



## Progressive Credit Ltd Mobile Loan Terms and Conditions

### 1. The agreement

- 1.1. This Agreement sets out the terms and conditions (hereinafter called “these terms and conditions”) which shall be applicable to the PCL Mobile Loan account (as hereinafter defined) opened by you (as hereinafter defined) with PCL (as hereinafter defined).
- 1.2. These terms and conditions and any amendments or variations thereto take effect on their date of publication and will be available online at [www.progressivecr.com](http://www.progressivecr.com).

### 2. Definitions

- 2.1. In these terms and Conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:
  - 2.1.1. **“PCL”** means Progressive Credit Ltd, and includes subsidiaries of PCL and its successors and assigns as may be from time to time;
  - 2.1.2. **“PCL”** means Progressive Credit Ltd;
  - 2.1.3. **“PCL Mobile Loan Account”** means the virtual loan account held by a customer with PCL and which is opened and operated in accordance with these terms and conditions herein contained;
  - 2.1.4. **“PCL Mobile Loan Products”** means the other virtual products or services offered to the customer to complement the PCL Mobile Loan account;
  - 2.1.5. **“PCL Mobile Loan Menu”** means the PCL Mobile Loan Menu on the Mobile system;
  - 2.1.6. **“Customer”** means the person in whose name the PCL Mobile Loan account with PCL is held;
  - 2.1.7. **“Customer care”** means any PCL’s branch, PCL’s customer care center or such other PCL agent or agents as may be notified to the customer by PCL from time to time;
  - 2.1.8. **“Credit Reference Bureau” OR “CRB”** means a credit reference bureau duly licensed under Banking act pursuant to Banking (Credit Reference Bureau) regulations, 2013, as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of customer credit information;
  - 2.1.9. **“Equipment”** includes your mobile phone handset, SIM card and/or other equipment which when used together enables you to access the network and to facilitate use and operation of the PCL Mobile system and PCL Mobile Loan products;
- 2.2. **“M-Pesa account”** means your mobile money store of value, being the record maintained by Safaricom of the amount of funds from time to time held by you in the M-Pesa system;
- 2.3. **“M-Pesa service”** means the money transfer and payments service provided by Safaricom through the M-Pesa system;
- 2.4. **“M-Pesa system”** means the system operated by Safaricom in Kenya for the provision of the M-Pesa service;
- 2.5. **“PIN”** means your personal identification number being the secret code used to access and operate the PCL Mobile system;
- 2.6. **“M-Pesa subscriber”** means any person registered to use the M-Pesa system to send or receive money or make payments;
- 2.7. **“Network”** means the mobile cellular network operated by Safaricom;
- 2.8. **“Request”** means a request or instruction received by PCL from you or purportedly from you through the network and the system and upon which PCL is authorized to act;
- 2.9. **“Safaricom”** means Safaricom limited **“Services”** shall include any form of financial services or

products that PCL may offer you pursuant to this agreement and as you may from time to time subscribe to and “service” shall be construed accordingly;

- 2.10. **“SIM card”** means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the network and to use the PCL Mobile system;
- 2.11. **“SMS”** means a short message service consisting of a text message transmitted from one mobile phone to another;
- 2.12. **“System”** means PCL’s electronic banking and communications software enabling the customer to communicate with PCL for purposes of the services. The system and the services will for the purpose of this agreement be accessed through the Safaricom system;
- 2.13. **“Transaction fees”** includes the any fees and charges payable for the use of the services as published by PCL on PCL’s web site and/or the daily newspapers in Kenya or by such other means as PCL shall in its sole discretion determine. Transaction fees are subject to change at any time at PCL’s sole discretion;
- 2.14. **“Virtual”** means the electronic monetary value depicted in your M-Pesa account representing an equal amount of cash;
- 2.15. **“We,” “our,” and “us,”** means PCL and includes the successors and assigns of PCL;
- 2.16. **“You” or “your”** means the customer and includes the personal representatives of the customer;
- 2.17. The word **“Customer”** shall include the masculine and the feminine gender as well as juristic persons;
- 2.18. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

### **3. Acceptance of the terms and conditions**

- 3.1. These terms and conditions will govern the use and operation of the PCL Mobile Loan account, you should take the time to read and understand them.
- 3.2. If you do not agree with these terms and conditions, please click “decline” or “cancel” on the PCL Mobile Loan menu.
- 3.3. You will be deemed to have read, understood and accepted these terms and conditions:
  - 3.3.1. upon clicking on the “accept” or “proceed” option on the PCL Mobile Loan menu; and/or
  - 3.3.2. by using or continuing to use and operate the PCL Mobile Loan system and/or the services.
- 3.4. By applying to open the PCL Mobile Loan account with PCL, you agree to comply with and be bound by these terms and conditions for the time being and from time to time in force governing the operation of the PCL Mobile Loan account and you affirm that these terms and conditions herein are without prejudice to any right that PCL may have with respect to the PCL Mobile Loan account in law or otherwise.
- 3.5. These terms and conditions may be amended or varied by PCL from time to time by thirty (30) days’ notice to you and the continued use of your PCL Mobile Loan account and/or the services constitutes your agreement to be bound by the terms of any such amendment or variation.

### **4. Loan Account opening**

- 4.1. In order to open a PCL Mobile Loan account with PCL, you must be at least 18 years old and a registered customer within the PCL services framework.
- 4.2. You may open a PCL Mobile Loan account solely by way of an electronic application made by you using your equipment via the PCL Mobile system.
- 4.3. You hereby agree and authorize the Safaricom to share with PCL personal information held by Safaricom pursuant to the agreement between you and Safaricom for the provision of Safaricom products and services and M-Pesa service including your phone number, name, date of birth, ID or passport number and such other information that will enable PCL to identify you and comply with the regulatory “know your customer” requirements (together the “personal information”). You also hereby agree and authorize PCL to request Safaricom for information relating to your use of the M-PESA Service, M-PESA System and Safaricom Services as PCL shall require for purposes of providing you the Services (“M-PESA Information”). You hereby consent to the disclosure of the Personal Information and the M-Pesa information by Safaricom to PCL and to the aforesaid use of the personal information and the M-Pesa information by PCL.

- 4.4. You hereby acknowledge and agree that PCL may also obtain your credit information from any duly authorized credit reference bureau as well as share your credit information with any such duly authorized credit reference bureau as stipulated in Banking (Credit Reference Bureau) regulations, 2013, as amended, revised or promulgated from time to time.
- 4.5. PCL reserves the right to request for further information from you pertaining to your application for a PCL Mobile Loan at any time. Failure to provide such information within the time required by PCL may result in PCL declining to accept your application for a PCL Mobile Loan.
- 4.6. Acceptance by PCL of your application for a PCL Mobile Loan shall be done via SMS sent to the Safaricom mobile phone number associated with your M-Pesa account. You acknowledge and accept that the acceptance by PCL of your application for a PCL Mobile Loan does not create any contractual relationship between you and Safaricom beyond the terms and conditions that apply to your Mpesa account from time to time.
- 4.7. PCL reserves the right to decline your application for a PCL Mobile Loan account or to revoke the same at any stage at PCL's sole discretion and without assigning any reason or giving any notice thereto.

## **5. Your requests**

- 5.1. You hereby irrevocably authorize PCL to act on all requests received by PCL from you (or purportedly from you) through the system and to hold you liable in respect thereof. PCL may nevertheless refuse to carry out any requests which would result in there being an overdraft on your PCL Mobile Loan account.
- 5.2. PCL shall be entitled to accept and to act upon any request, even if that request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, PCL believes that it can correct the incomplete or ambiguous information in the request without any reference to you being necessary.
- 5.3. PCL 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 PCL may act if PCL has in good faith acted in the belief that such instructions have been sent by you.
- 5.4. PCL may, in its absolute discretion, decline to act on or in accordance with the whole or any part of your request pending further enquiry or further confirmation (whether written or otherwise) from you. PCL shall not be under any obligation to so decline in any case, and shall in no event or circumstance be liable for not so declining.
- 5.5. You agree to and shall release from and indemnify PCL against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to PCL having acted in accordance with the whole or any part of any of your requests (or failed to exercise) the discretion conferred upon it.
- 5.6. You can only cancel your request through customer care and requesting cancellation. Cancellation will however only be allowed where your request is revocable and has not yet been acted on. If PCL is able to cancel your instruction, you may be charged for such cancellation.
- 5.7. PCL is authorized to effect such orders in respect of your PCL Mobile Loan as may be required by any court order or competent authority or agency under the applicable laws.
- 5.8. In the event of any conflict between any terms of any request received by PCL from you and these terms and conditions, these terms and conditions shall prevail.

## **6. Lien**

- 6.1. PCL shall have a general lien over all your property/assets in its possession in the event that you owe any money to PCL including but not limited to cash, goods, securities or valuables deposited for safe custody as security, cheques presented, bills and any other movable or immovable property charged to secure repayment of any money, whether or not that money has been repaid, and also over all property in respect of which, by the general law, PCL has lien.
- 6.2. Where you are indebted to PCL in circumstances giving PCL a right of set off, all property held under lien in terms of sub-clause 7.1 hereof shall be deemed to be held as security for the debt.
- 6.3. PCL may at any time give you notice in writing that if an accrued debt is not paid within a period

being not less than 30 days (or such other period specified in the notice) from the date of receipt by you of the notice then PCL may, without further notice, use any and all channels available to it to recover the debt including filing of a suit in court. Any part payment made will be accepted strictly on account and without prejudice to PCL's rights.

- 6.4. You hereby constitute us as your attorney for the purposes of any transaction will be held on your behalf in relation to your assets for purposes of discharging the debt.

## **7. Set-off**

- 7.1. We may set off amounts from any of your payments to PCL against amount that are due from you to us.

## **8. Statements and Balances**

- 8.1. You may request for a statement or activity report in respect of your PCL Mobile Loan Account from PCL Customer Care.
- 8.2. You may request for PCL Mobile Loan balances using PCL Mobile Loan ("Loan Balance")
- 8.3. You will be notified of all transactions on your PCL Mobile Loan account by way of SMS and the charges for this service.

## **9. Customer complaints**

- 9.1. Complaints may be made in person, in writing, by post, email, through available social media channels or by telephone.
- 9.2. PCL will take all measures within its means to resolve your complaints within a reasonable time. All complaints will be handled in accordance with PCL's complaints handling procedures, which are available on request from any PCL branch, or the PCL's customer care center. Where a notification regarding your complaint or any other matter is expected from PCL but not received, the complaint must be made within a reasonable time after non-receipt of such notification.
- 9.3. Applicable tariffs will be charged by your telephone and internet service provider(s) when communicating with the customer

## **10. Dormant accounts**

- 10.1. Your PCL Mobile Loan account will automatically be classified as inactive if you do not initiate any transactions on the account for a continuous period of 12 months.

## **11. PCL interest and charges**

- 11.1. PCL may debit your PCL Mobile Loan account with fees, loan processing fees, costs and other charges in respect of PCL's products and services provided to you. A detailed breakdown of the duly approved product charges, fees and expenses as published by PCL from time to time may be made available upon your request. Charges include but are not restricted to the following:
- 11.2. Unless otherwise agreed in writing, interest is on loan accounts or any other facility granted, at any rate or rates as PCL may determine from time to time. Such interest will be calculated on the full loan amount applied for and will form part of the outstanding loan amount. PCL will notify you within reasonable time prior to effecting any change(s) as regards interest rates. Where a higher rate of interest has been agreed, PCL WILL NOT charge such higher rate on any of your existing loan accounts, but on any subsequent loan accounts initiated after such agreement has been made. Such interest is payable notwithstanding the determination of your relationship with PCL and until you repay the full amount you owe PCL in full.
- 11.3. Legal charges: Advocate and client charges, costs and expenses incurred in any legal, arbitration or other proceedings arising out of or connected with your PCL Mobile Loan. Such advocate and client charges, costs and expenses shall be charged in accordance with the advocates (Remuneration) order 2014 as the same may amended, varied or promulgated from time to time.
- 11.4. Loan Processing Fee: the loan processing fee according to the duly approved tariff schedule as published by PCL from time to time.
- 11.5. Other charges and expenses: In addition to the debits authorized by sub-clauses 11.1 11.2, 11.3 and 11.4 of this clause, all other proper expenses and charges including but not limited to ledger and transactional fees; third party fees and statutory charges and fees. PCL may also debit your account

with expenses incurred:

- (a) in complying with your requests;
- (b) in complying with the requests of authorized and accredited Government or other agencies in relation to your account;
- (c) in collecting or attempting to collect any amount of money you owe PCL; and
- (d) Expenses incurred in realizing any security or protecting the subject matter of any security issued to PCL.

Such default rates as are provided in these terms and conditions at any rate or rates as PCL may determine from time to time. The default rate will be calculated on daily balances and debited monthly. The default rate shall be due and payable notwithstanding the determination of your relationship with PCL until settlement in full.

11.6. PCL will provide you with a statement of account with a detailed breakdown of the costs, charges and expenses incurred by you and as according to the tariff schedule under sub-clauses 11.1, 11.2, 11.3, 11.4 and 11.5 of this clause.

11.7. PCL will give you at least thirty (30) days' notice of intention to effect new charges, fees and/or costs by way of email, SMS, letter and/or notices in the daily newspapers.

## **12. Taxes**

12.1. All payments to be made by you in connection with these terms and conditions are calculated with regard to taxes payable by you.

## **13. Specific PCL Mobile Loan Products**

### **13.1. Nawiri Loan**

13.1.1. Only holders of PCL Physical Loan accounts will be eligible to open Nawiri Loan accounts.

13.1.2. Upon opening your PCL Mobile account, you will receive a credit limit. You may thereafter, subject to these terms and conditions, apply for a loan using the request loan menu on the Nawiri Loan menu on your equipment.

13.1.3. As a holder of a Nawiri Loan account, you will be entitled to borrow money from PCL as follows:

- a) As a holder of a PCL Mobile Loan account, you may, subject to these terms and conditions, apply for a Nawiri loan from PCL using the PCL Mobile system on your equipment.
- b) You may make repayments into your PCL Mobile Loan account therefrom using the Nawiri Loan menu on your equipment.
- c) You will not be required to notify PCL in advance of making a repayment into your Nawiri Loan account.
- d) PCL shall channel Nawiri loan proceeds into your M-Pesa account subject to approval of your Nawiri loan application, less any offsets, and applicable fees as per PCL products and services.
- e) There will be no restrictions on the number of repayments into your Nawiri Loan Account over any period of time subject to the loan balance outstanding of your Nawiri Loan account.
- f) Subject to availability of your credit limit, PCL shall impose no restrictions on the amount of credit facility you may apply over any period of time. You may apply up to the maximum allowable credit limit as per PCL scoring.
- g) Through the Nawiri Loan menu on your equipment, you may instruct PCL to make M-Pesa Sim Toolkit (STK) push notifications for loan repayments and credit the paid amount to your Nawiri Loan account upon your authorization using your M-Pesa PIN on your equipment.
- h) Through the Nawiri Loan menu on your equipment, you may renew your Nawiri loan at any time having satisfied the eligibility for a loan renewal as set out from time to time in PCL's products and services. Such eligibility criteria may be communicated to you upon request through PCL customer care.
- i) A successful loan renewal will effectively close the running Nawiri loan and open a new Nawiri loan account. The amount disbursed will be the new amount applied, less the

outstanding amount of the running Nawiri loan account.

- 13.2. M-Pesa transactional limits will apply and M-Pesa transactional charges will be applicable.
- 13.3. For your guidance, your credit limit may vary from time to time depending on your performance of previous Nawiri loan repayments, CRB score, and other parameters as set from time to time by PCL in PCL's products and services.
- 13.4. Your Nawiri Loan application will be appraised according to the applicable loan appraisal processes of PCL. PCL reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.
- 13.5. Acceptance or rejection by PCL of your application for a Nawiri loan shall be done via SMS sent to the mobile phone number associated with your PCL Mobile Loan account.
- 13.6. PCL will directly credit the loan proceeds into your M-Pesa account subject to any deductions on account of applicable transaction fees and interest charges.
- 13.7. The customer loan will be the amount requested by the customer.
- 13.8. You shall make all payments due from you to PCL in respect of the Nawiri loan within a period of thirty (30) days.
- 13.9. In the event that you do not repay the loan in full within the agreed repayment period, thirty (30) days, PCL will automatically roll over any outstanding amount in respect of the loan for a further period of thirty (30) calendar days up to a maximum of ninety (90) days.
- 13.10. Failure of you to repay the Nawiri Loan in full in accordance with Clause 13.9 will constitute default.
- 13.11. You hereby agree to pay costs charges and expenses incurred by PCL in obtaining or attempting to obtain repayment of any loan owed under your PCL Nawiri Loan account.
- 13.12. You hereby expressly consent and authorize PCL to disclose, respond, advise exchange and communicate the details or information pertaining to your PCL Nawiri account and or loan to credit reference bureaus or any regulator or authority as required under Banking act, Banking act (credit reference bureau regulations), 2013, as published, amended or revised from time to time or any other law.
- 13.13. You also hereby expressly consent and authorize PCL to disclose, respond, advise exchange and communicate the details or information pertaining to your PCL Nawiri Account and or loan to third parties involved in the administration of your PCL Nawiri Account and or loan, underwriting of insurance policies, updating of databases, or provision of user support.

#### **14. Government Checkoff Loan**

- 14.1. Only employees of approved Government ministries and agencies, and institutions will be eligible to apply for Government Checkoff loan through the PCL Mobile system.
- 14.2. Repayment for Government Checkoff loan shall be made through salary deductions effected through the checkoff system by your employer and remitted to PCL bank accounts as provided to the employer through authorized PCL representatives.
- 14.3. Such deductions in Clause 14.2 above shall continue to be effected for the full term of the loan applied, and thereafter, provided there is an amount outstanding due to PCL by yourself.
- 14.4. The interest rate and other applicable fees on Government Checkoff loan shall be determined by PCL from time to time and outlined in PCL's products and services. This information will be made available to you upon request from PCL customer care.
- 14.5. We reserve the right to vary interest rates from time to time and will reasonably endeavor to give prior thirty (30) days' notice of the changes in the interest rates by way of SMS to your equipment. If you do not receive such prior notice we will not be prevented from changing the interest rate. The new rates will not be effected on your running Government Checkoff loan but on subsequent loan applications.
- 14.6. Loan undertaking from other financial institutions or renewal of running loan shall not be available through the Government Checkoff Mobile system menu. For these services, you will be required to contact PCL customer care.

#### **15. Disclosure**

- 15.1. You hereby expressly consent and authorize PCL to disclose, receive, record or utilize your personal information or information or data relating to your PCL Mobile account and any details of your use of the Services:

15.1.1. to and from the PCL, PCL's service providers, dealers, agents or any other company that

may be or become PCL's subsidiary or holding company for reasonable commercial purposes relating to the Services;

15.1.2. to a credit reference bureau;

15.1.3. to PCL's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;

15.1.4. to Safaricom in connection with the M-Pesa service and the services;

15.2. You authorize PCL to disclose any information relating to your PCL Mobile Loan account to any local or international law enforcement, regulatory or governmental agency so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as PCL may deem necessary.

## **16. Your equipment and responsibilities**

16.1. 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.

16.2. You shall be responsible for ensuring the proper performance of your equipment. PCL shall neither be responsible for any errors or failures caused by any malfunction of your equipment, and nor shall PCL be responsible for any computer virus or related problems that may be associated with the use of the system, the services and the equipment. You shall be responsible for charges due to any service provider providing you with connection to the network and PCL shall not be responsible for losses or delays caused by any such service provider.

16.3. You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by PCL concerning the use of the system and services.

16.4. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your equipment and for keeping your PCL Mobile PIN secret and secure. You shall ensure that your PCL Mobile PIN does not become known or come into possession of any unauthorized person. PCL shall not be liable for any disclosure of your PCL Mobile PIN to any third party and you hereby agree to indemnify and hold PCL harmless from any losses resulting from any PCL Mobile PIN disclosure.

16.5. 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 PCL are examined and checked by you or on your behalf as soon as practicable after receipt by you in such a way that any unauthorized use of and access to the System will be detected.

16.6. You shall immediately inform PCL through any of the customer care channels in the event that;

16.6.1. You have reason to believe that your PCL Mobile PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or

16.6.2. You have reason to believe that unauthorized use of the services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.

16.7. You shall at all times follow the security procedures notified to you by PCL 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 PCL Mobile account's confidentiality. In particular, you shall ensure that the services are not used or requests are not issued or the relevant functions are not performed by anyone other than a person authorized to do so.

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

## **17. Exclusion of liability**

17.1. PCL shall not be responsible for any loss suffered by you should the services be interfered with or be unavailable by reason of (a) the failure of any of your equipment, or (b) any other circumstances whatsoever not within PCL's control including without limitation, force majeure or error, interruption, delay or non-availability of the system, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

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

17.3. Failure, malfunction, interruption or unavailability of the system, your equipment, the network, M-Pesa system and/or M-Pesa service;

17.4. Your failure to give proper or complete instructions for payments or transfers relating to your PCL

- Mobile Loan account; or
- 17.5. Your failure to comply with these terms and conditions and any document or information provided by PCL concerning the use of the system and the Services.
  - 17.6. If for any reason other than a reason mentioned in subparagraphs 17.1 or 17.2, the services are interfered with or unavailable, PCL's sole liability under this agreement in respect thereof shall be to re-establish the services as soon as reasonably practicable.
  - 17.7. Save as provided in subparagraph 17.3 PCL shall not be liable to you for any interference with or unavailability of the services, however caused.
  - 17.8. Under no circumstances shall PCL be liable to you for any loss of profit or anticipated investments 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 PCL.
  - 17.9. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

## **18. Intellectual property rights**

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

## **19. Indemnity**

19.1. In consideration of PCL complying with your instructions or requests in relation the PCL Mobile account, you undertake to indemnify PCL and hold it harmless against any loss, charge, damage, expense, fee or claim which PCL suffers or incurs or sustains thereby and you absolve PCL from all liability for loss or damage which you may sustain from PCL acting on your instructions or requests or in accordance with these terms and conditions.

19.2. The indemnity in clause 19.1 shall also cover the following:

- 19.2.1. All demands, claims, actions, losses and damages of whatever nature which may be brought against PCL 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 PCL'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 PCL.
- 19.2.2. Any loss or damage that may arise from your use, misuse, abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs
- 19.2.3. Any unauthorized access to your PCL Mobile 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.
- 19.2.4. Any loss or damage occasioned by the failure by you to adhere to these Terms and Conditions and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by PCL as a consequence of any breach by these terms and conditions.
- 19.2.5. Any damages and costs payable to PCL in respect of any claims against PCL for recompense for loss where the particular circumstance is within your control.

## **20. Variation and termination of relationship**

- 20.1. PCL may at any time, upon thirty (30) days' notice to you, terminate or vary its business relationship with you and close your PCL Mobile account and in particular but without prejudice to the generality of the foregoing PCL may require the repayment of outstanding debts resulting therefrom within such time as PCL may determine.
- 20.2. Without prejudice to PCL rights under clause 20.1, PCL may at its sole discretion suspend or close your PCL Mobile account:



- 20.2.1. If you use the PCL Mobile account for unauthorized purposes or where PCL detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the services;
- 20.2.2. If your M-PESA Account or agreement with Safaricom is terminated for whatever reason;
- 20.2.3. If PCL is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
- 20.2.4. If PCL reasonably suspects or believes that you are in breach of these terms and conditions (including non-payment of any Loan amount due from you where applicable);
- 20.2.5. Where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
- 20.2.6. To facilitate update or upgrade the contents or functionality of the services from time to time;
- 20.2.7. Where your account becomes inactive or dormant;
- 20.2.8. If PCL decides to suspend or cease the provision of the services for commercial reasons or for any other reason as it may determine in its absolute discretion.

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

## **21. Miscellaneous**

- 21.1. These terms and conditions (as may be amended from time to time) form a legally binding agreement binding on you and your personal successors.
- 21.2. This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.
- 21.3. PCL may vary or amend these terms and conditions and the transaction fees at any time by thirty (30) days' notice to you. Any such notice of variations or amendments may be published in posters or pamphlets available at PCL's agent outlets, branches, in the daily newspapers, on PCL's website and/ or by any other means as determined by PCL and any such variations and amendments shall take effect on the set effective date.
- 21.4. No failure or delay by either yourself or PCL in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.
- 21.5. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 21.6. If any provision of these terms and conditions shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.
- 21.7. Any addition or alteration to these terms and conditions may be made from time to time by PCL and of which notice has been given to you by way of publication as provided in subparagraph 21.3 shall be binding upon you as fully as if the same were contained in these terms and conditions.

## **22. Notices**

- 22.1. PCL may send information concerning the PCL Mobile account via SMS to the Safaricom mobile phone number associated with your M-Pesa account.
- 22.2. You acknowledge that you have no claim against PCL for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the PCL Mobile account.

## **23. Dispute resolution**

- 23.1. You may contact the customer care center to report any disputes, claims or PCL Mobile account discrepancies.
- 23.2. Any dispute arising out of or in connection with this agreement that is not resolved by customer care representatives shall be escalated in line with PCL's complaint resolution policy and process.
- 23.3. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

## **24. Privacy of your personal information**

- 24.1. We are a duly licensed Data Protection Agent as required by law, therefore, we do due diligence to

safeguard your personal information from unauthorized access or use. In that regard, we share your personal information with:

- 24.1.1. PCL and its service providers for the purposes of providing our products and services to you and to comply with the legal and regulatory obligations of PCL;
- 24.1.2. any party to whom we assign our rights under this agreement or any of our agreements for particular products and services;
- 24.1.3. our regulators and authorities; and
- 24.1.4. credit reference agencies or credit bureaus for the purposes of our credit assessments and so that these agencies or bureaus can maintain and provide to others a credit profile about you and possibly a credit score on your credit worthiness.

24.2. We are responsible for ensuring that your personal information is processed lawfully and in a reasonable manner that does not infringe your privacy.

24.3. Your personal information will not be disclosed to anyone else without your consent unless the PCL is legally required or permitted to disclose it.

## **25. Service outages and downtimes**

25.1. Our products and services rely on technological infrastructure (e.g. mobile network providers, internet service providers, and computer systems).

25.2. You understand and accept that service outages occur.

25.3. During a service outage it may not be possible for you to use our products and services, and there may be delays in your transactions being processed and being reflected in your account statements.

## **26. Our partners' services**

26.1. We agree with commercial partners that they will provide complimentary services to you with some of our products and services, or that they will offer you their services on special terms.

26.2. Our partners are solely responsible for their services and their terms and conditions will apply.

## **27. Changing our Terms and Conditions**

27.1. We can change this agreement by giving you thirty (30) of the change before it comes in to effect.

27.2. Our branch and contact center employees do not have authority to change our agreement or our agreements for particular products in their interactions with you except for authorized staff who may agree the re-arrangement of your financial obligations under a credit facility. Any change to our agreement or an agreement for a particular product or services that our authorized staff agree with you, must be in writing.

27.3. The changes that we can make to our products and services agreements and the manner in which changes are made may be prescribed or limited by law; details are set out in the agreement for the particular product or service.

27.4. If you continue to use a product or service after a change comes into effect, the change will apply to you.

## **28. Tenure of this agreement**

28.1. This Agreement will continue while you have one or more of our products or services.

28.2. After you have ceased to have a product or service from us your obligations under this agreement will continue until you have paid all your outstanding financial obligations to us.

28.3. We can end our agreement and (subject to any restrictions imposed by law), our agreements for particular products and services without prior notice to you if we find that you have given materially inaccurate information about you or it is otherwise necessary to protect our interests.

28.4. Our obligations to you under this agreement relating to how we treat your personal information and dormant accounts continue after you have ceased to have a product or service from us.