

## TERMS AND CONDITIONS AND LOAN AGREEMENT

### WHEREAS

**THIS AGREEMENT** is a financial services and an end-user agreement between **you** and **Lipa Later Limited** a company duly registered under the Laws of Kenya of P.O. Box No. 43537-00100 Nairobi for the loan application in the prescribed manner via the Company's website lipalater.com or USSD.

The Lender has agreed, at the request of the Borrower, to advance credit facilities (the "**Loan**") for purposes of purchasing the consumer items to include but not limited to electronics and furniture.

The Borrower agrees to settle the any monies due in full according to these terms and Loan Agreement;

The Lender and the Borrower (individually, each a "Party" and collectively, the "Parties") have agreed to record their mutual understanding in the terms set out below.

These Terms and Conditions and any amendments or variations thereto take effect on their date of publication.

### IT IS AGREED AS FOLLOWS:

#### 1. DEFINITIONS AND INTERPRETATION

For the purposes of this Agreement and the Odyssey Capital Limited's credit facilities, unless the context requires otherwise:

The words "we", "us", "our" *its*" and "**the Lender**" refer to Odyssey Capital Ltd and include its successors and assigns.

The words "you" "your" "**end-user**" or "the Borrower" means the customer that enters into these terms and include the personal representatives of the customer.

"Account" means your loan account with Odyssey Capital Ltd.

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📍 Palm Breeze Apartments, Links Road Nyali, Mombasa, Kenya

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“*Credit Reference Bureau*” means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013, as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of customer credit information;

“*Event of Default*” is defined in Clause 9.

“*Handset*” means the mobile phone or tablet on which the Services are provided from time to time, including any replacement or upgraded mobile device covered by this Agreement.

“*Loan*” means the principal amount of the loan made or to be made by us to you Odyssey Capital Ltd from time to time or (as the context requires) the principal amount outstanding for the time being of that loan;

“*Mobile Network Operator*” means a mobile network operator in Kenya registered with the Communications Authority of Kenya;

“*Security Software*” is defined in Clause 10.

“*Services*” means the services provided by the Lender under this Agreement.

“*SIM Card*” means the subscriber identity module which was used with the appropriate Handset to enable the customer to access a Mobile Network and to use USSD to make a loan application;

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

“*Request*” means a request or instruction received by the Bank from you or purportedly from you through the Network and the System and upon which the Lender is authorized to act.

“*Unstructured Supplementary Service Data (USSD)*” means is the protocol used by the end user using a cellphone to communicate with the Lender’s computers while making a loan application.

## **2. OUR CREDIT FACILITIES**

The Services offered by Odyssey Capital Ltd are intended solely and can only be utilized by persons who are 18 years or older and are legally capable of entering into a legally binding contract. Any

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use of our Services by anyone who does not fit this criterion is unauthorized and in violation of these Terms.

Odyssey Capital Ltd reserves the right to decline your loan application or to revoke the same at any stage at our sole and absolute discretion and without assigning any reason or giving any notice thereto.

We reserve the right (in our sole and absolute discretion) to issue, decline to issue a loan and/or vary the terms of any loan depending on its assessment of the credit profile of each individual customer from time to time.

You agree to not use our Services to conduct any activity that would constitute a civil or criminal offence or violate any law. You agree not to attempt to interfere with the concord application or security features or to gain unauthorized access to our systems.

### **3. USE OF OUR USSD PLATFORM AND LIPA LATER WEBSITE FOR LOAN APPLICATION**

We allow you to apply for a loan through concord using your mobile phone, a computer, the internet or other electronic channels. Odyssey Capital Ltd will be entitled to assume that any loan agreements entered into through electronic channels have been authorized and entered into by you.

If you access and use the USSD application option, you will be deemed to have read, accept and agree to be bound by and comply with these Terms.

You will notify us immediately if you become aware that any unauthorized person may have access to your Handset and information that they may use to make an authorized application, You will accept the terms of the loan agreement telephonically or via SMS by confirming agreement with these terms by sending your name and National Identity card number. At this juncture, we will confirm your monthly installment, the repayment period of the loan, the interest rate, insurance costs (where applicable), the total amount payable and the dates of the first and final installments.

Odyssey Capital Ltd may implement any authentication procedure it believes necessary for customer authentication when the Loan application is received, and the electronic record will be proof that you accept to comply and be bound by the terms herein.

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#### **4. REQUESTS MADE BY THE BORROWER**

You hereby irrevocably authorize the Lender to act on all Requests received by us from you (or purportedly from you) through the System and to hold you liable in respect thereof. The Lender may nevertheless refuse to carry out any Requests in its sole and absolute discretion.

Subject to its discretion, the Lender reserves the right to reject any Request in relation to a loan application from you even if you have previously been issued with a loan by us.

The Lender 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 we may act if the Lender has in good faith acted in the belief that such instructions have been sent by you.

The Lender may, in its absolute discretion, decline to act on or in accordance with the whole or any part of your Request pending further enquiry or further confirmation (whether written or otherwise) from you.

You agree to and shall release from and indemnify the Lender against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to us having acted in accordance with the whole or any part of any of your Requests (or failed to exercise) the discretion conferred upon it.

You acknowledge that to the full extent permitted by law that we shall not be liable for any unauthorized application, drawing, disclosure, any activity or any incident on your Handset by the fact of the knowledge and/or use or manipulation of your SIM CARD, ID or any means whether or not occasioned by your negligence.

In the event of any conflict between any terms of any Request received by us from you and this Agreement, this Agreement shall prevail.

#### **5. TEXT MESSAGING**

By agreeing to these Terms, you authorize us, our assigns, successors or servicing agents to send SMS Statement Notifications to any phone number(s) provided to us by you, in connection with your relationship with us, including your application, any loans with us, and any other agreements with us. This applies to any phone numbers you provide now or in the future.

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As used in this Terms “SMS Notifications” means any SMS (text message) or equivalent mobile communications from us to you pertaining to your loan phone numbers provided in connection with this loan, including but not limited to payment information, pending documents, account information, due dates and other relevant information pertaining to your loan account.

## **6. INTEREST**

You shall pay the Lender principal and interest on the Loan Amount at the rate and on the respective due dates to be specified by the Lender during application of the facility.

The terms of the loan and the interest rate payable in relation to each loan application will be communicated to each individual borrower at the application stage.

Rates are assigned at your loan application approval and are based on your creditworthiness.

## **7. APPLICATION CANCELLATION FEES**

In the event that you cancel the loan application after acceptance of the terms (constitutes a legally binding contract) of the loan for whatsoever reason, you are liable to pay cancellation fees to us as shall be determined by Lipa Later from time to time.

The cancellation fees are a nominal recompense Lipa Later for time and resources spent on analysing and approving the loan.

## **8. LOAN REPAYMENT**

The Repayment for the entire Loan shall be made monthly installments on a specific date in a manner to be specified by the Lender on approval of your loan application.

You agree to pay us legal and processing fees to be computed using the principal loan amount applied for. The fees shall be included in the final instalment in respect to expenses incurred by us in connection with the processing of your loan application, approval, for preparation of the contract, execution and disbursement of our credit facilities to you.

The statement of the Lender as to the rate, mode or amount of interest and penalties payable shall, in the absence of manifest error, be conclusive.

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## 9. EVENT OF DEFAULT

### (a) Event of Default

An “Event of Default” occurs when you fail to pay any sum payable for a Loan granted under these Terms and Conditions on the repayment dates to be communicated by the Lender via SMS or to failure to pay the interest when due or any indebtedness or failure to perform or observe your obligations under this Agreement.

### (b) Late fees and Penalties

If the Borrower defaults in making any payments hereunder within the specified time the Borrower shall pay late fees over and above the rate specified in the Schedule above.

If you fail to make any payments due to the Lender at the due date for payment, the Lender will be authorized to apply late fees at the rate of Kes.1500 per month on any outstanding amount or any portion remaining unpaid from the due date of such payment until actual payment thereof.

You further hereby agree to reimburse and indemnify the Lender against any loss of profit and expenses which the Lender may incur as a consequence of the Borrower’s default in making payment of either the Loan Amount or the Interest.

### (c) Lender’s Remedies

At any time after an Event of Default has occurred and is continuing, the Lender at all times reserves the right to utilise the Security Software or any means it deems fit to block the Borrower’s Handset and limit the Borrower’s access to the Handset until full payment of the amount due including the applicable late fees.

At any time after an Event of Default has occurred , the Lender may serve a notice in writing to the Borrower declaring the Loan Amount immediately due and payable together with all interest payable and demanding payment and if the Borrower does not comply with the notice served the Lender may exercise the following remedies without prejudice to any other right or remedy granted to it under any law:

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- (i) repossess the item financed under these Terms and Conditions from the Borrower
- (ii) sell the repossessed electronic or consumer item
- (iii) appoint a Debt Collector to recover the outstanding balance from the Borrower
- (iv) enter the Borrower's place of business and/or home and possess an asset or item of equal or greater value as a security or for the purpose of attaching the item to off-set the loan.
- (v) supply information concerning the Event of Default to Credit Reference Bureaus. A copy of any adverse information concerning you sent to a Credit Reference Bureau shall be made available to you upon written request.
- (vi) sue the Borrower for any money due and owing under this Agreement.

**(d) Specific Remedy Applicable to Star Times Customers available to the Lender**

In the event a Borrower(s) who receives credit facilities from us to purchase electronics (to include Televisions and decoders) obtained from one of our Partners Star Times Media (K) Co. Ltd defaults on his loan repayment obligations, the Borrower hereby acknowledges and consents to have his/her/its subscription from the said Partner blocked and to remain blocked at all times there are outstanding amounts due to us.

The subscription shall be unblocked when actual payment and settlement of account arrears or any portion of any outstanding amount as shall be advised by the Lender.

**10. SECURITY SOFTWARE**

The Lender has installed security software on the Handset ("**Security Software**") that enables the Lender, at its sole discretion, in accordance with this Agreement (including after an Event of Default has occurred and is continuing):

- (i) To suspend or disable certain features of the Handset, including (without limitation) factory reset, USB debugging, and side-loading of applications;
- (ii) To block access to the Service, to certain apps and features installed on the Handset, or to the Handset itself;
- (iii) To install and uninstall certain apps on the Handset;
- (iv) To prevent the uninstallation of certain apps from the Handset;

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- (v) To collect data from the Handset, including (without limitation) power usage, app usage, data usage and signal strength;
- (vi) To customise certain apps installed on the Handset, such as those downloaded from an app store; and

The Security Software is an integral part of the Service provided under this Agreement, and you shall not (and shall not attempt to):

- (a) modify, create derivative works from, display, copy, mirror, publish, distribute, transmit, transfer, license, sublicense, sell, market, or lease copies of the Security Software in whole or in part (or attempt to do any of the foregoing);
- (b) reverse engineer, decompile, disassemble or otherwise reduce the object code of the Security Software to source code form (or attempt to do any of the foregoing);
- (c) interrupt or attempt to interrupt operation of the Security Software in any way;
- (d) use the Security Software, or the content therein, or do any other thing that will infringe any Intellectual Property Rights or other rights of any third party;
- (e) remove or obscure any trademark symbols, copyright notices, or other intellectual property rights notices in the Security Software (or attempt to do any of the foregoing);
- (f) bypass the measures used to prevent or restrict access to the Security Software or enforce limitations on use thereof (or attempt to do any of the foregoing);
- (g) do anything likely to impair, interfere with or damage or cause harm or distress to any persons using the Security Software; or
- (h) use any information obtained using the Security Software otherwise than in accordance with this Agreement.

By entering into this Agreement and using the Services, you expressly consent to the installation of the Security Software on the Handset and to the foregoing uses, restrictions and limitations, and to such other features of the Security Software as may be duly notified to you from time to time in accordance with this Agreement.

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The Lender shall not be required to remove the Security Software until all of your obligations to the Lender under this Agreement have been satisfied in full.

## **11. CONSUMER INSURANCE**

You acknowledge and agree that you are required to take out consumer insurance over the financed electronic or consumer item.

The Consumer Insurance policy is mandatory for all financed Handsets and other electronic devices and may apply to other consumer items at the discretion of the Lender.

The premium rate shall be 5% of value of financed item to cover fire, special perils, burglary, terrorism and 10% of value of asset to cover fire, special perils, burglary, terrorism, damage subject to a minimum premium Kshs. 1500.

The term of the Insurance cover shall be for the duration of the loan. In the event of loss or damage of the financed item, you will be required to have completed paying at least 50% of the loan amount for the financed item/electronic to be replaced or repaired.

The Risks covered under the Consumer Insurance are: -

- (i) Fire and Special perils – Following fire, water, lightening, Explosions, impacts of vehicles, trees and animals, earthquakes and malicious damage.
- (ii) Theft/Burglary – threats or intimidation, actual forced entry into the borrower's premises.
- (iii) Terrorism risks included

In the event of damage or loss under the risks covered, you are required to:

- (i) Notify the Lender with 24 hours and fill in claim form provided
- (ii) Provide the us with the following documentation:
  - a. Police Abstract – For theft/loss explaining in detail the circumstances of loss/theft
  - b. Phone Blockage Certificate from mobile network operator – In the case of Handset theft / loss

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- c. Quotation – If electronic is damaged, a quotation of how much it will cost to fix it will be required.

The Consumer Insurance cover does not include the following: -

- (i) Loss or damage arising from wear and tear or depreciation or the action of light or atmospheric conditions
- (ii) Loss or deterioration occasioned by any process of cleaning, repairing and restoring.
- (iii) Manufactures defects. Touch screen display failure.
- (iv) Loss or damage directly or indirectly caused by seizure, confiscation, and destruction by government law enforcing agents.
- (v) Third party liability.
- (vi) Loss or damage as a result of distortion, erasure, corruption or alteration of Electronic Data.
- (vii) Loss or damage directly or indirectly caused by fluctuation, or insufficiency of electricity.
- (viii) Any infidelity, fraudulent, dishonest of staff/family members of the insured whether acting alone or in collusion with others.
- (ix) Loss or damage arising directly or indirectly from use of drugs and alcohol
- (x) Loss or damage arising directly from terrorism activities.
- (xi) Items held in trust or on commission.
- (xii) Loss arising from negligence

## **12. DELIVERY AND RISK OF LOSS/DAMAGE**

For purposes of these Terms, delivery to Borrower will occur when the financed item is placed in the possession of the Borrower or their nominated representative. The Borrower has the right to inspect the financed item on delivery and either return it to the dealer/retailer or accept delivery by signing the delivery note.

Risk of loss or damage with respect to the financed item shall pass to Customer upon delivery by a courier service or by other means and by signing the delivery note.

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### **13. PERSONAL INFORMATION & PRIVACY POLICY**

You agree to provide us with accurate personal information, such as your email address, cell phone number, mailing address, Identification Number (“ID”) or Passport Number and such other information that we may deem relevant in order to complete your application.

We may from time to time collect your personal information to which you hereby consent to provide relating to your employment to include but not limited to your employer, your position in the Company, copies of employment contract, pay slips, gross pay, bank statements card information, Mobile money statements and work permit for purposes of determining whether or to approve or reject your loan application, the amount of such loan and the terms and conditions applicable to such loan as well as during collection in the Event of Default.

Save in compliance with an order of the Court, Tribunal, Regulatory Directive or Order or any other legal or regulatory obligation, we do not disclose information about identifiable individuals to other parties, but we may provide them with anonymous aggregate information about our users.

By submitting your personal data, you agree to the collection, transfer, storing or processing of your personal data by the Lender. We will take all steps reasonably necessary to ensure that your data is treated, stored and processed securely at all times.

In any event, by continuing to use Lender’s website or its USSD platform to make a loan application you confirm your continuing acceptance and your consent to the terms set out therein.

You hereby agree and authorize us to verify information provided by you against the information held by third parties, that is, your employer or any Mobile Money Providers and others related sources in relation to your loan application and using of the Personal Information to the extent necessary in the opinion.

You hereby agree and authorize us to obtain and procure your Personal Information from the Credit Reference Bureaus and you further agree and consent to the disclosure and provision of such Personal Information by the Credit Reference Bureau. The Credit Reference Bureau provide a credit profile and possibly credit scores on your creditworthiness, subject to the credit record.

We reserve the right to supply consumer credit information to the Credit Reference Bureaus, and in this regard: you confirm that Odyssey Capital Ltd may transmit to the Credit Reference Bureau information on opening and termination of an Account by you.

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You hereby further agree to indemnify and hold Odyssey Capital Ltd and the third parties harmless with respect to any claims, losses, liabilities and expenses (including legal fees and expenses) that may arise as a result of the disclosure and reliance on such Personal Information.

Odyssey Capital Ltd reserves the right to request for further information from you pertaining to your loan application for credit facilities at any time. Failure to provide such information within the time required by us may result in us declining your Loan application.

We may (if necessary) disclose your personal information to fraud reporting agencies, and to any person we may appoint to assist in enforcement of this Terms and the Loan Agreement.

#### **14. INDEMNIFICATION**

You hereby agree to indemnify, defend the Lender, its directors, officers, shareholders, subsidiaries, affiliates, agents and licensors harmless from and against any and all liability, losses, damages and costs, including, without limitation, reasonable attorneys' fees, arising from your use of our Services.

In the event the Lender exercises any rights pursuant to this Agreement, the Borrower hereby releases Lender from any liability, costs, damages or other obligations and waives his/her right to sue (if any) and further agrees, promises and covenants that neither he, nor any person, organization, or any other entity acting on his behalf will file, charge, claim, sue or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) against the Lender as a result of such exercise of rights/remedies outlined above.

#### **15. LIPA LATER HABA HABA**

The Lender may at its sole discretion extend Lipa Later loan facilities to Borrowers whose applications were rejected in the first instance for not meeting the Lender's minimum criteria including but not limited to poor CRB records, Mpesa score or any other standard requirement.

**LipaLater HabaHaba** give such Borrowers an opportunity to access the loan facilities upon acceptance and fulfilment of the following conditions:

- (i) The Borrower makes three (3) months instalments prepayment to Lipa Later towards purchase of the desired item;

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- (ii) The Borrower acknowledges that in the event of non-payment during the prepayment period of 3 months, the Lender shall refund the amount paid net the interest that it would have accrued;
- (iii) In the event of cancellation of the facility at any time, the Borrower shall be liable to pay cancellation fees equivalent to the interest that the Lender would have earned in the absence of the cancellation.

The Lender will advise the Borrower on a case to case basis as the interest deductible/cancellation fees may vary depending on the item being financed.

The Lender reserves the right to cancel the facility in the following instances:

- (i) Sixty (60) days after approval of the facility and failure by the Borrower to make the prepayments
- (ii) Thirty (30) days from the day of default in any of the prepayments.

The Lender may offer a seven (7) day grace period after the lapse of the 60- and 30-day period contemplated above before declaring the account dormant and proceeding to cancel the facility.

## **16. LIPA LATER SUBSCRIPTION**

Lipa later subscription is a service that enables you access the Handset of your choice over an agreed subscription duration. The Handset remains Lipa Later property over this subscription duration.

You are at liberty to upgrade to another Handset or cancel before the subscription agreement has lapsed. You will however be required to pay for a cancellation fee, equivalent to the outstanding expected interest, and return the previous Handset before accessing the new Handset.

In the event that you opt to purchase the Handset taken up under subscription, you can do so by making either a Cash payment or through Lipa Later financing. This amount will be determined at the end of the subscription duration.

In the event that your Handset is faulty after we release it to you, you should immediately report it and return the same to Lipa Later within 48 hours of discovery. Due assessment of the Handset will be done to determine the cause of damage which will determine the way forward.

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Upon completion of the subscription period, you are required to;

- Fill in a check in form to ascertain the current condition of the Handset
- Pay an upfront subscription fee to enable you access another Handset

If you damage or lose the Handset during the subscription duration, you are required to pay an insurance excess fee of **10%** of the principal amount in case of damage and **20%** of the purchase price in the event of theft or loss. You will only get a replacement Handset;

- After making these payments
- If the circumstances of loss are covered under our insurance policy.

#### **17. ENTIRE AGREEMENT**

These Terms and Conditions as read together with our SMS communication to your cell phone and acceptance of the terms thereof constitute the entire agreement which shall be applicable to you and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us, whether written or oral, relating to its subject matter.

You acknowledge that in entering into this Agreement you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions.

The parties herein agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

#### **18. GENERAL CONDITIONS**

We disburse loans by purchasing the selected items from our Partner stores. Select dealers/retailers and stores apply.

You acknowledge that you have been duly advised regarding the nature, remedies and that neither the Lender or its employees or agents have used any compulsion or threat or exercised undue influence on them to induce them to execute this Agreement.

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You shall not sell, transfer, lease, gift, or part with the possession of any part of the electronic or consumer item financed under this Agreement without the prior written consent of the Lender.

The Lender reserves the right to assign and/or transfer all or any of its rights, benefits and obligations under this Agreement to any person at any time provided, that such assignment shall not relieve the Borrower of any of its obligations hereunder.

These Terms are severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions which will continue to be valid and enforceable to the fullest extent permitted by law. Any disputes arising out of the Terms or our Services offered will be resolved in accordance with the laws of Kenya.

#### 19. **GOVERNING LAW**

This Agreement shall be governed and construed in accordance with the laws of Kenya in all respects.

#### **Checkbox**



- ✓ I agree that I have carefully read and understood these Terms and the Loan Agreement for credit facilities or opening a loan account with Odyssey Capital Ltd which will govern my relationship with it and operation of my loan account.

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