

Terms and Conditions

1. DEFINITIONS

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

“ATM” means Automated Teller Machine;

“Bank” means NCBA Bank Kenya PLC incorporated in Kenya as a limited liability company under the Companies Act, 2015 and duly licensed as a bank under the Banking Act (Chapter 488 of the Laws of Kenya) and includes subsidiaries of the Bank as may from time to time be specified by the Bank to you;

“Break” means a premature withdrawal from a Loop Investment;

“Business Day” means a day on which the Bank is open for the transaction of ordinary business in Kenya;

“Central Bank Rate or CBR” means the lowest rate of interest charged by the Central Bank of Kenya on loans to banks which is published pursuant to the Central Bank of Kenya Act;

“Customer” or **“you”** means the person in whose name the Loop Account with the Bank is existing and includes his personal representatives and successors;

“Debit Card” means a card any automated teller machine access card or point of sale access card issued by the Bank in the name of the Debit Card Holder, 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 Debit Card Holder and in whose name(s) the card(s) will be issued by the Bank on account of the Debit Card Holder;

“Debit Card Holder” means a Customer that has requested for and has been issued with a Debit Card;

“Equipment” includes your mobile phone handset, SIM Card, computer, internet browser and/or other equipment which when used together enables you to access the Network and/or the System;

“Exchange Rate” means the prevailing spot rate of exchange of the Bank as conclusively determined by the Bank on the date on which any conversion of currency is to be enacted pursuant to these Terms and Conditions;

“Facility” means the aggregate of the approved overdraft or Loan or so much thereof as may have been disbursed and from time to time owed by the Customer, and includes all the Customer’s obligations to the Bank;

“IPRS” means the Integrated Population Registration System set up and maintained by the Government of Kenya under the Ministry of State for Immigration and Registration of Persons;

“Loop Account” means a bank account held by a Customer with the Bank and which is opened and operated in accordance with these Terms and Conditions;

“Loop Investment” means Loop Investment with Break or Loop Investment without Break;

“Loop Investment with Break” means the Loop Investment described in clause 8.1;

“Loop Investment with No Break” means the Loop Investment described in clause 8.2;

“Network” means the mobile cellular network operated by a licensed telecommunication service provider in Kenya;

“Password” means secret word or code that a Customer uses together with the Username in order to authenticate his identity and access the System;

“OTP” is a secret word or code that is valid for one login session or transaction and that can be used to authenticate a financial transaction initiated on the System.

“Overdraft” means a facility linked to your Loop Account that is an unsecured line of credit allowing you to use or withdraw more money than is available in your Loop Account;

“PIN” means your personal identification number being the secret code used to access and operate your Loop Account via the System and/or in conjunction with a Debit Card;

“PSP” means a payment services provider which includes, but is not limited to, VISA, MasterCard and Verve;

“Request” means a request or instruction received by the Bank from the Customer or purportedly from the Customer through the System and upon which the Bank is authorized to act;

“Your Risk Premium” is the chargeable amount or rate determined by the Bank from time to time for the tolerance of the extra risk the Bank undertakes with a Customer based on the Customer’s credit worthiness as indicated in a Customer’s credit scorecards;

“Services” shall include any form of banking services or products that the Bank may offer you pursuant to these Terms and Conditions and as you 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 handset enables you to access the Network;

“System” means the Bank’s electronic banking and communications software enabling the Customer to communicate with the Bank for purposes of the Services;

“Taxes” means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereof, wherever imposed, levied, collected or withheld pursuant to any regulation having the force of law;

“Time Risk Premium” the chargeable amount or rate determined by the Bank from time to time for the tolerance of the extra risk the Bank undertakes with an individual based on the tenor of the loan;

“TSP” means a telecommunication service provider licensed to operate in Kenya pursuant to the Kenya Information and Communication Act, 1998 (as amended from time to time);

“TSP System” means the system operated by a TSP for the provision of the mobile phone based money transfer services using the Network;

“User Interface” means a set of commands or menus through which a Customer interacts or communicates with the hardware and software of computers and other electronic devices;

“Username” or **“User ID”** means name or word used by a Customer to identify himself when he logs into the System.

2. SUBSCRIPTION BY THE CUSTOMER

2.1 Account opening

- a) In order to open a Loop Account with the Bank you must be at least 18 years old.
- b) You may only open a Loop Account by making an application electronically using your Equipment.
- c) Before applying to open the Loop Account you must carefully read and understand these Terms and Conditions which will govern the use and operation of the Loop Account.
- d) If you do not agree with these Terms and Conditions, please click “Back” on the account opening menu to discontinue the application process.
- e) You will be deemed to have read, understood and accepted these Terms and Conditions:-
 - i. upon clicking on the “Proceed” option on the 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 Loop Account.
- f) By applying to open the Loop Account with the Bank, you agree to comply with and be bound by these Terms and Conditions for the time being and from time to time in force governing the operation of the Loop Account and you affirm that these Terms and Conditions herein are without prejudice to any right that the Bank may have with respect to the Loop Account in law or otherwise.

- g) These Terms and Conditions may be amended or varied by the Bank from time to time and the continued use of your Loop Account constitutes your agreement to be bound by the terms of any such amendment or variation.
- h) You acknowledge and accept that the Bank offers the Loop Account only electronically and you agree to do business with the Bank and to operate the Loop Account by electronic means, save that you shall activate your Loop Account by collecting your Debit Card by visiting any of the Bank's branches.
- i) The Bank reserves the right to decline your application for a Loop 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.

2.2 Verification of personal information

- a) You hereby agree to provide to the Bank such identification documents as may be required by the Bank in order to active the Debit Card.
- b) You also hereby agree and authorize the Bank to request any TSP for your personal information held that TSP pursuant to the agreement between you and the TSP for the provision of their products and services including your phone number, name, date of birth, Identification Card or Passport number and such other information that will enable the Bank to identify you and comply with the regulatory "Know Your Customer" requirements (together the "Personal Information").
- c) You further hereby agree and authorize the Bank to request any TSP for information relating to your use of their mobile phone based money transfer services and the TSP System as the Bank shall require for purposes of providing you the Services ("Mobile Money Information").
- d) You hereby consent to the disclosure of the Personal Information and the Mobile Money Information by any TSP to the Bank and to the aforesaid use of the Personal Information and the Mobile Money 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 any TSP pursuant to clause 2.1(c) against the information received from the Government of Kenya in your respect as contained in the IPRS.

- g) The Bank reserves the right to request for further information from you pertaining to your application for a Loop Account at any time. Failure to provide such information within the time required by the Bank may result in the Bank declining to accept your application for a Loop Account or the Bank suspending or discounting the Services.

3. FEES

- a) You hereby agree to pay all fees payable in connection with your use of the Services.
- b) You shall pay to the Bank and the Bank is entitled deduct from your Loop Account (without reference to you):
 - i. any fees payable in respect of the Services;
 - ii. any legal charges including advocate and client costs incurred by the Bank in obtaining legal advice in connection with your Loop 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 Loop Account; and
 - iii. all other fees (including, but not limited to, those resulting from an overdrawn Loop Account or shared correspondent bank fees), expenses and taxes, duties, impositions and expenses incurred in complying with your Requests.
- c) You hereby agree to pay costs, fees, charges and expenses incurred by the Bank in obtaining or attempting to obtain payment of any loan owed or any other amount due under your Loop Account.
- d) The Bank will notify you of any changes to the fee and charges payable in respect of the use of the Services by way of notice by way of electronic message to your Equipment (or by such other alternative or additional means as the Bank will in its sole discretion determine including notice in a local newspaper of wide circulation), thirty (30) days prior to enacting any such change.

4. ACCOUNT STATEMENT

- a) You may request for a statement or activity report ("Loop Statement") in respect of your Loop Account from the Bank using your Equipment
- b) A Loop Statement shall not be sent to you in printed form, but shall be delivered to you either by SMS to the email or mobile phone number associated with your Loop Account or such other electronic means as the Bank may in its discretion determine. You shall be responsible for the payment of any charges levied by a TSP in delivering the Loop Statement to you.
- c) You may obtain printed Loop Statements or a printed bank statement pertaining to your Loop Account from any of the Bank's branches in Kenya. You shall be responsible for the payment of any charges levied by such branch for such printed statements.

- d) Save for a manifest error, a Loop Statement or bank statement issued to you aforesaid in respect of your Loop Account shall be conclusive evidence of the transactions carried out on your Loop Account for the period covered in the Loop Statement and/or bank statement.

5. LIEN

- a) When the Customer is indebted to the Bank, the Bank has a general lien over all property of the Customer in the Banks 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 property movable or immovable charged to secure payment of any money whether or not that money has been repaid, and also over all property over which by the general law the Bank has a lien.
- b) Where the Customer is indebted in circumstances giving the Bank a right of set off, all securities as set out in clause 5(a) hereof are held as security for the debt.
- c) Whereas the repayments for any debt may be accepted from the Customer at any branch, the same shall for purposes of this agreement be deemed payable electronically through deposits made into the Customer's Loop Account.
- d) The Bank may at any time give the Customer notice (in accordance with these Terms and Conditions) that if an accrued debt is not paid within a stated period, being not less than fourteen (14) days after the Customer receives notice from the Bank, then the Bank may without further notice realize sufficient relief of the Customer's assets to discharge the debt.
- e) If the debt is not discharged within the time allowed, the Bank may realize sufficient relief of 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 the 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.
- f) The Bank is under no obligation in respect of any sale under clause 5(e) other than malafides.
- g) Funds in foreign currencies which are subject to the Banks 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 accepts no liability for any loss caused by exchange fluctuations.
- h) Deposits including those held in foreign currencies and for a given period of time may be set off against indebtedness of the Customer notwithstanding that the time period of the deposit has not expired.

6. SET-OFF

- a) The Bank may, without notice, set off against any account indebtedness of the Customer:
 - i. Any other account whether current, loan, savings, mobile savings or loans or any other type:
 - ii. Any time or other deposit
- b) The Bank may, upon notice to the Customer (if required by law), set off his account against any other account or indebtedness in respect of which the Customer is liable, notwithstanding that some other person may also be liable in respect thereof.

7. LOAN

7.1 Application and appraisal

- a) As a holder of the Loop Account, you may, subject to these Terms and Conditions, apply for a loan from the Bank using the Loop Account menu on your Equipment.
- b) Where you apply for a loan from the Bank, your application shall be appraised according to the applicable loan appraisal processes of the Bank. The Bank reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.
- c) Subject to approval of your application for a loan the Bank shall disburse to you a loan of an amount to be determined by the Bank in its sole discretion.
- d) An application for a loan shall be deemed conclusive evidence of the Customer's agreement to be bound by the terms of the Facility as to the amounts of the Facility and interest as approved and determined by the Bank.
- e) The Facility and the conditions contained in these Terms and Conditions in relation to a loan shall become effective and the Customer's obligations to the Bank shall commence on the day that the Bank disburses the approved amount by crediting the Customer's Loop Account or otherwise applying the principal loan proceeds for the Customer's account or marking the limit on the Customer's Loop Account.

7.2 Interest

- a) The Customer will pay (and authorizes the Bank to debit his Loop Account with) interest on the Facility at the annual rate which is specified in the loan advice or at such other rate as is determined by the Bank at its sole discretion. Interest shall also be payable before and after any demand judgment or the bankruptcy of the Customer.

- b) The aggregate interest rate applicable to the Bank's Kenya Shillings denominated loan facilities is the sum total of the Central Bank Rate ("CBR") plus a margin determined by the Bank in accordance with clause 7.2(d) below. Foreign currency lending may be priced using the London Interbank Offered Rate ("LIBOR") or CBR. The CBR may change from time to time as may be notified by Central Bank of Kenya.
- c) The Bank shall be entitled to vary the basis on which interest shall be calculated in respect of the loan and/or adopt different internal bank benchmarks, and/or vary the rate of interest or internal margin chargeable to such other rate which the Bank considers appropriate in all the circumstances and subject to any applicable restrictions concerning the benchmark for interest rates and rate of interest chargeable under the law. Provided always that the Bank will notify the Customer of any increase or decrease of the aggregate interest rate payable in respect of each date of repayment by way of notice by way of electronic message to your Equipment (or by such other alternative or additional means as the Bank will in its sole discretion determine including notice in a local newspaper of wide circulation), thirty (30) days prior to enacting any such change in the aggregate interest rate. Any change of rate so advised will not prejudice in any way the Bank's right to recover interest charged subsequent to such change.
- d) Interest will be calculated by the Bank as follows:
Interest = CBR + Premium, where premium is determined as follows in relation to a loan or Overdraft respectively:
i. Loans: Premium = Your Risk Premium + Time Risk Premium
ii. Overdraft: Premium = Your Risk Premium
- e) If at any time during the continuance of the facilities, the amount drawn by the Customer from the Bank is in excess of the facilities committed by the Bank under these Terms and Conditions or any sums payable by the Customer under these Terms and Conditions are not paid on the date on which they are due in accordance with the provisions of these Terms and Conditions and whether demand has been made or not on the Customer to repay the same and whether notice has been given or not to the Customer to repay the same, the Customer shall pay additional interest (after as well as before any demand made or judgment obtained or the liquidation or administration of the Customer) at such rate as shall be indicated to the Customer when the loan is approved. Such interest shall be additional to the interest charged on the principal sum and shall be compounded in the event of it not being punctually paid with monthly rests in accordance with the usual practice of the Bank, but without prejudice to the right of the Bank to require payment of such interest when due. The Customer acknowledges and agrees that the aforesaid additional rate of interest represents a reasonable pre-estimate of the loss to be suffered by the Bank in funding the default on the Customer's part.

7.3 Expenses

- a) The Customer shall pay to the Bank and shall fully indemnify and reimburse upon demand all costs, charges and expenses (including legal and other professional expenses, stamp, registration or other duties and any VAT) incurred by the Bank in connection with the preparation and execution of, the obtaining of any documents required under, and the enforcement of, or the preservation of any rights under these Terms and Conditions or otherwise in connection with the Facility.
- b) The Customer shall be required to deposit on or before the approval date an appropriate amount in the Loop Account for the purpose of meeting preliminary costs and expenses. In the event that there are insufficient fund in the Customer's Loop Account, the Bank reserves the right to deduct these costs and expenses from the loan amount and credit these costs and credit the Customer's Loop Account with the net proceeds.

7.4 Insurance

- a) As a condition to your request for a loan, the Bank will require you to take insurance cover to cover death and disability through the Bank's insurance plan ("Insurance") and this will be provided by NCBA Insurance Agency Limited (NCBAI) or such other insurer as shall be notified to you by the Bank from time to time.
- b) The Customer shall give written notice to the Bank within 48 hours of any occurrence which gives rise or might give rise, to a claim under the policy of insurance and, except with the prior written consent of the Bank, the Customer shall not agree to settlement of any such claim.
- c) All proceeds received by the Bank in respect of any claim made under the insurance will be applied by the Bank in repayment of the loan. Any surplus after such application will be paid to the Customer's Loop Account.

7.5 Payments

- a) All payments by the Customer hereunder shall be made, without setoff or counterclaim, by the Customer, to the Loop Account or such account as the Bank may from time to time notify to the Customer.
- b) Without prejudice to the Bank's rights to require payment or otherwise recover amounts due hereunder from the Customer, the Bank may debit any amount due hereunder to any current or other account of the Customer maintained with the Bank, notwithstanding that the maximum amount permitted to be outstanding in respect of such account may be exceeded. Thereafter the amount so debited shall be treated as owing on the terms of such current or other account for all purposes.

- c) All payments due to be made by the Customer hereunder, whether of principal, interest or otherwise, shall be made without regard to any equities between the Customer and the Bank and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent the Customer is required by law to deduct or withhold any Taxes on any amounts payable hereunder, in which case the Customer shall promptly pay to the Bank such additional amount as is necessary to ensure that the net amount received by the Bank after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) is equal to the amount that the Bank would have received had no such deduction or withholding been made. The Customer will furnish the Bank within one month after the relevant payment is made with an official receipt of the relevant taxation authorities evidencing payment of any Taxes. In the event of failure to provide the receipts within one month as provided for herein, the Bank reserves the right to debit the amounts so deducted from the Customer's account.
- d) If any payment under these Terms and Conditions would otherwise be due to be made on a day which is not a Business Day, it shall be made on the next succeeding Business Day, unless such Business Day falls in the following calendar month, in which event it shall be made on the immediately preceding Business Day.
- e) The Customer hereby agrees that the Bank may at any time without notice or further demand, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Customer's then existing accounts wherever situate including any accounts in the name of the Bank or of the Customer jointly with others (whether current, deposit, loan or of any other nature whatsoever whether subject to notice or not and whether in Kenya Shillings or in any other foreign currency) and set off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any obligations or liabilities of the Customer to the Bank whether such liabilities be present, future, actual, contingent, primary, collateral, several or joint. For this purpose the Customer hereby irrevocably authorises the Bank to purchase with the moneys standing to the credit of such accounts such other currencies as may be necessary to effect such set off or transfer at the Exchange Rate.
- f) All interest and other payments of a periodic nature under these Terms and Conditions shall accrue from day to day and be calculated on the basis of actual days elapsed and a 365 day year (or such other day count as the Bank decides has become market practice).
- g) The Customer hereby agrees that the Bank may hold and delay payment pending the satisfaction by the Customer of any proceeds of crime, anti-money laundering and related requirements.

7.6 Representation and Warranties

- a) The Customer hereby represents and warrants to that Bank that:
- i. These Terms and Conditions constitute a valid and binding obligation of the Customer legally enforceable in accordance with its terms;
 - ii. All information submitted by the Customer to the Bank, inter alia, on his financial position, net worth, details of indebtedness, presents accurately his state of affairs and the financial position of the Customer as at such date.
 - iii. No litigation, mediation, arbitration or other legal or dispute resolution proceedings are taking place, pending or, to the knowledge of the Customer, threatened against the Customer which could have a material adverse effect on the assets or financial condition of the Customer.
 - iv. No Call in Event/event of default as defined in these Terms and Conditions has occurred and/or is continuing.
 - v. The representations and warranties set forth in this paragraph are given and made on and as of the date that the Customer's application for a Loan is approved and are continuing representations and warranties which are deemed to be repeated during the continuance of the Facilities.
 - vi. Each notice by the Customer requesting any drawing under any of the Facilities shall be deemed to constitute fresh representations and warranties by the Customer in the terms of this clause 7.6 as if made at such time.

7.7 Covenant

The Customer covenants with the Bank that, from the date of the Customer's acceptance of these Terms and Condition until all moneys owing to the Bank in respect of the Facility including all costs, interest due and other charges under clauses (*interest*), (*expenses*) and (*insurance*) of these Terms and Conditions have been paid in full, the Customer will inform the Bank of any Call in Even forthwith upon becoming aware of the same.

7.8 Event of default and Call in Event

- a) "Call in Event" means the occurrence of any of the following events or circumstances:
- i. Failure by the Customer to make any single repayment of principal or payment of interest, costs or other moneys in respect of the Facilities on its due date,
 - ii. A breach in the performance of any other term and condition of the Facilities or any covenant by the Customer or any term and condition of any finance or security documents or any other security held by the Bank for the Facilities,
 - iii. A trustee, sequester or similar officer being appointed of all or any of the assets of the Customer,
 - iv. Death or permanent incapacity of the Customer;
 - v. A distress, execution or other legal process being levied against any of the assets of the Customer and not being discharged or paid within seven (7) days,
 - vi. Issuance of a garnishee or attachment order against any deposit or asset maintained by the Customer;
 - vii. Failure to provide any collateral or security when so requested by the Bank.

- viii. Any indebtedness of the Customer becoming immediately due or payable or capable of being in default on the part of any person, or the Customer failing to discharge any indebtedness on its due date,
- ix. If, in the sole opinion of the Bank, there is a material adverse change in the Customer's financial condition or
- x. If any material part of the assets or revenues of the Customer is nationalized, compulsorily acquired, seized or appropriated, or
- xi. In accordance with normal banking practice, particularly as regards reporting and monitoring of related accounts to Central Bank of Kenya, notwithstanding the above provisions, default or call in event by any related accounts shall constitute a default or call in event for the Customer; or
- xii. Any representation or warranty made by the Customer hereunder or for the purpose of obtaining the Facilities being incorrect in any material respect as of the date of which it is made or deemed to be made, or there being any material adverse change of the position as set out in such representation or warranty, then the Bank's commitment to advance the Facilities or any balance thereof shall cease and the whole amount of the outstanding Facilities and all accrued interest, costs or other amounts owing hereunder will become repayable forthwith on demand in writing made by the Bank at any time. Any moneys not paid following a demand under this paragraph shall continue to attract interest at the contracted rate as well after as before judgment or any bankruptcy or liquidation of the Customer.

7.9 Currency Indemnity

- a) If any sum due from the Customer hereunder or under any order or judgment given or made in relation hereto has to be converted from the currency (the "first currency") in which the same is payable hereunder or under such order or judgment into another currency (the "second currency") for the purpose of (a) making or filing a claim or proof against the Customer, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation hereto, the Customer shall indemnify and hold harmless the Bank from and against any loss suffered as a result of any difference between: (x) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (y) the rate of exchange at which the Bank may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction in whole or in part, of any such order, judgment, claim or proof.
- b) Any amount due from the Customer under this clause 7 (*Loan*) shall be due as a separate debt and shall not be affected by judgment being obtained for any other sums due hereunder but it shall be secured, and the Bank shall have all rights in relation to it, as if it formed part of the Facilities. The term "rate of exchange" includes any premium or costs of exchange in connection with the purchase of the first currency with the second currency.

7.10 Changes in Circumstances

If any change in applicable law or regulation or in the application or interpretation thereof by any government authority charged with the administration thereof shall make it impracticable or unlawful for the Bank to maintain or give effect to its obligations under these Terms and Conditions, the Bank shall give notice in writing to the Customer of such event and the Bank's obligation to make the Facility available shall be cancelled and the Customer shall immediately upon receipt of such notice repay to the Bank the Facilities and accrued interest thereon to the date of repayment.

8. LOOP INVEST

8.1 Loop Investment with Break

- a) As a holder of the Loop Account, you may place money with the Bank on deposit for a maturity period of anywhere from three (3) months to twelve (12) months or such shorter or longer period as will be determined by the bank from time to time.
- b) The money placed on deposit in accordance with this clause 8.1 shall accrue such interest as shall be determined by the Bank at the time that the money is placed on deposit. The Customer may Request to Break at any time.
- c) On maturity or withdrawal of the deposit by the Customer, the Bank shall within forty eight (48) hours of the Request being made remit to the Customer the principal and interest (less any Taxes, including but not limited to withholding tax) to the Customer's Loop Account.

8.2 Loop Investment with No Break

- a) As a holder of the Loop Account, you may place money on with the Bank on deposit for a maturity period of anywhere from three (3) months to twelve (12) months or such shorter or longer period as will be determined by the bank from time to time.
- b) The money placed on deposit in accordance with this clause 8.2 shall accrue such interest as shall be determined by the Bank at the time that the money is placed on deposit. On or before maturity, the Customer may place the money on deposit for a further period of three (3) months to twelve (12) months or such shorter or longer period as will be determined by the Bank from time to time.
- c) On maturity, the Bank shall within forty eight (48) hours of the Request being made remit to the Customer the principal and interest (less any Taxes, including but not limited to withholding taxes). The money placed on deposit in accordance with this clause is not subject to Break and where the Customer Requests for Break, the Bank shall be reduce the interest rate (to such rate as the Bank determines from time to time) applicable to the deposit.

9. DEBIT CARDS

9.1 Application and Acceptance opening

- a) As a holder of the Loop Account, you will be required, subject to these Terms and Conditions, to apply for a Debit Card from the Bank using the Loop Account menu on your Equipment.
- b) The Debit Cardholder shall be deemed to have unconditionally agreed to and accepted these Terms and Conditions by collecting and activating the Debit Card at any of the Bank's branches or its agents.

9.2 Debit Card facilities

- a) The Debit Cardholder may use the Debit Card to pay for goods or services at retailers or suppliers world-wide who accept the Debit Card by signing a sales voucher and the Bank will debit to the Loop Account the amount of any such transactions authorized in such a way.
- b) The Debit Cardholder may use the Debit Card in conjunction with the PIN to withdraw money from automated teller machines which accept the Debit Card when they are operating. The amount of money so withdrawn will be debited to the Loop Account.
- c) The Debit Cardholder may use the Debit Card to deposit money at automated teller machines which accept deposits. The amount of money so deposited will be credited to the Loop Account after verification by the Bank.
- d) The Debit Cardholder may use the Debit Card in conjunction with the PIN to pay for goods and services by using a card operated machine at retailers or suppliers world-wide who offer this facility. The Bank will debit to the Loop Account the amount of any transactions authorized in this way.
- e) The Debit Cardholder may use the Debit Card at any bank which accepts the Debit Card to withdraw money or make payment by signing a voucher, the amount of which will be debited to the Loop Account.
- f) The Bank may, at its discretion, make available to the Debit Cardholder more ATMs, POS, and/or other devices through shared networks for the Debit Cardholder's convenience and use.

9.3 Fees

- a) All fees, charges related to transactions done by the Debit Cardholder at these devices, as determined by the Bank from time to time will be recovered by a debit to the Debit Cardholder's Loop Account ("Debit Card Fees").

- b) The Debit Cardholder understands and agrees that such networks may provide different functionality service offerings and different charges for different services and/or locations.

9.4 Card Discontinuation

- a) The Bank, shall, at its sole discretion, at any time, without notice to the Debit Cardholder, be entitled to withdraw, discontinue, cancel, suspend or terminate the facility to use the Debit Card and/or services related to it, at an ATM/other devices within and/or outside Kenya and shall not be liable to the Debit Cardholder for any loss or damage suffered by the Debit Cardholder resulting in any way from such discontinuation, cancellation, suspension, termination or any other act which shall refrain the Debit Cardholder from using the Debit Card.
- b) If the Debit Cardholder has more than one foreign currency account, the Bank shall, at its discretion, be entitled to select any one of the foreign currency accounts to be debited.
- c) The Debit Card is only available to persons over the age of eighteen (18) years and who are of full legal capacity in all other respects.
- d) The Debit Card is not transferable by the Debit Cardholder under any circumstances.

9.5 Debit Cardholders Obligations

- a) The Debit Cardholder accepts full responsibility for all transactions processed by the use of the Debit Card whether on Automated Teller Machine (ATM), Point-of Sale (POS) Terminal or any other device available or otherwise. Any instruction given by means of the Debit Card shall be irrevocable. The Debit Cardholder shall, in all circumstances, accept full responsibility for the use of the Debit Card, whether or not processed with the Debit Cardholder's knowledge or his authority, expressed or implied.
- b) The Debit Cardholder hereby irrevocably authorizes the Bank to debit the Debit Cardholder's account(s) with the amount(s) of any withdrawal or transfer or carry out any such instructions that may be received by the use of the Debit Card in accordance with the Bank's record of transactions.
- c) The Debit Cardholder's obligations with respect to the Loop Account accounts hereunder are payable to the Bank by the Debit Cardholder and are subject to the local laws (including, without limitation, any governmental acts, orders, decrees and regulations, including fiscal and exchange control regulations).
- d) The Bank shall not be liable for non-availability of funds credited to the Loop Account due to restrictions on convertibility or transferability, requisitions,

involuntary transfers, acts of war or civil strife or other similar or other causes beyond the Bank's control, in which circumstance no other branch, subsidiary or affiliate of the Bank shall be responsible therefore.

9.6 Debit Card Ownership

- a) The Debit Card belongs to the Bank and the Bank or any authorized officer, servant, employee, associate or agent of the Bank may retain the Debit Card, require the Debit Cardholder to return the Debit Card or suspend the use of the Debit Card at any time in its absolute discretion and the Bank shall not be liable for any loss suffered by the Debit Cardholder as a result thereof.
- b) The Debit Card is only valid for the period shown on it and must not be used outside that period or if the Bank has required by notice in writing to the Debit Cardholder that it be returned to the Bank. When the period of validity of a Debit Card expires it must be returned to the Bank and destroyed by cutting it in half.
- c) The Debit Cardholder must take all reasonable precautions to prevent unauthorized use of the Debit Card, including, not allowing anyone else to use the Debit Card.
- d) If the Debit Card is lost or stolen the Debit Cardholder shall immediately block the Debit Card on the UI and notify the Bank by telephoning the number(s) from time to time notified to the Debit Cardholder and the Debit Cardholder must, in addition, immediately notify relevant law enforcement agencies. The Debit Cardholder must confirm the loss of the Debit Card by notice in writing to the Bank within seven days if the initial notification to the Bank was by telephone.
- e) The Debit Cardholder must co-operate with any officers, employees or agents of the Bank and/or law enforcement agencies in any efforts to recover the Debit Card if it is lost or stolen.
- f) If the Debit Card is found after the Bank has been given notice of its loss or theft the Debit Cardholder must not use it again. The Debit Card must be cut in half.
- g) The Bank may from time to time, at its discretion, tie-up with various agencies to offer features on Debit Cards. All these features would be on a best efforts basis only, and the Bank does not guarantee or warrant the efficacy, efficiency, usefulness of any of the products or services offered by any service providers/merchants/outlets/agencies. Disputes (if any) will be taken up with the merchant/ agency, etc. directly, without involving the Bank.

9.7 The PIN

- a) The Debit Cardholder will select his own PIN (any 4-digit number) at the time of activating the Loop Account at any of the Bank's branches.

- b) The security of the PIN is very important and the Debit Cardholder shall not disclose the Debit Cardholder's PIN to anyone. If the Debit Cardholder fails to observe any of the security requirements, the Debit Cardholder may, at the Debit Cardholder's sole risk as to the consequences, incur liability for unauthorized use.
- c) As a matter of courtesy, the Debit Cardholder is advised that if the Debit Cardholder chooses his own PIN, he should not select a PIN that is easily identified or identifiable with him, e.g. birth date, car registration number, or repeated numbers etc. The Debit Cardholder should not write or indicate the PIN on the Debit Card or on any other item the Debit Cardholder carries or stores.

9.8 Usage Guidelines

- a) The Debit Cardholder confirms that he will use the Debit Cards only for permissible current account transactions and subject to any foreign exchange control restrictions, and other applicable local laws, regulations and directives as amended from time to time.
- b) The Debit Cardholder shall ensure adherence to all foreign exchange control restrictions and requirements as stipulated by the CBK from time to time. Usage of the Debit Card outside Kenya will be made strictly in accordance with the foreign exchange laws and regulations of Kenya and the foreign country the Debit Card is used in.
- c) The Debit Cardholder shall be solely and completely liable and responsible for any non-compliance with those laws, regulations and/or notifications. The onus of ensuring compliance with the aforementioned provisions rests solely with the Debit Cardholder. The Debit Cardholder accepts full responsibility for wrongful use and use in contravention of these laws, rules and regulations and undertakes to indemnify the Bank to make good any loss, damage, interest, conversion, any other financial charges that the Bank may incur and/or suffer on account thereof.
- d) The Debit Cardholder will be responsible for all facilities granted by the Bank and for all related charges and shall act in good faith in relation to all dealings with the Debit Card and the Bank. The Bank reserves the right to change the types of Cards transactions supported without any notice to the Debit Cardholder.
- e) The Debit Cardholder is not authorised to enter into transactions using the Debit Card to a value in excess of the credit balance (if any) of the Loop Account from time to time. The Loop Account will be charged interest by the Bank at the relevant interest rates of the Bank in respect of unauthorised overdrafts on the Loop Account unless otherwise agreed and the Bank's usual fees for unauthorised overdrafts may also be charged to the Loop Account.

- f) The Debit Cardholder shall at all times ensure that the Debit Card is kept at a safe place and shall under no circumstances whatsoever allow the Debit Card to be used by any other individual.
- g) The total amount of any Card transactions carried out in any one day shall be limited to such amounts and by such other conditions as shall be determined by the Bank from time to time.
- h) When the Debit Card is used to effect a transactions through a PSP (whether with a retailer or supplier, a Bank or from a card operated cash machines) in a currency other than the Loop Account currency, the PSP will convert the amount of the transactions into the currency of the Loop Account at its applicable Exchange Rate on the day upon which it receives notification of the transactions.
- i) The Debit Card may not be used as payment for an illegal purchase or purpose.
- j) The Debit Card is for electronic use only and will be acceptable at merchant establishments which that accepts Debit Cards.
- k) The Debit Card will be honoured only when it carries the signature of the Debit Cardholder. The Debit Card is operable with the help of the Debit Cardholder's signature or the PIN at POS terminals installed at Merchant locations depending on the functionality of the POS terminal.
- l) Each transactions is deemed authorised and completed once the terminal generates a sales slip. The amount of the transaction is debited immediately from the primary account linked to the Debit Card. The Debit Cardholder should ensure that the Debit Card is used only once at the merchant location for every transaction.
- m) In the event of the Loop Account being overdrawn, the Bank reserves the right to set off overdrawn amounts against any credit lying in any of the Debit Cardholder's other accounts without giving any notice. Nothing in these terms and conditions shall affect the Bank's right to set-off, transfer and apply monies at law or pursuant to any other agreement from time to time subsisting between the Bank and the Debit Cardholder.
- n) The Bank shall not in any way be responsible for merchandise, merchandise warranty or services purchased, or availed of by the Debit Cardholder from merchant establishments, including on account of delay in delivery, non-delivery, non-receipt of goods or receipt of defective goods by the Debit Cardholder. The Debit Card is purely a facility to the Debit Cardholder to purchase goods and/or avail of services, the Bank holds out no warranty or makes no representation about quality, delivery or otherwise of the merchandise. Any dispute or claim regarding the merchandise must be notified to the bank within 14 days in writing with evidence relating to loss (in form and substance satisfactory to the Bank) and the Bank does not in any way undertake or guarantee recovery or relief in relation to

the loss. The existence of the claim or dispute shall not relieve the Debit Cardholder of his/her obligation to pay all the charges due to the Bank and the Debit Cardholder agrees to pay promptly such charges.

- o) The Debit Cardholder shall be responsible for regularly reviewing these Terms and Conditions including amendments thereto as may be advised from time to time and shall be deemed to have accepted any amended Terms and Conditions by continuing to use the Debit Card.

9.9 The Debit Card Charges

- a) In addition to the amount of all card transactions, certain charges will be debited to the Loop Account as provided for herein.
- b) The Bank shall charge Debit Card issuance fee to each new Debit Card issued and a replacement fee for lost/expired cards to Debit Cardholder in accordance with the Bank's schedule of fees from time to time in force. The Debit Card issuance/replacement fees will be debited to the Loop Account linked with the Debit Card on application/renewal. The fees are not refundable.
- c) There will be separate service charges levied for such facilities as may be announced by the Bank from time to time and deducted from the Debit

9.10 Cardholder's Account

- a) In the case of transactions entered into by the Debit Cardholder through the Debit Card, the equivalent in the currency in which the Loop Account is held, along with processing charges, conversion charges, fees if any and other service charges for such transactions shall be debited to the Loop Account held at the Bank. The Debit Cardholder authorizes the Bank to recover all charges related to the Debit Card as determined by the Bank from time to time by debiting the Loop Account(s)
- b) The Bank accepts no responsibility for any surcharge levied by any merchant establishment and debited to the Loop Account linked with the Debit Card with the transactions amount. Any charge or other payment requisition received from a merchant establishment by the Bank for payment shall be conclusive proof that the charge recorded on such requisition was properly incurred at the merchant establishment for the amount and by the Debit Cardholder using the Debit Card referred to in that charge or other requisition, except where the Debit Card has been lost, stolen or fraudulently misused, the burden of proof for which shall be on the Debit Cardholder.
- c) Any government charges, duty or debits, or tax payable as a result of the use of the Debit Card shall be the Debit Cardholder's responsibility and if imposed upon the Bank (either directly or indirectly), the Bank shall debit such charges, duty or tax against the Loop Account. In addition, operators of shared networks may impose an additional charge for each use of their ATM/ POS Terminal/other

device, and any such charge along with other applicable fees/charges will be deducted from the Loop Account.

- d) Where the Loop Account does not have sufficient funds to deduct such fees, the Bank reserves the right to deny any further card transactions. In case of a Loop Account classified as overdrawn account, the Debit Cardholder will have to rectify such account balance position immediately. In every such situation where the Loop Account becomes overdrawn, a flat charge could be levied in addition to the interest to be charged on the debit balance in the Loop Account. This charge will be determined by the Bank from time to time. In the event of a Loop Account being overdrawn due to Debit Card transactions, the Bank reserves the right to setoff this amount against any credit lying from any of the Debit Cardholder's other accounts without giving any notice.
- e) The Bank reserves the right to deduct from the Debit Cardholder's Account a reasonable service charge and any expenses it incurs, including without limitation reasonable legal fees, due to legal action involving the Debit Card.
- f) Nothing in the Terms shall affect the Bank's right of set-off, transfer and application of monies at law or pursuant to any other agreement from time to time subsisting between the Bank and Debit Cardholder. The Debit Cardholder also authorizes the Bank to deduct from his Account, and indemnifies the Bank against any expenses it may incur in collecting money owed to it by the Debit Cardholder in connection with the Debit Card. (including without limitation reasonable legal fees).
- g) The Bank may levy service and other charges for use of the Debit Card, which will be notified to the Debit Cardholder from time to time.

10. FOREIGN ACCOUNTS AND CURRENCY

10.1 Foreign Account Tax Compliance Act

- a) The Customer hereby expressly acknowledges and agrees that pursuant to the Foreign Account Tax Compliance Act ("FATCA") enacted under the Laws of the United States of America (US), the Bank is or may be required for US citizens or residents to disclose and report certain information concerning the Customer's Loop Account to the relevant authorities including but not limited to the US Internal Revenue Service ("US Authorities"). Additionally FATCA may require the Bank to deduct, withhold and remit such taxes or monies to the US Authorities as may be directed by them from time to time.
- b) The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Customer's Loop Account(s) to the US Authorities and to deduct, withhold and remit such monies or taxes as may be directed by the US Authorities to enable the Bank to fulfil its obligations under FATCA and other enabling US statutes.

- c) The Customer hereby irrevocably releases and fully discharges the Bank, its directors, officers, employees, servants and agents and related parties from any and all claims, liabilities, damages, loss or expense arising from the Bank disclosing and reporting any such information concerning the Customer's Loop Account(s) to the US Authorities and/or deducting, withholding and remitting any monies to the US Authorities.

10.2 Holding and credit in foreign currency

- a) Subject to all laws and Government regulations applicable:-
 - i. The Bank will credit the counter-value of the Customer's holdings in foreign currencies to accounts with its correspondents in various countries of origin.
 - ii. Such accounts are in the Bank's name but are at the Customer's risk, and the Customer accepts responsibility for any ensuing consequences including but not limited to consequences of legal, fiscal or other measures affecting the account.
 - iii. Except in the case of an assignment by the Customer to the Bank, the Customer may dispose of such funds only by means of requests for cheques or transfers in the original currencies at the Bank's option
 - iv. All credits granted in foreign currencies are also subject to this clause

10.3 Accounts in Foreign Currency

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

11. CUSTOMER'S EQUIPMENT AND CUSTOMER'S RESPONSIBILITIES

- a) You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the System and the Services.
- b) You shall be responsible for ensuring the proper performance of your Equipment. The Bank shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall the Bank be responsible for any computer virus or related problems that may be associated with the use of the System, the Services and the Equipment. You shall be responsible for charges due to any TSP providing you with connection to the Network and the Bank shall not be responsible for losses or delays caused by any such service provider.
- c) You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by the Bank concerning the use of the System and Services.

- d) You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping any Username, Password, OTP or PIN related to the Service secret and secure. You shall ensure that your Username, Password, OTP and PIN does not become known or come into possession of any unauthorized person. The Bank shall not be liable for any disclosure of your Username, Password, OTP or PIN to any third party and you hereby agree to indemnify and hold the Bank harmless from any losses resulting from any PIN disclosure.
- e) You shall take all reasonable precautions to detect any unauthorized use of the System and the Services. To that end, you shall ensure that all communications from the Bank are examined and checked by you or on your behalf as soon as practicable after receipt by you in such a way that any unauthorized use of and access to the System will be detected.
- f) You shall immediately inform the Bank through any of its branches in Kenya in the event that:
 - i. You have reason to believe that your Username, Password, OTP or PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or
 - ii. You have reason to believe that unauthorized use of the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- g) You shall at all times follow the security procedures notified to you by the Bank from time to time or such other procedures as may be applicable to the Services from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your Loop Account's confidentiality. In particular, you shall ensure that the Services are not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorized to do so.
- h) You shall not at any time operate or use the Services in any manner that may be prejudicial to the Bank.

12. IRREVOCABLE AUTHORITY OF THE BANK

- a) 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.
- b) 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 and sole discretion cancel such transaction or instruction, but shall have no obligation to do so.

- c) 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.
- d) The Bank shall be entitled to presume as true, accurate and up to date all information supplied by the Customer and the conformity with the original document all documents submitted as copies and the authenticity of the originals of such copies.
- e) The Bank is authorized to effect such orders in respect of your Loop 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 these Terms and Conditions, these Terms and Conditions shall prevail.

13. EXCLUSION OF LIABILITY

- a) The Bank shall not be responsible for any loss suffered by you should the Services be interfered with or be unavailable by reason of (a) the failure of any of your Equipment, or (b) any other circumstances whatsoever not 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.
- b) The Bank will not be liable for any losses or damage suffered by you as a result of or in connection with:
 - i. unavailability of sufficient funds in your Loop Account;
 - ii. failure, malfunction, interruption or unavailability of the System, your Equipment and/or the Network
 - iii. the money in your Loop Account being subject to legal process or other encumbrance restricting payments or transfers thereof;
 - iv. your failure to give proper or complete instructions for payments or transfers relating to your Loop Account;
 - v. any fraudulent or illegal use of the Services, the System and/or your Equipment; or
 - vi. Your failure to comply with these Terms and Conditions and any document or information provided by the Bank concerning the use of the System and the Services.
- c) If for any reason other than a reason mentioned in clauses 13(a) or 13(b), the Services are interfered with or unavailable, the Bank's sole liability under this

Agreement in respect thereof shall be to re-establish the Services as soon as reasonably practicable.

- d) Save as provided in clause 13(c) the Bank shall not be liable to you for any interference with or unavailability of the Services, howsoever caused.
- e) 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.
- f) All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

14. INDEMNITY

- a) In consideration of the Bank complying with your instructions or Requests in relation the Loop Account, you undertake to indemnify the Bank and hold it harmless against any loss, charge, damage, expense, fee 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 Terms and Conditions.
- b) The indemnity in clause 14(a) 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 Loop 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 Terms and Conditions 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 Terms and Conditions.

- 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.

15. VARIATION AND TERMINATION OF RELATIONSHIP

- a) The Bank may at any time, upon notice to you, terminate or vary its business relationship with you and close your Loop Account and in particular but without prejudice to the generality of the foregoing the Bank may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine.
- b) Without prejudice to the Bank rights under clause 15(a), the Bank may at its sole discretion suspend or close your Loop Account:
 - i. if you use the Loop Account for unauthorized purposes or where the Bank detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
 - ii. if the Bank is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
 - iii. if the Bank reasonably suspects or believes that you are in breach of these Terms and Conditions (including non-payment of any loan amount due from you where applicable);
 - iv. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
 - v. to facilitate update or upgrade the contents or functionality of the Services from time to time;
 - vi. where you remain inactive for any period of time determined by the Bank in its reasonable discretion; or
 - vii. If the Bank decides to suspend or cease the provision of the Services for commercial reasons or for any other reason as it may determine in its absolute discretion.
- c) You may close your Loop Account at any time at any Loop Store in Kenya.
- d) If your Loop Account has any credit balance at the time of its closure, we will return any such balance to you, less any applicable fees. If your Loop Account is in arrears at the time of closure of your Loop Account, you agree to pay to us immediately all amounts you owe us.
- e) Termination shall however not affect any accrued rights and liabilities of either party.
- f) If the Bank receives notice of your demise, the Bank will not be obliged to allow any operation or withdrawal from your Loop Account by any person except upon

production of Grants of Letters of Administration or Probate by your legal representatives duly appointed by the Court.

16. DISCLOSURE OF INFORMATION

- a) You hereby expressly consent and authorize the Bank to disclose receive record or utilize your personal information or information or data relating to your Loop Account and any details of your use of the Services:
- i. to and from any local or international law enforcement or competent regulatory or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud;
 - ii. to and from the Bank's service providers, dealers, agents or any other company that may be or become the Bank's subsidiary or holding company for reasonable commercial purposes relating to the Services;
 - iii. to a Credit Reference Bureau;
 - iv. to the Bank's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings or to the extent required in the normal course of their duties;
 - v. for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities;
 - vi. in business practices including but not limited to quality control, training and ensuring effective systems operation; and
 - vii. to third parties in the following circumstances:
 - A. Where such disclosure is necessary in order for the Bank to act on a Request.
 - B. In order to comply with any law regulation or court order. If the Bank has to obey an order for information from an authorized government body, the Bank shall, to the extent required by law, notify the Customer before giving out the information.
 - C. If it involves a claim by or against the Bank in respect of an item deposited or drawn against the Customer's Loop Account;
 - D. If the Customer authorises the disclosure.
- b) The Bank employs a range of technologies and internal policy framework to protect the information and data maintained on our systems from loss, unauthorized access, disclosure, alteration, or destruction and has at all times taken and takes all steps reasonably necessary to ensure the confidentiality and integrity of such personal data and information and the way it is processed. These policies and standards are periodically updated to keep them up to date with regulations and market developments.

17. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that the intellectual property rights in the System (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that the Bank provides to you 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. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of the Bank.

18. MISCELLANEOUS

- a) These Terms and Conditions (as may be amended from time to time) form a legally binding agreement binding on you and your personal successors. Additionally, you have a right to obtain a copy of the Key Facts Document.
- b) This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.
- c) No failure, delay or other relaxation or indulgence on the part of the Bank to exercise any power right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power right or remedy preclude its further exercise or the exercise of any other power right or remedy.
- d) All moneys payable by the Customer under, the benefit of the covenants of the Customer contained in, and all other rights of the Bank under, these Terms and Conditions shall be assignable and remain valid and effective in all respects in favour of any assignee transferee or other successor in title of the Bank in the same manner as if such assignee transferee or other successor in title has been named in these Terms and Conditions as a party instead of or in addition to the Bank.
- e) The Bank may disclose to any proposed assignee or transferee or to its holding company, subsidiary, or any subsidiary of its holding company (whether or not they are proposed assignees or transferees) such information as is in its possession at any time relating to the Facilities or the Customer.
- f) 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 reorganization of the Bank shall not in any way prejudice or affect its rights under the Terms and Conditions.
- g) Any right or power which may be exercised or any determination which may be made under the Terms and Conditions by the Bank may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons therefor.
- h) A certificate by any officer or other duly authorized official of the Bank as to the money and liabilities for the time being due or accrued from or by the Customer pursuant to any of the Facility or security documents or the amount of any interest,

commission or other sums owing pursuant to any of these Terms and Conditions shall save for manifest error be conclusive evidence in any legal proceedings.

- i) Each of the provisions of these Terms and Conditions is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of these Terms and Conditions shall not in any way be affected or impaired thereby.
- j) In the event of any inconsistency between the terms of these Terms and Conditions and any general terms and conditions of the Bank (whether in force currently or at any time after these Terms and Conditions), the terms of these Terms and Conditions shall prevail.
- k) All rights of the Bank contained in these Terms and Conditions are in addition to all rights vested or to be vested in the Bank pursuant to the common law or statute.
- l) The Bank shall not be liable for the acts or omissions of its advocates, valuers or other professional advisers.
- m) The Customer hereby agrees (i) that the Bank may in its discretion record any telephone conversations between the Customer and the Bank made in connection with these Terms and Conditions and (ii) that the Customer will not object to such recordings being produced in evidence in a court of law.
- n) The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Customer's account(s) to other banks, financial institutions, credit card companies, or credit reference bureaus, including authorized agents, representatives, lawyers or debt collection agents for the purposes of any bona fide enquiry or collection of any data or towards recovery of any sums due and outstanding to the Bank.
- o) The Customer agrees not to disclose to any third parties any information provided by the Bank in connection with these Terms and Conditions, except to those legally required.
- p) The Bank may vary or amend at any time and without notice to you these Terms and Conditions. Any such variations or amendments may be published in posters or pamphlets at the Bank's branches, in the daily newspapers, on the Bank's website and/or by any other means as determined by the Bank and any such variations and amendments shall take effect immediately upon publication.
- q) The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

- r) The Bank is not responsible for the authenticity, validity, regularity or value of documents including but not limited to the bills of lading, delivery order, consignment documents, receipts, warrants and insurance policies.
- s) If any provision of these Terms and Conditions 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.
- t) Any addition or alteration to these Terms and Conditions may be made from time to time by the Bank and shall be binding upon you as fully as if the same were contained in these Terms and Conditions.
- u) You hereby agree that the Bank may collect any of your SMS data, location and such other information as may be required from your Equipment for purposes of establishing credit worthiness, for purposes of debt recovery or to identify ways of improving its Services. All such information shall be subject to the Bank's privacy policy which may be viewed here <http://ncbagroup.com/privacy-policy/>.

19. NOTICES

- a) Each party may give any notice, request, demand or other communication under or in connection with these Terms and Conditions by letter, facsimile, email or other comparable electronic means of communication.
- b) Any notice to the Customer shall be addressed to last known address provided by the Customer to the Bank or by way of SMS to the mobile phone number or email associated with the Customer. Notices to the Bank shall be addressed to the branch of the Bank where the Loop Account opening was approved or the registered office of the Bank. Any such communication will be deemed to be given as follows:
 - i. If by letter, at noon on the third Business Day following the day such letter was posted (or in the case of airmail, seven days after the envelope containing the same was delivered into the custody of the postal authorities); and
 - ii. If by facsimile transmission or comparable means of communication during the business hours of the other party then on the day of transmission, otherwise on the next following Business Day.
 - iii. If sent by SMS or email, on the date it is sent, whether or not actually received and the Bank's records shall be conclusive as to whether and when the SMS or email communication shall be considered to have been sent
- c) In proving such service it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped, addressed and delivered to the postal authorities or in the case of facsimile transmission, that a confirming hard copy was provided promptly after transmission or in the case of SMS or email or

other comparable electronic means, when the Bank receives a receipt message indicating proper transmission.

- d) The Customer acknowledges that SMS, email or other comparable communication may be illegible, unreliable, abused, delayed, mislaid or lost; that it may be tampered with or altered prior to, during or after transmission; may make the verification of signatures impossible; may result in the loss or leakage of confidential information; and may result due to the aforesaid in incorrect transfers or transactions.
- e) The Bank shall not be liable for and the Customer hereby irrevocably and unconditionally indemnifies and holds the Bank harmless for damages 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 delivery, post, e-mail, fax, telegraph, telephone, telex or any other means of communication.

20. DISPUTE RESOLUTION, JURISDICTION AND ARBITRATION

- a) You may contact any of the Bank's branches to report any disputes, claims or Loop Account discrepancies.
- b) Any dispute arising out of or in connection with these Terms and Conditions that is not resolved by Bank's branch representatives shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
- c) To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.
- d) These Terms and Conditions shall be governed by and construed in accordance with the laws of the Republic of Kenya.

21. CUSTOMER COMPLAINTS

On receiving a complaint, we shall provide the complainant with a prompt written acknowledgement within forty eight (48) hours and resolve the complaint in seven (7) working days. For complaints not resolved within seven (7) working days, written updates should be forwarded to the Customer on the progress in resolving the complaint, once in every seven (7) days.

22. COOLING OFF PERIOD

The Customer has the right to seek independent legal counsel in order to fully understand the implications and potential consequences of agreeing to these Terms and Conditions prior to clicking the “Accept” button. The Customer shall be deemed to have read, understood and accepted to be bound by these Terms and Conditions (which may be amended by the Bank from time to time) by selecting the “Accept” button.

NCBA Bank Kenya PLC is regulated by the Central Bank of Kenya for purposes of the Services.