



## TERMS AND CONDITIONS FOR DIGIFARM LOAN

### 1 Definitions and interpretation

1.1 In these Terms and Conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:

**"Credit Reference Bureau"** means a credit reference bureau duly licensed under the Banking Act (Cap 488, laws of Kenya) pursuant to the Banking (Credit Reference Bureau) Regulations of 2013, to among others, collect and facilitate the sharing of customer credit information.

**"DigiFarm App"** means the mobile application software and USSD developed by DigiFarm for the provision of the Services.

**"DigiFarm App PIN"** means your personal identification number being the secret code used to access the DigiFarm App.

**"DigiFarm Depot"** means an authorized store for collection of farm produce and which DigiFarm has entered into an agreement with to provide the Services.

**"DigiFarm System"** means the technical operational platform operated by DigiFarm.

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

**"Farmer"** means a person undertaking farming activities in whose name farmer profile and Loan Account with the DigiFarm and/or Financial Partner is existing.

**"Farmer Profile"** means a profile of the Farmer created by DigiFarm using the Farming Information.

**"Farming Information"** means all the information relating to the farming activities undertaken by the Farmer including the size and location of the Land, the type of crops and livestock, the amount of produce, the selling price of the produce, the market price of the produce and any other information DigiFarm (in its absolute discretion) shall deem necessary or desirable;

**"Fees"** means any fees, charges and costs payable to DigiFarm, Financial Partner or an MSP for disbursing the Loan as DigiFarm or as an MSP shall in its sole discretion determine;

**"Financial Partner"** means a financial institution licensed by the Central Bank of Kenya to provide loans and which DigiFarm has entered into an agreement with to provide the Services;

**"IPRS"** means the Integrated Population Registration System set up and maintained by the Government of Kenya under the State Department responsible for Immigration Services and Registration of Persons;

**"Land"** means the parcel of land that farming activities are undertaken by the Farmer;

**"Loan"** means a loan disbursed to a Farmer in accordance in with clause 6.3;

**"Loan Account"** means a loan account held by a Farmer with DigiFarm and/or Financial Partner and which is opened and operated in accordance with the terms and conditions herein contained;

**"Mobile Money Account"** means your mobile money store of value, being the record maintained by your MSP (defined below) of the amount of E-Money from time to time held by you in the Mobile Money System;

**"Mobile Money Information"** means information relating to your use of the Mobile Money Service operated by an MSP;

**"Mobile Money Service"** means the money transfer and payments service provided by the MSP through the Mobile Money System;

**"Mobile Money System"** means the system operated by an MSP for the provision of the Mobile Money Service using the Network;

**"Mobile Money Service Subscriber"** means any person registered to use the Mobile Money System to send or receive money or make payments;

**"MSP"** means any mobile service provider through whom the Farmer receives the mobile services as notified by DigiFarm or the Financial Partner;

**"Network"** means the mobile cellular network operated by an MSP;

**"Personal Information"** means personal information and copies of documents including your phone number, name, gender, address, date of birth, National Identity Card Number or Passport Number and such other information;

**"Products"** means the farm products that will be handed over to the Farmer by the DigiFarm Depot.

**"Purpose"** means farming business;

**"Request"** means a request or instruction received by DigiFarm from you or purportedly from you through the DigiFarm App and upon which DigiFarm and/or a Financial Partner is authorized to act;

**"Services"** means the services set out in clause 4.1 that DigiFarm may offer you pursuant to this Agreement and as you may from time to time subscribe to and **"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 use the Mobile Money System;

**"SMS"** means a short message service consisting of a text message transmitted from one mobile phone to another;

**"We," "our," and "us,"** means DigiFarm and includes the successors, affiliates and assigns of DigiFarm and/or Financial Partner

**"You" or "your"** means the Farmer and includes the personal representatives of the Farmer;

The word **"Farmer"** shall include both the masculine and the feminine gender as well as juristic persons;

Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

## **2 The Agreement**

- 2.1 This Agreement sets out the complete Terms and Conditions (hereinafter called "these Terms and Conditions") which shall apply to all the Services provided to you by DigiFarm and to the Loan Account opened by you with DigiFarm and/or Financial Partner
- 2.2 These Terms and Conditions and any amendments or variations thereto take effect on their date of publication.

## **3 Acceptance of the Terms and Conditions**

- 3.1 Before:
  - 3.1.1 downloading the DigiFarm App from our website or clicking "Accept" button below; and/or
  - 3.1.2 replying accept/ yes on the USSD

you should carefully read and understand these Terms and Conditions which will govern the provision of the Services and which will govern the use and operation of the Loan Account.

- 3.2 If you do not agree with these Terms and Conditions, please:
  - 3.2.1 click "Decline" on the DigiFarm App; and/or
  - 3.2.2 do not reply to our SMS.
- 3.3 You will be deemed to have read, understood and accepted these Terms and Conditions:
  - 3.3.1 upon clicking on the "Accept" option on the DigiFarm App requesting you to confirm that you have read, understood and agreed to abide with these Terms and Conditions; and/or
  - 3.3.2 replying with "Accept" to our SMS; and/or
  - 3.3.3 by using or continuing to use and operate the Loan Account.
- 3.4 By applying to use the Services and/or by applying to open the Loan Account:
  - 3.4.1 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 provision of the Service and the operation of the Loan Account; and
  - 3.4.2 you affirm that these Terms and Conditions herein are without prejudice to any right that DigiFarm or a Financial Partner may have in law or otherwise.
- 3.5 These Terms and Conditions may be amended or varied by DigiFarm from time to time and the continued use of the Services and/or the operation of the Loan Account constitutes your agreement to be bound by the terms of any such amendment or variation.

#### **4 The Service**

- 4.1 We will provide the following services to you through your Equipment or as we shall otherwise deem fit:
  - 4.1.1 collect and obtain the Farming Information from you, any person in the value chain, government or from any other person as maybe required to create the Farming Profile;
  - 4.1.2 create your Farming Profile using the Farming Information;
  - 4.1.3 submit the Farming Profile to the Financial Partner(s);
  - 4.1.4 obtain your Personal Information in accordance with clause 5 of this Agreement;  
(the "Services")
- 4.2 The Services are only available to the Farmers selected and registered by DigiFarm. DigiFarm can accept or decline any application for the Service at its sole discretion.
- 4.3 The Services will only be provided through the MSPs which, DigiFarm on its sole discretion, may determine from time to time.
- 4.4 It is your responsibility to familiarize yourself with the operating procedures of the Services. DigiFarm will not be liable for any losses incurred as a result of your errors either of commission and/or omission.
- 4.5 You acknowledge and accept that DigiFarm offers the Services only electronically and you agree to do business with DigiFarm providing the Loan and to operate the Loan Account only by electronic means via SMS and/or the DigiFarm App. Any query and complaint you may have relating to the Services shall be addressed to DigiFarm. For the avoidance of doubt, you

acknowledge and accept that you will not be allowed or entitled to receive or demand the Services pertaining to the Loan Account at any branch or branches of a Financial Partner unless otherwise advised by DigiFarm in its sole discretion. You further acknowledge and accept that DigiFarm is not a branch of the Financial Partner or the Financial Partner's Agent for purposes of conducting banking business or transactions and that it will not act as such.

- 4.6 You acknowledge that DigiFarm is not a Credit Reference Bureau but may provide credit information to a Financial Partner for purposes of these Terms and Conditions.

## **5 Loan Account Opening**

- 5.1 In order to open a Loan Account with DigiFarm and/or Financial Partner you must be at least 18 years old and a subscriber of an MSP with which DigiFarm has an agreement with for you to access the Services. DigiFarm reserves the right to verify with the MSP the authenticity and status of your subscription.
- 5.2 You may only open and operate a Loan Account by way of an electronic application made by you using your Equipment via SMS or the DigiFarm App.
- 5.3 You hereby agree and authorize DigiFarm to request the MSP for your Personal Information and Mobile Money Information held by the MSP pursuant to the agreement between you and the MSP.
- 5.4 You hereby agree and authorize DigiFarm to request the MSP for the Mobile Money Information as DigiFarm shall require for purposes of providing you with the Services or operating your Loan Account.
- 5.5 You hereby agree and authorize DigiFarm to obtain and procure your Personal Information contained in the IPRS from the Government of Kenya or from any other government records and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to DigiFarm.
- 5.6 You hereby agree and authorize DigiFarm to submit your Farming Profile to the Financial Partner, to enable DigiFarm and the Financial Partner to evaluate your application for the Loan by jointly developing a credit score.
- 5.7 You hereby agree and authorize DigiFarm to submit the Personal Information to the Financial Partner, to enable the Financial Partner to identify you and comply with "Know Your Customer" requirements as maybe required by any government regulator.
- 5.8 You hereby further acknowledge and authorize DigiFarm to verify your Personal Information received from the MSP pursuant to Clause 5.3 against the information received from the Government of Kenya in your respect as contained in the IPRS.
- 5.9 DigiFarm reserves the right to request for further information from you pertaining to your application for a Loan Account at any time. Failure to provide such information within the time required by DigiFarm may result in DigiFarm declining to accept your application for a Loan Account.
- 5.10 Acceptance or rejection by DigiFarm of your application for a Loan Account shall be done via SMS sent by DigiFarm to the Mobile Number associated with your Mobile Money Account. You acknowledge and accept that the acceptance or rejection by DigiFarm of your application for a Loan Account does not create any contractual relationship between you and the MSP beyond the terms and conditions that apply to your Mobile Money Account from time to time.
- 5.11 DigiFarm reserves the right to decline your application for a Loan Account or to revoke the same at any stage at DigiFarm's sole discretion and without assigning any reason or giving any notice thereto.

## **6 Loan Account**

- 6.1 As a holder of the Loan Account, you may, subject to these Terms and Conditions, apply for a loan from DigiFarm using SMS or the DigiFarm App installed on your Equipment.

- 6.2 Where you apply for a loan from DigiFarm, your application shall be appraised according to the applicable loan appraisal processes of DigiFarm. DigiFarm reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.
- 6.3 Subject to approval of your application for a loan DigiFarm shall disburse to you a loan of an amount to be determined by DigiFarm in its sole discretion subject to a minimum and maximum amount to be determined by DigiFarm taking into account the value chain, farm size, credit scoring and other parameters or as determined by DigiFarm from time to time in its sole discretion determine.
- 6.4 The proceeds of the Loan shall be credited into your DigiFarm Account subject to any deductions made on account of the applicable Fees.
- 6.5 You shall only utilize the proceeds of the Loan for the Purpose.
- 6.6 You will be required to present the loan voucher to DigiFarm Depot for Loan redemption where applicable.
- 6.7 Once the Loan verification and validation process is complete, the DigiFarm Depot shall hand over the Products to you.
- 6.8 You will then receive a message on the repayment of the Loan date where applicable.
- 6.9 In consideration of DigiFarm granting you the Loan, you shall pay DigiFarm a fee which fees breakdown shall be on the DigiFarm website and DigiFarm App (the "**Fee**"). You will always consent to the Fees before the loan is granted.
- 6.10 You shall make all payments due from you to DigiFarm in respect of the Loan and Fees using the Mobile Money Service and the Mobile Money System only unless otherwise agreed by DigiFarm in its discretion.
- 6.11 In case of default, in addition to paying the outstanding amount in respect of the Loan and any outstanding Interest, you shall pay to DigiFarm a default fee being the Fee a percentage determine by Digifarm of theoutstanding amount in respect of the Loan (the "Default Fee") where applicable.
- 6.12 DigiFarm shall be entitled to terminate this Agreement and close your Loan Account in accordance with the provisions of Clause 16 without prejudice to any of its rights accruing hereunder if you fail to repay the Loan and/or the Fees due from you within 90 calendar days from the due date of the Loan. Any repayment obligations by the Farmer shall survive this closure of the Loan Account.
- 6.13 DigiFarm reserves the right to vary the terms of the Loan including the Fees payable from time to time.
- 6.14 You hereby expressly consent and authorize DigiFarm/Financial Partner to disclose, respond, advise exchange and communicate the details or information pertaining to your Loan Account to Credit Reference Bureaus.

## **7 Fees**

- 7.1 You hereby agree to pay all Fees payable, in accordance with Clause 6.9, in connection with your use of the Services and operation of the Loan Account.
- 7.2 Where applicable the Fees payable shall include a cost of insurance premium payable by the Farmer to procure and maintain appropriate comprehensive insurance cover against all risks without restrictions or excess for (a) the Farmers produce (crops or livestock, as the case may be) and (b) credit life cover. Furthermore, the Farmer agrees that they shall not do or omit any act, matter, orthing in connection with obtaining the insurance which may invalidate the same.
- 7.3 You shall pay the Loan to DigiFarm and the DigiFarm is entitled deduct such outstanding amount from your Loan Account (without reference to you):
  - 7.3.1 any Fees payable in respect of the Loan;

- 7.3.2 any costs incurred by DigiFarm/Financial Partner in obtaining legal advice in connection with your Loan Account and your dealings with DigiFarm or incurred by DigiFarm/Financial Partner in any legal, arbitration or other proceedings arising out of any dealings in respect of your LoanAccount; and
- 7.3.3 Any other fees, expenses and taxes, duties, impositions and expenses incurred in complying with your Requests.
- 7.4 You hereby agree to pay costs charges and expenses (including legal fees) incurred by DigiFarm and/or Financial Partner in obtaining or attempting to obtain payment of any loan owed under your Loan Account.

## **8 Statements**

- 8.1 You may request for a statement or activity report in respect of your Loan Account from DigiFarm using your Equipment ("Mini Statement").
- 8.2 A Mini Statement shall provide details of the last (*insert number*) transactions (or such other number of transactions as determined by DigiFarm) in your Loan Account initiated from your Equipment.
- 8.3 A Mini Statement shall not be sent to you in printed form but shall be delivered to you either by SMS, App to the Mobile Phone number associated with your Mobile Money Account or such other electronic means as DigiFarm may in its discretion determine. You shall be responsible for the payment of any charges levied by the MSP in delivering the Mini Statement to you.
- 8.4 You may obtain printed Mini Statements or a printed bank statement pertaining to your Loan Account from DigiFarm. You shall be responsible for the payment of any charges levied by DigiFarm for such printed statements.
- 8.5 Save for a manifest error, a Mini Statement or bank statement issued to you aforesaid in respect of your Loan Account shall be conclusive evidence of the transactions carried out on your Loan Account for the period covered in the Mini Statement and/or bank statement.

## **9 Irrevocable Authority of DigiFarm**

- 9.1 You hereby irrevocably authorize DigiFarm to act on all Requests received by DigiFarm from you (or purportedly from you) through the DigiFarm App and to hold you liable in respect thereof, notwithstanding that any such requests are not authorized by you or are not in accordance with any existing mandates given by you.
- 9.2 If you request DigiFarm to cancel any transaction or instruction after a Request has been received by DigiFarm from you, DigiFarm may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
- 9.3 DigiFarm 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, DigiFarm believes that it can correct the incomplete or ambiguous information in the Request without any reference to you being necessary.
- 9.4 DigiFarm is authorized to effect such orders in respect of your Loan Account as may be required by any court order or competent authority or agency under the applicable laws.
- 9.5 In the event of any conflict between any terms of any Request received by DigiFarm from you and these Terms and Conditions, these Terms and Conditions shall prevail.

## **10 Farmer's Equipment and Farmer's Responsibilities**

- 10.1 You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the Services and/or the Loan Account on SMS or on the DigiFarm App.
- 10.2 You shall be responsible for ensuring the proper performance of your Equipment. DigiFarm

and/or the Financial Partner shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall DigiFarm and/or the Financial Partner be responsible for any computer virus, malware or related problems that may be associated with the use of the Services and/or the Loan Account on the DigiFarm App installed in the Equipment. You shall be responsible for charges due to any MSP providing you with connection to the Network and DigiFarm and/or the Financial Partner shall not be responsible for losses or delays caused by an MSP.

- 10.3 You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by DigiFarm concerning the use of the Services and/or the Loan Account on SMS or the DigiFarm App.
- 10.4 You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your PIN secret and secure. You shall ensure that your PIN does not become known or come into possession of any unauthorized person. The Financial Partner and/or DigiFarm shall not be liable for any disclosure of your PIN to any third party and you hereby agree to indemnify and hold the Financial Partner and/or DigiFarm harmless from any losses resulting from any PIN disclosure.
- 10.5 You shall take all reasonable precautions to detect any unauthorized use of your Equipment and/or the DigiFarm App installed on your Equipment and the Services. To that end, you shall ensure that all communications by SMS or from the DigiFarm App or from DigiFarm 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 your Equipment or the DigiFarm App installed on your Equipment will be detected.
- 10.6 You shall immediately inform the DigiFarm in the event that:
  - 10.6.1 You have reason to believe that your PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or
  - 10.6.2 You have reason to believe that unauthorized use including sending of SMS to DigiFarm or any other unauthorized use of the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 10.7 You shall at all times follow the security procedures notified to you by DigiFarm 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 Loan 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.
- 10.8 You shall not at any time operate or use the Services in any manner that may be prejudicial to DigiFarm and/or the Financial Partner.

## **11 Right to Use Land**

You warrant that you own the Land or that you have the authority and all necessary permissions to undertake farming activities on the Land.

## **12 Permission to access Land and Privacy**

- 12.1 You authorise DigiFarm to access the Land to confirm that the Farming Information is accurate. DigiFarm shall access the Land during working hours and upon giving a prior notice.
- 12.2 You authorise DigiFarm to take pictures of the Land using such technology as it deems fit.

## **13 Exclusion of Liability**

- 13.1 DigiFarm and/or the Financial Partner shall not be responsible for any loss suffered by you should the Loan Account and/or 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 the



DigiFarm's control including, without limitation, force majeure or error, interruption, delays or terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

- 13.2 DigiFarm and/or the Financial Partner will not be liable for any losses or damage suffered by you as a result of or in connection with:
- 13.2.1 unavailability of or insufficient funds in your Loan Account;
  - 13.2.2 failure, malfunction, interruption or unavailability of the System, your Equipment, the Network, Mobile Money System and/or Mobile Money Service;
  - 13.2.3 the money in your Loan Account being subject to legal process or other encumbrance restricting payments or transfers thereof;
  - 13.2.4 your failure to give proper or complete instructions for payments or transfers relating to your Loan Account;
  - 13.2.5 any fraudulent or illegal use of the Services, the Loan Account, the DigiFarm App and/or your Equipment; or
  - 13.2.6 your failure to comply with these Terms and Conditions and any document or information provided by DigiFarm concerning the use of the DigiFarm App, the use and operation of the Loan Account and the Services.
- 13.3 If for any reason other than a reason mentioned in subparagraphs 13.1 or 13.2, the Services are interfered with or unavailable, DigiFarm's and the Financial Partner's sole liability under this Agreement in respect thereof shall be to re-establish the Services, the Loan Account and the DigiFarm App as soon as reasonably practicable.
- 13.4 Save as provided in subparagraph 13.3 DigiFarm and/or the Financial Partner shall not be liable to you for any interference with or unavailability of the Services, the Loan Account and/or the DigiFarm App howsoever caused.
- 13.5 Under no circumstances shall DigiFarm and/or the Financial Partner 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 DigiFarm and/or the Financial Partner.
- 13.6 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

## **14 Intellectual Property Rights**

You acknowledge that the intellectual property rights in the DigiFarm App (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that DigiFarm provides to you through the DigiFarm App or otherwise are vested either in DigiFarm or in other persons that DigiFarm has licensed. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the DigiFarm App and associated documentation without the prior written consent of DigiFarm.

## **15 Indemnity**

- 15.1 In consideration of DigiFarm providing the Services and the Financial Partner providing the Loan, you undertake to indemnify DigiFarm and/or the Financial Partner and hold them harmless against any loss, charge, damage, expense, fee or claim which DigiFarm or the Financial Partner suffers or incurs or sustains thereby and you absolve DigiFarm and/or the Financial Partner from all liability for loss or damage which you may sustain from DigiFarm and/or the Financial Partner 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:
- 15.2.1 All demands, claims, actions, losses and damages of whatever nature which may be brought against DigiFarm and/or the Financial Partner 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 DigiFarm's or the Financial Partner'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 DigiFarm and/or the Financial Partner.
  - 15.2.2 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.
  - 15.2.3 Any unauthorized access to the DigiFarm App installed in your Equipment or your Loan 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.
  - 15.2.4 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 DigiFarm and/or the Financial Partner as a consequence of any breach by these Terms and Conditions.
  - 15.2.5 Any damages and costs payable by DigiFarm and/or the Financial Partner in respect of any claims against DigiFarm and/or the Financial Partner to compensate for loss where the particular circumstance is within your control.

## **16 Variation and Termination of Relationship**

- 16.1 DigiFarm may at any time, upon notice to you, terminate or vary its (their) business relationship with you and close your Loan Account and in particular but without prejudice to the generality of the foregoing DigiFarm may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Financial Partner may determine.
- 16.2 Without prejudice to the DigiFarm's rights under clause 16.1, DigiFarm and/or Financial Partner (as applicable) may at its sole discretion suspend or close your Loan Account:
- 16.2.1 if you use the Loan Account for unauthorized or unlawful purposes or where DigiFarm detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
  - 16.2.2 if your Mobile Money Account or agreement with an MSP is terminated for whatever reason;
  - 16.2.3 if DigiFarm and/or Financial Partner is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
  - 16.2.4 if DigiFarm and/or Financial Partner 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);
  - 16.2.5 where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
  - 16.2.6 to facilitate update or upgrade the contents or functionality of the Services from time to time;

- 16.2.7 where you remain inactive for any period of time determined by DigiFarm in its reasonable discretion;
- 16.2.8 If DigiFarm and/or Financial Partner 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; or
- 16.2.9 If DigiFarm and/or Financial Partner decides to suspend the provision of the Loans for commercial reasons or for any other reason as it may determine in its absolute discretion.
- 16.3 You may close your Loan Account at any time after repayment of your Loan, if any. Any repayment obligations by the Farmer shall survive this closure of the Loan Account.
- 16.4 If your Loan Account has any credit balance at the time of its closure, we will return any such balance to you, less any applicable fees. If your Loan Account is in arrears at the time of closure of your Loan Account, you agree to pay to us immediately all amounts you owe us.
- 16.5 Termination shall however not affect any accrued rights and liabilities of either party.
- 16.6 If DigiFarm and/or the Financial Partner receives notice of your demise, DigiFarm and/or the Financial Partner will not be obliged to allow any operation or withdrawal from your Loan Account by any person except upon production of Grants of Letters of Administration or Probate by your legal representatives duly appointed by the Court.

## **17 Information and data**

- 17.1 The Farming Information, Personal Information and all other information and data provided by the Farmer to DigiFarm shall remain at all times the property of the Farmer.
- 17.2 DigiFarm shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Farming Information, the Personal information and all the other information and data provided by the Farmer.
- 17.3 In the event of termination of this Agreement, DigiFarm shall when directed to do so by the Farmer, and instruct all its agents, partners, subcontractors and all other third parties, erase all information and data provided by the Farmer and all copies of any part of the information and data from its systems and magnetic data.
- 17.4 All the Farming Information, the Personal Information and all other information acquired by DigiFarm from the Farmer shall be used for purposes of the Services and as provided in these Terms and Conditions and shall not be further processed and disclosed without the consent the Farmer unless it is expressly authorised in this Agreement.
- 17.5 You hereby expressly consent and authorize DigiFarm and/or the Financial Partner to disclose receive record or utilize your personal information or information or data relating to your Loan Account and any details of your use of the Services:
  - 17.5.1 to and from any local or international law enforcement or competent regulatory or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud;
  - 17.5.2 to and from the Financial Partner's and/or DigiFarm's service providers, dealers, agents or any other company that may be or become DigiFarm's or the Financial Partner's subsidiary or holding company for reasonable commercial purposes relating to the Services;
  - 17.5.3 to a Credit Reference Bureau;
  - 17.5.4 to DigiFarm's or the Financial Partner's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
  - 17.5.5 to the MSP in connection with the Mobile Money Service and the Services;
  - 17.5.6 for reasonable commercial purposes connected to your use of the Services, such as

marketing and research related activities;

- 17.5.7 in business practices including but not limited to quality control, training and ensuring effective systems operation;
- 17.6 You agree that DigiFarm and/or Financial Partner may disclose details relating to your Loan Account or any details of your use of the Services or your credit facility account to any third party including credit reference bureaus, if in DigiFarm's and/or Financial Partner opinion such disclosure is necessary for the purposes of evaluating your creditworthiness or any transaction with or credit application made to DigiFarm or such third party, maintaining your Loan Account with DigiFarm or for any other lawful purpose.
- 17.7 You agree that DigiFarm and/or Financial Partner may disclose details relating to your Loan Account or any details of your use of the Services or any other credit facility account including details of your default in servicing financial obligations on your Loan Account or any other credit facility account to any third party including credit reference bureaus for the purpose of evaluating your credit worthiness or for any other lawful purpose.

## **18 Farmer Declaration**

In connection with this application and/or maintaining the Loan Account or any other a credit facility with DigiFarm, you authorise DigiFarm and/or Financial Partner to carry out credit checks with or obtain your credit information from, a credit reference bureau. In the event of the account going into default, you consent to your name, transaction and default details being forwarded to a credit reference bureau for listing. You acknowledge that this information may be used by banking institutions and other credit grantors in assessing applications for credit by me, associated companies, and supplementary account holders and for occasional debt tracing and fraud prevention purposes.

## **19 Miscellaneous**

- 19.1 These Terms and Conditions (as may be amended from time to time) form a legally binding agreement binding on you and your personal representatives or successor.
- 19.2 This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person except that DigiFarm and the Financial Partner may assign or transfer their rights and liabilities hereunder at any time after giving you reasonable notice.
- 19.3 DigiFarm may vary or amend at any time and with reasonable notice to you these Terms and Conditions and the Transaction Fees. Any such variations or amendments may be published in posters or pamphlets available at DigiFarm's website and/or by any other means as determined by DigiFarm and any such variations and amendments shall take effect immediately upon publication.
- 19.4 No failure or delay by either yourself or DigiFarm or the Financial Partner 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.
- 19.5 The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 19.6 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.
- 19.7 Any addition or alteration to these Terms and Conditions may be made from time to time by DigiFarm by way notice has been given to you by way of publication as provided in subparagraph 18.3 and shall be binding upon you as fully as if the same were contained in these Terms and Conditions.

## **20 Notices**

- 20.1 DigiFarm may send information concerning the Services or the Loan Account via SMS to the Mobile Phone number associated with your Mobile Money Account.
- 20.2 You acknowledge that you have no claim against DigiFarm and/or the Financial Partner for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the Loan Account.

## **21 Dispute Resolution, Jurisdiction and Arbitration**

- 21.1 You may contact DigiFarm to report any disputes, claims or Loan Account discrepancies.
- 21.2 Any dispute arising out of or in connection with this Agreement that is not resolved by DigiFarm shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party to the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995 (as amended from time to time).
- 21.3 To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.
- 21.4 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

## **22 Intellectual Property**

You acknowledge that the intellectual property rights in DigiFarm (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that DigiFarm provides to you through DigiFarm App or USSD or otherwise are vested either in the DigiFarm or in other persons from whom DigiFarm 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 DigiFarm and associated documentation without the prior written consent of DigiFarm.

- I have read and accept these Terms and Conditions.
- I decline these Terms and Conditions Link (disconnect from USSD)

