

## 1. Transactions

- a. Where the Bank receives several instructions at approximately the same time the total amount of which exceeds the available assets of or the credit granted to the Customer, the Bank has the discretion to honour the orders in whatever manner it thinks fit within the limit of the funds available.
- b. Where no overdraft has been agreed or the limit of the overdraft has been reached, the Bank may refuse to carry out any instructions which would result in there being an overdraft or cause the overdraft to be greater than that agreed, as the case may be.
- c. The Bank is entitled to demand the immediate repayment with interest and commission and other banking charges, cost and expenses including any legal cost incurred in connection with any account that is overdrawn and/or the subject of garnishee orders or where funds are erroneously paid into the account including any expenses whatsoever at such rates as may be determined by the Bank from time to time in its absolute discretion.
- d. All amounts credited to an account while any overdraft or any other banking facility is currently outstanding, shall first be applied by the Bank to offset the normal interest (including compounded interest), then the default interest. Then and only then shall any such amounts so credited be applied to reduce the amount outstanding of any such overdraft or any other banking facilities.
- e. Any money credited to the Customer in error will be recovered from the customer and must be repaid immediately together with the applicable interest at such interest rate as shall be determined by the Bank from time to time in its absolute discretion, whether demanded or not.
- f. The Bank reserves the right to immediately close any account, which in its reasonable opinion appears to have been opened with fraudulent documentation.
- g. Where an account is not operated to the satisfaction of the Bank, i.e. in accordance with the agreed terms and conditions, the account shall be closed without notice and the balance (if any) remitted to the Account Holder.

## 2. Unpaid Cheques

- a. The Bank has the right to close an account without notice where three or more cheques have been dishonored for lack of funds and may share such information with any competent credit information sharing organization approved by the Central Bank of Kenya.
- b. Any credit in the account due to deposit of Cheque or collection of negotiable instruments may be reversed if any of the cheques or negotiable instruments is subsequently returned unpaid. If the Account holder will have utilized such funds an overdraft will be created due to such reversals. The account holder irrevocably accepts to pay such overdrawn amounts inclusive of interest and other charges.
- c. The customer accepts not to issue Cheques against uncleared effects and the Bank reserves the right to dishonor such Cheques. If the bank allows payment of Cheques against uncleared effects the account holder agrees to :-
- (i) Pay the resulting overdraft of the Cheques is returned unpaid.
- (ii) Pay the interest arising from the overdraft at the prevailing rate.
- d. The customer accepts to pay any interest or other charge resulting from any unpaid/dishonoured cheques.

## 3. Drawing of Cash

- a. The bank may pay cash to the customer where the cheque is duly completed and signed by the authorized signatories.
- b. Where agents have been introduced to the Bank to transact on behalf of the customer in his/her account, the customer indemnifies the Bank in respect of all payments made to the presenter of the cheque.

## 4. Use of Personal Identification Codes, Cards, Security Procedures or Codes.

- a. The Customer must exercise due care and attention to ensure the safety and secrecy of any personal identification Number (s) (PIN), codes of security procedures. If the Customer makes a written record of any PIN, codes of security procedure, the Customer must make reasonable effort to disguise it and must not keep it with the card for which it is to be used.
- b. If the PIN or code is disclosed to any unauthorized person or if the Customer's Card is stolen, the Customer must immediately notify the Bank of such loss, theft or disclosure. Any oral notification must be confirmed in writing immediately and shall only take effect upon receipt of the written confirmation. The Bank shall not be liable in any way with respect to any transaction instruction given and acted on by the Bank prior to receipt by the Bank of notification of such loss, theft or disclosure.

## 5. Terms and Conditions - Debit Cards

The terms and conditions for use of African Banking Corporation Limited also known as "ABC Bank" and "the Bank" issued debit cards are as specified in this document and as amended by

the Bank from time to time. The cardholders shall be deemed to have unconditionally agreed to and accepted these terms and conditions by signing the card application form, or acknowledging receipt of the card in writing, or by signing on the reverse of the card, or by performing a transaction with the card. The cardholders will also continue to be bound by the terms and conditions of operations of all bank accounts held.

## Definitions

- "ABC Bank" means African Banking Corporation the proprietor of the card being also known as "ABC Bank" and in this document as "the bank".
- "Account" means the bank account (s) which are linked to a card "ATM" means Automated Teller Machine being a computer terminal that processes certain financial transactions.
- "Agent" means any individual/company appointed and authorized by ABC Bank to handle certain bank transactions on its behalf.
- "Agreement" means an application between bank and cardholder and defines rules together with all payment instructions, letters or notices given.
- "Application Form" means a document filled by the prospective Cardholder that captures cardholder's static details and other bank requirements and is used by the bank to issue a card.
- "Business Day" means any day on which ABC Bank is open for business but excludes a day which is gazetted as a public holiday.
- "Card" means valid debit card issued by ABC bank to a cardholder.
- "Cardholder" means a person to whom a debit card has been issued to by ABC bank who also operates an account with the bank. The cardholder should be either the sole account holder or in case of joint accounts, the sole signatory or authorized to act alone.
- "Card Details" means your card name, card number, card expiry date and CVV2 security code.
- "CVV2" means card verification value and is a three digit number located at the back of the card and is usually used as a signature for card-not-present transactions.
- "Card Present Transactions" means transactions that are carried out when all three parties are there i.e. card, cardholder and merchant. "Card Not Present Transactions" means transactions that are carried out when either one or two of the parties in a card transaction are absent.
- "Charges" means amounts charged and/or levied on a Card Account including but not limited to the joining fees, Annual Subscriptions Fees and other Card fees, cost bills, liquidated damages, together with interest accrued and accruing.
- "Kenya" means the republic of Kenya.
- "Merchant" means supplier of goods and services and includes ATM owners.
- "PIN" means Personal Identification Number being a set of code numbers that is supplied with the card to enable a cardholder to do a transaction.
- "SMS" means Short Message Service- which is an electronic communication done using a cellular network.
- "Statement" means a periodic list of transactions carried out during a certain period and is sent by the bank to a cardholder detailing all transactions carried out during a specified period. "Transaction" means any permissible instructions given by a cardholder using the debit card directly or indirectly to ABC bank to effect permissible actions in relation to the account (examples include cash withdrawals, payments at point of sale, cash/Cheque deposits etc)

## 5.1 Cardholder Obligations

- a. The Cardholder shall be deemed to have read, understood and agreed to be bound by these Conditions upon signing of the application form.
- b. The cardholder must sign the debit card immediately upon receipt. Store and keep the card in a safe place always within sight. The card can only be used within the 'valid from' to 'valid through' dates.
- c. The Cardholder confirms in particular to have considered all charges levied by the Bank and found them to be fair, reasonable and necessary to enable the Bank to continue providing the Card facility to him/her and shall not dispute any claim by GENERAL TERMS AND CONDITIONS GOVERNING BANKING WITH ABC BANK. The Bank against him/her (or against the main Card Account holder in case of a body corporate) on grounds that the charges charged by the Bank are unfair or unreasonable under any circumstance.
- d. The Personal Identification Number (PIN) issued to the cardholder for use with the debit card or any other numbers chosen by the cardholder as PIN is for the use by the cardholder, non-transferable and is strictly confidential. A written record of the PIN number MUST never be kept. On receipt of the PIN cardholder should memorize the number and destroy the PIN.
- e. The debit card is valid up to the last day of the month/year indicated. Upon expiry, cut the card in half and take it to the nearest branch of ABC bank Bank located countrywide. The renewed card is usually prepared prior to the expiry of the existing card. Renewal of the card is however at the discretion of ABC Bank.

f. The account shall be debited with the amount of any withdrawal, transfer and/or any other transactions effected by use of the debit card. The cardholder shall maintain sufficient fund in the account to meet any transactions. The cardholder shall not be permitted to overdraw funds by use of the card in excess of the overdraft limit, if any, agreed with the bank.

#### 5.2 International Usage

a. Use of the debit card must be in strict accordance with ABC Bank terms and Conditions and MasterCard Worldwide terms. In the event of any failure to comply with the same the account holder(s) will be liable jointly and severally for actions in breach of the said conditions and terms respectively and their cards may be revoked. The accountholders shall jointly and severally indemnify and hold harmless ABC Bank from and against any/all consequences arising from the accountholder not complying with terms and conditions provided.

b. The debit card is valid for transactions done in other currencies; however settlement will be done in local currency (Kenya Shilling) at a pre-determined exchange rate unless the card issued in another currency such as the dollar is provided.

c. ABC Bank shall be under no liability whatsoever in respect to any loss or damage arising directly or indirectly out of the decline of authorization for any transaction on the account of the cardholder having exceeded the foreign exchange entitlements for any merchant as prescribed from time to time.

d. The cardholder undertakes not to use the debit card to effect payment(s) for any illegal purchases of items/services not permitted by the bank or country or any applicable laws, rules or regulations.

e. In case of transactions effected in foreign currency using the debit card, the cardholder should promptly contact the bank and complete all necessary documentation as required.

#### 5.3 Authority to Set Off

a. The bank may without notice, set-off against any indebtedness of the customer from any account held with the bank whether current, savings, loan or any other types of deposits.

b. The bank may upon notice to the customer, set-off his account against any other account or indebtedness in respect of which the customer is liable notwithstanding that some other person may also be liable in respect thereof. In such circumstances upon receipt of an indemnity satisfactory to the bank against costs and customers expenses, the bank will give the customer any assistance necessary in obtaining the refund.

#### 5.4 Fees

a. The costs, charges and fees include withdrawal fee and currency conversion rate and could include further/additional costs/charges/fees as required by third parties.

b. The Cardholder hereby agrees and acknowledges that all applicable costs, charges and fees in connection with the issue or usage of the Card can be deducted automatically from the Cardholder's funds. The details of the costs, charges and fees are available from ABC Bank. Such costs, charges and fees are subject to change by ABC Bank from time to time and the most current applicable costs, charges and fees are available from any Bank Branch or ABCBank customer service.

c. In a situation where the funds are not sufficient to deduct such costs, charges and fees, ABC Bank reserves the right to recover the same directly from the Cardholder and/or from any accounts including joint accounts maintained by the Cardholder.

d. Any statutory levy including taxes payable as a result of the use of the Card shall be the Cardholder's responsibility and if imposed on/recovered/sought to be recovered from ABC Bank, such statutory levy shall be deducted from the funds and/or deducted directly from the Cardholder and/or from any account maintained by the Cardholder.

e. Transaction fees for cash withdrawals will be debited to the account at the time of posting the cash withdrawal. Other debt card related charges will be debited to the account from time to time as per prevailing tariff.

#### 5.5 Lost or Stolen Card

a. The Cardholder should immediately inform the Bank if they suspect their Card has been lost, stolen or compromised in any way. Telephone notification will be confirmed in writing within seven days quoting your Card account. Until and unless such notice is received, the Bank is authorized and shall remain authorized to debit your account for transactions made using your Card.

b. You shall be liable to the Bank for all losses or claims to the Bank arising from any Card transactions affected before receipt by the Bank of the written notice. You shall give the Bank and any such person acting on behalf of the Bank all necessary assistance in any investigations, avail information as to the circumstances of the loss, theft or possible misuse of the Cards. You shall take all reasonable steps to assist the Bank recover the Card and money.

c. If your Card is lost and reported to the Bank and you subsequently find it, you shall destroy the Card by cutting it in half and report the discovery to the Bank.

d. The Bank shall, as soon as practicable, replace any lost or stolen Card subject to payment of the applicable replacement charge. If there is a dispute on transactions as a result of loss of card or any other dispute the following documents must be submitted:-

- Dispute claim form
  - Dispute letter with a list of disputed transactions ( Date, Name of Merchant, Amount etc)
  - Copy of police abstract (where necessary)
  - Copy of ID ( if required by the bank)
- e. After blocking of the Card, the same cannot be used by the Cardholder again even if the Card is later recovered.

#### 5.6 Card closure, Replacement and Cancellation

a. The Cardholder may at any time cancel his/her Card by returning it to the Bank.

b. The Bank may at any time cancel a Card without notice, assigning any reason and without incurring any liability to the Cardholder(s).

c. The Cardholder must not use or attempt to use the Card after any notification of its cancellation or withdrawal has been given.

d. If the Cardholder loses or changes his/her Card, the Bank may at its discretion issue a replacement Card as the Cardholder may require.

e. The Bank shall automatically re-issue the Card upon expiry thereof and inform the client to collect the new Card from the Cardholder's respective branch within one month of such notification. The Bank shall be at its discretion to destroy such Card(s) that is not collected as aforesaid.

f. All amounts you owe us will immediately become due and payable to us if:

- You request us to close your account
- You request us to cancel you Card
- We revoke your Card or terminate this agreement
- We close your Card account
- You breach any part of this agreement
- You are declared bankrupt or your estate is provisionally or finally placed under a receiver or other administrator
- You die

#### 5.7 Consent and Conduct of Account

a. The Cardholder shall be fully liable in respect of each transaction instruction given by use of his/her Card. Transaction information should be given in such a way that the information displayed at a terminal is not disclosed to a third party. ABC Bank shall not be liable to any disclosure to any third party arising out of a transaction instruction.

b. The Cardholder should not hold the Bank liable, responsible or accountable in any way whatsoever for any loss, injury or damage howsoever arising out of the use of the Debit Card/ATM.

c. You consent to us:

- Making inquiries as to the conduct of your account from any credit reference agencies
- Listing your account with any credit reference agency should you default on your repayment obligation to us
- Releasing information to third parties for recovery and/or debt collection purposes.

#### 5.8 Liability

a. ABC Bank shall not be liable in any way if a third party does not honor the Card.

b. The Bank shall not be liable if it is unable to perform its obligations under this agreement due (directly or indirectly) to the failure of any machine, data processing system, transmission link, industrial dispute, strikes, lock outs, acts of any public enemy, wars, blockades, insurrections, riots, fires, civil disturbances, government regulations and directions, fraudulent activity, terrorist action or anything outside its direct control.

#### 5.9 Amendment of Condition of Use

ABC Bank reserves the right to vary, amend or replace all or any of these conditions at any time without prior notice. The Bank shall notify the Cardholder of any changes made to these conditions as soon as reasonably practicable but failure to make such notification shall not invalidate the changes.

#### 5.10 Governing law and jurisdiction

a. These terms and conditions and all matters arising out of the issue and use of the Card are subject to the laws of the Republic of Kenya and the parties submit to the exclusive jurisdiction of the Kenya courts of law.

b. The Cardholder shall not use the Card for any unlawful purposes, including the purchase of goods and services prohibited by the laws of Kenya, or in any contravention of any rule of law in force, nor as an aid towards any such contravention.

#### 5.11 MasterCard Worldwide Regulations

a. The use of the Card is regulated by the terms of MasterCard Worldwide and you agree to abide by those terms as they shall be communicated to you by the Bank from time to time.

b. Any charges made by MasterCard on foreign currency transactions shall be debited to your Card account. The amount of the Card transactions and charges rendered involving foreign currency shall be converted into the original currency in which the Card was ordered using the exchange rate quoted by the Bank on the date payment is received and any exchange gain or loss is credited/debited to your account

#### 5.12 General Use of the Card and PIN

a. The Cardholder warrants the complete accuracy of the information given upon the application for establishing the Card account and any subsequent communication with the Bank.

b. The cardholder will promptly notify the bank in writing of any change in address and telephone numbers

c. The bank reserves the right to add, delete and/or vary any of these terms and conditions from time to time with no reference to the cardholder however the same will be made available on request.

d. Any statement sent through post will be deemed to have been received by the cardholder within seven (7) days from the posting to the address last given to the bank in writing.

e. Any favor or concession we may give you will not affect any of our rights against you.

f. ABC Bank can close your account, reduce your limit, restrict activity and suspend access to your Card account if we in any way know or suspect that your Card is being used fraudulently, negligently or for illegal activities or if we must do so to comply with the law, without notice to you.

g. If we close or suspend access to your account for any reason, we will not be liable to you for any direct, indirect consequential or special damages arising from any act or omission by us or any third party for whom we are responsible, whether arising in statute or contract.

h. The card has an expiry date and is valid until the last day of the month shown unless the card is closed or revoked

i. The PIN allocated to you allows you to do electronic banking transactions such as draw cash from an Automated Teller Machine (ATM) or use purchase goods from Point of Sale (POS) terminal.

j. The card can be used to pay for goods and services at merchants who accept the card. When paying, you must sign a transaction slip or use your issued PIN to authenticate the transaction. You will not have to sign a slip when doing remote transactions such as ordering by mail, telephone or through the internet.

k. Ensure to sign a cash withdrawal slip if you withdraw cash through any means other than the ATM. Any purchase or cash withdrawals made using the card will be charged to the card account whether or not the slips are signed.

l. Transactions done on the card act as authority from the cardholder to the bank to pay merchants in respect to card transactions. This authority cannot be withdrawn for as long as a card is active.

m. The card has a daily withdrawal limit at the ATM. You may not exceed that limit unless authorized by the bank.

n. Merchant establishments may have maximum limits on amounts spent and the velocity of transactions. These limitations vary for every merchant. ABC bank will not be responsible for ascertaining or notifying the cardholder of such restrictions and shall not be liable for any loss suffered by the cardholders due to these limitations/restrictions.

o. The card can be used to access and transact over other delivery channels such as Internet Banking, Agent Banking and as such rules of those channel apply as well as the card existing rules.

p. It is the cardholder's responsibility to ensure that the card will not be used for unlawful/illegal transactions.

q. The cardholder remains liable for any amounts owing until the card account is paid in full. Transactions still pending from merchants will be processed as per regulations from MasterCard Worldwide as well as MasterCard Asia/Pacific Pte Ltd.

r. Where there is a dispute, please make a formal complaint to the bank in writing and the bank will endeavor to resolve the dispute as per MasterCard rules and regulations.

s. These rules cannot be varied or amended by the cardholder.

#### 6. Cheque Books

a. The Bank, at its absolute discretion issue the customer with a cheque book.

b. The Bank, at its sole discretion reserves the right to refuse issuance of more than one Cheque book without assigning any reasons.

c. Cheque books are to be kept securely. The Bank shall not be responsible if a payment is made against a Cheque stolen due to negligence on the part of the Account Holder.

d. Withdrawal can only be made through the Cheque book issued to the Account Holder.

e. The Bank is authorized to debit the Account Holder to recover the stamp duty,value of the Cheque books or for any other services rendered to the Account Holder.

f. Fresh Cheque books are issued only against the written request by the authorized persons on the printed requisition form supplied by the Bank.

g. Any cheque bearing alterations without authentication from the authorized signatures will not be paid.



h. On receipt of a written notice from the Customer to stop payment of a cheque, the Bank will record the notice and stop the payment provider that such notice is received before the transaction sought to be stopped has occurred. The Customer hereby indemnifies the Bank against any loss, damages, costs (including legal costs) or demands incurred by it as a result of or connection with a stop notice on which the bank has acted the Bank may make a charge for stopping a cheque.

i. Upon closure of the account, all unused Cheque leaves are to be surrendered to the Bank immediately failure to surrender any unused cheque leaves will result to the account not being closed.

#### 7. Payment and Deposit of Cheques

a. All payment/debit authorities, including any alteration on them must be authenticated by the drawer's full signature as per specimen signatures held by the Bank.

b. In drawing payment/debit authority forms, the amount in words and figures should be legible and Cheques should be drawn to prevent the insertion of any other words or figures and to prevent fraudulent alterations.

c. All cheques paid in for credit of account should be crossed. All Particulars of the Cheques (name of Drawee Bank and branch; Cheque Number etc) should be correctly written, both on pay-slip and the relative counterfoil. The Bank shall not be liable for any loss where the above requirements are not complied with. The payees should endorse all Cheques payable to order.

d. Cheques, Interest and Dividend Warrants, etc payable to the account holder may be accepted for collection and credited to savings account.

e. Where any cheque or order is unpaid for any reason whatsoever (including but not limited to physical loss), the Bank may debit the Customer with the amount previously credited (taking in to account any exchange fluctuation where relevant) in respect of that cheque or order, together with interest since the date of crediting if the account hereby is overdrawn.

#### 8. Payment of Interest on an Account

a. The rate of interest payable on any account may be provided by the Bank at its various branches in Kenya and further, the Customer accepts that this may be subject of change without notice to the Customer. Interest (where applicable) on any account will accrue from day to day, or as otherwise determined by the Bank in its absolute discretion and will be credited by the Bank to the relevant account (s) at such a time as determined by the Bank.

b. The bank will deduct withholding tax on interest before payment is made to the customer unless the law otherwise provides.

#### 9. Fixed Deposit Accounts

a. The Fixed Deposit is payable only upon maturity and at the branch of issue. The Bank may however at its sole discretion, allow premature withdrawal of fixed deposits. The Customer accepts that all such premature withdrawals will be subject to levy of charges and or breaking penalties, as the Bank may determine, and that these may be subject to change without notice to the customer.

b. If the amount of the Term Deposit is paid in by banker's cheque, the receipt shall be issued only after clearance of subject cheque and the interest shall apply from the date the cheque is cleared. The deposit slip does not suffice for the purpose of this clause.

c. In the event that no specific instructions are given for renewal, the bank shall be deemed to have implied instructions to re-invest the deposit inclusive of the interest accrued at call rate, or such other rate as may be determined by the Bank in its sole discretion and all other conditions shall apply.

d. The depositor is requested to take good care of the deposit receipt issued to him and keep it secure. The Bank shall not be responsible in any way for any unauthorized use resulting from any disregard of these instructions.

e. In the event of loss or misplacement of the deposit receipt, the customer shall be required to immediately

- report the loss to the police and obtain a police abstract
- inform the bank and to sign indemnity forms indemnifying the bank to be circulated among other banks before replacement
- certificate is issued.

f. Interest payable on the Fixed Deposit is subject to deduction of withholding tax.

#### 10. Joint Accounts

a. Each of the individuals constituting the Customer hereby authorizes and empowers the other to endorse for deposit with the bank any and all cheques, notes or other instruments for the payment of money, payable and purporting to belong to either or both of them and should any such instruments be received by the Bank without having been so endorsed then the Bank is hereby authorized to endorse any such instruments on behalf of the Customer and to credit the same to Account.

b. In the event of the death of any of individuals constituting the Customer, the surviving individual(s) shall be entitled to dispose of any credit balance, security or property available to the Account and remaining unencumbered, freely without limitation.

c. Any overdraft or other obligations incurred on the Account or otherwise shall be the joint and several liability of each and every individual constituting the customer.

#### 11. Minor Accounts

In respect of account(s) opened in the name minors (whether or not jointly with an individual who is not a minor). The Bank shall be entitled to act on the instructions received from the guardian named on the account opening form, irrespective of whether the minor account holder ceases to be a minor, until the Bank receives written notice to cease to act on the guardian(s) instructions.

#### 12. Accounts in Foreign Currency

The deposits and their payments are governed by the laws in effect from time to time in Kenya and are payable only at the branch of ABC Bank where the deposits were made. ABC Bank has the sole discretion to allow withdrawal at other branches in Kenya. Subject to all laws and government regulations applicable:

a. The Bank will credit the counter-value of the Customer's holdings in foreign currencies to accounts with its correspondents in various countries of origin.

b. Such accounts are in the Bank's name but are at the Customer's risk, and the Customer accepts responsibility for ensuing consequences, including but not limited to consequences of legal, fiscal or other measures affecting the accounts.

c. Except in the case of an assignment by the Customer to the Bank, the Customer may dispose of such funds only by means of requests for cheques or transfers in the original currencies at the Bank's option. Notice periods for all withdrawals may vary according to the currency.

d. The Bank shall have no responsibility to the customer for:

i. Any diminution due to taxes or imposts or depreciation in the value of the funds credited to the Account, which funds, in Bank's sole discretion may be deposited by the Bank in the Bank's name and subject to the Bank's control with such depository(ies) as the bank may select  
OR

ii. The unavailability of such funds, if, as a result of any threatened requisition, involuntary, distraint of any character, exercise of military or usurped powers or other cause(s) beyond the Bank's control, the Bank should decide, in the Bank's sole discretion, acting in good faith, to close, or to suspend or terminate operations in Kenya.

e. The bank will convert foreign cheques and other items on terms available upon request. Cheques payable abroad which may be received for payment into the Customer's account may be negotiated or collected at the Customer's expense. If Cheques are returned unpaid for any reason, the Bank will debit the Customer's account even if the return takes place after the Bank has

advised the Customer of payment of the cheque. Negotiation and collection of Cheques shall be subject to the current international Chamber of Commerce Uniform Rules for collections.

#### 13. Payment by Third Parties

The Bank may credit the customer with amounts paid in by third parties.

#### 14. Interest

If the Bank shall authorize the Customer to borrow from the Bank by overdraft or otherwise, to such extent and for such period, as the bank shall in its absolute discretion determine, the Bank will charge interest. The rate or rates will be between the Bank and the Customer subject to such maximum/minimum rates as may be prescribed by law. Interest on overdrawn account shall be added every month to the principal amount overdrawn and shall become an integral part of indebtedness of the Customer to the Bank. The Customer irrevocably and unconditionally agrees to pay any and all such interest to the Bank as and when in whatever way the Bank determines at its sole discretion. The Customer hereby irrevocably and unconditionally waives any rights to demand or claim repayment of any interest (compound or simple as decided by the Bank) paid to the Bank on any other banking facilities arising in connection with its account.

#### 15. Payment of Bank Charges

The Bank is entitled without notice to the Customer to levy or impose all customary banking and other charges and expenses in respect of any banking facilities provided to the Customer by the Bank, and to debit the relevant Accounts in accordance with the Bank's normal procedures. Such charges are not refundable upon termination of any or all the Customer's Account(s) or on termination of any facilities.

#### 16. Validity of Documents

a. The Bank is not responsible for authenticity, validity, regularity or value of documents including but not limited to bills of lading, delivery orders, consignment document, receipts, warrants and insurance policies.

b. A receipt for money, cheques, securities, etc. on behalf of the Bank is valid only if signed by duly authorized officers or system generated documents that state that no signature is required.

#### 17. Errors of Transmissions and Inadequate Execution of Orders.

All payment orders, exchange operations and sales or purchases of stocks bonds or shares in Kenya or elsewhere, undertaken by the Bank for the account of the Customer shall be at the Customer's own expense. Neither the Bank nor any of its agents or correspondents nor any employees shall be liable for any mutilation, interruption, error or transmission, omission or delay occurring in an transmission medium (including without limitation, cables, airlines, courier services and telex and facsimile system) however occurring.

#### 18. Statements

The contents of any statements of account or statement any other nature which has been sent by the Bank to the customer, and to which the Customer has not objected within thirty days of receipt thereof, shall be deemed approved by the Customer, and shall not thereafter be challenged by the Customer on any ground whatsoever.

#### 19. Communications

a. All notices, statements, letters and other communication from the Bank may be sent to the last address given by the Customer, and any change thereof should be notified to the Bank without delay and the Customer hereby agrees that where the mode of sending statements elected is by way of email, the bank shall not be liable where the same is accessed by any persons for which the same were not intended. The customer hereby agrees to sully indemnity the bank against all damages incurred due to information received by the wrong recipient because of incorrect addresses given by the account holder.

b. The Bank may give information about the customer and how the customer manages accounts to the following:

- Credit reference agencies duly authorized by the relevant regulators to carry on business as such in Kenya, who may use and give out information for credit assessments or to prevent or detect fraud.
- People who provide a service to the Bank's agents, on the understanding that these individuals will keep this information confidential.
- Anyone that the Bank transfers or may transfer rights to or duties under this agreement.
- Any person designated to be given such information pursuant to a valid court order.
- Other members of its group.

#### 20. Right of lien

a. The Bank has the right of lien on all properties of whatever nature (whether stocks, shares, shares, bills precious metal or otherwise) deposited with or held by the Bank in the name of the Customer and may hold the same as security for the payment of the indebtedness due from the Customer to the Bank (Whether by way of principal, interest, commission charges or otherwise whatsoever and whether such indebtedness will be fluctuating balance or otherwise) without prejudice to and the same shall not be affected by any other security held by the Bank for such indebtedness.

b. Funds in foreign currencies which are subject to the Bank's lien may be set off against debts or realized at the rate of exchange current at the date of set off realization. The Bank accepts no liability for any loss caused by exchange fluctuations.

c. Deposits including those held in foreign currencies, and for a given period of time may be set off against debts notwithstanding that the time period of the deposit has not expired.

#### 21. Variation and Termination of Business Relations.

a. The Bank may be at any time, upon notice to the Customer, terminate or vary its business relationship with the customer without assigning any reason to it in particular, but without prejudice to the generality of the foregoing, the Bank may cancel credits which it has granted and require repayment of outstanding debts resulting therefrom within such time as the Bank may determine.

b. The Bank may at any time freeze any account of the Customer.

i. At its own instance, if and so long as there is dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same, without any obligation to institute interpleader proceedings or to take any steps of its initiative for the determination of such dispute or doubt: or

ii. At the instance of any court or administrative order, or otherwise in circumstances where the Bank is bound to, close, freeze or suspend dealings on any of the above accounts without prior written notice to the Customer, or, without being liable for any breach of any duty it may owe the Customer.

c. In relation to any dealings in respect to any of the customer's account(s), the Bank shall not be liable for any loss resulting from transaction carried out following the customer's death, incapacity or bankruptcy (or any other analogous event or proceeding) unless and until the Bank has received a written notice of any such event together with such documentary evidences the Bank may require. Further, the Bank shall not be liable to the customer for any loss, damage or delay attributable in whole or part to the action of any government or government agency or any other event outside the Bank's control including, without limitation, strikes, industrial action, equipment failure, interruption of powers supply.



## 22. Waiver

No forbearance neglect or failure by the Bank in enforcement of any of these terms shall operate as a waiver of the Bank's rights to enforce them.

## 23. Ledger Fees

Ledger fees is levied at the end of each month depending on the number of transactions in the account subject to a minimum charge which may change from time to time at the discretion of the Bank.

## 24. Withdrawals

Withdrawals shall be made by means of the payment debit authority forms or counter cheques supplied by the Bank (in case of Savings A/C without Cheque book), subject to any changes that may be determined by the Bank from time to time. It will be within the right of the Bank to refuse if the payment debit authority forms or counter cheques used are other than those supplied to the account holder.

## 25. Right of Set-off

All operations between the Bank and the Customer of whatsoever nature shall be considered and treated for all purposes as a single integral and indivisible account, and the Bank shall (without prejudice to the generality of the foregoing) have the right (but not the obligation) to close and set off any account in the name of the Customer against any other such account nor in that of any establishment of which the Customer is sole proprietor or vice versa.

## 26. Indemnity

The customer hereby agrees to full indemnify the Bank against all costs and expenses (including legal fees) incurred by the Bank in enforcing these terms and conditions and the recovery of any amounts due to the Bank or incurred by the Bank in any legal proceedings or whatever nature.

## 27. Terms Subject to Change

The Bank reserves the right to amend, modify, review, repeal or add the above terms and conditions in its sole discretion from time to time. The changes shall be communicated to the customer in writing, by notices put up on the Bank's Notice Boards or any other appropriate means.

# TERMS AND CONDITIONS GOVERNING THE USE OF INTERNET BANKING

## 1. Definitions and interpretation

### 1.1 In these Terms and Conditions unless the context otherwise requires:

- a) "Bank" means ABC Bank Limited, incorporated in Kenya as a limited liability company under the Companies Act (Cap 486 of the Laws of Kenya) and includes such Branch or Subsidiaries of the Bank as may from time to time be specified by the Bank to the Customer; ;
- b) "Banking Day" means a day on which the counters of the Branch and/or the Bank Subsidiary (as applicable) are open for the transaction of ordinary business;
- c) "Bank Subsidiary" means the subsidiary or subsidiaries of the Bank which may from time to time be specified by the Bank to the Customer; ;
- d) "Branch" means a branch or branches of the Bank which may from time to time be specified by the Bank to the Customer;
- e) "Bank Account" means the Customer's personal and business transaction account(s), current overdraft facility account(s) and term and call deposit accounts (as the case may be) with the Bank;
- f) "Customer" means the Bank's Customer who is operating an active Bank Account
- g) "Customer Group" means the Customer and where the Customer is a company, its holding company (if any) and their respective subsidiaries from time to time;
- h) "Corporate administrator" - The person appointed by the account signatories of a Bank Account held by a corporate Customer, to create other Internet Banking operators.
- i) "Corporate user/Maker" Internet Banking operator with system rights to create or initiate new instructions (payments and other requests) on internet banking system, as created by a corporate administrator.
- j) "Corporate Dual user" Internet Banking operator with rights to both create and authorize instructions (payments and requests) on Internet Banking system, as created by a Corporate administrator.
- k) "Corporate Authorizer /Checker" Internet Banking user with rights for authorizing instructions created by Corporate Maker, as created by a Corporate Administrator.
- l) "Deposit Account" means a Bank Account with an available credit balance;
- m) "General Terms and Conditions" means the Bank's General Terms and Conditions signed by the Customer at the time the Customer opens a Bank Account;
- n) "Nominated User/s" means the representative or representatives of the Customer authorized by the Customer to hold and change the Password and hence to access the System and Service on behalf of the Customer;
- o) "Password" means the secret password known only to the Customer or Customer's Nominated User for access to the System. The Customer or Nominated User may change the password at will;
- p) "Request" means a request or instruction received by the Bank from the Customer or purportedly from the Customer through the System and upon which the Bank is authorized to act on;
- q) "Service" means such of the internet banking services, offered by the Bank which may be collectively branded by a product name, as the Customer may from time to time subscribe for;
- r) "System" means the electronic banking and communications software enabling the Customer to communicate with the Bank for the purposes of the Service. The System and Service will for the purpose of the Subscription be accessed through the internet via the Bank's website, www.abcthebank.com
- s) "Application" means application for the Internet Banking Service by a Customer;
- t) "User ID" means a unique identifier of the customer in the Internet Banking system and typically, it is the retail customer's Customer Identification File (CIF) as recorded in the Bank's core banking system;
- u) "Corporate ID" means a unique identifier of the Corporate in the Internet Banking system and typically, it is the corporate customer's Customer Identification File (CIF) as recorded in the Bank's core banking system;

### 1.2 In these Terms and Conditions

- a. where "the Customer" is more than one person, references to "the Customer" shall include all and/or persons and the obligations of the Customer shall be joint and several;
- b. words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;
- c. The customer agrees that the Terms and Conditions set out hereunder shall apply to the use of

the Service, as provided by the Bank to the customer.

d. The customer further agrees to accept and abide by such Terms and Conditions and instructions from time to time in force.

## 2. Application by Customer

2.1. In consideration of the customer paying to the bank the fees and charges set out in the tariff, the bank shall provide the Customer certain internet banking services subject to and in accordance with these terms and conditions.

2.2. The Customer will apply for the Bank's internet banking services by completing an application form provided by the Bank or by accepting these Terms and Conditions online through the Bank's website www.abcthebank.com. The Application shall be subject to the Bank's approval.

2.3. Once the Bank has approved the Application and the Customer has been maintained in the Bank's records as an authorized user of the Service, the Bank will provide the Customer with a User ID for retail Customers or Corporate ID for corporate Customers. The Customer shall create their preferred Password known only to them, and this Password along with their User ID or Corporate ID will allow them access for use of the Service.

2.4. Further additional internet banking services may be provided to the customer by the bank, provided the customer completes an application form in respect of such additional services, or accepts the additional terms and conditions online, and the Bank reserves the right to modify, replace or withdraw any Service at any time, for any reason whatsoever, without prior notice to the Customer.

2.5. The Customer's application for and use of the Service shall be subject to these terms and conditions and any personal or business transaction, term, call and overdraft accounts agreements between the Bank and Customer and shall be additional to and read together with the Bank's General Terms and Conditions signed by the Customer. Where there is any conflict between these Terms and Conditions and the Bank's General Terms and Conditions, these Terms and Conditions shall apply.

## 3. Joint accounts

3.1. Holders of joint accounts are jointly and severally liable under these Terms and Conditions. Application for the Service made by any of the joint account holders acting alone as per paragraph 2 above will be deemed to be binding on all the holders of the joint accounts. Each joint account holder acting alone, under an assigned User ID and Password may use the Service. The Bank shall not be required to obtain the consent of or notify any other joint account holder of the Requests. However each joint account holder may access the Service for the accounts for which they are an owner, joint owner or Nominated User using the assigned User ID and Password

3.2. Each joint account holder releases the Bank from any and all liability and agrees not to make any claim or bring any action against the Bank for honouring or allowing any actions or requests whether the person performing the transaction is one of the joint account holders or is otherwise authorized to use the Service.

## 4. Corporate Customers

4.1. For corporate customers, the account signatories shall nominate a Corporate administrator thus granting him the rights to create other Internet banking operators i.e. the makers and checkers

4.2. The Corporate administrator will be responsible for creating other Internet Banking operators (Corporate users/Maker, Dual User, Authorizer/Checker) and assigning them limits, as per approved authorization matrix by account signatories.

4.3. Any instructions coming through internet banking through maker checker mandate as set-up by Corporate administrator as per subparagraph 4.2 above will be considered to have come through the account signatories as per operating mandate of the account.

## 5. Customer's Facilities and Customer's Responsibilities

5.1. The Customer shall at their own expense provide and maintain in safe and efficient operating order such hardware, software and other facilities (including access to any public telecommunications systems) and any communications network (collectively "the Facilities") necessary for the purpose of accessing the System and the Service.

5.2. The Customer shall be responsible for ensuring proper performance of the Facilities including any losses or delays that may be caused by the Facilities. The Bank shall neither be responsible nor liable for any errors or failures caused by any malfunction of the Facilities nor shall the Bank be responsible or liable for any computer virus or related problems that may be associated with the use of the System, the Service and the Facilities. The Customer shall be responsible for charges due to any service provider providing the Customer with connection to the internet and the Bank shall not be responsible or liable for losses or delays caused by any such services provider.

5.3. The Customer shall obtain all licenses and consents necessary to have access to and use of the System and shall ensure that all persons it allows to have access to the System shall comply with all laws and regulations applicable to the use of the System and shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by the Bank concerning the use of the System and Service.

5.4. The Customer shall prevent any unauthorized access to or use of the System and Service by keeping their User ID/Corporate ID and Password secret at all times. The Customers shall ensure that their User ID/Corporate ID and Password do not become known or come into possession of any unauthorized person.

5.5. The Customer shall take all reasonable and necessary precautions to detect any unauthorized use of the System and Service. To that end, the Customer shall ensure that all communications from the Bank are examined and checked by or on behalf of the Customer as soon as practicable after receipt by the Customer in such a way that any unauthorized use of and access to the System will be detected.

5.6. The Customer shall immediately inform the Bank by telephone with a written confirmation sent the same day in the event that:

(a) The Customer has reason to believe that any Password used by the Customer to gain access to the Service and to communicate with the Bank is or may be known to any person not authorized to know the same and/or has been compromised; and/or

(b) The Customer has reason to believe that unauthorized use of the Service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.

5.7. The Customer shall not send or attempt to send any Request to the Bank through the System if the Customer has reason to believe that for any reason such Request may not be received by the Bank or may not be received accurately and intelligibly.

5.8. The Customer shall at all times follow the security procedures notified to the Customer by the Bank from time to time or such other procedures as may be applicable to the Service from time to time and specifically those that may be contained on the Bank's internet website. The Customer acknowledges that any failure on the part of the Customer to follow the recommended security procedures may result in a breach of the Customer's profile confidentiality and may lead to unauthorized transactions in account(s) linked to the Customer's Service subscription with the Bank. In particular, the Customer shall ensure that the Service is not used or Requests are not issued or the Relevant functions are not performed by anyone other than a person authorized to do so.

5.9. The Customer shall not at any time operate or use the Service in any manner that may be



prejudicial to the Bank.

5.10 The Bank shall be entitled and authorized to debit the Customer's Bank Account with the amounts of the transactions effected via the Service as well as debit the Customer's Bank Account with the amount of any fees applicable to the Service from time to time.

#### 6. Irrevocable Authority of the Bank

6.1. The Bank is irrevocably authorized by the Customer to act on all Requests received by the Bank from the Customer (or purportedly from the Customer) through the System and to hold the Customer liable thereof, notwithstanding that any such requests are not authorized by the Customer or are not in accordance with any existing mandates given by the Customer. If the Customer requests the Bank to cancel any transaction or instruction after a Request has been received by the Bank from the Customer, the Bank may in its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.

6.2. The Bank 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 Bank believes that it can correct the incomplete or ambiguous information in the Request without reference to the Customer being necessary.

6.3. The Bank shall not be obliged to accept or to act upon any Request if to do so would require access to, action by, or information from the Branch, or any Bank Subsidiary located in any jurisdiction where it is not a Banking Day at the relevant time when such access, action or information is required or would cause a breach of any existing mandate facility limit or agreement between the Bank, the Branch and/or Bank Subsidiary (as applicable) and the Customer. In the event that the Bank does accept or act upon any such Request, the Customer shall remain liable thereof.

6.4. In the event of any conflict between any terms of any Request from the Customer and the terms of these Terms and Conditions, the terms of these Terms and Conditions shall prevail. These Terms and Conditions and all authorizations and other procedures agreed under these Terms and Conditions supplement any General Terms and Conditions and any mandates, which apply to the Customer's Bank Accounts with the Bank.

#### 7. Limits of Internet Banking Transactions

7.1. The Customer may transfer or effect a payment for any amount as long as the transaction does not cause the balance in the Deposit Account to be less than zero unless the Customer has either an approved overdraft facility for the affected Deposit Account or a term Deposit Account pledged with the Bank to cover excesses that may arise in the affected Deposit Account from time to time in which case the two accounts are linked in the System for that purpose.

7.2. If the Customer has an approved overdraft facility or term Deposit Account linked to the payment Deposit Account, the transfers and/or electronic bill payments using the Service should not exceed the approved overdraft facility or the pledged term Deposit Account.

#### 8. Records of Transactions and Customer Rights to This Information.

8.1. All activities performed by the Customer once allowed access into the System will be logged until the Customer ends a session. The Bank shall maintain copies of all Requests received from the customer in electronic form. In addition, any hard copies of documentation prepared by the Bank in the process of effecting a transaction as per the Customer's Requests will be maintained. As between the Customer and the Bank, the Bank's copy records shall be conclusive evidence of the fact of receipt or non-receipt of a Request and of the contents of such Request.

8.2. The Account statement (hereinafter "the Account Statement") that the Customer receives at the determined product frequency will reflect all the Service transactions.

8.3. The Customer shall be deemed to have accepted and shall not subsequently challenge or object to any of the transactions contained in the Account Statement if the Customer fails to object to the Account Statement in writing within 30 days from the date the Account Statement was sent or deemed to have been sent to the Customer by the Bank.

#### 9. Charges

9.1. The Customer shall pay to the Bank transaction charges applicable to various transaction types as advised by the Bank from time to time. The Bank may in its sole discretion revise these charges and fees.

9.2. The Customer shall pay any tax chargeable upon any sums payable by the Customer to the Bank and also any other charges or duties levied on the Customer or the Bank by any governmental or statutory body relating to the provision of the Service.

9.3. The Bank is hereby irrevocably authorized from time to time to debit any amounts payable by the Customer under the provisions of subparagraphs 9.1 and/or 9.2 to any account in any currency maintained by the Bank, the Branch and/or the Bank subsidiaries (as applicable) in the name of the Customer. In addition to the fees payable under these Terms and Conditions, the charges and fees applicable to the Customer's Bank Accounts will apply.

#### 10. Exclusion of Liability

10.1. Circumstances not within the Bank's control

The Bank shall not be responsible or liable for any loss suffered by the Customer should the Service be interfered with or be unavailable by reason of (a) any industrial action, (b) the failure of any of the Customer's Facilities, or (c) any other circumstances whatsoever not reasonably within the Bank's control including, without limitation, force majeure or error, interruption, delay or non-availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

10.2. Electronic Bill Payments and Transfer of Funds

(a) The Bank will not be liable for any losses or damage suffered by the Customer as a result of delay, failure and/or refusal by the Bank to act on a Request in time or at all in any one or more of the following circumstances (as the case may be):-

- (i) If the Customer does not have enough funds in the Deposit Account;
- (ii) If the payment or transfer would result in the Customer's approved overdraft facility limit being exceeded;
- (iii) If the Customer does not authorize a bill payment in good enough time for the payment to be made and properly credited by the payee (the Customer's counter-party) by the time it is due;
- (iv) If the System or the Customer's Facilities were not working properly;
- (v) If circumstances beyond the Bank's control including those specified in sub paragraph 10.1 above prevent the Bank from making a payment or transfer;
- (vi) If the money in the Customer's account is subject to legal process court order or other encumbrance restricting the payment or transfer;
- (vii) If the Customer does not give proper or complete instructions for the payment or transfer or the Customer does not follow the procedures in this or other applicable agreement with the Bank for requesting a payment or a transfer;
- (viii) If the Bank has reason to believe that the Customer or someone else is using the Service for fraudulent or illegal purposes;
- (ix) If a payment or a transfer request would consist of money deposited in a form or by a method that has not yet made the money available for withdrawal;
- (x) If the payment or transfer request is in contradiction or conflict with other existing account agreements with the customer;
- (xi) If the payment or transfer request is received at a time when it is operationally not possible to effect the same within working hours of that day
- (ii) If the payment or transfer would result in the Customer's approved overdraft facility limit being exceeded;

(b) If the Bank makes a timely payment or transfer but the payee nevertheless fails to credit the Customer's payment promptly after receipt, the Bank shall not be liable for any loss or damage

suffered by the Customer as a result of such failure on the part of the payee.

#### 10.3 Indemnity

(a) The Customer shall indemnify and keep the Bank indemnified on a full and unqualified indemnity basis against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses suffered or incurred by the Bank in connection with or arising from (a), (b) and/or (c) of subparagraph 10.1 or where the particular circumstances is within the Customer's control and against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses suffered or incurred by the Bank as a consequence of any breach by the Customer of any term or condition hereof.

(b) The Customer shall indemnify and keep indemnified the Bank against any demands, claims, actions, losses, damages or costs relating to or in connection with the Service, whether directly or indirectly, unless such demands, claims, actions, losses, damages, or costs arose as a direct consequence of the gross negligence or willful misconduct of the Bank or any of its employees.

(c) The Customer shall indemnify and keep indemnified the Bank against the following: -

- (i) All demands, claims, actions, losses and damages of whatever nature which may be brought against the Bank or which it may suffer or incur arising from the Bank's reliance on any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by the Bank.
- (ii) Any loss or damage that may arise from the Customer'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.
- (iii) Any unauthorized access to the Customer's accounts or any breach of security or any destruction or accessing of the Customer's data or any destruction or theft of or damage to any to the Customer's equipment.
- (iv) Any loss or damage occasioned by the failure by the Customer to adhere to any terms and conditions applicable to the Service 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.
- (v) Any loss or damage that may arise from the use of the Service by the Customer, any joint account holder, Corporate Administrator, Corporate User/Maker, Corporate Dual user and/or Corporate Authorizer/Checker.

10.4 If for any reason other than a reason mentioned in subparagraph 10.1 the Service is interfered with or unavailable, the Bank's sole liability in respect thereof shall be to re-establish the Service as soon as reasonably practicable or, at the Bank's option, to provide to the Customer alternative banking facilities which need not be electronic facilities.

10.5 Save as provided in subparagraph 10.4, the Bank shall not be liable to the Customer for any interference with or unavailability of the Service, howsoever caused.

10.6 Under no circumstances shall the Bank be liable to the Customer for any loss of profit or anticipated savings or for any indirect or consequential loss of whatever kind, howsoever caused, arising out of or in connection with the Service.

10.7 Except in respect of death or personal injury caused by the negligence of the Bank, the Bank shall be under no liability for any claim whatsoever in respect of any terms and conditions contained herein or their performance thereof or any transactions effected by the Bank in response to any Request unless the Bank has received notice in writing of any such claim from the Customer:

(a) In the case of any claim relating to a transaction, within thirty (30) days from the date of the alleged transaction on which such claim is based; and

(b) In all other cases within ninety (90) days of the date of the alleged action or inaction by the Bank on which such claim is based.

10.8 To the extent permitted by law, the Bank:

- (a) Disclaims all warranties with respect to the System and Service either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a certain result.
- (b) Makes no warranty that the System is error free or that its use will be uninterrupted and the Customer acknowledges and agrees that the existence of such errors shall not constitute a breach of these Terms and Conditions.

#### 11. Amendments

The Bank may vary these Terms and Conditions at any time. Notification of any such variation may be given to the Customer either in writing or by publication thereof by such means as the Bank may decide but any variation whether notified or not shall be binding on the Customer.

#### 12. Termination

12.1. Notwithstanding anything contained in these Terms and Conditions, the Subscription may be terminated at any time by either party.

12.2. Upon termination, if the Customer re-applies for a Subscription, a reconnection fee may be payable.

12.3. The Bank may unilaterally terminate the Subscription for any reason, including but not limited to in the event that the Customer's Bank Account does not have sufficient available balances for the Bank to debit the applicable charges for the Subscription.

12.4. If the Customer terminates the Subscription, the Bank may continue to make electronic bill payments, transfer of funds and other transactions that the Customer would have previously authorized until such time as the Bank will have had a reasonable opportunity to act on the Customer's notice of termination.

12.5. The termination of this Subscription shall not, in itself, terminate or affect the relationship of Banker and Customer between the Bank and the Customer.

12.6. Paragraphs 10, 14 and 17 shall survive termination of the Subscription.

#### 13. General Provisions

13.1. The Customer shall not assign any benefit or any rights arising hereunder without the prior written consent or confirmation from the Bank.

13.2. No waiver by the Bank of any breach by the Customer of any of the terms and conditions hereof shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Customer.

13.3. The Customer acknowledges:

- (a) that it has not relied upon any representation, warranty, promise, statement of opinion or other inducement made or given by or on behalf of or purportedly by or on behalf of the Bank in deciding to; and that
  - (b) no person has or has had authority on behalf of the Bank whether before, on or after the subscription to make or give any such representation, warranty, promise, statement of opinion or other inducement to the Customer or to enter into any collateral or side agreement of any kind with the Customer in connection with the Service.
- 13.4. For the avoidance of doubt, nothing herein shall vary, discharge or in any other way affect or prejudice any security granted by the Customer or any third party in favour of the Bank in relation to any obligations of the Customer which may rise if any Request from the Customer hereunder is acted upon by the Bank.
- 13.5. If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or enforceability shall not affect the legality, validity or enforceability of the remaining provisions of these terms and conditions.
- 13.6. Any notice required to be given in writing under these terms and conditions shall be sufficiently served if sent by registered post, stamped and properly addressed;
- (a) to the manager of the Branch or of the Bank at the address of the Branch or the Bank, if to be served on the Bank; or
  - (b) To the Customer at the address of the Customer as per the Bank's records, if to be served on the Customer. And shall be deemed to have been served five banking days after posting.



#### 14. Confidentiality and Disclosure

14.1. The Customer undertakes to maintain strict confidentiality of its User ID/Corporate ID and Password and any other information and materials of any nature supplied to it by the Bank in relation to the Service. The Customer agrees to notify its agents, employees and/or sub-contractors of the provisions of this paragraph and to impose this confidentiality requirement on its agents, employees and/or sub-contractors entering into separate agreements, if necessary. The Customer shall be fully liable to the Bank for any breach of the provisions of this paragraph by itself, its employees, agents and/or sub-contractors.

14.2. The Customer hereby agrees that, if necessary for the provision of the Service, the Bank may disclose information about the Customer to any member of the Bank Group or the Customer Group.

14.3. The Customer also hereby agrees that the Bank may disclose information about the Customer to third parties in the following circumstances:-

- (a) Where such disclosure is necessary in order for the Bank to act on a Request.
- (b) In order to comply with any law regulation or court order. If the Bank has to obey an order for information from an authorized government body, the Bank may, to the extent required by law, notify the Customer before giving out the information.
- (c) Disclosure to the Bank's agents, sub-contractors, auditors, attorneys and other professional service providers to the extent required in the normal course of their duties.
- (d) Disclosure to a licensed credit reference agency the services of whom the Bank may have subscribed to.
- (e) If it involves a claim by or against the Bank in respect of an item deposited or drawn against the Customer's account.
- (f) If the Customer authorizes the disclosure.

#### 15. Intellectual Property Rights

15.1. The Customer acknowledges that the intellectual property rights in the System (and any amendments or enhancements thereto from time to time) and all associated documentation that the Bank provides to the Customer through the System or otherwise are vested either in the Bank or in other persons from whom the Bank has a right to use and to sub-license the System and/or the said documentation. The Customer shall not infringe any such intellectual property rights.

15.2. The Customer shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of the Bank.

#### 16. Protection from Third Parties

The customer shall indemnify the Bank against, and hold it harmless from, any and all liabilities, claims, costs, expenses and damages of any nature in any way arising out of or relating to disputes or legal actions by third parties concerning the use or Bank's provision of the Services.

Customer's obligations under this section shall survive termination of the Subscription.

#### 17. Relationship

Nothing in these Terms and Conditions shall create any agency, fiduciary, joint venture or partnership relationship between customer and the Bank.

#### 18. Headings

The headings contained in these Terms and Conditions are for convenience of reference only, and shall not be deemed to be a part of these Terms and Conditions neither be referred to in connection with the interpretation of these Terms and Conditions.

#### 19. Severability

In the event that any provision of these Terms and Conditions or the application of any such provision to any person or set of circumstances shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of these Terms and Conditions and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

If there are two or more persons comprised in the expression "the customer" then the undertakings and liabilities of the Customer under these Terms and Conditions shall be joint and in solid undertakings and liabilities shall be construed accordingly and reference herein to the "customer" shall mean any or more of them.

If the customer is a corporate body, then these Terms and Conditions shall continue in full force and effect and continue to bind each of its assigns and successors.

#### Governing Law

This document shall be governed and construed in accordance with the laws of therepublic of Kenya.