

# **UbaPesa Limited Terms & Conditions, Privacy Policy & User Agreement**

## **Introduction**

The Terms and Conditions in this User Agreement and any amendments or variations thereto will take effect on the date and time a user downloads from the Google Play Store or the Apple Store and registers onto our UbaPesa platform and on the date of publication of any amendments. By accepting to register onto UbaPesa platform, the user acknowledges that he / she has read, agree with and accept all of the Terms and Conditions.

You hereby acknowledge and accept that the acceptance by us of your application for a loan does not create any contractual relationship between you and Mobile Money service providers.

“Without Any Prejudice. By agreeing to these Terms & Conditions, I the “user” authorizes UbaPesa to access my personal information related to the registration process, conduct a back ground check with TransUnion, a registered Credit Reference Bureau and I declare waiver on any claim I may have against UbaPesa Limited or its affiliates in respect of such disclosure.

### **Clause 1. Privacy Policy**

Upon downloading the App and clicking the “Accept” option with respect to these Terms and Conditions, you will be deemed to have accepted UbaPesa’s Privacy Policy and allowed us to collect and process data about.

UbaPesa collects data to help us verify your identity and perform a credit profile for purposes of determining the amount that one qualifies for. We shall collect amongst other data; the data below;

- i. Telephone number
- ii. Name
- iii. ID Number
- iv. Email address
- v. Call logs, sms logs
- vi. Information from credit reference bureaus
- vii. Phone IMEI

You data will not be shared with any third parties except in instances where necessary for purposes of recovery any money advanced to you that will be in

default. Your information may also be shared to relevant government bodies and agencies and other licensed third part agencies within the confines of the law.

## **Clause 2. User Acceptance**

This agreement will be deemed as executed upon the user's successful registration of the UbaPesa app. The registration process will entail downloading the app from either the Google Play Store or Apple Store, installing it on one's phone and agreeing to the terms and conditions by checking / ticking the submit function on the app as the final process of registration. User can also at this point opt to decline executing the agreement. Should a user choose the exit (decline) option, the app will not complete the registration process and hence the agreement will stand null and void.

## **Clause 3. User Rights**

By agreeing to the Terms & Conditions, UbaPesa grants you the user non-transferable and non-exclusive rights to use the app on your mobile phone. Except as expressly set out in this agreement, you agree:

- i. Not to rent, lease, sub-license the app.
- ii. Not to modify the app in any way in whole or part.
- iii. Not to reverse-engineer or create derivative works based on the whole or any part of the app.
- iv. Not to access and alter the source code of the app in any form.

## **Clause 4. Restrictions**

As a user of the app, you are not permitted and it will be considered a breach of this agreement to:

- i. To infringe on our intellectual property rights or those of any third party in relation to your use of the app.
- ii. Use the app or any Service in any unlawful manner.
- iii. To cause the app to malfunction in any way
- iv. To compromise our systems or try to compromise our systems in any way.
- v. To hack or try to hack into our system for purposes of collecting any information or data for criminal activities.

---

Tel + 254 709 693 000 P.O .Box 22745 - 00100 Nairobi, Kenya

Golf View Office Suites, along Wambui Road off Thika Road, Muthaiga.

[www.ubapesa.com](http://www.ubapesa.com) [info@ubapesa.com](mailto:info@ubapesa.com)

## **Clause 5. Intellectual Property Rights**

You the user agree that all intellectual property rights of the app and the source code belong to UbaPesa Limited and are not transferrable to you in any form.

## **Clause 6. Right To Use**

The app is only approved for use for persons of age 18 and above. UbaPesa Limited reserves the right to verify the authenticity of your age through the available means to us. We reserve the right to decline any application for registration and or a loan advance. We will also reserve the right to revoke the same at any stage at our sole and absolute discretion without any reasons or giving any notice thereto.

## **Clause 7. Background Personal Information Check**

UbaPesa Limited will verify information provided by you to us against any of the available means to us amongst but not limited to;

- i. Information from mobile money service providers'
- ii. Information from the credit reference bureaus - TransUnion

As the user you hereby consent to that UbaPesa is authorized to verify your personal information and other information related to you from the information received from any of above mentions sources and use it use it to the extent necessary to enable us profile you for a loan advance.

Should the information provided by you in any way conflict with the sources above, UbaPesa reserves the right to request for clarification and more information from you for purposes of processing your loan advance request be it an approval or a decline.

## **Clause 8. User Requests**

The user herein irrevocably authorize UbaPesa to act on all requests received from the app. Any such requests will be deemed to have come from you the user who is in possession of your access PIN.

In our own discretion, we however reserve the right to reject any requests if deemed in breach of the terms and conditions here in. We shall be deemed to have acted properly and to have fully performed all the obligations, notwithstanding that the

request may have been initiated, sent or otherwise communicated in error or fraudulently.

The user shall be bound by any requests on which we may act if we have in good faith acted in the belief that such instructions have been sent by you. We may, in our absolute discretion, decline to act on or in accordance with the whole or any part of your request pending further inquiry or further confirmation from you, be it in writing, telephony or otherwise.

You agree to release from and indemnify UbaPesa against all claims, losses, damages, costs and expenses, arising in consequence of, or in any way related to us having acted (or failed to act) in accordance with the whole or any part of any of your requests.

To the full extent permitted by law, you the user agrees that UbaPesa shall not be liable for any fraudulent drawing, transfer, withdrawal, remittance, disclosure, any activity or any incident on your account by the fact of the knowledge and/or use or manipulation of your Account PIN whether or not occasioned by your negligence.

This Agreement shall prevail in the event of any conflict between any terms of any request received by us from you.

#### **Clause 9. Applicable Service Fees**

All applicable service fees will be disclosed on every transaction. There will be service fees applicable to UbaPesa and services fees applicable to the mobile money transactions. The service fees shall be paid to us and the mobile money service providers respectively upfront at the time of transaction.

Service fees payable and those to those to the mobile money service providers will be liable to change from time to time whenever deemed necessary by either part. Should there be any changes, UbaPesa will notify you the user of any changes, via email, in app notification and on our website.

#### **Clause 10. User Statements**

All user transactions are logged and available in a statement format. The statement and activity report in respect to any transaction is available within the app and also on request to be emailed to your registered email account during registration. All statements shall be emailed from the email address [accounts@ubapesa.com](mailto:accounts@ubapesa.com).

---

Tel + 254 709 693 000 P.O .Box 22745 - 00100 Nairobi, Kenya

Golf View Office Suites, along Wambui Road off Thika Road, Muthaiga.

[www.ubapesa.com](http://www.ubapesa.com) [info@ubapesa.com](mailto:info@ubapesa.com)

## **Clause 11. Credit Balance**

If your account has a credit balance as a result of overpayment of your loan. Such a credit balance shall be credited into your account for onward withdrawal to your M-PESA account.

## **Section 12. User Responsibilities**

It will be the sole responsibility of the user to maintain safety of their phones and accounts for purposes of accessing the UbaPesa app. The user will also bear the cost of maintaining the said safety.

By registering onto UbaPesa, the user hereby agrees and acknowledges that you shall be solely responsible for the safe keeping and proper use of your mobile phone. You shall keep your PIN secret and secure and ensure it doesn't become known or come into possession of unauthorized persons. No claim shall be lodged against us for any disclosure of your PIN to any authorized persons and you do agree to indemnify and hold us harmless from any losses resulting from any disclosure of your PIN.

You shall immediately alert us 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; and/or
- ii. You have reason to believe that unauthorized use of the app has or may have occurred or could occur and a transaction may have been fraudulently transacted.

You acknowledge that any failure on your part to follow the recommended security procedures will result in a breach of your account's confidentiality.

## **Clause 13. UbaPesa Responsibilities**

UbaPesa shall be responsible for ensuring that the app is functioning as designed, is free from any bugs and errors and that all security checks and systems are in adhered to.

UbaPesa shall not be responsible for any errors or failures caused by any malfunction of your mobile phone. Neither shall we be responsible for any other problems that may be associated with the use of the app, services or your phone that were not caused by us.

---

Tel + 254 709 693 000 P.O .Box 22745 - 00100 Nairobi, Kenya

Golf View Office Suites, along Wambui Road off Thika Road, Muthaiga.

[www.ubapesa.com](http://www.ubapesa.com) [info@ubapesa.com](mailto:info@ubapesa.com)

UbaPesa shall not be responsible for any third party dependences that are necessary for the proper end to end functioning of the app. This will include but not limited to internet connectivity, network coverage, availability of mobile money agents amongst others.

#### **Clause 14. Default**

All loan advances shall fall due and should be fully payable by the due date depending on the loan duration. A default roll over penalty fee shall be charged on every outstanding loan on the 61<sup>st</sup> day from the due date and a further 10% on compounded balance on the 90th day.

When a default has occurred and which is continuing, without prejudice to any other right or remedy granted to it under any law, we shall;

- i. Terminate this agreement in accordance with the terms and conditions.
- ii. Declare that the loan and all accrued penalties and charges plus any other amounts outstanding as immediately due and payable, whereupon they shall become immediately due and payable.
- iii. Engage the services of an external collections agent to seek recovery.
- iv. Get indemnification upon demand against any reasonable loss or expense as a result of the default.

#### **Clause 15. Breach**

In the event of breach of this agreement, at any time upon notice to you and without prejudice, we will terminate or vary our business relationship with you and close your account to the generality of the foregoing. We may cancel any loan granted to you and demand immediate repayment of outstanding debts.

Without prejudice to our rights under this clause. We may, at our sole discretion, suspend or close your account;

- i. If we reasonably suspect or believe that you are in breach of this agreement.
- ii. If you use the account for unauthorized purposes or where we detect or reasonably suspect any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the app.
- iii. If we are demanded of to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority

---

Tel + 254 709 693 000 P.O .Box 22745 - 00100 Nairobi, Kenya

Golf View Office Suites, along Wambui Road off Thika Road, Muthaiga.

[www.ubapesa.com](http://www.ubapesa.com) [info@ubapesa.com](mailto:info@ubapesa.com)

- iv. 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 Services from time to time;
- v. If it becomes inactive or dormant
- vi. If we receive notice and proof of your death from a competent jurisdiction.

## **Clause 16. Liability**

We shall not be responsible for any loss suffered by you should the app be interfered with or be unavailable by reason of the failure of your mobile phone or any other circumstances whatsoever not within UbaPesa's control including, without limitation:

- i. Force Majeure.
- ii. Interruption, delay or non-availability of the app due network unavailability
- iii. Acts of terror.
- iv. Adverse weather conditions.
- v. Failure of any network service providers.

We will not be liable for any losses or damage suffered by you as a result of or in connection with:

- i. Wrong or incomplete instructions for payments or transfers relating to your account.
- ii. Fraudulent or illegal use of the app and or your mobile phone.
- iii. A defect or fault in the app resulting from you having altered or modified the app
- iv. Your breach or failure to comply with this agreement and any document or information provided by us.
- v. A defect or fault in the app resulting from you having used the app in breach of this agreement and its terms.
- vi. Your breach any of the license restrictions.
- vii. In sufficient funds in your mobile money account.
- viii. Failure, malfunction, interruption or unavailability of the app, your mobile phone or network providers' services.

We shall not be liable to you for any interference with or unavailability of the app, howsoever caused. Under no circumstances shall we 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 us.

All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

### **Clause 17. Indemnity**

In consideration of us complying with your instructions or requests in relation your account, you undertake to indemnify us and hold it harmless against any loss, charge, damage, expense, fee or claim which we suffer or incur or sustain thereby and you absolve us from all liability for loss or damage which you may sustain from us acting on your instructions or requests or in accordance with this Agreement.

The indemnity shall also cover the following:

- i. All demands, claims, actions, losses and damages of whatever nature which may be brought against Us or which We 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 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.
- ii. 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.
- iii. Any unauthorized access to your Account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment.
- iv. 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

---

Tel + 254 709 693 000 P.O .Box 22745 - 00100 Nairobi, Kenya

Golf View Office Suites, along Wambui Road off Thika Road, Muthaiga.

[www.ubapesa.com](http://www.ubapesa.com) [info@ubapesa.com](mailto:info@ubapesa.com)

or the inability of a third party to process a transaction or any loss which may be incurred by Us as a consequence of any breach by this Agreement.

- v. Any damages and costs payable to us in respect of any claims against us for recompense for loss where the particular circumstance is within your control.

### **Clause 18. Mode Of Communication**

Mode of communication shall be via email to and from the email address [info@ubapesa.com](mailto:info@ubapesa.com) or to such e-mail address that may be communicated to you from time to time. We will confirm receipt of this by contacting you in writing by e-mail.

The user shall make all communications to us from the email address registered during installation of the app. UbaPesa shall contact you or give you notice in writing, by e-mail and or by SMS to the mobile phone number registered with us.

### **Clause 19. Entire Agreement**

The Terms and Conditions constitute the entire agreement between you and us 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.

You and We agree that neither of us shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

### **Clause 20. FAQs**

Please note that the in app FAQs forms part and parcel of UbaPesa terms and conditions.

### **Clause 21. Governing Law & Dispute Resolution**

This agreement shall be governed in accordance with the laws of Kenya. Both parties shall use their good faith and efforts to resolve any dispute, controversy or claim of any nature whatsoever arising out of or in relation to or in connection with this agreement.

---

Tel + 254 709 693 000 P.O .Box 22745 - 00100 Nairobi, Kenya

Golf View Office Suites, along Wambui Road off Thika Road, Muthaiga.

[www.ubapesa.com](http://www.ubapesa.com) [info@ubapesa.com](mailto:info@ubapesa.com)

In the event that an amicable settlement has not been reached within thirty (30) days of the parties' representatives meeting as aforesaid, the provisions of the laws of Kenya shall.

## APPENDIX A. TERMS & MEANINGS

- i. **Agreement**, means these Terms & Conditions.
- ii. **Account**, means your account with UbaPesa.
- iii. **PIN**, means your personal password used to access the UbaPesa app and make transactions.
- iv. **Loan advance**, means a loan taken through the UbaPesa app. **TransUnion**, a Credit Reference Bureau that performs credit scoring on any potential borrower.
- v. **Personal Information** means your phone number, name, date of birth, identification number, KRA PIN and such other information that will enable us to identify you and comply with the regulatory KYC.
- vi. **KYC** means know your customer.
- vii. **Relevant Information** means information including, but not limited to, data relating to your phone from your mobile phone, call history, sms history and any such other information as we shall require for purposes of providing the our services.
- viii. **Mobile phone** includes your handset, sim card and/or other equipment which when used together enables you to access our app.
- ix. **Default** means when you fail to pay in full any amounts on your loan by the due date.
- x. **Force Majeure** means events and or circumstances our control.
- xi. **Loan** means the principal amount of the loan made or to be made by UbaPesa to you under this agreement.
- xii. **Mobile money account** means your mobile money account record / account being maintained by mobile money providers.
- xiii. **Mobile network operator** means a mobile telephony network operator registered in Kenya.
- xiv. **Privacy Policy** means the UbaPesa privacy policy on any personal data that we collect.
- xv. **Request** means a request or instruction received by UbaPesa from you or purportedly from you through the network and the app and upon which UbaPesa is authorized to act.
- xvi. **Default roll over penalty** means the late penalty applicable to you if you fail to make any payments by the due date.

---

Tel + 254 709 693 000 P.O .Box 22745 - 00100 Nairobi, Kenya

Golf View Office Suites, along Wambui Road off Thika Road, Muthaiga.

[www.ubapesa.com](http://www.ubapesa.com) [info@ubapesa.com](mailto:info@ubapesa.com)

- xvii. **App** shall include any form of services or products that UbaPesa may offer through our app pursuant to this agreement.
- xviii. **Facilitation fee** means a fee associated to the technology for enabling the transaction of borrowing and loan processing. The facilitation fee is 10% of the principal borrowed.
- xix. **Loan/interest fee** – this is the amount in percentage form charged on the loan depending on the duration the borrower stays with the loan.
  - a. Loan/interest fee is chargeable per instalment and depending on the duration one takes to repay the loan. Varying from 0% to 15% depending on period taken to repay back the loan.
- xx. **SIM Card** means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the network to make phone calls, send or receive sms, access the internet and make mobile money transactions.
- xxi. **SMS** means a short message service. SMS can be send to and or received from one mobile phone to another.

In addition to the above definitions, unless the context requires otherwise, the singular shall include the plural and vice versa; a reference to any one gender, whether masculine, feminine or neuter, includes the other two; all the headings, subheadings and bullet points in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it; the recitals and schedules shall be deemed to form part of this Agreement.