

Terms and Conditions

EFFECTIVE FROM 27 October 2015

Before first using M&S Bank Explorer (the “App”) you must accept these Terms and Conditions (“Terms”) and the App’s Privacy and Cookie Policy. You should read all of them carefully. M&S Bank recommends you print or download a copy of these Terms and keep it in a safe place for your records. You can ask for a copy of these Terms at any time – the current version of these Terms can be found in settings within this App and can also be downloaded from M&S Bank’s website at marksandspencer.com/explorer.

M&S Bank does not offer financial services or products via this App. This App does not link with any account or product that you may hold with M&S Bank, and so relies entirely on your input through the App.

This App is provided by M&S Bank, the trading name of Marks & Spencer Financial Services plc, which is owned by HSBC Holdings plc. M&S Bank is authorised by the Prudential Regulation Authority, and regulated by the Financial Conduct Authority and the Prudential Regulation Authority, and is listed with the reference number 151427. M&S Bank is a company incorporated under the laws of England and Wales with company registration number 1772585 and its registered office is at Kings Meadow, Chester, CH99 9FB. M&S Bank’s registered VAT number is GB365684514.

M&S Bank is a member of the Financial Ombudsman Scheme and adheres to The Standards of Lending Practice. More detail about this is available on the Lending Standards Board website. For information about accounts and other products you can refer to the Money Advice Service website.

1. This licence shall commence when you first install and use this App and shall continue until terminated in accordance with clauses 20, 21 or 22.
2. M&S Bank grants you a personal, non-transferable, non-exclusive licence to use this App (including any future updates) subject to these Terms (which M&S Bank may change from time to time in accordance with clause 18). Only the following people have rights under these Terms:
 - you; and
 - M&S Bank; and
 - Google and Microsoft Bing (who supplies the mapping technology used by the App); and
 - the supplier of the mobile device to which you have downloaded the App; and
 - the operator of the app store from which you downloaded the App.

You acknowledge and agree that as between M&S Bank and you all ownership in this App remains with M&S Bank.

3. **Responsibility for the App’s content** – M&S Bank is solely responsible for this App and its content. You agree that Apple Inc., Google Inc., Microsoft Inc., BlackBerry Limited, any mobile telephone network provider, and any app store provider or other intermediary making this App available for download:

- a. has no responsibility for this App, and is under no obligation to provide any maintenance or support services for this App; and
- b. has no responsibilities or obligations to you in relation to the App,

but that only M&S Bank is responsible in this regard. Only M&S Bank will be responsible for any claims from you or a third party relating to the App or its possession or use, including alleged breaches of a third party’s intellectual property rights, product liability claims, compliance with legal or regulatory requirements and consumer protection claims. You acknowledge that, in the event of any third party claim that this App or your possession and use of this App infringes that third party’s intellectual property rights, M&S Bank (and not Apple Inc., Google Inc., Microsoft Inc. or BlackBerry Limited) will be responsible for the investigation, defence, settlement and discharge of any such claim. M&S Bank reserves the right to add or withdraw features or functionality within this App without prior notice or your consent, except to the extent that these changes result in changes to these Terms in which case the provisions of clause 18 shall apply; the addition or withdrawal of any features or functionality shall be without liability to you or to others.

4. **Charges** – M&S Bank does not currently charge for this App. However, your mobile network operator may charge you, and these charges may vary if you use your mobile device to access this App when abroad. You are solely responsible for these charges.
5. **No guarantees** – This App is provided “as is” with no representation, guarantee, warranty or agreement of any kind as to its functionality. M&S Bank cannot guarantee that access to the App will be uninterrupted or that there will be no delays or failures. M&S Bank also cannot guarantee that no viruses or other contaminating or destructive properties will be transmitted or that no damage will occur to your mobile device. You are responsible for adequate protection and back-up of data and/or equipment and for undertaking reasonable and appropriate precautions to scan for computer viruses or other destructive properties. M&S Bank is not responsible:
 - a. if you incur any loss as a result of any of the matters set out in this clause;
 - b. for any third party software that may be used in connection with this App; or
 - c. for any failure to provide services connected with this App, in part or full, due to abnormal and unforeseen circumstances beyond M&S Bank’s control, the consequences of which would have been unavoidable despite all efforts to the contrary (this includes, in particular, any suspension of App services resulting from maintenance and upgrades to M&S Bank’s

systems or the systems of any party used to provide the App services, outages on any phone network or in the case of mobile networks where you are not in an area of mobile coverage).

6. **Security** – You must take all reasonable precautions to keep your mobile device safe from unauthorised use, viruses and other security risks. These precautions include but are not limited to all of the following, as applicable:
 - a. using any key- or password-lock offered under your mobile device's operating software;
 - b. not allowing anyone else to have or use your mobile device;
 - c. not leaving your mobile device unattended; and
 - d. deleting this App from your mobile device before you dispose of it or send it away for repair etc.
7. **Links to third party sites or content** – By providing hyperlinks within the App M&S Bank does not endorse and is not responsible for any linked websites. M&S Bank recommends that you view the linked website's terms, privacy and cookie policy pages to understand how use of that website may affect you. M&S Bank is not responsible for the accuracy, timeliness or the continued availability or the existence of content, hyperlinks, or third party websites or pages linked to the App.
8. **Use of location data** – Certain services and functions within this App use information about your physical location sent from your mobile device (eg GPS signals). If you use these services, you agree to M&S Bank accessing, monitoring, transmitting, collecting, maintaining, disclosing, processing and using your location data via the App and passing it to its partners, licensees and service providers, Google Inc, Microsoft Bing and your mobile device's mapping and location services provider in order to provide the relevant functionality. Such data will be used in accordance with these Terms and this App's privacy policy, the terms and conditions and privacy policy of your mobile device's mapping and location services provider and with [Google's Terms of Service](#), [Acceptable Use Policy](#), [Microsoft Bing](#) and other notifications as amended from time to time, which you agree to by using these services. You will be asked to consent to the use of location services when you download and install this App or when you first use the relevant functionality, and you may withdraw this consent at any time by turning off the location services settings on your mobile device.
9. **Other Google services** – The App's services may contain translations powered by Google. Google disclaims all warranties related to the translations, express or implied, including any warranties of accuracy, reliability, and any implied warranties of merchantability, fitness for a particular purpose and non-infringement. You will comply with all applicable laws, regulations, and [Google's Terms of Service](#). In relation to these services and the relevant content, you agree not to:
 - a. scrape or build databases, or otherwise create permanent copies of any content, or keep cached copies longer than permitted by the cache header;
 - b. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third party;
 - c. misrepresent the source or ownership; or
 - d. remove, obscure, or alter any copyright, trademark, or other proprietary rights notices; or falsify or delete any author attributions, legal notices, or other labels of the origin or source of material.
10. **Trade marks and copyright** – 'HSBC' and the Hexagon device are trade marks of HSBC Group Management Services Limited and all rights in and to these marks vest in HSBC Group Management Services Limited. 'M&S' is a trade mark of Marks and Spencer plc. You may not use or reproduce the HSBC, the Hexagon device or the M&S trade marks, logo or brand name. Copyright in the pages, screens, information, and all material in their arrangement, included in the App is owned by or licensed to M&S Bank or the HSBC group of companies unless otherwise noted.
11. You must not use the App for any purpose which is unlawful, abusive, libellous, obscene or threatening.
12. You are responsible for all claims, damages and costs arising from:
 - a. your use of this App;
 - b. M&S Bank's reliance on information you have provided; and
 - c. any breach by you of these Terms, of any intellectual property or other rights of any person or entity.
13. No third party will have any rights under these Terms, save that Marks and Spencer plc, Apple Inc., Google Inc., Microsoft Inc. and BlackBerry Limited (and their subsidiaries) have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary.
14. **Prohibited installation and use** – You must not:
 - a. copy or reproduce in any way the whole or any part of this App or make it available for others to copy;
 - b. alter, modify or adapt the whole or any part of this App;
 - c. remove or tamper with any copyright notice attached to or contained within this App;
 - d. reverse engineer this App (except to the extent that M&S Bank is expressly precluded by law from imposing such a restriction);
 - e. install or use this App if:
 - i. you are located in China, Cuba, Iran, North Korea, Sudan, Syria, Turkey, Vietnam or any country that is subject to a US Government embargo, or that has been designated by the US Government as a "terrorist supporting" country; or
 - ii. you are listed on any US Government list of prohibited or restricted parties.
15. If M&S Bank allows you some extra time to meet your obligations, or does not use some of its rights, this does not mean that M&S Bank will do so again.
16. M&S Bank may transfer all or any of its rights under these Terms to a company affiliated with it or to any other party. You may not transfer your rights or obligations under these Terms to anyone else.
17. If for any reason a court finds any of these Terms to be unenforceable, the remainder of the Terms will continue in full force and effect.
18. **Changes** – M&S Bank may make any change to these Terms for all or any of the reasons set out below that apply:
 - a. if the change is favourable to you;
 - b. to respond to a change or anticipated change in relevant law or regulation or to respond to a change in industry guidance or code of practice;
 - c. to respond to the making of a relevant recommendation, requirement or decision of any court, ombudsman, regulator or similar body;
 - d. to respond to the costs or consequences of any event beyond M&S Bank's control that may impact its provision of accounts, services or facilities to you;
 - e. to make these Terms clearer;
 - f. to respond to any change in M&S Bank's systems and procedures, including any change arising from

any reorganisation of its business as a result of it being acquired by, or it acquiring, another bank or organisation;

- g. to respond to changes or anticipated changes in costs associated with relevant technology, the costs M&S Bank pays to others in respect of the App, inflation and/or in costs of providing accounts, services or facilities;
- h. to improve the services M&S Bank provides or to change the functionality of this App;
- i. to reflect changes in the license terms of service providers whose software is incorporated in, or used by, this App (including but not limited to Google, Inc.); or
- j. to respond to M&S Bank's internal policies on competitiveness, market share and/or the profitability of its business as a whole, where it is not acting dishonestly, for an improper purpose, in a manner which inappropriately discriminates against a particular customer or as an unreasonable financial institution would.

Where M&S Bank makes any change under this clause the change will be proportionate to the reason for the change.

19. M&S Bank may change these Terms and will provide you with notice before the changes take effect by email, post, SMS, by a message within the App or by a message within any M&S Bank or HSBC Internet Banking service that you are registered for, at least 2 months before the changes take effect.

20. **Termination** – M&S Bank may end these Terms immediately if:

- a. you have seriously or persistently broken any of these Terms;
- b. M&S Bank reasonably suspects you have committed fraud;
- c. you were not entitled to download the App;
- d. M&S Bank has reasonable grounds for believing you have committed or are about to commit a crime in connection with your bank account;
- e. you have not satisfied any anti-money laundering requirements;
- f. the App is withdrawn by Apple Inc., Google Inc., Microsoft Inc. or BlackBerry Limited; or
- g. if M&S Bank reasonably considers that by continuing the contract:
 - i. it may break a law, regulation, code, court order or other duty; or
 - ii. it, or another HSBC group company, may be exposed to action or censure from any government, regulator, law enforcement agency or similar authority.

M&S Bank will notify you personally immediately after it has terminated these Terms by SMS, by a message when you log onto the App, by post, by email, by secure e-message, by a message on your statement, or in any other way that will be sent to you or to your mobile device individually.

21. M&S Bank may end these Terms for any other reason by giving you at least two months' personal notice (personal notice may be done by push notification to you via the App). This may happen if, for example, it replaces the App.

22. For a period of 14 days after the day you accept these Terms within the App, you have the right to cancel these Terms with M&S Bank. You can do this by deleting this App from your mobile device. If you do not cancel you can still end your contract with M&S Bank at any time without notice by deleting the App from your mobile device.

23. Upon termination of these Terms for any reason you must uninstall this App and destroy all copies of this App (including all components of it) in your possession. On any termination of these Terms all rights granted to you in respect of this App will immediately end.

24. **Abnormal and unforeseen circumstances** – M&S Bank will not be responsible to you for failing to comply with these Terms:

- a. due to abnormal and unforeseeable circumstances beyond M&S Bank's control, the consequences of which would have been unavoidable despite all efforts to the contrary; or
- b. where M&S Bank's failure to comply is due to obligations under European or national law.

25. If any part of these Terms becomes invalid, illegal or unenforceable, this will not affect the validity of the remaining Terms.

26. **Your statutory rights** – Nothing in these Terms will reduce your statutory rights including your rights relating to mis-described accounts or services, the fairness of terms on which they are provided to you, or any rights you may have to close your account and/or claim compensation. For further information about your statutory rights contact your local authority Trading Standards Department, the Office of Fair Trading or the Citizens Advice Bureau.

27. **Governing law and language** – The laws of England and Wales apply to these Terms and how M&S Bank dealt with you before this licence applied. You and M&S Bank submit to the non-exclusive jurisdiction of the courts of England and Wales.

28. These Terms are in English and all communications M&S Bank sends to you will be in English.

29. **How to complain** – If M&S Bank does not deliver the standard of service you expect, or if you think M&S Bank has made a mistake, please let M&S Bank know. M&S Bank will investigate the situation and, if necessary, set about putting matters right as quickly as possible. Where appropriate it will also take steps to prevent a recurrence. However, if you remain dissatisfied and would like further information about its process for resolving complaints, please ask for the explanatory leaflet 'Listening to Your Complaints. You may be able to refer your complaint to the Financial Ombudsman Service at South Quay Plaza, 183 Marsh Wall, London E14 9SR.

30. **Compensation Scheme membership** – M&S Bank is covered by the Financial Services Compensation Scheme (FSCS). The FSCS can pay compensation to depositors if a bank is unable to meet its financial obligations. Most depositors are covered by the scheme. In respect of deposits, an eligible depositor is entitled to claim up to the current FSCS limit for deposits. For joint accounts each account holder is treated as having a claim in respect of their share so, for a joint account held by two eligible depositors, each depositor would have a claim up to the FSCS deposit limit and so the maximum amount that could be claimed in total would be twice the current FSCS deposit limit. The FSCS deposit limit relates to the combined amount in all the eligible depositor's accounts with the bank, including their share of any joint account, and not to each separate account. M&S Bank is a trading name of Marks & Spencer Financial Services plc. Customers who hold deposits with Marks & Spencer Financial Services plc (under one or both trading names) are eligible for one claim of up to the FSCS deposit limit. For further information about the scheme (including the current limits, amounts covered and eligibility to claim) please refer to the FSCS website fscs.org.uk or call the FSCS on 020 7741 4100 or 0800 678 1100.

Privacy and Cookie Policies

M&S Bank may collect, store and process any information that you provide via this App. M&S Bank will only use this information as necessary to provide you with the services and functionality within the App.

This App uses services provided by Google, Inc, (e.g. to locate nearby places of interest in the destination to which you are travelling) and Microsoft Bing (to help you locate locations of M&S Bank Branches and M&S Bureaux de Change locations). By using this App, you therefore accept:

- a) [Google's Privacy Policy](#) as amended from time to time, and agree to Google Inc. having access to your data within the App; and
- b) [Microsoft Bing Privacy Policy](#) as amended from time to time, and agree to Microsoft Inc having access to your data within the App.

You can turn off your location at any time by turning off your location services for the M&S Bank Explorer App on your mobile device.

To help maintain this App and make it work M&S Bank uses "cookies." Cookies are small files that M&S Bank's web server places on your mobile device that help to remember information that you've provided to the App, including your acceptance of the App's terms and conditions, privacy and cookies policies and other information.

Linking to social media: This App allows sharing of information to social media sites, such as posting information you wish to provide on your social media sites such as Facebook, Linked In, and Twitter, plus standard mobile device sharing functionality such as email, text messages and reminders. Please refer to the terms and conditions and privacy notices of the social media providers to confirm how your information and posts will be used.

The App collects, stores and reads the following information on and from your mobile device:

When you first use the App, M&S Bank creates a unique ID to track your activity within the App, which is solely used within the App and is not related to any other personally-identifiable M&S Bank data such as any bank account number, or your name or address.

M&S Bank collects data about how the App is used, such as:

- * the number of times you access the App,
- * whether you have accepted the terms and conditions, and privacy and cookie policy,
- * how often you view a page within the App,
- * any information you store within the app about planned trips, and
- * whether you share information within the App (e.g. via social media).

All data will be analysed and used in reports at aggregate level.

The App will also store relevant information on your device (in a 'cache'), including currency exchange rates and images used within the App.