

TRUSTGRO SCA LIMITED USSD TERMS & CONDITIONS

1. THE AGREEMENT

1.1 This Agreement sets out the complete terms and conditions ("USSD T&Cs") which shall apply when You use the Service (hereinafter defined) and is available at our website located at <https://ke.fin.africa/> (the "Website").

1.2 Any amendments or variations made to these USSD T&Cs shall take effect on their date of publication or as otherwise provided and such amendment or variation and shall be posted on the Website.

2. DEFINITIONS

In this section, the following words and phrases have the meaning set opposite them unless the context indicates otherwise:

2.1. **"Credit Reference Bureau"** means a credit reference bureau duly licensed under the Banking Act Cap 488 pursuant to the Banking (Credit Reference Bureau) Regulations 2020 to *inter alia*, collect and facilitate sharing of borrower credit information.

2.2. **"GSM"** stands for Global System for Mobile communication, which is a digital mobile telephony system.

2.3. **"Mobile Phone"** means the mobile handset together with requisite accessories, and equipment attachments.

2.4. **"Mobile Number"** means the unique mobile telephone number issued by a Mobile Operator to its subscribers and is used to identify such subscriber on the Network and which a User has indicated as his mobile number.

2.5. **"Mobile Operator"** means mobile telecommunication network operator that among others issues Mobile Numbers and SIMs to its subscribers.

2.6. **"Network"** means Mobile Operator's mobile cellular network;

2.7. **"Personal Information"** refers to the information about the User obtained by Fin or a Mobile Operator in connection with the respective services being provided by them including but not limited to the information collected by Fin for registering the User in the USSD System.

- 2.8. **"Products"** means the various loan products and Services offered by Fin through the Fin USSD.
- 2.9. **"Request"** means an instruction received by Fin from User's Mobile Phone and Mobile Number and made via the Fin USSD System and upon which Fin is authorized to act.
- 2.10. **"SIM"** means subscriber identity (identification) module.
- 2.11. **"USSD System"** means Fin proprietary digital platform (and any amendments, upgrades or enhancements thereto from time to time) enabling a User to communicate with Fin, subscribe to various Products on offer, manage and process Requests (as the case may be).
- 2.12. **"Service"** means the service we offer by which a User can Request for any of our Products or services, the processing of the Requests and any other services as we may decide to provide from time to time.
- 2.13. **"SMS"** stands for Short Message Service consisting of a text message transmitted to a Mobile Phone.
- 2.14. **"System Menu"** means the Fin USSD menu accessible through your Mobile Number for purposes of issuing Requests to a Mobile Operator in order to access the Service.
- 2.15. **"Fin"** means TrustGro SCA Limited T/A Fin with registered office at Avocado Towers, 1st floor, Muthithi Road, Nairobi and of P.O Box 5483-00100 Nairobi and registered as C54813.
- 2.16. **"Fin USSD"** is USSD System code number *714# or such other variants designated by the Fin by which you may access the Service.
- 2.17. **"Transaction PIN"** refers to unique personal identification number, which the User shall use to access the USSD System and authorize Requests.
- 2.18. **"User"** means an eligible customer of Fin or any other person all of whom are authorized to use the Service.
- 2.19. **"USSD"** refers to Unstructured Supplementary Service Data (USSD) unique to GSM. It is a capability built into the GSM standard phones to support transmitting of information over the signaling channels of the GSM network. USSD provides session-based communication, enabling a variety of applications.
- 2.20. **"User Profile"** refers to the customer's or any other authorized person's profile on the USSD System.

2.21. **"We"** **"our"** and **"us"** or its variants means Fin and includes the successors and assigns of Fin; and

2.22. **"You"** or **"Your"** or its variants means the User;

2.23. In these USSD T&Cs save where the context otherwise requires:

2.23.1 references to an individual or individuals shall include his or their respective personal representatives;

2.23.2 the singular includes the plural and vice versa and any gender includes any other gender;

2.23.3 references to 'borrower' 'User' and 'customer' shall include both the masculine and the feminine gender as well as the juristic persons.

2.23.4 In this Agreement, unless something in the subject matter or context is inconsistent therewith or unless otherwise herein provided, a reference to any legislation is to that legislation as now enacted or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder headings in these USSD T&Cs are for convenience purposes only and they do not affect the interpretation of this Agreement.

2. APPLICABILITY OF TERMS AND CONDITIONS

These USSD T&Cs form the contract between the You as the User and Fin for the use of the Service by You and shall be in addition to and not in derogation of other separate terms and conditions in respect of Products we offer.

4. ACCEPTANCE OF THE USSD T&Cs

4.1 These USSD T&Cs apply and shall take effect once You register for the Service ("Effective Date"). By using or continuing to use the Service, You are considered to have read, understood and accepted these USSD T&Cs and to be legally bound by these USSD T&Cs voluntarily for your own benefit.

4.2 You affirm that these USSD T&Cs are without prejudice to any right that we may have with respect to the Services in law or otherwise.

4.3 We may amend these USSD T&Cs from time to time and Your continued use of the Service constitutes Your agreement to be bound by such amendment or variation.

5. REGISTRATION AND USE OF THE SERVICE

- 5.1 In order for You to use the Services, you must have a registered Mobile Number with a Mobile Operator's network.
- 5.2 Access to the Services shall be through Fin USSD.
- 5.3 All instructions to us for use of the Service shall be made electronically through USSD code that will be accessible to You through Fin USSD.
- 5.4 To sign up for the Service, you must dial the Fin USSD and select the option made available on the USSD System Menu for purposes of accessing the Services.
- 5.5 You may be required to create Transaction PIN and username within such parameters required by the System Menu.
- 5.6 On the USSD System Menu, you will be required to accept these USSD T&Cs.
- 5.7 Upon successful signing up, You will receive an SMS confirming successful registration.
- 5.8 We have the absolute discretion to reject Your enrollment without adducing any reason for same.

6.AUTHORISATIONS

By registering for the Service, you authorize us to: -

- 6.1 obtain and procure your personal information contained in the Integrated Population Registration Service ("IPRS") from the Government of Kenya and you further agree and consent to the disclosure and provision of such personal information by the Government of Kenya to us;
- 6.2 to access any information from any third party;
- 6.3 in case You are a borrower, to subject the Your information to ascertain Your credit worthiness;
- 6.4 maintain logs of Your activity and transactions effected by you via the Service, using whatever means and to use such logs for the purpose of establishing or verifying that a particular transaction/activity was effected through your Mobile Number; and 6.5 to assess the Your credit score including but not limited to accessing the User's credit history from a Credit Reference Bureau.

7.SERVICE PROVISION

7.1 We shall use our best efforts from time to time to provide the Service. We reserve the right to determine the type of Service You can access. Our decision in this regard shall be final and binding on You.

7.2 We may also make additions/deletions to the Service at its sole discretion.

7.3 We are under no obligation to provide the Service to a Mobile Phone that is incompatible with our specifications.

8.ACCESS AND USE OF THE SERVICE

You hereby **agree** that: -

8.1 You shall use only Your Mobile Number registered on the USSD System and may also use Your preferred PIN to access the Service;

8.2 You shall not permit any other party to access your Mobile Phone or leave the Mobile Phone unattended or use Your Mobile Phone to access the Service;

8.3 You shall not permit any other party to access your SIM card or leave the SIM card unattended or use Your SIM Card to access the Service;

8.4 You unconditionally and irrevocably authorize us to honour transactions consummated through the USSD System. We have no obligation to verify the authenticity of any Request received from You through the USSD System or purporting to have been sent by You. Our own records of transactions maintained on our database shall be accepted as conclusive and binding for all purposes as evidence of your Requests consummated through the USSD System.

8.5 You shall inform us immediately upon You suspecting that Your Transaction PIN has been accessed by an unauthorized third party.

8.6 You shall inform us of any unauthorized transaction effected through the USSD System immediately You become aware of such transaction.

8.7 You shall take all steps possible to ensure that your Mobile Phone, SIM card with your Mobile Number and Transaction PIN are not shared with anyone and in case of misuse/theft/loss take immediate action to de-register your User Profile by calling our 24-hour support Centre - on 0111149000 or email: customercare.trustgro.com

9 LIABILITY

9.1 You shall be liable for any form of unauthorized transactions in the USSD System where You have breached these USSD T&Cs or contributed or caused the loss by Your negligent actions such as, but not limited to, the following:

9.1.1 not advising us immediately from the date of becoming aware of unauthorized access to or erroneous transactions performed from your Mobile Number using the Service.

9.1.2 not informing us about a change in or termination of your Mobile Number registered with us.

9.1.3 disclosing your Transaction PIN to third parties.

9.2 You shall be solely responsible for a compromise of Your Transaction PIN and its consequences and we shall not be held responsible in whatsoever manner for any financial / non-financial losses that occur/is likely to occur because of the leakage of Your Transaction PIN. You are advised to change the Transaction PIN from time to time or whenever you suspect a Transaction PIN compromise.

9.3 You shall be fully liable and responsible for all consequences arising from or in connection with use of the Service and / or access to any information or report or any other information as a result of such use by You or any other person whether or not authorized.

9.4 You shall be liable for any unauthorized use of your Mobile Phone and/or SIM card to access the Service and you hereby absolve us of all and any liability/responsibility in this regard. You undertake not to make any claim against us for losses, damages or actions arising out of the unauthorized use of your Mobile Phone and/or SIM card.

10 LIMITATION OF LIABILITY

10.1 Access to the Service may be affected by factors outside our control such as system downtime or failure. Uninterrupted access may also arise as a result of scheduled or unscheduled periodic testing, repair, upgrade or maintenance and other factors. We will use all reasonable efforts to ensure that Your Requests are processed in a timely manner and in accordance with the requirements of the law. Notwithstanding the foregoing, we do not make any representations or warranties as to continuous, uninterrupted or secure access to the Service.

10.2 While we will make every commercially reasonable effort to ensure that You receive proper Service, we will not be responsible to You or to any other person

claiming under You for any losses or damage, regardless of the nature in connection with the following unless procured through our own willful default or fraud: -

10.2.1 a failure, malfunction, interruption, or unavailability of the USSD System, Your Mobile Phone, the Operator's network;

10.2.2 Your failure use or to give proper or complete instructions using the USSD System;

10.2.3 any fraudulent or illegal use of the Service, the USSD System, and/or Your Mobile Phone;

10.2.4 any loss that may arise as a result of any negligence on Your part including revealing Your Transaction PIN to a third party

10.2.5 Your failure to comply with these Terms and Conditions; or

10.2.6 other circumstances whatsoever not within our control including, without limitation, force majeure, terrorist or any enemy action, natural calamity, floods, fire and other natural disasters, legal restraints, faults in the telecommunication network or Mobile Operator's network failure, software or hardware error, etc.

10.3 Under no circumstances shall we, our employees, agents or contractors, be liable for any damages, whatsoever, whether such damages are direct, indirect, incidental, consequential and irrespective of whether any claim is based on loss of revenue, investment, production, goodwill, profit, interruption of business or any other loss of any character or nature whatsoever and whether sustained by You or any other person.

10.4 We are shall in no way liable for the services provided by a Mobile Operator in relation to Your Mobile Phone and Mobile Number or charges levied by the Mobile Operator levied on its subscribers in relation to USSD transactions.

10.5 You acknowledge that we will take reasonable and practical steps to ensure that the USSD Systems has adequate security designs and controls to manage the risks in operating the USSD System taking into account any law, rules, regulations, guidelines, circulars, codes of conduct and prevailing market practices that may be applicable to us from time to time.

10.6 We exclude any warranty and obligations that are implied by law and not set out in this Agreement to the extent that we are permitted by law.

11. INDEMNITY

- 11.1 You shall indemnify and hold us harmless against any and all liability suffered or incurred (including but not limited to liabilities, judgments, damages, losses, claims, costs and expenses, including attorney's fees and expenses) by us, our customers or a third party, directors, nominees or any claim or action brought by a third party which is in any way the result of transactions done by You on the USSD System.
- 11.2 You further indemnify is for all losses, damages, actions and liability arising as a of your failure to comply with these USSD T&Cs. You understand and acknowledge that in the event of loss or misplacement of Your Mobile Phone and/or SIM card, it can be misused to access the USSD System. You shall indemnify us for any such misuse arising out of the same. You shall not hold us responsible for any loss that You may suffer in these circumstances.

12.DISCLOSURE OF INFORMATION:

- 12.1 By registering for the Service, you authorize us to reveal, receive, record or utilize Your information or data relating to Your use of the Service:
- 12.1.1 to any local or international law enforcement or competent regulatory or governmental agencies for purposes of aiding in the prevention, detection, investigation or prosecution of criminal activities or fraud;
 - 12.1.2 to a Credit Reference Bureau;
 - 12.1.3 to a third party involved in the provision of the Services;
 - 12.1.4 to our lawyers, auditors, debt collectors, loan recovery agencies or other professional advisors or to any court or arbitration tribunal for the purposes of any proceedings;
 - 12.1.5 for reasonable commercial purposes connected to Your use of the Services, such as marketing and research related activities;
 - 12.1.6 for any business practices including but not limited to quality control, training and ensuring effective systems operation; and
 - 12.1.7 for statistical analysis.
- 12.2 You acknowledge that we may retain Your transaction data for a period by required by law or regulation.
- 12.3 We always respect Your privacy and we will endeavor to ensure that that information shared with any third party in accordance with clause 6.1 is shared on confidential basis and strictly to the extent necessary for purposes provision of the Services or for any purpose set out under these USSD T&Cs.

13. WITHDRAWAL, SUSPENSION AND TERMINATION

13.1 We may at any time, upon notice to You, suspend, terminate or vary our business relationship with You.

13.2 We may suspend the Services: -

13.2.1 if you breach these USSD T&Cs;

13.2.2 if we notice abuse/misuse, breach of content, errors / omissions / fraudulent (including attempted) transactions related to Your use of the Service.

13.2.3 if we are required or requested to do so in order to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;

13.2.4 if we reasonably suspect or believe that You are in breach of these USSD T&Cs;

13.2.5 if required to do so to address technical problems or for reasons of ensuring safety;

13.2.6 to facilitate update or upgrade the contents or functionality of the Service from time to time;

13.2.7 if we decide to suspend or cease the provision of the Service for commercial reasons or for any other reason as we may reasonably determine.

13.2.8

14. INTELLECTUAL PROPERTY

The User acknowledges that the intellectual property rights in the USSD System, the Service and all associated documentation that we provide to you through the USSD System or otherwise are vested in us. You undertake that You shall not infringe any such intellectual property rights. You further undertake that you shall not duplicate, reproduce or in any way tamper with the USSD System or the Service and associated documentation without our prior written consent.

15. NOTICES

15.1 We may give You notices under these USSD T&Cs, by SMS to the User's Mobile Number. In addition, we may also publish notices of general nature, which are applicable to all Users of the Service on the Website. Such notices will have the same effect as a notice served individually to You.

15.2 Any notice or communication given in the aforesaid manner shall be deemed received by the User within twenty-four (24) hours of transmission by SMS or publication on our Website (as the case may be).

16.CHARGES

You shall be responsible for all Mobile Operator charges relating to transactions made through the Service and other costs inclusive of statutory charges, if any, relating to the use of the Service at prevailing rates or at future rates as determined by us and posted on the Website.

17.VARIATION

We shall at any time be entitled to amend, supplement or vary any of these USSD T&Cs as we introduce new functionalities to the Service or as may be required by law. Such amendment, supplement or variation shall be binding on You. An updated version of the USSD T&Cs shall be made available on the Website or any other medium that we may adopt from time to time. On publication of an updated version of these USSD T&Cs on our Website or any other medium, the You are deemed to have read same and consent to such modification. We shall determine the privileges attached to the use of the Service and shall have absolute discretion to change, vary add or amend these privileges and conditions attached thereto from time to time as we deems fit.

18.GOVERNING LAW AND JURISDICTION

18.1 The Service and these USSD T&Cs shall be governed by and construed in accordance with the laws of the Republic of Kenya.

18.2 We shall submit to the exclusive jurisdiction of the courts of the Republic of Kenya.

19.COMPLAINTS AND DISPUTE RESOLUTION

19.1 In the event You have any complaint regarding any transaction, the same should be brought to our attention immediately at our 24 hour support Centre on 0110049000 or email customercare@Fin.com.

19.2 You shall bring to our notice any error, discrepancy or omission in transactions noted by You immediately upon receiving alerts from the USSD System.

19.3 Without any prejudice to either Party's right under these USSD T&Cs, we shall attempt to resolve any dispute within [thirty (30) days] in accordance with our dispute resolution policy published by us from time to time. We shall upon consideration of the dispute confirm in writing whether the dispute is resolved or not.

20.SERVICE DEACTIVATION

In order to deactivate the Service, the User shall visit a branch or call 0111149000 or email customercare@Fin.com.

21.GENERAL

- 21.1 If any clause or part of these USSD T&Cs is found to be in conflict with any applicable law such clause will be severed and subject to amendment, modification or deletion by us without affecting the validity or enforceability of the remaining terms and conditions.
- 21.2 These USSD T&Cs constitute the entire agreement between us with respect to the Service.
- 21.3 You may not assign any right or obligation that may arise under these terms and conditions without our consent.
- 21.4 You agree that our rights will not be lessened or restricted or denied because of any leniency or restraint extended by us to You by any delay in exercising or failure to exercise any of our rights unless provided to You in writing and signed by our duly authorized representative. No waiver by us of any breach of these terms and conditions by Yourself shall operate as a waiver of any subsequent breach.
- 21.5 Nothing in these Terms and Conditions shall be read as preventing any party from pursuing any other remedy available to it under law.