

INVESTMENT PRODUCT
“MALI UNIT TRUST FUND”
Terms and Conditions

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1.0. THE AGREEMENT

- 1.1. This Agreement sets out the complete Terms and Conditions (afterwards these **Terms and Conditions**) which shall be applicable to the "MALI" Unit Trust Fund account (the "**Account**") opened by you (Customer) with M-PESA . The Terms and Conditions are also available at Safaricom's website located at <https://www.safaricom.co.ke/> (the "**Website**").
- 1.2. Any amendments or variations made pursuant to these Terms and Conditions shall thereto take effect on their date of publication or as otherwise provided in such amendment or variation and shall be posted on the Website.
- 1.3. These Terms and Conditions are subject to the, Incorporation Documents, the "**M-PESA Customer Terms and Conditions**" and any other terms and conditions for any Safaricom products and services that you may use in the course of using the Account.
- 1.4. In the event of any inconsistency between these Terms and Conditions and any other relevant terms and conditions, these Terms and Conditions shall apply.

2.0. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 2.1. Before opting to register for the Account and/or Service, you should carefully read and understand these terms and conditions as they govern the access, use and operation of the MALI Account.
- 2.2. If you do not agree with these terms and conditions, please click "**Decline**" on the MALI M-PESA Menu Opt-in Function.
- 2.3. You will be deemed to have read, understood and accepted these terms and conditions:
 - upon clicking on the "**Accept**" option on the MALI MPESA Menu Opt-in Function requesting you to confirm that you have read, understood and agreed to abide by these terms and conditions; and or
 - By using or continuing to use and operate the MALI MPESA Account and/or Service.
- 2.4. By opting into the MALI Account and/or Service, you agree to comply with and be bound by these terms and conditions as amended and revised from time to time and you affirm that these terms and conditions are without prejudice to any other rights that we may have in law or otherwise regarding your registration, access and use of the Account and/or Service.
- 2.5. We may from time to time vary or amend these terms and conditions and your continued access and use of the Service constitutes your acceptance to be bound by the terms of any such amendment or variation.

3.0. DEFINITIONS AND INTERPRETATION

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

"MALI Account" means a unit trust Account held by a Customer in the Fund and which is opened and operated by Genghis in accordance with the Incorporation Documents and the Terms and Conditions herein;

"Check balance" means a request or instruction received by Safaricom from you or purportedly from you through your mobile phone handset and MSISDN and made via the MPESA Application and upon which Safaricom is authorized to act. Purpose being to access information on amount invested and interest earned by the customer in the MALI Account.

"Customer" means an M-PESA subscriber operating an "M-PESA MALI Account" also referred to as an Investor;

"Custodian" means a bank appointed by the Trustee to offer custodial services to the Fund for this purpose being SBM Bank(Kenya) Custodian Services.

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

"Fund" means the MALI Unit Trust Fund

"Intellectual Property Rights" means any rights in any trade name, trademark or other intellectual property rights used by Safaricom or licensed to Safaricom and/or Genghis;

"Incorporation Documents" means the MALI Unit Trust Supplemental Trust Deed, the applicable Information Memorandum and the M-PESA terms and conditions.

"IPRS" means the Integrated Population Registration System operated by the Government of the Republic of Kenya;

"Investment"- This is the amount the customer deposits or transfers into their Mali account which shall be utilized for investment;

"Genghis" means Genghis Capital Limited, a limited liability company incorporated under the Companies Act and duly licensed as an investment bank by the Capital Markets Authority to provide fund management & Administration services also known as a Fund Manager or Administrator;

"M-PESA" means the money transfer and payments service provided by Safaricom through the M-PESA System;

"M-PESA Account" means a record maintained by Safaricom regarding the amount of electronic money from time to time held by the Customer with Safaricom that is represented by an equivalent amount of cash held by the MPESA Trustee on trust in accordance with the M-PESA Declaration of Trust and the M-PESA Customer Terms and Conditions;

“**M-PESA PIN**” means the personal identification number that uniquely identifies a subscriber for purpose of use of the M-PESA Service. The preferred PIN is confidential to you and should not be disclosed to any other person;

“**M-PESA Subscriber**” means any person registered to use the M-PESA System to send or receive money or make payments;

“**M-PESA System**” means the system operated by Safaricom in Kenya for the provision of the M-PESA Service using the Network;

“**MSISDN**” means the unique Mobile Subscriber Integrated Service Digital Network Number issued to a Safaricom subscriber and is used to identify the subscriber on Safaricom's Network;

“**Network**” means Safaricom's mobile cellular network;

“**Pay Bill**” means a pay bill account maintained by Safaricom for purposes of receiving payments made to it by a Customer for investment purposes;

“**Top –up**” means that the customer is adding funds to an already existing active account.

“**Trust Deed**” means the Fund's constitutional and primary governance document herein being the umbrella trust deed dated 1 December 2012 as supplemented by the MALI Unit Trust Fund Trust **Deed dated** _____ and as may be amended from time to time.

“**Unit**” means one undivided unit in the MALI portfolio.

“**Withdrawal**” means a request or instruction received by Safaricom from you or purportedly from you through your mobile phone handset and MSISDN and made via the MPESA Application and upon which Safaricom is authorized to act. Purpose being to access some or all of the funds in the account through redemption of your units held in the Fund;

“**Opt in**” means the confirmation from the Customer indicating that they are accepting the terms and conditions of the Service and that they are willing to use the Service.

“**Opt out**” means the confirmation from the Customer indicating that they wish to either not take up the Service or no longer use the Service.

“**Safaricom**” means Safaricom PLC, a duly licensed converged telecommunications service provider incorporated in Kenya as a limited liability company under the Companies Act (No. 17 of 2015);

“**Safaricom App or My Safaricom App**” means the software application upon which the service is offered;

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

“**System Menu**” means Genghis' electronic investment and communication software enabling the Customer communicate with Genghis for purposes of issuing instructions

and/or Requests and will for the purpose of this Service be accessed through the M-pesa System;

"Trustee" refers to KCB Bank (Kenya) Limited;

- 3.2. **"We"** **"our"** and **"us"** or its variants means Safaricom and includes the successors and assigns of Safaricom;
- 3.3. **"You"** and **"your"** or its variants means the Customer and includes the successors and assigns of the Customer;
- 3.4. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 3.5. Headings in these Terms and Conditions are for convenience purposes only and they do not affect the interpretation of this Agreement.

4.0. INVESTMENT TERMS & CONDITIONS

- 4.1. Units are traded at the daily ruling price and will be repurchased by the fund administrator, Genghis, in accordance with the Capital Markets (Collective Investment Schemes) Regulations, 2001 and on terms and conditions set out in the Trust Deed.
- 4.2. Completed application must be received for the Investment to be executed. This will be received electronically by selecting the Opt in option on the System Menu.
- 4.3. Subscriptions monies in cleared funds (collection account) received will be dealt with on the next dealing day.
- 4.4. The investor applies to invest in the MALI Account in accordance to the provisions of the Trust Deed at the net asset value (NAV) at the close of business on the date of receipt of the money by the Custodian, or receipt of this application, whichever is later. If received after 11.00am, the following day's interest will be used to calculate value of the respective unit trust product(s).
- 4.5. The Investor shall at all times be responsible for any instructions sent to Safaricom or Genghis whether by USSD and shall ensure that any such instructions are complete and correct in all respects.
- 4.6. The Investor acknowledges the inherent risk associated with the selected investment products. The Investor furthermore agrees that Safaricom and Genghis will not be liable for the consequences of market influences and consequent changes in interest rates. The Investor bears the complete investment risk. Neither Safaricom, Genghis nor the Fund will be responsible for any loss, consequential or otherwise, arising from changes in tax or other legislation that may have an effect on the investment returns of the Fund.

- 4.7. The Investor is entitled to any information the law requires a collective investment scheme provider to disclose. Safaricom is obliged to obtain and transmit such information if the investor requests it.
- 4.8. Once an account has been opened, a statement of investment will be sent to the Investor upon investment and subsequently on a monthly basis via email. Copies of statements are available to Investor on request from the MALI Mpesa Menu or the Safaricom App. The customer will also be able to query account status on phone.
- 4.9. Genghis and Safaricom reserves the right to withhold processing of any unclear, incomplete or ambiguous instruction forwarded by the investor.
- 4.10. Neither Safaricom, Genghis nor the Fund will be liable for any loss incurred due to incorrect information being supplied by the Investor.

5.0. OPENING THE MALI ACCOUNT

- 5.1. By opting in, you confirm that you are least eighteen (18) years old and a registered and active M-PESA Subscriber for at least three (3) months immediately preceding the date of your application to open a MALI M-PESA account. Genghis reserves the right to verify with Safaricom the authenticity and status of your M-PESA Account and transactions and may decline your application if we are not satisfied that you have met these minimum requirements.
- 5.2. You hereby agree and authorize Genghis to request Safaricom for your personal information held by them in respect of provision of Safaricom products and services such as the M-PESA Service. Such personal information includes but is not restricted to your phone number, name, date of birth, ID or Passport Number and such other information that will enable us to identify you and comply with the regulatory "know your customer" requirements (together the "Personal Information"). You also hereby agree and authorize Genghis to request Safaricom for/Safaricom to use information relating to your use of the M-PESA service, M-PESA System and other Safaricom products as we shall require for purposes of delivering the Services ("M-PESA Information"). You hereby consent to the use of and/or disclosure of the Personal Information and the M-PESA Information by Safaricom to Genghis and for us to use and or disclose such Personal Information to deliver the Service.
- 5.3. You may opt in solely by way of an electronic application made by you using your Equipment via the USSD, System Menu and Safaricom App.
- 5.4. You hereby agree and authorize us to obtain and procure your Personal Information contained in the IPRS from the Government of Kenya and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to us.

- 5.5. You hereby further acknowledge and authorize us to verify your Personal Information received from Safaricom against the information received from the Government of Kenya in your respect as contained in the IPRS.
- 5.6. We reserve the right to request further information from you pertaining to your application to register for the Service at any time. Failure to provide such information within the time we require may result in a decline of your application to register for the Service.
- 5.7. Our acceptance or decline of your application to register for the Service shall be communicated through an SMS sent to your Safaricom mobile phone number (MSISDN) and or Equipment. You acknowledge and accept that our acceptance of your application to register for the Service does not create any contractual relationship between you and Safaricom and/or Genghis beyond the terms and conditions that apply to your M- PESA Account and the Service from time to time.
- 5.8. We reserve the right to decline your application to open a MALLI Account or, subject to 30 days' notice or such other notice as may be required by law, to revoke your registration at any stage at our sole discretion and without assigning any reason or, where not prohibited by law, without giving any notice thereto.
- 5.9. You represent and warrant that none of the cash and other assets forming the Account have been derived directly or indirectly from any act or omission that may constitute an offence or as a result of or in connection with any criminal conduct under the Proceeds of Crime and Anti-money Laundering Act No. 9 of 2009 or any other written law;

6.0. YOUR REQUESTS

- 6.1. You hereby irrevocably authorize us and/or Genghis to act on all Requests received by us using your PIN and to hold you liable in respect thereof. We may nevertheless refuse to carry out any requests beyond the scope of the Service as offered from time to time.
- 6.2. Safaricom and/or Genghis shall be deemed to have acted properly and to have fully performed all our obligations upon our compliance with the Request. We may ask for further information or confirmation (whether written or otherwise) from you before complying with a Request but shall not be obliged to comply with a Request in the absence of such further information or confirmation.
- 6.3. We shall decline any Request if you have insufficient M-PESA balance. In deciding whether you have sufficient funds we shall, in liaison with Safaricom, take account of any outstanding Facilities, fees, charges, penalties and any other amounts due on your M-PESA in accordance with these terms and conditions or the terms and Conditions relating to the M-PESA Service.

- 6.4. You can only cancel a Request by calling the Safaricom Customer Care Centre and Requesting cancellation. Cancellation will however only be allowed where your Request is revocable and has not yet been acted on. If the Fund Manager is able to cancel your instruction you may be charged for such cancellation.
- 6.5. You accept and agree that, in relation to the Service, these terms and conditions shall prevail in the event of any conflict with any other agreement relating to your investment, M-PESA Account or any other agreement you may conclude with us or any other person relating to or impacting the Service, or these terms and conditions.

7.0. CUSTOMER COMPLAINTS

Complaints may be made in person in writing, by post, fax, e-mail or by telephone. Genghis will take all measures to resolve all complaints in a fair, appropriate and timely manner. All complaints will be handled in accordance with Genghis' complaint handling procedures and The Capital Markets (Conduct of Market Business(Market Intermediaries) Regulations, 2017.

8.0. FEES, CHARGES AND EXPENSES

- 8.1. All third party costs associated with the administration of the Fund will be charged to the Fund. This will include but not limited to the fund management fees, Custodian and Trustee Fees, marketing and fund administration fees.
- 8.2. These costs are as set out below (and may be amended from time to time in accordance with the Trust Deed:
 - 8.2.1. Fund Manager's Fees - 2.0% per annum;
 - 8.2.2. Trustee Fees - 0.20% per annum; and
 - 8.2.3. Custodial Fees - 0.15% per annum subject to a minimum fee of KES 10,000/= per month.

9.0. YOUR PERSONAL INFORMATION

- 9.1. You hereby expressly consent and authorize us to disclose receive record or utilize your personal information or information or data relating to your account and any details of your use of the Services:
 - I. to and from our service providers, dealers, agents or any other company that may be or become the our affiliate or subsidiary or holding company for reasonable commercial purposes relating to the Services;
 - II. to the Capital Markets Authority;
 - III. to our lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;

- IV. to Safaricom in connection with the M-PESA Service and the Services;
 - V. for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and
 - VI. in business practices including but not limited to quality control, training and ensuring effective systems operation.
- 9.2. You authorize us to disclose any information relating to your investment account to any local, foreign or international law enforcement or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as we may deem necessary.
- 9.3. You authorize us to disclose, respond, advise exchange and communicate the details or information pertaining to your investment account to third parties involved in the administration of your investment account, underwriting of insurance policies, updating of databases, or provision of user support.
- 9.4. You shall notify your nearest Safaricom shop in writing of any changes to your Personal Information or update the same through the Equipment on your USSD or Safaricom App including but not restricted to your name and address. Until such notice is received, your Personal Information shall be deemed to be that which you provided in your application to register for the Service.

10.0. YOUR EQUIPMENT AND RESPONSIBILITIES

- 10.1. You shall at your own expense provide and maintain in safe and efficient operating order such Equipment necessary for the purpose of accessing the Services.
- 10.2. You shall be responsible for ensuring the proper performance of your Equipment. We shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall we be responsible for any computer virus or related problems that may be associated with your access and use of the Services and Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and we shall not be responsible for losses or delays caused by any such service provider.
- 10.3. You shall follow all instructions, procedures and these terms and conditions and any other documents we may provide you concerning access and use of the Services and Equipment.
- 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. We shall not be liable for any disclosure of your PIN to any third party and you hereby agree

to indemnify and hold us harmless from any loss and damage we may incur as a result of your intentional, negligent or reckless disclosure of the PIN.

10.5. You shall take all reasonable precautions to detect any unauthorized use of your Equipment, PIN and or the Services and immediately notify us and Safaricom to enable us to take steps to protect your investment account and M-PESA Account respectively.

10.6. You shall immediately inform us through the Customer Care Centre in the event that:

- I. 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; or
- II. You have reason to believe that unauthorized use of the Service 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 we notify you 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 responsibility to keep Personal Information confidential. 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 by you.

11.0. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that the intellectual property rights in the Service (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that we provide to you are vested in Genghis or Safaricom pursuant to the contractual agreements between Genghis and Safaricom or in other persons from whom Genghis and/or Safaricom has given a right to use and to sub-license. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with any documentation or functionality on the Equipment, USSD, STK Menu or Safaricom App without ours and Safaricom's prior written consent.

12.0. VARIATION AND TERMINATION OF RELATIONSHIP

12.1. We may at any time, upon notice to you, terminate or vary our business relationship with you and suspend or discontinue your Account and or access to the Service:

- I. if you use the Service for unauthorized purposes or where we detect any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
- II. if your M-PESA Account or agreement with Safaricom is terminated for whatever reason;

- III. if we are required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority to that effect or necessitating it;
- IV. if Safaricom and/or Genghis reasonably suspects or believes that you are in breach of these terms and conditions;
- V. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of your safety or public access fees;
- VI. to facilitate update or upgrade the contents or functionality of the Services from time to time;
- VII. where your M-PESA Account becomes inactive or dormant or is deemed abandoned in line with the Unclaimed Financial Assets Act;
- VIII. if we decide to suspend or cease provision of the Services for commercial reasons or for any other reason as we may determine.

12.2. Termination shall not affect any accrued rights and liabilities of either party and, in particular, shall not affect your obligations to meet any liabilities incurred prior to such termination or interest earned from your Investment.

13.0. REDEMPTION OF UNITS

- 13.1. You may apply for redemption of your units, in whole or in part, through your Equipment, in accordance with the applicable terms of the Trust Deed.
- 13.2. Redemption – Upon successfully redeeming your units and receiving your Investment (and any interest thereon) receipt of which shall be effected within a maximum of 72 hours the Customer shall cease to be a Unit Holder to the extent of the Units redeemed.
- 13.3. Your right to redeem units may be suspended in certain exceptional circumstances with the Trustee's consent and in accordance with the Trust Deed and the Capital Markets (Collective Investment Schemes Regulations 2001 (as may be amended from time to time)).

14.0. BREACH OF TERMS AND CONDITIONS

In the event of any breach of these terms and conditions, we may in circumstances where you fail to comply or fail procure compliance with the terms of a notice consequently served on you, require immediate redemption in full of your Investment (and any interest thereon) and/or forthwith terminate the contractual relationship with you without any consequential liability to you or any other person.

15.0. DISPUTE RESOLUTION, JURISDICTION AND ARBITRATION

- 15.1. You may contact the Safaricom Customer Care Center or account manager with Genghis (if any) to report any disputes, claims or discrepancies in your Investment account.

Our customer care representatives shall handle the report in accordance with our standard complaint handling procedures ("the **Complaints Procedure**").

- 15.2. Any dispute arising out of or in connection with this Agreement that is not resolved through the Complaints Procedure within thirty (30) days shall be referred to arbitration by a single arbitrator chosen by mutual agreement of the parties. In default of agreement, or failing such agreement, the dispute shall be referred to single arbitrator appointed by the Capital Markets Authority (being a licenced Fund Manager under the Capital Markets Act (CAP 485 A) of not less than 10 years standing in practice. Such arbitration shall be conducted in the English language in Nairobi in accordance with the provisions of the Arbitration Act.
- 15.3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.
- 15.4. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

16.0. DEATH OR BANKRUPTCY

On your death or bankruptcy, your obligations shall remain in full force and effect until such a time as they shall be duly satisfied in the manner prescribed by law. Any Investments, held in your Account shall be dealt with in accordance with the applicable law.

17.0. NOTICES

Without prejudice to any other clause in these terms and conditions, all notices concerning the Service shall be sent via SMS to the Safaricom mobile phone number (MSISDN) associated with your M-PESA Account and shall be deemed received if we do not receive a delivery failure notice.

18.0. MISCELLANEOUS

- 18.1. These terms and conditions (as may be amended from time to time) form a legally binding agreement binding on you and your personal representatives and successors.
- 18.2. This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.
- 18.3. We may vary or amend these terms and conditions and tariffs at any time and without notice to you. You will be notified of any such variations or amendments within 30 days in advance of their intended commencement date and such notice and particulars of the variations including the amended version of these terms and conditions shall be published on the fund manager's and Safaricom websites and may, additionally, be published in posters or pamphlets and availed at Safaricom's Agents outlets, fund manager's or in the daily newspapers or by any other means as we may determine.

- 18.4. No failure or delay by either yourself or on our part 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.
- 18.5. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 18.6. 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.
- 18.7. Any variations or amendments to these terms and conditions shall be binding upon you as fully as if the same were contained in these terms and conditions.
- 18.8. Your contractual relationship with the fund manager is governed in all respects by the Laws of Kenya and the parties submit to the exclusive jurisdiction of the Kenya courts.

19.0. DISCLAIMER

- 19.1. Past performance is no indication of future results and that investing in a unit trust scheme constitutes a risk for your invested capital. This document does not constitute a distribution recommending the purchase or sale of any security or portfolio.
- 19.2. Please be advised that the investment product Information Memorandum contains all information necessary to evaluate the product and should be read before investing. We recommend that you consult your own independent financial advisor to obtain professional advice before exercising any decisions based on the information present in this document.



Information
Memorandum- Mali FRules- Mali Fund.docx



Trust Deed and