

BIMA HIMA™ TERMS AND CONDITIONS

1. Definitions

- 1.1. **“Account”** means your Loan account with the Lender;
- 1.3. **“Credentials”** means your personal credentials used to access the **BIMA HIMA™** System, initiate requests and access the Services;
- 1.4. **“Customer”** means a person whose name is registered in the Lenders **BIMA HIMA™** Loan System with valid identification details and a registered mobile phone number;
- 1.5. **“Facility”** means the Loan which the Customer requests from the Lender through their registered and recognized Mobile Phone Number;
- 1.6. **“Insurer”** means the XXX Insurance Kenya Limited incorporated in Kenya as a limited liability company under the Companies Act (Chapter 486 of the Laws of Kenya) and registered as an Insurance Company by the Insurance Regulatory Authority providing General Insurance inter alia and having its principal place of business at xxxx, and P.O. Box xxx Nairobi Kenya;
- 1.7. **“Loan”** means a loan disbursed electronically by the Lender to a Customer in full satisfaction of his agreement with the Insurer with respect to the Customer’s motor premiums upon a Customer’s request.
- 1.8. **“BIMA HIMA™ System”** means the Lenders electronic lending and communication software enabling the Customer to communicate with the Lender for the purpose of accessing the Facility and Services;
- 1.9. **“Late Repayment Charge”** means a penalty charged at the rate of five percent (5%) on any outstanding amounts which have become due but remain unpaid on the Repayment Date;
- 1.10. **“Lender”** means BKY Insurance Limited incorporated in Kenya as a limited liability company under the Companies Act (Chapter 486 of the Laws of Kenya) and having its principal place of business at Lower Duplex Apartments 2nd floor suite 24 , Upper Hill Road, and P.O. Box 35502-00100 Nairobi Kenya;
- 1.11. **“Motor Insurance”** means such insurance cover as the Insurer may provide and the Customer has accepted in respect of such motor risks affecting the Customer and as defined by the agreement between the Insurer and the Customer.
- 1.12. **“Motor Premium”** means such payments that the Customer is required to pay by the Insurer in satisfaction of the Motor Insurance agreement, whether a renewal, renegotiation, or otherwise as agreed between the Customer and the Insurer.

- 1.13. **“Repayment Date”** means the day that the Loan instalment shall be due for repayment being thirty (30) calendar days from the date of disbursement of the Loan;
- 1.14. **“Request”** means a request or instruction received by the Lender from you or purportedly from you through the Safaricom Network and the S **BIMA HIMA™** system and upon which the Lender is authorized to act;
- 1.15. **“Service”** means and shall include any form of Loan, payment solution, transfer service, or Request that the Lender may offer you pursuant to this Agreement as you may from time to time subscribe to, and “Services” shall be construed accordingly;
- 1.16. **“Mobile Money”** means the money transfer and payments service operated by the Mobile Money Providers in Kenya;
- 1.17. **“Mobile Money Account”** means your mobile money store of value, being the record maintained by Mobile Money Providers in Kenya of the amount of E-Money from time to time held by you in the Mobile Money Provider’s System;
- 1.18. **“Mobile Network Operator”** means a mobile network operator in Kenya registered with the Communications Authority of Kenya;
- 1.19. **“Mobile Money Provider”** means a Mobile Network Operator that has been duly authorized by the Central Bank of Kenya under applicable law to offer Mobile Money Services in Kenya;
- 1.20. **“Equipment”** means and shall include your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access the Just Cash System and use the products and services availed to you by the Mobile Network Operators subject to such term and conditions agreed between you and the Mobile Network Operators;
- 1.21. **“You”** or **“your”** means the Customer and includes the personal representatives, assigns and heirs of the Customer;
- 1.22. The word **“Customer”** shall include the masculine and the feminine gender as well as juristic persons;
- 1.23. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

2. **Acceptance of the Terms and Conditions:**

- 2.1. Before applying for the Service you should carefully read and understand these Terms and Conditions which will govern the provision, use, operation and management of the Service.
- 2.2. If you do not agree with these Terms and Conditions, please cancel the Registration by failing to confirm your National Identification number, Mobile Phone Number and Personal Details.
- 2.3. You will be deemed to have read, understood and accepted these Terms and Conditions:-
 - 2.3.1. by replying **“YES”** on the **BIMA HIMA™** System; and
 - 2.3.2. by using or continuing to use and operate the Service
- 2.4. By applying to access the Service with the Lender 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 Service and you affirm that these Terms and Conditions herein are without prejudice to any right that the Lender may have with respect to the Service in law or otherwise.

- 2.5. These Terms and Conditions may be amended or varied by the Lender from time to time and the continued use, access, enjoyment of the Service constitutes your agreement to be bound by these terms and conditions or any such amendment, addition, deletion or variation.
- 2.6. You acknowledge and accept that the Lender offers the Service only by electronic means via the **BIMA HIMA™** System.
- 2.7. By using the **BIMA HIMA™** System 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 these Services, you consent to us and our affiliates' and licensees' transmission, collection, 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 S **BIMA HIMA™** System.

3. Personal Information

- 3.1. You hereby agree and authorise the Lender to verify information provided by you to the Lender against the information held by the Mobile Money Providers in relation to your Mobile Money Account pursuant to the agreement between you and the relevant Mobile Money Provider for the provision of its products and services and the Mobile Money Service.
- 3.2. The information that the Lender may verify against the information held by the Mobile Money Providers includes (without limitation): your phone number, name, date of birth, Identification Number (“ID”) or Passport Number and any other such other information that will enable the Lender to identify you and comply with the regulatory “Know Your Customer” requirements (together the “Personal Information”).
- 3.3. You hereby agree and authorise the Lender to verify information including, but not limited to, data relating to your phone (including, without limitation, your phone’s history) from your Equipment, from any SMS sent to you by the Mobile Money Providers and any financial services providers relating to your use of the Mobile Money Service and such other information as the Lender shall require for purposes of providing you the Services (the “Relevant Information”).
- 3.4. You hereby consent to the Lender verifying the Personal Information and the Relevant Information with the Mobile Money Providers and using of the Personal Information and the Relevant Information to the extent necessary in the opinion of the Lender to provide you with the Services.
- 3.5. You hereby agree and authorise the Lender to obtain and procure your Personal Information and Relevant Information from your respective Mobile Money Provider and you further agree and consent to the disclosure and provision of such Personal Information by the Mobile Money Provider and further to indemnify and hold the Lender and the Mobile Money 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 and reliance on such Personal Information and/or Relevant Information.
- 3.6. The Lender reserves the right to request for further information from you pertaining to your request for a Loan, Service or to access the **BIMA HIMA™** System at any time. Failure to provide such information within the time required by the Lender may result in the Lender declining to accept your request.

4. Customer’s Responsibilities

- 4.1. You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the **BIMA HIMA™** System and the Services.

- 4.2. You shall be responsible for ensuring the proper performance of your Equipment. The Lender shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall the Lender be responsible for any computer virus or related problems that may be associated with the use of the **BIMA HIMA™** System, the Services and the Equipment. You shall be responsible for charges due to any service provider providing you with connection to the **BIMA HIMA™** System and the Lender shall not be responsible for losses or delays caused by any such service provider.
- 4.3. You shall follow all instructions, procedures and terms contained in this Agreement and any document provided by the Lender concerning the use of the System and the Services.
- 4.4. 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 unauthorised person. The Lender shall not be liable for any disclosure of your Credentials to any third party and you hereby agree to indemnify and hold the Lender harmless from any losses resulting from any disclosure of your Credentials.
- 4.5. You shall take all reasonable precautions to detect any unauthorised use and access of the System and the Services undertaken using your Equipment. To that end, you shall ensure that all communications from the Lender are examined and checked by you or on your behalf as soon as practicable after receipt by you in such a way that any unauthorised use of and access to the **BIMA HIMA™** System will be detected. You shall immediately inform the Lender in the event that:
 - 4.5.1. 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
 - 4.5.2. You have reason to believe that unauthorised access and use of the **BIMA HIMA™** System and the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 4.6. You shall at all times follow the security procedures notified to you by the Lender from time to time or such other procedures as may be applicable to the Services from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your Personal Information, Relevant Information and such other information held by the Lender in connection to the Services and Requests made by you to the Lender in 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 you or a person authorised by you to do so.
- 4.7. You shall not at any time operate or use the Services in any manner that may be prejudicial to the Lender.

5. Operations

- 5.1. You acknowledge that the Lender shall appraise your Facility request according to the Lender's loan appraisal and vetting processes and that the Lender reserves the right, at its sole discretion, and without assigning any reason to approve or decline your application for a Facility.
- 5.2. Subject to approval of your Facility request for a Loan, the Lender shall lend and disburse an amount to be determined by the Lender in its sole discretion subject to the Customer's advised Credit Limit.
- 5.3. The proceeds of the Loan shall be paid to the Insurer in satisfaction of your medical premium as advised to you by the Insurer.

- 5.4. In consideration of the Lender granting you the Loan, you shall pay an Administration Fee of Two Naught Five percent (2.5%) per month of the Loan or any other rate as may be determined.
- 5.5. In consideration of the Lender granting you the Loan, you shall pay a Commitment Fee of Two percent (2%) of the Loan or any other rate as may be determined, that shall be paid over the tenure of the Loan.
- 5.6. You shall make payments due from you to the Lender in respect of the Loan on the Repayment Date using the Safaricom 'Pay Bill' service ONLY to the Number **4048037** unless otherwise agreed and advised by the Lender in its discretion.
- 5.7. If you do not pay the Loan on the Repayment Date the Lender shall automatically charge a Late Repayment Charge.
- 5.8. You shall pay to the Lender any charges, fees, expenses, taxes, duties, impositions and expenses incurred by the Lender in complying with your Facility request.
- 5.9. You hereby expressly give consent to the Lender to recover all monies due that you will not have settled on the Repayment Date through your employer from your payroll in the first instance or from any other source of your income or assets.
- 5.10. The Lender reserves the right to vary the terms of the Loan including the Administration Fee and fees payable thereon from time to time.
- 5.11. Any addition, alteration, modification or deletion to these Terms and Conditions which may be made from time to time by the Lender and of which notice may be given to you by way of Short Messaging Service or such other method that the Lender shall adopt and use to communicate with you shall be binding upon you as fully as if the same were contained in these Terms and conditions.
- 5.12. You hereby undertake to notify the Lender immediately of any situation circumstance or event, which materially changes the provision, use, operation and management of the Loan, Services or your access to the **BIMA HIMA™** System.
- 5.13. If the Lender holds any money or you have a credit balance with the Lender at any time as a result of overpayment of your Loan, you may issue a Request to the Lender for payment of such credit balance and the Lender 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 Provider.

6. **Credit Reference Bureaus**

- 6.1. You hereby expressly authorise the Lender to solicit, query, search, conduct, carry out and perform credit checks with, and/or obtain the Customer's credit information, or such other information, from any or all licensed Credit Reference Bureaus, with respect to this Agreement, and/or the Lender maintaining a Loan for you.
- 6.2. You hereby expressly consent, allow and authorise the Lender to disclose, advise, exchange and communicate the details pertaining to your Loan to Credit Reference Bureaus (CRBs) and other Credit Providers.
- 6.3. You authorise the Lender to obtain any information that it may require relating to the Loan from credit providers, and from any other source to which the Lender may apply, each source being hereby authorised by you to provide the Lender with such information.

7. Exclusion of Liability

7.1. The Lender will endeavour to do its utmost to ensure that there are no delays or failures in offering the Loan. However, the Lender shall not be liable for any loss suffered by you due to, as a result of, or in connection with failures that may arise as a result of inefficiencies caused by the Mobile Network Operators or which are occasioned by strikes, riots or civil unrest, breakages, fire, unforeseen commercial delays, acts of God or permission requirements or licences that are required from Mobile Network Operators.

7.2. You hereby expressly consent to waive any claim against the Lender for delays or failures to offer the Loan, Service or respond to any Request made by you due to any or all of the causes and events mentioned in clause 6.1 above.

8. Termination

8.1. The Lender shall not be obliged to advance the Loan or, where the Loan has been advanced, may demand immediate payment of all amounts owed under this Agreement in the event that:

8.1.1. You fail to pay any sum payable hereunder on the Repayment Date.

8.1.2. You fail to perform and/or observe any of your obligations under the Agreement.

8.1.3. The Lender has reason to believe that you are likely to become insolvent or have committed an act of bankruptcy.

8.2. The Lender shall at any time, upon notice to you, terminate or vary its business relationship with you and cease to offer you the Services and in particular but without prejudice to the generality of the foregoing the Lender may cancel the Credit Limit which it has granted and require the repayment of outstanding debts resulting from such credits within such time as the Lender may determine.

8.3. Without prejudice to the Lender's rights under clause 9.1, the Lender may at its sole discretion suspend or close your access to the Services and the **BIMA HIMA™** System where:

8.3.1. if you use the **BIMA HIMA™** System for unauthorised purposes or where the Lender detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;

8.3.2. if your Mobile Money Account or agreement with a Mobile Network Operator is terminated for whatever reason;

8.3.3. the Lender is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;

8.3.4. the Lender 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) 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;

8.3.5. such a suspension, closure or termination is necessary as a consequence of technical problems or for reasons of safety; to facilitate update or upgrade the contents or functionality of the Services from time to time;

8.3.6. you have in the opinion of the Lender become inactive or dormant in the use of the **BIMA HIMA™** System or the Services;

- 8.3.7. the Lender 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;
- 8.3.8. if the Insurer terminates your medical insurance agreement for whatever reason;
- 8.4. Termination shall however not affect any accrued rights and liabilities of either party.
- 8.5. If the Lender receives notice of your demise, the Lender will not be obliged to allow any operation or access to the Services or accept Requests by any person except upon production of administration letters from a competent authority or confirmed grant of letters of administration or confirmed grant of probate by your legal representatives duly appointed by a court of competent jurisdiction.

9. Indemnity

- 9.1. In consideration of the Lender complying with your instructions or Requests in relation to providing the Services, you undertake to indemnify the Lender and hold it harmless against any loss, charge, damage, expense, fee or claim which the Lender suffers or incurs or sustains thereby and you absolve the Lender from all liability for loss or damage which you may sustain from the Lender acting on your instructions or requests or in accordance with these Terms and Conditions.
- 9.2. The indemnity in clause 9.1 shall also cover the following:
 - 9.2.1. All demands, claims, actions, losses and damages of whatever nature which may be brought against the Lender or which it may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Lender'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 the Lender.
 - 9.2.2. 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.
 - 9.2.3. 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.
 - 9.2.4. 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 the Lender as a consequence of any breach by these Terms and Conditions.
 - 9.2.5. Any damages and costs payable to the Lender in respect of any claims against the Lender for recompense for loss where the particular circumstance is within your control.

10. Notices

- 10.1. The Lender shall send information concerning the Loan or Facility or Services via Short Messaging Service (SMS) to you through the Mobile Network Operators associated with your Loan or Facility or Service and registered on the **BIMA HIMA™** System.
- 10.2. You acknowledge that you have no claim against the Lender for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the Facility or Loan or Services.

11. Dispute Resolution

Any dispute arising out of or relating to this Agreement, or the breach, termination or validity thereof (a **Dispute**) will be settled in accordance with the procedures set forth herein.

11.1. Disputes

- 11.1.1. The Parties shall use their good faith efforts to resolve any Dispute, controversy or claim of any nature whatsoever arising out of or in relation to or in connection with this Agreement. To this end, the Parties in dispute shall each promptly appoint representatives of appropriate standing who shall meet and attempt to resolve any Dispute between them. In the event that an amicable settlement has not been reached within thirty (30) days of the parties' representatives meeting as aforesaid, the following provisions of this clause 11.2 shall apply.

11.2. Arbitration

- 11.2.1. Any dispute, difference or question whatsoever and howsoever arising out of or in connection with this Agreement, save as specifically provided herein, shall be referred for final determination to a single arbitrator to be appointed by agreement between the parties hereto or in default of any such agreement within seven (7) days of the notification of any dispute by either party to the other then, upon application by either party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators ("Institute").
- 11.2.2. Such arbitration shall take place in Nairobi and shall be conducted in accordance with the Rules of Arbitration of the Institute.
- 11.2.3. To the extent permissible by law the determination of the arbitrator shall be final and binding upon the Parties and shall not be subject to any appeal.
- 11.3. Nothing in this clause 11 shall restrict either Party's freedom to commence legal proceedings of any nature for the purposes of seeking preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of any arbitrator.

12. Governing Law

- 12.1. This Agreement shall be governed by the laws of Kenya and the parties agree to submit disputes arising out of or about this Agreement to the courts in Kenya.

13. **Entire Agreement**

13.1. This Agreement constitutes the entire understanding between the Parties relating to the subject matter herein unless any representation or warranty made about this Agreement was made fraudulently and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, promises, arrangement, correspondence negotiations or understandings whether oral or written, of any Party to this Agreement.

14. **General**

14.1. No failure on the part of any party to exercise, or delay on its part in exercising, any right, power or remedy provided by this Agreement 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.

14.2. No failure by the Lender to exercise, and no delay in exercising, any right or remedy in respect of any provision of this Agreement shall operate as a waiver of such right or remedy.

14.3. If any provision or part of a provision of this Agreement 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 this Agreement, all of which shall remain in full force and effect.