve their customer intelligence
 - 8.3.6. to investigate, prevent or detect fraud or carry out checks against money laundering;
 - 8.3.7. to share Information via any organisation which provides a centralised application matching service which it collects from and about mortgage and/or credit applications, for the purpose of preventing and detecting fraud;
 - 8.3.8. to trace debtors and recover debt;
 - 8.3.9. to meet our obligations to any relevant regulatory authority or taxing authority;
 - 8.3.10. if we have to by law, the law allows it, or it is in the public interest; or
 - 8.3.11. if all of the assets which we use to operate the Mobiloan Platform (or substantially all of them) are acquired by a third party, we may transfer personal information we then hold to that party so that the acquirer can continue to operate the Mobiloan Platform; and
- 8.4. We may check your details with a fraud prevention agency or agencies, and if you give us false or inaccurate Information and we suspect fraud, we will record this. We and other organisations (including Government and relevant regulatory Authorities) may use, search and access these records from Kenya and other countries to:
- 8.4.1. help make decisions about credit and credit related services, for you;
 - 8.4.2. trace debtors, recover debt, prevent fraud; or
 - 8.4.3. check your identity to prevent money laundering, unless you furnish us with other satisfactory proof of identity.
- 8.5. If you default on any of your obligations under a Loan we may access and use your personal information and disclose the same to any credit reference agency and any Collections Agency used by us and any Government and relevant regulatory Authority for:
- 8.5.1. managing credit and credit-related accounts or facilities;
 - 8.5.2. recovering any debt due under your Loan; and
 - 8.5.3. checking details on proposals and claims for insurance.
- 8.6. We may monitor, record, store and use any telephone, email, electronic or other communication with you in order to check any instructions given to us, for training purposes, for crime prevention and to improve the quality of our customer service.



9. Customer's Equipment and Customer's Responsibilities

- 9.1. You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the System and the Services.
- 9.2. You shall be responsible for ensuring the proper performance of your Equipment. The Parties shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, nor shall the Parties be responsible for any virus or related problems that may be associated with the use of the System, the Services and the Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and the Parties shall not be responsible for losses or delays caused by any such service provider.
- 9.3. You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by the Parties concerning the use of the System and Services.
- 9.4. You are entitled to opt-out from receiving marketing material, if you so wish.
- 9.5. You shall, at all times, submit accurate and true information and promptly update such registration information as necessary.
- 9.6. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your Mobiloan PIN secret and secure. You shall ensure that your MOBILOAN PIN does not become known or come into possession of any unauthorized person. The Parties shall not be liable for any disclosure of your MOBILOAN PIN to any third party and you hereby agree to indemnify and hold the Parties harmless from any losses resulting from any MOBILOAN PIN disclosure.
- 9.7. You shall take all reasonable precautions to detect any unauthorized use of the System and the Services. To that end, you shall ensure that all communications from the Parties are examined and checked by you or on your behalf as soon as practicable after receipt by you in such a way that any unauthorized use of and access to the System will be detected.
- 9.8. You shall immediately inform MFS through the Contact Centre in the event that:
 - 9.8.1. You have reason to believe that your Mobiloan PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or
 - 9.8.2. You have reason to believe that unauthorized use of the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 9.9. You shall at all times, follow the security procedures notified to you by the Parties from time to time or such other procedures as may be applicable to the Services 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 Mobiloan Account's confidentiality. In particular, you shall ensure that the Services are not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorized to do so.
- 9.10. You shall not, at any time, operate or use the Services in any manner that may be prejudicial to the Parties.
- 9.11. You shall be responsible for checking your statements whether or not you receive a statement reminder or a loan default notification.
- 9.12. You shall authorize the Parties 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 shall consent to your name, transaction and default details being forwarded to a credit reference bureau for listing. You shall acknowledge that this information may be used by other institutions and other credit grantors in assessing applications for credit by you, associated companies, and supplementary account holders and for occasional debt tracing and fraud prevention purposes.

- 9.13. It is your responsibility to periodically review these Terms and Conditions to stay informed of updates. You will be subject to, and will be deemed to have been made aware of and to have accepted, the changes in any revised Terms and Conditions by your continued use of the Mobiloan system after the publication of the variations and amendments.

10. Your use of the Mobiloan Platform

10.1. You undertake not to use the Mobiloan Platform to:

- 10.1.1. harvest or collect email addresses or other financial, personal or contact Information of customers or other users from the Mobiloan Platform by electronic or other means for the purposes of sending unsolicited communications or inviting any person to borrow outside the Mobiloan Platform;
 - 10.1.2. use the Mobiloan Platform in any unlawful manner or in any other manner that could damage, disable, overload or impair the Mobiloan Platform or the servers on which it is hosted;
 - 10.1.3. use automated scripts to collect any information from or otherwise interact with the Mobiloan Platform;
 - 10.1.4. upload, post, publish, display, transmit, share, store or otherwise make available on the Mobiloan Platform any Information that we may deem fit;
 - 10.1.5. distribute information which is misleading, harmful, threatening, unlawful, libellous, defamatory, infringing of any intellectual property rights, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
 - 10.1.6. upload software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
 - 10.1.7. be used for unsolicited or unauthorised advertising, solicitations, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation;
 - 10.1.8. access the private Information of any third party, including, without limitation, addresses, phone numbers, email addresses, Personal Identification Numbers, telephone numbers or other identifiers, credit card numbers and/or debit card numbers;
 - 10.1.9. or to attempt to promote or market any goods or services for your own financial benefit;
 - 10.1.10. register on the Mobiloan Platform more than once or register on the Mobiloan Platform on behalf of an individual other than yourself, or register on the Mobiloan Platform on behalf of any entity without that entity's prior written authorisation;
 - 10.1.11. impersonate any person or entity, or falsely state or otherwise misrepresent yourself, your age, your financial employment or personal circumstances or your affiliation with any person or entity; use or attempt to use another's account, service or system without authorisation from us, or create a false identity on the Mobiloan Platform;
 - 10.1.12. solicit information from any other user of the Mobiloan Platform or solicit passwords or personally identifying Information for commercial or unlawful purposes; or
 - 10.1.13. invite any person to lend or borrow money outside the Mobiloan Platform or to transact on the basis of any change (other than a change agreed with MFS) to these Terms, any Loan or any other terms or conditions contained in the Mobiloan Platform.
- 10.2. You are solely responsible for any content that you upload to the Mobiloan Platform. You may not post, transmit, or share personal information on the Mobiloan Platform that is incorrect, no longer valid or which you did not create or that you do not have permission to display or post.
- 10.3. You agree to indemnify and hold each other customer, us, our subsidiaries and affiliates, and each of the Parties directors, officers, agents, contractors, partners and employees, harmless from and against any loss, liability, claim, demand, damages, costs and expenses, including reasonable attorney's fees, arising out of or in connection with any of your personal information, your use of the Mobiloan Platform including any lending made through the Mobiloan Platform, your conduct in connection with the Mobiloan Platform or with other users of the Mobiloan Platform, or any violation of these Terms or of any law or the rights of any third party.



11. Exclusion of Liability

- 11.1. The Parties 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 Parties control including, without limitation, force majeure or error, interruption, delay or non-availability of the 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.
- 11.2. The Parties will not be liable for any losses or damage suffered by you as a result of or in connection with:-
- 11.2.1. Unavailability of sufficient funds in your Mobile money Account;
 - 11.2.2. Failure, malfunction, interruption or unavailability of the System, your Equipment, the Network, Mobiloan System and/or Mobiloan Service;
 - 11.2.3. Your failure to give proper or complete instructions for payments relating to your Mobiloan Account;
 - 11.2.4. Any fraudulent or illegal use of the Services, the System and/or your Equipment; or
 - 11.2.5. Your failure to comply with these Terms and Conditions and any document or information provided by the Parties concerning the use of the System and the Services.
- 11.3. If for any reason other than a reason mentioned in subparagraphs 11.1 or 11.2, the Services are interfered with or unavailable, the Parties' sole liability under this Agreement in respect thereof shall be to re-establish the Services as soon as reasonably practicable.
- 11.4. Save as provided in subparagraph 11.3 the Parties shall not be liable to you for any interference with or unavailability of the Services, howsoever caused.
- 11.5. Under no circumstances shall the Parties 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 Services even where the possibility of such loss or damage is notified to MFS.
- 11.6. MFS shall only be liable for foreseeable loss or damage arising directly out of its own breach of these Terms, negligence or wilful misconduct.
- 11.7. We shall not be liable for any loss or damage arising out of or in connection with:
- 11.7.1. any error or inaccuracy in the information entered by you or any other Mobiloan Customer;
 - 11.7.2. any of the information available on the Mobiloan Platform; or
 - 11.7.3. any failure to make a repayment, breach, negligence, breach of contract, misrepresentation or wilful misconduct in relation to any Loan.
- 11.8. In no circumstances shall the Parties be liable for any indirect, special or consequential loss or damage, including loss or damage arising out of or in connection with a failure by a customer to make a repayment, any breach of a Loan by a customer, lost information, lost profits, damage to goodwill or business interruption, any delay or failure to perform our own obligations under these terms due to circumstances beyond our own reasonable control.
- 11.9. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.



12. Intellectual Property

12.1. You acknowledge that the intellectual property rights in the System (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that MFS provides to you through the System or otherwise are vested either in MFS or in other persons from whom MFS has a right to use and to sub-license the System and/or the said documentation. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of MFS.

13. Indemnity

13.1. In consideration of the Parties complying with your instructions or Requests in relation to Mobiloan, you undertake to indemnify the Parties and hold it harmless against any loss, charge, damage, expense, fee or claim which the Parties suffer or incur or sustain thereby and you absolve the Parties from all liability for loss or damage which you may sustain from the Parties acting on your instructions or requests or in accordance with these Terms and Conditions.

13.2. The indemnity in clause 13.1 shall also cover the following:

13.2.1. All demands, claims, actions, losses and damages of whatever nature which may be brought against the Parties or which it 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 Parties 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 the Parties.

13.2.2. 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.

13.2.3. Any unauthorized access to your Mobiloan 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.

13.2.4. 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 MFS as a consequence of any breach by these Terms and Conditions.

13.2.5. Any damages and costs payable to the Parties in respect of any claims against the Parties for recompense for loss where the particular circumstance is within your control.

14. Termination

14.1. The Parties may at any time, upon notice to you, terminate or vary its business relationship with you and close your Mobiloan Account and in particular but without prejudice to the generality of the foregoing the Parties may cancel credit limit which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Parties may determine.

14.2. Without prejudice to the Parties rights under clause 14.1, the Parties may at its sole discretion suspend, decline loan application or close your Mobiloan Account following a notice of the same provided by the Parties:

14.2.1. If you use Mobiloan for unauthorized purposes or where detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;

14.2.2. If you provide any information that is untrue, inaccurate, not current, or incomplete, the Parties has the right to not only suspend or terminate your account but also refuse any and all current or future use of the System;

14.2.3. If your agreement with the Parties or your distributor is terminated for whatever reason;

14.2.4. If the Parties are required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;



- 14.2.5. If the Parties 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);
- 14.2.6. Where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety that shall be sent to the Customer;
- 14.2.7. To facilitate update or upgrade the contents or functionality of the Services from time to time upon provision of a notice to the Customer;
- 14.2.8. Where you remain inactive for a period of time exceeding 120 days; or
- 14.2.9. If the Parties decide to suspend or cease the provision of the Services for commercial reasons, notice of which will be sent to the Customer by way of [e-mail or SMS] before the suspension/termination of the Customer's account.
- 14.2.10. If you have a current listing with a Credit Reference Bureau for a Non- performing account with any institution.
- 14.3. You may close your Mobiloan Account by opting out of the service at any time upon payments of all outstanding amounts owed to the Parties.
- 14.4. If your Mobiloan Account has any credit balance at the time of its closure, we will return any such balance to you, less any applicable fees. If your Mobiloan is in arrears at the time of closure of your Mobiloan Account, you agree to pay to us immediately all amounts you owe us including all applicable fees.
- 14.5. Termination shall not affect any accrued rights and liabilities of either Party.
- 14.6. If the Parties receive notice of your demise, the Parties will not be obliged to allow any operation or withdrawal from your Mobiloan Account by any person except upon production of a Grant of Letters of Administration or Grant of Probate and a Confirmation of Grant by your legal representatives duly appointed by the Court.

15. Disclosure of Information

- 15.1. You hereby expressly consent and authorize the Parties to receive, record, disclose or utilize your personal information or information or data relating to your Mobiloan Account and any details of your use of the Services including details of your default in servicing financial obligations on your Mobiloan Account:
 - 15.1.1. 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;
 - 15.1.2. to and from MFS's service providers, dealers, agents or any other company that may be or become MFS's subsidiary or holding company for reasonable commercial purposes relating to the Services;
 - 15.1.3. to a Credit Reference Bureau if in the Parties' opinion such disclosure is necessary for the purposes of evaluating your creditworthiness or any transaction with or credit application made to the Parties, maintaining your Account with the Parties or for any other lawful purpose;
 - 15.1.4. to the Parties lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
 - 15.1.5. to a Network in connection with the Mobile Money Service and the Services;
 - 15.1.6. for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and
 - 15.1.7. in business practices including but not limited to quality control, training and ensuring effective systems operation.



16. Miscellaneous

- 16.1. These Terms and Conditions (as may be amended from time to time) form a legally binding agreement between you, your personal representatives, heirs and permitted assigns/successors in title and assigns and the Parties.
- 16.2. You may not assign this Agreement and any rights or liabilities accruing thereunder to any other person unless expressly permitted in writing by the Parties.
- 16.3. The Parties may vary or amend these Terms and Conditions and the Transaction Fees, subject to prior notice to you. Any such variations or amendments may be notified to you via SMS, published in posters, in the daily newspapers, on MFS website and/or by any other means as determined by the Parties and any such variations and amendments shall take effect within a period of 7 days from publication.
- 16.4. No failure or delay by either yourself or the Parties 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.
- 16.7. Any addition or alteration to these Terms and Conditions may be made from time to time by the Parties and of which notice has been given to you by way of publication as provided in subparagraph 16.3 shall be binding upon you as fully as if the same were contained in these Terms and Conditions.
- 16.8. The Parties' failure to exercise or enforce any right or provision of these Terms and Conditions shall not operate as a waiver of such right or provision.
- 16.9. There is no joint venture, partnership, employment or agency relationship created between you and us as a result of these Terms and Conditions or the use of the Mobiloan Services.
- 16.10. You hereby waive any and all defences you may have based on the electronic form of these Terms and Conditions and the lack of signing by the parties hereto to execute these Terms and Conditions.
- 16.11. Except with respect to Customer's obligation to pay Charges, neither Party shall be liable for any Loss resulting from delay or failure to perform this Agreement, either in whole or in part, where any such delay or failure is due to a Force Majeure Event.
- 16.12. The Customer accepts and acknowledges that this is a legal and binding agreement between the Customer and the Parties once accepted by both parties.
- 16.13. Choice of Law: These Terms are in English and governed by Kenyan law which shall also apply to the establishment of our relationship with you. We will only write and communicate with you in English. By accepting these Terms you confirm that you are able to read and understand English.
- 16.14. Taxes: If any taxes apply to you as a result of entering into these Terms or as a result of entering into any Loan you must account for them yourself.
- 16.15. We may transfer our rights and obligations under these Terms to another person, and we will notify you in writing if this should happen. You are not permitted to transfer or assign your rights or your obligations under these Terms to any other person.
- 16.16. "We," "our," and "us," means the Parties and includes its successors in title and assigns;
- 16.17. "You" or "your" means the Customer and includes your personal representatives and heirs;
- 16.18. The word "Customer" shall include both the masculine and the feminine gender as well as juristic persons;
- 16.19. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 16.20. Headings in these Terms and Conditions are for convenience purposes only and they do not affect the interpretation of this Agreement.



17. Notices

- 17.1. The Parties may send information concerning Mobiloan via SMS to the Mobile Network Mobile Phone number associated with your Mobiloan Account.
- 17.2. You acknowledge that you have no claim against the Parties for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to Mobiloan.

18. Dispute Resolution, Jurisdiction and Arbitration

- 18.1. You may contact the MFS Contact Centre to report any disputes, claims or Mobiloan Account discrepancies.
- 18.2. Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
- 18.3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.
- 18.4. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.