

**TERMS AND CONDITIONS RELATING TO  
THE HUSTLER FUND GROUP MICRO ENTERPRISE SAVINGS AND LOAN PRODUCT**

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**1. THE AGREEMENT**

- 1.1 This Agreement sets out the terms and conditions (hereinafter called "the Terms and Conditions") which shall be applicable to the Hustler Fund Group Micro Enterprise Savings and Loan Product (hereafter referred to as the "Product") opened by you (as hereinafter defined) with the Bank (as hereinafter defined).
- 1.2 The Customer accepts and acknowledges that this is a legally binding agreement between the Customer on the first part and (1) the Bank as the administrator of the Product on behalf of the Government of Kenya and (2) Telkom Kenya Limited as the mobile network operator whose platform shall be used for purposes of disbursing the Loan, remitting the savings component of the Product and receiving repayments from the Customers.
- 1.3 Upon accepting these Terms and Conditions during the opt-in process, the Customer shall be bound by the terms hereof.

**2. DEFINITIONS**

- 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 **"Bank"** means KCB Bank Kenya Limited incorporated in Kenya as a limited liability company under the Companies Act (Chapter 486 of the Laws of Kenya) and duly licensed as a bank under the Banking Act (Chapter 488 of the Laws of Kenya) and includes subsidiaries of the Bank as may from time to time be specified by the Bank to you.
- 2.1.2 **"Customer Care Centre"** means any Mobile Network Operator Retail Shops or Bank Branch or such other Bank Agent or Agents as may be notified to the Customer by the Bank from time to time.
- 2.1.3 **"Customer"** means the Group micro enterprise and includes its members registered under the Micro and Small Enterprise Authority Micro and Small Enterprises Act, 2012 which has opted in to the Product, it being acknowledged that:
- 2.1.3.1 the liabilities of the members of a Group micro enterprise shall be joint and several;
- 2.1.3.2 the term Customer shall be construed to include the Customer's personal representatives; and
- 2.1.3.3 where the context permits, the term Customer shall be construed to mean the respective individuals registered on the System for purposes of accessing the Product.
- 2.1.4 **"E-Money"** means the electronic monetary value depicted in your Mobile Money Account representing an equal amount of cash.
- 2.1.5 **"Equipment"** includes your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access the Network.
- 2.1.6 **"Fund"** means the financial inclusion fund established through the Public Finance Management (Financial Inclusion Fund) Regulations, 2022 issued and published under the Public Finance Management Act, 2012.
- 2.1.7 **"Group Official"** means a designated member with the role of a chairperson, treasurer, secretary mandated to act on behalf of a Group micro enterprise for purposes of registering for and enjoying the benefits under the Product.

- 2.1.8 **“Group Wallet/” or “Group Account”** means your Group store of value, being the record maintained by the Bank of the amount of E-Money from time to time held by a Group micro enterprise in the Mobile Money System.
- 2.1.9 **“Group”** means the group micro enterprise registered for the Product under these Terms and Conditions.
- 2.1.10 **“Hustler Fund Group Micro-Enterprise Loan Product” or the “Product”** means the products under the Fund which is aimed at benefiting Group micro enterprises and whose terms are set out in these Terms and Conditions.
- 2.1.11 **“Interest rate”** shall mean the rate of 7% or such other loan rate as may be approved and communicated from time to time or such interest rate as the bank may from time to time apply to Loan under the Product.
- 2.1.12 **“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 and its successors.
- 2.1.13 **“Member”** means an individual who is onboarded in a Group for purpose of Group registration with MSEA or to access the Product. Group Hustler Fund.
- 2.1.14 **“Mobile Money Account”** means your mobile money store of value, being the record maintained by Mobile Network Operator of the amount of E-Money from time to time held by you in the Mobile Money System.
- 2.1.15 **“Mobile Money Service”**.means the money transfer and payments service provided by Mobile Network Operator through the Mobile Money System; **“Mobile Money System”** means the system operated by Mobile Network Operator in Kenya for the provision of the Mobile Money Service using the Network.
- 2.1.16 **“Mobile Money Subscriber”** means any person registered to use the Mobile Money System to send or receive money or make payments.
- 2.1.17 **“Mobile Network Operator”** means a means a telecommunications service provider or providers that offer wireless voice and data communication to its subscribed mobile users, possesses its own mobile license, mobile infrastructure and maintains a direct relationship with mobile user.
- 2.1.18 **“MSEA”** means Micro & and Small Enterprise Authority established under the Micro and Small Enterprises Act(No. 55 of 2012), which is a government body charged with registration and development of groups of micro and small enterprises.
- 2.1.19 **“Network”** means the mobile cellular network operated by Mobile Network Operator.
- 2.1.20 **“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.
- 2.1.21 **“PIN”** means your personal identification number being the secret code used to access and operate the Mobile Money System.
- 2.1.22 **“Request”** means a request or instruction received by the Bank from you or purportedly from you through the Network and the System and upon which the Bank is authorized to act.
- 2.1.23 **“Savings Deduction”** means 5% of the Loan Amount deducted during disbursement of the Loan.

- 2.1.24 **"Services"** shall include any form of financial services or products that the Bank may offer you pursuant to this Agreement and as you may from time to time subscribe to and "Service" shall be construed accordingly.
  - 2.1.25 **"SIM Card"** means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the Network.
  - 2.1.26 **"SMS"** means a short message service consisting of a text message transmitted from one mobile phone to another.
  - 2.1.27 **"System"** means the Mobile Network Operator's or the Bank's electronic banking and communications software for purposes of the Services.
  - 2.1.28 **"Transaction Fees"** means the fees charged to transact on your Mobile Money Wallet as published by Mobile Network Operator from time to time.
  - 2.1.29 **"We," "our," and "us,"** means the Bank and Mobile Network Operator and include their successors and assigns.
  - 2.1.30 **"You" or "your"** means the Customer as defined in this clause.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

### 3. THE LOAN AND SAVINGS PRODUCT

- 3.1 The Product, administered by KCB Bank Kenya Limited and the Mobile Network Operator, has the following key features:
- 3.1.1 The loan limit amount assigned to a group shall be based off the collective individual member limit contribution as determined by the bank up to a maximum of KES 200,000.
  - 3.1.2 To be eligible to register for the Product, the Group must meet the following eligibility requirements:
    - (a) be registered by the MSEA;
    - (b) have at least ten members;
    - (c) Group members must be Kenyan citizens with valid National Identification cards;
    - (d) The Group must be actively engaged in lawful economic activity in Kenya;
    - (e) Group members must not have defaulted on previous Hustler Fund products; and
    - (f) Group must provide its residential details, including county and constituency of establishment and operation.
  - 3.1.3 The loan repayment period shall be a maximum of 3 months provided that the Group may select any of the following repayment terms:
    - (a) 1 month.
    - (b) 3 months.
  - 3.1.4 Interest shall be charged on the Loans at the rate of 7% per annum prorated to the applicable period as selected by the Group. Interest shall be accrued daily until repayment in full.
  - 3.1.5 The Loan shall be advanced to eligible Groups through the Group Wallet.
  - 3.1.6 The Groups may access the Product via the USSD channel through the short code \*254#.
  - 3.1.7 The Product shall have a savings component pursuant to which 5% of the loan advanced shall be deducted to go towards the Group savings (**the "Savings Deduction"**).

3.1.8 In the event of a default in repayment (non-payment within the selected repayments period days from the date of disbursement), default interest shall accrue at the rate of 1.5% p.a. with effect from the day past due. If the Group is in default, the Group's credit rating and assigned credit limit may be reviewed by the Bank.

3.1.9 In the event of default, the Customer shall not be eligible to borrow from the Fund until full repayment of all outstanding amounts.

#### **4. ACCEPTANCE OF THE TERMS AND CONDITIONS**

4.1 Before applying for funds under the Group Micro Enterprise Loan Product via the Mobile Money System customers should carefully read and understand these Terms and conditions which will govern the use and operation of the Hustler Fund Micro Enterprise Loan Product.

4.2 If you do not agree with these Terms and conditions, please click "Decline" on the Hustler Fund menu at \*254#.

4.3 You will be deemed to have read, understood and accepted these Terms and Conditions:

4.3.1 upon clicking on the "Accept" option on the Hustler Fund menu requesting you to confirm that you have read, understood, and agreed to abide with these Terms and Conditions; and/or

4.3.2 by using or continuing to use and operate the Hustler Fund and/or the Services.

4.4 By applying funds under Hustler Fund Micro Enterprise Loan Product , 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 the Hustler Fund Micro Enterprise Loan Product and you affirm that these Terms and Conditions herein are without prejudice to any right that the Bank or Mobile Network Operator may have with respect to the Group Savings and Loan Project in law or otherwise.

4.5 These Terms and Conditions may be amended or varied from time to time subject to at least thirty (30) days prior notice to you. The continued use of the services under the Hustler Fund Micro Enterprise Loan Product and/or the Services after lapse of the said notice period constitutes your agreement to be bound by the terms of any such amendment or variation.

#### **5. ACCOUNT OPENING**

5.1 The Bank reserves the right to verify with the Mobile Network Operator the authenticity and status of your Mobile Money account.

5.2 The Bank reserves the right to verify with MSEA the authenticity and status of your Group registration.

5.3 You may access the Product by USSD by dialing \*254#.

5.4 The Customer hereby consents to have the personal data shared by the Mobile Network operator and MSEA with the Bank for purposes of onboarding the customer to the product. This will enable the Bank to identify you and comply with the regulatory "Know Your Customer" requirements (together the "Personal Information").

5.5 You also hereby agree and authorize the Bank to request Mobile Network Operator for information relating to your use of the Mobile Money Service, Mobile Money System and Mobile Network Operator Services as the Bank shall require for purposes of providing you the Services ("Customer information") and in particular to determine your credit limit. You hereby consent to the disclosure of the Personal Information and the Customer information by Mobile Network Operator and MSEA to the Bank and to the aforesaid use of the Personal Information and the Customer information by the Bank.

5.6 You hereby agree and authorize the Bank 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 Bank.

- 5.7 You hereby agree and authorize the Bank to share your personal information with MSEA for the purpose of formal registration of the Group you belong in during onboarding on Hustler Fund Group Micro Enterprise Savings and Loan Product.
- 5.8 The Bank reserves the right to request for further information from you pertaining to your application for Hustler Fund Group Micro Enterprise Savings and Loan Product funds at any time. Failure to provide such information within the time required by the Bank may result in the Bank declining to accept your application for the Loan.
- 5.9 Confirmation of your application acceptance for a Hustler Fund Group Micro Enterprise Savings and Loan Product shall be done via SMS sent to the Mobile Network Operator Mobile Phone Number associated with your Hustler Fund Group.
- 5.10 Group member or Group official can opt in or belong to only one Hustler Fund Group at a time.

## **6. CREATING A GROUP FOR PURPOSES OF ACCESSING THE PRODUCT**

- 6.1 Any eligible individual customer, being an Official of a Group, may initiate the process for creating the Group on the System using the access channels.
- 6.2 During the process of creating the Group, the applicant will be required to provide details of the Group including the name of the Group and the proposed Officials and members of the Group who must meet the eligibility criteria set out in these Terms and Conditions.
- 6.3 Individual Customers proposed to be added as Group members with respect to each Group shall be notified of the invitation to join the Group and shall have the option of either accepting the invitation or declining to join the Group.
- 6.4 Once a Group has been set up, it will be assigned a unique identifier on the System and may thereafter access the Product in accordance with these Terms and Conditions.
- 6.5 We reserve the right to require that an application for a Loan is approved by such number of Group Officials and Members as we may in our sole discretion determine.
- 6.6 Notwithstanding the provisions of this clause, all the members of the Group shall be jointly and severally liable for the repayment of the Loan.

## **7. APPLYING FOR LOANS UNDER THE PRODUCT**

- 7.1 Where you apply for a loan from the Bank, your application shall be appraised according to the applicable loan appraisal processes of the Bank. The Bank reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.
- 7.2 Subject to approval of your application for a loan the Bank shall disburse to you a loan of an amount to be determined by the Bank in its sole discretion subject to the minimum or maximum amounts as the Bank may from time to time in its sole discretion determine (the "Loan"). The Group shall not be entitled to request for more than one loan.
- 7.3 The proceeds of the Loan shall be credited into the Group Wallet Account subject to any deductions on account of applicable Savings Deduction. Subject to the relevant approval of Group Officials and Members, proceeds of the Loan may be utilized by the Group by way of withdrawal to a designated individual member's Mobile Money Account, remittance to a Paybill or Till number, or lending to Group members on terms set by the Group.
- 7.4 The members of the Group shall repay the Loan from their Mobile Wallets within the term agreed upon at the time of loan request.

- 7.5 You shall make all payments due from you to the Bank in respect of the Loan and Transaction Fees using Mobile Money only unless otherwise agreed by the Bank in its discretion.
- 7.6 If you do not repay the Loan in full within the loan term after the date of disbursement of the Loan, the Bank will automatically start charging a late repayment default interest which shall be calculated on any outstanding loan amount in respect of the loan and shall continue to accrue till payment is received by the Bank in full.
- 7.7 The Bank shall be entitled to terminate this Agreement and close your Group Account if you fail to repay the Loan and interest and other fees due thereon within the agreed period.
- 7.8 The Bank 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 and regulations of the Central Bank of Kenya and the policies of the Bank.
- 7.9 Disbursement of the Hustler Fund Group loan shall constitute 95% of the requested loan amount which shall be transferred to the Group wallet and notification sent to the Group.
- 7.10 The Savings Deduction shall automatically be channeled to the Group mandatory savings wallet.
- 7.11 The Group Wallet shall hold the Group e-money value and the Group members and officials shall, at any time, transfer the funds to their mobile money wallet.
- 7.12 The transfer of funds from Group wallet to an official or member mobile money wallet shall be subjected to approval by at least five random members who may or may not include officials but exclude the initiator of the request.
- 7.13 Loan disbursement shall be declined if any of the Group member has an overdue loan on any of the hustler fund products. The Group members shall be notified of the individual(s) with overdue loan amount.
- 7.14 The disbursed loan shall be booked against the Group and all Group members shall be liable for the open loan book.

## 8. YOUR REQUESTS

- 8.1 You hereby irrevocably authorize the Bank to act on all Requests received by the Bank from you (or purportedly from you or your Group) through the System and to hold you liable in respect thereof. The Bank may nevertheless refuse to carry out any Requests which would result in there being an overdraft on your Hustler Fund Group Micro Enterprise Savings and Loan Product and Mobile Money Account.
- 8.2 Mobile Network Operator and the Bank shall be entitled to accept and to act upon any Request, if they believe that it can correct any incomplete or ambiguous information in the Request without any reference to you being necessary.
- 8.3 Mobile Network Operator and the Bank shall be deemed to have acted properly and to have fully performed all the obligations owed to you notwithstanding that the Request may have been initiated, sent or otherwise communicated in error or fraudulently, and you shall be bound by any Requests on which Mobile Network Operator and the Bank may act if they in good faith and without negligence acted in the belief that instructions was sent by you.
- 8.4 Mobile Network Operator and the Bank may, in its absolute discretion, decline to act on or in accordance with the whole or any part of your Request pending further enquiry or further confirmation (whether written or otherwise) from you.
- 8.5 You agree to and shall release from and indemnify Mobile Network Operator and the Bank against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to their having acted in accordance with the whole or any part of any of your Requests.

- 8.6 You acknowledge that to the full extent permitted by law, Mobile Network Operator and the Bank shall not be liable for any unauthorized drawing, transfer, remittance, disclosure, any activity or any incident on your account by the fact of the knowledge and/or use or manipulation of your PIN, password, ID or by any other means occasioned by your negligence.
- 8.7 Mobile Network Operator and the Bank are authorized to effect such orders in respect of your Hustler Fund Micro Enterprise Loan Product funds as may be required by any court order or competent authority or agency under the applicable laws.
- 8.8 In the event of any conflict between any terms of any Request received by the Bank from you and these Terms and conditions, these Terms and conditions shall prevail.

## 9. **LOAN REPAYMENT**

- 9.1 Repayment of any amount due includes but is not restricted to repayment of the Interest, penalty, and principal amount and may be made through partial payments or a full payment.
- 9.2 The Bank may at any time communicate through an SMS notification to the number registered to access the fund that if an accrued debt is not paid within a stipulated period from the date of receipt by you then Mobile Network Operator may, without further notice, freeze your Mobile Money account or group wallet from borrowing from the fund until payment in full.
- 9.3 It is agreed that the Facility shall be available on an ongoing/continuous basis from the first date of utilization of the loan up to the last day for the period selected.
- 9.4 Any funds received from the customer shall be applied towards repayment of the amount due on the loan in the following order of priority:
- 9.4.1 First in repayment of penalty fee;
  - 9.4.2 Secondly towards all Interest; then
  - 9.4.3 Thirdly towards repayment of the principal amount.

## 10. **STATEMENTS**

- 10.1 You may request for a statement or activity report in respect of your funds within the Mobile Money Wallet and Group Wallet through the applicable Mobile Network Operator channels and menu.
- 10.2 The statement shall not be sent to you in printed form but shall be delivered to you via SMS to the Mobile Network Operator mobile phone number associated with your Group Wallet.
- 10.3 Save for a manifest error, a statement issued to you in the aforesaid manner shall be conclusive evidence of the transactions carried out on your Mobile Money wallet or Group wallet for the period covered in the statement.
- 10.4 We reserve the right to rectify discrepancies, add and/or alter the entries in your statements, without prior notice to you. you will however be informed of any rectification, additions and or alterations effected on your statements within a reasonable time after the changes are effected.
- 10.5 All notifications of transactions related to the Hustler Fund Micro Enterprise Loan Product shall be by way of SMS.

## 11. **CUSTOMER COMPLAINTS**

- 11.1 You may contact the Bank's or Mobile Network Operator's Customer Care Center to report any disputes, claims or discrepancies in respect of the Service through any of the contacts provided below.
- Mobile Network Operator  
By calling 100 or sending an email to the respective Mobile Network Operator. Alternatively you can visit any Mobile Network Operator shop.

KCB Bank

Email: contactcentre@kcbGroup.com

Tel: +254 (20) 3270000

Tel: +254 (732) 187000

Tel: +254 (711) 087000

WhatsApp: +254 (711) 087087

SMS: 22522

11.2 Mobile Network Operator and the Bank will take all measures within its means to resolve your complaints within 30 calendar days. All complaints will be handled in accordance with Mobile Network Operator and the Bank's complaints handling procedures, which are available on request from any Mobile Network Operator or Bank Branch or Customer Care Centre. Where a notification regarding your complaint or any other matter is expected but not received, you may make a further complaint within a reasonable time after the non-receipt of such notification. Customer complaints vary and the same is governed by a documented service agreement outlining the resolution timeline of each issue category.

11.3 Applicable tariffs will be charged by your telephone and internet service provider(s) when communicating with the Customer Care Centre.

## 12. TAXES

12.1 Amounts advanced to You in your Mobile Money Wallet or Group wallet may be subject to taxes in accordance with applicable Kenyan, foreign or international law.

12.2 You consent and agree that we may withhold amounts in your Mobile Money Wallet or Group wallet if any Kenyan or foreign tax authority requires us to do so.

## 13. PRIVACY POLICY

### 13.1 *Collection of information*

We collect certain Personal Information for compliance with our legal and contractual obligations to you or to take steps to enter into an agreement with you without which we are legally obligated to deny you the service.

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.

### 13.2 *Privacy*

We are committed to respecting and protecting the privacy of the information we collect from you. Our privacy statement, in compliance with the requirements of the Data Protection Act 2019, as updated from time to time, explains how we treat your Personal Information, who we share your information with, and measures taken protect your privacy when you use our Service. This can be found on the Mobile Network Operator and KCB websites.

## 14. DISCLOSURE

14.1 You hereby expressly consent and authorize the Bank to disclose, receive, record or utilize your personal information or information or data relating to your Personal Loan Project account and any details of your use of the Services:

14.1.1 to and from the Bank's service providers, dealers, agents or any other company that may be or become the Bank's subsidiary or holding company for reasonable commercial purposes relating to the Services.

14.1.2 to a Credit Reference Bureau.

14.1.3 to the Bank's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings.



- 14.1.4 to Mobile Network Operator or other business partners in connection with the Mobile Money Service and other affiliated Services for the purpose of fulfilment of a legal obligation or realizing legitimate interests.
- 14.1.5 for the purposes of credit scoring for the services.
- 14.1.6 for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities;
- 14.1.7 in business practices including but not limited to quality control, training and ensuring effective systems operation; and
- 14.1.8 for such other purposes as may be prescribed in law in the various legislation and or regulations of Kenya applicable from time to time.

14.2 You authorize the Bank to disclose any information relating to your account to any Kenyan, 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 Kenya or any other country and or as the Bank may deem necessary.

14.3 In the event of death, your estate administrator will be granted access to your Mobile Money wallet upon production of letters of administration from a competent authority or confirmed grant of letters of administration or confirmed grant of probate by your legal representatives duly appointed by the Court.

## 15. YOUR EQUIPMENT AND RESPONSIBILITIES

15.1 You shall at your own expense provide and maintain in safe and efficient operating order your device necessary for the purpose of accessing the System and the Services.

15.2 You shall be responsible for ensuring the proper performance of your device. We shall neither be responsible for any errors or failures caused by any malfunction of your device, and nor shall virus or related problems that may be associated with the use of the System, the Services and the device. You shall be responsible for charges due to any service provider providing you with connection to the Network and the Bank shall not be responsible for losses or delays caused by any such service provider.

15.3 You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by the us concerning the use of the System and Services.

15.4 You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your device 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 the us harmless from any losses resulting from any PIN disclosure.

15.5 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 Mobile Network Operator and the Bank 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.

15.6 You shall immediately inform the Mobile Network Operator and the Bank through the Customer Care Centre in the event that:

15.6.1 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; and/or

15.6.2 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.

15.7 You shall at all times follow the security procedures notified to you by the Bank 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 Personal Loan Project's

data 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.

15.8 You shall not at any time or use the device in any way that may be prejudicial to Us.

## 16. EXCLUSION OF LIABILITY

16.1 In the absence of negligence on its part, the Mobile Network Operator and the Bank 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 device, or (b) any other circumstances whatsoever not within our control including, without limitation, force majeure, terrorist or any enemy action and adverse weather or atmospheric conditions.

16.2 In the absence of negligence on its part, the Mobile Network Operator and the Bank will not be liable for any losses or damage suffered by you as a result of or in connection with:

16.2.1 unavailability of sufficient funds in your Mobile Money account wallet;

16.2.2 the money in your Mobile Money Wallet being subject to legal process or other encumbrance restricting payments or transfers thereof;

16.2.3 your failure to give proper or complete instructions for payments or transfers relating to your Hustler Fund Micro Enterprise Loan Product funds;

16.2.4 any fraudulent or illegal use of the Services, the System and/or your Equipment; or

16.2.5 Your failure to comply with these Terms and Conditions and any document or information provided by the Bank concerning the use of the System and the Services.

16.3 Under no circumstances shall Mobile Network Operator or the Bank 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 the Bank.

16.4 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

## 17. INTELLECTUAL PROPERTY RIGHTS

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 Mobile Network Operator and the Bank provide to you through the System or otherwise are vested in us or in other persons from whom they have 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 our prior written consent.

## 18. INDEMNITY

In consideration of our compliance with your instructions or Requests in relation to the Mobile Money wallet, you indemnify us and agree to 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. VARIATION AND TERMINATION OF RELATIONSHIP

19.1 Without prejudice to any of our rights under these terms and conditions, we reserve the right to at any time upon giving a 30 days notice to you, terminate or vary our business relationship with you and may suspend or discontinue your use or access to the Hustler Fund Micro Enterprise Loan Product :

19.1.1 if you use the Mobile Money wallet for unauthorized purposes or where the Bank detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services.

19.1.2 if your Mobile Money account or agreement with Mobile Network Operator is terminated for whatever reason.

19.1.3 if the Bank is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority.

19.1.4 if the Bank reasonably suspects or believes that you are in breach of these terms and conditions

- 19.1.5 where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety.
- 19.1.6 to facilitate update or upgrade the contents or functionality of the Services from time to time.
- 19.1.7 where your Mobile Money Wallet becomes inactive or dormant or is deemed abandoned in line with the Unclaimed Financial Assets Act No. 40 of 2011.
- 19.1.8 if we decide to suspend or cease provision of the Services for commercial reasons or for any other reason as we may determine.

19.2 If your Mobile Money Wallet has any credit balance at the time of its closure, the Mobile Network Operator will return any such balance to you, less any applicable fees.

19.3 You may cancel registration for the Service at any time through your Equipment or at your nearest Mobile Network Operator Shop. You may however not cancel registration if you have an outstanding and unpaid loan/ principal or unpaid Interest and Fees.

19.4 Termination shall however not affect any accrued rights and liabilities of either party.

## 20. **JOINT AND SEVERAL LIABILITY**

20.1 The Customer's acceptance to register for the Product and/or acceptance of these Terms and Conditions constitutes their covenant and agreement that (i) each of the Group Members is jointly and severally liable for the keeping, observing and performing of all of the terms, covenants, conditions, provisions and agreements of these Terms and Conditions, and (ii) the term "Group Member" or "Customer" as used in these Terms and Conditions means and includes each of the Group Members jointly and severally.

20.2 The act of or notice from, request from or notice to any one or more of the Group Members, with respect to these Terms and Conditions, including, but not limited to, any amendment, expiration, termination or modification of these Terms and Conditions, will be binding upon each and all of the Group Members with the same force and effect as if each and all of the Group Members had so acted or so given or received such notice or request.

20.3 Without prejudice to the generality of the foregoing, any individual customer, being a Group Member shall be jointly and severally liable for the obligations of the Group, for the repayment of any Group Loans advanced to the Group and for any other obligations otherwise expressed or contemplated to be created between us and the Group or any Group Member.

20.4 Each individual customer, being a Group Member, agrees that they are jointly and severally liable for, and absolutely and unconditionally guarantee to us the prompt payment and performance of, all obligations and all agreements under these Terms and Conditions.

20.5 Each individual customer, being a Group Member agrees that his/he guaranty obligations hereunder constitute a continuing guaranty of payment and that such obligations shall not be discharged until full payment of the obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any obligations, instrument or agreement to which any Group Member is or may become a party or be bound; (b) the absence of any action to enforce these Terms and Conditions or any waiver, consent or indulgence of any kind by us; and/or (c) the insolvency of any Group Member of a Group with an outstanding Group Loan.

## 21. **GROUP MEMBERS' MANAGEMENT**

21.1 You acknowledge that Group Officials registered for the Product shall be permitted to manage the Groups and shall be allowed to:

- 21.1.1 Subject to relevant consent from the members, add members to the Group;

- 21.1.2 Subject to required approval from other Officials and members, suspend members from the Group;
- 21.1.3 Activate a member after a period of suspension;
- 21.1.4 Remove members from the Group, subject to approval from Officials and members and to there being no outstanding liabilities by the member and the relevant Group;
- 21.1.5 Assign roles to members by giving them Official roles of chairperson, treasurer or secretary; and
- 21.1.6 Subject to approval by other Officials and members, effect a change in names.

21.2 The Bank and the MNO shall not under any circumstances be liable for the actions of the Group Officials relating to management of the Groups. By registering for the Service, you authorize the MNO to take the instructions of the respective Officials as being binding upon you without further reference to you.

## 22. MISCELLANEOUS

- 22.1 These terms and conditions (as may be amended from time to time) form a legally binding agreement binding on you and your personal successors.
- 22.2 These terms and conditions (as may be amended from time to time) should be read in conjunction with the Terms and Conditions for the Mobile Money services offered by the respective MNO. In the event of any inconsistency with respect to the Hustler Fund Micro Enterprise Loan Product funds, these Terms and Conditions shall prevail in relation to the provision of the Hustler Fund Micro Enterprise Loan Product funds.
- 22.3 This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.
- 22.4 The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 22.5 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.

## 23. DISPUTE RESOLUTION, JURISDICTION AND ARBITRATION

- 23.1 You may contact the Banks or Mobile Network Operator's Customer Care Center to report any disputes, claims or discrepancies.
- 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 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 No. 4 of 1995.
- 23.3 To the extent permissible by Law, the determination of the Arbitrator 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.