



AGREEMENT FOR MOBILE AND ONLINE BANKING SERVICE



1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, including the Schedule, the following definitions shall have the following meanings:

“Agreement”	means this agreement for the provision of Mobile and or Online Banking Service;	“Customer”	means the Bank’s Customer whose details are set out in Part 1 of the Schedule;
“Alert”	means the customised messages sent either by short messaging service (“SMS”) / text over the Customer’s mobile phone, email, or fax or any other modes of communication;	“Customer Group”	means the Customer and where the Customer is a company, its holding company (if any) and the Customer’s respective subsidiaries from time to time;
“Bank”	means NCBA Bank Kenya PLC a limited liability company incorporated under the provisions of the Companies Act, No 17 of 2015, Laws of Kenya in the Republic of Kenya and licensed as a Bank under the Banking Act Chapter 488, Laws of Kenya having its registered office at Nairobi and care of P. O. Box 44599-00100 Nairobi and includes such Branch or Subsidiaries of the Bank as may, from time to time, be specified by the Bank to the Customer;	“Deposit Account”	means any Bank Account with a credit balance;
“Banking Day”	means a day other than a Saturday, a Sunday or a gazette public holiday in Kenya on which the counters of the Branch and/or the Bank Subsidiary (as applicable) are open for the transaction of ordinary business in Kenya;	“Electronic Banking”	means Online Banking Service or the performance of transactions over the internet through the Bank’s website;
“Branch”	means a branch or branches of the Bank which may from time to time be specified by the Bank to the Customer;	“Electronic Bill Payment”	means a service provided by the Bank that allows a Customer to send money from the Customer’s account to a creditor or vendor such as public utilities, telephone, electric water bills also including telegraphic transfers (“TT”) to be credited against a specific account;
“Bank Account”	means the Customer’s current and savings deposit account(s), current overdraft facility account (s) and term and call deposit account(s) (as the case may be) with the Bank;	“Force Majeure Events”	means circumstances and events which arise which are beyond the control of either Party and include fire, storm, tempest, lightning, earthquake, other exceptional weather conditions and effects, explosion, epidemic, natural disaster, and/ or an act of God; threat of or preparation for war (whether or not declared), invasion, act of foreign enemies, hostilities, civil war, rebellion, revolution, insurrection, terrorist or military action of whatever nature and with whatever effect, confiscation, nationalisation, the exercise of governmental powers of eminent domain or police powers or an intention to exercise such powers, any form of usurped power, or any threat of the foregoing; any form of labour dispute, lock-outs, strikes, boycott, riot, political unrest, vandalism, civil commotion and/or disorder; or political interference of any kind;
“Channel”	means all or any system, medium or channel (including telephone and facsimile), whether internet based or not, which may be established by the Bank from time to time to enable Customers to gain access and utilise banking and other services from time to time;	“MSP”	means a duly licensed mobile service provider through whom the Customer or the Bank receives the mobile services as notified by the Bank;
“Channel Services”	means the provision by the Bank to the Customer of access to one (1) or more Channels pursuant to the terms of this Agreement enabling the Customer to utilise one (1) or more of the Product Services;	“Mobile Banking”	means Mobile Banking Service or the performance of transactions, payments etc over the phone through the Bank’s system;

“Nominated User(s)”	means the representative or representatives of the Customer authorised by the Customer to hold and change the Password and hence to access the System and Service on behalf of the Customer;		the service charges agreement in addition to transaction service charges applicable to various transaction types as advised by the Bank from time to time.
“Password”	means the secret password known only to the Customer or the Customer’s Nominated User for access to the System. The Customer or its nominated user may change the password at will;	“Service Supplements”	means the Service Supplements provided by the Bank to the Customer;
“PIN”	the four (4) digits provided to the Customer by the Bank for authentication / verification by the Bank of his /her identity thereby enabling the Customer to obtain access to the Customer’s Account(s);	“System”	the mobile banking/ electronic banking and communications software enabling the Customer to communicate with the Bank for the purposes of the Service. The System Service will for the purpose of this Agreement be accessed through the mobile phone for Mobile Banking and through the internet via the Bank’s website, www.ncbagroup.com for Online Banking; and,
“Request”	means a request or instruction received by the Bank from the Customer or purportedly from the Customer through the System and upon which the Bank is, by virtue of subparagraph 4.1, authorised to act;	“The Facilities	means the communication line, modem, connection or other software, hardware or equipment provided and used by the Customer for the transmission and/ or receipt of any information sent electronically or by telephone for the purposes of or in connection with any of the services;
“Security Procedures”	means the security measures and procedures set out in the user guides and/or Service Supplements (including without limitation, provisions relating to customer identification and user identification) and any other instructions the Bank may give concerning security from time to time;	1.2 In this Agreement:	
“Service”	means such Mobile Banking and/ or Online Banking Service specified in clause 5 of this Agreement as the Customer may from time to time subscribe to and “Services” shall be construed accordingly and shall include channel services and such other internet related services in this Agreement;	1.2.1 references to “the Bank” shall include the Bank, its successors and assigns;	
“Service Fees”	means the service tariffs, fees and charges (including any cancellation fees or termination charges), the legal or recovery fees in relation to the Customers Bank Account or Deposit Account charged by the Bank to the Customer for providing the services and any software and system materials provided or licensed by the Bank to the Customer in accordance with	1.2.2 references to “the Customer” shall include the Customer, its successors and permitted assigns and references to a “subsidiary” shall mean a subsidiary undertaking within the meaning of section 3(1) of the Companies Act No. 17 of 2015 of the Laws of Kenya;	
		1.2.3 where “the Customer” is more than one (1) person, references to “the Customer” shall include all and/ or any of such persons and the obligations of the Customer shall be joint and several;	
		1.2.4 words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;	
		1.2.5 “person” shall include a body of persons, corporate or incorporate;	
		1.2.6 “party” or the “parties” shall mean a party or the parties to this Agreement;	
		1.2.7 references to paragraphs, subparagraphs and Schedules shall mean paragraphs, subparagraphs and Schedules of this Agreement; and,	
		1.2.8 the Customer’s use of the Service is also governed by the applicable current, savings, term and call and overdraft accounts agreement(s) and the Bank’s General Terms and Conditions which the Customer has already signed.	

2. SYSTEM USAGE AND MATERIALS

- 2.1 The Bank will maintain the whole Banking system, (hereinafter referred to as “the System”), as well as the website, www.ncbagroup.com, (hereinafter referred to as “the Site”), to provide the Customer with information about the Bank services and products, including the Mobile Banking and Online Banking services, and to facilitate communication with the Bank. If, as a visitor to the Site or the System, the Customer wishes to take on the Service, the Customer will be required to read the terms and conditions of this Agreement and the customer’s subsequent use of the site and/or System for the purposes of the Service constitutes their agreement to all such terms and conditions. However it should be noted that, visitors to the Site and/or the System must first register to enable them access any of the material under Online &/or Mobile Banking service.
- 2.2 Once the Bank has formally approved the Customer and the Customer has been maintained as an authorised user of the Service, the Customer will provide to the System a unique, (PIN - Mobile Banking) &/or (identification and ID and a secret password - Online Banking), known only to the Customer, (and/or the nominated user for Online Banking), and then only shall the Customer be afforded use of the Service. The PIN and/or ID and Password, will form a unique link to each specific Customer’s profile(s).
- 2.3 Further Services and profiles may be added from time to time by the Bank and the Bank reserves the right to modify, replace or withdraw any Service and/or profile at any time, for any reason whatsoever, with reasonable prior notice to the Customer.
- 2.4 The Service shall be available for a Customer to access twenty four (24) hours a day for three hundred and sixty five (365) days per year except during periods of service unavailability detailed in clause 2.6.
- 2.5. The Bank shall adhere to the following hours of operation and cutoff times:
 - 251 payments: the Customer’s transactions shall be processed at the end of each Business Day if the request is completed and transmitted by 1530Hrs of any Banking Day and any transactions submitted after the cut off time or on days falling outside of Banking Days shall be considered the next Banking Day;
 - 252 owned external transfers: All transfers made between the Customer’s Bank Account and an account owned by the Customer at any other financial institution shall be processed on the scheduled Banking Day if the transfer request is received by 1530Hrs and credited to the receiving account 1 Banking Day later;
 - 253 unverified account: any transfer from the Customer’s Banking Account to an account which the Customer has not verified shall be processed within 1 Banking Day;
 - 254 wires: domestic wire transfer requests shall be submitted through the System between 1530Hrs of any Banking Day and international wires shall be submitted between the hours of 2000Hrs of any Banking Day.

- 2.6 The Service shall be available for a Customer to access twenty four (24) hours a day for three hundred and sixty five (365) days per year except during the following periods of service unavailability:
 - 261 scheduled maintenance: access to the Service may be inaccessible to the Customer with notice where scheduled maintenance of the System occurs. The Bank shall give a Customer reasonable notice of scheduled maintenance by a notice displayed on the website at www.ncbagroup.com and/or in any Bank or Bank Branch;
 - 262 unscheduled maintenance: access to the Service may be unavailable to the Customer with or without notice where the Bank has to perform unscheduled maintenance works; and,
 - 263 system outages: the Bank may be prevented or delayed in the performance of any of its obligations to provide access to the Service by Force Majeure Events.

3. CUSTOMER’S RESPONSIBILITIES

- 3.1 The Customer shall at its own expense provide and maintain in safe and efficient operating order such hardware, software and other facilities (including access to any public telecommunications systems), and any communications network necessary for the purpose of accessing the System and the Service.
- 3.2 The Customer shall maintain an active email account at all times and record such email address within the Customer’s profile in the Service and shall promptly notify the Bank of a change of email address by changing the address at [provide link] within the Service. If, for any reason the email address changes or becomes inoperable for more than a short period of time, the Customer shall contact the Bank immediately so that the Bank can arrange to provide the Customer with notices and account statements through other means.
- 3.3. If the Bank contacts the Customer at the email address of record within the Service and learns that the email is undeliverable to that address, the Bank may, at its discretion:
 - i. require the Customer to provide a valid email address at next login attempt;
 - ii. require the Customer to accept this Agreement again at next login attempt;
 - iii. attempt to contact the Customer through another means to obtain a valid email address;
 - iv. disable the Service for other users (Online Banking for Small Business only); and/or,
 - v. discontinue electronic Customer Notices and instead provide them by paper.
- 3.4. If the Customer has an e-mail address that the Bank deems to be inoperable and the Customer does not provide the Bank with a new email address, then the customer agrees that the Bank may send the Customer paper statements and other paper Customer Notices. In the event the Customer receives paper statements, any applicable fee discounts or waivers associated with the Customer’s Personal Account and/or the Service may be

discontinued.

- 35 The Customer shall be responsible for ensuring the proper performance of the phone and/or Facilities including any losses or delays that may be caused by the MSP and/ or Facilities. The Bank shall neither be responsible for any errors or failures caused by any malfunction of the Customer's phone and/or Facilities, and nor shall the Bank be responsible for any virus or related problems that may be associated with the use of the System / phone, the Service and the phone/ Facilities. The Customer shall be responsible for charges due to any service provider providing the Customer with connection to the internet and the Bank shall not be responsible for losses or delays caused by any such service provider.
- 36 The Customer shall abide with any applicable regulations and/or obtain all licences and consents necessary to have access to and use of the System and shall ensure that all the persons it allows to have access to the System shall comply with all laws and regulations applicable to the use of the System and follow all instructions, procedures and terms contained in this Agreement and any document provided by the Bank concerning the use of the System and Service.
- 37 The Customer shall prevent any unauthorised access to or use of the phone /System and Service by way of keeping their PIN and/or access code and Password a secret at all times. The Customers shall ensure that the PIN does not, and/or access code and Password, do not become known or come into the possession of any unauthorised person.
- 38 The Customer shall take all reasonable precautions to detect any unauthorised use of the phone /System and Service. To that end, the Customer shall ensure that all the communications from the Bank are examined and checked by or on behalf of the Customer as soon as practicable after receipt by the Customer in such a way that any unauthorised use of and access to the phone/ System will be detected.
- 39 The Customer shall immediately inform the Bank by telephone through the Bank's customer care contact centre number followed with a written confirmation sent the same day in the event that:
 - 39.1 the Customer has reason to believe that their PIN and/ or any Password used by the Customer to gain access to the Service and to communicate with the Bank is or may be known to any person not authorised to know the same and/or has been compromised; and/or
 - 39.2 the Customer has reason to believe that unauthorised use of the Service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.

4. INSTRUCTIONS BYCUSTOMERS

- 4.1 The Bank is irrevocably authorised by the Customer to act on all Requests received by the Bank from the Customer (or purportedly from the Customer) through the System and to hold the Customer liable thereof, notwithstanding that any such requests are not authorised by the Customer or are not in accordance with any existing mandates given

by the Customer. If the Customer requests the Bank to cancel any transaction or instruction after a Request has been received by the Bank from the Customer, the Bank may at its absolute discretion, cancel such transaction or instruction but shall have no obligation to do so.

- 4.2 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 reference to the Customer being necessary.
- 4.3 The Bank shall not be obliged to accept or to act upon any Request if to do so would require access to, action by, or information from the Branch, or any subsidiary of the Bank located in any jurisdiction where it is not a Banking Day at the relevant time when such access, action or information is required or would cause a breach of any existing mandate facility limit or agreement between the Bank, the Branch and/or any subsidiary of the Bank (as applicable) and the Customer. In the event that the Bank does accept or act upon any such Request, the Customer shall remain liable thereof.
- 4.4 For the purposes of carrying out any instruction, the Customer:
 - 4.4.1 authorises the Bank to transmit payment instructions on the Customer's behalf and to act for these purposes as instructing financial institution (or procure any other Bank member or third party so to act). The Customer acknowledges that the Bank will be acting as the Customer's agent for the purpose of transmitting or procuring the transmission of any such Instructions and that the Bank or any other Bank member or third party being the recipient of any such instructions shall be authorised and entitled to act upon them as if they had been given directly by the Customer to such recipient; and,
 - 4.4.2 agree to authorise any relevant third party to provide account and other information to the Bank.
- 4.5 For the avoidance of doubt:
 - 4.5.1 The Customer agree that the Bank is authorised to record all telephone conversations made between the Bank in writing or by tape or other means as the Bank may determine;
 - 4.5.2 where any instruction is given by fax, email, or sms followed by delivery of the original instruction, the fact that the same had been given by fax, email or sms and the date of the facsimile shall be annotated on the original copy (where possible). In the absence of such annotation, the Customer agrees that the Bank shall not be liable for any consequences including (without limitation), in the case of payment instructions, any losses arising from any duplication of payment or fund transfer; and,
 - 4.5.3 in the absence of manifest error, the Bank's records (whether in paper, electronic, data or other form) of each instruction or other communication with the Customer shall be conclusive evidence of the fact of receipt or non-receipt of such instruction or

communication and of the contents of an instruction or communication.

- 4.6 In the event of any conflict between any terms of any Request from the Customer and the terms of this Agreement, the terms of this Agreement shall prevail.
- 4.7 The Bank shall create an email list service which allows the Customer to request e-mail messages notifying the Customer of events and information of interest to the Customer. The Bank will deliver the email list messages that the Customer has requested to the e-mail address the Customer designate upon registration.
- 4.8 The Bank may from time to time include in the email list messages information about new products and services. The Customer's receipt of information about any products or services is not a guarantee that the Customer qualifies for the products or services described. In order to obtain any of the products or services, it is necessary that the Customer qualifies in accordance with the terms of any particular product or service.
- 4.9 We will not send confidential information regarding the Customer's account(s), balances, or transfers via the email list service. The Customer shall not e-mail confidential information to the Bank using unencrypted email services. The Customer may opt-out of the email list Service by not checking the Email List option on the registration form or by contacting the Bank, branch or contact@ncbagroup.com.
- 4.8 The Bank at its sole discretion reserves the right to deny access and use of the Service to the Customer if it has cause to believe that there has been unauthorised use and access of the Service or any fraudulent activity.
- 4.8.1 Where the Bank denies access to the Service it may require user verification using the four (4) digit PIN provided to the Customer for verification purposes.
- 4.8.2 Where a Customer unsuccessfully verifies their information the Bank, at its sole discretion, may do the following:
- i. deny access to the Service;
 - ii. require the Customer to verify their identity in person at the Customer's Branch;
 - iii. require the Customer to verify their identity by calling their Branch; and,
 - iv. any other verification procedure the Bank deems appropriate.

5. MOBILE BANKING & ONLINE BANKING SERVICE AND TRANSACTIONS

- 5.1 Depending on the subscription applied for by the Customer and approved by the Bank, the transactions that a Customer is able to perform may vary. The Services and transactions allowed may include but are not limited to the following:
- 5.1.1 Mobile Banking;
- i. Obtaining account information like current balances, mini statements and account activity;
 - ii. Electronic bill payment for telephone bills, electricity bills in accordance with clause 5.6.;
 - iii. Requests for printed bank statements, cheque

books and cheque status;

- iv. Stop cheque requests;
 - v. Inquiries on foreign exchange rates and interest rates;
 - vi. Change of password- done by the Customer; and,
 - vii. Notifications on credit or debit transactions as advised by Customer.
- 5.1.2 Online Banking:
- i. General customer interaction- news, advice, Bank products etc;
 - ii. Online application for Bank products;
 - iii. Obtaining account information like current balances, account activity and other details;
 - iv. Requests for printed bank statements and cheque books;
 - v. Stop cheque requests;
 - vi. Requests for change of Customer profile particulars like phone number, address etc;
 - vii. Payroll processing and wire transfer of salaries to the employees' bank' accounts;
 - viii. Inquiries on foreign exchange rates and interest rates;
 - ix. Change of password- done by the Customer;
 - x. Internal Transfer of funds - between different accounts of the Customer.
 - xi. Transfer of Funds to external bank accounts of the Customer or third parties.
 - xii. Giving instructions to the Bank to open a term deposit;
 - xiii. Initiating a number of bank transactions including Letter of Credit, bank guarantee, Loan application and others as the Bank may facilitate online from time to time; and,
 - xiv. Application for letters of credit.
- 5.2 The Customer will subscribe for specific services and/or transaction types and its profile shall be customized to allow performance of only those Services subscribed for.
- 5.3 The Customer may transfer or effect a payment for any amount subject to the provisions of clause 3 of this Agreement, as long as the transaction does not cause the balance in the deposit account to be less than zero (0) unless the Customer has either an overdraft facility for the affected deposit account or a term deposit account pledged with the Bank to cover excesses that may arise in the affected deposit account from time to time in which case the two (2) accounts are linked in the System for that purpose.
- 5.4 If the Customer has an overdraft facility or a term deposit account linked to the payment deposit account, the transfers and/or electronic bill payments using the Service should not exceed the approved overdraft facility or the pledged term deposit amount.
- 5.5 The Customer can use the Service to obtain balance and transaction information about the Customer's Accounts. Ledger Balance and Available Balance shown are defined in the applicable Account Agreement. In addition, information about deposits which have not yet posted will be available.

- 5.5.1 Balance and transaction information provided to the Customer as part of the Service is not the official record of the account or its activity. The account statement, furnished to the Customer by the Bank in electronic or paper format, whichever is applicable, is the official record. Balance and transaction information is generally updated regularly, but is subject to adjustment and correction and therefore should not be relied upon by the Customer for taking, or not taking, any action.
- 5.5.2 If the Customer overdraws their checking account and the Customer has deposit account overdraft protection, the credit to the Customer checking account will appear on the day the checking account is overdrawn, and the debit to the Customer savings account will not appear until the following day. This means that the Customer's savings account balance will be overstated by the transfer amount for one (1) day. If a transfer exceeds the available credit on the Cash Reserve or overdraft protection line or business line of credit, the funds will appear in the account to which the Customer transferred them, but will not be available for withdrawal. The transfer may be reversed the following Business Day.
- 5.6 The Customer shall have access to electronic bill payment on the Service and shall be able to carry out payments in lieu of the following:
- 5.6.1 availability and use: the bill payment service shall be available 7 days per week and twenty four (24) hours per day except during scheduled or unscheduled maintenance in clause 2.6;
- 5.6.2 scheduling the payments: the Customer shall choose the date that the designated individual, merchant or institution or individual shall receive the funds;
- 5.5.3 recurring payments: a Customer shall have the right to set up a weekly or monthly recurring payment to an individual, institution or merchant by visiting their Branch;
- 5.5.4 rejecting bill payments: the Bank at its sole discretion may reject any bill payment which appears fraudulent, erroneous or illegal without notice to the Customer; and,
- 5.5.5 payment authorisation: by attending the Customer's Branch to designate the names and account numbers where electronic bills should be paid the Customer authorizes the Bank to act in accordance with any bill payment made on the Service.

6. SERVICE FEES

- 6.1 The Customer shall pay or procure the payment of all the Service Fees incurred in connection with the Service.
- 6.2 The Customer shall pay the Service Fees in accordance with the fee schedule published on the Website www.ncbagroup.com and available at any Bank Branch.
- 6.3 The Service Fees relating to legal or recovery fees in relation to the Customers Bank Account or Deposit Account shall be as set out under the Advocates Act, Cap 16, Laws of Kenya and/or the Auctioneers Act No. 5 of

1996, Laws of Kenya, and /or all other law(s) that shall be applicable as amended from time to time.

- 6.4 The Customer shall be solely responsible for the payment of all fees charged by their internet service provider as a result of the customer's use of the Service. In addition, the Customer shall pay all the telephone charges which may be levied by their mobile / telephone service provider to access their online account.
- 6.5 The Customer shall not be liable to pay any fee for accessing their Bank Account or making any Internal Transfer within their own Bank Account.
- 6.6 The Customer, whenever applicable, shall pay any tax chargeable upon any sums payable by the Customer to the Bank and also any other charges or duties levied on the Customer or the Bank by any governmental or statutory body relating to the provision of the Service.

7. EXCLUSION OF LIABILITY

The Bank will not be responsible or liable for:

- 7.1 Any indirect or consequential losses or economic loss or loss of profit or business incurred by the Customer in connection with the services notwithstanding the Bank's awareness of the possibility or likelihood of the Customer incurring the same;
- 7.2 Any loss in connection with any unforeseeable acts or omissions or neglect acts on the part of the Bank's service providers, contractors, agents or employees;
- 7.3 Any losses arising in connection with the Bank acting upon instructions sent by the Customer or by reason of the Customer failing or refusing to so act if, acting in good faith, in the Bank's opinion there is or are reasonable ground(s) for such failure or refusal (other than as caused by the Bank's gross negligence or willful default);
- 7.4 The Bank shall not be responsible for any loss suffered by the Customer should the Service be interfered with or be unavailable by reason of any Force Majeure Event,
- 7.5 Any losses caused as a result of or in connection with any laws or regulations of countries where transactions are settled or cleared where any negotiable instrument or receivable is collected or any exchange control restrictions which are imposed from time to time unless caused by our breach of such laws and regulations;
- 7.6 If any losses suffered by the Customer by reason of:
- 7.6.1 the shut-down or delay in the availability of the Mobile Service Provider (MSP) and/or Website;
- 7.6.2 any viruses, Trojan horses, worms, logic software, other bombs or other similar programs or routines (including hacking) affecting any Website, Service or System Materials; or,
- 7.6.3 incomplete messaging.
- 7.7 Any damages or losses arising from unauthorised access to any Service by a third party using the PIN &/or any customer identification or user identification or access code unless we have received prior notification from the Customer in accordance with the user guides and/ or the relevant notification that no further access to the relevant Service shall be granted to any person using such customer identification or user identification or access

- code with effect either from receipt of such notification or such later date as may be specified in such notification; or
- 7.8 The consequences of any misuse of any Channel &/or Website by the Customer, (or the Customers authorized persons), or any use of any Website or Channel by the Customer, (or the Customer Authorised Persons), not related to any of the Services. For the avoidance of doubt, any other limitation of liability contained in any shall be in addition to and shall not derogate from the above
- 7.9 Without prejudice to clause 7.1 above, the Bank's maximum aggregate liability to the Customer for any claim arising from or in connection with any Service is limited to the aggregate amount of service charges paid by the Customer for the relevant Service in the three (3) months preceding such claim.
- 7.10 Whilst the Bank will use all reasonable endeavours to ensure that all financial information available through the Services is accurate when initially made available, the Bank shall not be liable for any loss incurred or damage suffered by the Customer by reason or in consequence of the Customer using financial information which is not up to date.
- 7.11 Save as otherwise provided in this Agreement, all terms, conditions and warranties implied by law regarding the quality or fitness for purpose or otherwise of the Services or the System Materials are excluded to the fullest extent permitted by applicable law.
- 7.12 To be valid, any claim that the Customer has against the Bank under the Agreement or otherwise in connection with any Service or any ancillary service must be notified to us within thirty (30) days after the Customer has become aware or should have become aware of the facts on which it is based.

8. INDEMNITY

- 8.1 Except to the extent that we are liable under the terms of this Agreement, the Customer shall fully and effectively indemnify and keep the Bank indemnified against (a) any damages and costs payable to the Bank in respect of any claims against the Bank for recompense for loss caused by (a), (b) and/or (c) of clause 7.4 where the particular circumstance is within the Customer's control; and (b) any loss which may be incurred by the Bank as a consequence of any breach by the Customer of the terms of this Agreement.
- 8.2 The Customer shall fully and effectively indemnify and keep indemnified the Bank against any demand, claim or action relating to or in connection with the Service, whether directly or indirectly, unless such demand, claim or action arose as a direct consequence of the gross negligence or wilful misconduct of the Bank or any of the Bank's officers, directors and/or employees.
- 8.3 The Customer shall fully and effectively indemnify and keep indemnified the Bank against the following:-
- 8.3.1 All demands, claims, actions, losses and damages of whatever nature which may be brought against the Bank or which it may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Bank's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by the Bank.
- 8.3.2 Any loss or damage that may arise from the Customer'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.
- 8.3.3 Any unauthorised access to the Customer's accounts 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 equipment.
- 8.3.4 Any loss or damage occasioned by the failure by the Customer to adhere to any terms and conditions applicable to the Service 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.
- 8.3.5 Any fraud, misrepresentation, manipulation or other breach of this Agreement.
- 8.4 The Bank reserves the right, at the Bank's own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by the Customer, in which event the Customer will cooperate with the Bank in asserting any available defenses. The Customer will not settle any action or claims on the Bank's behalf without the Bank's prior written consent. This indemnification is provided without regard to whether the Bank's claim for indemnification is due to the Customer's use of the Service.
- 8.5 If for any reason other than a reason mentioned in clause 7.4 the Service is interfered with or unavailable, the Bank's sole liability under this Agreement in respect thereof shall be to re-establish the Service 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.
- 8.6 Save as provided in clause 7.4, the Bank shall not be liable to the Customer for any interference with or unavailability of the Service, howsoever caused.
- 8.7 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 Service.
- 8.8 Except in respect of death or personal injury caused by the negligence of the Bank, the Bank shall be under no liability whatsoever in respect of any terms of this Agreement or their performance thereof or any transactions effected by the Bank in response to any Request:

- 8.8.1 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
- 8.8.2 In all other cases within one (1) year of the date of the alleged action or inaction by the Bank on which such claim is based.
- 8.9 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

9. AMENDMENTS

- 9.1 The Bank may amend the, or change the Agreement at any time upon giving fourteen (14) Business Days' notice to the Customer on the particulars for the change.
- 9.2 Any amendment or variation made by the Bank shall be deemed to have been properly notified and served on the Customer if it is delivered by hand or sent by registered post, telex or fax to the last known address as per the Bank's records. In the absence of evidence of earlier receipt, any notice or demand shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, seven business days after posting (notwithstanding that it be undelivered or returned undelivered) or, if sent by telex or fax, on the completion of transmission.
- 9.3 Where any amendment is made, it shall be sufficient to prove that the notice or demand was properly addressed and posted or shall be deemed to have been delivered and/ or received on the date of publication of the advertisement if notice was served by way of advertisement in a daily newspaper.

10. TERMINATION

- 10.1 The Service provided by the Bank to the Customer may be terminated at any time by the Bank or the Customer by giving fourteen (14) Business Days' notice of the termination.
- 10.2 Any termination made by the Bank or the Customer shall be deemed to have been properly notified and served if it is delivered by hand or sent by registered post, telex or fax to the last known address of the Customer or the Bank. In the absence of evidence of earlier receipt, any notice shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, fourteen (14) Business Days' after posting (notwithstanding that it be undelivered or returned undelivered) or, if sent by telex or fax, on the completion of transmission.
- 10.3 In the event of any change in any law or the application thereof, or any other event which, in the sole and absolute discretion of the Bank, would have the effect of prejudicing the Bank should it continue with the rendering of the Service to the Customer, the Bank shall be entitled to terminate this Agreement at any time with fourteen (14) Business Days' notice to the Customer.
- 10.4 Where any termination is made by the Bank or the Customer, it shall be sufficient to prove that the notice or demand was properly addressed and posted.
- 10.5 The Bank shall continue to process any properly initiated instructions and/or payments which the Bank

receives before the date of termination. Termination of the Agreement shall only be effective as to prospective transactions only and shall not alter any of the rights or liabilities of the Bank or the Customer as to any transactions and/or payment obligations incurred prior to the date of termination.

- 10.6 The termination of this Agreement shall not, in itself, terminate or affect the relationship of Banker and Customer between the Bank and the Customer.
- 10.7 Clauses 7, 11.3, 11.5 and 12 shall survive termination of this Agreement.

11. GENERAL PROVISIONS

- 11.1 The Customer shall not assign the benefit of this Agreement or any rights arising hereunder without the prior written consent of the Bank.
- 11.2 No waiver by the Bank of any breach by the Customer of any of the terms of this Agreement 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.
- 11.3 The Customer acknowledges:
- 11.3.1 that it has 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 deciding to enter into this Agreement; and that
- 11.3.2 no person has or has had authority on behalf of the Bank whether before, on or after the signing of this Agreement 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 Service.
- 11.4 This Agreement supersedes all prior agreements, arrangements and understandings between the parties and constitutes 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 from the Customer hereunder is acted upon by the Bank.
- 11.5 Any notice required to be given in writing under this Agreement and/or the schedules or parts of this Agreement shall be sufficiently served if sent by registered post, stamped and properly addressed;
- 11.5.1 to the Manager of the Branch or of the Bank at the address of the Branch or the Bank set out in Part II of the schedule if to be served on the Bank; or,
- 11.5.2 to the Customer at the address given for the Customer in Part I of the schedule to this Agreement, if to be served on the Customer,
- and shall be deemed to have been served five (5) banking days after posting.
- 11.6 A copy of any notice served on a Branch shall also be sent by registered post to the Bank at the address set out at

the end of this Agreement or such other address as the Bank may notify to the Customer from time to time for this purpose. Failure to send such a copy shall not invalidate any notice served on the Branch.

12. CONFIDENTIALITY AND DISCLOSURE

- 12.1 The Customer undertakes to maintain the confidentiality of the PIN &/or its ID, access code and Password and any other information and materials of any nature supplied to the Customer by the Bank in relation to the Service. The Customer agrees to notify the Customer's nominated user, agents, employees and/or sub-contractors of the provisions of this paragraph and to impose this confidentiality requirement on its nominated user, agents, employees and/or sub-contractors entering into separate agreements, if necessary. The Customer shall be fully liable to the Bank for any breach of the provisions of this paragraph by the Customer, the Customer's nominated user, the Customer's employees, the Customer's agents and/or sub-contractors.
- 12.2 The Customer authorises the Bank to collect, retain and use personal information about the Customer for certain purposes as detailed in such data protection and privacy policies as the Bank may issue from time to time and which policies are available upon request or at www.ncbagroup.com.
- 12.3 The Customer agrees that the Customer's personal information shall be collected, processed, shared or otherwise dealt with in accordance with the terms of the Bank's Privacy Policy as may be updated from time to time, and which is also available upon request or at [provide link]. The Customer also confirms that the Customer has read, understood and accepted the terms of the Privacy Policy. Without prejudice to the foregoing, the Customer agree that the Bank is authorised to disclose any necessary information (including any personal data) regarding the Customer and the status of the Customer's accounts (including deposit accounts) with the Bank or any Bank Member or affiliate of the Bank obtained under this Agreement or any other agreement with the Bank or with a Bank Member or affiliate of the Bank to any or all of:
- 12.3.1 the Customer's holding company or any other member of the Customer's group company or a company affiliate to the Customer;
- 12.3.2 any office/Branch/division of any Bank Member;
- 12.3.3 any agent, contractor or third party provider or service provider or professional adviser who provides administrative, telecommunications, computer, payment, collections, security, clearing, credit reference or checking, or other services or facilities to the Bank in connection with the operation of the Bank's business;
- 12.3.4 any person to whom the Bank is required or permitted to make disclosure to under the requirements of any law, court order, regulation or practice including but not limited to government agencies, regulators, credit reference bureaus, etc;

- 12.3.5 any financial institution with which the Bank proposes to have any dealings; and,
- 12.3.6 any actual or proposed participants or sub- participants in, or assignee, novatee or transferee of, any of the Bank's rights in relation to the Customer, and to use such information in connection with the administration and operation of the Services.
- 12.4 The Customer agrees and consents that the Bank may disclose any information in the possession of the Bank relating to account details to any and all agents used by the Bank in the course of the operation of the account including but not limited to agents appointed by the Bank to manage the account.
- 12.5 The Customer agrees and consent that the Bank may disclose any information in the possession of the Bank relating to this application and or account to any third party (including other institutions licensed under the Banking Laws of the Republic of Kenya and Credit Reference Agencies) if in the Bank's opinion such disclosure is necessary for the purpose of evaluating any application made to the Bank by the Customer maintaining an account with the Bank or for other purposes but within the strict confinements of the laws of Kenya.
- 12.6 The Customer agrees and confirms that the Bank may disclose any information in the possession of the Bank relating to details of the Customer's Bank Account to any third party (including other institutions licensed under the Banking laws of the Republic of Kenya and Credit Reference Agencies) for the purpose of evaluating the applicant(s) credit worthiness or for any other lawful purpose.
- 12.7 The Customer (s) consents that the Bank may obtain any information relating to the Customer from any third party including Credit Reference institutions licensed under the laws of the Republic of Kenya if in the Bank's opinion such disclosure is necessary for the purpose of evaluating any application made to the Bank by the customer or for any other purpose as maybe prescribed by any existing law.

13. INTELLECTUAL PROPERTY RIGHTS

- 13.1 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.
- 13.2 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.

14. GOVERNING LAW

- 14.1 This Agreement shall be governed by and shall be construed according to the Laws of Kenya.
- 14.2 The parties hereby irrevocably submit to the jurisdiction
- 14.3 of the Courts of Kenya, but the Bank shall be at liberty to enforce anywhere a judgement in any jurisdiction where the Customer carries on business or has any asset.

15. SEVERABILITY

- 15.1 Each of the provisions of this Agreement is severable and distinct

from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and

enforceability of the remaining provisions shall not in any way be affected or impaired.

