

**Preamble**

The relationship between the Bank and the Customer shall be governed by these Terms and Conditions.

**Definitions**

In these Terms and Conditions, unless the context otherwise requires:

- (a) **“Access Profile”** means the information and/or documentation held by the Bank in respect of the Customer for purposes of the Customer’s access to the System and/or use of the GABNet Banking Facility;
- (b) **“Account(s)”** means any one or more of the Customer’s accounts held with the Bank which includes the Customer’s Current Account, Investment Time Deposit Account, facility account or any other account that a Customer may have with the Bank;
- (c) **“Account Opening Form”** means the form that the Bank may prescribe from time to time to be completed by the Customer in respect to the establishment and operation of an Account;
- (d) **“ATM”** means an automated teller machine of the Bank or of a Shared Network Partner of the Bank a (which the Bank may from time to time advise) including the VISA network where-soever situated at which the Customer or Cardholder can effect a Transaction;
- (e) **“ATM Card”** means the Visa Electron debit card or prepaid card (as the case may be) issued by the Bank at the request of and in the name of the Cardholder for use in connection with debit card services or prepaid card services (as the case may be) provided by the Bank;
- (f) **“Authorised Signatory”** means any person(s) authorised as specified in writing by the Customer to the Bank to operate the Account on the Customer’s behalf in accordance with the Customer’s Mandate;
- (g) **“Available Balance”** means the amount in the Account which can be drawn by the Customer without any restriction by the Bank (such restricted amounts including without limitation any unconfirmed credit(s), any amount(s) credited to the Account in error and/or any amount(s) which the Bank has a right of set-off);
- (h) **“Bank”** means Gulf African Bank Limited its successors in title (whether immediate or derivative) and assigns;
- (i) **“Banking Hours”** means the hours for which the Bank is generally open for all classes of business as may be determined by the Bank in respect of each of the Bank’s Branches from time to time;
- (j) **“Bank’s Branches”** means (including the main registered office of the Bank) places in the Republic of Kenya where the Bank’s business is operated and conducted and a **“Bank’s Branch”** shall be construed accordingly;
- (k) **“Bank’s Tariff”** means (including but not limited to) the schedule of the fees and charges levied by the Bank in relation to an Account, a financial product or service as may be approved and announced by the Bank from time to time;
- (l) **“Business day”** means any day which the Bank is open for business;
- (m) **“Cardholder”** means a person to whom an ATM Card has been issued and whose name appears on it;
- (n) **“Cheque”** means the cheque forms issued by the Bank to the Customer and forming part of the Chequebook;
- (o) **“Chequebook”** means the serially numbered Cheques bound together and issued by the Bank to the Customer;
- (p) **“Current Account”** means the current account(s) structured on the Shari’ah concept of Qard opened and maintained by the Customer with the Bank;
- (q) **“Customer”** means a holder of an Account its successors in title (whether immediate or derivative) and permitted assigns;
- (r) **“Foreign Currency”** means any currency howsoever denominated other than Kenya Shillings;
- (s) **“GABNet Application Form”** means the form to be completed by the Customer in order to subscribe to the GABNet Banking Facility;
- (t) **“GABNet Banking Facility”** means such banking services offered by the Bank from time to time to the Customer through the Bank’s official website upon subscription by the Customer to such services;
- (u) **“GABNet Terms and Conditions”** means the terms and conditions relating to the use of the GABNet Banking Facility as set out in paragraph 19 of these Terms and Conditions;
- (v) **“Indemnity”** means the indemnity form executed by the Customer in favour of the Bank pursuant to which the Customer agrees and accepts to indemnify the Bank in respect of instructions from the Customer to the Bank by facsimile and/or electronic mail;
- (w) **“Investment Period”** means a period of one (1) calendar month in respect of the tenure of an Investment Time Deposit Account and a period of one (1), three (3), six (6), nine (9) or twelve (12) calendar months as shall be selected by the Customer in respect of the tenure of an Investment Time Deposit Account;
- (x) **“Investment Time Deposit Account”** means an Account where the Customer (*Rab al Maal*) authorises the Bank as *Mudarib* to invest the deposit according to the unrestricted Mudaraba agreement under the principles of *Shari’ah*;
- (y) **“Kenya Shillings”** means the lawful currency of the Republic of Kenya;
- (z) **“Mandate”** means the mode of operation of an Account as specified by the Customer in the Account Opening Form;
- (aa) **“Mandate Card”** means the form that the Bank may prescribe from time to time to be completed by the Customer in respect of the Mandate;
- (ab) **“Merchant Establishment”** means an establishment wherever located which accepts the ATM Card and shall include but not be limited to stores, shops, restaurants, hotels or airline organisations which display the Bank’s logo or a Shared Network Partner’s logo including any VISA branded logo, as a sign of acceptance of the ATM Card and at which a POS Terminal has been installed;
- (ac) **“Mudarib”** means entrepreneur or managing trustee in an investment and for the purpose of these Terms and Conditions, the Mudarib refers to the Bank;
- (ad) **“Mudaraba”** means a partnership in profit in which one party provides capital (*“Rab al Maal”* or *“Mudaraba Investor”*) and the other party provides its expertise and skill in relation to the investment of such capital (*“Mudarib”* or *“Mudaraba Manager”*). Profit, if any, is shared between the parties as per an agreed ratio while loss, if any, is borne solely by the Mudaraba Investor (as the case may be) as per the laws of Kenya notwithstanding the fact that it is contrary to *Shari’ah*. This does not apply to Current Account Customers;
- (ae) **“Mudaraba Pool”** has the meaning ascribed to it in sub-paragraph 2(b) of the Special Terms and Conditions;
- (af) **“PIN”** means in relation to a Cardholder, the personal identification number required to gain access via an ATM or POS Terminal to effect a Transaction;
- (ag) **“POS Terminal”** means a point of sales (POS) terminal installed at a Merchant Establishment capable of processing a Transaction;
- (ah) **“Profit Calculation Period”** means, in relation to an Investment Time Deposit Account,

a period of one (1), three (3), six (6), nine (9) or twelve (12) calendar months as shall be applicable to the Customer or otherwise as determined by the Bank, for which profits on the Mudaraba Funds as defined in sub-paragraph 2(a) of the Special Terms and Conditions;

- (ai) **“Profit Payment Date”** means the date on which the Bank pays the Customer’s share of the profit amount, which shall fall no later than fifteen (15) days after the end of the relevant Profit Calculation Period;
- (aj) **“Qard”** means an interest free loan of any fungible commodity including money;
- (ak) **“Rab Al Maal”** means the capital provider. The Customer is a *Rab al Maal* as regards its, his other credit balance in its, his other Account with the Bank;
- (al) **“Shared Network Partner”** means any person with whom the Bank enters into an arrangement by which Cardholders of the Bank can effect Transactions on ATMs and/or POS Terminals owned by or affiliated to the body;
- (am) **“Shari’ah”** means the general body of Islamic laws and regulations;
- (an) **“Shari’ah Supervisory Board”** means the committee of Islamic scholars and academics who have agreed to advise the Bank on matters of Islamic jurisprudence and *Shari’ah* as the same impacts on the business of the Bank;
- (ao) **“Special Terms and Conditions”** means the particular terms and conditions relating to a specific type of Account as set out in these Terms and Conditions;
- (ap) **“System”** means the multi-media banking and communications software and/or equipment enabling the Customer to communicate with the Bank for the purposes of the GABNet Banking Facility whose access through the internet shall be through the Bank’s website (for the time being [www.gulfafribank.co.ke](http://www.gulfafribank.co.ke));
- (aq) **“Terms and Conditions”** means these Terms and Conditions as set out in the Account Opening Form as may be amended from time to time;
- (ar) **“Transaction”** means any transaction effected by use of the ATM Card in accordance with these Terms and Conditions and **“Transactions”** shall be construed accordingly; and
- (as) **“Weightages”** means investment participation weightages, approved by the Bank for Investment Time Deposit Accounts, in the *Mudaraba Pool*.

**First – The General Terms and Conditions**

**1. ACCOUNT OPENING**

The Bank may, at its sole and absolute discretion, upon due application by the Customer and subject to these Terms and Conditions, open an Account for a Customer in the name of the Customer. The Bank shall not open an Account for any Customer whose name appears in any blacklist(s) (whether local or international) issued, circulated or otherwise available to the Bank from time to time.

**2. ACCOUNT NUMBER**

The Bank shall assign a base account number for each Customer to carry out all transactions with the Bank. The base account number is used to determine the Customer’s various account types. The Customer may carry out all transactions with any of the Bank’s Branches.

**3. SPECIMEN SIGNATURE**

The Customer shall give to the Bank, in a form acceptable to the Bank, at the Bank’s sole and absolute discretion, a specimen of the signature of each Authorised Signatory. The Bank may require a fresh specimen signature in the event of a change in the Customer’s name. The specimen signature of the Authorised Signatory registered with the Bank shall be considered to be the basis for carrying out transactions on the Customer’s Account(s) as indicated on the Mandate Card by the Customer. The specimen signature shall remain valid unless changed or cancelled. Any change or cancellation shall only become valid on the next working day following the day of receipt of such instructions from the Customer by the Bank’s Branch at which the Account is maintained.

**4. CUSTOMER’S INSTRUCTIONS**

- (a) The Customer can give the Bank instructions in person or by post, telephone, mobile telephone, facsimile or, where suitable arrangements have been put in place, by computer, unless the Bank advises the Customer that instructions may be given in a different way for a particular Account or service. The Bank shall only be bound to act upon the Customer’s original and duly executed instructions and/or documents drawn or accepted in accordance with the Mandate until such time as the Customer shall give the Bank due written notice to the contrary.
- (b) Before the Customer gives the Bank any instructions by telephone, mobile telephone, facsimile or computer the Customer and the Bank will agree on the necessary security procedures for authenticating such instructions.
  - (c) The Bank will act on instructions given:
    - (i) on a document bearing the original signature(s) of the Customer (in the case of a business owned by a sole proprietor) or the Authorised Signatory; or
    - (ii) by telephone, mobile telephone, facsimile or computer whether or not they were given by the Customer as long as the Bank has followed the security procedures.
- (d) If the Customer gives the Bank an instruction by telephone, mobile telephone or computer, the Bank may ask the Customer to confirm it under sub-paragraph 4(c)(i).
- (e) Instructions received after Banking Hours or on a non-Business Day shall be processed on the next Business Day. The Customer may cancel instructions provided that the Bank is not otherwise irrevocably bound to act upon such instructions and provided further that the Bank has confirmed in writing that such instructions have not yet been acted upon. The Bank shall be entitled to levy a charge as per the Bank’s Tariff for cancelling instructions.
- (f) The Bank shall not be bound to verify the correctness of oral (by telephone or otherwise), facsimile, electronic or any other forms of unwritten communication or instructions. The Bank shall however not be liable in the event that the Bank acts on instructions which have been corrupted or improperly transmitted or if the information contained in the said communication is not received or is delayed and the Customer shall indemnify and hold the Bank harmless if such an event occurs. In the event the Customer seeks to have this service, the Customer shall fill out and sign the Indemnity and the Bank shall reserve the right to grant such requests of the Customer.
- (g) The Bank may refuse to act on the Customer’s instructions, if the instructions are not clear and/or if the Bank has reason to believe that the Customer did not give the instructions and/or if the Bank believes that a law, regulation, code or other duty which applies to the Bank may be broken by acting on the instructions.

**5. DEPOSITS AND WITHDRAWALS**

- (a) The Customer may deposit for credit to the Account cash, cheques and/or other instruments drawn in a manner and in a form acceptable to the Bank. The Bank shall not accept any li-

ability for cash sent through the post. All cheques and/or other instruments sent through the post must be crossed and marked 'Account Payee Only/Not Negotiable' and must be made payable to the name of the Customer's Account. Deposits by third parties into the Customer's Account may be accepted without any responsibility to the Bank and upon the Bank undertaking relevant queries in accordance with any anti-money laundering and/or anti-terrorism laws.

- (b) Subject to daily withdrawal limits (if any), a sufficient Available Balance and the Special Terms and Conditions of the Account, the Customer may make withdrawals and/or payments from the Account.
- (c) Withdrawals can be made from the Account by the Customer or by an Authorised Signatory or by an agent who can be appointed after completing the required documents prepared by the Bank. Cash drawings from a Current Account shall be done using the Cheques or through the ATM using the Customer's ATM Card.
- (d) The Customer shall not be permitted to draw against, and the Bank shall not be obliged to make payment against a cheque or other payment which has not been cleared.
- (e) The Bank shall only pay cash to the Customer upon the presentation of a Cheque, where the Cheque is duly signed by an Authorised Signatory.
- (f) Where a Cheque is presented by any person other than the Customer for the payment of cash, the Bank may require confirmation from an Authorised Signatory before it makes payment to such person and in this regard the Customer shall indemnify the Bank on a full and unqualified basis in respect of all payments made to the bearer of the cheque whether or not the money is received by the Customer and whether or not the order for payment is in fact the order of the Customer.
- (g) Where the Bank receives several instructions from the Customer for withdrawals and/or payments from the Account at approximately the same time such that the aggregate amount sought to be withdrawn and/or paid exceeds the Available Balance, the Bank may in its sole and absolute discretion comply with such of the said instructions in such order and/or manner as it deems fit.
- (h) The Customer must not draw the Account below the prescribed minimum balance of the Account without the Bank's prior written consent. The Bank shall be at liberty at its sole and absolute discretion to refuse to honour a Cheque, make a payment and/or allow a withdrawal if the effect of the same would be to cause the Account to be drawn below its prescribed minimum balance.
- (i) In the event that the Customer's Account is overdrawn as a result of the Bank's exercise of its right to automatically debit the Customer's Account or for any other reason whatsoever, the amount for which the Customer's Account is overdrawn including any other charges imposed by the Bank is a debit due and payable to the Bank.
- (j) The Customer undertakes to pay any amount calculated at the rate of 20% per annum (which rate may be revised by the Bank from time to time) on any amounts debited by the Bank from the Customer's Account in accordance with clause (i) above from (and including) the date of the same being debited until the actual payment of such amounts together with the additional amounts payable pursuant to this clause (j) in full and such sums shall hereinafter be referred to as 'Default Damages'. The Customer further undertakes to pay all the amounts recovered by the Bank on account of Default Damages in an account maintained by the Bank specifically for charitable purposes as approved by the Bank's *Shari'ah* Supervisory Board. The Customer acknowledges that the Default Damages constitute reasonable charges in respect of legal costs that the Bank will incur in collecting or attempting to collect a required payment by the Customer hereunder.
- (k) Authorised Signatories of Customers who cannot sign their name (due to illiteracy or any other form of disability) should produce proper identification acceptable to the Bank to perform the transaction before the concerned Bank official by using finger print and stamp (if any) before drawing any amount from the Customer's Account. To protect the interests of the Customers whose Authorised Signatories may be illiterate or unable to sign their names due to disability, the Bank may issue Chequebooks or ATM Cards on a discretionary basis.

## 6. COLLECTION AND REMITTANCES

- (a) Cheques, dividend-warrants, bonds or drafts drawn to the order of a depositor or the Customer deposited in the Account shall be accepted as collection items, unless agreed otherwise by the Bank and in accordance with the banking practices prevailing at *Shari'ah* compliant banks. The Bank has the right to reject cheques, drafts or any other securities drawn to the order of a third party. The Bank maintains the right to debit any Account with any unpaid and non-collected items in addition to Bank charges in accordance with the Bank's Tariff without assuming any responsibility in case of non-collection of such items.
- (b) Drawings against cheques under collection shall only be allowed after their actual realization.
- (c) The Banks shall pay the actual amount of Telex/SWIFT transfers or bank drafts/cheques received in favour of the Customer after deducting the banking fees or charges and commissions in accordance with the Bank's Tariff and the correspondent bank's charges.
- (d) The Customer agrees that purchase by the Bank of a bank draft (in Foreign Currency) previously issued by the Bank at the instruction of the Customer shall be at the discretion of the Bank and at the exchange rate prevailing on the date of purchase after the deduction of the Bank's fees/charges and commissions in accordance with the Bank's Tariff.
- (e) The Bank shall credit all incoming remittances and bank drafts of the Customer into the Customer's Account in the currency of such Account unless the Bank receives instructions contrary thereto from the Customer, and the deposit shall be at the exchange rate prevailing on the same day of deposit.
- (f) The Bank shall have the right to refuse to pay for any bank draft or transfer if the name of the beneficiary and/or his/her account number does not match that of the Bank's records or for any other reason.
- (g) All the transfers effected by the Bank according to the Customer's instructions shall be at the Customer's expense and responsibility, and the Bank shall not be responsible if the amounts credited to the Customer's Accounts are reduced due to the charges or decline in value, and the Bank shall not be responsible if the Customer is unable to avail the funds on account of any restrictions issued by the concerned authorities.
- (h) The Bank and its correspondents are not liable for the consequences of any irregularity, delay, mistake, telegraphic error, omission or misinterpretation that may arise and the Bank shall further not be liable for any loss which may be incurred through its correspondents failing properly to identify the person named in the instructions or retaining the funds should the Bank or its correspondents deem such retention expedient pending confirmation of the identity of any other person or of the said instructions by a letter or otherwise.
- (i) Should all or any of such transfers be unpaid and refunded to the Bank, the Customer can only claim the value thereof at the buying rate of the day when the refund takes place. The refund cannot be effected until the Bank has received definite advice from its correspondents that the funds are unpaid and that the original instructions have been cancelled.
- (j) The Bank shall at its absolute discretion determine the order or priority of funds transfers instructed by the Customer, and may at its absolute discretion transfer funds from any of the Customer's Accounts to cover any overdraw amount in the Customer's Current Account.

- (k) The Customer irrevocably agrees and authorises the Bank to act on all the Customer's instructions (including but not limited to funds transfers, bill payments and stop payment instructions) and accepts full responsibility for all such instructions, and in particular for ensuring the accuracy and completeness of the Customer's instructions, and also for ensuring that the same instructions are not inadvertently transmitted to the Bank twice.
- (l) Any instructions for funds transfers is subject to any arrangement now subsisting or which may hereafter subsist between the Customer and the Bank in relation to the particular Account. The Bank hereby reserves the right to:
  - (i) refuse at any time to carry out any one or more of the Customer's funds transfer instructions (whether in relation to one-off funds transfer or standing instructions/recurring bill payments) without assigning any reason therefor; and/or
  - (ii) impose limits, restrictions or conditions on the Customer's funds transfer (whether in relation to type, currency, purpose, number, or any other aspect thereof) as may be required by the Bank or any relevant authority(ies).

## 7. STATEMENTS OF ACCOUNTS/ADDRESSES/DETAILS

- (a) The Customer shall be provided with the advices and statements of accounts in respect of the Customer's Account (as per the Customer's request or by the decision of the Bank). If the Bank does not receive any objection within fifteen (15) days from the date of dispatch of the advice or the statement of account by mail, and/or by any electronic media, then such statement and advice shall be deemed correct. If the Customer does not receive a statement of account for any period, it is the responsibility of the Customer to demand a statement from the Bank within one (1) month of the date on which such a statement would normally have been sent to the Customer.
- (b) For all purposes, including any legal proceedings, a certificate signed by any director, manager and/or any authorised signatory of the Bank as to any matter relating to the Account shall, in the absence of any manifest error, be conclusive evidence against the Customer in respect of the said matter.
- (c) Unless the Customer gives notice in writing, the address set out in the Account Opening Form shall be the approved address for the mailing of all letters, notices, advices, statements of accounts or other notification (legal or otherwise). The Customer shall inform the Bank in writing, in case of changes to any of the Customer's particulars as set out in the Account Opening Form.
- (d) The Bank may stop mailing advices or statements of account if they are returned undelivered on two (2) or more consecutive occasions until such time the Bank is provided by the Customer with an alternative address for mailing the statements. Those statements not mailed to the Customer may be collected from the Bank premises, after serving sufficient notice for retrieval of the same from the system. The Bank, at any time after giving prior notification to the Customer, may stop mailing through either normal or registered postal mail the Customer's statement of accounts where the Bank's own electronic delivery channels or access options are available to allow Customers to request, receive and retrieve their statements of accounts electronically. The Customer hereby absolves the Bank from any consequences, losses, damages, claims or other rightful acts which the Customer may otherwise have against the Bank arising either directly or indirectly from instances where the statements of accounts are returned to the Bank undelivered. Furthermore, the Customer understands that the Bank will not be responsible in any way, for the Customer's inability to verify the correctness or the propriety of the entries in the statements in instances where the Customer's statements of accounts are returned to the Bank undelivered, and agrees to indemnify and hold the Bank indemnified against any loss, damage or claims which may arise by virtue of the above.
- (e) The Account shall be operated by the Customer under the name(s) specified in the Account Opening Form and all documents provided thereunder. The Bank shall have the right, at its sole and absolute discretion, to request the Customer for all necessary proof of the Customer's name and any change thereof and the Bank shall be at liberty to decline to act on any or all of the Customer's instructions until such request is met to the sole and absolute satisfaction of the Bank.
- (f) The Bank reserves the right, at its sole and absolute discretion, at any time during the tenure of the Account to request the Customer for any information and/or documentation that the Bank may require for the establishment and/or operation of the Account including any information, confirmations and/or documentation stipulated by any anti-money laundering and/or anti-terrorism laws.
- (g) The Customer must immediately inform the Bank in writing of any change in the details given in the Account Opening Form and any subsequent changes thereto.
- (h) The Customer shall have the right to ask for an additional copy of the statement of account at the Customer's own expense.

## 8. STANDING ORDERS

The Bank may effect any standing orders from the Customer provided that the Customer has sufficient Available Balance in its Account on the due date(s) of the execution of such orders. The Bank shall not be liable for any delay or error in the dispatch or on the transmission or for any error on the part of the paying Bank or any of its correspondents. The Customer acknowledges that the Bank shall not be liable for such delays or errors and the Customer shall indemnify the Bank for the losses, damages and expenses incurred by the Bank as a result of the execution of the standing orders given by the Customer.

## 9. ADJUSTMENT OF ENTRIES

The Bank reserves the right without prior notice to the Customer, to debit any amount(s) credited to the Account in error and/or reverse any entry made to the Account in error. The Bank accepts no responsibility for the consequences of such debits and/or reversals. In case of any errors in entries, any adjustments or correction in the entries signed by the Bank shall be considered effective and correct. The Customer shall not have the right to claim the value of the wrong deposits into the Customer's Account and the Customer agrees and confirms that the Bank has the right to claim the amounts wrongfully paid to the Customer. The Customer further agrees and accepts that the Customer has the obligation to settle the amounts wrongfully paid to the Customer by the method, procedures, and the dates specified by the Bank without any objection and irrespective of the lapse of any period of time from the date of occurrence of the wrong entry.

## 10. BANK CHARGES, FEES AND COMMISSIONS

- (a) All applicable fees and charges for the various services or products provided by the Bank shall be set out in the Bank's Tariff which may be amended from time to time.
- (b) The Bank has the right to automatically debit the Customer's Account(s) for all applicable fees and charges for the various services or products provided by the Bank in accordance with the Bank's Tariff and any governmental fees, taxes, levies and/or stamp duty, and also any other

fees and charges payable on the transactions performed by the Customer from time to time. The Bank shall not be obligated to notify the Customer or obtain the Customer's consent prior to any debit made by the Bank.

- (c) Current Accounts are subject to the stipulated minimum daily balance as determined and announced by the Bank from time to time.
- (d) In the event that the Customer's Account is overdrawn as a result of the Bank's exercise of its right to automatically debit the Customer's Account or for any other reason whatsoever, the amount for which the Customer's Account is overdrawn including any other Bank charges imposed by the Bank is a debit due and payable to the Bank.
- (e) The Customer undertakes to pay any amount calculated at the rate of 20% per annum (which rate may be revised by the Bank from time to time) on any amounts debited by the Bank from the Customer's Account in accordance to with sub-paragraph 10(d) above from (and including) the date of the same being debited until the actual payment of such amounts together with the additional amounts payable pursuant to this sub-paragraph 10 (e) in full and such sums shall hereinafter be referred to as "Default Damages". The Customer further undertakes to pay all the amounts recovered by the Bank on account of Default Damages in an account maintained by the Bank specifically for charitable purposes as approved by the Bank's Shari'ah Supervisory Board. The Customer acknowledges that the Default Damages constitute reasonable charges in respect of legal costs that the Bank will incur in collecting or attempting to collect a required payment by the Customer hereunder.
- (f) The Bank shall have the right to vary the charges and fees set out in the Bank's Tariff at any time upon receiving approval from the Bank's Shari'ah Supervisory Board.

#### 11. THE BANK'S RIGHTS OF SET-OFF AND LIEN

- (a) Where a Customer maintains more than one Account or establishes more than one Account in future whether with the Bank's head office or at any of the Bank's Branches, such relationships between the Bank and the Customer will be deemed to constitute that of a single integral and indivisible account relationship. The Bank shall have an absolute right to combine or merge any of the Customer's Accounts for the purpose of setting-off any debit balance against available credit balance or to reimburse itself for recovery of monies for which the Customer is liable. The Bank shall have a general lien over all the property of the Customer in the Bank's possession, including, but not limited to, cash, goods, securities or valuables held by the Bank, cheques presented for payment, bills and any other property (movable or immovable) charged in whatever manner by the Customer in favour of the Bank to secure the repayment of such monies.
- (b) The Customer agrees that the Bank may at any time and without giving any prior notice, freeze, set-off or transfer any amounts between the Customer's Accounts whatsoever their types or names in Kenya Shillings or Foreign Currency, so that each Account shall be considered as security for the other Accounts, individually or jointly, for the purpose of settling any liability of the Customer or the party(ies) guaranteed by the Customer towards the Bank.
- (c) The Bank may attach all the properties maintained by the Bank in the name of the Customer and call on all the guarantees issued by the Customer to the Bank for the purpose of settling any amounts due by the Customer to the Bank.

#### 12. ACCOUNTS IN FOREIGN CURRENCIES

- (a) Subject to any exchange regulations (where applicable), the Customer may open Accounts in Foreign Currency upon the approval of the Bank.
- (b) The transactions in the Accounts maintained in Foreign Currency shall be effected only by the Bank's forms, drafts or written instructions, in the same currency that the Account is maintained.
- (c) Cash withdrawal in Foreign Currency notes from Accounts maintained in Foreign Currency will be subject to the rate of exchange and commission as determined by the Bank from time to time.
- (d) The Customer may transfer from its Account maintained in Foreign Currency to its Account maintained in Kenya Shillings or vice versa at the prevailing rate of exchange on the day of such transfer. The Customer acknowledges that the Bank will not be held responsible for any exchange losses that the Customer may incur when transferring any amount from its Account maintained in Foreign Currency to any other currency Account.

#### 13. FREEZING OF THE ACCOUNT

The Bank in its sole discretion may at any time, refuse to accept any instructions in respect of the Account, if and for so long as:

- (a) there is any dispute between the Customer and the Bank; or
- (b) the Bank has any reason to suspect that a fraud has been or is likely to be committed; or
- (c) the Account is being or is likely to be operated by the Customer for any illegal and/or unlawful transaction; or
- (d) the Bank has any doubt for any reason that either the Customer is not the person entitled to operate the Account or that there is any dispute in respect of the Mandate; or
- (e) the Bank is under a legal obligation to do so.

#### 14. CHEQUEBOOKS

- (a) The Chequebook shall be issued by the Bank to the Customer at the Bank's sole discretion, subject to the Chequebook Terms and Conditions which are set out in this paragraph 14.
- (b) The Bank may charge a fee for the issuance of a Chequebook and any other additional Chequebooks issued to the Customer as may be set out in the Bank's Tariff.
- (c) The Bank may refuse to make payment to the Customer or any other third party on any Cheque which is not drawn in the manner specified in this sub-paragraph 14(c):
  - (i) the Customer must write, date and have the Authorised Signatory(ies) sign the Cheque in clear handwriting using legible ink (preferably blue or black) in the currency of the Account for an amount not exceeding the Available Balance;
  - (ii) when drawing a Cheque, the amount should be stated in both words and figures in such a manner as to prevent the insertion of any other word or figure and/or to prevent any fraudulent alterations;
    - (iii) the Cheque must be signed by an Authorised Signatory as per the terms of the Mandate;
    - (iv) any alteration to the Cheque must be counter-signed by an Authorised Signatory as per the terms of the Mandate; and
    - (v) any un-crossing of the Cheque must be done by an Authorised Signatory as per the terms of the Mandate.
- (d) No incomplete Cheque should be given to any person and all uncompleted Cheques should be kept in safe custody at all times.
- (e) The Customer must count the number of Cheques contained in the Chequebook at the time the Customer is issued with the Chequebook and periodically throughout the use of the

Chequebook. If any Cheque is found to be lost or missing, the Customer must inform the Bank immediately.

- (f) The Bank may refuse to honour a Cheque where the date of the Cheque is more than six (6) months old or where the date is in the future (post-dated cheques).
- (g) Where the Customer wants the Bank to stop payment on a Cheque, the Customer must immediately request the Bank in writing to do so. Upon receipt of a written notice from the Customer to stop payment of a Cheque, the Bank shall record the notice and stop the payment provided that such notice is received before the transaction sought to be stopped has not occurred. The Bank reserves the right to charge an administration fee for stopping the payment of a Cheque.
- (h) The Bank shall not be liable to the Customer in any way and the Customer shall fully indemnify the Bank against any claims by any third party should the Bank make payment against a Cheque on the Customer's behalf, where the Cheque is presumed to be issued by the Customer but the signature or content of the Cheque and/or written instruction has been forged if:
  - (i) the Customer has facilitated such forgery; or
  - (ii) there has been a previous forgery of the Customer's Cheque or note of instruction without the Customer having previously objected to the payment,

#### 15. INOPERATIVE/ DORMANT ACCOUNTS

- (a) An Account shall be considered inoperative if no transaction is effected on it for a period exceeding six (6) months and the Bank shall, in this case, have the right to reject any debit to the Account including cheques, outgoing transfers or any other incoming transfers. The Bank may (including without limitation) apply any one or more of the following conditions to an Account upon its classification as "dormant":
  - (i) confirm the validity and authenticity of the first transaction reactivating the Account;
  - (ii) suspend the issuance of statements of Account; and/or
  - (iii) charge a maintenance fee as may be determined by the Bank from time to time.
- (b) The Customer shall be fully responsible for any consequences, claims, legal procedures or losses pertinent thereto, and the Customer declares that the Bank shall not in any case be responsible therefor, and the Customer should approach the Bank to re-activate or close the Account.

#### 16. ATM AND ATM CARD USAGE

##### (a) Conditions of Issue and Use

- (i) ATM Cards shall not be issued to corporate Customers or Customers which are trading businesses owned and operated by more than one (1) proprietor. This paragraph 16 is therefore only applicable to Customers which are businesses owned and operated by sole proprietors who have been issued with ATM Cards by the Bank.
  - (ii) It is a condition of issue that the Cardholder maintains a Current Account with the Bank at any of the Bank's Branches for the Bank to issue the ATM Card. In the event of the Account being closed for any reason, the ATM Card shall immediately be returned to the Bank by the Cardholder and its validity shall cease.
  - (iii) The ATM Card is issued for use only on electronic machines capable of accepting VISA/ELECTRON cards and may not be used to obtain credit of any description on the strength of the ATM Card.
  - (iv) The ATM Card may be utilized at any ATM in order to effect a Transaction which shall include:
    - (a) to effect a debit to the Account by withdrawal of cash, any such debit being effected immediately;
    - (b) to effect a credit to the Account by the deposit of cash or cheque, any such credit being effected either on the next working day (for cash deposit) or on the day of receipt of cleared funds (for cheque deposits).
    - (c) to display the current balance of the Account on the ATM;
    - (d) to give an account mini statement to the Cardholder;
    - (e) to order a cheque book or Statement relating to the Account; and
    - (f) such other Transaction as may from time to time be made available by the Bank to the Cardholder including top-up of mobile phone airtime and transfer of funds between Accounts.
  - (v) The ATM Card is issued entirely at the risk of the Cardholder who shall indemnify the Bank for all loss or damage howsoever caused from the use of the ATM Card.
- (b) **Loss, Surrender or Replacement of ATM Card**
- (i) The ATM Card shall remain the property of the Bank at all times.
  - (ii) The Cardholder shall take every possible care to prevent the ATM Card from being lost, misplaced or stolen and shall not pass the ATM Card to any other person.
  - (iii) The Cardholder shall notify the Bank immediately if the ATM Card is lost, misplaced or stolen or if it comes to the hands of a third party.
  - (iv) Where oral notice of loss or theft is given, it must be confirmed in writing to the Cardholder's Bank's Branch within forty eight (48) hours of the receipt of the oral notice by the Bank.
  - (v) The Bank may, at its sole discretion, cancel the validity of the ATM Card and request its return at any time, in which case the Cardholder shall immediately comply, with such request.
  - (vi) The Cardholder must return the ATM Card to the Bank for cancellation in the event the Cardholder no longer wishes to utilize the ATM Card.
  - (vii) On receipt of a written request for replacement of an ATM Card either damaged or lost the Bank after due verification may issue a replacement ATM Card and debit the Account with the appropriate replacement fee applicable from time to time.
  - (viii) The Cardholder must not use or attempt to use the ATM Card after any notification of cancellation or withdrawal has been given.

##### (c) PIN

- (i) To enable the Cardholder to utilise the ATM Card, a PIN shall be issued to the Cardholder. The PIN shall be mailed and/or personally delivered to the Cardholder on identification and the Cardholder shall ensure that the same is received in a sealed envelope. This PIN may subsequently be changed by the Cardholder at his/her own risk at any ATM that offers such a service.
- (ii) The security of the PIN is important and must be maintained by the Cardholder at all times.
- (iii) The Cardholder may incur liability for unauthorised use of the ATM Card and any instruction given by means of the ATM Card and the PIN, whether in conjunction or independently, may be deemed by the Bank at its sole and absolute discretion to be instructions given by the Cardholder.

- (iv) The Cardholder undertakes:
- not to disclose his/her PIN to any other person;
  - to take precaution to prevent anyone else seeing the PIN being entered in an ATM or POS Terminal;
  - not to write or indicate the PIN on the ATM Card or elsewhere, even if it is disguised; and
  - to commit the PIN to memory and destroy any record thereof.
- (v) In the event of the PIN becoming known to someone else other than the Cardholder, that person shall be treated by the Bank as an agent of the Cardholder and the Cardholder shall indemnify the Bank against all losses or damage which may occur as a result of the PIN becoming known.
- (vi) The Cardholder shall notify the Bank immediately if the PIN is unwittingly or otherwise disclosed or made available to a third party.
- (d) Multiple Accounts and Cards**  
The daily cash withdrawal limit for an ATM Card shall be in respect of the total daily cash withdrawals made from all the Accounts for the ATM Card.
- (e) ATM and POS Transactions**
- The Bank shall debit the Customer's Account with the amount of any withdrawal/transfer payment of telephone, water, electricity bills or payments for goods and services at the POS Terminals and all such payments as effected by the use of the ATM Card along with the related Bank charges in accordance with the Bank Tariff.
  - The Cardholder shall at all times remain liable for any Transaction and shall indemnify the Bank for all loss or damage howsoever caused by any unauthorized use of the ATM Card or related PIN. The Bank's record of Transactions shall be conclusive and binding for all purposes.
  - The amount of any Transaction in a currency other than Kenya Shillings will be converted into Kenya Shillings at a rate determined by the Bank for the date when the relevant Transaction is debited to the ATM Card's corresponding Account. Relevant charges as per the Bank's Tariff will apply.
  - The Cardholder accepts all debits made to the Account arising from the use of the ATM Card without limitation (except after written notice of loss has been received and acknowledged by the Bank).
  - The Cardholder shall ensure sufficient drawing power in the Account to which the ATM Card relates before making any withdrawals. If for any reason an Account is overdrawn by the use of the ATM Card, the Cardholder shall immediately make up for the deficit by a direct payment or transfer of funds from any other Account of the Cardholder maintained with the Bank. Failure to comply with this condition shall entitle the Bank to cancel the ATM Card and/or make transfer on the Cardholder's behalf (if more than one Account is maintained at the Bank).
  - The Bank reserves the right to limit the total cash sum withdrawn by the Cardholder during any twenty four (24) hour period and to advise the Cardholder of such limits from time to time.
  - When a Cardholder completes a Transaction through an ATM, the Cardholder can opt to receive a printed Transaction record. However, for all cash/cheque deposit transactions at the ATM the Cardholder agrees that no receipt shall be issued by the ATM other than an acknowledgement of receipt of a cheque or envelope as the case may be and without express reference to the amount deposited. The Cardholder is advised to retain the record of a Transaction generated by the ATM.
  - Any deposit made through the ATM will be subject to verification by the Bank which shall be binding and conclusive for all purposes.
  - The Cardholder agrees that requests on the ATM such as chequebook requisitions shall be processed on the next working day.
- (f) Merchant Establishment Usage**
- The Card may be utilized at any Merchant Establishment. The ATM Card is for electronic use only.
  - Once authenticated and approved, the Transaction is complete and a Transaction print out shall be generated at the POS Terminal for execution by the Cardholder.
  - The Cardholder is also advised to check the Transaction details before taking delivery of the items purchased and/or services provided and leaving the counter of the Merchant Establishment.
  - Once the ATM Card is swiped and verified and the Transaction approved, the Account shall be debited with the full value of the Transaction immediately.
  - The Bank shall not accept responsibility for any arrangement or negotiations the Cardholder may have with the Merchant Establishment including but not limited to the nature or quality of the goods supplied and/or services provided or any representations or warranties made by the Merchant Establishment. Should the Cardholder have any complaint concerning any Merchant Establishment as to the merchantability or quality of goods supplied and/or services provided, such complaint shall be resolved by the Cardholder directly with the Merchant Establishment. Failure to do so however shall not relieve the Cardholder of any obligations to the Bank. The Cardholder is also advised to notify the Bank of any grievances, complaints or disagreements with a Merchant Establishment immediately.
  - The Bank does not accept any responsibility for a surcharge levied by any Merchant Establishment.
  - In case a Cardholder wishes to reverse a completed Transaction due to an error or on account of return of merchandise by the Cardholder to the Merchant Establishment, the earlier sales receipt issued by the Merchant Establishment must be cancelled by the Merchant Establishment, and a copy of the cancelled receipt must be retained in the Cardholder's possession. Reversal/ refund of debits due to such Transactions shall be processed manually and shall only be made by the Bank upon the Bank's receipt of:
    - an appropriate refund from the Merchant Establishment, either directly or through the respective Shared Network Partner's settlement process; and
    - the cancelled sales slip from the Cardholder.
  - If the Cardholder, or anyone authorised to use the ATM Card, provides a mandate whether such comprises but is not limited to a signed coupon, subscription voucher or telephone instruction or gives the ATM Card number to make a purchase or obtain cash advance, without presenting the ATM Card (such as for mail order, telephone order or internet), the legal effect shall be the same as if the ATM Card was used by the Cardholder and a sales voucher or any other document or cash advance voucher was signed by the Cardholder. The Bank shall debit the ATM Card Account with the full amount of all ATM Card transactions and the Cardholder will be liable to pay the Bank all the amounts so debited whether or not such a voucher or other document is signed by the Cardholder and irrespective of any rights or obligations as between the Merchant Establishment and the Cardholder.
- (g) Card Fees and Service Charges**
- In respect of each Cardholder the Bank shall be entitled at its sole and absolute discretion in accordance with the Bank's Tariff, to charge and debit from the Account such fees and charges as it may from time to time notify the Cardholder including but not limited to an initial ATM Card issuance fee, an ATM Card renewal and/or replacement fee, a service fee for an amount to be prescribed by the Bank from time to time for the use of the ATM Card and a charge for undertaking such Transactions as may from time to time be specified by the Bank. Any failure however by the Bank to so notify the Cardholder shall not prejudice in any way howsoever the recovery by the Bank of such fees and charges from the Cardholder.
  - If the ATM Card is utilized at ATMs belonging to Shared Network Partners of the Bank, a service fee may be charged by the operator and/or an automated transfer network for undertaking the Transaction.
  - Any Government duties, rates, taxes or charges as and when levied by the Government or any other competent taxing authority in respect of any Transaction shall be payable by the Cardholder and debited by the Bank to the Account.
- (h) Termination**
- The Cardholder may discontinue utilizing the ATM Card and the debit card services provided by the Bank at any time by a written notice to the Bank accompanied by the return of the ATM Card cut into two (2) pieces. The ATM Cardholder shall be liable for all Transactions undertaken by the Cardholder and/or charges incurred up to the receipt, as duly acknowledged by the Bank, of the written notice of termination to the Bank.
  - The Bank shall be entitled to discontinue the debit card services at any time by cancelling the ATM Card without assigning any reason whatsoever upon issuance of seven (7) days notice, which notice shall be issued either by posting to the Cardholder's address last notified in writing to the Bank or by electronic mail to the Cardholder's electronic mail address as indicated in the Account Opening Form. The notice shall be deemed to have been served upon the Cardholder seven (7) days after the date of posting or seven (7) days after the date of sending the electronic mail as the case may be. Upon termination either at the request of the Cardholder or by the Bank, the Bank shall not be required to refund any amounts to the Cardholder, whether in respect of prepaid fees or otherwise.
- (i) Expenses of Enforcement**  
A Cardholder shall be liable to indemnify the Bank (on a full and unqualified indemnity basis) in respect of any and all expenses incurred by the Bank in enforcing or attempting to enforce these Terms and Conditions or the recovery of any amounts due from a Cardholder to the Bank including all legal fees and court filing fees and disbursements.
- (j) General ATM Card Conditions**
- An ATM Card is not transferable and must not be used by any person other than by the Cardholder.
  - An ATM Card remains the property of the Bank and upon cancellation must be surrendered on demand to the Bank.
  - An issued ATM Card shall have a limited validity period, on expiry of which a new ATM Card may be issued by the Bank at the Bank's sole and absolute discretion.
  - The ATM Card is neither a credit card nor a cheque guarantee card and the Cardholder shall not represent the ATM Card as such.
  - The Account may not be overdrawn by a Cardholder by effecting a Transaction.
  - Cash or cheques deposited in an ATM for credit to an Account shall be collected by the Bank and the proceeds shall not be available until the relevant funds have been received for value by the Bank.
  - The execution of a Transaction shall be subject to any operating limitations mandated on the Account.
  - The use of the ATM Card is subject to the rules and regulations of the Shared Network Partners including VISA.
  - The Cardholder hereby gives consent to the Bank to make inquiries regarding the verification of any information that has been provided by the Cardholder in the Account Opening Form.
  - The Bank may assign its rights and benefits at any time.
- (k) Liability of the Cardholder and the Bank**
- A Cardholder shall be fully liable in respect of each Transaction undertaken by the use of the ATM Card.
  - A Transaction must be carried out in such a way that any confidential information displayed on a POS Terminal is not disclosed to a third party. The Bank shall not be liable for any disclosure to any third party arising out of effecting of a Transaction.
  - A Cardholder shall not hold the Bank liable, responsible or accountable in any way whatsoever for any loss, injury or damage howsoever arising out of the use of an ATM including inability to make a cash withdrawal due to lack of funds at the ATM where the Transaction is being processed.
  - The Bank shall not be liable for the refusal or inability of any Merchant Establishment, POS Terminal or ATM to accept or honour an ATM Card or to complete a Transaction.
  - The Bank shall not be liable for the retention of an ATM Card by an ATM or POS Terminal.
  - The Bank shall not be liable for any loss or damage arising directly or indirectly from any malfunction or failure of an ATM and ATM Card or POS Terminal or the temporary insufficiency of funds in such machine.
  - The Bank shall bear no liability for inability to perform its obligations with regard to the ATM operations due to anything whatsoever outside the control of the Bank.
  - The Bank shall not be liable if it is unable to perform its obligations due (directly or indirectly) to but not limited to the failure of any machine, data processing system or transmissions link or to industrial dispute, strikes, lock outs, acts of any public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lighting, earthquakes, fires, storms, flood, civil disturbances, terrorisms, governmental regulations and directions and anything outside the direct control of the Bank, its agents or sub contractors.
- 17. MOBILE BANKING**
- (a) The Mobile Banking Service**
- The Bank will provide the mobile banking service ("the Mobile Banking Service") to the Customer through the Customer's mobile phone. The Customer must be a subscriber of a mobile service provider with which the Bank has an agreement with for the provision of this service for the Customer to access the Mobile Banking Service.

- (ii) The Customer may subscribe to the Mobile Banking Service. The Bank reserves the right to accept or decline any application for the Mobile Banking Service at its sole discretion.
- (iii) The processing of the Customer's application and the subsequent registration for the Mobile Banking Service will be done within five (5) working days of submitting the Customer's application
- (iv) It is the Customer's sole responsibility to familiarize himself/herself with the operating procedures for the Mobile Banking Service as will be provided by the Bank upon the Customer's registration to the Mobile Banking Service. The Bank will not be liable for any losses incurred as a result of the Customer's errors either of commission and/or omission.
- (v) The Customer agrees and undertakes to be bound by and to comply with all of the procedures relating to the Mobile Banking Service as may be issued by the Bank from time to time. The Bank shall not be bound by or obliged to take any action on any instructions which do not properly comply with the procedures and the Bank may reject such non-compliant instructions.
- (vi) The Bank will provide the Customer with a Personal Identification Number (PIN) for use with the Mobile Banking Service. The Customer must keep this PIN secret and not disclose it. The Customer must take all reasonable care to prevent unauthorized or fraudulent use of the Mobile Banking Service. The Bank will not be held liable for any losses arising from the unauthorized use of the Customer's PIN.
- (vii) The provision of the Mobile Banking Service is subject to the availability of the mobile telephony connectivity. The Bank will not be held liable for non-delivery or delay in delivery or wrongful delivery of the Mobile Banking Service as a result of the failure of the mobile telephony connectivity.
- (viii) The Customer agrees that the Bank shall not be held liable for any disputes that may arise between the Customer and the Customer's mobile service provider.
- (ix) The Mobile Banking Service will be provided to the Customer as long as the Customer is the sole account holder of the Account(s) or has the Mandate to singularly operate the specified Accounts.
- (x) The Bank will ensure as far as possible that any information supplied to the Customer through the Mobile Banking Service is accurate. The Bank shall not be liable for any error which results in the provision of inaccurate information.
- (xi) The Mobile Banking Service will only be available in geographical regions where the chosen mobile service provider(s) provide (s) mobile telephony connectivity.
- (xii) The Customer undertakes to keep the Customer's SIM card and mobile phone safely. The Customer shall not leave the Customer's mobile phone unattended or permit any person access to the Customer's mobile phone in such a manner that he may use it and/or the Mobile Banking Service, whether with or without the Customer's consent.
- (xiii) The Customer must notify the bank immediately of theft or loss of the Customer's mobile phone/SIM Card, any unauthorized access to the Mobile Banking Service or upon the Customer's discontinuation of the telephony service with the Customer's mobile service provider at the Bank's Branch at which the relevant Account is held. The Bank shall not be held liable for any losses resulting from the loss of the SIM card and/or cell phone howsoever caused.
- (xiv) The Bank reserves the right to enhance the Mobile Banking Services at anytime. It is the Customer's responsibility to keep updated with these enhancements. The Bank will make all reasonable efforts to notify the Customer of any changes or updates at the Bank's Branches and/or the Bank's website.
- (xv) The Bank reserves the right to charge a fee for the provision of the Mobile Banking Service and for the use of all or part of the Mobile Banking Service in accordance with the Bank's Tariff. The Customer will be liable to pay the Bank for any fees levied for the use of the Mobile Banking Service, unless the Bank in its sole discretion has waived such fees. By accepting these terms and conditions, the Customer provide the Bank with the authority to debit these fees from the Customer's Account on a monthly basis. These charges will be reflected in the Customer's normal bank statement. The Bank reserves the right to revise the fees chargeable for the Mobile Banking Service from time to time. The Bank reserves the right to terminate the Mobile Banking Service in the event that the Customer fails to pay any fees levied for the provision of the Mobile Banking Service.
- (xvi) The Bank shall not be held liable for the quality of service of the mobile service provider and gives no warranty with respect to the quality of service by the mobile service provider.
- (xvii) The Customer must notify the Bank of any changes in the Customer's Account number, mobile telephone number, address and any other information that may affect the Customer's ability to access the Mobile Banking Service. The Bank will not be held liable for sending information to the Customer's mobile telephone number as contained in our records at any given time.
- (xviii) The Customer agrees to bear all risks and consequences of the Bank's inability to comply with any instruction sent using the Mobile Banking Service due to errors in transmission of the Customer's instructions.

**(b) Non-repudiation**

Until and unless the Customer notifies the Bank otherwise, all instructions received by the Bank which are associated with the Customer's mobile phone details shall be deemed to have come from the Customer, and the Bank shall be entitled to rely on such instructions whether they actually originated from the Customer or not. The Customer acknowledges that the Bank may not be able to reverse or annul any transaction executed based on instructions received prior to the Customer's notice to the Bank.

**(c) Indemnity**

The Customer hereby indemnifies and holds the Bank harmless against any loss, claim and/or damage that may arise due to negligence, fraud collusion or violation of these terms on the part of the Customer and/or any third party.

**(d) Termination and consequences of termination**

- (i) The Customer may terminate the use of the Mobile Banking Service through an application form available at the Bank's Branches. Such requests will be effected within five (5) working days of receipt of the termination notice by the Bank. Any fees that may be outstanding at the time of such termination will remain payable and the Bank reserves the right to debit such fees from the Customer's Account.
- (ii) The Customer will remain liable for any mobile service provider charges that may arise from the use of the Mobile Banking Service as per the mobile service provider's terms and conditions.

**(e) Discontinuation of the Mobile Banking Service**

The Mobile Banking Service may be discontinued by the Bank at the Bank's sole discretion and at any time after giving prior notice to the Customer. It is agreed by the Customer and the Bank that the Bank may however suspend the service temporarily, without any notice to the Customer, for upgrade, expansion, maintenance and repair activities, or for any emergency reason as deemed necessary.

**(f) Disclosure**

Information and instructions received from the Customer through the Mobile Banking Service will be stored by the Bank and accessed by employees of the Bank (as is deemed necessary).

**(g) Force Majeure**

Notwithstanding any provision contained in these Terms and Conditions, the Bank shall not be liable to the Customer to the extent fulfillment or performance of any terms or provisions of these Terms and Conditions is delayed or prevented by revolution or other civil disorders; wars; acts of enemies; strikes; lack of available resources from persons other than the Bank; labour disputes; electrical equipment or mobile network failure; fires; floods; acts of God; government or regulator action; or, without limiting the foregoing, any other causes not within its control, and which by the exercise of reasonable diligence the Bank is unable to prevent, whether of the class of causes hereinbefore enumerated or not. If any force majeure event occurs, the Bank will give prompt written notice to the Customer and will use commercially reasonable efforts to minimize the impact of such event.

**18. GABNET BANKING FACILITY**

**(a) Subscription by Customer**

- (i) Upon approval of the Customer's subscription to the GABNet Banking Facility by the Bank as well as payment by the Customer of the fees and charges set out in subparagraph 18(f) below to the Bank, the Bank shall provide to the Customer the GABNet Banking Facility subject to and in accordance with these Terms and Conditions.
- (ii) Where the Customer subscribes for the Bank's infomail service, the Customer shall, indicate an email address in the GABNet Application Form, which email address shall be registered by the Bank. Only request or instructions received through the Customer's said registered email address shall be acted upon by the Bank.
- (iii) Where the Customer subscribes for the Mobile Banking and the GABNet Banking Facility, the Customer shall, indicate a phone number in the GABNet Application Form, which phone number shall be registered by the Bank. Only requests or instructions received through the said phone number shall be acted upon by the Bank. The Customer can only register one phone number with the Bank.
- (iv) Where the Customer subscribes for the Bank's call centre service, the Customer shall, indicate either their date of birth or date of incorporation or date of registration (as the case may be) in the GABNet Application Form, which date shall be registered by the Bank. The Bank shall only act upon requests or instructions in respect of the Bank's call centre service after the said date has been verified.
- (v) The Customer undertakes to provide accurate information in the GABNet Application Form and further undertakes that the Customer shall promptly provide accurate information in furtherance of the subscription whenever required to do so by the Bank. The Customer shall be responsible for the correctness and authenticity of any and all information provided by them to the Bank. The Bank shall not be liable to the Customer and/or any third party for any loss and/or damage arising out of any inaccurate information provided by the Customer however so caused. The Customer unconditionally and irrevocably undertakes and agrees to fully indemnify the Bank against all claims, demands, losses, costs, damages, liabilities or expenses whatsoever which the Bank may at any time incur, sustain or suffer as a result of relying on any inaccurate information provided by the Customer and also agrees to reimburse the Bank in full, upon demand, for all payments, losses, costs, damages, liabilities and expenses made, suffered or incurred by the Bank as a consequence thereof or arising therefrom.
- (vi) The Bank reserves the right to add, modify, replace or withdraw any electronic banking service at any time, for any reason whatsoever, without prior notice to the Customer.

**(b) Customer's Facilities and Customer Responsibilities**

- (i) The Customer shall at their own expense provide and maintain in safe and efficient operating order such hardware, software, phone, fax machine, and other communication equipment and facilities (including access to any public telecommunications systems) and any communications network (collectively the "Facilities") necessary for the purpose of accessing the System and the GABNet Banking Facility.
- (ii) The Customer shall be responsible for ensuring proper performance of the Facilities including any losses or delays that may be caused by the Facilities. The Bank shall neither be responsible nor liable for any errors or failures caused by any malfunction of the Facilities nor shall the Bank be responsible or liable for any computer virus or related problems that may be associated with the use of the System, the GABNet Banking Facility and the Facilities. The Customer shall be responsible for charges due to any service provider providing the Customer with connection to the internet, cellular phone, telephone or any other applicable media services and the Bank shall not be responsible or liable for losses or delays caused by any such service provider.
- (iii) The Customer shall obtain all licences and consents necessary to have access to and use of the System and shall ensure that all persons they allow to have access to the System shall comply with all laws and regulations applicable to the use of the System and shall follow all instructions, procedures and terms contained in the GABNet Terms and Conditions and any document provided by the Bank concerning the use of the System and GABNet Banking Facility.
- (iv) The Customer shall prevent any unauthorized access to and/or use of the System and GABNet Banking Facility by keeping its access code/password/PIN required to access the GABNet Banking Facility secret at all times. The Customer shall ensure that its access code/password/PIN does not become known or come into possession of any unauthorised person.
- (v) The Customer shall take all reasonable and necessary precautions to detect any unauthorized use of the System and the GABNet Banking Facility. To that end, the Customer shall ensure that all communication from the Bank is 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 System shall be detected.
- (vi) The Customer shall immediately inform the Bank by telephone followed by a written confirmation sent on the same day in the event that:
  - (a) the Customer has reason to believe that its access code/password/PIN is or may be known to any unauthorised person and/or has been compromised; and/or
  - (b) The Customer has reason to believe that unauthorised use of the System and/or the GABNet Banking Facility has or may have occurred or could occur and/or a transaction in respect of the GABNet Banking Facility may have been fraudulently inputted or compromised.
- (vii) The Customer shall not send or attempt to send any request or instructions to the Bank through the System if the Customer has reason to believe that for any reason such request or instructions may not be received by the Bank or may not be received accurately and intelligibly.
- (viii) 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 GABNet Banking Facility from time to time and specifically those that may be contained on the Bank's internet website or product literature. 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 Access Profile confidentiality and may lead to unauthorised use of the System and/or GABNet Banking Facility. In particular, the Customer shall ensure that the GABNet Banking Facility is not used or request or instructions are not issued or the relevant functions are not performed by anyone other than a person authorised to do so.

- (ix) The Customer shall not at any time operate or use the GABNet Banking Facility in any manner that may be prejudicial to the Bank.
- (x) The Customer understands and accepts that the Customer may link an Account with multiple signatories to the Customer's Access Profile and GABNet Banking Facility only if the Customer has submitted to the Bank an original GABNet Application Form executed by all signatories to the said Account confirming that the Bank is authorised to act on all request or instructions. It shall be the sole responsibility of the Customer to ensure that no unauthorised persons have access to the said Account.
- (xi) The Bank shall be entitled and authorised to debit the Account with the amounts of the transactions effected via the GABNet Banking Facility as well as to debit the Account with the amount of any fees applicable to the GABNet Banking Facility from time to time.

(c) **Irrevocable Authority to the Bank**

- (i) The Bank is irrevocably authorised by the Customer to act on all requests or instructions and to hold the Customer liable therefore, notwithstanding that any such requests or instructions are not issued by/and or authorized by the Customer or are not in accordance with the Customer's Mandate. If the Customer requests the Bank to cancel any transaction or instruction after a request or instruction has been received by the Bank from the Customer, the Bank may in its sole and absolute discretion cancel such transaction or instruction.
- (ii) The Bank shall be entitled to accept and to act upon any request or instruction, even if that request or instruction is for any reason incomplete or ambiguous if, the Bank, in its sole and absolute discretion believes that it can act upon the request or instruction the incompleteness or ambiguity of the request or instruction notwithstanding.
- (iii) The Bank shall not be obliged to accept or to act upon any request or instruction if to do so would require access to, action by, or information from the Bank's Branch when such access, action or information is required or would cause a breach of any existing mandate facility limit or agreement between the Bank and the Customer. In the event that the Bank does accept or act upon any such request or instructions, the Customer shall remain liable for and indemnify the Bank against all claims, demands, losses, costs, damages, liabilities or expenses whatsoever which the Bank may at any time incur, sustain or suffer as a result of accepting or acting upon such request or instructions.
- (iv) In the event of any conflict between any terms of any request or instruction from the Customer and the GABNet Terms and Conditions the GABNet Terms and Conditions shall prevail. The GABNet Terms and Conditions and all authorisations and other procedures arising here from supplement the Terms and Conditions and any other mandates, which apply to the Account(s).

(d) **Limits of Electronic Banking Transactions**

The Customer may transfer or effect a payment for any amount provided that such transaction in respect of the GABNet Banking Facility does not cause the balance in the Account to fall below the prescribed minimum balance of the Account unless the Customer has a separate Account duly pledged with the Bank to cover excesses that may arise in the affected Account from time to time in which event the said Accounts must be linked in the System for that purpose and the said transaction cannot cause the excess balance in the affected Account to exceed the amount pledged in the other Account.

(e) **Records of Transactions and a Customer's Rights to This Information**

- (i) All transactions in respect of the GABNet Banking Facility performed by the Customer once allowed access into the System shall be logged for the period that the Customer has access to the System. Subject to the applicable laws, the Bank shall maintain copies of all requests or instructions in applicable multi-media form. In addition, any hard copies of documentation prepared and/or held by the Bank for the purpose of effecting a transaction as per a request or instruction shall be maintained by the Bank.
- (ii) All documents and other records of whatever nature held and/or issued and/or maintained by the Bank in respect of a request or instruction and/or the GABNet Banking Facility, shall, in the absence of manifest error, be conclusive evidence of the request or instructions and/or the GABNet Banking Facility and all transactions relating thereto and shall not be subject to challenge by the Customer on any ground, whatsoever.
- (iii) The Customer shall be deemed to have unconditionally accepted and shall not subsequently challenge or object to any of the transactions in respect of a request or instruction and/or GABNet Banking Facility or any other transaction in respect of the Account contained in any statement of account issued by the Bank to the Customer in respect of a request or instruction and/or the GABNet Banking Facility unless the Customer objects to the Bank in writing in respect of the said transactions as contained in the said statement of account within fifteen (15) days from the date the said statement of account is issued or deemed to have been issued by the Bank to the Customer.

(f) **Charges**

- (i) The Customer shall pay to the Bank an initial set up fee and a monthly subscription fee for the GABNet Banking Facility in addition to transaction charges applicable to various transaction types in respect of the GABNet Banking Facility as set out in the Bank's Tariff or as advised by the Bank from time to time. The Bank may in its sole discretion revise these charges and fees after giving the Customer fourteen (14) days notice of such revision. The Bank may also in its sole discretion waive the initial set up fees and/or the monthly subscription fees or a portion thereof.
- (ii) The Customer shall pay any tax chargeable upon any sums payable by the Customer to the Bank and also any other charges or duties levied on the Customer or the Bank by any governmental or statutory body relating to the provision of the GABNet Banking Facility.
- (iii) The Bank is hereby irrevocably authorised by the Customer from time to time to debit any amounts payable by the Customer in respect to the GABNet Banking Facility as set out in the Bank's Tariff to the relevant Account. In addition to the fees payable under the GABNet Terms and Conditions, the charges and fees applicable to the Account shall also apply.

(g) **Exclusion of Liability**

- (i) Circumstances Not Within the Bank's Control: The Bank shall not be responsible or liable for any loss or damage suffered by the Customer, whether direct, indirect or consequential, including but not limited to loss of revenue, profit, business, contracts, anticipated savings or goodwill, loss of use or value of any equipment including soft-

ware, whether foreseeable or not, should the GABNet Banking Facility 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.

(ii) **Electronic Bill Payments and Transfer of Funds:**

- (a) The Bank shall not be liable for any losses or damage suffered by the Customer, whether direct, indirect or consequential, including but not limited to loss of revenue, profit, business, contracts, anticipated savings or goodwill, loss of use or value of any equipment including software, whether foreseeable or not, as a result of delay, failure and/or refusal by the Bank to act on a request or instructions in time or at all in anyone or more of the following circumstances (as the case may be):-
  1. If the Customer does not have a sufficient amount in the Account;
  2. If the Customer does not authorise a bill payment in good enough time for the payment to be made and properly credited by the payee (the Customer's counter-party) by the time it is due;
  3. If the System or the Facilities are not fully functional;
  4. If circumstances beyond the Bank's control prevent the Bank from making a payment or transfer;
  5. If the amount in the Account is subject to legal process court order or other encumbrance restricting the payment or transfer;
  6. If the Customer does not give proper or complete instructions for the payment or transfer or the Customer does not follow the procedures in these GABNet Terms and Conditions or other applicable agreement with the Bank in respect of a request for a payment or a transfer;
  7. If the Bank has reason to believe that the Customer and/or any other party is using the GABNet Banking Facility for fraudulent or illegal purposes;
  8. If a payment or a transfer request would be in respect of an amount deposited in a form or by a method that has not yet made the said amount available for withdrawal;
  9. If the payment or transfer request is in contradiction or conflict with other existing agreements in respect of the Account.
- (b) If the Bank makes a timely payment or transfer but the payee nevertheless fails to credit the Customer's payment promptly after receipt, the Bank shall not be liable for any loss or damage suffered by the Customer as a result of such failure on the part of the payee.

(iii) **Indemnity**

- (a) The Customer shall indemnify and keep the Bank harmless on a full and unqualified indemnity basis against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses whatsoever suffered sustained or incurred by the Bank in connection with or arising from circumstances set out in sub-paragraph 18(g)(i) where the particular circumstance is within the Customer's control and against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses suffered or incurred by the Bank as a consequence of any breach by the Customer of any term or condition hereof.
- (b) The Customer shall indemnify and keep the Bank harmless against any demands, claims, actions, losses, damages, costs or expenses whatsoever which the Bank may at any time incur, sustain or suffer as a result of provision of the GABNet Banking Facility unless such demands, claims, actions, losses, damages, or costs arose as a direct consequence of the gross negligence or willful misconduct of the Bank or any of its employees.
- (c) The Customer shall indemnify and keep the Bank harmless against the following:
  1. All demands, claims, actions, losses and damages of whatever nature which may be brought against the Bank or which it may suffer sustain or incur arising from the Bank's reliance on any incorrect, illegible, incomplete or inaccurate information or data contained in the Subscription or in any request or instructions.
  2. Any loss or damage that may arise from the Customer's and/or the Nominated User's use, misuse, abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs.
  3. Any unauthorised access to the Account or any breach of security or any destruction or accessing of the Customer's data or any destruction or theft of or damage to any of the Customer's Facilities.
  4. Any loss or damage occasioned by the failure by the Customer to adhere to any terms and conditions applicable to the GABNet Banking Facility 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.

(iv) If for any reason other than a reason mentioned in subparagraph 18(g)(i) the GABNet Banking Facility is interfered with or unavailable, the Bank's sole liability in respect thereof shall be to re-establish the GABNet Banking Facility as soon as reasonably practicable or, at the Bank's option, to provide to the Customer alternative banking facilities which need not be electronic facilities.

(v) Save as provided in sub-paragraph 18(g)(iv), the Bank shall not be liable to the Customer for any interference with or unavailability of the GABNet Banking Facility, howsoever caused.

(vi) Under no circumstances shall the Bank be liable to the Customer for any loss of profit or anticipated savings or for any indirect or consequential loss of whatever kind, howsoever caused, arising out of or in connection with the GABNet Banking Facility.

(vii) Except in respect of death or personal injury caused by the gross negligence or willful misconduct of the Bank, the Bank shall be under no liability for any claim whatsoever in respect of these GABNet Terms and Conditions or their performance thereof or any transactions effected by the Bank in response to any request or instructions unless the Bank has received notice in writing of any such claim from the Customer as follows:

- (a) in the case of any claim relating to a transaction, within thirty (30) days from the date of the alleged transaction on which such claim is based; and
- (b) in all other cases within ninety (90) days of the date of the alleged action or inaction by the Bank on which such claim is based.

- (viii) To the extent permitted by law, the Bank:
  - (a) disclaims all warranties with respect to the System and GABNet Banking Facility, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a certain result.
  - (b) makes no warranty that the System is error free or that its use shall be uninterrupted and the Customer acknowledges and agrees that the existence of such errors shall not constitute a breach of these GABNet Terms and Conditions.

**(h) Variation**

The Bank may vary these GABNet Terms and Conditions either in whole or in part at any time. Notification of any such variation may be given to the Customer either in writing or by publication thereof by such means as the Bank may decide and any such variation shall be binding on the Customer.

**(i) Termination**

- (i) Notwithstanding anything contained in these GABNet Terms and Conditions, the GABNet Banking Facility may be terminated at any time by either the Bank or the Customer giving the other one (1) calendar month's notice, provided that in the event of any change in any law or the application thereof, or any other event which, in the judgment of the Bank, would have the effect of prejudicing the Bank should it continue with the rendering of the GABNet Banking Facility to the Customer, the Bank shall be entitled to terminate the GABNet Banking Facility at any time without notice to the Customer.
- (ii) If the Customer terminates the GABNet Banking Facility, the Bank may continue to make electronic bill payments, transfer of funds and other transactions that the Customer would have previously authorized until such time as the Bank shall have had a reasonable opportunity to act on the Customer's notice of termination.
- (iii) The termination of the GABNet Banking Facility shall not, in itself, terminate or affect the relationship of Banker and Customer between the Bank and the Customer.
- (iv) Sub-paragraphs 18(g), (j)(iii), (j)(vi) and (k) and shall survive termination of the GABNet Banking Facility.

**(j) General Provisions**

- (i) The Customer shall not assign any benefit or any rights arising hereunder without the prior written consent or confirmation from the Bank.
- (ii) No waiver by the Bank of any breach by the Customer of any of these GABNet Terms and Conditions shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Customer.
- (iii) The Customer acknowledges:
  - (a) that they have not relied upon any representation, warranty, promise, statement of opinion or other inducement made or given by or on behalf of or purportedly by or on behalf of the Bank in the GABNet Application Form; and
  - (b) that no person has or has had authority on behalf of the Bank whether before, on or after Subscription to make or give any such representation, warranty, promise, statement of opinion or other inducement to the Customer or to enter into any collateral or side agreement of any kind with the Customer in connection with the GABNet Banking Facility.
- (iv) These GABNet Terms and Conditions hereof supersede all prior agreements, arrangements and understandings between the parties and, together with the Terms & Conditions, constitute the entire agreement between the parties relating to the subject matter hereof. For the avoidance of doubt, nothing herein shall vary, discharge or in any other way affect or prejudice any security granted by the Customer or any third party in favour of the Bank in relation to any obligations of the Customer which may arise if any request or instructions from the Customer hereunder is acted upon by the Bank.
- (v) Each of the provisions of these GABNet Terms and Conditions is severable and distinct from the others. If at any time any of the GABNet Terms and Conditions hereof is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity nor enforceability of the remaining GABNet Terms and Conditions shall in any way be affected or impaired thereby.
- (vi) Any notice required to be given in writing under these GABNet Terms and Conditions shall be sufficiently served if sent by registered post, stamped and properly addressed:
  - (a) to the manager of the relevant Bank's Branch or of the Bank at the postal address of the Bank's Branch or the Bank, if to be served on the Bank; or
  - (b) to the Customer at the address as recorded with the Bank with respect to the Account, if to be served on the Customer; and shall be deemed to have been served five (5) Business Days after posting.

**(k) Confidentiality and Disclosure**

The Customer undertakes to maintain strict confidentiality of their GABNET Banking Facility PIN and any other information and materials of any nature supplied to them by the Bank in relation to the GABNet Banking Facility.

**(l) Intellectual Property Rights**

- (i) 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.
- (ii) 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.

**19. COMPLAINTS**

- (a) The Bank may require that any complaint made by the Customer in relation to the Account be made in writing.
- (b) Once a complaint has been received by the Bank, the Bank shall:
  - (i) provide the Customer with a prompt written acknowledgement (at least within seven (7) days of receipt) that it has received the complaint and is dealing with it and where a complaint which was submitted orally is not resolved within forty eight (48) hours, the Bank shall confirm to the Customer in writing, through electronic means or through

other means agreeable to the Customer of the existence of the complaint and that it is still pending resolution by the Bank;

- (ii) investigate the complaint competently, promptly and impartially;
- (iii) assess fairly and promptly the subject matter of the complaint, whether the complaint should be upheld and what remedial action or redress (or both) may be appropriate;
- (iv) offer any redress or remedial action which is appropriate;
- (v) explain to the Customer, in a way that is fair, clear and not misleading and in a language the Customer understands the Bank's assessment of the complaint, its decision on it, and any offer of remedial action or redress; and
- (vi) comply promptly with any offer of remedial action or redress which the Customer accepts.

**20. LIABILITY**

- (a) Without prejudice to any other provisions in these Terms and Conditions, the Bank shall not be liable to the Customer:
  - (i) for any loss of profit or opportunity or any consequential loss or damage to the Customer's reputation;
  - (ii) or to any third party for making payment on the Customer's behalf or acting upon any written instructions presumed to be issued by the Customer even negligently, where the signature or content of the written instruction has been forged if the Customer has facilitated such forgery and/or if there has been a previous forgery of the Customer's Cheque or note of instruction to which the Customer has not previously objected to and/or if the Bank has exercised due care and acted in good faith in making such payment;
  - (iii) for any act or omission including any breach of its obligations under these Terms and Conditions caused by circumstances beyond the Bank's reasonable control including but not limited to fire, strike, insurrection or riot embargo, terrorist or any enemy action, theft or burglary, delays in transportation or the requirement or regulations of any civil or military authority;
  - (iv) (where the Bank is operating the Account by means of a software package or other accounting system) for the non-performance of the software which shall have occurred directly or indirectly as a result of (including without limitation) adverse power fluctuations or damage resulting from fire, water, accidents, spillage of fluids, connections to improper power supplies, faulty or incorrect electrical wiring or connection,
- (b) Subject to these Terms and Conditions, where the Bank is found to be liable to the Customer for any loss, injury or damage resulting from any wilful or negligent delay or error in carrying out the Customer's clear and unequivocal instructions, the Bank's liability shall be the lower of:
  - (i) the amount of such loss, injury or damage; or
  - (ii) the amount of any interest or profit (as the case may be) not received, or any interest or profit (as the case may be) that the Customer has to pay as a result of such failure, delay or error.

**21. 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.

**22. COMMUNICATION**

- (a) 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) if delivered personally, at the date and time of delivery;
  - (ii) if sent by post, on the fourth day from the date of posting;
    - (iii) if sent by airmail, on the seventh day days from the date of posting;
    - (iv) if sent by telex, when the proper answerback is received;
    - (v) if sent by SWIFT, when the acknowledged SWIFT message is received; and
    - (vi) if sent by facsimile, on completion of the transmission and in the case of posting it shall be sufficient to prove that the letter containing the communication was properly stamped and addressed notwithstanding that it be undelivered or returned undelivered.
- (b) The Customer shall have no claim against the Bank for damages resulting from loss, delay, misunderstanding, mutilation, duplication, or any other irregularity due to the transmission of any communication whether to or from the Customer, the Bank or any third party, by delivery, post, fax, telegraph, telephone, telex or any other form of cable communication.

**23. INDULGENCES**

- (a) Any concession which may be granted to the Customer by the Bank shall not affect the Customer's obligations to the Bank or the Bank's rights as against the Customer.
- (b) If the Bank does not at any time exercise the full implementation thereof of any clause or obligation set out in these Terms and Conditions, or if the Bank delays the implementation thereof, the same shall not be considered to be a waiver of its right or abandonment of the full implementation thereof at a subsequent time.

**24. ASSIGNMENT**

The Bank shall have a full and unfettered right to assign and/or transfer all or any of its rights, benefits and obligations under these Terms and Conditions and/or under any Special Terms and Conditions, to any person at any time without notice to the Customer.

**25. CLOSING ACCOUNTS**

- (a) Without prejudice to other provisions in these Terms and Conditions dealing with Accounts classified as "inoperative" or "dormant", the Bank shall not close an Account without giving the Customer reasonable notice of not less than fourteen (14) days except:
  - (i) where the Account is being used for illegal activity; or
  - (ii) pursuant to a court order.
- (b) In the Bank's notice to the Customer of its intention to close the Account, the Bank shall inform the Customer of the reasons why the Account will be closed by the Bank.
- (c) Where the Customer can take steps to prevent the Account from being closed, the Customer shall be given sufficient time to take such steps as may be necessary to keep the Account running.
- (d) Where the Bank closes an Account, the Bank's responsibility shall end by issuing a cheque for the balance available on the Account and sending it to the Customer's mail at the Customer's address last communicated by the Customer. The Customer shall repay any amounts due to the Bank upon receiving the Bank's advice of its intention to close the indebted Account.
- (e) Where it is impossible to trace the Customer the funds shall be dealt with by the Bank as may be prescribed by law.

- (f) The funds in an Account closed pursuant to a court order may only be dealt with as the court may direct.

## 26. OTHER GENERAL CONDITIONS

- (a) The Bank shall at all times operate the Account in accordance with the rulings and guidance given by the Bank's Shari'ah Supervisory Board. The Bank and Customer both agree to be bound by the rules and guidance of the Shari'ah Supervisory Board with respect to all matters relating to the interpretation and applications of the rules of Shari'ah to the Account.
- (b) All amounts held in all Accounts are held in strict conformity with the rules of Shari'ah as determined by the Bank's Shari'ah Supervisory board.
- (c) Unlike conventional interest based bank accounts, it is hereby agreed by the Customer and the Bank that the Bank shall not pay interest on the Account nor shall the Bank use the Customer's deposits for prohibited based lending. The Bank may however use the deposits in the Account for Shari'ah compliant purposes but always in accordance with the requirements of the Laws in Kenya.
- (d) In case of the corporate Customer being wound up or liquidated, its Account shall be frozen and no amounts in its name with the Bank shall be released unless a formal order by a competent court is produced and availed to the Bank to this effect, and the Bank shall only be responsible therefor from the date on which it has been notified about the winding up or liquidation.
- (e) In the case of the death of a Customer's sole proprietor, the Customer's Account shall be frozen and no amounts in the Customer's name with the Bank shall be released to that sole proprietor's personal representatives or heirs or their attorneys unless a formal order by a competent court is produced and availed to the Bank to this effect, and the Bank shall only be responsible therefor from the date on which it has been notified about the death.
- (f) The Customer shall be responsible for paying the *zakat* due on the Customer's funds unless the Customer authorises the Bank in writing to pay it on the Customer's behalf.
- (i) The Bank has the right to destroy the Chequebooks/ATM Cards/PIN mailers (as the case may be) if they have not been collected by the Customer within a maximum of three (3) months from the date of issuance thereof. The Customer shall submit a new application form and pay the relevant charges for re-issuance of any of these items in accordance with the Bank's Tariff.
- (ii) The Bank shall at any time have the right to amend these Terms and Conditions from time to time and the Bank shall notify the Customer of such amendments through a general notice to be displayed at the Bank's Branches and the Customer shall thereafter be bound by such amendments to the Terms and Conditions. If the Bank does not receive an objection from the Customer within fifteen (15) days, then the Customer shall be considered to have accepted such amendments.
- (iii) The Bank's records and documents shall be considered as evidence of the correctness of the Customer's balance. If, however, the contrary is claimed, then the burden of proof shall lie with the Customer.

The deposit percentage that the Bank shall invest in an unrestricted Mudaraba basis in the Mudaraba Pool shall be subject to change as to be fixed by the Bank from time to time and will be notified at the Bank's head office and the Bank's Branches.

## 27. REPRESENTATIONS AND WARRANTIES

- (a) Except as specifically provided herein and to the fullest extent permitted by law, the Bank makes no and expressly excludes all and any warranties, representations, guarantees or endorsements, whether express or implied, oral or written, including without limitation to warranties for merchantability, fitness for a particular purpose, accuracy, quality, adequacy, security, availability, reliability, timeliness and/or completeness of any product, service, information, content or any other (including third party products, services, information and content) contained in these Terms and Conditions or performance, use and operation of any of the foregoing.
- (b) The Customer agrees that the Customer has placed no reliance on any representation, warranty or guarantee made by the Bank save and except for those representations, warranties or guarantees which have been expressly stated under these Terms and Conditions. Any representations, whether written or oral, given by any officer or representative of the Bank shall be void and have no legal effect whatsoever.

## 28. CONFIDENTIALITY AND DISCLOSURE

- (a) Without prejudice to the foregoing sub-paragraph 16(c), the Customer undertakes to maintain strict confidentiality of his/her PIN Code(s) and any other information and materials of any nature supplied to him/her by the Bank in relation to services provided by the Bank.
- (b) The Bank may not without the Customer's prior consent, disclose any information about the Customer or any other person relating to the Account, to any other third party than in the following circumstances:
- (i) to the Bank's agents, associates or subsidiary companies for the purpose of lending and/or with the aim of developing new products and improving services and benefits to its customers with the understanding that the information will be kept confidential;
- (ii) anyone to whom the Bank may transfer its rights to under this Agreement;
- (iii) where the Bank is legally compelled to or it is in the public's interest to disclose such information; or
- (iv) to protect the Bank's interests and its customers and this may include the use of credit scoring and rating and/or the release of information to reference agencies or duly enacted credit reference bureaus.
- (c) The Customer hereby consents to the Bank disclosing any information regarding an Account that the Bank may be required to disclose under the Foreign Account Tax Compliance Act of the United States of America.
- (d) The Customer hereby gives the Bank consent for the disclosure of information as provided for in these Terms and Conditions.

## 29. DISCLAIMER

The bank disclaims liability for any funds or assets deposited by the Customer which are subsequently found to have derived from illegal source or activities. The Customer confirms that the funds or assets deposited with the Bank are not derived from any illegal source or activities.

## 30. APPLICABLE LAWS AND JURISDICTION

These Terms and Conditions shall be governed by and shall be construed in accordance with the Laws of the Republic of Kenya. The Bank and the Customer each hereby agree to submit to the non-exclusive jurisdiction of the courts of Kenya in connection with any legal action suit or proceedings arising out of or relating to these Terms and Conditions.

## Second- Special Terms and Conditions

### NOTE: If you are only opening a:

- (a) Current Account- refer to section (1) below and disregard section (2);  
(b) Investment Time Deposit Account - refer to section (2) below only and disregard sections ).

### 1. Current Account

- (a) The credit balance in the Current Account is a Qard to the Bank on which no profit or other form of return is payable.
- (b) The Bank undertakes to pay the credit balance in full subject to the Customer's compliance with these Terms and Conditions.
- (c) The Bank may invest all amounts outstanding in the Current Account in such manner as the Bank, in its absolute discretion, deems fit and no returns of whatsoever nature (including profit) is paid out on the Current Account.
- (d) The Current Account shall be subject to the minimum balance requirements prescribed by the Bank from time to time and advised to the Customer and may be operated in such denominations approved by the Bank from time to time.
- (e) Withdrawals from Current Accounts shall be made through cheques issued by the Bank, written instructions or an ATM Card as provided for in paragraph 5 of the general Terms and Conditions. Deposits in the Account may be accepted in all the Bank's Branches by cash, cheques or through the Bank's ATM or cash deposit machines as provided for in paragraph 5 of the general Terms and Conditions.
- (f) Transfers between Accounts may be performed.
- (g) The Bank shall have the right to refuse to pay any payment orders or cheques written on forms other than the Bank's forms without any responsibility whatsoever on the part of the Bank.

### 2. Investment Time Deposit Account

- (a) The Customer shall enter into a Mudaraba on the terms and conditions stipulated in the Mudaraba agreement to be provided if the Customer wishes to open an Investment Time Deposit Account with the Bank.
- (b) The Customer as the owner of the Mudaraba Funds or Rab-al-Maal authorises the Bank (being the Mudarib or fund manager) to invest the Mudaraba Funds in the Investment Time Deposit Account ("ITDA Deposit") according to the principles of Islamic Shari'ah in such manner as the Bank, in its absolute discretion, deems fit.
- (c) The ITDA Deposits maintained by the Customer shall be invested by the Bank in the Mudaraba Pool together with funds from the Bank's equity and other depositors and shall be managed and invested by the Bank in the Mudaraba Assets on an unrestricted (or restricted, if applicable) basis in accordance with the principles of Shari'ah.
- (d) The profits ("ITDA Mudaraba Profits") realized as a result of the Bank's investment activity under sub-paragraph 2(c) above of these Special Terms and Conditions, shall be allocated between the Bank and the Customer, as follows:
- (i) in consideration of the services provided by the Bank hereunder, the Bank shall be entitled to a predetermined percentage share of the Mudaraba Profits, for the corresponding Investment Period (the "ITDA Mudarib's Profit Share");
- (ii) the remaining ITDA Mudaraba Profit, after deduction of the ITDA Mudarib's Profit Share (the "ITDA Profit Amount"), shall be allocated amongst the depositors by reference to the Weightages in accordance with sub-paragraph 2(d)(iii) of these Special Terms and Conditions. The Customer's share of the profit will be determined in accordance with the per annum rate (the "ITDA Profit Rate") applicable to the relevant category to which the Customer's ITDA Deposits belongs and shall be paid on the relevant Profit Payment Date; and
- (iii) the ITDA Mudarib's Profit Share and the Weightages applicable to each category shall be determined by the Bank. The Weightages shall be posted on the Bank's website on monthly basis. The Bank reserves the right to vary the ITDA Mudarib's Profit Share and/or the Weightages from time to time in accordance with the prevailing regulations and/or directives applicable to it and such variation shall be deemed to be effective upon the commencement of the Profit Calculation Period immediately succeeding such variation. The Customer shall be deemed to have accepted such variation if the Bank does not receive any notice to the contrary within seven (7) days from the issuance of such notice.
- (iv) The ITDA Profit Amount for an Investment Time Deposit Account shall be calculated on the monthly average balance of the Investment Time Deposit Account for the relevant Investment Period and the Profit Calculation Period is deemed to be one (1) calendar month unless the Customer withdraws whole or part or part of the balance whenever the Customer desires.
- (e) The Bank as Mudarib shall bear any loss arising from its operations as per the Laws of Kenya, notwithstanding the fact that it is contrary to Shari'ah.
- (f) The Customer shall be considered to have agreed to the renewal of the deposit automatically on maturity subject to the prevailing rate, unless the Customer instructed otherwise before the expiry of the investment by giving four (4) Business Days notice prior to maturity of the deposit.
- (g) The Customer may not draw the whole or a part of his/her deposit before its expiry. In special cases the management of the Bank may allow the Customer to draw the whole or a part of the deposit and the management has the right to decide on how the deposit shall be treated in such case as per Shari'ah guidelines.
- (h) Except for amounts held in Investment Term Deposit Accounts in Kenya Shillings, the Bank is not bound to repay deposits in the same currency deposited, but undertakes payment by issuing a demand draft or transfer of the same currency deposited at the exchange rate prevailing on the day of repayment of the said deposit.
- (i) The minimum limit for accepting the Investment Term Deposit equivalent to that in other currencies shall be defined by the Bank from time to time.
- (j) The Customer shall select a fixed Investment Period (or such other periods approved by the Bank), provided that the minimum term of the Investment Term Deposit Account will be one (1) calendar month or as otherwise determined by the Bank from time to time by .
- (k) The Bank shall issue acknowledgement of receipt/ renewal of the Investment Term Deposit Account to the Customer stating the amount deposited in the Customer's favour.
- (l) The Bank shall establish a stabilization fund, if required. Such fund shall be funded, held and disbursed only upon instruction and prior approval of the Shari'ah Supervisory Board of the Bank.
- (m) The Bank being a member of the Deposit Protection Fund is obliged to protect Customer deposits under the provisions of section 39 of the Banking Act (Chapter 488 of the Laws of Kenya).