

*Draft 2: 15 July 2016*  
*For discussion purposes only*

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**BUSINESS AND ASSET TRANSFER AGREEMENT**

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between

**NIC BANK LIMITED**

and

**[NIC BANK KENYA PLC]**

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THIS AGREEMENT is made this                      day of                      2016

**BETWEEN:**

- (1) **NIC BANK LIMITED**, a company registered in accordance with the laws of the Republic of Kenya under registration number C.11/77 and whose registered office is at NIC House, Masaba Road, Plot 209/8182, and of Post Office Box Number 44599-00100, Nairobi, Kenya (the **Seller**); and
- (2) [**NIC BANK KENYA PLC**], a company registered in accordance with the laws of the Republic of Kenya under registration number [•] and whose registered office is at NIC House, Masaba Road, Plot 209/8182, and of Post Office Box Number 44599-00100, Nairobi, Kenya (the **Buyer**).

**WHEREAS**

- A. The Seller is a public company listed on the Nairobi Securities Exchange Limited and licensed by the Central Bank of Kenya (the **CBK**) to carry on banking business in Kenya.
- B. The Seller owns subsidiaries in Kenya, Uganda and Tanzania (the **Subsidiaries**), as are more particularly set out in Schedule 1 to this Agreement (the Seller and the Subsidiaries are hereinafter referred to as the **Group**).
- C. The Seller wishes to reorganise the Group to achieve a structure where the Seller will be a non-operating holding company (as define under the Banking Act, Chapter 488 of the laws of Kenya) owning interest in its Subsidiaries with a view of, among other things, enabling the Group meet regulatory requirements for investments by banking institutions in Kenya.
- D. The Seller has established Buyer, which is a wholly owned subsidiary of the Seller, and has agreed to the sell and transfer to the Buyer the Sale Business and the Assets {other than the Excluded Assets and Excluded Liabilities} (each as defined below) as a going concern on the terms and conditions of this Agreement.
- E. The Buyer has agreed to purchase the Sale Business as a going concern on the terms and conditions set out in this Agreement.

**IT IS AGREED AS FOLLOWS:**

**1. Definitions and Interpretation**

**1.1. Definitions**

For the purposes of this Agreement and the recital above, unless the context requires otherwise:

- 1.1.1. **Agreement** means this Agreement together with its Schedules;
- 1.1.2. **Assets** means all the assets of the Seller relating to the Sale Business as at the Effective Time and including, without limitation, the following (particulars of which are set out in Part 1 of Schedule 5 with regard to assets with a financial value):
  - 1.1.2.1. Equipment;

- 1.1.2.2. Properties;
- 1.1.2.3. Goodwill;
- 1.1.2.4. the benefit (subject to the burden) of the:
  - 1.1.2.4.1. contracts relating to the Staff Loans; and
  - 1.1.2.4.2. Business Contracts,but excluding the Excluded Assets;
- 1.1.3. **Assumed Liabilities** means all the liabilities of the Seller relating to the Sale Business, comprising the:
  - 1.1.3.1. Creditors;
  - 1.1.3.2. obligations relating to:
    - 1.1.3.2.1. the Business Contracts;
    - 1.1.3.2.2. the Employment Contracts; and
    - 1.1.3.2.3. the contracts relating to the Staff Loans; andbut excluding the Excluded Liabilities;
- 1.1.4. **Book Debts** means all trade and other debts and amounts owing to the Seller at the Effective Time in respect of goods and services supplied by the Seller in the usual or ordinary course of carrying on the Sale Business (whether or not invoiced);
- 1.1.5. **Business Contracts** means all or any contracts and engagements entered into by the Seller in relation to the Sale Business which remain to be performed in whole or in part (other than in relation to warranty or guarantee obligations) as at the Effective Date but excluding contracts relating to the Staff Loans and the Employment Contracts;
- 1.1.6. **Business Day** means a day (other than a Saturday, Sunday or public holiday) when banks in the Republic of Kenya are open for business
- 1.1.7. **Business Information** means all information, know-how and techniques (whether or not confidential and in whatever form held) which in any way (wholly or partially) relate to:
  - 1.1.7.1. all or any part of the Sale Business; or
  - 1.1.7.2. any services rendered by the Sale Business; or
  - 1.1.7.3. any documentation, formulae manuals or instructions relating to 1.1.7.1 or 1.1.7.2 above; or
  - 1.1.7.4. the operations, management, administration or financial affairs of the Sale Business (including business plans and forecasts, information relating to future business development or planning and information relating to litigation or legal advice); or

- 1.1.7.5. the sale or marketing of the services rendered by the Sale Business, including all customer names and lists, sales and marketing information (including targets, sales and market share statistics, market surveys and reports on research).
- 1.1.8. **Claim** means a claim under the Warranties and a Claim is connected with another Claim or Substantiated Claim if they arise out of the occurrence of the same event or relate to the same subject matter;
- 1.1.9. **CMA** means the Capital Markets Authority established under the Capital Markets Act, Chapter 485A of the laws of Kenya;
- 1.1.10. **Completion** means the completion of the sale and purchase of the Sale Business and the Assets in accordance with this Agreement;
- 1.1.11. **Consideration** means the consideration for the Sale Business and the Assets to be paid by the Buyer to the Seller in accordance with clause 4 (*Consideration*).
- 1.1.12. **Completion Date** means the close of business on the date on which Completion takes place pursuant to clause 5 (*Completion*);
- 1.1.13. **Conditions** means the conditions set out in Schedule 3 (*Conditions*);
- 1.1.14. **Creditors** means, to the extent not defined elsewhere in the definition of Assumed Liabilities, those amounts owing by the Seller to creditors in connection with the Sale Business as at the Effective Time details of which are comprised within Schedule 5.
- 1.1.15. **Customer Cash** means all cash sums belonging or referable to customers or potential customers in connection with the Sale Business which are held by or deposited with the Seller;
- 1.1.16. **Demands** means any action, award, claim or other legal recourse, complaint, cost, debt, demand, expense, fine, liability, loss, outgoing, penalty or proceeding;
- 1.1.17. **Employees** means the persons wholly employed by the Seller in the Sale Business, which at the date of this Agreement consist of those persons whose details are set out in Schedule 4 (*Employees*);
- 1.1.18. **Employment Act** means the Employment Act, Number 11 of 2007;
- 1.1.19. **Employment Contracts** means the contracts of employment entered into between the Seller and each of the Employees;
- 1.1.20. **Encumbrances** means any mortgage, charge (fixed or floating), pledge, lien, hypothecation, guarantee, trust, right of set-off or other third party right or interest (legal or equitable) including any assignment by way of security, reservation of title or other security interest of any kind, howsoever created or arising, or any other agreement or arrangement (including a sale and repurchase agreement) having similar effect;
- 1.1.21. **Effective Time** means the Completion Date;

- 1.1.22. **Equipment** means to the extent not defined elsewhere in the definition of Assets, all the computer equipment, motor vehicles, plant, machinery, furniture and fittings together with all spare parts, accessories and consumables relating thereto and other tangible chattels owned by the Seller and used in connection with the Sale Business as at the Effective Time details of which are set out in Schedule 5;
- 1.1.23. **Excluded Assets** means the Assets that are to be retained by the Seller, more particularly set out in Part 2 of Schedule 5 (*Excluded Assets*);
- 1.1.24. **Excluded Liabilities** means to the extent not defined elsewhere in the definition of Assumed Liabilities, any other liabilities and obligations properly incurred by the Seller in the ordinary course of business in relation to the Sale Business as at the Effective Time that are to be retained by the Seller, details of which are set out in Part 3 of Schedule 5 (*Excluded Liabilities*);
- 1.1.25. **Goodwill** means the goodwill, custom and connection of the Seller in the Sale Business, together with the exclusive right for the Buyer and its successors and assigns to carry on the Sale Business under a name similar or identical to the Seller's name;
- 1.1.26. **Group** means the entities set out in Schedule 1 hereto;
- 1.1.27. **IT System** means all computer hardware (including network and telecommunications equipment) and software (including associated preparatory materials, user manuals and other related documentation) owned, used, leased or licensed by or in relation to the Sale Business and those listed in Schedule 5;
- 1.1.28. **MTN** means the Kenya Shillings eight billion (KES 8,000,000,000) Subordinated Medium Term Note Programme issued by the Seller;
- 1.1.29. **NHIF** means the National Hospital Insurance Fund;
- 1.1.30. **NSE** means the Nairobi Securities Exchange Limited;
- 1.1.31. **Parties** means the parties to this Agreement;
- 1.1.32. **PAYE** means the pay as you earn tax, a withholding tax on income payments to employees;
- 1.1.33. **Properties** means, to the extent not defined elsewhere in the definition of Assets, the leasehold and freehold immovable properties owned by the Seller in relation to the Sale Business as set out and more particularly described in Schedule 5 and including the benefit of any leases, sub-leases or other interests subordinate to the interest of the Seller in the relevant Properties;
- 1.1.34. **Records** means the books, accounts the VAT Records and records and returns, lists of clients, customers and suppliers, credit reports, price lists, costs records, work tickets, catalogues, advertising and all the other documents, papers and records (including the employee database) however stored of the Seller related to the Sale Business, the Employees or any of the Assets.

- 1.1.35. **Sale Business** means the banking and any other ancillary business carried on by the Seller in Kenya as at the Effective Time but for the avoidance of doubt does not include the business of investment in the Seller's current subsidiaries;
- 1.1.36. **Seller's Transaction Advisers** means CfC Stanbic Bank Limited and NIC Capital Limited acting jointly;
- 1.1.37. **Shares** means [14,000,000] ordinary shares of Kenya Shillings [1,000] each in the capital of the Buyer to be acquired by the Seller in the Buyer as part consideration for the sale and transfer of the Sale Business and the Assets to the Buyer;
- 1.1.38. **Staff Loans** means the loans, facilities and other advances howsoever described, whether or not contingent or irrevocable, made or agreed to be made by the Seller to any of the Employees and all securities created or to be created in favour of the Seller to secure such loans, facilities or advances short particulars of which are set out in Schedule 5.
- 1.1.39. **Substantiated Claims** means a Claim in respect of which liability is admitted by the Seller, or which has been adjudicated on by a court of competent jurisdiction and no right of appeal lies in respect of such adjudication or the Parties are prevented by passage of time or otherwise from making an appeal;
- 1.1.40. **Third Party Consent** means a consent, licence, approval, authorisation or waiver required from a third party for the conveyance, transfer, assignment or novation in favour of the Buyer of any of the Assets or Assumed Liabilities in terms acceptable to the Buyer;
- 1.1.41. **Transaction** means the transaction contemplated by this Agreement or any part of that transaction; and
- 1.1.42. **Warranties** means the warranties set out in Schedule 6 (*Warranties*).

## 1.2. Interpretation

- 1.2.1. In addition to the definitions in clause 1.1, unless the context requires otherwise:
- 1.2.1.1. the singular shall include the plural and vice versa;
- 1.2.1.2. a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.2.1.3. reference to a clause or schedule is to a clause or schedule of or to this Agreement;
- 1.2.1.4. a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); and
- 1.2.1.5. any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.3. All the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it.

- 1.4. The recitals and Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement and any reference to this Agreement shall include the recitals and the Schedules.
- 1.5. Where any term is defined within the context of any particular clause or recital in this Agreement, the term so defined, unless it is clear from the clause or recital in question that the term so defined has limited application to the relevant clause or recital, shall bear the meaning ascribed to it for all purposes in terms of this Agreement notwithstanding that that term has not been defined in this clause 1.
- 1.6. The Parties acknowledge and agree that this Agreement has been jointly negotiated and drafted by all of them and that it is intended to benefit all Parties equally. Accordingly, neither this Agreement nor any of the provisions thereof shall be construed strictly against any of the Parties.

## 2. **Conditions**

- 2.1. Completion of this Agreement is subject to the Conditions in Schedule 3 (*Conditions*) being satisfied or waived by the date and time specified in clause 2.4.
- 2.2. If any of the Conditions are not satisfied or waived by the date and time specified in clause 2.1 and clause 2.4, this Agreement shall cease to have effect immediately after that date and time except for:
  - 2.2.1. the provisions set out in clause 2.3; and
  - 2.2.2. any rights or liabilities that have accrued under this Agreement.
- 2.3. The following provisions shall continue to have effect, notwithstanding failure to waive or satisfy the Conditions:
  - 2.3.1. Clause 1 (*Definitions and Interpretations*);
  - 2.3.2. Clause 2.1, clause 2.2 and clause 2.3;
  - 2.3.3. Clause 13 (*Confidentiality and Announcements*);
  - 2.3.4. Clause 26 (*Entire Agreement*);
  - 2.3.5. Clause 16 (*Variation and Waiver*);
  - 2.3.6. Clause 17 (*Costs*);
  - 2.3.7. Clause 18 (*Notice*); and
  - 2.3.8. Clause 24 (*Governing Law and Jurisdiction*).
- 2.4. The Seller and the Buyer shall use all reasonable endeavours (so far as lies within their respective powers) to procure the Conditions of Schedule 3 (*Conditions*) are satisfied as soon as practicable and in any event no later than:
  - 2.4.1. the Completion Date; or



- 2.4.2. such later time and date as may be agreed in writing by the Seller and the Buyer.
- 2.5. The Buyer and the Seller shall use their respective endeavours to procure that the Conditions are satisfied, including procuring that all necessary actions are taken and the provision by both Parties of all information reasonably necessary to make any application for consent, notification or filing as requested by any relevant authority, keeping all Parties informed of the progress of any notification or filing and providing such assistance as may reasonably be required.
- 2.6. The Buyer may, to such extent as it thinks fit and is legally entitled to do so, waive in whole or in part any of the Conditions by written notice to the Seller.

### 3. **Agreement to sell and purchase**

- 3.1. Unless expressly otherwise provided in this Agreement, the Seller shall sell with full title guarantee and the Buyer, relying on the Warranties in this Agreement and with a view to carrying on the Sale Business as a going concern, shall purchase free from all Encumbrances with effect from the Effective Time:
- 3.1.1. the Assets;
- 3.1.2. the Business Information;
- 3.1.3. the IT System;
- 3.1.4. the Book Debts;
- 3.1.5. the Customer Cash;
- 3.1.6. the Records;
- 3.1.7. all (if any) of the other assets, property or rights of the Seller relating to or in connection with, or belonging to or required for use in the Sale Business or in the Properties and which are not otherwise described in the preceding paragraphs of this clause 3.1; and
- 3.1.8. all of the Seller's rights against third parties and the benefit of all sums to which the Seller is entitled from third parties.
- 3.2. The Excluded Assets and Excluded Liabilities more particularly set out in Parts 2 and 3 of Schedule 5 respectively, shall be excluded from the sale under this Agreement.

### 4. **Consideration**

The Consideration shall comprise partly of cash and partly of allotment to the Seller of the Shares in the Buyer as fully paid and shall be settled in the manner set out in Schedule 7 (*Consideration*).

### 5. **Completion**

- 5.1. Subject always to the provisions of clause 2.1, Completion shall take place on the Completion Date;
- 5.1.1. at the head office of the Seller; or

- 5.1.2. at any other place agreed in writing by the Parties.
- 5.2. Completion Date means [31 December 2016] but:
- 5.2.1. if the Conditions have not been satisfied or waived in accordance with clause 2 on or before that date, means:
- 5.2.1.1. the second Business Day after such Conditions are all satisfied or waived; or
- 5.2.1.2. any other date agreed in writing by the Parties; or
- 5.2.2. if Completion is deferred in accordance with clause 5.6, means the date to which it is deferred.
- 5.3. The Seller undertakes to the Buyer that the Sale Business shall be conducted in the manner provided in Schedule 2 (*Completion*) until Completion and gives the Buyer the undertakings set out in that Schedule.
- 5.4. At Completion, the Parties shall comply with their respective obligations set out in Part 2 of Schedule 2 (*Completion Obligations*).
- 5.5. At Completion, and subject to the Seller having complied with clause 5.4, the Buyer shall settle the Consideration in accordance with Schedule 7 (*Consideration*).
- 5.6. Completion may be deferred on the mutual written consent of the Parties, but otherwise this clause 5 applies to a Completion deferred under this clause 5.6 as it applies to Completion that has not been deferred.
- 5.7. Following Completion, the Parties shall comply with their respective obligations set out in Part 3 of Schedule 2 (*Actions and Obligations after Completion*).

## 6. Warranties

- 6.1. The Buyer enters into this Agreement on the basis of, and in reliance on, the Warranties set in Schedule 6 (*Warranties*).
- 6.2. The Seller warrants and represents to the Buyer that each Warranty is true, accurate and not misleading.
- 6.3. The Seller shall ensure that nothing is done or omitted to be done which would, at any time before or at Completion, be materially inconsistent with any of the Warranties, breach any Warranty or make any Warranty untrue or misleading.
- 6.4. The Seller agreed that any information supplied by or on behalf of any of the Employees of the Seller or its advisers in connection with the Warranties, shall not constitute a warranty, representation or guarantee as to the accuracy of such information in favour of the Seller, and the Seller hereby undertakes to the Buyer that it waives any and all claims which it might otherwise have against any of the Employees in respect of such claims.
- 6.5. Warranties given *so far as the Seller is aware* are deemed to be given to the best knowledge, information and belief of the Seller after it has made all reasonable enquiries.

6.6. Each of the Warranties is separate and, unless expressly provided to the contrary, is not limited by reference to any other Warranty or anything in this Agreement.

## 7. **Apportionments and prepayments**

7.1. All periodical charges and periodical outgoings of the Sale Business or related to the Assets, including but not limited to rents, rates and non-customer rebates, insurance, electricity, telephone and water charges and all liabilities in relation to salaries, wages, entitlement to paid holiday, employee bonus or commission, expenses, national health insurance and pension contributions and PAYE income tax shall be apportioned on a time basis, so that such part of the relevant charges attributed to the period ending at the Effective Time shall be borne by the Seller and such part of the relevant charges attributable to the period commencing on the day immediately following the Effective Time shall be borne by the Buyer.

7.2. Where any product or service is to be provided by the Buyer under any contract after the Effective Time, but any payment (whether by way of deposit, prepayment or otherwise) in respect of the price or cost of such product or service has been received by the Seller before the Effective Time, the Seller shall pay an amount equal to the amount of that payment (excluding any amount in respect of value added tax for which the Seller is required to account) to the Buyer and shall hold such sum in trust for the Buyer until it is paid.

7.3. Where any product or service is to be provided by the Buyer under any contract after the Effective Time, but any payment (whether by way of deposit, prepayment or otherwise) in respect of the price or cost of it has been made by the Seller before the Effective Time, the Buyer shall pay an amount equal to the amount of that payment (excluding any amount in respect of value added tax for which the Buyer is required to account) to the Seller and shall hold such sum in trust for the Seller until it is paid.

7.4. All money or other items belonging to the Buyer, which are received by the Seller on or after the Effective Time in connection with the Sale Business or any of the Assets, shall be held in trust for the Buyer and shall be paid to the Buyer.

7.5. All money or other items belonging to the Seller, which are received by the Buyer on or after the Effective Time in connection with the Sale Business or any of the Assets, shall be held in trust for the Seller and shall be paid to the Seller.

7.6. Any sum due between the Parties pursuant to this clause 7 shall be paid in cash within thirty (30) Business Days of receipt to such bank account as the receiving Party may notify the paying Party in writing.

## 8. **Liabilities of the Seller and the Buyer**

8.1. The Buyer shall:

8.1.1. with effect from the Effective Time, assume responsibility for and indemnify and hold the Seller harmless against the payment and performance of the Assumed Liabilities and shall pay or perform the Assumed Liabilities in accordance with practice similar to the present

performance of the Seller in the payment or, as the case may be, the performance of the Assumed Liabilities; and

8.1.2. pay, satisfy or discharge all debts, liabilities and obligations incurred by the Buyer in connection with the Sale Business after Completion.

8.2. Nothing in this Agreement shall pass to the Buyer, or shall be construed as accepted by the Buyer of, any liability, debt or other obligation of the Seller (whether accrued, absolute, contingent, known or unknown) for anything done or omitted to be done before Completion in the course of or in connection with the Sale Business or the Assets (save to the extent that any such liability is included in the Assumed Liability) and the Seller shall:

8.2.1. indemnify and hold the Buyer harmless against any and all obligations, liabilities and Demands arising there from; and

8.2.2. perform any obligation falling due for performance of which should have been performed before Completion.

## 9. **Indemnities**

The Seller undertakes to indemnify and hold the Buyer harmless against all Demands (excluding professional fees and costs) which may be suffered or incurred by the Buyer and which arise directly or indirectly in connection with this Agreement.

## 10. **Employees**

10.1. The Parties agree that the sale and purchase pursuant to this Agreement will constitute a relevant transfer of Employees, and accordingly it will operate so as to terminate the contracts of employment of the Employees with the Seller.

10.2. The Seller undertakes to the Buyer that it shall procure written waivers of the Employees to their entitlement to severance pay under the Employment Act on or before the Effective Time.

10.3. The Buyer undertakes to the Seller that it shall employ the Employees on the same terms and conditions as offered by the Seller and shall acknowledge the duration of employment that each Employee served with the Seller.

10.4. The Seller shall, on request by the Buyer, provide to the Buyer such information or documents as the Buyer may reasonably require relating to the terms of employment, pension and life assurance arrangements, health benefits, welfare or any other matter concerning any of the Employees or any trade union, employee representative or body of employees of their representatives or relating to collective arrangements or collective or individual grievances in the period before the Effective Time.

## 11. **Business Contracts**

11.1. Subject to Completion taking place, the Seller shall, with effect from the Effective Time, assign to the order of the Buyer, or procure the assignment to the order of the Buyer of, all the Business Contracts which are capable of assignment without a Third Party Consent.

- 11.2. If any of the Business Contracts cannot be assigned or novated without obtaining a Third Party Consent, then the Seller shall use all reasonable endeavours to obtain such consents.
- 11.3. Insofar as any of the Business Contracts cannot be assigned or novated to the Buyer without Third Party Consent, and such consent is refused or otherwise not obtained or where any of the Business Contracts are incapable of transfer to the Buyer by assignment, novation or other means:
- 11.3.1. the Seller shall at the Buyer's request, use all reasonable endeavours with the co-operation of the Buyer to procure such assignment and novation;
- 11.3.2. unless and until any such Business Contract is assigned or novated, the Seller shall continue its corporate existence and shall hold such Business Contract and any monies, goods or other benefits received thereunder as trustee for the Buyer and its successors in title absolutely;
- 11.3.3. the Buyer shall (if such sub-contracting is permissible and lawful under the Business Contract in question and to the extent that they are Assumed Liabilities), as the Seller's sub-contractor, perform all the obligations of the Seller under such Business Contract and, where sub-contracting is not permissible, the Buyer shall perform such obligations as agent for the Seller; and
- 11.3.4. unless and until any such Business Contract is assigned or novated, the Seller shall (so far as it lawfully may), give all such assistance as the Buyer may reasonably require to enable the Buyer to enforce its rights under such Business Contract and (without limitation) shall provide access to all relevant books, documents and other information in relation to such Business Contract as the Buyer may require from time to time.
- 11.4. Nothing in this Agreement shall be construed as an assignment or attempted assignment if such assignment or attempted assignment would constitute a breach of such Business Contract.

## 12. **Future trading and trade enquiries**

The Seller shall promptly refer to the Buyer all enquiries relating to the Sale Business and assign to the Buyer all orders relating to the Sale Business, including enquiries relating to services provided in connection with the Sale Business, which the Seller may receive after Completion.

## 13. **Confidentiality and announcements**

- 13.1. Except to the extent required by law or any legal or regulatory authority of competent jurisdiction:
- 13.1.1. neither Party shall at any time disclose to any person (other than its professional advisers) the terms of this Agreement; and
- 13.1.2. neither Party shall make any announcement relating to this Agreement or its subject matter without the prior written approval of the other Party, save as provided in clause 13.2 below.

13.2. The Seller may at any time after Completion, announce the sale and transfer of the Sale Business and Assets to any regulators, shareholders, employees, clients, press customers or suppliers, its Subsidiaries and any other member of the Group.

14. **Further assurance**

The Parties shall (at their own expense) promptly execute and deliver such documents, perform such acts and do such things as the Buyer may reasonably require from time to time for the purpose of giving full effect to this Agreement.

15. **Assignment**

This Agreement is personal to the Parties and neither shall assign transfer, mortgage, change, declare a trust of, or deal in any other matter with any of its rights and obligations under this Agreement without the prior written consent of the other.

16. **Variation and waiver**

16.1. No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).

16.2. No failure or delay by either the Seller or the Buyer to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.

16.3. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. A waiver of any right or remedy under this Agreement is only effective if it is in writing.

16.4. Except as expressly provided otherwise in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. **Costs**

Except as expressly provided in this Agreement, the Seller shall pay the costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

18. **Notices**

Any notice required to be given by any Party hereto to any other shall be deemed validly served by hand delivery or by facsimile or by prepaid registered post to its address given herein or such other address as may from time to time be notified for this purpose and any notice served by hand shall be deemed to have been served on delivery and any notice served by prepaid registered post shall be deemed to have been served seven (7) days after the date on which it was posted and in proving service it shall be sufficient to prove that the notice was properly addressed and delivered or posted (and in the case of a facsimile that the fax was correctly transmitted), as the case may be.

To:

NIC Bank Limited  
NIC House, Masaba Road  
P.O. Box 44599-00100  
Nairobi,  
Kenya

*For the kind attention of [ ]*

To:

[NIC Bank Kenya PLC]  
NIC House, Masaba Road  
P.O. Box 44599-00100  
Nairobi  
Kenya

*For the kind attention of: [ ]*

**19. No partnership**

Nothing contained in this Agreement shall be deemed to constitute a partnership between the Parties or to make any of them the agent or representative of the other. Save as expressly provided herein, the Parties shall act severally, and not jointly, for the purposes of this Agreement. Therefore, save as expressly provided herein, a Party shall not be liable for the non-compliance by another Party with any undertaking or obligations of such other Party to any third party for the purpose of this Agreement.

**20. Non-merger**

For the avoidance of doubt the Parties hereby agree and acknowledge that the provisions of this Agreement shall not merge for whatever reason so far as they remain to be observed or performed.

**21. Agreement survives Completion**

This Agreement (other than the obligations that have already been fully performed) remains in full force after Completion.

**22. Severability**

If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any competent jurisdiction, that shall not affect the validity or enforceability in that jurisdiction of any other provision of this Agreement or the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

**23. Counterparts**

This Agreement may be executed in any number of counterparts each of which when executed and delivered shall be an original, but each engrossment shall together constitute one and the same instrument and shall take effect from the time of execution of the last engrossment.

**24. Governing law**

This Agreement and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the Republic of Kenya.

**25. Dispute resolution**

25.1. All disputes arising out of Agreement, including any question regarding their interpretation, existence, validity or termination will be referred to and finally resolved by arbitration in Kenya in accordance with the provisions of the Arbitration Act, 1995 by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom. The language of the arbitration shall be English. Each of the Parties shall bear its own cost of preparing and presenting its case. The costs of arbitration (including fees and expenses of the arbitrators) shall be shared equally between the Parties unless the award provides otherwise.

25.2. Before resorting to arbitration pursuant to clause 25.1 the Parties shall attempt to settle by negotiations between them in good faith all disputes or differences which arise between them out of or in connection with this Agreement. Disputes not settled within five (5) days of notification by one Party to the other maybe referred to arbitration by either party in accordance with clause 25.1.

25.3. It is understood and agreed that notwithstanding the above provisions, either Party has the unequivocal right to obtain timely injunctive relief from the courts.

**26. Entire agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

**IN WITNESS** this Agreement has been duly executed as a deed the day month and year first above written:

SEALED with the Common Seal of )  
NIC BANK LIMITED in the presence of: )  
 )  
 )  
 )  
 )  
----- )  
Director )  
Name: )  
 )



\_\_\_\_\_ )  
 )  
 Director/Company Secretary )  
 Name: )  
 )  
 Before me: )  
 )  
 )  
 \_\_\_\_\_ )  
 Advocate )

**C E R T I F I C A T E**

**I HEREBY CERTIFY** that ..... and  
 ..... both Directors/Director and Company Secretary of  
**NIC BANK LIMITED** appeared before me on the ..... day of .....  
 2016, and being known to me/identified by ..... of  
 ..... acknowledged the above signatures to be theirs and that they  
 had freely and voluntarily executed this instrument and understood its contents.

\_\_\_\_\_  
*SIGNATURE & DESIGNATION OF PERSON  
 CERTIFYING*

**SEALED** with the Common Seal of )  
**NIC BANK KENYA PLC** in the presence of: )  
 )  
 )  
 )  
 )  
 \_\_\_\_\_ )  
 Director )  
 Name: )  
 )  
 )  
 \_\_\_\_\_ )  
 Director/Company Secretary )  
 Name: )  
 )  
 Before me: )  
 )  
 )  
 \_\_\_\_\_ )  
 Advocate )

**C E R T I F I C A T E**

**I HEREBY CERTIFY** that ..... and  
 ..... both Directors/Director and Company Secretary of  
**NIC BANK KENYA PLC** appeared before me on the ..... day of .....  
 2016, and being known to me/identified by ..... of  
 ..... acknowledged the above signatures to be theirs and that they  
 had freely and voluntarily executed this instrument and understood its contents.

-----  
*SIGNATURE & DESIGNATION OF PERSON  
CERTIFYING*

**DRAWN BY:**

Coulson Harney  
Advocates  
5<sup>th</sup> Floor, ICEA Lion Centre  
West Wing  
Riverside Park  
Chiromo Road  
P.O. Box 10643-00100  
**NAIROBI**

**SCHEDULE 1**

**Seller's Group Structure**



## SCHEDULE 2

### Completion

#### Part 1: Conduct between the date of this Agreement and Completion

1. The Seller undertakes to the Buyer that, from the date of this Agreement to Completion, it shall:
  - 1.1 operate the Business in its usual way so as to maintain the Sale Business as a going concern and not discontinue or cease to operate all or a material part of the Sale Business;
  - 1.2 not acquire or dispose of, or agree to acquire or dispose of, any asset except in the usual and ordinary course of its trade nor assume or incur a liability, obligation or expense (actual or contingent) except in the usual and ordinary course of its trade and on normal arms-length terms;
  - 1.3 not do, or allow to be done, any act or thing which may adversely affect the Goodwill or the relationship of the Business with its customers, suppliers, business contacts or Employees;
  - 1.4 ensure that no long-term, onerous or unprofitable contracts are entered into in connection with the Business;
  - 1.5 not take any action which is inconsistent with the provisions of this Agreement, or which is or might constitute or cause a breach of any of the Warranties, or which would or might make any of the Warranties misleading or inaccurate; and
  - 1.6 not provide or agree to provide any non-contractual benefit to any Employee or their dependants.
2. The Seller shall immediately disclose to the Buyer in writing any matter or thing which arises or becomes known to it before Completion which is or might be a breach of, might reasonably be expected to cause or constitute a breach of or is inconsistent with or may render inaccurate or misleading, any of the Warranties, or which is a breach of, or may otherwise give rise to a claim under, any other provision of this Agreement.
3. The Seller shall procure that until Completion, the Buyer and its advisers shall be given promptly on request access at all reasonable times to:
  - 3.1 the Employees;
  - 3.2 the Properties;
  - 3.3 the Records; and
  - 3.4 such further facilities and information relating to the Business as they may reasonably require.

## **Part 2: Completion obligations**

1. The Seller shall deliver, or procure delivery to the Buyer of, or make available to the Buyer
  - 1.1 physical possession of all the Assets capable of passing by delivery, with the intent that title in such Assets shall pass to the Buyer by and on such delivery;
  - 1.2 duly executed conveyances, assignments, licences and other documents in the agreed form necessary to vest title in the Properties and the Assets in, or transfer the Properties and the Assets to, the Buyer or as the Buyer directs;
  - 1.3 the title deeds (if any) relating to the Properties and all invoices, policies, premiums, receipts, maintenance contracts, health and safety files and other accounts relating to the Properties and the Assets;
  - 1.4 duly executed agreements in the agreed form for the assignment or novation of the benefit of the Business Contracts to the Buyer, or as the Buyer directs, and all requisite notices, consents and licences therefor;
  - 1.5 duly executed assignments in the agreed form to vest the Goodwill in the Buyer or as the Buyer directs;
  - 1.6 all such Third Party Consents as the Buyer may require to vest in the Buyer the full benefit of the Assets;
  - 1.7 the Business Contracts and the books, accounts, reference lists of customers, credit reports, price lists, cost records, work tickets, catalogues, advertising and all other documents, papers and records in the possession or under the control of the Seller relating to the Sale Business or any of the Assets duly written up to the Completion Date;
  - 1.8 all NHIF and PAYE records, fully completed in respect of the Employees and showing that payments are up to date;
  - 1.9 a copy of the resolution passed by the shareholders of the Seller approving the Transaction; and
  - 1.10 a copy of the minutes of a meeting of the Board of Directors of the Seller authorising the execution by the Seller of this Agreement, and a copy of any other documentation that may be necessary or desirable arising out of or in connection with this Agreement or the transactions contemplated in them, and appointing the relevant signatory or signatories to sign this Agreement, and any such other documentation on its behalf endorsed with a certificate by the company secretary that such copy minutes are a true and accurate record of the relevant meeting and that the authority conferred remains valid and outstanding as at Completion.
2. The Buyer shall:
  - 2.1 cause the Shares to be issued to the Seller as fully paid
  - 2.2 deliver to the Seller a copy of the resolution passed by the shareholders of the Buyer approving the Transaction; and

- 2.3 deliver to the Seller a copy of the minutes of a meeting of the Board of Directors of the Buyer authorising the execution by the Buyer of this Agreement, and a copy of any other documentation that may be necessary or desirable arising out of or in connection with this Agreement or the transactions contemplated in them, and appointing the relevant signatory or signatories to sign this Agreement, and any such other documentation on its behalf endorsed with a certificate by the company secretary that such copy minutes are a true and accurate record of the relevant meeting and that the authority conferred remains valid and outstanding as at Completion;
- 2.4 deliver to the Seller an acknowledgment in writing that the Buyer accepts liability for the Assumed Liabilities and an indemnity (in the agreed form) in favour of the Seller in respect thereof; and
- 2.5 deliver to the Seller share certificates in relation to the Shares in favour of the Seller as well as such waivers, consents or other documents as may be required to give good title to the Shares to the Seller and to enable the Seller to become their registered holder free from all Encumbrances.

### **Part 3: Actions and obligations after Completion**

1. As soon as practicable after Completion, the Seller and the Buyer shall each issue a statement in the agreed form to the customers of, and suppliers to, the Sale Business informing them of the transfer of the Sale Business to the Buyer.
2. All correspondence, information, orders, enquiries and other documentation, items and all money relating to or connected with the Sale Business or the Assets received by the Seller, on or after Completion shall be immediately passed or paid (as the case may be) to the Buyer or as it may direct.
3. On and at any time after Completion, the Seller shall give or procure to be given to the Buyer all such information and other assistance (including particulars of Customers, suppliers and others who have dealt with the Seller in connection with the Sale Business) that the Buyer may reasonably require for the conduct of the Sale Business and for the purpose of implementing the provisions of this Agreement.
4. The Seller shall, if so required by the Buyer on or at any time after Completion and at the Buyer's expense, send a circular (in a form provided by the Buyer) to persons who have had dealings with the Seller in connection with the Sale Business, announcing the transfer to the Buyer of the Sale Business and the Assets.

**SCHEDULE 3**  
**Conditions**

This Agreement is subject to the terms and conditions in this Schedule 3.

1. The passing of a resolution by the Board of Directors of the Seller approving the Transaction;
2. The passing of a resolution by the Board of Directors of the Buyer approving the Transaction;
3. The passing at a general meeting of the Seller of an ordinary resolution in the agreed form to approve the terms of this Agreement.
4. The passing at a general meeting of the Buyer of an ordinary resolution in the agreed form to approve the terms of this Agreement.
5. Approval of the Transaction the CBK and the Cabinet Secretary of the National Treasury of Kenya pursuant to Section 9 of the Banking Act on terms satisfactory to the Parties.
6. The approval of the Seller as a non-operating holding company by the CBK in terms of and pursuant to Section 13 of the Banking Act;
7. The approval by the CBK under Section 9A and Parts A and B of the First Schedule to the Banking Act of (i) the Seller, (ii) the persons proposed to be directors of the Buyer and the Chief Executive Officer of the Buyer and (iii) any person holding such number of shares in the Seller which, on completion, would result in such person holding an indirect beneficial interest in more than five per cent (5%) of the share capital of the Buyer, in each case, as being fit and proper, thereby being eligible to become significant shareholders (as defined in the Banking Act) of the Buyer;
8. Approval by the Capital Markets Authority, the Nairobi Securities Exchange Limited and the MTN's noteholders for the transfer of the MTN by the Seller to the Buyer.
9. Receipt of a letter of no objection to the Transaction from the Competition Authority of Kenya.
10. Any tax exemption required to effect the Re-organisation having been obtained on terms satisfactory to the Board of the Seller;
11. Any waivers, consents or approvals from the lessors in respect of the properties leased by the Seller;
12. Any approvals that may be required under any material contracts entered into by the Seller as a result of the transaction contemplated by this Agreement;
13. The following consents, authorisations or similar clearances being granted in terms satisfactory to the Parties:
  - 13.1 all those which are required by any government, regulatory body or authority for Completion; and
  - 13.2 all those which are necessary or desirable for Completion.



## SCHEDULE 4

### Part A

#### Employees to be employed by the Buyer

All current employees of the Seller (other than the employees listed in Part B of this Schedule 4) whose particulars are contained in the Employee Register of the Seller. The Employee Register has been shared with the Buyer on or before the Effective Time.

### Part B

#### Employees to be retained by the Seller

NAME	DEPARTMENT
JOHN GACHORA	GMD & STRATEGIC PLANNING
DAVID ABWOGA	FINANCE
LIVINGSTONE MURAGE,	GROUP COMPANY SECRETARY
SUZZANNE MUTURI	GMD OFFICE
JOSHUA OWINO OCHOLA	INTERNAL AUDIT/ RISK/ COMP/ LEGAL

**SCHEDULE 5**  
**Part 1: Assets and Liabilities**

STATEMENT OF FINANCIAL POSITION	Bank
	31st March, 2016
	Un-audited
	Shs '000
<b>ASSETS</b>	
Cash ( both Local & Foreign)	1,103,811
Balances due from Central Banks	7,577,577
Kenyan Government securities held for dealing purposes	-
Financial assets at fair value through profit & loss	-
<b>Investment Securities:</b>	
<b>a) Held to Maturity</b>	
a. Kenya Government securities	5,312,429
b. Other securities	-
<b>b) Available for sale:</b>	
a. Kenya Government securities	17,425,757
b. Other securities	-
Deposits and balances due from local banking institutions	2,117,904
Deposits and balances due from banking institutions abroad	3,006,440
Tax recoverable	-
Loans and advances to customers (net)	104,816,520
Balances due from banking institutions in the group	1,597,024
Investments in associates	-
Investments in subsidiary companies	4,357,701
Investments in joint ventures	-
Investment properties	
Property and equipment	788,292
Prepaid lease rentals	6,969
Intangible assets	491,170
Deferred tax asset	1,167,587
Retirement benefit asset	-
Other assets	2,493,024
<b>TOTAL ASSETS</b>	<b>152,262,205</b>
<b>LIABILITIES</b>	
Balances due to Central Banks	-
Customer deposits	103,208,309
Deposits and balances due to local banking institutions	101,800
Deposits and balances due to foreign banking institutions	4,695,614
Other money market deposits	-
Borrowed funds	14,007,994
Balances due to banking institutions in the group	173,201
Tax payable	522,557
Dividends payable	-

Deferred tax liability	-
Retirement benefit liability	-
Other liabilities	2,116,537
<b>TOTAL LIABILITIES</b>	<b>124,826,012</b>
<b>EQUITY</b>	
Paid up / Assigned capital	3,199,728
Share Premium	2,700,017
Revaluation reserves	179,983
Retained earnings	19,543,914
Statutory loan reserves	1,652,919
Other reserves	(480,314)
Proposed dividends	639,946
Capital grants	-
	<b>27,436,193</b>
<b>Non-controlling interests</b>	-
<b>TOTAL EQUITY</b>	<b>27,436,193</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>152,262,205</b>

#### Part 2: Excluded Assets

		Amounts (KES 000)
<b>Excluded Assets</b>	Investment in Subsidiaries	5,357,701
	Intellectual Property	[.....]

#### Part 3: Excluded Liabilities

		Amounts (KES 000)
<b>Excluded Liabilities</b>	Tax payable	522,557
	Dividends payable	51,754
	Other liabilities	1,000,000

#### Part 4: Completion Statement

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## **SCHEDULE 6**

### **Warranties**

#### **1. Information supplied**

- 1.1 All information contained in this Agreement and all other information relating to the Sale Business and the Assets given by or on behalf of the Seller to the Buyer, its advisers or agents are true, accurate and complete in every respect and are not misleading.
- 1.2 There is no information that has not been disclosed which, if disclosed, might reasonably affect the willingness of the Buyer to buy the Sale Business and the Assets on the terms of this Agreement.

#### **2. Capacity of the Seller**

- 2.1 The Seller has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this Agreement and all agreements and documents entered into, or to be entered into, pursuant to the terms of this Agreement.
- 2.2 This Agreement and all other agreements and documents referred to in it constitute (or shall when executed constitute) valid, legal and binding obligations on the Seller enforceable in accordance with their respective terms.

## SCHEDULE 7

### Consideration

1. As consideration for the sale and transfer by the Seller of Sale Business and the Assets to the Buyer, the Buyer shall settle the following consideration to the Seller:

#### 1.1 Issuance of Shares

- (a) **Pre-completion:** On incorporation Buyer will/has issue(d) to the Seller one million (1,000,000) ordinary shares in the share capital of the Buyer with par value of Kenya Shillings one thousand (KES1,000.00) each for deferred consideration to be settled on the date of transfer of the Sale Business and Assets;
- (b) **Completion:** On the Completion Date, the Buyer will allot fourteen million (14,000,000) new ordinary shares of par value of Kenya Shillings one thousand (KES 1,000) each to the Seller at an allotment price of approximately [Kenya Shillings one thousand five hundred and twenty seven and thirty four cents (KES 1,527.34)] per share; and

#### 1.2 Cash Consideration

- (a) **Completion:** On the Completion Date, the Buyer will pay the Seller a minimum cash consideration of [Kenya Shillings one billion two hundred and seventy million (KES 1,270,000,000)] by crediting the Seller's customer bank current account maintained with the Buyer; and
- (b) **Post-Completion:** within ninety (90) days of the Completion Date, an additional cash consideration computed by the Sellers Transaction Advisers based on Completion Accounts prepared by the Seller as at the Completion Date and subject to limited scope audit review by the Seller's auditors it being acknowledged that based on the Completion Accounts, the Seller may be required to refund some excess cash consideration to the Buyer and the Seller undertakes to do so.