

## General Terms and Conditions

The relationship between Commercial Bank of Africa Limited (the "Bank") and the Customer is governed by the Laws of Kenya, except where the following general terms and conditions apply and subject to any further agreement in writing. Specific terms apply to specific accounts and products and are available to the Customer upon request.

### Section A

#### 1. Definitions and Interpretation

In these general terms and conditions, unless the context otherwise requires:

- (a) "Banking Day" means a day on which the counters of the Branch and/or the Bank Subsidiary (as applicable) are open for the transaction of ordinary business;
- (b) "Branch" means a branch or branches of the Bank which may from time to time be specified by the Bank to the Customer;
- (c) "Bank Account" means the Customer's current and savings deposit account(s), current overdraft facility account(s) and term and call deposit accounts (as the case may be) with the Bank;
- (d) "The Customer" means the Customer whose detail are captured in the foregoing section. Where "the Customer" is more than one person, references to "the Customer" include all and/or any of such persons and the obligations of the Customer shall be joint and several;
- (e) "Deposit Account" means any Bank Account with a credit balance.
- (f) Words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;
- (g) The Customer shall not assign the benefit of this Agreement or any rights arising hereunder without the prior written consent of the Bank.
- (h) 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.
- (i) 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.
- (j) All warranties, representations, indemnities, covenants and obligations made or entered into by more than one person are so made or entered into jointly and severally.

#### 2. Customer's Instructions

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

#### 3. Authorised Signatories

The Customer will give the Bank in an acceptable form the specimen signature of every person authorized to operate the account. The Bank is under no duty to enquire or ascertain into the purpose for which an authorized signatory exercises his powers on behalf of or otherwise for

the Customer. The Bank accepts no obligation to any person (including any authorized signatory) other than the Customer who is authorized to operate the account or whose concurrence or signature is necessary for the operation of the account.

The Customer undertakes to maintain the confidentiality of his ID and Password under Section B together with all other information and materials of any nature supplied to it by the Bank in relation to this agreement. The Customer shall be fully liable to the Bank for any breach of the provisions of this paragraph.

#### 4. Set-Off

- (a) The Bank may, upon notice, set off against any account or indebtedness of the Customer:
  - (i) any other account whether current, loan, savings or any other type;
  - (ii) any time or other deposit
- (b) The Bank may, upon notice to the Customer, set off his account against any other account or indebtedness in respect of which the Customer is liable, notwithstanding that some other person may also be liable in respect thereof.

#### 5. Simultaneous Order In Excess of Funds

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

#### 6. Bank Charges and Expense Interest

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

- (a) **Interest**  
Unless otherwise agreed in writing, interest on overdrawn accounts including additional interest, loan accounts or any other facility granted by the Bank, at a rate which may be different for different accounts. Provided that the bank will notify the Customer within thirty (30) days any change in the rate of interest charged.
- (b) **Legal Charges**  
Advocate and Client costs incurred by the Bank in obtaining legal advice in connection with the Customers accounts and dealings with the Bank or incurred by the Bank in any legal, arbitration or other proceedings arising out of any dealings in respect of the Customer.
- (c) **Commission**  
Commission at such rates and at such time or times as the Bank decides, with discretion to charge different rates for different accounts. Provided that the Bank will be required to inform the Customer within thirty (30) days prior to charging or varying the rate of any commissions.
- (d) **Other Charges and Expenses**  
In addition to the debits authorized by sub-clauses (a), (b) and (c) of this Clause, all other fees, expenses and charges including but not limited to ledger fees, disbursements for cheque books, postages, cables, telephone calls, communication costs, taxes, duties, impositions and expenses incurred in complying with the Customer's requests.

#### 7. Statements Deemed Approved If Not Objected To Within 28 Days

The contents of any statements of account or statement of any other nature which has been sent by the Bank to the Customer, and to which the Customer has not objected within Twenty-eight (28) days of receipt thereof, shall be deemed approved by the Customer, and shall not thereafter be challenged by the Customer on any grounds whatsoever, whether lack of mandate, forged or inadequate signature or endorsement of cheques, forged alteration thereof or otherwise.

#### 8. Delay By Customer In Lodging Complaints

The Bank is not responsible for any matter unless the Customer has made a written complaint to the Bank as soon as reasonably possible.

## 9. Payment By Third Parties

The Bank may credit the Customer with amounts paid by third parties.

## 10. Deposit of Cheques

- (a) All cheques or other orders for payment of whatsoever nature are accepted for deposit or collection at the risk of the Customer. Where any cheque or order is unpaid for any reason whatsoever (including but not limited to physical loss), the Bank may debit the Customer with the amount previously credited (taking into account any exchange fluctuation where relevant) in respect of that cheque or order, together with interest since the date of crediting if the account thereby is overdrawn.
- (b) Before making any withdrawal, the Customer must allow a sufficient time to elapse after making any deposit (even of cash) in order to enable the Bank to carry out the necessary bookkeeping operations to credit the account. For the purposes of this sub-section sufficient time shall be deemed to be one complete business day in relation to deposits of cleared funds, and 4 clear working days for in relation to deposit of cheques and bankers drafts .
- (c) Notwithstanding the provisions of Clause 9 herein any money credited to the Customer in error must be repaid immediately together with applicable interest upon demand.

## 11. No Duty on Bank To Protest

The Bank is not liable for any loss or damage suffered by any party if any dishonoured bill is not noted or protested or both. The bank will nevertheless endeavour to cause dishonoured bills to be noted or protested or both, provided that it receives instructions to do so in reasonable time.

## 12. Repayment of Overdrawn Accounts

The Bank is entitled to demand the immediate repayment with interest of any account that is overdrawn.

## 13. Express Authority

The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Customer's account(s) to other Banks, financial institutions, credit card companies, or credit reference bureaus, including authorized agents, representatives, lawyers or debt collection agents for the purposes of any bona fide enquiry or collection of any data or towards recovery of any sums due and outstanding to the Bank.

The Bank may from time to time release (without notifying the Customer) any information relating to any of the Customer's accounts to any statutory authority, including the Kenya Revenue Authority, which has the legal power to demand for such information.

The Customer acknowledges that any information released by the Bank under this clause may be used by the recipient to assess applications for credit by the Customer or any related parties, for debt tracing and for fraud prevention purposes. The Customer also acknowledges that such information being released to the recipients may affect the Customer's ability to maintain existing facilities with lenders or credit card companies. The Customer shall have no claim whatsoever against the Bank for any loss, damage, fees or expenses suffered or incurred by him in relation to the release of any information by the Bank under this clause.

## 14. Lien

- (a) When the Customer is indebted to the Bank, the Bank has a general lien over all property of the Customer in the Bank's possession, including but not limited to cash, goods, securities or valuables deposited for safe custody or as security, cheques presented for repayment, bills and any other property movable or immovable charged to secure payment of any money whether or not that money has been repaid, and also over all property over which by the general law the Bank has a lien.

- (b) Where the Customer is indebted in circumstances giving the Bank a right of set off, all securities as set out in paragraph (a) hereof are held as security for the debt.
- (c) Whereas the repayments for any debt may be accepted from the Customer at any Branch, the same shall for purposes of this agreement be deemed payable at the head office of the Bank in Nairobi.
- (d) The Bank may at any time give the Customer notice in writing that if an accrued debt is not paid within a stated period being not less than fourteen (14) days after the receipt of the Customer of the notice then the Bank may without further notice realize sufficient relief of the Customer's assets to discharge the debt.
- (e) If the debt is not discharged within the time allowed, the Bank may realize sufficient relief of the Customer's assets to discharge the debt, and the Customer constitutes the Bank his attorney for the purpose of conducting the sale, giving title to the assets sold and all other necessary matters. Any sum remaining after such a transaction will be held for the Customer subject to these Terms and Conditions.
- (f) The Bank is under no obligation in respect of any sale under sub clause (e) other than for malafides.
- (g) Funds in foreign currencies which are subject to the bank's lien may be set off against debts or realised at the rate of exchange current at the date of set off or realization. The Bank accepts no liability for any loss caused by exchange fluctuations.
- (h) Deposits including those held in foreign currencies and for a given period of time may be set-off against debts notwithstanding that the time period of the deposit has not expired.

## Section B

### 15. Provision of Internet Banking Services

As part of this agreement the Bank may provide certain banking services electronically via the internet to the Customer subject to the terms and conditions set out in this clause and the remainder of this agreement. For the purposes of this Section B the following definitions shall have the following meanings:

"Password"	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.
"Nominated User/s"	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.
"Service"	such of the internet banking services specified in clause 19 of this agreement as the Customer may from time to time subscribe to and "Services" shall be construed accordingly.
"System"	the 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 internet via the Bank's website, <a href="http://www.cbagroup.com">www.cbagroup.com</a>
"Request"	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 clause 18 authorised to act.

### 16. The Services Related to the Customer's Profile(s)

- (a) The Bank will maintain the web-site, [www.cbagroup.com](http://www.cbagroup.com) (hereinafter referred to as "the Site"), to provide the Customer with information

about the Bank services and products, including the internet banking service, and to facilitate communication with the Bank. The use of the Site for purposes of the Service by the Customer constitutes an agreement to all such terms and conditions contained in the whole of this agreement.

- (b) Upon entering into this agreement the Customer will provide to the System a unique identification (or ID) and a secret password known only to the Customer, and then only shall the Customer be afforded use of the Service. The ID and password will form a unique link to each specific Customer's access profile(s).
- (c) Further services and profiles may be added from time to time by the Bank and the Bank reserves the right to modify, replace or withdraw any Service and/or profile at any time, for any reason whatsoever, provided that the bank will be required to notify the Customer within thirty (30) days of effecting such change.

#### 17. Customer's Facilities and Customer's Responsibilities

- (a) The Customer shall at its own expense provide and maintain in safe and efficient operating order such hardware, software and other facilities (including access to any public telecommunications systems), and any communications network ("the Facilities") necessary for the purpose of accessing the System and the Service.
- (b) The Customer shall be responsible for ensuring proper performance of the Facilities including any losses or delays that may be caused by the Facilities. The Bank shall neither be responsible for any errors or failures caused by any malfunction of the Customer Facilities, and nor shall the Bank be responsible for any computer virus or related problems that may be associated with the use of the System, the Service and the Facilities. The Customer shall be responsible for charges due to any service provider providing the Customer with connection to the internet and the Bank shall not be responsible for losses or delays caused by any such service provider.
- (c) The Customer shall obtain all licences and consents necessary to have access to and use of the System and shall ensure that all persons it allows to have access to the System shall comply with all laws and regulations applicable to the use of the System and follow all instructions, procedures and terms contained in this Agreement and any document provided by the Bank concerning the use of the System and Service.
- (d) The Customer shall prevent any unauthorised access to or use of the System and Service by way of keeping its ID and Password a secret at all times. The Customers shall ensure that its ID and Password do not become known or come into possession of any unauthorised person.
- (e) The Customer shall take all reasonable precautions to detect any unauthorised use of the System and Service. To that end, the Customer shall ensure that all communications from the Bank are examined and checked by or on behalf of the Customer as soon as practicable after receipt by the Customer in such a way that any unauthorised use of and access to the System will be detected.
- (f) The Customer shall immediately inform the Bank by telephone with a written confirmation sent the same day in the event that:
  - (i) The Customer has reason to believe that any password used by the Customer to gain access to the Service and to communicate with the Bank is or may be known to any person not authorised to know the same and/or has been compromised; and/or
  - (ii) The Customer has reason to believe that unauthorised use of the Service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- (g) The Customer shall not send or attempt to send any Request to the Bank through the System if the Customer has reason to believe that for any Reason such Request may not be received by the Bank or may not be received accurately and intelligibly.
- (h) The Customer shall at all times follow the security procedures notified to the Customer by the Bank from time to time or such other procedures as may be applicable to the Service from time to time and specifically those that may be contained in the Bank's internet website. The

Customer acknowledges that any failure on the part of the Customer to follow the recommended security procedures may result in a breach of the Customer's profile confidentiality and may lead to unauthorised transactions in accounts linked to the Customer's Service subscription with the Bank. In particular, the Customer shall ensure that the Service is not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorised to do so.

- (i) The Customer shall not at any time operate or use the Service in any manner that may be prejudicial to the Bank.
- (j) The Customer understands and accepts that it may link a business account or an account requiring multiple signatures to the Customer's profile on this Service only if the Customer has submitted to the Bank an original written standing mandate to the effect that the Bank is authorised to process transactions not exceeding a certain specified amount, and it will be the responsibility of the Customer to ensure that no unauthorised persons have access to these accounts.
- (k) The Bank shall be entitled and authorised to debit the Customer's accounts with the amounts of the transactions effected via the Service as well as debit the Customer's account with the amount of any fees applicable to the Service from time to time.

#### 18. Irrevocable Authority of the Bank

- (a) The Bank is irrevocably authorised by the Customer to act on all Requests received by the Bank from the Customer (or purportedly from the Customer) through the System and to hold the Customer liable thereof, notwithstanding that any such requests are not authorised by the Customer or are not in accordance with any existing mandates given by the Customer. If the Customer requests the Bank to cancel any transaction or instruction after a Request has been received by the Bank from the Customer, the Bank may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
- (b) The Bank shall be entitled to accept and to act upon any Request, even if that Request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, the Bank believes that it can correct the incomplete or ambiguous information in the Request without reference to the Customer being necessary.
- (c) The Bank shall not be obliged to accept or to act upon any Request if to do so would require access to, action by, or information from the Branch, or any subsidiary or the Bank located in any jurisdiction where it is not a Banking Day at the relevant time when such access, action or information is required or would cause a breach of any existing mandate facility limit or agreement between the Bank, the Branch and/or any subsidiary of the Bank (as applicable) and the Customer. In the event that the Bank does accept or act upon any such Request, the Customer shall remain liable thereof.
- (d) 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.

#### 19. Internet Banking Services and Transactions

The services and transactions allowed shall include but are not limited to the following:-

- (a) General Customer interaction- news, advice, Bank products etc
- (b) Online application for Bank products.
- (c) Obtaining account information like current balances, account activity and other details.
- (d) Electronic bill payment for telephone bills, electricity bills etc
- (e) Requests for printed bank statements and cheque books
- (f) Stop cheque requests.
- (g) Requests for change of Customer profile particulars like phone number, address etc.

- (h) Payroll processing and wire transfer of salaries to the employees' bank accounts.
- (i) Inquiries on foreign exchange rates and interest rates.
- (j) Change of password- done by the Customer.
- (k) Internal Transfer of funds - between different accounts of the Customer.
- (l) Transfer of Funds to external bank accounts of the Customer or third parties.
- (m) Giving instructions to the Bank to open a term deposit.
- (n) 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.
- (o) Credit card application, credit card statement information and settlement of credit card account online for the CBA VISA card holders.

## 20. Limits of Internet Banking Transactions

- (a) The Customer may transfer or effect a payment for any amount subject to the provision on clause 17 (j) of this agreement, as long as the transaction does not cause the balance in the deposit account to be less than zero 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 accounts are linked in the System for that purpose.
- (b) 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.

## 21. Records of Transactions and Customer Rights to This Information

- (a) All activities performed by the Customer once allowed access into the System will be logged until the Customer ends a session. The Bank shall maintain copies of all Requests received from the Customer in electronic form. In addition, any hard copies of documentation prepared by the Bank in the process of effecting a transaction as per the Customer's Requests will be maintained. As between the Customer and the Bank, the Bank's copy records shall be conclusive evidence of the fact of receipt or non-receipt of a Request and of the contents of such Request.
- (b) The Customer will be entitled to a monthly statement covering all the Service transactions. The Customer will also get a reference number upon successful completion of each transfer or electronic bill payment, except for recurring or standing Requests for payments/transfers. A copy of any documentation including the monthly statements provided to the Customer by the Bank which indicates that a transaction was effected through the Service shall be conclusive evidence of such a transaction.

## 22. Exclusion of Liability

### (a) Circumstances not within the Bank's Control

The Bank shall not be responsible for any loss suffered by the Customer should the Service be interfered with or be unavailable by reason of (a) any industrial action, (b) the failure of any of the Customer's facilities, or (c) any other circumstances whatsoever not reasonably within the Bank's control including, without limitation, force majeure or error, interruption, delay or non-availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

### (b) Electronic Bill Payments and Transfer of Funds

The Bank will not be liable for any losses or damage suffered by the Customer as a result of delay, failure and/or refusal by the Bank to act on a Request in time or at all in the following circumstances (as the case may be):-

- (i) If the Customer does not have enough funds in the Deposit Account;
- (ii) If the payment or transfer would go over the Customer's overdraft facility limit;
- (iii) If the Customer does not authorize a bill payment in good enough time for the payment to be made and properly credited by the payee( the Customer's counter-party) by the time it is due;
- (iv) If the System or the Customer's Facilities were not working properly;
- (v) If circumstances beyond the Bank's control including those specified in this clause prevent the Bank from making a payment or transfer;
- (vi) If the money in the Customer's account is subject to legal process or other encumbrance restricting the payment or transfer;
- (vii) If the Customer does not give proper or complete instructions for the payment or transfer or the Customer does not follow the procedures in this or other applicable agreement with the Bank for requesting a payment or a transfer;
- (viii) If the Bank has reason to believe that the Customer or someone else is using the Service for fraudulent or illegal purposes;
- (ix) If a payment or a transfer request would consist of money deposited in a form or by a method that has not yet made the money available for withdrawal;
- (x) If the payment or transfer Request is in contradiction with other existing account agreements with the Customer.

- (c) If the Bank makes a timely payment or transfer but the payee nevertheless fails to credit the Customer's payment promptly after receipt, the Bank shall not be liable for any loss or damage suffered by the Customer as a result of such failure on the part of the payee.
- (d) If for any reason other than a reason mentioned in clause 22 (b) 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.
- (e) Save as provided in clause 22 (d) the Bank shall not be liable to the Customer for any interference with or unavailability of the Service howsoever caused.
- (f) 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 even where the possibility of such loss or damage is notified to the Bank.
- (g) All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

## 23. Intellectual Property Rights

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. 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.

## 24. Indemnity

In consideration of the Bank complying with the Customer's instructions in relation to any of his accounts with the Bank or the Service, the Customer undertakes to indemnify the Bank and hold it harmless against any loss, charge, damage, expense, fee or claim which the Bank suffers or incurs or sustains thereby and the Customer absolves the Bank from all liability for loss or damage which the Customer may sustain from the Bank acting on the Customer's instructions or request or in accordance with these terms and conditions. The indemnity shall also cover the following:

- (a) 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.
- (b) 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.
- (c) 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.
- (d) 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 or any loss which may be incurred by the Bank as a consequence of any breach by the Customer of the terms of this Agreement.
- (e) Any damages and costs payable to the Bank in respect of any claims against the Bank for recompense for loss caused by (i), (ii) and/or (iii) of clause 22 (b) where the particular circumstance is within the Customer's control.

## 25. Variation and Termination of Relationship

- (a) The Bank may at any time, upon notice to the Customer, terminate or vary its business relationship with the Customer and in particular but without prejudice to the generality of the foregoing the Bank may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine, save that for the purposes of Section B of this agreement, the Internet Banking Service provided by the Bank to the Customer may be terminated at any time by the Bank giving the Customer one calendar month's notice, PROVIDED that in the event of any change in any law or the application thereof, or any other event which, in the judgement of the Bank, would have the effect of prejudicing the Bank should it continue with the rendering of the Internet Banking Service to the Customer, the Bank shall be entitled to terminate the agreement at any time without notice to the Customer.
- (b) The Bank may at any time freeze any account of the Customer if the account is used for any fraudulent activity or if and so long as there is any dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same, without any obligation to institute interpleader proceedings or to take any step of its own initiative for the determination of such dispute or doubt.

## 26. Cheque Books

- (a) Cheque books are issued subject to the following conditions:-

The Customer agrees to look after and use any cheque book and any cheque form with the utmost care.

- (b) The Customer further agrees to ensure:-
  - (i) That all uncompleted cheque forms are kept in safe custody at all times;
  - (ii) That the Bank is informed immediately upon discovery by the Customer that any cheque book or any cheque form has been stolen, lost or mislaid;
  - (iii) That any person preparing the cheque is authorized to do so;
  - (iv) That any cheque is prepared and signed in ink or other indelible writing materials;
  - (v) That the amount of any cheque is written as near as possible to the left side of the form to prevent any addition of unauthorized letters or figures;
  - (vi) That any cheque and any alteration is signed by an authorized signatory;
  - (vii) That no uncompleted cheque is given to any stranger or other person when the Customer does not have reasonable grounds for believing him to be trustworthy.
- (c) The Customer is advised that:
  - (i) Where possible any uncompleted cheque should be crossed with two distinct lines in order to make the cheque negotiable only through a Bank: and
  - (ii) If it is known with which Bank the beneficiary of a cheque keeps his account then the name of the Bank should be added to the crossing in order to make the cheque negotiable only through that particular Bank.
- (d) On the receipt of a written notice from the Customer to stop payment of a cheque, the Bank will record the notice.
- (e) Upon closure of any account the Customer will return to the Bank any remaining uncompleted cheque forms relating to the account.

## 27. Drawing of Cash

- (a) The Bank may refuse payment of any cheque not drawn on the Bank's cheque form in the manner specified by the Bank in these Terms and Conditions.
- (b) The Bank will pay cash to the Customer where the cheque is signed in the presence of the teller, by an authorized signatory or by authorized signatories.
- (c) Where a cash cheque is presented not by the Customer but by a third party, the Bank may require confirmation from the Customer or from a representative of the Customer before it makes payment. Where cash cheques are presented by employees or other known agents of the Customer the following steps will be taken.
  - (i) The employee or agent will be identified beforehand in a manner acceptable to the Bank.
  - (ii) A limit on such drawings will be agreed in writing with the Bank, and until such limit is agreed no drawings will be allowed under this paragraph.
- (d) Where the Customer requests that payments be made under paragraph (c) the Customer indemnifies the Bank in respect of all payments made to the presenter of the cheque whether or not the money was received by the Customer and whether or not the order for payment was in fact the order of the Customer.
- (e) The Bank shall not be liable in any way to the Customer for having honoured, even negligently, any cheque the signature or content of which has been forged or any payment instruction from the Customer or his authorized signatory, which instruction was given fraudulently if;
- (f) the Customer has facilitated such forgery either by failure to comply

with any of the conditions contained in Clause 26 hereof or by negligence in any other way; or

- (g) there has been a previous forgery of any cheque of the Customer without the Customer having objected to the first statement of accounts which debited such cheque as provided by Clause 7 hereof or
- (h) the forgery has been perpetrated by an employee, servant, agent, contractor, authorized signatory or persons known to the Customer.
- (i) The Bank may redebit unpaid bills of exchange, cheques and similar instruments which it has discounted or credited. Until settlement of any debit balance created by any such redebit, the Bank may also claim against any party to the negotiable instrument under the applicable law. In no case is the Bank committed to protest within the prescribed time for non-payment or to exercise possible rights of recourse. If, by virtue of bills of exchange, cheques or other instruments drawn on foreign countries, recourse has been exercised against the Bank within the prescribed time in these countries, the loss or damage eventually resulting therefrom will be borne by the holder of the account who remitted the instruments to the Bank.

## 28. Validity of Documents

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

## 29. Holdings and Credit In Foreign Currency

Subject to all laws and government regulations applicable:-

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

## 30. Accounts In Foreign Currency

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

## 31. Application to all Accounts

These Terms and Conditions shall apply to each and every account now or subsequently opened in the name of the Customer

## Section C

### 32. Provisions for Use of The CBA Visa Gold and Classic Credit Cards

As part of this agreement the Bank may provide certain banking services electronically via the internet to the Customer subject to the terms and conditions set out in this clause and the remainder of this agreement. For the purposes of this Section C the following definitions shall have the following meanings:

- (a) "Cardholder" means any person for whose use a Card is issued by the Bank;
- (b) "Authorized User" means a person other than the principle Cardholder nominated under clause 41 to whom the Bank shall have issued a Card;

- (c) "ATM" means an Automated Teller Machine;
- (d) "Card" means the CBA Visa Gold or CBA Visa Classic Card issued to the Cardholder;
- (e) "Account" means a record or statement of financial expenditure or receipts relating to a particular period or purpose
- (f) "Card Account" means an Account maintained by the Bank in relation to Card transactions;
- (g) "Transactions" means any payment made or cash advance obtained by the card, the card number or in any manner authorized by a Cardholder for debit to the Card Account.
- (h) "Credit Limit" means the maximum debit balance permitted to the Card Account as determined by the Bank in its sole discretion and notified to the principle Cardholder.
- (i) "Due Date" means the date as indicated in the statement referred to in clause 34 or as determined by the bank pursuant to this Agreement;
- (j) "PIN" means any Personal Identification Number issued to the Principle Cardholder or subsequently selected by the principle cardholder where self selection is available;
- (k) "Principle Cardholder" means a person in whose name a Card Account is maintained pursuant to such person's application for establishment of a Card Account.

### 33. Use of Card

The card must be signed by the Cardholder immediately on receipt and may only be used:-

- (a) By that Cardholder;
- (b) Subject to the Terms of Agreement current at the time of use;
- (c) To obtain the facilities and benefits from time to time made available by the Bank in respect of the use of the Card;
- (d) For any lawful purpose, including the purchase of goods or services not prohibited by the Kenyan Law;
- (e) During the Validity period embossed on the Card;
- (f) Subject to the right of the Bank in its absolute discretion and without prior notice, at any time to withdraw the right to use the card, or to refuse any request for authorization of, any particular Card Transaction and to publish any such withdrawal or refusal.
- (g) Within the credit limit. In deciding whether this has been exceeded the bank may take into consideration the amount of any card transaction not yet debited and any authorization given by the bank in respect of any prospective Card Transaction. The Bank reserves the right to vary the Credit Limit from time to time at its sole discretion provided that the Bank will notify the Cardholder by way of notice in writing of not less than thirty (30) days prior to effecting any change.;

- (h) For any cash advance, directly from the bank or an ATM, within the set limit of Kshs. 40,000/= (USD 500) or such other amount determined by the Bank and notified to the Principle Cardholder from time to time which shall form part of the Credit Limit;

- (i) Participate in the Bank's installment plan facility subject to the specific terms and conditions.

### 34. Monthly Statements, Credit Limit, Interest and Late Payment Charges

- (a) The Bank will normally send a monthly statement showing all credits and debits in respect of the card account to the principle cardholder who will repay by the due date not less than 20% of the account shown

due to the Bank or such amount as the bank shall determine from time to time or the full amount if it is less than Kshs. 5,000/= or USD 65;

- (b) If the principle Cardholder does not notify the Bank in writing within Twenty-eight (28) days after the date of the statement of any error or omission, the statement will be considered to be complete and correct except for any amount improperly credited to the account.
- (c) The amount of any excess over the Credit Limit, any arrears and any card transactions made in breach of this Agreement will be immediately payable in full whether or not demanded by the bank.
- (d) If the Principle Cardholder shall repay the whole balance outstanding on a Statement by the close of business on the Due Date, no interest shall be charged on any items appearing on the Statement. Otherwise interest will be charged on a monthly basis at a rate of 3.5% on the balance carried forward or as the bank shall from time to time determine;
- (e) If the Principle Cardholder shall make any payments other than the whole balance outstanding on a statement such payment shall be applied by way of reduction against the balance outstanding on the statement in order of maturity of the transactions to the extent available, with the payments being applied first against the earliest dated outstanding transaction appearing on the Card Account.
- (f) All amounts charged to the card account under this Agreement will be immediately payable in full on the commission of an act of bankruptcy by or on the death of the principle or authorized Cardholder or at the banks sole discretion upon demand, if there is any breach in the terms of this agreement by the cardholder who shall also be fully liable for all legal fees and expenses incurred by or on behalf of the bank resulting from actions to recover the indebtedness against any deposit held by the Principle Cardholder with the bank.
- (g) A credit limit excess charge on a daily basis at a rate to be determined by the bank may be debited to the Card Account or any portion of its balance in excess of the credit limit in addition to any interest or Charges chargeable under this Agreement;

### 35. Fees and other Charges

- (a) Details of the joining fee, first year's subscription fee and charges payable in respect of each Additional Authorized User shall be advised by the bank and paid by the Principle Card holder upon Application for the establishment of a Card Account;
- (b) Card holders will also pay the Bank a transaction fee for each cash advance charge to the account and an administration fee for each cheque, direct debit/standing order received by the Bank in payment of the indebtedness which is subsequently dishonoured;

### 36. Transactions In a Different Currency

The Card Holder must be fully familiar and comply with all the applicable Exchange Control Regulations when the card is used for transactions in a currency that is different from the card currency. Card transactions made in different currency will be shown on the statement in the card currency and are payable in the card currency converted at the exchange rate charged to the Bank on the date of conversion together with a conversion fee which is a percentage of the value of the foreign transaction and which percentage can vary from time to time. This exchange rate may not be the rate in effect on the date of the transaction.

### 37. Automated Teller Machine

The Cardholder (Principle and Authorized) may use the card together with such Cardholders Personal Identification Number (PIN) to execute a transaction at any of the automated teller machines or terminals designated by the bank. If the cardholder has selected such PIN all security procedures as described herein apply to each transaction executed by the card holder who must exercise all necessary precautions against loss or theft of the card or disclosure of the PIN.

### 38. Withdrawal of Use of The Card

- (a) The bank may at any time upon serving notice to the Cardholder cancel the right to use any card entirely or in respect of specific facilities or refuse to re-issue renew or replace any card, without in any case affecting the Principle Cardholders obligations under this agreement which shall continue to be in force;
- (b) The card remains the property of the bank at all times. On request, all or any card issued for use on the Card Account must be returned immediately to the bank or to any other person acting for the bank;
- (c) The Principle Cardholder shall be liable for all expenses incurred by the bank in reclaiming a cancelled card;

### 39. Termination

- (a) The Principle Cardholder may terminate this Provisions under Section C by written notice to the bank but such termination shall only be effective on the return to the bank of all cards issued on the Card Account, and the payment of liabilities of the Principle Cardholder, under this agreement. Until such termination, the bank may re-issue Cards from time to time for use in accordance with this agreement.
- (b) All notices to the bank must be posted by registered post to the Bank's Card Department at P.O. Box 30437, 00100 Nairobi, Kenya. For the purpose of delivery, the address is, Commercial Bank of Africa Limited, Commercial Bank Building, Mezzanine Floor, Mara/Ragati Roads Upper Hill;

### 40. Safe Guarding The Card and The Pin

- (a) The cardholder will exercise all care necessary to ensure the safety of the card and the secrecy of the PIN at all times. The card holder will not disclose the Card Number to any third party except in connection with encashment usage or for the purpose of a Card Transaction or when reporting the actual loss or theft of the card;
- (b) A Principle Cardholder may reveal the PIN to an Authorized User;
- (c) A Cardholder shall never allow any other person to use the card with or without knowledge of the PIN;
- (d) A cardholder shall never write the PIN on the card or anything usually kept with it;
- (e) If the card is however lost, stolen or for any other reason liable to misuse or the PIN has been disclosed to anyone other than the Authorized user, the cardholder must immediately notify the Card Department, Commercial Bank of Africa Limited at the address as contained in this Agreement. If this notification is given orally, it shall not take effect unless followed by a confirmation in writing to the Card Manager P.O. Box 30437, 00100 Nairobi.
- (f) Until the bank receives the formal notification, the principle cardholder will be liable in respect of any use of the card. After the bank has been effectively notified, the principle cardholders liability for any subsequent use of the card other than the by a card holder will cease

provided that the Card has not been used by a person who acquired possession of it with the cardholders consent express or implied;

- (g) The card holder will give the bank all information in the cardholders possession as to the circumstances of the loss, theft or misuse of the card or disclosure of the PIN and take all steps deemed necessary by the bank to assist in the recovery of a missing Card. In the event of any such loss, theft or misuse being suspected, the bank may provide the police with any information it considers relevant. If a card is reported as lost, stolen or liable to misuse, that card must not subsequently be used but must be cut in half and returned immediately to Card Manager P.O. Box 30437, 00100 Nairobi;

#### 41. Refunds and Cardholder Claims

- (a) The Card Account will only be credited with a refund in respect of a Card Transaction if the bank receives a refund voucher or refund verification acceptable to it. No claim by the cardholder against a third party may be subject of a defence or counterclaim against the bank. No rights of the card holder against the bank. No rights of the cardholder against the bank may be assigned or otherwise disposed of;
- (c) The principle card holder shall not be entitled to interest on any credit balances there may be in the Card Account.
- (d) No Cardholder shall return for cash refund any goods and tickets for services obtained with the card.

Any such refunds must be credited only through the Card Account;

#### 42. Authorized Users

The bank may issue a Card for use by any natural person nominated by the Principle Cardholder as an Authorized User on the Card Account. The Principle Cardholder shall be liable for all amounts arising from or losses incurred by the bank in connection with the use of the card by an authorized user (including any use in breach of this Agreement which the bank shall be under no responsibility to prevent) and any expenses or charges therefrom shall be debited to the account. In addition to its other powers, the bank shall cancel any Authorized Users Card at any time upon the request in writing of the Principle Cardholder and the return of such Card to the Bank, or upon the surrender of such card to the bank by the Authorized User.

#### 43. General

The bank shall not be liable if it is unable to perform its obligation under this Agreement due (directly or indirectly) to the failure of any machine, data processing system or transmissions link or to industrial dispute, strikes, lock outs, acts of any public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, storms, flood, civil disturbances, terrorism, governmental regulations and directions and anything outside the direct control of the Bank, its agents or sub-contractors; If the bank is unable to produce or send a monthly statement in respect of the Card Account, the Principle Cardholder's liability for the overdue payment charge shall continue for the purpose of calculating such charge, and in establishing the date on which payment is due, the bank may select a date in each calendar month as the statement date;

- (a) The Bank shall not be liable, responsible or accountable in any way whatsoever for any loss, injury or damage howsoever arising from the use of the ATM and the principle Cardholder agrees to indemnify the bank against all losses, costs, charges and expenses which the bank may suffer or incur directly or indirectly arising from any use by a Cardholder of an ATM or any breach of this Agreement howsoever,

whensoever and wheresoever arising;

- (b) The Principle Cardholder shall immediately notify the Card Manager CBA card department, P.O. Box 30437, 00100 Nairobi, Kenya in writing of any change of name of address.
- (c) Any other facilities or benefits made available to Cardholders as such and not forming part of this Agreement may be withdrawn at any time without notice;
- (d) The Cardholder warrants the complete accuracy of the information given upon the application to establish the Card Account and any subsequent communication with Bank;
- (e) The Cardholder shall not make any payment to any person except the Bank in respect of goods or services with the use of the card;
- (f) This agreement shall be governed by the Kenyan Law;

#### 44. Credit Information

The Cardholder hereby authorizes and consents to the Bank receiving and exchanging with other persons financial information about the Cardholder from time to time, including the sharing and exchange of credit information concerning the Cardholder with the Credit Reference Bureau.

The Cardholder consequently indemnifies the Bank for any loss or damages arising as a result of incorrect information being processed by the bank or any credit bureau or any other person or company with whom the Cardholder has or may have financial dealings or as a result of any information provided by the Bank in respect of the Cardholder's account. The Bank will endeavor, to ensure that all information and data are correct.

#### 45. Communications

- (a) All notices, statements, letters and other communications from the Bank may be sent to the last address given by the Customer, and the date on the Bank's copy of any such communication is taken to be the date of such dispatch in the absence of proof to the contrary.
- (b) Any written communication from the Bank to the Customer including but not limited to any notices given pursuant to these Terms and Conditions shall be deemed to have been received by the Customer, if delivered then at the date and time of delivery, and if sent by post it shall be sufficient to prove that the letter containing the communication was properly stamped and addressed.
- (c) The Customer has no claim on the Bank for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication whether to or from the Customer, the Bank or any third party, by delivery, post, e-mail, fax, telegraph, telephone, telex or any other means of communication.

#### 46. Confidentiality

The Customer consents to CBA, its officers, employees, agents and advisers disclosing information relating to the Customer (including details of CBA banking agreements, the accounts, the products or any other arrangement with CBA) to CBA and other permitted parties;

- (a) professional advisers, service providers or independent contractors to, or agents of, CBA, such as debt collection agencies;
- (b) data processing firms and correspondents who are under a duty of confidentiality to CBA any actual or potential participant or sub-participant in relation to any of CBA obligations under CBA's banking agreement between CBA, or assignee, novatee or transferee (or any officer, employee, agent or adviser of any of them); any credit bureau or credit reference agency, rating agency, business alliance partner, insurer

or insurance broker of, or direct or indirect provider of credit protection;

- (c) any financial institution which the Customer have or may have dealings for the purpose of conducting credit checks (including in the form of bank references); any court, tribunal or authority (including an authority investigating an offence) with jurisdiction over the Customer; the Central Bank of Kenya; a merchant or a member of a card association where the disclosure is in connection with use of a card; and
- (d) any authorised person or any security provider; anyone CBA consider necessary in order to provide you with services in connection with an account, whether they are located in or outside Kenya.

The Customer consents to the recipients of the information CBA discloses, using and transferring the information where it is necessary to provide the Customer with services in connection with an account. To the extent permitted by the Customer waive all rights to make claims or complaints under any law imposing a duty of confidentiality on CBA with respect to this clause.

**47. Marginal Notes**

Marginal notes and headings contained on these General Terms and Conditions are for information purposes only and are not conclusive as to the contents of the Clauses they relate to.

**48. Amendments**

Any addition or alteration to these General Terms and Conditions may be made from time to time by the Bank and of which notice has been given to the Customer shall be binding upon the Customer within thirty (30) days from the date of the effecting such addition and/ or alteration as fully as if the same were contained in these Terms and conditions.

**To Commercial Bank of Africa Limited**

I/We confirm that I/We have read and understood and accept this General Terms and Conditions including the specific conditions on electronic banking and issuance of the CBA Visa Credit Card.

dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**Authorized Signature(s)**

1. \_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

2. \_\_\_\_\_  
Signed

\_\_\_\_\_  
Date

