



TERMS AND CONDITIONS FOR THE MKOPO WA POCHI PRODUCT

1. Scope

- 1.1. This Agreement sets out the complete terms and conditions between you, Pezesh Africa Limited ("**Pezesh**") and Safaricom Plc ("**Safaricom**") for the Mkopo Wa Pochi Product (the "**Product**") and shall be binding on your personal representatives and permitted assignees, if any. We reserve the right to change the name of the product from time to time, provided that such change of the product name shall not affect the accrued rights and obligations of the parties as at the date of the change.
- 1.2. Mkopo Wa Pochi is a loan product for Pochi La Biashara Customers.
- 1.3. These terms and conditions and any amendments or variations thereto shall take effect on their date of publication.
- 1.4. These Terms are supplemental to the M-PESA Terms and Conditions, the Lipa na M-PESA Terms and Conditions and the Terms and Conditions applicable to the Pochi La Biashara product (together called the "**M-PESA Terms and Conditions**"). In the event of any inconsistency between these Terms and Conditions and the M-PESA Terms and Conditions or any other relevant Terms and Conditions with respect to the Product, these Terms and Conditions shall prevail.
- 1.5. Notwithstanding anything to the contrary implied in these Terms and Conditions, the Customer acknowledges that the loans advanced under the Product shall be advanced and administered by Pezesh and/or lenders through the M-PESA Channels. Accordingly, Safaricom excludes all liability from all losses, claims and damages (including legal fees and associated expenses) that may arise in connection with the loan product in so far as such liability is on account of a lender borrower relationship.

2. DEFINITIONS

In this Agreement, the following words and expressions (save where the context requires otherwise) bear the following meanings:

- 2.1. "**Access Channels**" means the gateway provided by Safaricom to the Customers to access their M-PESA Account and the loan product through either, USSD, STK or APP.
- 2.2. "**Account**" means an account held in your name with Pezesh and which is opened and operated in accordance with the terms and conditions herein contained.
- 2.3. "**Agreement**" means the agreement entered between us and you whose terms are the Terms and Conditions set out herein.
- 2.4. "**Applicable Interest Rate**" means the Rate of Interest chargeable on the loan, it being acknowledged that the interest chargeable shall be 1.09% for 7 days applied once on the loan such that whether the loan is repaid on the 1st day or the last date of the repayment period, the total amount repayable shall be the same, that is the principal together with interest on the principal.
- 2.5. "**Borrower**" or "**Customer**" means an eligible Pochi La Biashara Customer who borrows a loan under these Terms and Conditions, it being acknowledged that we shall determine in our sole discretion the eligibility requirements.
- 2.6. "**Customer Care Centre**" means a customer care Centre designated for the Product in accordance with these terms and conditions.
- 2.7. "**Credit Reference Bureau**" means a Credit Reference Bureau duly licensed under the laws of the Republic of Kenya, as amended from time to time, to *inter alia*, collect and facilitate the sharing of customer credit information.
- 2.8. "**Equipment**" includes your mobile phone handset, device, M-PESA enabled SIM Card and/or other equipment which when used together enables you to access the Network and credit from Pezesh under these Terms.



- 2.9. **"IPRS"** means the Integrated Population Registration System set up and maintained by the Government of Kenya under the Ministry of State for Immigration and Registration of Persons.
- 2.10. **"Loan Account"** means a loan account opened with Pezesh using the Access Channels under these Terms and Conditions.
- 2.11. **"M-PESA" or "M-PESA Service"** means the money transfer and payment service that is managed and operated exclusively by Safaricom in Kenya and licensed by the Central Bank of Kenya.
- 2.12. **"M-PESA Account"** means a record maintained by Safaricom corresponding with the amount of electronic money from time to time held by or transacted by M-PESA Subscribers and represented by an equivalent amount of cash held by the Trustee in trust in accordance with the M-PESA Declaration of Trust and the M-PESA Customer Terms and Conditions.
- 2.13. **"M-PESA System"** means the technical platform for the time being providing the M-PESA Service.
- 2.14. **"Opt-in Function"** means the proprietary menu option developed by Safaricom that enables Customers to apply to register for the Product.
- 2.15. **"Opt-out Function"** means the proprietary menu option developed by Safaricom that enables M-PESA Subscribers to opt out of the Product.
- 2.16. **"Pezesh"** means Pezesh Africa Limited, a limited liability company incorporated under the Companies Act 2015 in the Republic of Kenya.
- 2.17. **"Pochi Customer"** means an M-PESA customer who has signed up for the Pochi La Biashara Product.
- 2.18. **"PIN"** means your personal identification number being the secret code used to access and operate your Equipment on the M-PESA System including but not restricted to access and use of the Product.
- 2.19. **"Request"** means a request or instruction received by us from you or purportedly from you through the Network and the System and upon which we are authorized to act.
- 2.20. **"Safaricom"** means Safaricom PLC, a limited liability Company incorporated under the Laws of Kenya within the Republic of Kenya having its registered office at Safaricom House, off Waiyaki Way, P.O. Box 66827, 00800 Nairobi.
- 2.21. **"Repayment"** means the paying back of an advanced loan, including the principal loan borrowed, applicable interest and any other fees.
- 2.22. **"System"** means the system used by us in enabling the operation of the Product, including the disbursement of loans and acceptance of loan repayments.
- 2.23. **"Trustee"** means M-PESA Holding Company Limited, being the person designated as the custodial trustee of customer funds represented on the M-PESA System or such other trustee(s) as may be appointed from time to time for purposes of holding and safeguarding trust funds represented on the M-PESA system.
- 2.24. **"We," "our," and "us,"** means Pezesh and includes the successors and assigns of Pezesh provided that where the context requires, such term may be construed to mean Pezesh and/or Safaricom.
- 2.25. **"You" or "your"** means the Pochi Customer who signs up for the Product.

3. ACCEPTANCE

- 3.1. Before opting-in or registering for the Product, you should carefully read and understand these terms and conditions. These Terms and Conditions are available on the respective websites of Safaricom and Pezesh at www.safaricom.co.ke and <https://pezesh.com/>. Where you are unable to read and understand these terms and conditions from an electronic device you are requested to collect a printed version from a Safaricom shop.



- 3.2. If you do not agree with these terms and conditions, please click "**Decline**" on the Opt-in Function. At any point after registering for the Product, you may opt out of the Product using the Opt-Out Function, subject to having cleared all outstanding loans and any applicable interest, fees and other charges.
- 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 Opt-in page requesting you to confirm that you have read, understood and agreed to abide by these terms and conditions; and or
 - 3.3.2. by using or continuing to use and requesting for the Product.
- 3.4. The rights and remedies provided in these Terms and Conditions are without prejudice to any other rights and remedies that we may have in law or otherwise regarding your registration, access and use of the Product.
- 3.5. We may from time to time vary or amend these terms and conditions and your continued access and use of the Product constitutes your acceptance to be bound by the terms of any such amendment or variation.
- 3.6. Any addition or alteration to this Agreement may be made from time to time by Pezesha and of which notice of 15 days shall be given to you by way of publication. Upon such addition, variation or modification, the amended Agreement shall be binding upon you as fully as if the same were contained in this Agreement.
- 3.7. It is your responsibility to review the terms of this Agreement regularly and to ensure that you understand any amendments made to them.
- 3.8. You are solely responsible for seeking independent legal advice on the legal consequences of entering this Agreement. You understand and accept that the cost of obtaining legal advice is to be borne by you and not Pezesha.
- 3.9. If you have any questions or inquiries in relation to this Agreement, please contact Pezesha's customer care desk at help@pezesha.com

4. PERSONAL INFORMATION

- 4.1. We are committed to respecting and protecting the privacy of the information we collect from you. Our privacy statement, as updated from time to time, explains how we treat your Personal Information, who we share your information with, and measures taken protect your privacy when you use the Product. This can be found on Safaricom's Data Privacy Statement <https://www.safaricom.co.ke/dataprivacystatement/> and on the Pezesha website. If unable to access the link or the website, please reach us on any of our customer care channels to receive a copy.
- 4.2. You consent to the disclosure of personal information as enumerated hereunder by Safaricom to Pezesha for the purpose of building a loan profile on your behalf on the Pezesha platform. Your obtained personal information will include:
 - 4.2.1. Your full name;
 - 4.2.2. Passport/National ID number; and
 - 4.2.3. Your mobile telephone number.
- 4.3. You authorize Pezesha to verify the information you have provided on your identity through any source which Pezesha may in its sole discretion decide to use.
- 4.4. You hereby authorize Pezesha to verify the information you have provided on your identity when opening your Account by obtaining and procuring your personal information contained in the IPRS and you further agree and consent to the disclosure and provision of such personal information by the Government of Kenya to Pezesha.
- 4.5. You hereby irrevocably authorize Pezesha to obtain your credit information from a Credit Reference Bureau.



- 4.6. You understand and agree that Pezesha reserves the right to make periodic checks during the tenor of this Agreement to establish your most current credit information.
- 4.7. You hereby irrevocably authorize Pezesha and Safaricom to disclose, receive, record or utilize any or all your personal information or information or data relating to your Loan Account and any details of your use of the Product:
 - 4.7.1. 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;
 - 4.7.2. to and from their service providers, dealers, agents or any other company that may be or become the their subsidiary or holding company for reasonable commercial purposes relating to the Product;
 - 4.7.3. for reasonable commercial purposes connected to your use of the Product, such as marketing and research related activities;
 - 4.7.4. in business practices including but not limited to quality control, training and ensuring effective systems operation; and
 - 4.7.5. for any other lawful commercial purpose.

5. LOAN APPLICATION

- 5.1. A Loan Account is opened with Pezesha once you sign up using the Opt-In Function on the Access Channels upon accepting these Terms and Conditions.
- 5.2. You hereby grant Pezesha the authority to access your personal information and business transaction data that is held by Safaricom in order for Pezesha to undertake your KYC checks and credit scoring to determine how much credit you qualify for (the "**Credit Limit**").
- 5.3. The Credit Limit and the Applicable Rate of Interest will be determined by Pezesha in its sole discretion.
- 5.4. In making its determination, Pezesha may make a credit assessment after considering information from various sources, including but not limited to, your business transaction history with Safaricom, your mobile money account transaction history, your credit information from the Credit Reference Bureau, your history of use of the Product and prevailing market conditions.
- 5.5. Upon making the determination, you will be assigned a Credit Limit and will be notified of the same together with the terms and conditions applicable to any borrowings within the Credit Limit.
- 5.6. Notwithstanding anything that is contained in this clause, Pezesha retains the right to approve or reject your loan application without assigning any reason.
- 5.7. All loans to be advanced will be charged an access fee of 2.76% of the principal amount to be disbursed to you.
- 5.8. Loans advanced shall be subject to a tenor of seven (7) days and a maximum rollover period of seven (14) days, during which a roll over fee equivalent to 3.85% for the fourteen (14) days shall be charged. You may only roll over the loan once.
- 5.9. You shall be liable to pay a penalty for default at the rate of 1% per day for a period of 7 days.

6. AUTHORIZATIONS



- 6.1. You understand and agree that Pezesh reserves the right to vary the terms of your loan including, but not limited to, the repayment period, collection method and interest payable based on, but not limited to, your most current credit information.
- 6.2. You acknowledge that we may effect an automatic deduction from your Pochi La Biashara account in order to offset any amounts owing to Pezesh under these Terms and Conditions.
- 6.3. You acknowledge that Pezesh may institute recovery proceedings against you in case of a default, and irrevocably authorize Pezesh to commence debt collection proceedings against you in a court of law.
- 6.4. In case of default, you also irrevocably authorize Pezesh to also send your name to an external debt collection agency or institute court proceedings to make good the amount owing to them at your cost in relation to your loan with Pezesh. You further authorize Pezesh to send your name and details to a licensed Credit Reference Bureau where you are in default in line with the law.

7. LOAN REPAYMENT

- 7.1. You shall repay the loans advanced under these Terms and Conditions together with any interest, fees and charges, through the Access Channels.
- 7.2. You understand and accept that the Applicable Interest on the loan shall be applied once during the term of the loan.
- 7.3. You can repay your loan either by installments or by making a single lump sum payment within the agreed duration of the loan from the date the loan proceeds are credited to your M-PESA Account.
- 7.4. You will make your repayments solely using the Access Channels provided that in the event that the Access Channels are for whatever reason unavailable, you will make your repayments into the Pezesh paybill of 898927 or such account as Pezesh may notify you from time to time.
- 7.5. For the avoidance of doubt, loan repayments will be deemed to have been made upon an amount equivalent to the outstanding loan being debited from your M-PESA.
- 7.6. You will repay the loan without any set off or counterclaim and, free and clear of and without any deduction or withholding whatsoever.
- 7.7. On each date when the payment of any principal, interest or fees are due under any Agreement between yourself and Pezesh, you hereby authorize Safaricom to deduct automatically all principal, interest or fees when due hereunder from the funds held in the Pochi wallet or such wallet as we may notify you from time to time.

8. DEFAULT

- 8.1. The following events occurring will be held as an "**Event of Default**":
 - 8.1.1. if you fail to make any payment when due under this Agreement which is not remedied by the first day after you receive a notice of the failure via any communication made by Pezesh;
 - 1.1.1. if you are adjudged bankrupt by a court of competent jurisdiction in Kenya or any other jurisdiction;
 - 1.1.2. if you make a composition with your creditors arising from your inability to pay your debts;
 - 1.1.3. if you suffer any event which, under the laws of any jurisdiction, has the same effect as any of the above events; or
 - 8.1.2. if you take any action towards any of the above events.
- 8.2. Upon your default Pezesh will be entitled to:



- 8.2.1. demand immediate repayment of all outstanding amounts due to Pezesha within a period of Pezesha's choosing;
- 8.2.2. collaborate with Safaricom to follow-up with you for the amounts due to us;
- 8.2.3. deny you further loans and/or access to Pezesha's services;
- 8.2.4. send information regarding the loan and your default to a Credit Reference Bureau; and/or
- 8.2.5. pursue any means of debt recovery available at law and any other measures Pezesha may in its sole discretion decide to take.

9. YOUR REQUESTS

- 9.1. You hereby irrevocably authorize Pezesha to act on all Requests received by Pezesha from you through the M-PESA System and to hold you liable in respect thereof, notwithstanding that any such Requests are not authorized by you.
- 9.2. Pezesha 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, Pezesha determines that the incomplete or ambiguous information is immaterial to its action on the Request.
- 9.3. If you Request Pezesha to cancel any transaction or instruction after a Request has been received by Pezesha from you, Pezesha may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
- 9.4. Pezesha shall be deemed to have acted properly and to have fully performed all the obligations owed to you notwithstanding that the Request may have been initiated, sent or otherwise communicated in error or fraudulently, and you shall be bound by any Requests on which Pezesha may act if Pezesha has in good faith acted in the belief that such instructions have been sent by you.
- 9.5. You agree to and shall release from and indemnify Pezesha and Safaricom against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to Pezesha having acted in accordance with the whole or any part of any of your Requests (or failed to exercise) the discretion conferred upon it.
- 9.6. You acknowledge that to the full extent permitted by law, Pezesha shall not be liable for any unauthorized drawing, transfer, remittance, disclosure, any activity or any incident on your account by the fact of the knowledge and/or use or manipulation of your M-PESA Account login credentials or any means whether or not occasioned by your negligence.
- 9.7. You accept and understand that Pezesha is authorized to effect such orders in respect of your Account as may be required by any court order or competent authority or agency under the applicable laws.
- 9.8. In the event of any conflict between any terms in this agreement and any Request received by Pezesha from you and the terms of this Agreement shall prevail.

10. YOUR RESPONSIBILITIES

- 10.1. You shall follow all instructions, procedures and terms contained in this Agreement and any document provided by Pezesha or Safaricom concerning the use of the M-PESA System and the Product.
- 10.2. You shall take all reasonable efforts to ensure that the correct and agreed upon loan amount has been disbursed. Where there is disparity between the requested amount and the disbursed amount, you shall immediately and in any case not less than Twenty-Four (24) hours from the time of disbursement contact Safaricom and Pezesha for correction of the discrepancy failing which, the amounts shall be treated as correctly disbursed.



10.3. You shall take all reasonable efforts to ensure loan repayments are successfully paid. Where any doubt arises, you shall immediately contact Safaricom or Pezesh for clarification, and/or reversal of any adverse payments made to a wrong business account.

10.4. You undertake to make good your repayments within the stipulated time and within the contract terms.

11. INDEMNITY

11.1. In consideration of Pezesh and Safaricom complying with your instructions or Requests in relation to your Account, you undertake to indemnify Pezesh and Safaricom and hold us harmless against any loss, charge, damage, expense, fee or claim which Pezesh or Safaricom suffers or incurs or sustains thereby and you absolve Pezesh and Safaricom from all liability for loss or damage which you may sustain from Pezesh and/or Safaricom acting on your instructions or requests or in accordance with this Agreement.

11.2. The indemnity in clause 11.1 shall also cover the following:

- 11.2.1. all demands, claims, actions, losses and damages of whatever nature which may be brought against or which we may suffer or incur arising from 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, act of God, pandemic, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond our 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 us;
- 11.2.2. 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;
- 11.2.3. any unauthorized access to your M-PESA 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;
- 11.2.4. any loss or damage occasioned by the failure by you to adhere to this Agreement 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 as a consequence of any breach of this Agreement; and/or
- 11.2.5. any damages and costs payable by us in respect of any claims against us for recompense for loss where the particular circumstance is within your control.

12. INTELLECTUAL PROPERTY RIGHTS.

12.1. All copyright, trademarks, patents and other intellectual property rights in any material or content (including without limitation software, data, source code, applications, information, text, photographs, music, sound, videos, graphics, logos, symbols, artwork and other material or moving images) contained in or accessible via the M-PESA System ("**Intellectual Property**") is either owned by us or has been licensed to us by the rights owner(s) for use. You will not infringe any such intellectual property rights.

12.2. Having noted the foregoing, you shall not be entitled in respect of any Intellectual Property to change, edit, modify, reformat or adapt it in any way, sell, reproduce, display, distribute, or otherwise use the Intellectual Property in any way for any non-private, public or commercial purpose without our written consent.

12.3. If you violate any of the foregoing provisions, your permission to use the Intellectual Property automatically terminates and you must immediately destroy any copies you have of the Intellectual Property.

13. ASSIGNMENT, NOVATION AND OTHER DEALINGS

13.1. Either of Pezesh and Safaricom may assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without your prior written consent.



13.2. You may not assign or novate this Agreement without our consent.

14. NOTICES

14.1. Pezesh may send information concerning your Account through a phone call, via SMS to the mobile phone number or email address associated with your Account.

14.2. You accept that you have no claim against the Pezesh for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to mis-transmission of any communication pertaining to your Account.

15. DISPUTE RESOLUTION

15.1. You may channel any complaints you may have through the Safaricom Customer Care Centre or through the Pezesh help desk.

15.2. If any dispute arises between the Parties to this Agreement regarding any provision of this Agreement, or its application or termination, then we agree that we will attempt to resolve our dispute peaceably by means of joint co-operation or discussion between the parties directly involved in the dispute within five (5) days after notification of the dispute or such extended time period as we may agree to.

15.3. In the event that the Parties are unable to resolve the dispute, that dispute shall be referred to mediation by an advocate of more than 5 years post admission appointed by the parties jointly. The cost of the mediation will be borne equally by the parties.

15.4. If the parties shall not be able to settle the dispute through mediation, parties shall be at liberty to institute court proceedings.

16. GOVERNING LAW AND JURISDICTION

16.1. You agree that this Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

16.2. You agree to the exclusive jurisdiction of the courts of the Republic of Kenya in respect of disputes which may arise out of the Product and this Agreement.

17. MISCELLANEOUS

17.1. Our failure to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

17.2. If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality.

18. TERMINATION

18.1. We may at any time, upon notice to you, terminate this Agreement and close your Account.

18.2. Pezesh may at its sole discretion suspend or close your Account:

18.2.1. if you use the provided loan for unauthorised purposes or where Pezesh detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Product;

18.2.2. if your use of the provided loan in the opinion of Pezesh is in contravention with the law of Kenya and or illegal and not limited to money laundering activities;



- 18.2.3. if Pezesha is required or requested to comply with an order or instruction of or a recommendation from the government, court of competent jurisdiction, regulator or other competent authority;
 - 18.2.4. if Pezesha reasonably suspects or believes that you are in breach of the terms of this Agreement which you fail to remedy (if remediable) within the time given for you to respond to any notice sent to you requiring you to do so;
 - 18.2.5. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety; to facilitate update or upgrade the contents or functionality of the Product from time to time;
 - 18.2.6. where your Account becomes inactive or dormant for a period not exceeding six months; or
 - 18.2.7. if we decide to suspend or cease the provision of the Product for commercial reasons or for any other reason as it may determine in its absolute discretion.
- 18.3.** Termination shall however not affect any accrued rights and liabilities of either party.
- 18.4.** If Pezesha receives notice of your demise, Pezesha will not be obliged to allow any operation or withdrawal from your Account by any person except upon production of administration letters from a competent authority or a confirmed grant of letters of administration or a confirmed grant of probate by your legal representatives duly appointed by a court of competent jurisdiction.