

# TERMS AND CONDITIONS OF LOANS

concluded on dd/mm/yyyy, between:

**Zenka Finance Limited** a company incorporated under the laws of the Republic of Kenya with a company registration number PVT-EYU82X2 (hereinafter called the “**Zenka**” or “**Lender**” or “**us**” or “**we**”)

and

<b>Name</b>	
<b>Surname</b>	
<b>e-mail address</b>	
<b>ID</b>	

( hereinafter called the “**Borrower**”, “**End-User**”, “**you**”)

These Terms and Conditions are in respect of the Loan (as hereinafter defined) details of which are presented below:

Principal amount	_____ KES
Processing Fee	_____ KES
Total Amount Due	_____ KES
Start Date	Dd/mm/yyyy
Due Date	Dd/mm/yyyy

**THE BORROWER’S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 8 AND 11 TO 12.**

## 1. BASIS OF AGREEMENT AND BACKGROUND

- 1.1 The brand names "Zenka", "Zenka Finance" as well as their accompanying logo wherein used here, are kept by Zenka. All rights thereto are reserved.
- 1.2 This agreement (“the **Terms and Conditions**”) is a financial services and an end-user licence agreement between

you and Zenka, and sets out the terms and conditions which shall be applicable to the Services (as hereinafter defined) applied for by you with Zenka. Termination of these Terms and Conditions for whatever reason shall also terminate any provision of the Services to you subject to clause 13 of the Terms and Conditions.

- 1.3 These Terms and Conditions (together with our Privacy Policy and Terms of Use) and any subsequent amendments or variations thereto (of which you shall be always be kept informed of on the date of publication) set out the complete terms and conditions which shall be applicable to the Account (as hereinafter defined) opened by you with Zenka and the provision of the Services (as hereinafter defined).

- 1.4 These Terms and Conditions and any subsequent amendments or variations thereto take effect on their date of publication.

## 2. DEFINITIONS AND INTERPRETATION

### 2.1 Definitions

For the purposes of these Terms and Conditions:

“**Acceptable Use Restrictions**” has the meaning given to it in clause 6;

“**Account**” means the account with Zenka opened and operated in accordance with these Terms and Conditions and in which your Loan will be placed;

“**App**” means our mobile, USSD or web-based loan applications;

“**Business Day**” means a day other than a Saturday, Sunday or gazette public

holiday when banks open for business in Nairobi, Kenya;

**“Credentials”** means your personal credentials used to access the App and operate your Account;

**“Credit Reference Bureau”** means a credit reference bureau duly licensed by the Central Bank of Kenya, to among other things, collect and facilitate the sharing of customer credit information;

**“Data Protection Act”** means the Data Protection Act, 2019 which makes provision for the regulation of the processing of personal data and provides for the rights of data subjects and obligations of data controllers and processors;

**“E-Money”** means the electronic monetary value depicted in your Mobile Money Account representing an equal amount of cash;

**“Equipment”** includes your mobile phone handset, computer, SIM Card and/or other equipment which when used together enables you to access the Network;

**“Event of Default”** has the meaning given to it in clause 12;

**“Encumbrance”** includes any mortgage or charge (whether legal or equitable), lien, option, security interest, restrictive covenant, pledge, assignment, title retention, trust arrangement or other restriction of any kind or other encumbrance securing or any right conferring a priority of payment in respect of any obligation of any person. **“Encumber”** shall be construed accordingly;

**“Force Majeure”** means events, circumstances or causes beyond the reasonable control of Zenka making Zenka’s performance of its obligations inadvisable, commercially impracticable, illegal, or impossible, including without limitation acts of God, war, strikes or labour disputes, embargoes or government orders;

**“Licence Restrictions”** has the meaning given to it in clause 5;

**“Loan”** means the principal amount of the loan, in such amount as Zenka may determine in its absolute discretion, made or to be made by Zenka to you under these Terms and Conditions from time to time through the App or (as the context requires) the principal amount outstanding for the time being of that loan and includes any interest, fees and any monies due from you to Zenka ;

**“Mobile Money Account”** means your mobile money store of value, being the record maintained by Mobile Money Service Providers in Kenya of the amount of E-Money from time to time held by you in the relevant Mobile Money System;

**“Mobile Money”** means the money transfer and payments service operated by the Mobile Money Services Providers in Kenya;

**“Mobile Network Operator”** means a mobile network operator in Kenya licensed and regulated by the Communications Authority of Kenya;

**“Mobile Money Services Provider”** means a Mobile Network Operator that has been duly authorized by the Central

Bank of Kenya under applicable laws to offer Mobile Money Services in Kenya;

**“Mobile Money Service”** means the money transfer and payments service provided by the Mobile Money Services Providers through the Mobile Money System;

**“Mobile Money System”** means the system operated by the Mobile Money Services Providers in Kenya for the provision of the Mobile Money Service;

**“Network”** means a mobile cellular network operated by a Mobile Network Operator;

**“PIN”** means personal identification number, a secret number used in electronic financial transactions and required to access the System and complete a transaction;

**“Privacy Policy”** means the privacy policy of Zenka that sets out the basis on which any personal data we collect from you, or personal data that you provide to us, will be processed and used by us;

**“Processing fee”** include any fees and charges for issuing the Loan, any top-up of the Loan and any administrative charges for the extension of the Loan, payable by the Borrower for the use of the Services as presented by Zenka on the System during the application process or by any other means as Zenka shall in its sole direction determine;

**“Request”** means a request or instruction received by Zenka from you or purportedly from you through the System and upon which Zenka is authorised to act;

**“Services”** shall include any form of financial services or products that Zenka may offer you pursuant to these Terms and Conditions and as you may from time to time subscribe to and the term **“Service”** shall be construed accordingly;

**“SIM Card”** means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the Network, and to access and use the Mobile Money Account;

**“SMS”** means a short message service consisting of a text message transmitted from your mobile phone to another;

**“System”** means Zenka’s electronic communications and payments software and, mobile and USSD applications enabling you to communicate with Zenka for purposes of the Services. The System and the Services will for the purpose of these Terms and Conditions be accessed through the Equipment via the Network;

**“Technology”** has the meaning given to it in clause 4(e);

**“USSD”** means Unstructured Supplementary Service Data, a Global System for Mobile (“GSM”) communication technology used to send text between a mobile phone and an application program in the Network.

## 2.2 Interpretation

Unless the context requires otherwise in these Terms and Conditions:

- (a) the singular shall include the plural and vice versa;
- (b) a reference to any one gender, whether masculine, feminine or neuter, includes the other two;

- (c) clause headings shall not affect the interpretation of these Terms and Conditions;
- (d) references to clauses are to the clauses of these Terms and Conditions.
- (e) a reference to a statute, or statutory provision is a reference to it as it is in force from time to time, and shall include any subordinate legislation made from time to time under that statute or statutory provision; as between the you and Zenka no such amendment, modification or re-enactment made after the date of publication shall apply to these Terms and Conditions to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect your rights, until these Terms and Conditions are amended and varied and subsequently published; and
- (f) any words following the terms including, include, in particular, for example, without limitation or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 3. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 3.1 Before downloading or streaming the App, or opening an Account via the System you should carefully read and understand these Terms and Conditions which will govern the use and operation

of the App and the Account.

- 3.2 After downloading the App, you will be given the opportunity as part of registration process to accept these Terms and Conditions by clicking on the relevant box.
- 3.3 If you do not agree with these Terms and Conditions depending of the applying process:
- (a) please click the “Reject” option in the System; or
  - (b) do not respond in any way or progress with the downloading, installation or application.
- 3.4 You will be deemed to have read, understood and accepted these Terms and Conditions:
- (a) by clicking on the relevant checkbox as described in clause 3.2;
  - (b) upon registration of an Account;
  - (c) by using or continuing to use and operate the Account; and/or
  - (d) every time you make an application for a Loan.
- 3.5 Please note that you will not be able to access the Services if you do not accept these Terms and Conditions.
- 3.6 By downloading and installing the App and opening an Account with Zenka or accepting the Services, you agree to comply with and be bound by the Terms and Conditions governing the operation of the Account and you affirm that these Terms and Conditions are without prejudice to any other rights that Zenka may have with respect to the Account in law.
- 3.7 These Terms and Conditions may be amended or varied by Zenka from time

to time and the continued use of the Services or the operation of the Account constitutes your express agreement to be bound by the terms of any such amendment or variation. We will take all reasonable measures to notify you of any such changes and publish any amendments of these Terms and Conditions and indicate the date of publication and therefore the date of any applicable amendment. This may result in different terms and conditions applying to any new Loan you wish to take.

- 3.8 From time to time updates to these Terms and Conditions or the App may be issued through a notification on the App. Depending on the nature of the update, you may not be able to use the Services until you have downloaded or streamed the latest version of the App and accepted any updated version of these Terms and Conditions, if any. You have the right to decline the updated version of these Terms and Conditions. If you reject the updated version of these Terms and Conditions, you will thereafter not be able to access the Services.
- 3.9 If you use the Services, you consent to us (and to our affiliates' and licensees') to the transmission, collection, sharing, disclosure, retention, maintenance, processing and use of your data for credit scoring services or to improve our Services or your experience while using the App. The processing of your data will be done in accordance with the provisions of these Terms and Conditions, the Data Protection Act, Privacy Policy and any other applicable laws and regulations, governing the protection of personal data.
- 3.10 At its sole discretion, Zenka reserves the right to decline your application, or any

new application for the Services or to revoke an application that has been granted, at any stage without any reason or giving any you notice there of

#### 4. GRANT AND SCOPE OF SUBLICENCE

Subject to these Terms and Conditions and in consideration of you agreeing to abide by them, we grant you a non-transferable, non-exclusive sublicense to use the App on your Equipment. We reserve all other rights, including but not limited to intellectual property rights, that relate to the App and any other Services that we provide. Except as expressly set out in these Terms and Conditions or as permitted by any applicable law, you agree:

- (a) to ensure that you are the only person using the App on your Equipment and to notify Zenka as soon as you become aware of any unauthorized use of the App by any person;
- (b) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App;
- (c) not to make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;
- (d) not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing; and
- (e) to comply with all technology control, data or export laws and regulations that apply to the technology used or supported by

the App or any Service (the “Technology”).

use each of them in accordance with the terms of these Terms and Conditions.

## 5. LICENCE RESTRICTIONS

You must:

- 5.1 not use the App or any Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms and Conditions, or act fraudulently or maliciously, for example, by hacking into or inserting malicious programs or code, including viruses, or harmful data, into the App, any Service or any operating system;
- 5.2 not infringe our intellectual property rights or those of any third party in relation to your use of the App or any Service (to the extent that such use is not licensed by these Terms and Conditions);
- 5.3 not transmit any material that is defamatory, offensive or otherwise objectionable in relation to your use of the App or any Service;
- 5.4 not use the App or any Service in a way that could damage, disable, overburden, impair or compromise the System or interfere with other users; and
- 5.5 not collect or harvest any information or data from any Service or the System or our systems or attempt to decipher any transmissions to or from the servers running any Service.

## 6. ACCEPTABLE USE RESTRICTIONS

### 6.1 Intellectual property rights:

- (a) You acknowledge that rights in the App are sublicensed (not sold) to you, and that you have no rights in, or to, the App or the Technology whatsoever other than the right to

- (b) You acknowledge that you have no right to have access the App in source-code form.

### 6.2 Use of the Services:

- (a) The Services offered by Zenka can only be utilized by persons who are at least eighteen (18) years. We reserve the right to verify the authenticity and status of your age and Mobile Money Account with the relevant Mobile Money Services Provider. Anyone not meeting this age requirement will not be able to complete the registration process.
- (b) Zenka’s acceptance of your application for an Account will be displayed on the System. You hereby acknowledge and confirm that the acceptance by Zenka of your application for an Account does not create any contractual relationship between you and the Mobile Money Services Provider beyond the terms and conditions that apply to your Mobile Money Account from time to time.
- (c) As a holder of an Account, you may subject to these Terms and Conditions, apply for a Loan from Zenka using your Equipment.
- (d) As you apply for the Loan, you will be able to select your preferred Loan repayment period through the App or USSD on your Equipment.
- (e) Your application for a Loan shall be appraised according to the applicable Loan appraisal processes of Zenka including the assessment of your credit profile.

- (f) Zenka will review your application and indicate your maximum entitlement to the Loan. You will have the option to decide how much of the entitlement to the Loan to borrow and accept or decline the Loan by clicking the relevant button on the App or by using a proper option via USSD . If you decide to take up less than your entitlement to the Loan, you will be able to increase the Loan up to your full entitlement at a later date and accept the terms of the increased Loan and repayment via the App or USSD.
- (g) you will be required to pay the Loan amount increased by the appropriate Processing fee in the due date in accordance with this Terms and Conditions, subject to the Clause 8.
- (h) We reserve the right to decline your application for a Loan or to revoke the same at any stage at our sole and absolute discretion and without assigning any reason or giving any notice thereto. Acceptance or rejection by Zenka of your application for a Loan shall be done via a notification on the App or an message sent to your Equipment via USSD.
- (i) Subject to the approval of your application for a Loan, Zenka shall disburse to your Mobile Money Account, an amount either equivalent (but no more) than the amount that you applied for. We reserve the right (in our sole and absolute discretion) to issue, decline to issue a Loan and/or vary the terms of any Loan depending on our assessment of the credit profile of each individual Borrower from time to time. The terms of the Loan and the fees payable in relation to each Loan application will be displayed on the App or USSD and you will have the option to accept or decline these terms, prior to the disbursement of the Loan to your Mobile Money Account.
- (j) In addition, the Lender will send an SMS to your mobile number containing a link to the Terms and Conditions with the specific financial details of your Loan.
- (k) Unless otherwise directed by Zenka in its discretion, you shall make all payments due from you to Zenka in respect of the Loan including the charges, fees and interests under Clause 8 using the Mobile Money Service and the System.
- (l) If you are unable to repay the Loan within the repayment period, Zenka may at its sole discretion approve a request from you for the extension of the repayment period subject to the payment of a relevant processing fee. You can extend your Loan for 7, 14 or 30, day or other period presented by Zenka from time to time or by the time automatically assigned to you and your Account by Zenka from time to time. The extension fee will be displayed on your Account before you will apply for the extension.
- (m) We do not guarantee that the App, any content on it or the Services will always be always available or be uninterrupted. We may suspend or withdraw or restrict the availability of all or any part of the App or Services for business and operational reasons. We will try to give you reasonable notice of any suspension or withdrawal.
- 6.3 **Personal and Relevant information**
- (a) You hereby agree and authorise us to verify any information provided by you to us against the information held by the Mobile Money Services Providers in

- relation to your Mobile Money Account pursuant to the agreement between you and the relevant Mobile Money Services Provider for the provision of its products and services and the Mobile Money Services.
- (b) The information that Zenka may verify against the information held by the Mobile Money Services Providers, the Integrated Population Registration System (“IPRS”) or other authority or person includes (without limitation): your phone number, name, date of birth, national identification number (“ID”) or passport number and such other information that will enable us to identify you and comply with the “Know Your Customer” requirements (together the “**Personal Information**”) and you hereby consent to the disclosure of such Personal Information to us by IPRS and other authority or person.
- (c) You hereby agree and authorise us to verify information including, but not limited to, data relating to your phone, your Equipment, from any SMS sent to you by the Mobile Money Services Providers, any financial services providers or other person relating to your use of the Mobile Money Service and such other information as we shall require for purposes of providing you the Services (the “**Relevant Information**”) and you hereby consent to such Mobile Money Services Providers, any financial services providers or other person providing to us the Relevant Information.
- (d) You hereby consent to Zenka: (a) verifying the Personal Information and the Relevant Information with the Mobile Money Services Providers and using of the Personal Information and the Relevant Information to the extent necessary in the opinion of Zenka; and (b) contacting you at any time to verify your details, ask for further information or clarification.
- (e) You hereby agree and authorise us to obtain and procure your Personal Information and Relevant Information from your respective Mobile Money Services Provider (or any other authority or person) and you further agree and consent to the disclosure, sharing and provision to us of such Personal Information by the Mobile Money Services Provider (or other authority or person), and further agree to indemnify and hold us and the Mobile Money Services Provider harmless with respect to any claims, losses, liabilities and expenses (including legal fees and expenses) that may arise as a result of the disclosure or sharing and reliance on such Personal Information or Relevant Information.
- (f) You hereby agree and authorise us to obtain and procure your credit information from the Credit Reference Bureaus and you further agree and consent to the disclosure, sharing and provision of such Personal Information by the Credit Reference Bureaus.
- (g) Zenka reserves the right to request for further information from you pertaining to your application for an Account at any time. Failure to provide such information within the time required by Zenka may result in Zenka declining to accept your application for an Account. We will only process your personal data that is contained in the Personal Information or

- Relevant Information to the extent, and in such a manner, as is necessary for the provision of the Services including but not limited to the assessment of your creditworthiness and in cases of the default of your Loan. We will not process your personal data for any other purpose or in a way that does not comply with these Terms and Conditions or the Data Protection Act.
- (h) We will maintain the confidentiality of your personal data and will not disclose such data to third parties unless you or these Terms and Conditions specifically authorises the disclosure, or as required by law.
- (i) You hereby expressly consent and authorize us to disclose, respond, advise, exchange and communicate the details or information pertaining to your Account or use of the Services to persons including but not limited to:
- i. third parties involved in the administration of your Account, underwriting of insurance policies, updating of databases or provision of user support,
  - ii. Zenka's service providers, subsidiaries or holding company for reasonable commercial, administrative, support, risk purposes relating to the Service,
  - iii. Zenka's lawyers, auditors, professional advisors or to any court or arbitral tribunal in connection with any legal or audit proceedings,
  - iv. your Mobile Money Service Provider in connection with the Services,
  - v. in business practice including but not limited to quality control, training and ensuring effective systems operation,
  - vi. to any local or international law enforcement or government 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 law.
- (j) We reserve the right to supply consumer credit information to the Credit Reference Bureaus, and in this regard: you confirm that we may transmit to the Credit Reference Bureaus data about the App, opening and termination of an Account by you without reference to you.
- (k) You hereby agree and authorize us to collect, transmit, move, store, process and access your Personal Information and Relevant Information across cloud computing platforms and the servers of Zenka, its subsidiaries, affiliates, service providers and associated entities wheresoever the said cloud computing platforms and servers may be located whether it be within the Republic of Kenya or without its borders for all purposes relating to the application, maintenance and operation of your Account. You acknowledge and accept that:
- i. positive Information concerning granted Loan can be reported to the Credit Reference Bureaus including in particular information concerning granting loan, performing of the loan; and

- ii. information on non-compliance with this Terms and Conditions may be transferred to the Credit Reference Bureaus; and
  - iii. the Credit Reference Bureaus will provide a credit profile and possibly credit scores on your creditworthiness to us, subject to the credit record.
- 7. REQUESTS MADE BY THE BORROWER**
- 7.1 You hereby irrevocably authorise us to act on all Requests received by us from you (or purportedly from you) through the System and to hold you liable in respect thereof. We may nevertheless refuse to carry out any Requests in our sole and absolute discretion.
- 7.2 Subject to our discretion, we reserve the right to reject any Request without giving any reasons in relation to a Loan application from you even if you have previously been issued with a Loan by us.
- 7.3 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 our absolute discretion, we believe that we can correct the incomplete or ambiguous information in the Request without any reference to you being necessary.
- 7.4 We shall be deemed 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 we may act if we have in good faith acted in the belief that such instructions have been sent by you.
- 7.5 We may, in our 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.
- 7.6 You agree to release and indemnify Zenka against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to Zenka having acted in accordance with the whole or any part of any of your Requests or having failed to exercise the discretion conferred upon it.
- 7.7 Acting only as the provider of the Services, you acknowledge that Zenka is not able to distinguish between negligent or fraudulent behaviour undertaken on your behalf. You therefore agree and acknowledge to the full extent permitted by law that we shall not be liable for any unauthorised 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 Account, PIN, password, ID or any means whether or not occasioned by your negligence or by fraud.
- 7.8 You hereby authorize us to effect such orders in respect of your Account as may be required by any court order or competent tribunal, authority, body or agency under the applicable laws.
- 7.9 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 as at their latest date of publication, shall prevail.
- 8. INTEREST, CHARGES AND FEES**
- 8.1 The interest and any monies including any late payment charges or fees payable by you to Zenka in relation to any Loan

shall be displayed by Zenka on the App or presented during USSD application process . We shall be entitled to set and charge the Processing Fee in connection with your use of the Services and from time to time amend or vary the Processing fee for the Services. The Processing Fee , payable on any new application for Services will be displayed on the App or on USSD.

- 8.2 All payments to be made by you under these Terms and Conditions shall be made in full without any set off or counter claim and save in so far as required by the law to the contrary, free and clear of and without any deduction or withholding whatsoever. If you are at any time required to make any deduction or withholding from any payment to Zenka you shall immediately pay to Zenka such additional amounts as will result in Zenka receiving the full amount it would have received had no such deduction or withholding been required.
- 8.3 If you fail to make any payments due to Zenka within the repayment period, we will apply late payment interest of one per cent (1%) per day on the outstanding principal, and other Processing Fees or interest at a rate to be communicated to you, on such amounts loaned to you, up to the full amount of the Loan. We will use reasonable endeavors to notify you of any changes in relation to interest within a reasonable period before such changes are implemented including displaying notices of the changes on the App or Zenka website or SMS.
- 8.4 You hereby agree to pay costs, charges and expenses incurred by Zenka in obtaining or attempting to enforce payment of any Loan or any other amount due from you to Zenka.

## 9. STATEMENTS

- 9.1 A statement and activity report in respect of your Account will be made available within seventy two[72 hours] of a Request. Please make your Request via our e-mail address: [support@zenka.co.ke](mailto:support@zenka.co.ke) or via a link on the App.
- 9.2 The statement on the App shall provide details of the last four (4) Loans, concerning your Account as initiated from your Equipment. Your statement will show all amounts credited or debited from your Account and any amounts due. You must check your statement carefully and notify us as soon as possible if the statement includes any transaction or other entry which appears to you to be erroneous or not made in accordance with your instructions.
- 9.3 Zenka reserves the right to rectify discrepancies, add and/or alter the entries in your statements, without prior notice to you. We will however inform you of any rectification, additions and or alterations effected on your statements within a reasonable time after the changes are effected.
- 9.4 You will be notified of all transactions on your Account by way of SMS or App notification and the charges (if any) for this service will be debited from your Account.
- 9.5 Save for a manifest error, a statement issued to you in respect of your Account shall be conclusive evidence of the transactions carried out on your Account for the period covered in the statement.

## 10. TAXES

- 10.1 All payments to be made by you in connection with these Terms and Conditions are calculated without regard

- to any taxes payable by you. If any taxes are payable in connection with the payment, you must pay Zenka an additional amount equal to the payment multiplied by the appropriate rate of tax. You must do so at the same time as making the payment.
- 10.2 You hereby consent and agree that Zenka may withhold amounts in your Account if any tax authority requires Zenka to do so, or Zenka is otherwise required by law or pursuant to agreements with any tax authority to do so, or if Zenka needs to comply with internal policies or with any applicable order or sanction of a tax authority.
- 11. BORROWER'S RESPONSIBILITIES**
- 11.1 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.
- 11.2 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 malicious code or program 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 Mobile Money Services Provider, Mobile Network Provider and/or any service provider providing you any relevant services with connection to the Network and we shall not be responsible for losses or delays caused by any such service provider.
- 11.3 You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by us concerning the use of the System and the Services.
- 11.4 You hereby agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your Credentials secret and secure. You shall ensure that your Credentials do not become known or come into possession of any person. We shall not be liable for any disclosure of your Credentials to any third party and you hereby agree to indemnify and hold Zenka harmless from any losses resulting from any disclosure of your Credentials.
- 11.5 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 Zenka are examined and checked by you 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.
- 11.6 You shall immediately inform Zenka in the event that:
- (a) you have reason to believe that your Credentials are or may be known to any person not authorised to know the same and/or have been compromised; and/or
  - (b) you have reason to believe that unauthorised use of the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 11.7 You shall at all times follow the security procedures notified to you by Zenka 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 Account's confidentiality and integrity. 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 authorised to do so.

11.8 You shall not at any time operate or use the Services in any manner that may be prejudicial to Zenka.

11.9 You hereby represent and warrant (on the date that you open an Account and each other date that you use the Services) that:

- (a) these Terms and Conditions constitute a valid and binding obligations enforceable in accordance with its terms;
- (b) the Personal Information and the Relevant Information provided by you to Zenka presents accurately your state of affairs and financial position as at the date it was provided;
- (c) no litigation or other dispute resolution proceedings are taking place, pending or threatened against you which could have a material adverse effect on your financial condition.

## 12. DEFAULT

12.1 An event of default ("**Event of Default**") occurs when you:

- (a) fail to pay any sum when due and payable for a Loan granted under these Terms and Conditions for

any period of time unless failure to pay is caused solely by an administrative error or technical problem;

- (b) are subject of a bankruptcy petition or order;
- (c) die or are permanently incapacitated;
- (d) are involved or deemed to participate in illegal activities, money laundering or corrupt activities or you are charged or convicted or such activities;
- (e) breach the performance of any other term and condition or covenant in these Terms and Conditions; or
- (f) if, in the sole opinion of Zenka, there is a material adverse change in your financial condition.

12.2 At any time after an Event of Default has occurred and/or which is continuing, Zenka may, without prejudice to any other right or remedy granted to it under any law:

- (a) terminate these Terms and Conditions and close your Account in accordance with clause 13 below;
- (b) declare that the Loan and all accrued interest, charges and all other amounts outstanding under these Terms and Conditions are immediately due and payable, whereupon they shall become immediately due and payable; and
- (c) supply information concerning the Event of Default to Credit

Reference Bureaus. A copy of any adverse information concerning you sent to a Credit Reference Bureau shall be made available to you upon written request.

### 13. VARIATION AND TERMINATION

13.1 We may at any time, upon notice to you, terminate or vary our business relationship with you and close your Account and require the repayment of outstanding debts and monies resulting from such credits within such time as we may determine in our sole discretion.

13.2 Without prejudice to our rights under clause 13.1, we may at our sole discretion suspend or close your Account:

- (a) if you use the Account for unauthorised or unlawful purposes or where we detect any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
- (b) if your Mobile Money Account or agreement with a Mobile Network Operator is terminated for whatever reason;
- (c) 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;
- (d) if we reasonably suspect or believe that you are in breach of these Terms and Conditions which you fail to remedy (if remediable) within 14 days after

the service of notice by email, SMS or other electronic means requiring you to do so;

- (e) where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
- (f) to facilitate update or upgrade the contents or functionality of the Services from time to time;
- (g) if we decide to suspend or cease the provision of the Services for commercial reasons or for any other reason as we may determine in our absolute discretion; or
- (h) if you breach any of the Licence Restrictions or the Acceptable Use Restrictions.

13.3 If your Account has a credit balance at any time as a result of overpayment of your Loan, you may issue a Request to us for payment of such credit balance and we will return any such balance to you, less any applicable fees or tax, provided that such amount falls above the minimum transfer amounts specified by the relevant Mobile Money Services Provider. Payment will be made to you within seventy two (72) hours of your request.

13.4 Termination shall not affect any accrued rights and liabilities of either you or Zenka.

13.5 If Zenka receives notice of your demise, it will not be obliged to allow any operation or withdrawal from your Account by any person except upon production of confirmed grant of letters

of administration or confirmed grant of probate by your legal representatives or executors of your estate duly appointed by a court of competent jurisdiction.

#### 14. EXCLUSION OF LIABILITY

14.1 Zenka shall not be responsible for any loss suffered by you should the Services be interfered with or be unavailable by reason of the failure of any of your Equipment, or any other circumstances whatsoever not within Zenka's control including, without limitation, Force Majeure or error, interruption, system downtime 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.

14.2 You acknowledge that the App has not been developed to meet your individual or unique requirements, and that it is therefore your responsibility to ensure that the facilities and functions of the App as described meet your requirements.

14.3 We only supply the App for domestic and private use. You agree not to use the App or Services for any commercial, business or resale purposes, and we have no liability to you for any loss of profit, loss of business, business interruption, loss of data or loss of business opportunity.

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

- (a) any defect or fault in the App or any Service resulting from you having altered or modified the App;

- (b) any defect or fault in the App resulting from you having used the App in breach of the terms of this Agreement;

- (c) your breach of any of the Licence Restrictions or the Acceptable Use Restrictions;

- (d) unavailability of sufficient funds in your Mobile Money Account;

- (e) failure, malfunction, interruption or unavailability of the System, your Equipment, the Network or a Mobile Money System;

- (f) the money in your Account being subject to legal process, garnishee order or other encumbrance restricting payments or transfers thereof;

- (g) loss of monies in your Account, or in your Mobile Money Account through fraud, or assisted fraud or negligence on your part;

- (h) your failure to give proper or complete instructions for payments or transfers relating to your Account;

- (i) any fraudulent or illegal use of the Services, the System and/or your Equipment; or

- (j) your failure to comply with these Terms and Conditions and any document or information provided by us concerning the use of the System and the Services.

14.5 If for any reason other than a reason mentioned in clauses 14.1 to 14.4, the Services are interfered with or unavailable, our sole liability under these Terms and Conditions in respect thereof

shall be to re-establish the Services as soon as reasonably practicable.

- 14.6 Save as provided in clause 14.5, we shall not be liable to you for any interference with or unavailability of the Services, howsoever caused.
- 14.7 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 Services even where the possibility of such loss or damage is notified to us.
- 14.8 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

## 15. INDEMNITY

- 15.1 In consideration of Zenka complying with your instructions or Requests in relation your Account, you undertake to indemnify Zenka and hold it harmless against any loss, charge, damage, expense, fee or claim which Zenka suffers or incurs or sustains thereby and you absolve Zenka from all liability for loss or damage which you may sustain from Zenka acting on your instructions or your Requests or in accordance with these Terms and Conditions.
- 15.2 The indemnity in clause 15.1 shall also cover the following:

- (a) all demands, claims, actions, losses and damages of whatever nature which may be brought against Zenka 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 Zenka's 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 Zenka;

- (b) 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;
- (c) any unauthorised access to your 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;
- (d) 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 Zenka as a consequence of any breach by these Terms and Conditions; and
- (e) any damages and costs payable by Zenka in respect of any claims against Zenka for recompense for

loss where the particular circumstance is within your control.

## 16. COMMUNICATION AND NOTICES

16.1 If you wish to contact us in writing, or if any condition in these Terms and Conditions requires you to give us notice, you can send this to us by e-mail to support@zenka.co.ke or Attention: Customer Care Manager, Zenka Finance Limited, Post Box Office Number 29107 - 00100, Nairobi, Kenya or to such e-mail address or postal address that may be communicated to you from time to time. We will confirm receipt of this by contacting you in writing by e-mail within seventy two [72 hours] of the receipt of your correspondence.

16.2 If we have to contact you or give you notice in writing, we will do so by e-mail address you provide to us in your request for the App or during the USSD process.

16.3 You acknowledge that you have no claim against Zenka for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication or notification pertaining to the Account.

## 17. GENERAL

### 17.1 Remedies Cumulative and No Waiver

- (a) Except as expressly provided in these Terms and Conditions, the rights and remedies provided under these Terms and Conditions are in addition to, and not exclusive of, any rights or remedies provided by law.
- (b) No failure on the part of any party to exercise, or delay on its part in

exercising, any right, power or remedy provided by these Terms and Conditions or by law shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise of that, or any other, right, power or remedy.

- (c) No failure by Zenka to exercise, and no delay in exercising, any right or remedy in respect of any provision of these Terms and Conditions shall operate as a waiver of such right or remedy.

### 17.2 Effect of Invalidity

If any provision or part of a provision of these Terms and Conditions shall be, or be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Terms and Conditions, all of which shall remain in full force and effect.

### 17.3 Assignment

These Terms and Conditions and any rights or liabilities accruing thereunder may not be assigned by you to any other person. You hereby confirm and agree that we will be entitled, without your consent or notice to you, to cede, novate, assign, factor, securitize, Encumber and/or delegate all or any part of our rights and/or obligations under these Terms and Conditions to any person.

### 17.4 Complaints

- (a) Complaints may be made in writing by post or email.
- (b) Zenka will take all measures within its means to resolve your legitimate complaints as soon as possible and in any case within forty (40) days.

#### 17.5 Entire Agreement

- (a) These Terms and Conditions, our Privacy Policy and Terms of Use constitute the entire agreement between you and us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.
- (b) You acknowledge that in entering into these Terms and Conditions you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions or our Privacy Policy and Terms of Use.
- (c) You agree that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these Terms and Conditions.

#### 18. JURISDICTION

- 18.1 In these Terms and Conditions, if an issue, dispute, claim, controversy, difference, question or claims for compensation or otherwise (“Dispute”) arises out of or in connection with these Terms and Conditions between us, we will attempt in good faith to negotiate a settlement to the Dispute within twenty (20) Business Days of either of us

notifying the other of the Dispute and such efforts will involve the escalation of the Dispute to the senior management of each Party.

- 18.2 If we reach agreement on the resolution of the Dispute, the settlement agreement will be recorded in writing and will be binding on us once it is signed by our duly authorised representatives.

- 18.3 If the Dispute between the Parties is not mutually settled by way of *bona fide* discussions or agreed between us, it shall be brought exclusively to the courts of the Republic of Kenya. You hereby consent to the exclusive jurisdiction of such courts and waive any right to challenge jurisdiction or venue in such courts with regard to any suit, action, or proceeding under or in connection with these Terms and Conditions.

- 18.4 Unless these Terms and Conditions have already been repudiated or terminated, we shall, (notwithstanding that any Dispute is subject to the dispute resolution procedure set out in these Terms and Conditions), continue to carry out their obligations in accordance with these Terms and Conditions.

#### 19. GOVERNING LAW

These Terms and Conditions shall be governed by and construed in accordance with the laws of Kenya.