



## GENERAL TERMS & CONDITIONS

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## 1. INTRODUCTION

These General Terms and Conditions (the "GTC") apply to the services offered by NIC Bank Kenya PLC (hereinafter referred to as the "Bank" which expression shall where the context so admits include its success and assigns) to its customers. In consideration of the Bank offering those services, the customer agrees to be bound by the GTC. The customer must carefully read, understand and accept these GTC as they govern the content and services offered by the Bank to the customer.

In relation to the Website, the customer's use of any online service implies that the customer has accepted the GTC and the GTC form or will form a legally binding agreement between the customer and the Bank establishing the terms and conditions under which the Website or online service may be used. If you do not accept these terms and conditions, please do not access the Website or use the online services.

A copy of the GTC and other specific terms and conditions in respect to certain of the Bank's accounts, products and services are available to the Customer for collection at any of the Bank's branches or for download on the Website. In addition to the GTC, specific terms may also apply to specific accounts, products and services. In the event of conflict, the specific terms and conditions relating to a particular account, product and service will prevail over the GTC.

In the GTC, the expression "the customer" shall include any person, firm, partnership or corporate body; any expression referring to the masculine gender shall also apply to the feminine gender and vice versa; and any expression referring to the singular shall also apply to the plural and vice versa

## 2. DEFINITIONS:

In these GTC, the following words and expressions (save where the context requires otherwise) bear the following meanings:

**"Authorised signatory"** means the customer or account holder or other person that has been designated or appointed by the customer or authorised by law to access or operate the account on the customer's behalf;

**"Bank Account"** or "account" means the customer's or cardholders current and savings deposit account(s), current overdraft facility account (s) and term and call deposit accounts, take on accounts and loan accounts, mobile and online accounts (as the case may be) with the Bank and any other type of account that the Bank may provide from time to time;

**"Contact Centre"** means the point of contact for the Bank whose details shall be communicated by the Bank from time to time through any of its communication channels;

**"Customer"** or "you" means the person in whose name a Bank Account is existing or as may be otherwise prescribed by the law;

**"Customer Care Centre"** means any point of service of the Bank including any of its branches or its subsidiaries wherever located;

**"Deposit Account"** means any Bank Account with a credit balance;

**"Electronic Banking"** means NIC Online Banking Service or the performance of transactions of any type including but not limited to requests, instructions, payments etc. through the internet, mobile or any other electronic device.

**"Electronic Bill Payment"** allows you to send money from your account to a creditor or vendor such as public utilities, telephone, electricity, water bills and also includes

telegraphic transfers (TT) to be credited against a specific account;

**"Equipment"** includes your mobile phone handset, SIM Card, Computer and/or other equipment which when used together enables you to access the System;

**"Facilities"** means the communication line, modem connection or other software, hardware or equipment provided and used by you for the transmission and/or receipt of any information sent electronically or by telephone for the purposes of or in connection with the Services;

**"IPRS"** means the Kenyan Government's Integrated Population Registration System which is maintained under the Ministry of Interior and Coordination of National Government;

**"Mobile Banking"** means NIC Mobile Banking Service or the performance of transactions of any type including but not limited to requests, instructions, payments etc. over the phone through the System;

**"Mobile Network"** means the mobile cellular network by a duly licensed MSP;

**"MSP"** any mobile service provider through whom the Customer or the Bank receives the mobile services;

**"NIC Group"** means collectively NIC Group PLC and the Subsidiaries;

**"NIC Mobile Banking"** the provision of the following services through a mobile telecommunication device accessing the System:

- Obtaining account information like current balances, mini statements and account activity.
- Electronic bill payment for telephone bills, electricity bills etc.
- Requests for printed bank statements, cheque books and cheque status
- Stop cheque requests.
- Inquiries on foreign exchange rates and interest rates.
- Change of password- done by the Customer.
- Internal Transfer of funds - between different accounts of the Customer.
- Transfer of Funds to external bank accounts of the Customer or third parties.
- Notifications on credit or debit transactions as advised by Customer
- MVISA transaction and Pesalink services
- Any other service that the Bank may offer through this channel

**"NIC Mobile Banking Account"** means a bank account held by a Customer with the Bank and which is opened and/or operated through a mobile device in accordance with the terms and conditions herein contained;

**"NIC Online Banking"** the provision of the following services through the System:

- General Customer interaction- news, advice, Bank products etc.
- Online application for Bank products.
- Obtaining account information like current balances, account activity and other details.
- Electronic bill payment for telephone bills, electricity bills etc.
- Requests for printed bank statements and cheque books
- Stop cheque requests.

- Requests for change of Customer profile particulars like phone number, address etc.
- Payroll processing and wire transfer of salaries to the employees' bank accounts.
- Inquiries on foreign exchange rates and interest rates.
- Change of password- done by the Customer.
- Internal Transfer of funds - between different accounts of the Customer.
- Transfer of Funds to external bank accounts of the Customer or third parties.
- Giving instructions to the Bank to open a term deposit.
- Initiating a number of bank transactions including Letter of Credit, bank guarantee, Loan application and others as the Bank may facilitate online from time to time.
- Application for letters of credit.
- Any other service that the Bank may offer through this channel

**"Nominated User"** the representative or representatives of the Customer authorised by the Customer to hold and change the Password and hence to access the System and Service on behalf of the Customer;

**"Password"/ "PIN"/ "One Time Password (OTP)"/ "Token"/ "Transaction Authorization Number"** and/or any other similar term that may be introduced by the Bank from time to time means the secret number, phrase or combination of phrases, letters and/or numbers known only to the Customer or the Customer's Nominated User for access to the System. The Customer or its Nominated User may change the password at will;

**"PIN"**, in relation to Mobile Banking only and without prejudice to the meaning in these terms, means the 4 (four) digits provided to the Customer by the Bank for authentication / verification by Bank of his /her identity. The customer will be able to obtain a range of financial information as determined by the Bank related to his / her relevant Bank Account(s) through the use of PIN and such other means of identification assigned to the Customer in connection with the Bank Account(s);

**"Request"** means an instruction received by the Bank from the Customer or purportedly from the Customer through the System and upon which the Bank is authorised to act;

**"Services"** include any form of banking products and services offered by the Bank to a Customer pursuant to this Agreement and as the customer may from time to time subscribe to and "Service" shall be construed accordingly;

**"SIM Card"** means the subscriber identity module which when used with the appropriate mobile phone device enables you to access the System;

**"Subsidiary"** means any company or other entity that is wholly or partially owned or controlled by the Bank or any company that is wholly or partially owned or controlled by NIC Group PLC;

**"Subsidiary Products and Services"** means any product or service provided by, or through, a Subsidiary;

**"System"** means the Bank's electronic banking and communications software(s) enabling the Customer to communicate with the Bank for the purposes of the Services;

**"Transaction Fees"** means the charges payable by customers for use of the Bank's and its subsidiaries products and services as detailed in the applicable tariff as availed to the customer from time to time through the available communication channels and the Bank's branches;

**"Website"** means the Bank's website, www.nic-bank.com; and

**"We"** or **"Us"** means NIC Bank Kenya PLC or where applicable means NIC Group;

### 3. BANK ACCOUNT WITHIN A BRANCH

These GTC shall apply to each Bank Account now or subsequently opened in the name of the customer and which is not an NIC Mobile Banking Account. Please refer to section 4 below in relation to the NIC Mobile Banking Account.

#### 3.1. Customer's Instruction

The customer requests the Bank to honour and to debit to his Bank Account all cheques, drafts, bills, promissory notes, acceptances, negotiable instruments and orders drawn accepted or made out to him, and to carry out any instructions he may give in connection with his account notwithstanding that any such debiting or carrying out may cause his account to be overdrawn or an overdraft to be increased. Where no overdraft agreement has been reached, the Bank may nevertheless refuse to carry out any instructions which would result in there being an overdraft or any greater than agreed, as the case may be.

#### 3.2. Authorized Signature

Where the customer wishes to operate on his account wholly or partially by delegated authority, the customer will give the Bank in an acceptable form a mandate expressing in precise terms what powers have been delegated to the mandatory and the specimen signature of every person authorized to operate the account. Unless otherwise set out in the mandate aforementioned all signatories are entitled to withdraw all or any of the customer's property or securities held by the Bank from time to time, to open any further account in the customer's name, and to overdraw any of the customer's accounts.

#### 3.3. Set-off

- (a) (a) The Bank may, without notice to the customer, combine, consolidate and/or set off all monies so held against any account or indebtedness of the customer:
- (i) any other account whether current, loan, savings or any other type;
  - (ii) any account, whether in credit or debit, or other deposit; and
  - (iii) any other account or indebtedness in respect of which the customer is liable, notwithstanding that some other person having a joint interest in the account may not be liable and that the other account is in a different branch of the Bank.
- (b) (b) The Bank reserves the right to return cheques which, as a result of the aforementioned combining, consolidation and/or set off, would overdraw the account.

#### 3.4. Simultaneous order in excess of funds

Where the Bank receives several orders at approximately the same time and the total amount of those orders exceeds the available assets of or the credit granted to the customer, the Bank may honour the orders in whatever manner it thinks fit within the limit of funds available.

#### 3.5. Bank charges, Expenses and interest

The Bank is entitled to be paid by the customer and may debit the customer with:

- (a) Unless otherwise agreed in writing, interest (including default interest), on overdrawn accounts, loan account or any other facility granted by the bank,

at a rate which may be different for different accounts. The Bank will notify the customer of any change in the rate of discretion where required by law.

- (b) The Bank may debit and/or overdraw the customer's account where it has become aware that it had credited the customer's account with any amount (whether erroneously or not) or where the Bank had made any payment on behalf of the customer without first debiting the customer's account.
- (c) The notification of the charges, costs and applicable interest payable by the customer in relation to any account shall be indicated in the Important Information Document (IID) which shall be available to the customer at all times through the Bank's branches or other communication channels;
- (d) Advocate and client cost incurred by the bank in obtaining legal advice in connection with the customer's accounts and dealings with the bank or incurred by the Bank in any legal, arbitration or other proceedings arising out of any dealings in respect of the customer ;
- (e) Commission at such rates and at such times as the bank shall decide from time to time, with discretion to charge different rates for different accounts. However, the Bank shall keep the customer notified of any amendments to the rates; and
- (f) All other expenses and charges including but not limited to ledger fees, disbursement for cheques books, postages, swift, telephone calls, taxes, duties, impositions, recovery costs for any amount due and expenses incurred in complying with the customer's request.

### 3.6 Payment by third parties and deposit of cheques

- (a) The Bank may credit the customer with amounts paid by third parties.
- (b) All cheques or other orders for payment of whatsoever nature are accepted for deposit or collection at the risk of the customer. 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 into account any foreign exchange fluctuations where relevant) in respect of that cheque or order, together with interest since the date of crediting if the account thereby is overdrawn;
- (c) Before making any withdrawal, the customer must allow sufficient time to elapse after making any deposit in order to enable the Bank to carry out the necessary bookkeeping operations to credit the account. For the purpose of this sub-section, sufficient time shall be deemed to be one complete business day in relation to Kenya shillings deposits of cleared funds and four (4) complete business days in relation to deposit of local Kenya shillings cheques and bankers drafts and such other time period as the bank may at its sole discretion determine in relation to any foreign currency cheques, drafts or deposits; and
- (d) Notwithstanding the provisions herein, the customer undertakes that any money credited to the customer in error must be repaid immediately together with applicable interest on demand.

### 3.7 No duty on Bank to protest

The Bank is not liable for any loss or damage suffered by any party if any dishonoured bill is not noted or protested or both unless the Bank receives instructions to do so in reasonable time.

### 3.8 Repayment of Overdrawn Accounts and Lien

The Bank is entitled to demand the immediate repayment, with interest, of any account that is overdrawn. The interest rate applicable for overdrawn accounts shall be two point five percent per month or any other rate determined by the Bank from time to time and advised to the customer. Overdraft facilities shall be governed by the specific terms and conditions for such facilities.

### 3.9 Lien

- (a) Nothing in these GTC and any other agreement shall be treated as constituting an implied agreement restricting or negating any general lien over all property of the customer in the Bank's possession including, but not limited to, cash, goods, securities or valuables deposited for safe custody or as security, cheques presented for repayment, bills and any other movable or immovable property charged to secure repayment of any money whether or not that money has been repaid; and also over all property over which by law the Bank has lien;
- (b) Where the customer is indebted in circumstances giving the Bank a right of lien and set off over securities as set out in paragraph (a) hereof, the Bank may realize the security to discharge the debt upon giving reasonable notice to the customer;
- (c) If the debt is not discharged within the time allowed, the Bank may realize the debt sufficiently from the customer's assets to discharge the debt, and the customer constitutes the Bank his attorney for the purpose of conducting the sale giving title to assets sold and all other necessary matters. Any sum remaining after such a transaction will be held for the customer subject to these terms and conditions;
- (d) The Bank is under no obligation to the Customer in respect of any sale under this clause;
- (e) 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 or realization. The Bank shall not be liable for any loss caused by exchange fluctuations; and
- (f) 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.

### 3.10 Variation and Termination of Relationship

- (a) The Bank may at any time, upon notice to the customer, terminate or vary its relationship with the customer. Without prejudice to the generality of the foregoing, the Bank may cancel advances which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank shall determine; and
- (b) The Bank may close the customer's account upon issuance of a fourteen day notice, or for such other period, or without notice in accordance with the laws relating to banking in Kenya.

### 3.11 Partnership Accounts

In the event of the customer being a partnership, the following additional provisions shall apply:

- (a) The partners authorize the Bank to carry out instructions countermanding payment of cheques, bills of exchange, promissory notes, or other orders for payment when such instructions are given by any person whose name appears on the mandate whether or not that person has signed the original payment instruction;
  - (b) The partners authorize the Bank to make advances with or without security by way of an overdraft, loan or in any other manner on the request of the partners at the time made within the mandate, and to discount bills and promissory notes on the request of the partners for the time being made in accordance with the mandate;
  - (c) The partners authorize the bank to accept by the way of pledge or deposit, as security or for safe custody, anything belonging to the partnership on the instructions of the partners for the time being made in accordance with the mandate, and to deliver upon the said instructions anything so accepted or held on account of the partnership;
  - (d) All liability of the partners to the Bank is joint and several;
  - (e) Upon any change in the constitution of the partnership, the partners will sign a new mandate; and
  - (f) A mandate remains in force and may be acted upon by the bank until it has been revoked in writing by all the signatories or Partners or until it has been replaced by a new mandate from the Partners.
- (iii) That any person preparing the cheque is authorized to do so;
  - (iv) That any cheque is prepared and signed in ink or other indelible writing material(s);
  - (v) That the amount of any cheque is written as near as possible to the left side of the form / leaf to prevent any unauthorized alteration;
  - (vi) That any cheque and any alteration is signed by an authorized signatory subject to the banking rules as shall be amended from time to time;
  - (vii) That no uncompleted cheque is given to any stranger or other person who is not a signatory to the cheque form / leaf; and
  - (viii) That only cheque forms / leaves overprinted with an account number are used for that particular account.

(c) The customer is advised that:

- (i) Where possible any completed cheque forms / leaves should be crossed with two distinct lines in order to make the cheque negotiable only through a Bank; and
  - (ii) If it is known with which Bank the beneficiary of the cheque form / leaf operates an account, the cheque form / leaf will be negotiable only through that particular Bank.
- (d) On receipt of a written notice from the customer to stop payment of a cheque form / leaf, the Bank will record the notice; and
  - (e) Upon closure of any account the customer will return to the Bank any remaining uncompleted cheque forms / leaves relating to that account.
  - (f) The Bank shall at its sole discretion issue cheque books based on the product chosen by the customer.

### 3.12 Freezing of Accounts

The Bank may at any time freeze any account of the Customer if and so long as there is any dispute, or the Bank has doubt for any reason (whether or not well founded) as to the person or person(s) entitled to operate the same, or for any other lawful purpose; without any obligation to institute interpleaded proceedings or to take any steps of its own initiative for the determination of such dispute or doubt.

### 3.13 Joint Account

In the event of two or more customers holding a joint account, the following additional provisions shall apply:

- (a) The holders of the joint account(s) authorize the Bank to pay or deliver to the order of the survivor(s) or the executor(s) or administrator(s) of such survivor(s) any monies standing to the credit of their joint account(s); and
- (b) All liabilities on joint account(s) are joint and several.

### 3.14 Cheque books

Cheques books are issued subject to the following terms and conditions:

- (a) The customer agrees to look after and use any cheque book and its cheque forms / leaves therein with the utmost care;
- (b) The customer further agrees to ensure:
  - (i) That all uncompleted cheques forms / leaves are kept in safe custody at all times;
  - (ii) That the Bank is informed immediately upon discovery by the Customer that any cheque book or any cheque form / leaf has been stolen, lost or mislaid;

### 3.15 Cheques not Drawn on the Bank's forms / leaves in the manner specified by the Bank - Drawing of Cash

- (a) The Bank may refuse payment of any cheque form / leaf not drawn on the Bank's cheque forms / leaves in the manner specified by the Bank in these terms and conditions.
- (b) the Bank will pay cash to the customer where the cheque form / leaf is signed by an authorized signatory or by authorized signatories in the presence of the Bank's teller;
- (c) Where a cash or deposit cheque form / leaf is presented by a person other than the customer (i.e. by a third party), the Bank can at its own discretion require confirmation from the customer or from a representative of the customer before it makes payment.
- (d) Where cash cheques are presented by employees or other known agents of the customer, the following steps must be taken:
  - (i) The employee or agent will be identified beforehand and in a manner acceptable to the Bank; and
  - (ii) A limit on such drawings or specific instruction are agreed in writing between the customer and the Bank, where the limit is not agreed with the Bank, the Bank shall assume that the customer has authorised the Bank to process all cheques without a limit.

- (e) Where the customer requests that payments be made under paragraph (b) above, the customer shall indemnify and keep the Bank indemnified in respect of all payments made to the presenter of the payment as if the payment was authorized by the customer and he shall have no claim against the Bank.

### 3.16 Forgery

The Bank shall not be liable in any way to the customer for having honoured even negligently any cheque form / leaf the signature or content of which has been forged if:

- The customer has facilitated such forgery either by failure to comply with these GTC or by negligence in any other way;
- There has been a previous forgery of any cheque of the customer without the customer having objected to the first statement of account which debited such cheque as provided for in these GTC;
- The forgery has been perpetrated by an employee, servant, agent, contractor or person known to the customer; and
- The Bank shall not be liable for dishonouring cheque forms / leaves if it has reason to believe that the cheque forms / leaves should not be paid due to any reason including suspected forgery whether or not the Bank has contacted the customer.

### 3.17 Custody of Documents and Items

Any article, title or item received by the Bank for storage or safekeeping is received for deposit on the following terms and conditions:

- The article, title or item is received by Bank for the account and order of the depositor;
- The article, title or item is received by the Bank at the sole risk of the depositor as regards any damage to or loss of the article, title or item through any cause whatsoever including but not limited to Moth, Vermin, Heat or Leakage and the Bank shall not be liable for any such damage or loss except in so far as this clause expressly provides to the contrary;
- The Bank undertakes to exercise reasonable care in looking after the article, title or item and in ensuring that no unauthorized person has the access thereto; provided that the liability of the Bank for loss or damage of any one article, title or item and its content (if any) does not exceed the specified value of the article, title or item;
- The Bank has lien over the article, title or item and any such article, title or item deposited with the Bank for storage or safekeeping for an outstanding charge payable to the Bank on account of the services provided by the Bank for the storage or safekeeping of the article, title or item or any other such article, title or item and pursuant to that lien the Bank is authorized to open any package or envelope containing the article, title or item or any other such article, title or item and to exercise in respect of the article, title or item or any other such article, title or item such rights as the Bank is permitted by these general terms and conditions to exercise over any property over which the Bank has lien;
- The customer will certify that any items / packages deposited do not contain any firearm or other explosive device or any substance prohibited in a Banking premises or commercial premises by any prevailing laws in Kenya. The Bank may verify if need be the contents of such deposit prior to acceptance; and

- (f) In the event of death of the depositor the Bank will release the article, title or item to the depositor's personal representatives upon production by such personal representative of a certified copy of the depositors Death Certificate and a valid grant of probate or letter of administration, and subject to payment of all outstanding charges due to the Bank in respect of the storage or safe keeping of the article, title or item.

### 3.18 Validity of Documents

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

### 3.19 Holding / credit in foreign currency

Subject to all laws and governmental regulations applicable:

- The Bank will credit the counter value of the customers' holdings in foreign currencies to accounts with its correspondents in various countries of origin;
- Such accounts are in the Bank's name, but are at the customer's risk and the customer accepts responsibility for insuring any consequence, including but not limited to consequence of legal, fiscal or other measures affecting the accounts;
- Except in the case of an assignment by the customer, the Bank may dispose of such funds only by means of request for cheques or transfers in the original currencies at the Bank's option; and
- All credits granted in foreign currencies are also subject to this Clause.

### 3.20 Accounts in Foreign Currencies

Subject to all laws and governmental regulations, where an account is in foreign currency any demand on the bank for payment from such account is properly met by the Bank issuing a draft or effecting a transfer or making a payment in any other manner in foreign currency at the discretion of the Bank.

### 3.21 E-mail, Indemnity and Statements

- The bank is authorised to act on instructions sent by me/ us in relation to my/our account(s) by e-mail provided by me/us unless otherwise stated by me/us. The customer hereby expressly authorises the Bank to send statements and/or advices in relation to the customer's account(s) to the e-mail and/or other address provided by the customer; and
- All documents or information regarding the customer's account(s) or transaction(s) with the Bank will be binding if they are in the form of data messages or accessible in a form in which they may be read, stored and retrieved whether electronically or as computer printouts for subsequent reference.
- In consideration of access to this service, the Bank shall at its sole discretion accept or decline email instructions and shall not be liable for such decision. All transaction requests through this channel, which take place in a currency other than Kenyan Shillings whether in or outside Kenya, will be converted as appropriate based on the account currency and such conversion will be done at such exchange rate as may be determined by the Bank from time to time at its sole discretion.

- (d) In consideration of the contents of this clause, the customer hereby releases, indemnifies and holds the Bank harmless from and against all actions, suits, proceedings, costs (including legal costs), claims, demands, charges, expenses, losses and/or liabilities arising therefrom provided that the Bank has not been negligent and has acted in good faith with the customer's instructions.

#### 4. NIC MOBILE BANKING ACCOUNT

Before operating the NIC Mobile Banking Account via the NIC Mobile Banking system you should carefully read, understand and accept the GTC and in particular those contained in this section as they will govern the use and operation of the NIC Mobile Banking Account.

##### 4.1 Acceptance of terms and conditions

- (a) If you do not agree with these Terms and Conditions, click "Decline" on the NIC Mobile Banking Account opening menu and you will not be allowed to open and operate your NIC Mobile Banking Account.
- (b) You shall be deemed to have read, understood and accepted these terms and conditions:-
- (i) upon clicking on the "Accept" option on the NIC Mobile Banking Account opening menu requesting you to confirm that you have read, understood and agreed to abide with these Terms and Conditions; and/or
  - (ii) by using or continuing to use and operate the NIC Mobile Banking Account.
- (c) By applying to open the NIC Mobile Banking Account with the Bank, you agree to comply with and be bound by the terms and conditions governing the operation of the NIC Mobile Banking Account and you affirm that the terms and conditions are without prejudice to any right that the Bank may have with respect to the NIC Mobile Banking Account in law or otherwise.

##### 4.2 NIC Mobile Banking Account offered electronically only

- (a) You acknowledge and accept that the Bank offers the NIC Mobile Banking Account only electronically or any other mode determined by the Bank and you agree to do business with the Bank and to operate the NIC Mobile Banking Account via the NIC Mobile Banking system or any other mode determined by the Bank.
- (b) Any query and complaint you may have relating to the Services shall be addressed to the Bank through the Contact Centre and through any NIC Bank Branch.
- (c) For the avoidance of doubt, you acknowledge and accept that you will not be allowed or entitled to receive or demand the services pertaining to the NIC Mobile Banking Account at any branch or branches of the Bank unless and until you go through the stipulated KYC requirements or otherwise advised by the Bank in its sole discretion.

##### 4.3 Account Opening

- (a) In order to open a NIC Mobile Banking Account with the Bank, you must be at least 18 years old with legal capacity to contract, and a registered and active mobile subscriber with an MSP with which the Bank shall in its sole discretion decide. The Bank reserves the right to verify with the IPRS and/or any other platform the authenticity of your details.
- (b) You may open a NIC Mobile Banking Account solely by way of an electronic application made by you using your device via the NIC Mobile Banking account

opening menu on the System or any other mode determined by the Bank.

- (c) You hereby agree and authorize the Bank to request IPRS or any other platform for your personal information held by IPRS or that platform pursuant to the agreement between you and the Bank for the provision of Mobile Banking products and services including your phone number, name, date of birth, ID or Passport Number and such other information that will enable the Bank to identify you and comply with the regulatory KYC requirements (together the "Personal Information").
- (d) You also hereby agree and authorize the Bank to request IPRS or any other database containing your personal information for information relating to your ID as the Bank shall require for purposes of providing you the Services. You hereby consent to the disclosure of the Personal Information by IPRS to the Bank and to the aforesaid use of the Personal Information by the Bank.
- (e) You hereby agree and authorize the Bank to obtain and procure your Personal Information contained in the IPRS from the Government of Kenya and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to the Bank.
- (f) You hereby further acknowledge and authorize the Bank to verify your Personal Information received from Mobile Network against the information received from the Government of Kenya in your respect as contained in the IPRS or any other database containing your personal information.
- (g) The Bank reserves the right to request for further information from you pertaining to your application for an NIC Mobile Banking Account at any time. Failure to provide such information within the time required by the Bank may result in the Bank declining or terminating your NIC Mobile Banking Account.
- (h) Acceptance by the Bank of your application for an NIC Mobile Banking Account shall be done via SMS sent to the Mobile Phone Number associated with your NIC Mobile Banking Account or any other communication channel for which you have provided us your contact details. You acknowledge and accept that the acceptance by the Bank of your application for a NIC Mobile Banking Account does not create any contractual relationship between you and Mobile Network beyond the terms and conditions that apply to your NIC Mobile Banking Account from time to time.
- (i) The Bank reserves the right to decline your application for an NIC Mobile Banking Account or to revoke the same at any stage at the Bank's sole discretion and without assigning any reason or giving any notice thereto or in accordance with notice periods permitted in law.
- ##### 4.4 NIC Mobile Banking Account
- (a) As a holder of an NIC Mobile Banking Account, you will be entitled, subject to the GTC, to transfer money from your NIC Mobile Banking Account and/or make withdrawals .
- (b) As a holder of the NIC Mobile Banking Account, you may make deposits into or withdrawals from transact on your NIC Mobile Banking Account using the NIC Mobile Banking account opening menu on your Equipment. The transaction fees payable to The Bank and/or Mobile Network for transactions effected



in respect of your NIC Mobile Banking Account from time to time will apply to any transactions effected in respect of your NIC Mobile Banking Account using the NIC Mobile Banking system.

- (c) Interest may be paid on the NIC Mobile Banking Account at periodic intervals as determined by The Bank and/ at such rate as may be determined by The Bank.

#### 4.5 Fees

- (a) You hereby agree to pay all fees payable in connection with your use of NIC Mobile Banking Account as per the advised tariff by the Bank through various its various communication channels.
- (b) You shall pay to the Bank and the Bank is entitled deduct from your NIC Mobile Banking Account:
  - (i) any Transaction Fees payable in respect of the Mobile Services;
  - (ii) any Facility or penalty Fees payable in respect of the Mobile Services;
  - (iii) any legal charges including advocate and client costs incurred by The Bank in obtaining legal advice, in connection with your NIC Mobile Banking Account and your dealings with The Bank or incurred by The Bank in any legal, arbitration or other proceedings arising out of any dealings in respect of your NIC Mobile Banking Account; and
  - (iv) all other fees, expenses, taxes, charges (including recovery costs and charges or auctioneers charges), duties, impositions and expenses incurred in complying with your Requests

#### 4.6 Irrevocable Authority Of the Bank

- (a) It is your sole responsibility to familiarize yourself with the operating procedures for the service as will be provided by the Bank upon your registration to the service. The Bank will not be liable for any losses incurred as a result of your errors either of commission and/or omission.
- (b) You hereby irrevocably authorize the Bank to act on all Requests received by The Bank from you (or purportedly from you) through the System and to hold you liable in respect thereof, notwithstanding that any such requests are not authorized by you or are not in accordance with any existing mandates given by you.
- (c) If you request the Bank to cancel any transaction or instruction after a Request has been received by the Bank from you, The Bank may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
- (d) 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 any reference to you being necessary.
- (e) The Bank is authorized to effect such orders in respect of your NIC Mobile Banking Account as may be required by any court order or competent authority or agency under the applicable laws.
- (f) In the event of any conflict between any terms of any Request received by the Bank from you and the GTC, the GTC shall prevail.

## 5. MOBILE AND ONLINE BANKING

### 5.1 System usage and materials

- (a) The Bank will maintain the System, as well as the Website, to provide the Customer with information about the Bank services and products, including the Bank's Mobile Banking & Online Banking services, and to facilitate communication with the Bank. If, as a visitor to the Website or the System, the Customer wishes to take on the Service, they will be required to read the terms and conditions of this agreement and their subsequent use of the Website &/or System for purposes of the service constitutes their agreement to all such terms and conditions. However it should be noted that, visitors to the Website &/or the System must first register to enable them access any of the material under the Bank's Online &/or Mobile Banking service.
- (b) Once the Bank has formally approved the Customer and the Customer has been maintained as an authorised user of the Service, the Customer will provide to the System a unique, PIN and/or User Name and Identification Details and a secret password, known only to the Customer, and/or the Nominated User for Online Banking, and then only shall the Customer be afforded use of the Service. The PIN and Password, will form a unique link to each specific Customer's profile(s).
- (c) Further services and profiles may be added from time to time by the Bank and the Bank reserves the right to modify, replace or withdraw any Service and/or profile at any time, for any reason whatsoever, with or without prior notice to the Customer pursuant to the law.

### 5.2 Customer's responsibilities

- (a) The Customer shall at its 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 necessary for the purpose of accessing the System and the Service.
- (b) The Customer shall be responsible for ensuring proper performance of the phone &/or Facilities including any losses or delays that may be caused by the MSP &/or Facilities. The Bank shall neither be responsible for any errors or failures caused by any malfunction of the Customer phone &/or Facilities, and nor shall the Bank be responsible for any virus or related problems that may be associated with the use of the System / Phone, the Service and the phone/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 for losses or delays caused by any such service provider.
- (c) The Customer shall abide with any applicable regulations and/or obtain all licences and contents 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 follow all instructions, procedures and terms contained in this Agreement and any document provided by the Bank concerning the use of the System and Service.

- (d) The Customer shall prevent any unauthorised access to or use of the phone /System and Service by way of keeping their PIN &/or access code and Password a secret at all times. The Customers shall ensure that the PIN does not, &/or access code and Password do not become known or come into possession of any unauthorised person.
- (e) The Customer shall take all reasonable precautions to detect any unauthorised use of the phone /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 unauthorised use of and access to the phone/ System will be detected.
- (f) The Customer shall immediately inform the Bank by telephone with a written confirmation sent the same day in the event that:
  - (i) The Customer has reason to believe that their PIN &/or 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 authorised to know the same and/or has been compromised; and/or
  - (ii) The Customer has reason to believe that unauthorised use of the Service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- (g) The Customer shall not send or attempt to send any Request to the Bank through their phone /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;
  - (i) 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 including those that may be contained in the 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 unauthorised transactions in accounts 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 authorised to do so;
  - (ii) The Customer shall not at any time operate or use the Service in any manner that may be prejudicial to the Bank;
- (h) For NIC Online Banking, The Customer understands and accepts that it may link a business account or an account requiring multiple signatures to the Customer's profile on this Service only if the Customer has submitted to the Bank an original written standing mandate to the effect that the Bank is authorised to process transactions not exceeding a certain specified amount, and it will be the responsibility of the Customer to ensure that no unauthorised persons have access to these accounts.
- (i) The Bank shall be entitled and authorised to debit the Customer's accounts with the amounts of the transactions effected via the Service as well as debit the Customer's account with the amount of any fees applicable to the Service from time to time.

- (j) The Customer shall be responsible for the acts and omissions for the use of the facility &/or of its Nominate User thus, the Bank shall not be responsible for any loss that arises there from.

### 5.3 Instructions by customer

- (a) The Bank is irrevocably authorised 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 authorised 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 at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
- (b) 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.
- (c) 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 subsidiary or the Bank 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 any subsidiary of the Bank (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.
- (d) For the purposes of carrying out any Instruction, you:
  - (i) Authorise us to transmit payment instructions on your behalf and to act for these purposes as instructing financial institution (or procure any other Bank Member or third party so to act). You acknowledge that the Bank will be acting as your agent for the purpose of transmitting or procuring the transmission of any such Instructions and that the Bank or third party being the recipient of any such Instructions shall be authorised and entitled to act upon them as if they had been given directly by you to such recipient; and
  - (ii) Agree to authorise any relevant third party to provide account and other information to us.
- (e) For the avoidance of doubt;
  - (i) you agree that we are authorised to record all telephone conversations made between us in writing or by tape or other means as we may determine;
  - (ii) where any Instruction is given by fax, email, or sms followed by delivery of the original Instruction, the fact that the same had been given by fax, email or sms and the date of the facsimile shall be annotated on the original copy (where possible). In the absence of such annotation, you agree that we shall not be liable for any consequences including (without limitation), in the case of payment Instructions, any losses arising from any duplication of payment or fund transfer, and

- (iii) as between us, and in the absence of manifest error, our records [whether in paper, electronic, data or other form] of each Instruction or other communication with you shall be conclusive evidence of the fact of receipt or non-receipt of such Instruction or communication and of the contents of an instruction or communication.
- (f) In the event of any conflict between any terms of any Request from the Customer and the terms of this Agreement, the terms of this Agreement shall prevail.

#### 5.4 Service charge

- (a) The Customer shall pay or procure the payment of our service tariffs, fees and charges (including any cancellation fees or termination charges) for providing the services and any software and system materials provided or licensed by us to you in accordance with the service charges agreement in addition to transaction service charges applicable to various transaction types as advised by the Bank from time to time. The charges herein shall also apply to any legal or recovery fees in relation to the account. The applicable legal fees shall be as provided for in the Advocates Act and/or Auctioneers Act or and other law(s) that shall be applicable from time to time.
- (b) The Customer, whenever applicable, 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.
- (c) The Bank is hereby irrevocably authorised from time to time to debit any amounts payable by the Customer under the GTC against 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 this agreement, the charges and fees applicable to the Customer's Bank Accounts will apply.

## 6. DEBIT CARDS / ATM CARDS / PREPAID CARDS

### 6.1 Introduction

- (a) In consideration of the Bank making available to the customer an ATM/Debit card/Pre-paid card, the customer agrees to be bound by the following terms and conditions:
  - (i) "The card" means any automated teller machine access card (ATM card) or point of sale access card (Debit Card) or a Pre-paid card issued by the Bank in the name of the cardholder, including any such card issued in replacement thereof or in substitution thereof or in addition thereto and/or any additional / supplementary card(s) issued to persons nominated and authorised by the account holder / cardholder and in whose name(s) the card(s) will be issued by the Bank on account of the account holder / cardholder;
  - (ii) "Co- branded card" means a card issued by the Bank and which contains certain additional features and/or benefits derived from a collaboration between the Bank and an Entity.
  - (iii) "Entity" for purposes of this section is defined as the institution with which the Bank has a co-branded card with.
  - (iv) "The cardholder" means the person in whose name the card has been issued;
  - (v) "The card number" means the number embossed or imprinted on the card;

- (vi) "The card facilities" means those services and facilities made available, electronically or otherwise, by the Bank from time to time through the use of the card;
- (vii) "The PIN" means any personal identification number which in conjunction with the card and/or card number enables any of the card facilities to be utilized;
- (viii) "Point of sale" means the place and/or terminal or device where the cardholder completes a retail transaction by use of the card to make a payment to a merchant in exchange for goods or services and upon which the merchant will also normally issue a receipt for the transaction.
- (ix) "Use of the card" means the use of the card and/or the card number to access card services / facilities;
- (b) The Bank shall at its sole discretion issue the card based on the product chosen by the customer.

### 6.2 Acceptance

Acceptance by the cardholder of these terms and conditions shall be deemed to take place upon receipt by the cardholder or his agent of the card.

### 6.3 Use of the Card and related Safeguards

The use of the card will be governed by the following terms and conditions:

- (a) The Cardholder must sign the Card immediately upon receipt. The Card is valid whether or not it is signed by the Cardholder named thereof;
- (b) The Card may only be used by the Cardholder in accordance with and subject to the terms and conditions of this Agreement current at the time of use;
- (c) The Card may only be used to withdraw money at permitted ATMs and/or purchase goods or to obtain services and facilities at establishments accepting the Card;
- (d) The Card is not transferable and is valid for use only by the person whose name is embossed on the Card and only during the validity period embossed thereon;
- (e) The Card may only be used within the limits approved by the Bank. In determining whether the limit has been exceeded, the Bank may take into consideration the total amount of card transactions not yet debited to the account and any authorisations given by the Bank in respect of prospective Card Transactions; The use of the Card is subject to the right of the Bank in its absolute discretion and with or without prior notice pursuant to the law, at any time to withdraw the right to use the Card for, or to refuse authorisation of, any particular card transaction and to publish such withdrawal or refusal in such manner as the Bank shall determine; The Card may be used access the card services at permitted point of sale and to obtain cash from any permitted ATM within the cash withdrawal limits as shall be determined by the Bank and notified to the Cardholder from time to time; All Card transactions, which take place in a currency other than Kenyan Shillings whether in or outside Kenya, will be converted from the currency in which the Card Transactions took place into Kenya Shillings and shall be debited to the account for which the card was issued. Such conversion will be done at such exchange rate as may be determined by the Bank from time to time at its sole discretion;

- (f) The Cardholder shall exercise all care necessary to ensure the safety of the Card and the secrecy of the PIN at all times. A cardholder should never write the PIN on the card or anything usually kept with it. The Cardholder shall exercise prudence in disguising any written record of the PIN;
- (g) A Cardholder shall not allow any other person to use the card with or without the knowledge of the PIN;
- (h) If the Card is lost, stolen or is for any other reason liable to misuse or the PIN has been disclosed to anyone, the Cardholder must immediately notify the Bank in writing either by hand delivery, fax, e-mail or by post. Until the Bank receives such a written notification, the Cardholder will be liable in respect of any use of the card; and
- (i) The Cardholder will give the Bank all the information in the Cardholder's possession as to the circumstances of loss, theft or misuse of the Card or disclosure of the PIN and take all steps deemed necessary by the Bank to assist in the recovery of the missing Card. If a Card is reported as stolen, lost or liable for misuse, that Card must not subsequently be used but must be cut in half and returned to the Bank.

#### 6.4 Refusal by any establishment

The Bank will not be liable in any manner whatsoever in the event of a refusal by any establishment worldwide to accept or honour the Card. The Bank will also not be liable for the quality, effectiveness or merchantability of any goods supplied or services rendered by any establishment. The Bank may at its discretion restrict access to the card services in any jurisdiction or outlet worldwide.

#### 6.5 Membership to the Entity

Where the Cardholder elects to subscribe to the co-branded card product;

- a) The Cardholder agrees and confirms that he/she is a member of the entity where applicable.
- b) If the Cardholder is not an existing member of the entity, he/she may be required to become a member of the entity by way of executing the Application forms for that entity prior to the signing of the terms and conditions of the GTC, to access the card service(s).
- c) If there are any membership subscription fees charged by the entity to the card holder, such fees shall be debited through the card account upon cardholder's standing instructions which will remain in force until cancelled as indicated in the terms and conditions of the entity.
- d) Termination of this Agreement shall not be construed to be a discharge of the Cardholder's obligations to the entity if any as governed by the terms and conditions that they have executed with the entity.
- e) If the cardholder ceases to be a member of the entity, he/she will be required to;
  - i. Notify the bank and issue instructions for the replacement of the co-branded card with a non-co-branded card.
  - ii. Surrender the co-branded card at the point of collecting the replacement card.
  - iii. Failure to observe the above, the bank will assume the cardholder's continued membership with the entity and any pre-existing non cancelled standing instructions with the bank.

#### 6.6 Joint and several liability

Where the cardholder is a person other than the holder of the account, the cardholder and the holder of the account shall be jointly and severally liable for the payment of all indebtedness arising from the use of the card but no partial or full release by the Bank of either of them shall reduce the liability of the other to the Bank. Any reference herein to the liability of the cardholder or to the appropriation of the funds or any security of the cardholder shall be deemed to be a reference also to the cardholder of the account.

#### 6.7 Deemed use of card by cardholder

The cardholder is obliged to return the card for cancellation if he no longer wishes to use the card facilities, or if the account is closed, and to notify the Bank (and if such notification is oral, immediately thereafter to confirm the notification in writing), if he knows or reasonably suspects that the card has been lost, stolen, or misappropriated or that the PIN has become known to other persons and until he returns the card or makes such notification, all requests made, instructions given and transactions initiated through the use of the card shall be deemed to have been made, given or initiated (as the case may be) by the cardholder, and the Bank is irrevocably authorised to act or give effect to all such requests, instructions and transactions and to debit the account with the amount of all payments and disbursements initiated through, and all charges, duties and levies imposed in respect of the use of the card and to recover all such amounts, charges duties and levies from the cardholder.

#### 6.8 Cash and Transaction Card Limits

The card may be used to obtain cash from permitted ATMs, or make settlements for purchases at permitted points of sale within any cash and/or transaction settlement limits that the Bank shall at its sole discretion determine from time to time and notified to the cardholder. Such limits shall also apply to foreign currency transactions where applicable which shall be converted by the Bank to local currency equivalent at the Bank determined currency exchange rates.

#### 6.9 Countermands

The cardholder may not countermand any request made, instruction given, or transactions initiated through the use of the card.

#### 6.10 Accounts to be funded

The Bank shall not be obliged to act on or give effect to any payment or disbursement initiated through the use of the card unless there are sufficient funds in the account at the time when the payment or disbursement is to be made or unless suitable arrangements have been agreed to by the Bank. Due to factors beyond the control of the Bank, the process of crediting the cardholder's account for subsequent utilisation of such funds through use of the card may be delayed for unspecified period of time. The Bank shall not be held liable for such delays.

#### 6.11 Appropriation

If the account shall ever be in debit beyond the amount formally authorised by the Bank, the Bank may at its sole discretion and without notice reduce or settle the account by appropriating to it any monies standing to the credit of any other account of the cardholder or otherwise held at any time by the Bank for and on behalf of the cardholder whether the amounts which are set off against each other are due and payable or not, or to release any security lodged with the Bank by or on behalf of the cardholder and to use the proceeds thereof toward the reduction or resettlement of such indebtedness.

**6.12 Losses**

Except where the loss or damage is primarily caused by the negligence, wilfulness or fraud of any employee or agent of the Bank, but otherwise irrespective of the reason resulting to such loss or damage, the cardholder will have no claim for compensation or otherwise against the Bank or any of its employees or its agents for or in respect of any loss or damage suffered by him arising out of use of the card or card facilities.

**6.13 Termination and restriction of card use**

The Bank may at any time, without prior notice, and without giving any reasons thereof, terminate or restrict the cardholder's use of the card and/or the card facilities.

**6.14 Cheques / Cash deposited through the ATM**

Where a cardholder deposits cheque(s) / cash in envelopes or otherwise through an ATM, such envelopes or deposits shall be handled with due care by designated Bank officials or the Bank's authorised agents. The findings of the contents of such envelopes or deposits by the duly designated officials of the Bank or its agents shall be deemed to be final.

**6.15 Debiting / Crediting Delays**

Due to factors beyond the control of the Bank, the process of debiting / crediting the cardholder's account with the utilized or deposited funds may be delayed for unspecified period of time. The cardholder confirms the debt until the outstanding amount is settled in full and the Bank shall not be held liable for such delays.

**6.16 Card failure at ATMs and/or Points of Sale**

The cardholder acknowledges that the function and use of the card at ATMs and points of sale is handled by third parties and as such the functions can inadvertently fail due to various factors beyond the control of the Bank or third party. The Bank shall not be liable where the transaction response message given at the ATM or point of sale outlet is erroneous or inconsistent with the actual card or account status. The cardholder agrees that he shall have no claim against the Bank or the third party should the delay or failure occur at an ATM or Point of Sale. The use of the Card is subject to the right of the Bank in its absolute discretion and without prior notice, at any time to withdraw the right to use the Card for, or to refuse authorization of, any particular card transaction and to publish such withdrawal or refusal in such manner as the Bank shall determine.

**6.17 Discrepancies on deposits through ATMs**

Discrepancies noted within the contents of the envelopes or deposits made through the Bank's ATM(s) shall be advised by telephone to the cardholder by the Bank on the following working day.

**6.18 Cut off time**

Items deposited through the ATM by 3:00pm of a full working day will be reflected in the customer's account(s) the following working day.

**6.19 Claims**

Any claims for dispensing of incorrect cash must be received by the Bank or service centres of the Bank where the account is held within forty eight (48) hours of the transaction upon which such claim is being made.

**6.20 Card ownership**

Ownership of the card shall at all times vest in the Bank and the cardholder shall return the card to the Bank forthwith on demand.

**6.21 New cards**

The Bank may from time to time at its sole discretion issue a new card and/or card number and/or PIN in replacement of or substitution of or in addition to the card and/or card number and/or the PIN.

**6.22 Charges**

Charges imposed by the Bank from time to time shall be payable by the cardholder to the Bank for the provision of the card facilities whether or not the card facilities are used during the period concerned. The charges or fees payable by the cardholder shall be governed by the tariff guide which is on display in the Bank's premises or on the Website.

**6.23 Legal and other fees**

The cardholder shall indemnify the Bank for all expenses incurred by the Bank in exercising any right against the cardholder in respect of any breach of his obligation hereunder, including all legal charges of the attorney and client costs, attorney's collection charges and tracing charges and value added tax on all such charges (if applicable).

**6.24 Certificates / Advice Slips**

Any certificates / advice slips issued by the Bank as to the amount(s) due on the account(s) and/or any other matter(s) arising in whole or part from the use of the card(s) shall for all purposes be conclusive proof of the fact(s) stated therein.

**6.25 Visa international regulations**

- (a) The use of the card is regulated by the terms of VISA International 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 VISA International on foreign currency transactions shall be debited to your card account. The amount of card transactions and charges rendered involving foreign currency shall be converted into Kenya shillings at the exchange rate quoted by VISA International on the date the debit is received and any exchange gain or loss is debited to your card account

**7. GENERAL****7.1 Statements deemed approved if not objected to within 28 days**

- (a) The Bank shall issue statements of account to the customer at least once every six months or upon request by the customer.
- (b) In relation to an NIC Mobile Banking Account, a customer may request for a statement or activity report ["NIC Mobile Mini Statement"] in respect of his NIC Mobile Banking Account from the Bank using his Equipment. An NIC Mobile Mini Statement shall provide details of transactions as determined by the Bank in respect of the customer's NIC Mobile Banking Account initiated from the customer's Equipment.
- (c) The contents of any statement of account or statements of any other nature shall be sent by the Bank to the customer at the customer's last known postal address, e-mail address or through an electronic device including but not limited to mobile phone or computer device. The customer shall be responsible for the payment of any charges levied by the Bank in delivering a statement to a mobile phone or similar device.

- (d) All statements to which the customer has not objected within twenty eight (28) days of receipt thereof, shall be deemed properly approved by the customer, and shall thereafter not be challenged by the customer on any other ground whatsoever.
- (e) The customer shall be deemed to have received any statement of account or statement of any nature one (1) day after it was sent by email or five (5) days after it was sent by post or immediately through an electronic device.
- (f) The customer hereby consents to have statements sent via email instead of post, except where the customer has not provided an email address or where the customer has chosen to generate or receive such statement through an electronic device.
- (g) The Bank shall not be held liable for the failure of delivery or receipt of statements by the customer and/or exposure of the statements to third parties where the customer fails to provide accurate details of their email and/or postal address or for any other exposure beyond the control of the Bank such as through malicious or unintended access by unauthorized third parties to whom the address provided does not belong or where the address is shared between such third parties and the customer.
- (f) if any losses suffered by you by reason of:
  - (i) the shut-down or delay in the availability of the Mobile Service Provider (MSP) or Website;
  - (ii) failure, malfunction, interruption or unavailability of the System, the customer's Equipment, third party system or service;
  - (iii) any fraudulent or illegal use of the Services, the System or the customer's Equipment;
  - (iv) the Debit Account being subject to legal process or other encumbrance restricting payments or transfers thereof;
  - (v) any viruses, trojan horses, worms, logic software, other bombs or other similar programs or routines (including hacking) affecting any Website, Service or System Materials; or
  - (vi) failure to give proper or complete instructions for payments or transfers relating to the Bank Account.
- (g) any damages or losses arising from unauthorised access to any Service by a third party using the PIN or any Customer Identification or User Identification or access code unless we have received prior notification from you in accordance with the User Guides and/or the relevant notification that no further access to the relevant Service shall be granted to any person using such Customer Identification or User Identification or Access code with effect either from receipt of such notification or such later date as may be specified in such notification;

## 7.2 Delay by Customer lodging complaints

The Bank shall not be responsible for any matter related to the customers' account unless the customer has made a written complaint to the Bank as soon as reasonably possible.

## 7.3 Exclusion of liability

The Bank will not be responsible for:

- (a) any indirect or consequential losses or economic loss or loss of profit or business incurred by you in connection with the Services notwithstanding our awareness of the possibility or likelihood of you incurring the same;
- (b) any loss in connection with any unforeseeable acts or omissions on the part of our service providers, contractors, agents or employees;
- (c) any losses arising in connection with us acting upon Instructions sent by you or by reason of us failing or refusing to so act if, acting in good faith, in our opinion there is or are reasonable ground(s) for such failure or refusal [other than as caused by our gross negligence or wilful default];
- (d) the Bank shall not be responsible 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.
- (e) any losses caused as a result of or in connection with any laws or regulations of countries where transactions are settled or cleared where any negotiable instrument or receivable is collected or any exchange control restrictions which are imposed from time to time unless caused by our breach of such laws and regulations;

- (h) The consequences of any misuse of the Facilities &/ or the Website by you, (or your Authorized Persons), or any use of the Website or the Facilities by you, (or your Authorized Persons), not related to any of the Services.

For the avoidance of doubt, any other limitation of liability shall be in addition to and shall not derogate from the above.

- (i) If for any reason other than a reason mentioned in clause a-h (both inclusive) above, the Services are interfered with or unavailable, the Bank's sole liability under this Agreement shall be to re-establish the Service as soon as reasonably practicable and in any event the Bank's maximum aggregate liability to you for any claim arising from or in connection with any Service is limited to the aggregate amount of service charges paid by you for the relevant Service in the three months preceding such claim.
- (j) Under no circumstances shall the Bank be liable to you for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Services even where the possibility of such loss or damage is notified to the Bank.
- (k) Whilst we will use all reasonable endeavours to ensure that all financial information available through the Services is accurate when initially made available, we shall not be liable for any loss incurred or damage suffered by you by reason or in consequence of your using financial information which is not up to date.
- (l) All terms, conditions and warranties implied by law are excluded to the fullest extent permitted by applicable law.

- (m) To be valid, any claim that you have against us under the Agreement or otherwise in connection with any Service or any ancillary service must be notified to us within thirty (30) days after you have become aware or should have become aware of the facts on which it is based.

#### 7.4 Communication

- (a) All notices, statements, letters, e-mails and other communication from the Bank shall be sent to the last address given by customer, and the date on the Bank's copy of such communication is taken to be the date of such dispatch in the absence of proof to the contrary;
- (b) Any written communication from the Bank to the customer including but not limited to any notice given pursuant to these terms and conditions shall be deemed to have been received by the customer, (i) at the time the same is left at the address of or handed to a representative of the party to be served, (ii) by post on the day not being a gazetted public holiday five(5) days following the date of posting, (iii) in the case of facsimile transmission, telex, telegram, email or other means of telecommunication on the next following day.
- (c) In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.
- (d) The customer shall have no claim on the Bank for damage resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication whether to or from the customer, the Bank or any third party, by hand delivery, post, telephone, e-mail or any other means of communication; and
- (e) The Bank must be notified in writing of any change in the customer's address including e-mail address. Any notice or correspondence sent by the Bank or its advocates to the customer at the address last notified to the Bank by the customer shall be deemed duly served.

#### 7.5 Disclosures

- (a) The customer agrees and expressly consent that the Bank may in its absolute discretion:
- (i) disclose to the Central Bank of Kenya, the Kenya Revenue Authority, the police, correspondent banks and agents, the Subsidiaries or any other person authorised by law any matter concerning the operation or proposed operation of any account or concerning the business of the customer;
- (ii) disclose to the Bank's advocates for the purposes of seeking advice or drawing securities or recovering any monies due to the Bank, details of the customer's account and the business being transacted between the customer and the Bank; to any debt collection agent or auctioneers for the purpose of collecting any sums due to the Bank; and to a credit reference bureau in the event of breach by the customer;
- (iii) disclose any information in the possession of the Bank relating to this application and account

details to any and all agents used by the Bank in the course of the operation of the account including but not limited to agents appointed by the Bank to manage the account; and

- (iv) obtain any information relating to the customer from any third party including the next of kin advised by the customer or other institutions licensed under the Banking and Central Bank Act or credit reference bureaus if in the Bank's sole discretion such information is necessary for the purpose of evaluating any application made to the Bank by the applicant(s) and or an account holder(s) with the Bank or for any other lawful purpose.
- (b) Disclose any information in the possession of the Bank relating to this application including account details of the account holder to any other party or institution under international laws and any other laws in order to comply with its obligations pertaining to banking operations and the provision of the Services.
- (c) The customer acknowledges that any information released by the Bank under this clause may be used by the recipient to assess applications for credit by the customer and any related parties, for debt tracing and for fraud prevention purposes. The customer acknowledges that such information being released to the recipients may affect the customer's ability to maintain existing facilities with lenders or credit card companies. The customer shall have no claim whatsoever again the bank for any loss, damage, fees or expenses suffered or incurred by him in relation to the release of any information by the Bank under this clause, if the Bank releases such information on its genuine belief that the recipient is legally entitled to such information.
- (d) The Bank shall not be under any duty to notify the customer of the disclosure to any third party of any information in relation to the customer's account or business as set out in this clause.

#### 7.6 Subsidiary Services

- (a) The Bank may provide and give access to Subsidiary services and products that are controlled or offered by the Subsidiaries. Such provision, access or link to the Subsidiary is governed by that Subsidiaries respective general term and conditions as well as these GTC.
- (b) The customer confirms that he understands and accepts the Subsidiary's general terms and conditions before retrieving, using, relying upon or dealing with the Subsidiary.
- (c) All links, applications and any other access points to these Subsidiaries are provided solely for the customer's convenience, and the customer agrees that under no circumstances will it hold the Bank liable for any loss or damage caused by use of, or reliance upon, any application (electronic or otherwise), links, access points, content and products or services available through a Subsidiary.

#### 7.7 Intellectual property rights

- (a) 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;

- (b) 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.

### 7.8 General indemnity

- (a) In consideration of the Bank complying with your instructions or Requests in relation to the Bank Account, you undertake to indemnify the Bank and hold it harmless against any loss, charge, damage, expense, fee (including legal fees) or claim which the Bank suffers or incurs or sustains thereby and you absolve the Bank from all liability for loss or damage which you may sustain from the Bank acting on your instructions or requests or in accordance with these GTC.
- (b) The indemnity in clause (a) above shall also cover 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 its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Bank's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by the Bank.
  - (ii) Any loss or damage that may arise from your 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 your Bank Account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment.
  - (iv) Any loss or damage occasioned by the failure by you to adhere to these GTC and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by the Bank as a consequence of any breach by these GTC.
  - (v) Any damages and costs payable to the Bank in respect of any claims against the Bank for recompense for loss where the particular circumstance is within your control.

### 7.9 Warranties and representations

The customer warrants and represents as follows:

- (a) The information given in the application form for establishing the account and any subsequent communications to the Bank in respect of the account / card are true and accurate.

- (b) The account and the card will not be used by the holder in contravention of any law, regulation of rule in force, nor as an aid to such contravention or circumvention of the law, regulation or rule.
- (c) The customer has read, understood and agreed to comply with these GTC and any other specific terms and conditions necessary in order to obtain the Services.
- (d) The customer has received (or successful access to) the specific terms and conditions in respect to the Services, from the Bank's branches, Subsidiaries, agents, affiliates or on the Bank's website at www.nic-bank.com and agrees to be bound by the said specific terms and conditions.
- (e) The customer has received all the information pertaining to the Services and confirms that, before accepting the GTC and other specific terms and conditions, he sought independent advice and clarification from persons other than the Bank's officials in relation to those terms and conditions. The customer further confirm that the Bank provided him with sufficient time to consider the said terms and conditions prior to my/our acceptance of them.

### 7.10 No assignment by customer

- (a) This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person. The Bank may assign its rights, benefits and obligations under this Agreement at any time.
- (b) These GTC (as may be amended from time to time) form a legally binding agreement binding on the customer and the customer's assigns and successors (as the case may be).
- (c) Any change in the constitution of the Bank or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person or any reconstruction or reorganisation of the Bank shall not in any way prejudice or affect its rights.

### 7.11 No counterclaim or set off

No claim by the customer against any person will be subject of a set off or a counter claim against the Bank in respect of any amount due from the customer to the Bank.

### 7.12 Insurance

The customer agrees and confirms that the Bank shall debit the requisite premium from the account for maintaining a limited insurance cover on the customer for any liability on the account and/or card and all transactions related thereto. The Bank may demand, at its discretion any amounts due on the account if there is any breach of these GTC by the customer.

### 7.13 Severability

If any provision of these GTC shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.

### 7.14 No waiver

No relaxation, delay or indulgence on the part of the Bank in exercise of any of its rights under the GTC shall operate as a waiver of such rights.



### 7.15 Amendment by Bank

- (a) The Bank may vary or amend the GTC at any time upon notice to you, where required by the law. Any such variations or amendments may be published in posters or pamphlets available at Bank's branches, in the newspapers, on the Website and/or by any other means as determined by the Bank and any such variations and amendments shall take effect upon publication (or otherwise as the Bank may determine).
- (b) Any addition or alteration to the GTC made from time to time by the Bank and of which notice has been given to the customer shall be binding upon the customer as fully as if the same were contained in the GTC.

### 7.16 Dispute resolution, jurisdiction and arbitration

- (c) A customer may report any disputes or claims to any of the Bank's customer care centres at the Bank's branches;
- (d) Any dispute arising out of or in connection with this Agreement that is not resolved by Bank's customer care centre representatives shall be resolved in accordance to the applicable laws
- (e) The customer submits to the jurisdiction of the High Court of Kenya in Nairobi in the event of any dispute arising in respect to the GTC.

### 7.17 Applicable laws

In addition to the Laws of Kenya and the GTC, other Laws and regulations (as amended from time to time) affecting the customer's accounts and/or cards shall apply including but not limited to:

- a) Tax Laws and regulations of local and other foreign jurisdictions including United States Foreign Account Tax Compliance Act (FATCA); and
- b) Any other applicable International Laws or Laws of other jurisdictions to enable the Bank comply with its obligations pertaining to its operations.



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