

# TERMS AND CONDITIONS OF LOANS

THE BORROWER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 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 owned by and are the intellectual property of Pata Mkopo Company Limited (a company incorporated under the laws of the Republic of Kenya with a company registration number PVT-LRUEVBV). All rights thereto are reserved.
- 1.2 This Agreement is a financial services and an end-user licence agreement between you ("End-user" "borrower" or "you") and Pata Mkopo Company Limited ("Pata Mkopo", "us" or "we"), and sets out the complete Terms and Conditions ("Terms and Conditions") which shall be applicable to the Pata Mkopo's products and services ("Services") applied for by you with Pata Mkopo. Termination of the Agreement for whatever reason shall also terminate any provision of Services to you subject to the provisions of clause 13 of these Terms and Conditions.
- 1.3 These Terms and Conditions (together with our Privacy Policy and Terms of Use) sets out the complete terms and conditions (the "Terms and Conditions") which shall be applicable to the Account (as hereinafter defined) opened by you with Pata Mkopo.
- 1.4 These Terms and Conditions and any 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;

**"Agreement"** means these Terms and Conditions;

**"Account"** means your Loan account with Pata Mkopo;

**"App"** means our mobile, USSD and 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 under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013, to among other things, collect and facilitate the sharing of customer credit information;

**"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;

**"Force Majeure"** means events, circumstances or causes beyond its reasonable control of Pata Mkopo

making Pata Mkopo'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;

**"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;

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

**"Loan"** means the principal amount of the loan made or to be made by Pata Mkopo 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, penalties and any monies due from you to the ;

**"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 Mobile Money Services Provider's 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

registered with 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 Pata Mkopo 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;

**"Request"** means a request or instruction received by Pata Mkopo from you or purportedly from you through the Network and the System and upon which Pata Mkopo is authorised to act;

**"Services"** shall include any form of financial services or products that Pata Mkopo 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 Pata Mkopo’s electronic communications and payments software and, mobile and USSD applications enabling you to communicate with Pata Mkopo for purposes of the Services. The System and the Services will for the purpose of these Terms and Conditions be accessed through a Mobile Network Operator’s System;

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

“Transaction Fees” includes any fees and charges payable for the use of the Services as published by Pata Mkopo on Pata Mkopo’s website or by such other means as Pata Mkopo shall in its sole discretion determine. Transaction Fees are subject to change at any time at Pata Mkopo’s sole discretion; and

“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:

- (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 any party includes that party's personal representatives, successors, nominees, affiliates and permitted assigns;
- (f) 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; and
- (g) 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 with Pata Mkopo (“Account”) via our mobile, USSD and web-based loan services system (“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 deemed to accept the Terms and Conditions upon clicking or checking the “**Accept**” option on Pata Mkopo’s System asking you to confirm that you have read, understood and agreed to abide by these Terms and Conditions.
- 3.3 If you do not agree with these Terms and Conditions:
- (a) please click the “**Decline**” option in Pata Mkopo’s System; or
  - (b) do not resend back to us the unique code sent to you by SMS; or
  - (c) 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) downloading and installing the App; and/or
  - (b) upon sending back by SMS the unique code sent to you; and/or
  - (c) upon registration of an Account; and/or
  - (d) by using or continuing to use and operate the Account.
- 3.5 Please note that you will not be able to access the Services if you decline the Terms and Conditions.
- 3.6 By downloading and installing the App and opening an Account with Pata Mkopo, you agree to comply with and be bound by the Terms and Conditions governing the operation of the Account and you affirm that the Terms and Conditions herein are without prejudice to any other right that Pata Mkopo may have with respect to the Account in law or otherwise.
- 3.7 These Terms and Conditions may be amended or varied by Pata Mkopo from time to time and the continued use of the Services 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.
- 3.8 From time to time updates to the App may be issued through the website. 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.
- 3.9 By using the App or any of the Services, you consent to us collecting and using technical information about the Equipment and related software, hardware and peripherals for Services that are internet-based or wireless to improve our products and to provide any Services to you. If you use the Services, you consent to us and our affiliates' and licensees' transmission, collection, sharing, disclosure, retention, maintenance, processing and use of your data to determine our credit scoring services or to improve our Services and/or your experience while using the App.
- 4. GRANT AND SCOPE OF LICENCE**
- In consideration of you agreeing to abide by these Terms and Conditions, we grant you a non-transferable, non-exclusive licence to use the App on your

Equipment, subject to these Terms and Conditions. We reserve all other rights. Except as expressly set out in these Terms and Conditions or as permitted by any local law, you agree:

- (a) not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App;
- (b) 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;
- (c) 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
- (d) 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 (“**Technology**”).

## **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, including the submission of any material (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 our systems or security 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 all intellectual property rights in the App and the Technology anywhere in the world belong to us or our licensors, that rights in the App are licensed (not sold) to you, and that you have no rights in, or to, the App or the Technology whatsoever other than the right to use each of them in accordance with the terms of these Terms and Conditions.
- (b) You acknowledge that you have no right to have access to the App in source-code form.

### **6.2 Use of the Services:**

- (a) The Services offered by Pata Mkopo can only be utilized by persons over the age of

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.

- (b) Pata Mkopo's acceptance of your application for an Account will be displayed on the App. You hereby acknowledge and accept that the acceptance by Pata Mkopo of your application for an Account does not create any contractual relationship between you and the Mobile Money Services Providers beyond the terms and conditions that apply to your Mobile Money Account from time to time.
  - (c) 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.
  - (d) 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 its assessment of the credit profile of each individual borrower from time to time. The terms of the Loan and the interest rate payable in relation to each Loan application will be displayed on the App.
- 6.4 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.
  - 6.5 The information that Pata Mkopo may verify against the information held by the Mobile Money Services Providers and Integrated Population Registration System ("IRPS") 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").
  - 6.6 You hereby agree and authorise us to verify information including, but not limited to, data relating to your phone (including, without limitation, your cellphone's history) from your Equipment, from any SMS sent to you by the Mobile Money Services Providers and any financial services providers 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").
  - 6.7 You hereby consent to Pata Mkopo: (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 Pata Mkopo; and (b) contacting you at any time to verify your details, ask for further information or clarification.

### 6.3 Personal information

- 6.8 You hereby agree and authorise us to obtain and procure your Personal Information and Relevant Information from your respective Mobile Money Services Provider and you further agree and consent to the disclosure, sharing and provision of such Personal Information by the Mobile Money Services Provider, 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 and/or Relevant Information.
- 6.9 You hereby agree and authorise us to obtain and procure your Personal 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.
- 6.10 Pata Mkopo 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 Pata Mkopo may result in Pata Mkopo declining to accept your application for an Account.
- 6.11 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.
- 6.12 You acknowledge and accept that:
- (a) information on non-compliance with the Terms and Conditions of these Terms and Conditions is transferred to the Credit Reference Bureaus; and
  - (b) 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 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 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 and shall release from and indemnify Pata Mkopo against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to Pata Mkopo having acted in accordance with the whole or any part of any of your Requests (or failed to exercise) the discretion conferred upon it.

7.7 You acknowledge that to the full extent permitted by law 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.

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 shall prevail.

## **8. INTEREST, PENALTIES, CHARGES AND FEES**

8.1 The interest and any monies including any late payment penalties, charges or fees payable by you to Pata Mkopo in relation any Loan shall be displayed by Pata Mkopo on the App or sent to you by SMS. We shall be entitled to set and charge Transaction Fees, in connection with your use of the Services and from time to time amend or vary the Transaction Fees for the Services. If we decide to start charging Transaction Fees or where already applicable, vary

or amend the Transaction Fees, the Transaction Fees payable on any new application for Services will be displayed on the App or SMS. We will use reasonable endeavors to try notify you of any changes in relation to Transaction Fees within a reasonable period before such changes are implemented including displaying notices of the changes on the App or Pata Mkopo website or SMS.

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 Pata Mkopo you shall immediately pay to Pata Mkopo such additional amounts as will result in Pata Mkopo 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 Pata Mkopo at the due date for payment, we will apply late payment fees or penalties on such amount loaned to you at a rate to be communicated to you.

## **9. STATEMENTS**

9.1 A statement and activity report in respect of your Account will be made available on Request. Requests shall be made via our e-mail address: [support@zenkafinance.com](mailto:support@zenkafinance.com) or via a link on the App.

9.2 The statement on the App shall provide details of the last four (4) transactions or such other number of transactions as determined by Pata Mkopo, concerning



your Account as initiated from your Equipment.

9.3 Your statement will show all amounts credited or debited from your Account. 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.

9.4 Pata Mkopo 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.

9.5 You will be notified of all transactions on your Account by way of SMS and the charges for this service will be debited from your Account.

9.6 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 Pata Mkopo 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 Pata Mkopo may withhold amounts in your

Account if any tax authority requires Pata Mkopo to do so, or Pata Mkopo is otherwise required by law or pursuant to agreements with any tax authority to do so, or if Pata Mkopo 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 Pata Mkopo harmless from any losses resulting from any disclosure of your Credentials.
- 11.5 You shall take all reasonable precautions to detect any unauthorised use of the System and the Services. To that end, you shall ensure that all communications from Pata Mkopo are examined and checked by you as soon as practicable after receipt by you in such a way that any unauthorised use of and access to the System will be detected.
- 11.6 You shall immediately inform Pata Mkopo 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 Pata Mkopo 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 Pata Mkopo.
- 12. DEFAULT**
- 12.1 An event of default ("**Event of Default**") occurs when you:
- (a) fail to pay any sum payable for a Loan granted under these Terms and Conditions for a period of thirty (30) consecutive days unless failure to pay is caused solely by an administrative error or technical problem; or
  - (b) are declared bankrupt;
- 12.2 At any time after an Event of Default has occurred and/or which is continuing, Pata Mkopo may, without prejudice to any other right or remedy granted to it under any law:
- (a) terminate this Agreement in accordance with clause 13 below;
  - (b) declare that the Loan and all accrued interest, penalties, 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 in particular but without prejudice to the generality of the foregoing we may cancel credits which we have granted you 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's 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 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 (including non-payment of any Loan amount due from you

where applicable) 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) where your Account becomes inactive or dormant;
- (h) 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
- (i) 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, provided that such amount falls above the minimum transfer amounts specified by the relevant Mobile Money Services Provider.

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

13.5 If Pata Mkopo 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.
- 13.6 You may close your Account at any time by sending an SMS with the words "CLOSE ACCOUNT" to us and resending a unique code sent to you by us, if payments of all outstanding amounts owed to us have been received in full by us.
- 13.7 If your Account has any credit balance at the time of its closure, we will return any such balance to you or surrender the balances to the Unclaimed Financial Assets Authority as per the law, less any applicable fees. If your Loan is in arrears at the time of closure of your Account, you shall pay to us immediately all amounts you owe us in full.
- 14. EXCLUSION OF LIABILITY**
- 14.1 Pata Mkopo 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 Pata Mkopo's control including, without limitation, Force Majeure or error, interruption, time, system downtime 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 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 and Documents 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 these Terms and Conditions;
  - (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 Pata Mkopo complying with your instructions or Requests in relation your Account, you undertake to indemnify Pata Mkopo and

hold it harmless against any loss, charge, damage, expense, fee or claim which Pata Mkopo suffers or incurs or sustains thereby and you absolve Pata Mkopo from all liability for loss or damage which you may sustain from Pata Mkopo acting on your instructions or 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 Pata Mkopo 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 Pata Mkopo'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 Pata Mkopo;
- (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 Pata Mkopo as a consequence of any breach by these Terms and Conditions; and
- (e) any damages and costs payable by Pata Mkopo in respect of any claims against Pata Mkopo 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@zenkafinance.com](mailto:support@zenkafinance.com) or Attention: Customer Care Manager, Pata Mkopo Company Limited, Post Box Office Number 29107, 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.

16.2 If we have to contact you or give you notice in writing, we will do so by e-mail or by SMS to the mobile phone number or email address you provide to us in your request for the App.

16.3 You acknowledge that you have no claim against Pata Mkopo 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 Pata Mkopo 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

This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person. We will be entitled, without your consent or notice to you, to cede, novate, assign, securitize, Encumber, factor and/or delegate all or any part of our rights and/or obligations under this Agreement to any person.

### 17.4 Entire Agreement

- (a) These Terms and Conditions, our Privacy Policy and our 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 or Terms of Use.

- (c) You and we agree that neither of us shall have any 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 the Parties, the Parties will attempt in good faith to negotiate a settlement to the Dispute within twenty (20) Business Days of either Party 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 the Parties reach agreement on the resolution of the Dispute, the settlement agreement will be recorded in writing and will be binding on the Parties once it is signed by their duly authorised representatives.

18.3 If the Dispute between the Parties is not mutually settled by way of bonafide

discussions or agreed between the parties, 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 this Agreement has already been repudiated or terminated, the parties 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.