



Final version: 19 October 2017

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**TERMS AND CONDITIONS FOR CASH ADVANCE OVER M-TIBA**

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between

**STICHTING MEDICAL CREDIT FUND**

and

**CAREPAY LIMITED**

and

**ELIGIBLE HEALTHCARE PROVIDER**

## **PARTIES:**

This Agreement (hereinafter these **Terms and Conditions**) is made between:

- (1) **STICHTING MEDICAL CREDIT FUND**, a foundation incorporated under the law of the Netherlands, having its registered seat in Amsterdam and its principal place of business in (1105 BM) Amsterdam Zuidoost at Trinity Building C, Pietersbergweg 17, the Netherlands, registered with the Trade Register of the Dutch Chamber of Commerce under number 34151092 (hereinafter the **Lender**);
- (2) **CAREPAY LIMITED**, a limited liability company incorporated under the laws of Kenya, having its registered office in Nairobi and its principle place of business in Nairobi at No. 41, Kabarsiran Avenue (hereinafter the **Agent**); and
- (3) the Eligible Healthcare Provider who has accepted these Terms and Conditions in accordance with the provisions hereof (hereinafter the **Borrower**).

## **WHEREAS**

- A. The Lender aims to enhance the provision of affordable and better quality healthcare to low income Africans and contribute to increased access to affordable basic health care delivery in Africa in the context of building sustainable health systems, by strengthening the business cases of Healthcare Providers (as defined below) and improving the quality of their medical services through facilitating access to investment capital and the provision of business and quality technical assistance.
- B. The Agent is a Kenyan company that administers conditional healthcare payments between funders, patients and healthcare providers in order to help make healthcare safer and more transparent for both patients and Healthcare Providers. It is the owner and administrator of the Agent Payment Platform (as defined below), through which funds from public and private funders are directed to patients' "health wallet" on their mobile phone. The use of these funds is restricted to conditional spending at selected Healthcare Providers across Kenya.
- C. The Lender and the Agent have agreed to partner to provide Cash Advances (as defined below) to Healthcare Providers, which Cash Advances will be repaid by the Healthcare Providers via the Agent Payment Platform.
- D. The Borrower wishes to obtain a Cash Advance and to repay the Loan Balances (as defined below) via the Agent Payment Platform in accordance with these Terms and Conditions.
- E. These Terms and Conditions set out the terms and conditions that will apply to borrowing and repayment by the Borrower of a Cash Advance via the Agent Payment Platform.

## **IT IS AGREED AS FOLLOWS:**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

For the purposes of these Terms and Conditions (including the recitals above), unless the context requires otherwise:

- 1.1.1 **Account** means the Borrower's loan account with the Lender;
- 1.1.2 **Admin Fee** means the fee stipulated as such in the Fee Schedule;
- 1.1.3 **Agency Fee** means the fee stipulated as such in the Fee Schedule;
- 1.1.4 **Agent Payment Platform** means a health payment infrastructure that manages payments between funders, patients and Healthcare Providers via the E-money Systems, operated by the Agent for purposes of providing M-TIBA services and through which the Services will be made available;
- 1.1.5 **Cash Advance** means a loan advanced or to be advanced by the Lender to the Borrower and repayable via the Agent Payment Platform in accordance with these Terms and Conditions;
- 1.1.6 **Cash Advance Application** means an application for a Cash Advance by the Borrower to the Lender hereunder;
- 1.1.7 **Cash Advance Offer** means an offer of a Cash Advance made by the Lender to the Borrower hereunder;
- 1.1.8 **Eligibility Criteria** means the eligibility criteria set out in Schedule 1 (as such criteria may be amended, supplemented, varied, reviewed or waived from time to time in accordance with the terms hereof);
- 1.1.9 **Eligible Healthcare Provider** means a Healthcare Provider who meets the Eligibility Criteria and has not been rejected by the Lender pursuant to the terms hereof;
- 1.1.10 **E-Money** means the electronic monetary value depicted in the E-money Account representing an equal amount of cash;
- 1.1.11 **E-money Account** means the Borrower's electronic money store of value being a record provided by E-money Providers in Kenya of the amount of E-money from time to time held by the Borrower in the E-money Provider's E-money System;
- 1.1.12 **E-money Provider** means a Mobile Network Operator that has been duly authorized by the Central Bank of Kenya under applicable law to offer E-money Services in Kenya;
- 1.1.13 **E-money Services** means the money transfer and payments service provided by the E-money Providers through the E-Money System;
- 1.1.14 **E-money System** means the system operated by the E-money Providers in Kenya for the provision of E-money Services, or a payment platform linked to the E-money System including but not limited to digital payment platforms;
- 1.1.15 **E-money Till** means a special subscriber identity module (SIM) card that is created for the purpose of receiving payments from E-money Systems with a unique number commonly known as a till number and whose ancillary functions may include receiving payment notifications via SMS;

- 1.1.16 **Encumbrance** includes any mortgage or charge (whether legal or equitable), lien, option, security interest, restrictive covenant, pledge, assignment, title retention, trust arrangement or other restriction of any kind or other encumbrance securing or any right conferring a priority of payment in respect of any obligation of any person;
- 1.1.17 **Event of Default** means any event or circumstance set out in clause 16;
- 1.1.18 **Fee Schedule** means Schedule 2 to these Terms and Conditions (as amended, supplemented, varied, reviewed or waived from time to time in accordance with the terms hereof);
- 1.1.19 **Force Majeure** means events, circumstances or causes beyond its reasonable control of the Lender making the Lender's performance of its obligations inadvisable, commercially impracticable, illegal, or impossible, including but not limited to acts of God, war, strikes or labour disputes, embargoes or government orders;
- 1.1.20 **Gross Cash Advance Amount** means Cash Advance amount including the Transaction Fees and applicable Taxes on the Transaction Fees;
- 1.1.21 **Healthcare Providers** means medical care and health care providers (such as dispensaries, health centers, clinics, medical practitioners, laboratory managers, pharmacies and individuals) who have signed up to the Agent Payment Platform;
- 1.1.22 **Instalments** has the meaning ascribed to it in clause 11.1;
- 1.1.23 **Interest Rate** in respect of a Cash Advance means:
- 1.1.23.1 the rate of interest stipulated in the Cash Advance Offer in relation to that Cash Advance or if none is stipulated, such rate as is stipulated in the Fee Schedule or such rate (not exceeding any maximum permitted by law) as the Lender may from time to time determine; or
- 1.1.23.2 on occurrence of an Event of Default, the aggregate of the aforesaid interest rate and the Margin;
- 1.1.24 **IPRS** means the Integrated Population Registration System set up and maintained by the Government of the Republic of Kenya under the Ministry in charge of the Immigration and Registration of Persons;
- 1.1.25 **Loan Balance** means the aggregate of the Outstanding Principal, accrued Interest and other sums due and owing by the Borrower to the Lender in connection with a Cash Advance and/or under these Terms and Conditions;
- 1.1.26 **Loan Fees** means the Admin Fees and any other fees and charges payable to the Lender in respect of the Cash Advance as set out in the Fee Schedule, the Cash Advance Offer and/or published by or on behalf of the Lender on any website, daily newspaper in Kenya or by such other means

as the Lender may determine in accordance with the terms hereof (as such fees or charges may be varied from time to time in accordance with the terms hereof);

- 1.1.27 **Margin** means the rate stipulated as such in the Fee Schedule;
- 1.1.28 **Maximum Tenor** has the meaning ascribed to it in clause 11.5;
- 1.1.29 **M-TIBA** means the mobile payment service provided by the Agent where money is earmarked for healthcare payments only;
- 1.1.30 **Net Cash Advance Amount** means, in connection with a Cash Advance, the net amount disbursed to the Borrower. To avoid doubt, the Net Cash Advance Amount excludes the Transaction Fees;
- 1.1.31 **Outstanding Principal** means to the amount of principal owed on a Cash Advance by the Borrower to the Lender being an amount equivalent to the Gross Cash Advance Amount diminished by principal payments already repaid by the Borrower;
- 1.1.32 **Parties** means the Borrower, the Agent and the Lender and, where the context requires, includes their respective successors in title, personal representatives and permitted assigns;
- 1.1.33 **Request** means a request or instruction received by the Lender from the Borrower or purportedly from the Borrower through the Agent Payment Platform and upon which the Lender is authorised to act, and includes a Cash Advance Offer;
- 1.1.34 **Security** means a lien or security over the Till Revenues or any other form of security provided to the Lender and/or the Agent (as security agent and trustee for the Lender), in respect of the obligations of the Borrower arising hereunder and/or in relation to a Cash Advance;
- 1.1.35 **Services** shall include a Cash Advance and any form of financial services or products that the Lender may offer the Borrower pursuant to these Terms and Conditions and as the Borrower may from time to time subscribe to;
- 1.1.36 **SMS** means a short message service consisting of a text message transmitted from one mobile phone or other electronic device to another;
- 1.1.37 **Taxes** means all present and future taxes (including value added tax), levies, duties, charges, assessments, imposts, deductions, duties or withholdings whatsoever or other charges of similar nature, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected or withheld pursuant to any regulation having the force of law;
- 1.1.38 **Transaction Fees** includes the Loan Fees and the Agency Fees (as may be varied from time to time in accordance with the terms hereof);
- 1.1.39 **Terms and Conditions** means these Terms and Conditions as may be amended, supplemented, varied or reviewed by the Lender from time to time; and

1.1.40 **Till Revenues** means the E-money revenues received, held and/or depicted in the Borrower's E-money Account via the Agent Payment Platform.

## 1.2 **Interpretation**

1.2.1 In addition to the definitions in clause 1.1, in these Terms and Conditions:

1.2.1.1 unless the context requires otherwise, words in the singular shall include the plural and vice versa;

1.2.1.2 unless the context requires otherwise, a reference to any one gender, whether masculine, feminine or neuter, includes the other two;

1.2.1.3 a reference to a time of day is to Nairobi time;

1.2.1.4 an obligation on a party not to do something includes an obligation not to allow that thing to be done;

1.2.1.5 reference to an **amendment** or similar terms includes a novation, re-enactment, supplement or variation (and **amended** shall be construed accordingly);

1.2.1.6 a reference to an **authorisation** includes an approval, authorisation, consent, exemption, filing, licence, notarisation, registration and resolution;

1.2.1.7 a reference to **determine** or **determined** means, unless the contrary is indicated, a determination made at the discretion of the person making it;

1.2.1.8 any words following the terms **including, include, in particular, such as, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

1.2.1.9 **month** means calendar month;

1.2.1.10 any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of these Terms and Conditions or any amendments or Schedules hereto;

1.2.2 The Schedules form an integral part of these Terms and Conditions and shall have the same force and effect as if expressly set out in the body of these Terms and Conditions and any reference to these Terms and Conditions shall include the Schedules.

1.2.3 All the headings and sub-headings in these Terms and Conditions are for convenience only and are not to be taken into account for the purposes of interpreting it.



- 1.2.4 If a definition imposes substantive rights or obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition.
- 1.2.5 Where any term is defined within the context of any particular clause in these Terms and Conditions, the term so defined shall bear the meaning ascribed to it for all purposes in these Terms and Conditions notwithstanding that that term has not been defined in this clause 1;

## 2. ACCEPTANCE OF THE TERMS AND CONDITIONS

- 2.1 These Terms and Conditions constitute a collective offer by the Lender and the Agent to the Borrower for the provision of a Cash Advance in accordance with the terms hereof and may be accepted by an Eligible Healthcare Provider in manner envisaged under clause 2.3. Upon such acceptance, these Terms and Conditions shall, subject to clause 8.1, *ipso facto* constitute a binding contract between the Lender, the Agent and the Borrower.
- 2.2 A Healthcare Provider may decline these Terms and Conditions or any Cash Advance Offer made to such Healthcare Provider by electronically clicking on the "**Decline/No**" option available, in relation to these Terms and Condition and/or such Cash Advance Offer, on the Agent Payment Platform and/or the Agent's website, the Lender's website, and/or such other online or electronic platform where an offer is made by the Lender or the Lender's duly authorized agent. A Healthcare Provider may, prior to acceptance of these Terms and Conditions, notify the Lender of any errors in these Terms and Conditions by e-mail to: [customerservice@carepay.co.ke](mailto:customerservice@carepay.co.ke) with a copy to [info@medicalcrediffund.org](mailto:info@medicalcrediffund.org).
- 2.3 An Eligible Healthcare Provider may accept (and shall be deemed to have read, understood and accepted) these Terms and Conditions by:
  - 2.3.1 electronically clicking on the "**Accept/Yes**" option available, in relation to these Terms and Conditions, on the Agent Payment Platform, the Agent's website, the Lender's website, and/or such other online or electronic platform where these Terms and Conditions are published by the Lender or the Lender's duly authorized agent;
  - 2.3.2 making a Cash Advance Application;
  - 2.3.3 accepting a Cash Advance Offer ; or
  - 2.3.4 denoting its acceptance of these Terms and Conditions through such other acceptance methods prescribed by the Lender and/or the Lender's duly authorized representative.
- 2.4 By accepting these Terms and Conditions, making a Cash Advance Application, and/or accepting a Cash Advance Offer as set out in clause 2.3, the Borrower agrees to comply with and be bound by these Terms and Conditions and affirms that the Terms and Conditions are without prejudice to any



other rights that the Lender may have with respect to the matters contemplated in these Terms and Conditions in law or otherwise.

- 2.5 These Terms and Conditions may be amended by the Lender from time to time in accordance with the terms hereof and the continued making of Cash Advance Application(s), acceptance of Cash Advance Offer(s) and/or enjoyment of Cash Advance(s) shall constitute the Borrower's agreement to be bound by the terms of such amendments.

**3. CASH ADVANCES**

Subject to the provisions of these Terms and Conditions, the Lender shall make available to the Borrower a Cash Advance in accordance with the terms hereof.

**4. PURPOSE**

- 4.1 The Borrower shall apply the proceeds of the Cash Advance solely for the purposes of the Borrower's general working capital and expenses related to the healthcare operations of the Borrower.
- 4.2 The Lender is not bound to monitor or verify the application of any amount borrowed pursuant to these Terms and Conditions.

**5. AMOUNT OF CASH ADVANCES**

- 5.1 The maximum Gross Cash Advance Amount shall be the lower of:
- 5.1.1 the average monthly Till Revenues over the last three (3) months preceding a Cash Advance Application or, as the case may be, a Cash Advance Offer;
  - 5.1.2 the Till Revenues in the last month preceding a Cash Advance Application or a Cash Advance Offer; and
  - 5.1.3 a maximum amount as stipulated in the first row of Schedule 3 of these Terms and Conditions
- 5.2 The minimum Gross Cash Advance Amount shall be as stipulated in the second row of Schedule 3 of these Terms and Conditions.
- 5.3 The Lender may from time to time in its sole and absolute discretion vary the maximum and/or minimum Gross Cash Advance Amounts.

**6. DRAWING**

- 6.1 An Eligible Healthcare Provider may apply for a Cash Advance by submitting a Cash Advance Application in respect of a Cash Advance Amount that is not less than the prescribed minimum Gross Cash Advance Amount or more than the prescribed maximum Gross Cash Advance Amount.
- 6.2 A Cash Advance Application shall:





- 6.2.1 be made using the Borrower's E-money Till linked to the Agent Payment Platform (the **Designated Till**);
- 6.2.2 stipulate:
  - 6.2.2.1 the amount of the Net Cash Advance Amount applied for;
  - 6.2.2.2 the repayment schedule proposed by the Borrower in accordance with clause 11.3 and in Schedule 3;
  - 6.2.2.3 details of the bank account or the Designated Till or E-Money linked phone number to which the proceeds of the Cash Advance should be disbursed or whether the disbursement will be made through the Agent; and
  - 6.2.2.4 such other information as may be required by the Lender.
- 6.3 The Lender may from time to time, in its sole and absolute discretion, make Cash Advance Offer(s) to the Borrower following the Borrower's Cash Advance Application(s) or on the Lender's own initiative as a form of promotion of the Cash Advance.
- 6.4 Subject to these Terms and Conditions, the Lender will within forty eight (48) hours from the acceptance by the Borrower of a Cash Advance Offer:
  - 6.4.1 (without reference to the Borrower) add the Transaction Fees, together with any applicable Taxes for which the Lender and/or the Agent is by law required to remit to the relevant taxing authority, to the Net Cash Advance Amount for purposes of booking the Gross Cash Advance Amount against the Account; and
    - 6.4.1.1 remit the Agency Fee to the Agent;
    - 6.4.1.2 retain the Loan Fees for its account and benefit; and
    - 6.4.1.3 as applicable, remit the Taxes to the relevant taxing authority or the Agent for its onward transmission to the taxing authority; and
  - 6.4.2 disburse the Net Cash Advance Amount to the Borrower through the Agent or to the bank account, the Designated Till or E-money linked phone number specified by the Borrower.
- 6.5 The Borrower acknowledges and accepts that:
  - 6.5.1 Cash Advance Applications, Cash Advance Offers, and acceptance of Cash Advance Offers may only be made electronically via the Agent Payment Platform using the Designated Till or through such other means or channels as may from time to time be established and/or prescribed by the Lender;



- 6.5.2 Cash Advance Offers will be valid for forty eight (48) hours or such other period as may be specified in the offers, and shall automatically lapse if not accepted by the Borrower within such timeframe; and
- 6.5.3 the Lender is not obliged to accept or consider a Cash Advance Application.

**7. CONDITIONS PRECEDENT**

- 7.1 Without limiting the rights of the Lender under these Terms and Conditions, the Lender will not be obliged to make a Cash Advance to the Borrower unless:
  - 7.1.1 the Borrower has accepted the Cash Advance Offer in respect thereof;
  - 7.1.2 the Borrower meets the Eligibility Criteria to the satisfaction of the Lender;
  - 7.1.3 the Lender is satisfied with the creditworthiness of the Borrower;
  - 7.1.4 if a previous Cash Advance is outstanding:
    - 7.1.4.1 the Borrower has repaid at least one third (1/3) of the Gross Cash Advance Amount in relation to that Cash Advance; and
    - 7.1.4.2 the proceeds of the new Cash Advance applied for will be utilised to first fully settle the Loan Balance in relation to that previous Cash Advance and the balance of the proceeds dealt with the manner set out in clause 6.4; and
  - 7.1.5 no Event of Default is continuing or would result from the proposed Cash Advance.
- 7.2 This clause 7 is inserted solely for the benefit of the Lender. The Lender may, in its sole discretion, prescribe additional requirements under the Eligibility Criteria or waive or defer any aspect of the Eligibility Criteria or other requirement of this clause 7, in whole or in part, and subject to such other conditions (if any) as the Lender may determine.

**8. LENDER'S RIGHTS**

The Lender reserves the right to:

- 8.1 approve or decline the Borrower's acceptance of these Terms and Conditions;
- 8.2 approve or decline any Cash Advance Application made by the Borrower;
- 8.3 revoke any Cash Advance Offer at any stage; or
- 8.4 terminate or vary its business relationship with the Borrower and require the repayment of any Loan Balance(s) within such time as the Lender may determine,



in each case, at the Lender's sole, absolute and unfettered discretion and without assigning any reasons or giving any notice thereto.

## 9. **INTEREST**

- 9.1 The Borrower shall pay Interest on the Loan Balance at the Interest Rate.
- 9.2 Interest shall accrue on a day-to-day basis, calculated according to the number of actual days elapsed and a year of three hundred and sixty five (365) days.
- 9.3 The Lender shall be entitled from time to time to vary the Interest Rate to such other rate as the Lender is of the opinion is commercially reasonable or represents the rate or rates commonly chargeable by lenders in Kenya from time to time in relation to advances of the nature made available to the Borrower and having regard to such other circumstances as the Lender shall deem appropriate. All the covenants and provisions contained herein relating to the payment of Interest shall be construed and have effect as referring to such varied rate of Interest applicable from time to time.

## 10. **FEES AND COSTS**

- 10.1 The Borrower shall on the disbursement of a Cash Advance to the Borrower, in respect of that Cash Advance:
  - 10.1.1 pay to the Lender (for its own account) the applicable Loan Fees; and
  - 10.1.2 pay to the Agent (for its own account) the applicable Agency Fee.
- 10.2 The Borrower shall pay, on demand all Taxes, costs, fees, duties, impositions and expenses (together with any Taxes on them) that the Lender incurs in connection with these Terms and Conditions and/or the transactions contemplated hereunder including those incurred in complying with the Borrower's Cash Advance Application(s) and/or obtaining or attempting to obtain payment of any Loan Balance(s) hereunder.
- 10.3 The Borrower shall pay any stamp and other similar duties and Taxes to which these Terms and Conditions and any ancillary documents may be subject, or give rise and shall indemnify the Lender against any losses or liabilities that it may incur as a result of any delay or omission in paying any such duties or Taxes.

## 11. **REPAYMENT**

- 11.1 The Borrower shall repay the Loan Balance in accordance with these Terms and Conditions.
- 11.2 The Loan Balance shall, unless otherwise agreed by the Lender in its discretion, be repaid by way of daily deductions (the **Instalments**) from the Till Revenues.

- 11.3 Subject to clause 11.5, the Borrower shall, with the Lender's approval, elect that each Instalment (other than the final one) will constitute any one of the percentages of its daily Till Revenues, as stipulated in the third row of Schedule 3 of these Terms and Conditions.
- 11.4 The Agent shall deduct from the daily Till Revenues and remit to the Lender each Instalment around midnight each day, until the Loan Balance is repaid in full, and the Borrower irrevocably and unconditionally authorises the Agent to do so.
- 11.5 The Borrower shall ensure that:
- 11.5.1 each Gross Cash Advance Amount together with all Interest accrued thereon is repaid within the maximum tenor is stipulated in the fourth row of Schedule 3 of these Terms and Conditions from (and including) the date of disbursement of the Cash Advance (the **Maximum Tenor**); and
- 11.5.2 at least the minimum instalment percentage as stipulated in the fifth row of Schedule 3 of these Terms and Conditions of each Gross Cash Advance Amount (together with all Interest accrued thereon) is repaid within any sixty (60) consecutive days period of the Maximum Tenor.
- 11.6 The Borrower shall be entitled to make any additional or enhanced repayments of the Loan Balance, without penalty, prepayment charges or prepayment fees.
- 11.7 All payments made by the Borrower under these Terms and Conditions shall be made in full, without set-off, counterclaim or condition, and free and clear of, and without any deduction or withholding, provided that, if the Borrower is required by law or regulation to make such deduction or withholding, it shall:
- 11.7.1 ensure that the deduction or withholding does not exceed the minimum amount legally required;
- 11.7.2 pay to the relevant taxation or other authorities, as appropriate, the full amount of the deduction or withholding;
- 11.7.3 furnish to the Lender or the Agent (as the case may be), within the period for payment permitted by the relevant law, either:
- 11.7.3.1 an official receipt of the relevant taxation or other authorities concerned on payment to them of amounts so deducted or withheld; or
- 11.7.3.2 if such receipts are not issued by the taxation or other applicable authorities concerned on payment to them of amounts so deducted or withheld, a certificate of deduction or equivalent evidence of the relevant deduction or withholding; and
- 11.7.4 pay to the Lender or the Agent (as the case may be) such additional amount as is necessary to ensure that the net full amount received by the Lender or the Agent (as the case may be) after the required deduction or withholding is equal to the amount that the Lender or the Agent (as the case may be) would have received had no such deduction or withholding been made.

12. **COLLATERAL**

- 12.1 The Borrower, with full title guarantee and as a continuing security for the payment and discharge on the due date therefor by the Borrower of all Loan Balances under these Terms and Conditions, hereby grants to the Agent (as security agent and trustee for the Lender) and the Lender, by way of security, a first priority lien over all rights, title and interest under, or in connection with, the Till Revenues, the Designated Till and all other E-money Till(s) held by the Borrower and all claims of whatsoever nature relating to the Till Revenues, the Designated Till and such E-money Till(s).
- 12.2 The Borrower agrees that the Lender and/or the Agent (as security agent and trustee for the Lender) may at any time set off any liability of the Borrower to the Lender (whether such liability is present or future, liquidated or unliquidated, and whether or not it arises under these Terms and Conditions) against the Till Revenues, other funds held in the Designated Till or such other E-money Till(s) from time to time or any liability of the Lender to the Borrower, and the Borrower hereby authorises the Lender and/or the Agent (as the case may be) to do so. Any exercise of the rights under this clause 12.2 shall not limit or affect any other rights or remedies available to the Lender under these Terms and Conditions or otherwise.
- 12.3 The Borrower shall forthwith upon request by the Lender:
- 12.3.1 execute in respect of the Till Revenues, the Designated Till and such other E-money Till(s) such mortgage, charge, pledge, assignment or other security interest or Encumbrance (as the Lender directs) in favour of the Lender and/or the Agent (as security agent and trustee for the Lender) and in such form as the Lender requires; and
- 12.3.2 from time to time and at all times execute and do all such further assurances, documents (to contain such clauses for the benefit of the Lender as the Lender shall require), acts and things and give all such notices, orders and directions as the Lender may reasonably require for facilitating the realisation of the Loan Balance and for exercising all the powers, authorities and discretions hereby and/or by law conferred on the Lender or any receiver or agent of the Lender.

13. **NEGATIVE PLEDGE**

The Borrower covenants that while any Loan Balance is outstanding, it will not without the prior consent in writing of the Lender:

- 13.1 (save in the case of the Security) create or attempt to create or permit to arise or subsist any Encumbrance over or in respect of the Till Revenues and/or the Designated Till, or any part thereof; or
- 13.2 change the details of, part with possession or transfer, sell, assign, discount, factor, or (other than in the ordinary course of business) otherwise dispose of the Till Revenues and/or the Designated Till or any of its rights, title or interest thereto, or any part thereof or attempt or agree so to do; or



- 13.3 acquire, sign up for, set up or use any other E-money Till (other than the Designated Till) in connection with its healthcare business; or
- 13.4 divert any payments due to it from the Designated Till or encourage any person making payment to it not to effect the payment through the Designated Till.

**14. REPRESENTATIONS AND WARRANTIES**

- 14.1 The Borrower represents and warrants to the Lender that:
  - 14.1.1 it has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, these Terms and Conditions and the transactions contemplated hereunder;
  - 14.1.2 it has obtained all required or desirable authorisations to enable it (a) undertake its healthcare business and (b) to enter into, exercise its rights and comply with its obligations in these Terms and Conditions. All such authorisations are in full force and effect;
  - 14.1.3 no Event of Default has occurred or is continuing, or is reasonably likely to result from obtaining the Cash Advances or the entry into, the performance of, or any transaction contemplated by these Terms and Conditions; and
  - 14.1.4 the information, in written or electronic format, supplied to the Lender directly or through the Agent in relation to the Borrower was, at the time it was supplied complete, true and accurate in all respects.
- 14.2 Each of the representations and warranties in this clause 14 is deemed to be repeated by the Borrower on each date a Cash Advance Application is made or during which any Loan Balance is outstanding.

**15. COVENANTS**

The Borrower covenants with the Lender that it will:

- 15.1 deliver to the Lender promptly upon request such financial or other information as the Lender may, from time to time, request relating to the Borrower or its business;
- 15.2 obtain all authorisations necessary (and do all that is needed to maintain them in full force and effect) under any law or regulation to enable it undertake its business and to perform its obligations under these Terms and Conditions;
- 15.3 comply, in all respect, with all laws, if failure to do so has or is likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under these Terms and Conditions;
- 15.4 notify the Lender of any Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence; and

15.5 carry on and conduct its business in a proper and efficient manner and will not make any change to the general nature or scope of its business as carried on at the date of when these Terms and Conditions were entered into.

## 16. EVENTS OF DEFAULT

16.1 Each of the events or circumstances set out in this clause 16 is an Event of Default:

16.1.1 any sum payable by the Borrower under these Terms and Conditions is unpaid, unless its failure to pay is caused solely by an administrative error or technical problem and payment is made within four (4) days of its due date;

16.1.2 the Borrower fails (other than by failing to pay), to comply with any provision of these Terms and Conditions and (if the Lender considers, acting reasonably, that the default is capable of remedy), such default is not remedied within fourteen (14) days of the Borrower becoming aware of the default;

16.1.3 any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, these Terms and Conditions is (or proves to have been) incomplete, untrue, incorrect or misleading when made, repeated or deemed made;

16.1.4 the Designated Till or agreement between the Borrower and the Agent is terminated for any reason;

16.1.5 it is or becomes unlawful, for any reason, for the Lender to perform any of its obligations under these Terms and Conditions;

16.1.6 the use of, or access to, the Agent Payment Platform (or the technology supporting it) is terminated or suspended;

16.1.7 the Borrower stops or suspends payment of any of its debts, or is unable to, or admits its inability to, pay its debts as they fall due or commits an act of bankruptcy or insolvency;

16.1.8 any provision of these Terms and Conditions is or becomes, for any reason, invalid, unlawful, unenforceable, terminated, disputed or ceases to be effective or to have full force and effect;

16.1.9 the Borrower suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a substantial part of its business; or

16.1.10 any event occurs (or circumstances exist) which, in the opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the provisions of these Terms and Conditions.

16.2 At any time after an Event of Default has occurred, the Lender may, by notice to the Borrower:

- 16.2.1 (without prejudice to the accrued rights and obligations) terminate these Terms and Conditions hence terminate its business relationship with the Borrower;
- 16.2.2 cancel all outstanding obligations of the Lender under these Terms and Conditions whereupon they shall immediately be cancelled;
- 16.2.3 declare that any Loan Balance(s) (and all accrued Interest and all other amounts outstanding under these Terms and Conditions) is immediately due and payable, whereupon they shall become immediately due and payable;
- 16.2.4 declare that any Loan Balance(s) be payable on demand, whereupon it shall become immediately payable on demand by the Lender; and/or
- 16.2.5 enforce the Security.

## 17. ACCOUNTS, CERTIFICATES AND STATEMENTS

- 17.1 The Lender shall maintain (or procure to be maintained) accounts evidencing the amounts owed to it by the Borrower, in accordance with its usual practice. Entries in those accounts shall be *prima facie* evidence of the existence and amount of the Borrower's obligations as recorded in them.
- 17.2 A statement and activity report in respect of the Account will be available to the Borrower via a contact link for that purpose on the Agent Payment Platform.. The statement will provide details of transactions in the Account and such other information as the Lender shall deem necessary.
- 17.3 Save for manifest error, a statement issued by the Lender as aforesaid in respect of the Account shall be conclusive evidence of the transactions carried out in respect of the Account and/or or the Loan Balance. The Lender must check the statement carefully and notify the Lender as soon as possible if the statement contains any error.
- 17.4 The Lender reserves the right to rectify discrepancies, add and/or alter the entries in the statements, without prior notice to the Borrower. The Lender will however inform the Borrower of any rectification, additions and/or alterations effected on the statements after the changes are effected.

## 18. REQUESTS MADE BY THE BORROWER

- 18.1 The Borrower irrevocably authorises the Lender to act on all Requests received by the Lender from the Borrower (or purportedly from the Borrower) and to hold the Borrower liable in respect thereof. The Lender may nevertheless refuse to carry out any Requests in its sole and absolute discretion.
- 18.2 The Lender 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, the Lender believes that it can correct the incomplete or ambiguous information in the Request without any reference to the Borrower being necessary.





- 18.3 The Lender shall be deemed to have acted properly and to have fully performed all the obligations owed to the Borrower notwithstanding that the Request may have been initiated, sent or otherwise communicated in error or fraudulently, and the Borrower shall be bound by any Requests on which the Lender may act if the Lender has in good faith acted in the belief that such instructions have been sent by the Borrower.
- 18.4 The Lender may, in its absolute discretion, decline to act on or in accordance with the whole or any part of a Request pending further enquiry or further confirmation (whether written or otherwise) from the Borrower.
- 18.5 The Borrower agrees 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 the Lender having acted in accordance with the whole or any part of any of the Requests (or failed to exercise) the discretion conferred upon it.
- 18.6 The Borrower acknowledges that to the full extent permitted by law, the Lender shall not be liable for any unauthorised drawing, transfer, remittance, disclosure, any activity or any incident on the Account by the fact of the knowledge and/or use or manipulation of the Borrower's Personal Identification Number (PIN) or password or any means whether or not occasioned by the Borrower's negligence.
- 18.7 The Lender is authorised to effect such orders in respect of the Account as may be required by any court order or competent authority or agency under the applicable laws.
- 18.8 In the event of any conflict between any terms of any Request and these Terms and Conditions, these Terms and Conditions shall prevail.

## 19. DATA

- 19.1 The Borrower hereby agrees and authorizes the Lender to:
- 19.1.1 obtain from the Agent the Borrower's personal and/or general information held pursuant to an agreement and/or arrangements between the Borrower and the Agent including copies of documents containing such information that will enable the Lender to identify the Borrower and comply with regulatory and/or internal "know your client" requirements or similar identification procedures;
- 19.1.2 obtain from the Agent statements on the Till Revenue history and other data or information relating to the Borrower's E-money Till(s);
- 19.1.3 obtain and procure the Borrower's personal information contained in the IPRS from the Government of the Republic of Kenya; and
- 19.1.4 carry out credit checks with or obtain the Borrower's credit information from, any credit reference bureau and disclose any information relating to the Borrower to any credit reference bureau. The



Borrower acknowledges that such information may be used by financial institutions, lenders and other persons in assessing, among other things, applications for credit and for occasional debt tracing and fraud prevention purposes.

- 19.2 If the Lender is obliged for any reason to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower will, promptly on the request of the Lender, supply (or procure the supply of) such documentation and other evidence as is reasonably requested in order for the Lender to be able to carry out, and be satisfied that it has complied with, all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in these Terms and Conditions.
- 19.3 The Borrower agrees and consents that the Lender may collect, use, disclose and process the Borrower's personal information obtained in accordance with these Terms and Conditions or set out in any application form, letter or other documents or agreement exchanged between any parties hereto or possessed by the Lender (such information hereinafter referred to as **Data**), for any one or more of the following purposes:
- 19.3.1 determining whether to enter into a business relationship with the Borrower under these Terms and Conditions or otherwise;
  - 19.3.2 processing the Borrower's application(s) for Cash Advance(s);
  - 19.3.3 administering and/or managing the Borrower's relationship and/or dealings with the Lender; and
  - 19.3.4 reasonable commercial purposes connected to the transaction contemplated under these Terms and Conditions including sending the Borrower marketing, advertising and promotional information about other products and/or services that the Lender, its affiliates, business partners and related entities may be offering, and which Lender is of the view that may be of interest or benefit to the Borrower; and
  - 19.3.5 business activities including quality control, training and ensuring the efficient carrying on of the transactions contemplated under these Terms and Conditions.
- 19.4 To the fullest extent permitted by law, the Borrower unconditionally authorizes the Lender to disclose the Data to:
- 19.4.1 its investors, third party service providers, dealers, agents, or other persons that may be or become the Lender's affiliate (including their legal advisers and other advisers) for reasonable commercial purposes related to the transactions contemplated hereunder or such other purposes as the Lender may reasonably deem necessary;

- 19.4.2 any third party including credit reference bureaus, if in the Lender's opinion such disclosure is necessary for the purposes of evaluating the Borrower's creditworthiness or any transaction with or credit application made to the Lender or such third party or for any other lawful purposes;
- 19.4.3 any law enforcement or competent regulatory or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud;
- 19.4.4 the Lender's legal advisers, auditors or other professional advisers, or to any court or arbitration tribunal in connection with any legal proceedings or audit; and
- 19.4.5 to the Agent in connection with the transactions contemplated under these Terms and Conditions.
- 19.5 The Borrower warrants and represents that it has read and understood all of the above provisions and all other provisions of these Terms and Conditions and the Lender's Personal Data Protection Policy.

## 20. **LIMITATION OF LIABILITY**

- 20.1 The Lender shall not be responsible for any loss suffered by the Borrower should the Services be interfered with or be unavailable by reason of the failure of any mobile phone handset, SIM card, or electronic device or equipment used in connection with the function of the Designated Till (the **Equipment**), or any other circumstances whatsoever not within the Lender's control including, without limitation, *Force Majeure* or error, interruption, malfunction, delay or non-availability of the Agent Payment Platform, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.
- 20.2 The Lender will not be liable for any losses or damage suffered by the Borrower as a result of or in connection with, among other things:
  - 20.2.1 failure by the Borrower to meet the Eligibility Criteria;
  - 20.2.2 failure, malfunction, interruption or unavailability of the Agent Payment Platform, the Equipment, or any mobile network, or internet services or telecommunications system;
  - 20.2.3 the Borrower's failure to give proper or complete instructions in its Requests; or
  - 20.2.4 any fraudulent or illegal use of the Services, the Agent Payment Platform and/or the Equipment; or
  - 20.2.5 the Borrower's failure to comply with these Terms and Conditions and any document or information provided by the Lender and/or the Agent concerning the use of the Agent Payment Platform and/or the Services.
- 20.3 If for any reason other than a reason mentioned in clauses 20.1 or 20.2, the Services are interfered with or unavailable, the Lender's sole liability in respect thereof shall be to re-establish the Services as soon as reasonably practicable.

- 20.4 Save as provided in clause 20.3, the Lender shall not be liable to the Borrower for any interference with or unavailability of the Services, howsoever caused.
- 20.5 Under no circumstances shall the Lender be liable to the Borrower 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 the Lender.
- 20.6 All warranties and obligations implied by law, custom or trade are hereby excluded to the fullest extent permitted by law.

## 21. **INDEMNITY**

- 21.1 In consideration of the Lender complying with the Borrower's instructions or Requests hereunder, the Borrower undertakes to indemnify the Lender and hold it harmless against any loss, charge, damage, expense, fee or claim which the Lender suffers or incurs or sustains thereby and the Borrower absolves the Lender from all liability for loss or damage which the Lender may sustain from the Lender acting on the Borrower's Requests or in accordance with these Terms and Conditions.
- 21.2 The indemnity in clause 21.1 shall also cover the following:
- 21.2.1 All demands, claims, actions, losses and damages of whatever nature which may be brought against the Lender or which it may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Lender's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by the Lender.
- 21.2.2 Any loss or damage that may arise from the Borrower's 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.
- 21.2.3 Any unauthorised access to the Account or any breach of security or any destruction or accessing of the Data or any destruction or theft of or damage to any of the Equipment.
- 21.2.4 Any loss or damage occasioned by the failure by the Borrower to adhere to these Terms and Conditions and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by the Lender as a consequence of any breach by these Terms and Conditions.



21.2.5 Any damages and costs payable to the Lender in respect of any claims against the Lender for recompense for loss where the particular circumstance is within the Borrower's control.

## 22. SEVERABILITY

If any provision (or part of a provision) of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of these Terms and Conditions.

## 23. ASSIGNMENT AND TRANSFER

23.1 Each of the Lender and the Agent may assign any of its rights under these Terms and Conditions or transfer all its rights or obligations by novation.

23.2 The Borrower may not assign any of its rights or transfer any of its rights or obligations under these Terms and Conditions.

## 24. GENERAL

24.1 The Lender may at any time without notice and in its sole discretion vary or amend these Terms and Conditions (including the Loan Fees, the Interest Rates and/or the Eligibility Criteria). Any such variation or amendment may be published in posters or pamphlets displayed or available at the Agent's offices, in any daily newspaper, on the Lender's and/or the Agent's website and/or by any other website or means determined by the Lender and such variations or amendments shall take effect immediately upon publication and shall be binding on the Parties as if they were contained in these Terms and Conditions.

24.2 Without prejudice to any other right of the Lender (under these Terms and Conditions or otherwise) to terminate or cancel these Terms and Conditions, the Lender may in its sole discretion terminate, cancel or suspend these Terms and Conditions or discontinue the Services at any time and from time to time for commercial reasons or any other reason as it may determine.

24.3 Any notice or other communication by the Lender to the Borrower under these Terms and Conditions may be made through publication of notices, posters or pamphlets displayed or available at the Lender's and/or the Agent's offices or premises, or by way of general notices to the Lender's customers in any daily newspaper, on the Lender's and/or the Agent's website and/or by any other website or through SMS to the Designated Till or any mobile phone number associated with the Account or by any other means determined by the Lender.

24.4 Any enquiries or other communications by the Borrower to the Lender and/or the Agent may be made via [customerservice@carepay.co.ke](mailto:customerservice@carepay.co.ke) or 0800721253 or such other communication channels as may be communicated to the Borrower from time to time.

- 24.5 A waiver of any right or remedy of the Lender under these Terms and Conditions or by law, or any consent given by the Lender under these Terms and Conditions, is only effective if given in writing by the Lender and shall not be deemed a waiver of any other breach or default. It only applies in the circumstances for which it is given and shall not prevent the Lender from subsequently relying on the relevant provision.
- 24.6 A failure or delay by the Lender to exercise any right or remedy provided under these Terms and Conditions or by law shall not constitute a waiver of that or any other right or remedy, prevent or restrict any further exercise of that or any other right or remedy or constitute an election to affirm these Terms and Conditions. No single or partial exercise by the Lender of any right or remedy provided under these Terms and Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 24.7 The rights and remedies of the Lender provided under these Terms and Conditions are cumulative and are in addition to, and not exclusive of, any rights and remedies provided by law.

25. **DISPUTE RESOLUTION**

- 25.1 The Parties shall use their good faith efforts to resolve any dispute, controversy or claim of any nature whatsoever arising out of or in relation to or in connection with these Terms and Conditions. To this end, the Parties in dispute shall each promptly appoint representatives of appropriate standing who shall meet and attempt to resolve any dispute between them. In the event that an amicable settlement has not been reached within thirty (30) days of the parties' representatives meeting as aforesaid, the following provisions of this clause 25 shall apply.
- 25.2 Any dispute, difference or question (the **dispute**) whatsoever and howsoever arising out of or in connection with these Terms and Conditions, save as specifically provided herein, shall be referred for final determination to a single arbitrator to be appointed by agreement between the parties to the dispute or in default of any such agreement within seven (7) days of the notification of any dispute by either party to the other then, upon application by either party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators (the **Institute**).
- 25.2.1 Such arbitration shall take place in Nairobi and shall be conducted in accordance with the Rules of Arbitration of the Institute.
- 25.2.2 To the extent permissible by law the determination of the arbitrator shall be final and binding upon the Parties and shall not be subject to any appeal.
- 25.2.3 Nothing in this clause 25.2 shall restrict either Party's freedom to commence legal proceedings of any nature for the purposes of seeking preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of any arbitrator.



- 25.3 Clauses 25.1 and 25.2 are for the benefit of the Lender and the Agent only. As a result, neither the Lender nor the Agent shall be prevented from taking proceedings relating to a dispute in any court, tribunal, administrative body or other body with jurisdiction as it sees fit. To the extent allowed by law, the Lender or the Agent may take concurrent proceedings.
- 25.4 These Terms and Conditions shall be governed by and construed in accordance with the laws of Kenya.

**SCHEDULE 1**  
**ELIGIBILITY CRITERIA**

<b>Parameter</b>	<b>Requirement</b>
<b>Type of Healthcare Provider</b>	The Healthcare Provider should fall under any one or more of the following categories: health post, dispensary, health center, clinic, nursing home, (district, county or country) hospital, laboratory, pharmacy, diagnostic center, eye center, or specialist health service.
<b>Licensing</b>	The Healthcare Provider should be licensed
<b>Business registration</b>	The Healthcare Provider should have a current business operation permit (if applicable)
<b>Social relevance</b>	The Healthcare Provider should predominantly serve the low income segment of the population
<b>Minimal outreach</b>	The Healthcare Provider should have a practice of at least 3,000 patient visits or at least 12,000 for a pharmacy per year
<b>Patient safety</b>	The Healthcare Provider should meet basic patient safety conditions, that is, be clean, well maintained, and apply basic hygiene rules
<b>Quality improvement objective</b>	The Healthcare Provider should show commitment to improve quality
<b>Credit Reference Bureau</b>	The Healthcare Provider should not have a negative listing with one or more of Kenya's Credit Reference Bureaus.



**SCHEDULE 2**  
**FEE SCHEDULE**

<b>Fee/Cost</b>	<b>Amount</b>
<b>Admin Fee</b>	1% of the Net Cash Advance Amount
<b>Agency Fee</b>	2% of the Net Cash Advance Amount
<b>Interest Rate</b>	24% p.a
<b>Margin</b>	No margin of default rate above normal rate

**SCHEDULE 3**

<b>Maximum gross Cash Advance amount</b>	Kenya Shilling five hundred thousand (KES 500,000)
<b>Minimum gross Cash Advance amount</b>	Kenya Shillings ten thousand (KES 10,000)
<b>Installment percentages options</b>	33%, 50% or 67% of the daily Till Revenues
<b>Maximum tenor</b>	One hundred and eighty (180) days
<b>Minimum instalment percentage</b>	16.7%