



Preamble

The Facility is based on the Shari'ah principle of Tawarruq and is used subject to the following Terms and Conditions:

1. Definitions

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

"Agent" means your Agent. the Bank's Information Technology Department shall be your Agent;

"Bank" means Gulf African Bank Limited, a body corporate carrying on banking business under the regulation of the Central Bank of Kenya and of Post Office Box number 43683-00100 Nairobi in the Republic of Kenya and includes subsidiaries of the Bank and its successors and assigns as may be from time to time;

"Commodity" means any Shari'ah compliant commodity which the Bank shall acquire for sale to the Customer and "Commodities" shall be construed accordingly;

"Commodity Broker" means a broker who buys and sells Commodities;

"Credit Reference Bureau" means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013, as amended, revised or promulgated from time to time, to inter alia, collect and facilitate the sharing of customer credit information;

"Customer" means the person in whose name the Facility with the Bank is held;

"Customer Care Centre" means Safaricom's Customer Care service, any Safaricom Retail Shops or such other retail outlet or outlets as may be notified to the Customer from time to time;

"Equipment" includes your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access the Network and to facilitate use and operation of the Facility;

"Facility" means the Sharia compliant Murabaha financing facility advanced by the Bank to you through the M-PESA System;

"Facility Amount" means the amount approved by the Bank pursuant to your request with for a Facility from the Bank;

"Facility Menu" means the Facility Menu on the M-Pesa System;

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

"M-Pesa Account" means your mobile money store of value, being the record by Safaricom of the amount of funds from time to time held by you in the M-Pesa System;

"M-Pesa Information" means information relating to your usage of M-Pesa Services;

"M-Pesa Service" means the money transfer and payments service provided by Safaricom through the M-Pesa System;

"M-Pesa Subscriber" means any person registered to use the M-Pesa System to send or receive money or make payments;

"M-Pesa System" means the system operated by Safaricom in Kenya for the provision of the M-Pesa Service using the Network;

"M-Pesa PIN" means your personal identification number being the secret code used to gain access and operate the M-Pesa System and the Facility Menu;

"Murabaha" means the Shariah compliant sale of Commodities by the Bank to the Customer with a disclosed profit;

"Network" means the mobile cellular network operated by Safaricom;

"Notification of Sale" means the notification of sale of Commodities issued by the Bank to the Commodity Broker that the Bank has sold Commodities;

"Offer to Sell" means the offer by the Bank to sell the Commodities to the Customer;

"Outsourced Services" means those services that are offered by the Bank to you through a third party service provider;

"Personal Information" includes your mobile telephone number, name, date of birth, national identity card number, passport number and any such similar information from which you can be identified;

"Request" means a request or instruction received by the Bank from you or purportedly from you through the Network and the System and upon which the Bank is authorized to act;

"Safaricom" means Safaricom Plc, a limited liability company incorporated and registered in Kenya whose registered office is at Safaricom House, Waiyaki Way, Nairobi P.O. Box number 66827 Westlands - 00800, Nairobi and which company is licensed under the Kenya Information and Communications Act Chapter 411A of the Laws of Kenya to operate network facilities and further authorized by the Central Bank of Kenya to operate the M-PESA Service;

"Services" shall include any form of financial services or products that the Bank may offer you pursuant to these Terms and Conditions or that you may subscribe to and "Service" shall be construed accordingly;

"Shari'ah" is a reference to the general body of Islamic law and regulations as interpreted by the Bank's Shari'ah Supervisory Board and, where relevant, by reference to any applicable standards published by Accounting and Auditing Organisation for Islamic Financial Institutions (AAOIFI);

"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;

"SIM Card" means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the Network and to use the M-Pesa System;

"SMS" means a short message service consisting of a text message transmitted from one mobile phone to another;

"System" means the Bank's electronic banking and communications software enabling you to communicate with the Bank for purposes of the Services. The System and the Services will for the purpose of these Terms and Conditions be accessed through the M-Pesa System;

"Tawarruq" means the process pursuant to which the Bank purchases a commodity from a vendor for purposes of re-sale on Murabaha basis to the Customer who subsequently sells it to a third party;

"Terms and Conditions" refer to these Terms and Conditions;

1.2. Unless the context otherwise requires in these Terms and Conditions:

- (a) References to writing shall include any mode of reproducing words in a legible and non-transitory form;
- (b) references to indemnifying any person against any

circumstances include indemnifying and keeping him harmless from all actions claims and proceedings from time to time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;

- (c) references to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation or other regulations made under the relevant statute;
- (d) references to and the definition of any document (including these Terms and Conditions) shall be deemed to be a reference to such document as it may from time to time be amended modified or replaced (in whole or in part) but disregarding any amendment variation modification or replacement taking place in breach of such document;
- (e) references to a "person" shall include a natural person body corporate or incorporate firm corporation state administrative and governmental body whether being a separate legal entity or not trust or joint venture;
- (f) references to the masculine includes a reference to the feminine and neuter gender and vice versa;
- (g) references to "we", "our" or "us" means the Bank;
- (h) references to "you" and "your" means the Customer and includes the personal representatives of the Customer;
- (i) words importing the singular shall include the plural and vice versa;
- (j) the word "tax" shall be construed so as to include any tax levy impost assessment duty or other charge of a similar nature (including without limitation value added tax stamp duty and any penalty or interest payable in connection with any failure to pay or any delay in paying the same) and "taxation" shall be construed accordingly and the expression "competent taxing authority" means in respect of any state or administrative division thereof any governmental authority monetary agency or central bank having power to collect or levy tax; (i) and the expression "month" means a calendar month.

2. Acceptance of the Terms and Conditions

- 2.1. Before applying to register for a Facility, you should carefully read and understand these Terms and Conditions which will govern the use and operation of the Facility.
- 2.2. If you do not agree to these Terms and Conditions, please click "Decline" on the Facility Menu.
- 2.3. Upon clicking on the "Accept" option on the Facility Menu, you will be deemed to have:
 - 2.3.1. read, understood, accepted and agreed to abide by and be bound by these Terms and Conditions;
 - 2.3.2. appointed the Bank's Information Technology Department as your Agent for purposes of undertaking the Tawarruq transactions on your behalf; and
 - 2.3.3. authorized your Agent to pay the Facility Amount into your M-Pesa Account;
- 2.4. By applying for, using or continuing to use the Facility with the Bank, you agree to comply with and be bound by these Terms and Conditions for the time being and from time to time in force governing the operation of the Facility and you affirm that these Terms and Conditions herein are without prejudice to any right that the Bank may have with respect to the Facility in law or otherwise.
- 2.5. These Terms and Conditions may be amended or varied by the Bank (subject to approval by the Central Bank of Kenya) from time to time upon issuance of thirty (30) days' notice to you and the continued use of the Services associated with the Facility constitutes your agreement to be bound by the terms of any such amendment or variation.
- 2.6. You acknowledge and accept that the Bank offers the Facility only

electronically and you agree to do business with the Bank and to operate the Facility only by electronic means via the Facility Menu on the M-Pesa System. Any query and complaint you may have shall be addressed to the Bank through the Customer Care Centre. For the avoidance of doubt, you acknowledge that you will not be allowed or entitled to receive or demand the Services pertaining to the Facility at any branch or branches of the Bank unless otherwise advised by the Bank in its sole discretion. You further acknowledge and accept that the Customer Care Centre is not a branch of the Bank or the Bank's agent for purposes of conducting banking business or transactions and that it will not act as such.

3. The Facility

- 3.1. Subject to these Terms and Conditions, in order to be eligible for a Facility with the Bank, you must be:
 - 3.1.1. at least 18 years old; and
 - 3.1.2. a registered and active Safaricom user for at least six (6) months immediately preceding the date of your application.
- 3.2. The Bank shall not process a Facility 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.
- 3.3. You may apply for a Facility solely by way of an electronic application made by you using your Equipment via the Safaricom USSD and/or App on your Equipment. By doing so, you hereby agree to and authorize:
 - 3.3.1. Safaricom to share with the Bank your Personal Information held by it including but not limited to your mobile telephone number, name, , identity card or passport number which information the Bank may utilize to identify you and satisfy the requirements of 'Know Your Customer' policies applicable to the Bank;
 - 3.3.2. the Bank to request Safaricom for information relating to your use of the M-PESA Service and M-PESA System as the Bank shall require for purposes of providing you the Services ("M-PESA Information");
 - 3.3.3. the Bank to obtain and procure your Personal Information contained in the IPRS from the Government of Kenya and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to the Bank.
- 3.4. You hereby consent to the disclosure of your Personal Information and M-PESA Information to the Bank and to the use of the Personal Information and the M-PESA Information by the Bank in accordance with its Privacy Statement at <https://gulfafricanbank.com/>. You hereby further acknowledge and authorize the Bank to verify your Personal Information received by the Bank pursuant to Clause 3.3 against the information received from the Government of Kenya in your respect as contained in the IPRS.
- 3.5. You hereby acknowledge and agree that the Bank may also obtain your credit information from any duly authorised Credit Reference Bureau as well as share your credit information with any such duly authorised Credit Reference Bureau as stipulated in the Banking (Credit Reference Bureau) Regulations, 2013, as amended, revised or promulgated from time to time.
- 3.6. The Bank reserves the right to request for further information from you pertaining to your application for a Facility at any time. Failure to provide such information within the time required by the Bank may result in the Bank declining to accept your application for a Facility.
- 3.7. Acceptance by the Bank of your application for a Facility shall be done via SMS sent to the Safaricom mobile phone number associated with your M-PESA Account. You acknowledge and accept that the acceptance by the Bank of your application for a

Facility does not create any contractual relationship between you and Safaricom beyond the terms and conditions that apply to your M-PESA Account from time to time.

- 3.8. The Bank reserves the right to decline your application for a Facility or to revoke the same at any stage at the Bank's sole discretion and without assigning any reason or giving any notice thereto.
- 3.9. The Bank reserves the right to verify the authenticity and status of your M-PESA Account with Safaricom.
- 3.10. Your Facility limit will automatically be cancelled if you do not initiate any transactions on the account for a continuous period of 12 months.

4. Facility Application and Approval Process

- 4.1. Upon approval of your request for a Facility, the following shall take place:
 - 4.1.1. Firstly, the Bank shall purchase Commodities equivalent to the value of the Facility that the Bank has approved;
 - 4.1.2. Second, the Bank shall issue your Agent with an Offer to Sell requiring your Agent to purchase the Commodities on Murabaha basis on your behalf;
 - 4.1.3. Third, your Agent shall accept the Bank's Offer to Sell by completing and executing the Offer to Sell and property and risk in the Commodities will pass to you simultaneously at the time the Offer to Sell is executed and completed whereby a debtor and creditor relationship shall come into existence between you and the Bank respectively, and whereby you shall be indebted to the Bank for payment of the Facility and the Profit in consideration for the transfer and purchase of the Commodities by you from the Bank;
 - 4.1.4. Fourth, upon completion of the sale and purchase of Commodities by the Bank and your Agent, your Agent will sell the Commodities to a third party on your behalf at a price equivalent to the Facility Amount and credit the sale proceeds into your M-PESA Account.
- 4.2. Each Tawarruq transaction shall be evidenced by and be subject to these Terms and Conditions and the Offer to Sell and the Customer's Acceptance. Forms of the Agency Agreement, Offer to Sell and Notification of Sale are attached to these Terms and Conditions.
- 4.3. Your application for a Facility shall be appraised according to the applicable facility appraisal processes of the Bank. The Bank reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a Facility.
- 4.4. Subject to approval of your application for a Facility, the Bank shall determine the Facility Amount you are eligible for in its sole discretion subject to a minimum amount of Kenya Shillings One Thousand (Kshs. 1000/=) and a maximum amount of Kenya Shillings Three Hundred Thousand (Kshs. 300,000/=) or such other minimum or maximum amount as the Bank may from time to time in its sole discretion determine.
- 4.5. The Facility Amount shall be credited into your M-PESA Account.
- 4.6. You shall repay the Facility within thirty (30) calendar days of the date of disbursement of the Facility.
- 4.7. In consideration of the Bank granting you the Facility, you shall pay the Bank profit ("Profit") in accordance with the Bank's tariff. Profit will be charged on the Facility Amount on a monthly basis and shall be paid by you in arrears in addition to the Facility.
- 4.8. You shall make all payments due from you to the Bank in respect of the Facility and the Profit using the M-PESA Service and the System only unless otherwise agreed by the Bank in its discretion.
- 4.9. In the event that you do not repay the Facility in full within 30 calendar days of the date of disbursement of the Facility, the Bank shall grant you a further Facility equivalent to the principal outstanding for a period of 30 days (the "Restructured Facility").

In consideration of the Bank forbearing to demand the immediate repayment of your Facility and granting you the Restructured Facility, you shall, in addition to paying the outstanding profit on the Facility, pay to the Bank additional profit on the Restructured Facility in accordance with the Bank's tariff. Profit shall be calculated on the basis of the principal outstanding.

- 4.10. You hereby agree to pay costs, charges and expenses incurred by the Bank in obtaining or attempting to obtain payment of any amounts owed under your Facility account.
- 4.11. The Bank shall be entitled to terminate its relationship with you and call your Facility in accordance with the provisions of Clause 13 without prejudice to any of its rights accruing hereunder if you fail to repay the Facility and/or Profit or Bank charges due thereon within the agreed repayment period.
- 4.12. The Bank shall utilize funds in any other accounts opened and operated by you to offset any amounts outstanding and due from you to the Bank in respect of your Facility.
- 4.13. The Bank reserves the right to vary the terms of the Facility from time to time having regard to the prevailing rules and regulations of the Central Bank of Kenya and the policies of the Bank.

5. Your Requests

- 5.1. You hereby irrevocably authorize the Bank to act on all Requests received by the Bank from you (or purportedly from you) through the System and to hold you liable in respect thereof.
- 5.2. The Bank shall be entitled to accept and to act upon any Request, even if that Request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, the Bank believes that it can correct the incomplete or ambiguous information in the Request without any reference to you.
- 5.3. The Bank shall be deemed to have acted properly and to have fully performed all the obligations owed to you notwithstanding that the Request may have been initiated, sent or otherwise communicated in error or fraudulently, and you shall be bound by any Requests on which the Bank may act if the Bank has in good faith acted in the belief that such instructions have been sent by you.
- 5.4. The Bank may, in its absolute discretion, decline to act on or in accordance with the whole or any part of your Request pending further enquiry or further confirmation (whether written or otherwise) from you. The Bank shall not be under any obligation to decline in any case, and shall in no event or circumstance be liable for not declining.
- 5.5. You agree to indemnify the Bank against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to the Bank having acted or failed to act in accordance with the whole or any part of your Requests.
- 5.6. You acknowledge that a Request once acted upon by the Bank cannot be cancelled by you.

6. Set Off and Lien

- 6.1. The Bank shall have an absolute right to combine or merge any of your bank accounts for the purpose of setting-off any debit balance against available credit balance or to reimburse itself for recovery of monies for which you are liable. The Bank shall have a general lien over your items 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 you in favour of the Bank to secure the repayment of such monies.
- 6.2. The Bank shall hold your funds in any other accounts held with the Bank in your name personally or jointly as collateral and security for any amounts outstanding and due from you to the Bank in respect of your Facility. You hereby agree and confirm that the Bank is entitled in its discretion to prevent or restrict you from withdrawing in whole or in part the funds in any such bank accounts for so long as and to the extent of the amount

outstanding in respect of your Facility without the Bank giving any notice to you and/or without incurring any liability to you whatsoever in that connection.

- 6.3. You agree that the Bank may at any time and without giving any prior notice, freeze, set-off or transfer any amounts held in any of your accounts held with the Bank in your name personally or jointly with others for the purpose of settling any liability you may have with the Bank.
- 6.4. You hereby constitute us as your attorney for the purposes of any transaction, such attorney will be held on your behalf in relation to your assets for purposes of discharging any debt owing to the Bank.

7. Statements

- 7.1. You may request for a statement or activity report in respect of your Facility from the Bank using your Equipment ("Facility Statement").
- 7.2. You will be notified of all transactions in respect to your Facility by way of SMS which will be free of charge.

8. Disclosure

- 8.1. You hereby expressly consent and authorize the Bank to disclose receive record process or utilize your Personal Information or information or data relating to your Facility and any details of your use of the Services:
 - 8.1.1. to and from the Bank, the Bank's service providers, dealers, agents or any other company that may be or become the Bank's subsidiary or holding company for reasonable commercial purposes relating to the Services;
 - 8.1.2. to a Credit Reference Bureau;
 - 8.1.3. to the Bank's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;
 - 8.1.4. to Safaricom in connection with the M-PESA Service and the Services;
 - 8.1.5. for reasonable commercial purposes connected to your use of the Services; such as marketing and research related activities; and
 - 8.1.6. in business practices including but not limited to quality control, training and ensuring effective systems operations.
- 8.2. You hereby expressly consent and authorize the Bank to disclose, respond, advise exchange and communicate the details or information pertaining to your Facility to third parties involved in the administration of your Facility, updating of databases, or provision of user support.
- 8.3. You hereby expressly consent and authorize the Bank to disclose any information relating to your Facility to any local or international law enforcement, regulatory or governmental agency so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as the Bank may deem necessary.

9. Your Equipment and Responsibilities

- 9.1. It is your sole responsibility to familiarize yourself with the Facility's operating procedures as will be provided by the Bank upon your registration thereto. The Bank will not be liable for any losses incurred as a result of your errors either of commission and/or omission.
- 9.2. You must notify the Bank immediately of theft or loss of your Equipment or SIM Card, any unauthorized access to the M-Pesa Service or upon your discontinuation of the telephony service with Safaricom. The Bank shall not be held liable for any losses resulting from the loss of the SIM card and/or Equipment howsoever caused.
- 9.3. The Bank reserves the right to enhance the Facility in order to

improve your experience.. It is your responsibility to keep updated with these enhancements. The Bank will make all reasonable efforts to notify you of any changes or updates via SMS to the Safaricom number associated with your M-PESA Account or other reasonable means which include notices at the Bank's branches and/or the Bank's website.

- 9.4. The Bank shall not be held liable for the quality of service offered by Safaricom and gives no warranty with respect to the quality of service by Safaricom.
- 9.5. You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the System and the Services.
- 9.6. You shall be responsible for ensuring the proper performance of your Equipment. The Bank shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall the Bank be responsible for any virus or related problems that may be associated with the use of the System, the Services and the Equipment. You shall be responsible for charges due to Safaricom and the Bank shall not be responsible for losses or delays caused by Safaricom.
- 9.7. You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by the Bank concerning the use of the System and Services.
- 9.8. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your M-Pesa PIN secret and secure. You shall ensure that your M-Pesa PIN does not become known or come into the possession of any unauthorized person. The Bank shall not be liable for any disclosure of your M-Pesa PIN to any third party and you hereby agree to indemnify and hold the Bank harmless from any losses resulting from any M-Pesa PIN disclosure.
- 9.9. You shall at all times follow the security procedures notified to you by the Bank from time to time or such other procedures as may be applicable to the Services from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in you incurring losses. In particular, you shall ensure that the Services are not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorized to do so.
- 9.10. You shall not at any time operate or use the Services in any manner that may be prejudicial to the Bank or which is not in accordance with the principles upon which the Bank operates.

10. Exclusion of Liability

- 10.1. Without prejudice to any other provisions in these Terms and Conditions, the Bank shall not be liable to you:
 - 10.1.1. for any loss of profit or opportunity or any consequential loss or damage to your reputation;
 - 10.1.2. 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;
 - 10.1.3. for any loss suffered by you should the Services be interfered with or be unavailable by reason of (a) the failure of any of your Equipment, or (b) any other circumstances whatsoever not within the Bank's control including without limitation, force majeure or error, interruption, delay or non-availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.
- 10.2. The Bank will not be liable for any losses or damage suffered by you as a result of or in connection with:
 - 10.2.1. unavailability of sufficient funds in your M-PESA

- Account;
- 10.2.2. failure, malfunction, interruption or unavailability of the System, your Equipment, the Network, or the M-Pesa Services; or
- 10.3.3. Your failure to comply with these Terms and Conditions and any document or information provided by the Bank concerning the use of the System and the Services.
- 10.3. If for any reason other than a reason mentioned in clause 10.1 or 10.2, the Services are interfered with or unavailable, the Bank's sole liability under these Terms and Conditions in respect thereof shall be to re-establish the Services as soon as reasonably practicable.
- 10.4. Under no circumstances shall the Bank be liable to you for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Services even where the possibility of such loss or damage is notified to the Bank.
- 10.5. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.
- 10.6. Subject to these Terms and Conditions, where the Bank is found to be liable to you for any loss, injury or damage resulting from any wilful or negligent delay or error in carrying out your clear and unequivocal instructions or Requests, the Bank's liability shall be the lower of:
- 10.7. the amount of such loss, injury or damage; or
- 10.8. the amount of profit (as the case may be) not received, or any penalty or profit (as the case may be) that you have to pay as a result of such failure, delay or error.
- 10.9. Subject to these Terms and Conditions, the provision of Outsourced Services by the Bank shall not diminish any legal liability on the part of the Bank.

11. Indemnity

- 11.1. You 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 clause 10.1 where the particular circumstance is within your 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 you of any term or condition hereof.
- 11.2. You 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 Facility unless such demands, claims, actions, losses, damages, or costs arose as a direct consequence of the gross negligence or wilful misconduct of the Bank or any of its employees.
- 11.3. You shall indemnify and keep the Bank harmless against the following:
- 11.3.1. 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 a Request.
- 11.3.2. Any loss or damage that may arise from your use, misuse, abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs.
- 11.3.3. Any unauthorised access to the Facility or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment not attributable

- to the Bank.
- 11.3.4. Any loss or damage occasioned by the failure by you to adhere to any terms and conditions applicable to the Facility and/or by supplying 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.
- 11.3.5. If for any reason other than a reason mentioned in clause 10.1 the System is interfered with or unavailable, the Bank's sole liability in respect thereof shall be to re-establish the System as soon as reasonably practicable or, at the Bank's option, to provide to you alternative banking facilities which need not be electronic facilities.
- 11.3.6. Save as provided in clause 11.3.5, the Bank shall not be liable to you for any interference with or unavailability of the System, howsoever caused.
- 11.3.7. Except in respect of death or personal injury caused by the gross negligence or wilful misconduct of the Bank, the Bank shall be under no liability for any claim whatsoever in respect of these 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 you as follows:
- 11.3.7.1. 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
- 11.3.7.1. 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.
- 11.3.8. To the extent permitted by law, the Bank:
- 11.3.8.1. disclaims all warranties with respect to the System 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;
- 11.3.8.2. makes no warranty that the System is error free or that its use shall be uninterrupted and you acknowledge and agree that the existence of such errors shall not constitute a breach of these Terms and Conditions.

12. Intellectual Property Rights

You acknowledge that the intellectual property rights in the System (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that the Bank provides to you through the System or otherwise are vested either in the Bank or in other persons from whom the Bank has a right to use and to sublicense the System and/or the said documentation. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of the Bank.

13. Variation and Termination of Relationship

- 13.1. The Bank may at any time, upon thirty (30) days' notice to you, terminate or vary its relationship with you and cancel your Facility limit and in particular but without prejudice to the

generality of the foregoing the Bank may require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine.

- 13.2. Without prejudice to the Bank's rights under clause 13.1, the Bank may at its sole discretion suspend or cancel your Facility:
- 13.2.1. if you use the Facility for unauthorized purposes or where the Bank detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
 - 13.2.2. if your M-PESA Account or agreement with Safaricom is terminated for whatever reason;
 - 13.2.3. if the Bank is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
 - 13.2.4. if the Bank reasonably suspects or believes that you are in breach of these Terms and Conditions (including non-payment of any Facility amount due from you where applicable);
 - 13.2.5. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
 - 13.2.6. to facilitate update or upgrade the contents or functionality of the Services from time to time;
 - 13.2.7. where your Facility becomes inactive; and
 - 13.2.8. if the Bank decides to suspend or cease the provision of the Services for commercial reasons or for any other reason as it may determine in its absolute discretion.

14. Notices

- 14.1. The Bank may send information concerning your Facility via SMS to the Safaricom number associated with your M-PESA Account.
- 14.2. You acknowledge that you have no claim against the Bank for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to your Facility.

15. Complaints and Dispute Resolution

- 15.1. You may contact the Customer Care Center to report any disputes, claims or Facility discrepancies.
- 15.2. Once a complaint has been received by the Customer Care Centre, the Customer Care Centre shall:
 - 15.2.1. provide you 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 Customer Care Centre shall confirm to you in writing, through electronic means or through other means agreeable to you of the existence of the complaint and that it is still pending resolution by the Bank;
 - 15.2.2. investigate the complaint competently, promptly and impartially;
 - 15.2.3. 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;
 - 15.2.4. offer any redress or remedial action which is appropriate;
 - 15.2.5. explain to you, in a way that is fair, clear and not misleading and in a language you understand the Customer Care Centre's assessment of the complaint, its decision on it, and any offer of remedial action or redress; and
 - 15.2.6. comply promptly with any offer of remedial action or redress which you accept.
- 15.3. Any dispute arising out of or in connection with these Terms and Conditions that is not resolved by Customer Care Centre

representatives shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.

- 15.4. To the extent permissible by law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.

16. Applicable Laws and Jurisdiction

- 16.1. 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 you 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.
- 16.2. Insofar as you wish or are required for any reason to enter into only transactions which comply or are consistent with the principles of the Shari'ah (Shari'ah compliant or Shari'ah compliance), you confirm that you have made your own investigation into and satisfied yourself as to the Shari'ah compliance of these Terms and Conditions.
- 16.3. You confirm that you have not relied on the Bank or any written declaration, opinion or other documents prepared by, on behalf or at the request of the Bank for the purposes of a determination or confirmation that these Terms and Conditions are Shari'ah compliant.
- 16.4. Notwithstanding the provisions of clause 16.1, each of the parties recognises that the principle of payment of interest is repugnant to Shari'ah and accordingly, to the extent that Kenyan law would but for the provisions of this clause impose, whether by contract or statute, any obligation to pay interest, the parties hereby irrevocably and unconditionally expressly waive and reject any entitlement to recover interest from each other.

17. Financial Crime, International Sanctions, and Prohibited Business Activity

As a regulated Bank, we operate controls and safeguards relating to international sanctions, the detection and prevention of financial crime, and prohibited business activity both within and outside Kenya which may delay or prevent us from providing our products and services to you, or require us to terminate our business relationship and our agreements for particular products and services (subject to any restrictions imposed by law) without prior notice to you.

You agree to provide information and documents about yourself and about your banking transactions reasonably required to assist us in operating the controls and safeguards.

18. Variation

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

19. General Provisions

- 19.1. These Terms and Conditions (as may be amended from time to time) form a legally binding agreement on you and your personal successors.
- 19.2. These Terms and Conditions and any rights or liabilities accruing hereunder may not be assigned by you to any other person.
- 19.3. The Bank may vary or amend these Terms and Conditions and the Profit at any time upon approval by the Central Bank of

- Kenya and upon giving thirty (30) days' notice to you. Any such notice of variations or amendments may be published in posters or pamphlets available at Safaricom's places of business, their Agents' outlets, Bank branches, in the daily newspapers, on the Bank and/or Safaricom's websites and/or by any other means as determined by the Bank and any such variations and amendments shall take effect after expiry of the thirty (30) days' notice period.
- 19.4. No failure or delay by either yourself or the Bank in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.
 - 19.5. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
 - 19.6. If any provision of these Terms and Conditions shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.
 - 19.7. Any addition or alteration to these Terms and Conditions of which notice has been given to you as provided in clause 19.3 shall be fully binding upon you as if the same were contained in these Terms and Conditions.
 - 19.8. You shall not assign any benefit or any rights arising hereunder without the prior written consent or confirmation from the Bank.
 - 19.9. No waiver by the Bank of any breach by you of any of these 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 you.
 - 19.10. You acknowledge that:
 - 19.10.1. you 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; and
 - 19.10.2. no person has or has had authority on behalf of the Bank whether before, on or after your application for a Facility to make or give any such representation, warranty, promise, statement of opinion or other inducement to you or to enter into any collateral or side agreement of any kind with you in connection with the Services.
 - 19.11. these Terms and Conditions hereof supersede all prior agreements, arrangements and understandings between the parties and 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 you or any third party in favour of the Bank in relation to any obligations which may arise if any Request or instructions from you hereunder is acted upon by the Bank.
 - 19.12. Each of the provisions of these Terms and Conditions is severable and distinct from the others. If at any time any of the Terms and Conditions hereof is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity nor enforceability of the remaining Terms and Conditions shall in any way be affected or impaired thereby.
 - 19.13. The Bank shall at all times operate the Facility in accordance with the rulings and guidance given by the Bank's Shari'ah Supervisory Board. The Bank and you 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 Facility.
 - 19.14. The Bank's records and documents shall be considered as evidence of the correctness of your balance. If, however, the contrary is claimed, then the burden of proof shall lie with you.

20. Appointment of Agent

- 20.1 Upon clicking on the "Accept" option on the Facility Menu, you will be deemed to have appointed the Bank's Information Technology Department as your Agent for purposes of undertaking and completing the Tawarruq transactions on your behalf.
- 20.2. You have the authority to revoke the agency at any time, at your absolute discretion, without assigning any reason whatsoever, subject to a notice in writing given at least seven (7) days prior to revocation.
- 20.3. The Agent shall act loyally and faithfully towards you and shall obey your instructions and in the absence of any such orders or instructions in relation to any particular matter to act in such manner as is most beneficial to you.
- 20.4. The Agent will conduct the duties under the agency in an orderly and businesslike manner and shall be liable for any negligence, want of skill or misconduct. The Agent shall indemnify you against any loss damage cost tax liability or expense suffered or incurred by you as a consequence of or in relation to any breach by the Agent of the Agent's duties and obligations under the agency.

21. Indulgences

- 21.1. Any concession which may be granted to you by the Bank shall not affect your obligations to the Bank or the Bank's rights as against you.
- 21.2. 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.

22. 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 to any person at any time without notice to you.

23. Representations and Warranties

- 23.1. 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.
- 23.2. You agree that you have 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.