

APPLICATION FOR OPENING ACCOUNT OF INDIVIDUALS

Branch	
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I/We wish to open the following account (s) with I&M Bank Limited as per the following details:

First Applicant															
Mr /Mrs /Ms	First name	Middle name				Last name									
ID/ Passport No./ Alien Registration No.						Marital status (√)		single <input type="checkbox"/>		married <input type="checkbox"/>					
						Date of birth		D	D	M	M	Y	Y	Y	Y
PIN Number:				Nationality:				Resident <input type="checkbox"/>		Non - Resident <input type="checkbox"/>					
Mailing Postal Address					Post Code		Town								
Permanent Address (if different from above)					Post Code		Town								
Telephone (residence)				Telephone (office)				Mobile							
Office Email				Personal Email				Fax Number							
Physical residence location address															
Employer's / Company Name															
Office Postal Address					Post Code		Town								
Nature of Business/ Occupation							Position								
Monthly Income KShs (√)		0 - 10,000 <input type="checkbox"/>		10,000 - 50,000 <input type="checkbox"/>		50,000 - 100,000 <input type="checkbox"/>		Above 100,000 <input type="checkbox"/>							

For Young Savers (Minor)	
Guardian's Name	

Other Accounts held currently with I&M Bank or other banks (for first applicant only)		
Bank Name	Branch	Account number
Bank Name	Branch	Account number

Second Applicant															
Mr /Mrs /Ms	First name	Middle name				Last name									
ID/ Passport No./ Alien Registration No.						Marital status (√)		single <input type="checkbox"/>		married <input type="checkbox"/>					
						Date of birth		D	D	M	M	Y	Y	Y	Y

Third Applicant															
Mr /Mrs /Ms	First name				Middle name				Last name						
ID/ Passport No./ Alien Registration No.				Marital status (√) single <input type="checkbox"/>				married <input type="checkbox"/>							
Date of birth								D	D	M	M	Y	Y	Y	Y

Fourth Applicant															
Mr /Mrs /Ms	First name				Middle name				Last name						
ID/ Passport No./ Alien Registration No.				Marital status (√) single <input type="checkbox"/>				married <input type="checkbox"/>							
Date of birth								D	D	M	M	Y	Y	Y	Y

Account Type (√ where applicable)												
Personal Transactional	Sapphire	<input type="checkbox"/>	Business Transactional	Sapphire	<input type="checkbox"/>	Foreign Currency Transactional	Sapphire	<input type="checkbox"/>				
	Bahati	<input type="checkbox"/>		Biashara	<input type="checkbox"/>		Others	<input type="text"/>				
	Young Savers	<input type="checkbox"/>		Alpha	<input type="checkbox"/>	Term Deposit		<input type="checkbox"/>				
	Malaika	<input type="checkbox"/>		Savannah	<input type="checkbox"/>	Call Deposit		<input type="checkbox"/>				
	Tayari	<input type="checkbox"/>		Others	<input type="text"/>							
	Others	<input type="text"/>										

Currency (√ where applicable)												
KShs	<input type="checkbox"/>	USD	<input type="checkbox"/>	GBP	<input type="checkbox"/>	Euro	<input type="checkbox"/>	Other (Name)	<input type="text"/>			
Initial Deposit Details				Period (in case of Term Deposit)								
Purpose of Account												

Account mandate												
Signing Instructions (√ as applicable) Singly <input type="checkbox"/> Jointly, any ___ <input type="checkbox"/> Either or survivor <input type="checkbox"/> Any Other <input type="text"/>												
Other Signing Instructions <input type="text"/>												

Account facilities (√ as needed)												
Cheque Book <input type="checkbox"/>				Hold Mail <input type="checkbox"/>				Third Party Operation* <input type="checkbox"/>				

* Please sign separate Third Party Mandate

Request for Next Generation Facility (√ as needed)*														
I&M Retail Internet Banking (I-Click) <input type="checkbox"/>				I&M Call Centre <input type="checkbox"/>				I&M Mobile <input type="checkbox"/>						
Email Address: <input type="text"/>														
Mobile Phone Number: <input type="text"/>														
Short Name: Kindly provide short name (max 10 letters) to represent your account number for I&M Mobile								Notify me by SMS (chargeable) for transactions of the following amount and above (in Kshs) minimum Kshs 5,000			Debit		Credit	
<input type="text"/>											<input type="checkbox"/>		<input type="checkbox"/>	

Request for emailed statements in lieu of physical statement (optional):
 Frequency (√ only one option)* Daily Weekly Fortnightly Monthly Quarterly Bi-annually Annually

* PLEASE READ CAREFULLY THE TERMS AND CONDITIONS GOVERNING THE USE OF I&M NEXT GENERATION BANKING FACILITY AND THE TERMS AND CONDITIONS GOVERNING THE USE OF I&M INTERNET BANKING. SOME OF THE NEXT GENERATION FACILITY SERVICES ARE CHARGEABLE AS PER I&M BANK'S TARIFF OF CHARGES.

Request for I&M Visa Debit Card (√ as needed)*

First Applicant only Second Applicant Third Applicant All Applicants

Other Accounts held with I&M Bank that you wish to be linked to the First Applicant's Card (applicant has to be one of the account holders and mandate of operation of all linked accounts have to be singly, either or any one):

Account Name		Account number		Branch	
Account Name		Account number		Branch	

* Please read carefully the TERMS AND CONDITIONS OF USE OF THE I&M BANK LIMITED DEBIT CARD. Only available if account operating mandate is "singly" or "either or survivor"

Introducer

Name			
Address		I&M Bank A/C No	

Certificate by Introducer

I confirm that I have known the above account applicant for _____ years and the physical location and address indicated herein is correct. I also confirm that I consider the new account holder to be respectable and trustworthy to operate the Bank Account.

Date _____ Signature _____

I/We the undersigned request you to open an account or accounts as detailed above and at any time subsequently to open such further account(s) of whatever nature as I/we may direct. I/We confirm that all of the above details are correct and that I/we have read, understood and agree to the attached I&M Bank Limited General Terms and Conditions, the Terms and Conditions Governing the Use of I&M Next Generation Banking Facility, the Terms and Conditions Governing the Use of I&M Internet Banking and the Terms and Conditions of Use of the I&M Bank Limited Debit Card.

Signature of 1st Signatory	<input type="text"/>	Signature of 2nd Signatory	<input type="text"/>
Name	<input type="text"/>	Name	<input type="text"/>
Date	<input type="text"/>	Date	<input type="text"/>
Signature of 3rd Signatory	<input type="text"/>	Signature of 4th Signatory	<input type="text"/>
Name	<input type="text"/>	Name	<input type="text"/>
Date	<input type="text"/>	Date	<input type="text"/>

Documents required

Introduction Reference	<input type="checkbox"/>	Recent Colour Passport Photographs (of all applicants)	<input type="checkbox"/>
Signature Card	<input type="checkbox"/>	Copy of Work permit (if applicable)	<input type="checkbox"/>
ID / Passport Copy (of all applicants)	<input type="checkbox"/>	PIN Card Copy (of all applicants)	<input type="checkbox"/>

FOR OFFICIAL USE ONLY			
Information data input			
Statement frequency		D, W, M, Q, H/Y, Y	Mail flag (0-1)
Tax flag		(0-1)	Sector code (1-99)
Special conditions		(0-9)	Gender (0-2)
Employer		G, P, T, D, S, C, O	Bank director related (1-2)
Income range		(0 - 4)	

Customer information checklist	Initials	Initials
Valid Identification documents obtained & authenticated		Signatures scanned
Photographs obtained		Input by
Reference verified		Verified by
Mandated signatures obtained		Manager's approval
Customer contact information available		Exception
Debit card ordered		(Give reasons)
Cheque book ordered		Exception approved by
Registered for NGF: I-Click <input type="checkbox"/> I&M Call Centre <input type="checkbox"/>		Account opened by (Name & Initials)
E-mail statements <input type="checkbox"/> I&M Mobile <input type="checkbox"/>		Authorised by (Name & Initials)

I&M BANK LIMITED GENERAL TERMS AND CONDITIONS

Subject to any other agreement made in writing between the Bank and the Customer, the relationship between the Bank and the Customer shall be governed by the following general terms and conditions (the "General Terms and Conditions"):

1. DEFINITIONS

- (i) "Account" means any type of account held by a Customer with the Bank (including without limitation) any account in relation to any advance, deposit, contract, product, dealing or service established and operated between the Bank and the Customer;
- (ii) "Available Balance" means the amount in the Account which can be drawn by the Customer without any restriction by the Bank (such restricted amounts including without limitation any unconfirmed credit(s), any amount(s) credited to the Account in error and/or any amount(s) which the Bank has a right of Set-Off);
- (iii) "Application Form" means the Bank's form completed by the Customer in respect to the establishment and operation of an Account;
- (iv) "Authorised Signatory" means the Customer and/or in relation to the Customer any person(s) authorised as specified in writing by the Customer to the Bank to operate the Account on the Customer's behalf;
- (v) "Bank" means I&M Bank Limited.
- (vi) "Bank's Branches" means (including the main registered office of the Bank) all places either in or outside the Republic of Kenya where the Bank's business is operated and conducted;
- (vii) "Business Day" means any day on which the Bank is open for all classes of banking business (excluding statutory and other public holidays) as the Bank may determine from time to time;
- (viii) "Banking Hours" means the hours for which the Bank is generally open for all classes of business as may be determined by the Bank in respect of each of the Bank's Branches from time to time;
- (ix) "Bank's Tariffs" means (including but not limited to) the schedule of the charges and fees levied by the Bank in relation to the Account;
- (x) "Cheque" means the cheque forms issued by the Bank to the Customer and forming part of the Chequebook;
- (xi) "Chequebook" means the serially numbered Cheques bound together and issued by the Bank to the Customer.
- (xii) "Chequebook Terms and Conditions" means the Specific Terms and Conditions relating to the use of the Cheques and the Chequebook by the Customer;
- (xiii) "Customer" means a holder of the Account;
- (xiv) "Debt" means all moneys, obligations and liabilities whatsoever whether principal, interest or otherwise in Kenya Shillings or in Foreign Currency which may be due, owing or incurred by the Customer to the Bank whether present or future, actual or contingent;
- (xv) "Foreign Currency" means any currency howsoever denominated other than Kenya Shillings;
- (xvi) "Kenya Shillings" means the lawful currency of the Republic of Kenya;
- (xvii) "Mandate" means the mode of operation of the Account as specified by the Customer in the Application Form;
- (xviii) "Security" means (including but not limited to) any agreement, mortgage, charge, pledge, lien, guarantee, indemnity, debenture and/or other security securing in whole or in part any Debt of the Customer with the Bank;
- (xix) "Specific Terms & Conditions" means the particular terms and conditions relating to a specific type of Account; and
- (xx) "Tax" means all taxes levies duties charges imposts or withholdings (including, without limitation, compensating tax, drought levy, value added tax, stamp duties, service charges, National Social Security or Hospital Insurance Fund payments) together with all penalties charges and interest relating to any of them

2. ELIGIBILITY

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

3. CUSTOMER'S ADDRESS

The address specified by the Customer in the Application Form shall be deemed by the Bank to be the registered address of the Customer and all postal communication to the Customer shall be sent by the Bank to the said address. The Customer must notify the Bank in writing of any changes to this address.

4. CUSTOMER'S NAME

The Account shall be operated by the Customer under the name(s) specified in the Application Form and all documents provided there under. The Bank shall have the right, at its sole and absolute discretion, to request the Customer for all necessary proof of the Customer's name and any change thereof and the Bank shall be at liberty to decline to act on any or all of the Customer's instructions until such request is met to the sole and absolute satisfaction of the Bank.

5. CUSTOMER INFORMATION

The Bank reserves the right, at its sole and absolute discretion, at any time during the tenure of the Account to request the Customer for any information and/or documentation that the Bank may require for the establishment and/or operation of the Account.

6. CUSTOMER'S INSTRUCTIONS

- (i) The Bank shall only be bound to act upon the Customer's original duly executed instructions and/or documents drawn or accepted in accordance with the Mandate until such time as the Customer shall give the Bank due written notice to the contrary;
- (ii) instructions received after Banking Hours or on a non-Business Day shall be processed on the next Business Day. The Customer may cancel instructions provided that the Bank is not otherwise irrevocably bound to act upon such instructions and provided further that the Bank has confirmed in writing that such instructions have not yet been acted upon. The Bank shall be entitled to levy a charge as per the Bank's Tariffs for cancelling instructions;
- (iii) the Bank may, subject to such requirements as it shall in its sole and absolute discretion deem necessary and upon prior written request from the Customer, act upon oral, facsimile, electronic or any other forms of unwritten communication. The Bank shall however not be liable and the Customer shall indemnify and hold the Bank harmless if the Bank acts on instructions which have been corrupted or improperly transmitted or if the information contained in the said communication is not received or is delayed;
- (iv) the Bank may refuse to act on the Customer's instructions, if the instructions are not clear and/or if the Bank has reason to believe that the Customer did not give the instruction and/or if the Bank believes that a law, regulation, code or other duty which applies to the Bank may be broken by acting on the instructions.

7. SPECIMEN SIGNATURES

The Customer shall give to the Bank, in a form acceptable to the Bank at the Bank's sole and absolute discretion, a specimen of the signature of each Authorised Signatory. The Bank may require a fresh specimen signature in the event of a change in the Customer's name.

8. DEPOSITS & CREDITS

- (i) the Customer may deposit for credit to the Account cash, cheques and/or other instruments drawn in a manner and of a form acceptable to the Bank. The Bank shall not accept any liability for cash sent through the post. All cheques and/or other instruments sent through the post must be crossed and marked 'Account Payee Only/Not Negotiable' and must be made payable to the name of the Customer's Account;
- (ii) any negotiable or non-negotiable instrument of whatsoever nature, shall be accepted by the Bank for deposit or collection at the sole risk of the Customer. The Bank reserves the right without prior notice to reverse any entries in the Account and debit any amounts credited in the Account in respect of any promissory notes, bills of exchange, cheques or other instruments credited to the Account which are subsequently returned unpaid for any reason whether or not the Bank has advised the Customer of such entries and credits. The reversal of such entries and debit of such amounts does not affect the right of the Bank to retain such unpaid notes, bills, cheques or instruments and to exercise in its favour all rights relating to such instruments;
- (iii) the Bank assumes no responsibility and shall not be liable for the value given to funds by a beneficiary or corresponding bank provided that the Bank has acted according to the Customer's instructions;
- (iv) the Bank acts only as the Customer's collecting agent and assumes no responsibility for the realisation of any items deposited with the Bank for collection; and
- (v) the negotiation and collection of negotiable instruments denominated in a Foreign Currency, shall be subject to the International Chamber of Commerce Uniform Rules of Collection as presently enacted or subsequently varied and/or amended.

9. PAYMENT OF CASH

- (i) the Bank shall only pay cash to the Customer upon the presentation of a cheque, where the cheque is duly signed by an Authorised Signatory;
- (ii) where a cheque presented by a party other than the Customer for the payment of cash, the Bank may require confirmation from an Authorised Signatory before it makes payment to such party; and
- (iii) where the Authorised Signatory requests the Bank to make a payment under sub paragraph (ii) above the Customer shall indemnify the Bank on a full and unqualified basis in respect of all payments made to the bearer of the cheque whether or not the money is received by the Customer and whether or not the order for payment is in fact the order of the Customer.

10. WITHDRAWAL AND PAYMENTS

- (i) Subject to daily withdrawal limits (if any), a sufficient Available Balance and the Specific Terms and Conditions of the Account, the Customer may make withdrawals and/or payments from the Account;
- (ii) the Customer shall not be permitted to draw against, and the Bank shall not be obliged to make payment against a cheque or other payment which has not been cleared.

11. SIMULTANEOUS ORDER OF FUNDS

Where the Bank receives several instructions from the Customer for withdrawals and/or payments from the Account at approximately the same time such that the aggregate amount sought to be withdrawn and/or paid exceeds the Available Balance, the Bank may in its sole and absolute discretion comply with such of the said instructions in such order and/or manner as it deems fit.

12. BANK CHARGES AND EXPENSES

The Bank shall be entitled to be paid by the Customer and shall be at liberty to debit the Account with:

- (i) all expenses incurred by the Bank in clearing or attempting to clear any cheque or other payment to be credited to the Customer's Account.
- (ii) interest (including default and/or additional interest if any) on any overdrawn account, loan account or on any other credit facility extended by the Bank to the Customer, at such per annum rate and computed and compounded in such manner as shall be determined by the Bank in its sole discretion, without notice to the Customer (subject to the limits permitted by law);
- (iii) legal and/or professional charges charged, where applicable, on an advocate/client basis and incurred by the Bank in obtaining any legal and/or professional advice in connection with the Account, the preparation of any documents relating to the Customer's credit facilities and/or any dealings by the Customer with the Bank;

- (iv) processing fees, commitment fees, commission charges etc. at such rates, at such times and in such manner as the Bank may from time to time decide; and
(v) all other expenses and charges levied by the Bank as more particularly set out in the Bank's Tariffs (a copy of which is available upon request).

13. STATEMENTS OF ACCOUNT

- (i) the Bank shall provide the Customer with a statement of the Account on a regular basis covering all the transactions made in the Account. The Bank may also (upon the Customer's written request and payment of the requisite fee) provide the Customer with an additional statement(s) and/or provide the statement to the Customer at such intervals as the Customer and the Bank may agree; and
(ii) the contents of any statement issued by the Bank to the Customer, to which the Customer has not objected to within twenty-eight (28) days of receipt thereof, shall be deemed to be accepted by the Customer and shall, in the absence of any manifest error, be conclusive evidence of all the transactions made in the Account and shall not be subject to challenge by the Customer on any ground, whatsoever;
(iii) for all purposes, including any legal proceedings, a certificate signed by any director, manager and/or any authorised signatory of the Bank as to any matter relating to the Account and/or any Debt shall, in the absence of any manifest error, be conclusive evidence against the Customer in respect of the said matter and/or Debt.

14. STANDING ORDERS/DIRECT DEBITS

The Bank may permit the Customer to effect automatic debits or withdrawals (such as Direct Debits or Standing Orders) from the Account unless the Specific Terms and Conditions of the Account state otherwise. All such transactions shall be effected at the Bank's discretion and the Bank reserves the right not to effect any instructions relating to a Direct Debit or Standing Order where there is an insufficient Available Balance.

15. ACCOUNTING & TRANSMISSION ERRORS

- (i) The Bank reserves the right without prior notice to the Customer, to debit any amount(s) credited to the Account in error and/or reverse any entry made to the Account in error. The Bank accepts no responsibility for the consequences of such debits and/or reversals. Any amount(s) credited by the Bank to the Account in error and utilised by the Customer must be repaid to the Bank together with all applicable interest accrued thereon within twenty-four (24) hours of demand being made by the Bank to the Customer; and
(ii) payment orders, exchange operations and sales and purchases of securities in Kenya or elsewhere, undertaken by the Bank for the account of the Customer shall be at the Customer's own expense. Neither the Bank nor any of its correspondents nor any of its employees shall be liable for any mutilation, corruption (including without limitation, cables, airlines, courier services, electronic mail, telex or facsimile systems) howsoever occurring.

16. INTEREST

- (i) Interest shall only be payable on the credit balance in an interest earning Account. Interest shall be calculated at such rate as the Bank may determine and vary from time to time;
(ii) Interest shall be paid and credited to the Account in such manner as specified in the Specific Terms and Conditions of the Account; and
(iii) Interest shall be calculated on gross and any Tax that the Bank is required to pay shall be debited from the Account.

17. CREDIT FACILITIES EXTENDED BY THE BANK TO THE CUSTOMER

Upon due application by the Customer, the Bank may, at its sole and absolute discretion, extend credit facilities to the Customer in such manner and upon such terms and conditions as the Bank may determine. The Bank shall be entitled to debit the Account with all interest, commission, costs, expenses and other charges (including banking and legal charges) incurred in connection with the extension of such credit facilities.

18. REPAYMENT OF OVERDRAWN ACCOUNTS

- (i) The Customer must not draw the Account below the prescribed minimum balance of the Account (or exceed the limit of any overdraft facility extended and approved by the Bank in respect of the Account) without the Bank's prior written consent. The Bank shall be at liberty at its sole and absolute discretion to refuse to honour a cheque, make a payment and/or allow a withdrawal if the effect of the same would be to either cause the Account to be drawn below its prescribed minimum balance or the said overdraft limit to be exceeded; and
(ii) if the Account is drawn below its prescribed minimum balance or the approved overdraft limit is exceeded without the Bank's prior written consent the Customer shall (including without limitation) pay such fees as the Bank may prescribe as well as pay additional interest on the particular amount drawn below the prescribed minimum balance or the particular amount in excess of the approved overdraft limit (in this paragraph together called the "outstanding amounts") at such rate or rates and computed and compounded in such manner as may be determined by the Bank in its sole and absolute discretion until the outstanding amounts are paid in full. The Bank shall also be at liberty to demand from the Customer the immediate repayment, in full, of the entire outstanding amounts together with all interest accrued thereon as well as all other costs, charges and expenses arising there from.

19. BANKS' LIEN

- (i) In the event of a Debt, the Bank shall have a general lien over all the property of the Customer in the Bank's possession, including, but not limited to, cash, goods, securities or valuables held by the Bank, cheques presented for payment, bills and any other property (movable or immovable) charged in whatever manner by the Customer in favour of the Bank to secure the repayment of the Debt; and
(ii) the Bank may, at any time, give the Customer notice in writing that if the Debt is not repaid to the Bank within a stipulated period of time, the Bank, may without any further notice to the Customer, enforce any of its rights and remedies under any Security so as to redeem the Debt.

20. BANK'S RIGHT OF SET-OFF

- (i) All operations between the Bank and the Customer of whatsoever nature shall be considered and treated by the Bank for all purposes as a single integral and indivisible account and the Bank may, without notice utilise any credit balance in the Account (whether current, loan, savings, time deposit or any other type of account or in the account of any other person for whom the Customer has agreed to act as surety) to pay any Debt due to the Bank from the Customer or any other person whom the Customer has agreed to act as guarantor and/or surety. This right of Set-Off shall be in addition to, and shall not impair or affect, any of the Bank's other rights of recovery;
(ii) convert, at the Bank's prevailing rates of exchange, any money held by the Bank in a Foreign Currency which is subject to the Bank's lien and thereafter exercise the Bank's right of Set-Off. The Bank accepts no liability for any loss caused by such currency conversion; and
(iii) liquidate a time deposit (including those denominated in Foreign Currency and/or for a given period of time) and exercise the Bank's right of Set-Off against the Debt notwithstanding that the time period of the deposit has not expired or interest accrued.

21. VARIATION OF RELATIONSHIP & CLOSURE OF THE ACCOUNT

- (i) The Customer may, upon prior issuance to the Bank of a thirty (30) day written Notice or such Notice as the Bank may deem fit close the Account subject to the settlement of any Debt;
(ii) the Bank may at any time, upon giving notice to the Customer, terminate or vary its business relationship with the Customer and/or close the Account and may require the repayment by the Customer of any Debt resulting from such determination, variation and/or closure; and
(iii) if the Bank terminates or varies its relationship with the Customer and/or closes the Account, it shall be the Customer's sole responsibility to notify any other party regarding such termination, variation and/or closure.

22. FREEZING OF THE ACCOUNT

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

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

23. CHEQUEBOOKS

- (i) The Chequebook shall be issued by the Bank to the Customer at the Bank's sole discretion, subject to the Chequebook Terms and Conditions which are set out in this paragraph and on the inside cover of the Chequebook;
(ii) The Bank may charge a fee for the issuance of a Chequebook and any other additional Chequebooks issued to the Customer;
(iii) The Bank may refuse to make payment to the Customer or any other third party on any cheque which is not drawn in the manner specified by the Chequebook Terms and Conditions set out below:
(a) The Customer must write, date and sign the Cheque in clear handwriting using legible ink (preferably blue or black) in the currency of the Account for an amount not exceeding the Available Balance;
(b) when drawing a Cheque:
(i) the amount should be stated in both words and figures in such a manner as to prevent the insertion of any other word or figure and/or to prevent any fraudulent alterations;
(ii) the Cheque must be signed by an Authorised Signatory as per the terms of the Mandate;
(iii) any alteration to the Cheque must be counter-signed by an Authorised Signatory as per the terms of the Mandate;
(iv) any un-crossing of the Cheque must be done by an Authorised Signatory as per the terms of the Mandate;
(v) no incomplete Cheque is given to any person; and
(vi) all uncompleted Cheques are kept in safe custody at all times.
(c) the Customer must count the number of Cheques contained in the Chequebook at the time the Customer is issued with the Chequebook and periodically throughout the use of the Chequebook. If any Cheque is found to be lost or missing, the Customer must inform the Bank immediately,
(iv) the Bank may refuse to honour a Cheque where the date of the Cheque is more than six (6) months old or where the date is in the future (post-dated cheques);
(v) where the Customer wants the Bank to stop payment on a Cheque, the Customer must immediately request the Bank in writing to do so. Upon receipt of a written notice from the Customer to stop payment of a Cheque, the Bank shall record the notice and stop the payment provided that such notice is received before the transaction upon which the Cheque is based has occurred. The Bank reserves the right to charge an administration fee for stopping the payment of a Cheque;
(vi) the Bank shall not be liable to the Customer in any way and the Customer shall fully indemnify the Bank against any claims by any third party should the Bank make payment against a Cheque on the Customer's behalf, where the Cheque is presumed to be issued by the Customer but the signature or content of the Cheque and/or written instruction has been forged if:
(a) the Customer has facilitated such forgery; or
(b) there has been a previous forgery of the Customer's Cheque or note of instruction without the Customer having previously objected to the payment,
(vii) the Bank acts only as the Customer's collecting agent and if the Customer's Cheque or any other third party instrument is lost or stolen while in the custody of the Bank the Bank shall not be liable for any loss of profit or opportunity suffered by the Customer or any other person and/or for any charges incurred by the Customer or any other person in stopping payment thereof even where the Bank has been negligent.

24. JOINT ACCOUNTS

- The following Specific Terms and Conditions shall apply to Joint Accounts:
(i) where a Joint Account is operated by a Mandate designated as "Either/or Survivor", each Customer to the Joint Account is authorised to operate the Joint Account individually and it shall be deemed that the instructions given by one Customer to the Joint Account regarding the Joint Account are authorised by the other Customer(s) to the Joint Account;
(ii) where a Joint Account is operated on a Mandate designated as "Jointly", each Customer to the Joint Account is only authorised to operate the Joint Account together with all other Customers to the Joint Account (or as specified in the Mandate). The Bank shall not be held liable for refusing to act or for any delay in accepting the instructions which are not issued by all Customers to the Joint Account;
(iii) if any Customer to the Joint Account gives instructions that conflict or appear to conflict with instructions given by another Customer(s) to the Joint Account the Bank may refuse to act on any such instructions until the conflict is resolved to the Bank's sole satisfaction; and
(iv) each Customer to the Joint Account shall be jointly and severally liable to repay any Debt in respect of the Joint Account.

25. FIXED DEPOSITS

The Bank may at its sole discretion, accept funds in specified currencies from the Customer to be placed in an interest earning deposit Account for a fixed period of time. Such Specific Terms and Conditions as may be set by the Bank in respect of such Accounts shall apply and if there is any difference between these General Terms and Conditions and such Specific Terms and Conditions, the Specific Terms and Conditions shall apply.

26. FOREIGN CURRENCY ACCOUNTS

- Subject to any exchange regulations (where applicable):
(i) the Bank may operate the Account in a Foreign Currency;
(ii) the Bank may at the request of the Customer, credit or debit the Account with a currency which is not the designated currency of the Account and may convert such amount debited or credited at the Bank's prevailing rate of exchange; and
(iii) the Foreign Currency Account shall be operated by the Customer at the Customer's risk including but not limited to the consequences of any legal, fiscal or other measures affecting the Foreign Currency Account.

27. DORMANT ACCOUNTS

- (i) The Account shall be deemed to have become Dormant where the Account has remained inoperative for such period of time as may be specified by the Specific Terms and Conditions of the Account or as may be determined by the Bank from time to time; and
(ii) The Bank may (including without limitation) apply any one or more of the following conditions to an Account upon its classification as Dormant:
(a) confirm the validity and authenticity of the first transaction reactivating the Account;
(b) suspend the payment of interest (if applicable);
(c) suspend the issuance of Account Statements; and
(d) charge a maintenance fee as may be determined by the Bank from time to time.

28. DEDUCTIONS

All payments required to be made by the Customer to the Bank pursuant to these General Terms and Conditions or otherwise shall be made in immediately available funds without any set-off, counterclaim or deduction of any Tax whatsoever unless required by law in which event the Customer shall simultaneously while making the relevant payment pay, to the Bank such additional amount as shall result in the receipt by the Bank of the full amount which would otherwise have been receivable by the Bank.

29. COMPLAINTS

The Bank may require that any complaint made by the Customer in relation to the Account be made in writing. The Bank shall act upon such complaint, as soon as is reasonably possible, after receipt of the complaint by the Bank.

30. LIABILITY

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

31. VALIDITY OF DOCUMENTS

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

32. COMMUNICATIONS

- (i) any written communication from the Bank to the Customer, including but not limited to, any notice given pursuant to these General Terms and Conditions shall be deemed to have been received by the Customer:
(a) if delivered personally, at the date and time of delivery;
(b) if sent by post, on the fourth day from the date of posting;
(c) if sent by airmail, on the seventh day from the date of posting;
(d) if sent by telex, when the proper answerback is received;
(e) if sent by SWIFT, when the acknowledged SWIFT message is received; and

- (f) if sent by facsimile, on completion of the transmission and in the case of posting it shall be sufficient to prove that the letter containing the communication was properly stamped and addressed notwithstanding that it be undelivered or returned undelivered;
- (ii) the Customer shall have no claim against the Bank for damages resulting from loss, delay, misunderstanding, mutilation, duplication, or any other irregularity due to the transmission of any communication whether to or from the Customer, the Bank or any third party, by delivery, post, fax, telegraph, telephone, telex or any other form of cable communication.
- 33. INDULGENCES**
Any concession which may be granted to the Customer by the Bank shall not affect the Customer's obligations to the Bank or the Bank's rights as against the Customer.
- 34. CONFIDENTIALITY**
(i) the Bank values the Customer's privacy and has a policy to hold in confidence information and/or documentation relating to the Customer and/or the Account. However the Bank may in certain circumstances disclose such information and/or documentation to any person in connection with any actual or likely event of default by the Customer. This right to disclose includes disclosing information under these General Terms and Conditions (including the assignment or transfer of all the Bank's rights and obligations under these General Terms and Conditions).
(ii) the Customer authorises the Bank to respond, if it shall so choose, to any and all inquiries (including without limitation any bank's references) received from any other bank, financial institution or person providing credit or financial services, concerning the Account without any reference to the Customer.
(iii) the Bank may also disclose information and/or documentation relating to the Account in the following circumstances:
(a) to any credit reference, scoring or rating agencies;
(b) to any persons providing information or services to the Bank, (including without limitation a holding or group companies, subsidiaries or related parties) on the understanding that the information shall be confidential and may not be further disseminated; and
(c) where the Bank is under a legal or contractual obligation to do so (including but not limited to the Bank's legal and/or contractual obligations to prevent money laundering and related offences) and/or where it is in the interest of the public.
- 35. ASSIGNMENT**
The Bank shall have a full and unfettered right to assign and/or transfer all or any of its rights, benefits and obligations under these General Terms and Conditions and/or under any Specific Terms and Conditions, to any person at any time without notice to the Customer.
- 36. INTERPRETATION**
(i) the expression the "Customer" and/or "person" and or "party" shall include any natural person, firm, partnership, incorporate or corporate body, state, state agency, governmental authority in whatever name of style and when there are two or more included in the expression the "Customer" and/or "person" and/or "party" such expression shall include either one severally and/or both or all of them jointly.
(ii) references to words denoting the singular number shall include the plural and vice versa and reference to the masculine gender includes a reference to the feminine gender and neuter and vice versa;
(iii) any obligation imposed by or resulting from these General Terms and Conditions which is undertaken by more than one person shall be a joint and several obligation of each of the persons who has undertaken it whether as principal, guarantor, indemnifier, surety or otherwise; and
(iv) each of the provisions of these General Terms and Conditions is severable and distinct from the others. If at any time any of the General Terms or Conditions hereof is or becomes illegal, invalid or unenforceable in any respect neither the legality, validity nor enforceability of the remaining General Terms and Conditions shall in any way be affected or impaired thereby.
- 37. VARIATION**
(i) the Bank may vary these General Terms and Conditions, any Specific Terms and Conditions and/or the Bank's Tariffs (either in whole or in part) at any time. Notification of any such variation may be given to the Customer either in writing or by publication thereof by such means as the Bank may decide but any variation whether notified or not shall be binding on the Customer; and
(ii) the Bank may introduce a new type of Account for which Specific Terms and Conditions shall apply. Where there is any conflict between these General Terms and Conditions and any Specific Terms and Conditions, the Specific Terms and Conditions shall apply.
- 38. INDEMNITY**
The Customer hereby agrees to indemnify and keep the Bank harmless against all claims, demands, losses, costs, damages, liabilities and expenses whatsoever (including any Taxes, legal and/or statutory fees (billed, where applicable, on an advocate/client basis) incurred, sustained or suffered by the Bank (or by any other person on the Bank's behalf) in connection with:
(i) the negotiation, preparation, execution, delivery, stamping or registration (whether in whole or in part) of any Security;
(ii) any preservation or exercise (or attempted preservation or exercise) of any of the Bank's rights under or in connection with the enforcement (or attempted enforcement) of these General Terms and Conditions, any Specific Terms and Conditions and/or any Security;
(iii) any actual or proposed amendment of or waiver to any Security;
(iv) any discharge or release of any Security; and
(v) any dealing with or obtaining of professional and/or other advice about any matter or question arising out of or in connection with these General Terms and Conditions, any Specific Terms and Conditions and/or any Security.
- 39. GOVERNING LAW**
These General Terms and Conditions and any Specific Terms and Conditions shall be governed by the laws of the Republic of Kenya and the Customer hereby submits to the non-exclusive jurisdiction of the Courts of Kenya.

TERMS AND CONDITIONS GOVERNING THE USE OF I&M NEXT GENERATION BANKING FACILITY

- 1.1 In these Terms and Conditions (the "Next Generation Terms and Conditions"), including any Schedule, unless the context otherwise requires:
(a) "Access Profile" means the information and/or documentation held by the Bank in respect of the Customer and/or the Nominated User for purposes of the Customer's and/or Nominated User's access to the System and/or use of the Service.
(b) "Application Form" means the Form to be completed for Subscription;
(c) "Associate" means the same as the definition of "associate" under the relevant provisions of the Banking Act, Chapter 488 of the Laws of Kenya.
(d) "Bank" means I&M Bank Limited.
(e) "Banking Day" means a day on which the counters of the Branch and/or the Subsidiary (as applicable) are open for the transaction of ordinary business;
(f) "Branch" means (including the main registered office of the Bank) all places either in or outside the Republic of Kenya where the Bank's business is operated and conducted;
(g) "Bank Account" means an account held by a Customer with the Bank (including without limitation) any account in relation to any advance, deposit, contract, product, dealing or service established and operated between the Bank and the Customer;
(h) "Card" means the Credit Card and/or Debit Card issued by the Bank to the Customer and/or the Nominated User.
(i) "Customer" means a holder of a Bank Account whose Subscription has been approved by the Bank;
(j) "Deposit Account" means a Bank Account with an amount therein which can be drawn by the Customer without any restriction by the Bank;
(k) "email" means Electronic Mail;
(l) "Electronic Banking Services" means the Bank's Next Generation Banking Facility;
(m) "General Terms and Conditions" means the General Terms and Conditions in respect of the Bank Account;
(n) "I&M Call Centre Service" means (including without limitation) the service extended by the Bank to a Customer whereby upon due Request the Customer can speak to the Bank's designated representative(s) on enquiries regarding the balance in the Bank Account, transactions in the Bank Account as well as receive information on the Bank's products and services;
(o) "I&M Infomail service" means (including without limitation) the service extended by the Bank to a Customer whereby upon due Request, the Bank transmits to the Customer an appropriate email message containing the balance of the Bank Account and/or a Statement of the Bank Account and or a mini Statement of the Customer's last 6 transactions in the Bank Account;
(p) "I&M M-Banking service" means (including without limitation) the service extended by the Bank to a Customer whereby upon due request by a Customer and/or a Nominated User to the Bank through a Phone : -
a. the Bank transmits to the Phone an appropriate SMS containing the balance and/or a mini statement of the Bank Account;
b. effects a transfer of an amount from a Deposit Account to another Bank Account and/or a Phone Account.
c. the Customer and/or Nominated User purchases Phone airtime using funds held in a Deposit Account.
d. the Customer and/or the Nominated User pays Bills from selected service providers (as may be notified by the Bank to the Customer from time to time) using funds held in a Deposit Account.
e. the Bank acts upon Requests, including but not limited to Requests to stop a cheque, issue a cheque book, change the M-Banking PIN and/or update the contact information held by the Bank in respect of a Customer and/or Nominated User;
f. the Bank transmits to the Phone an appropriate SMS containing information regarding the Bank Account, including but not limited to information regarding the status of any banking facilities extended by the Bank to a Customer and/or Nominated User, the Bank's foreign exchange rates, the Bank's interest rates, etc.
g. the Bank transmits to the Phone an appropriate SMS containing information on transactions effected using the Card.
h. Any other service that the Bank offers in future as part of I&M M-Banking service
(q) "I&M Smart Statements service" means (including without limitation) the service extended by the Bank to a Customer whereby upon due Request the Bank transmits to the Customer's fax machine a Statement of the Bank Account.
(r) "Next Generation Banking Facility" means I&M Infomail service, I&M M-Banking service, I&M Smart Statements service and I&M Call Centre service and such other services as may be notified by the Bank to the Customer from time to time;
(s) "Nominated User/s" means any representative(s) of the Customer authorized by the Customer to hold and change the M-Banking PIN and hence to access the System and Service on behalf of the Customer;
(t) "M-Banking PIN" means the secret Personal Identification Number provided to the customer by the bank comprising four (4) digits for authentication/verification by bank of his/her identity. The customer will be able to obtain M-banking services as determined by the bank related to his/her account(s) through use of the PIN.
(u) "Phone" means a Customer's and/or the Nominated User's cellular/mobile telephone line which has been duly registered with the Bank as part of the Customer's and/or Nominated User's Access Profile
(v) "Phone Account" means a Customer's and/or Nominated User's cellular/mobile banking account held through their Phone.
(w) "Request" means a request or instruction received by the Bank from (or purportedly from) the Customer and/or the Nominated User through the System in respect of the Service and upon which the Bank is, by virtue of subparagraph 4.1, authorized to act;
(x) "Service" means such of the Electronic Banking Services as the Customer may from time to time apply for and the Bank approve and/or agree to provide;
(y) "SMS" means a Short Message transmitted to or from a Phone.
(z) "Subsidiary" means such subsidiary or subsidiaries of the Bank which may from time to time be specified by the Bank to the Customer;
(aa) "System" means the multi-media banking and communications software and/or equipment enabling the Customer to communicate with the Bank for the purposes of the Service. Where access through the Internet is necessary, the System and Service shall for the purpose of this agreement be accessed through the Bank's website (for the time being www.imbank.co.ke);
(bb) "Subscription" means application for the Service by a Customer;
- 1.2 In these Next Generation General Terms and Conditions:
(a) the expression the "Customer" and/or "person" and or "party" shall include any natural person, firm, partnership, incorporate or corporate body, state, state agency, governmental authority in whatever name of style and when there are two or more included in the expression the "Customer" and/or "person" and/or "party" such expression shall include either one severally and/or both or all of them jointly;
(b) references to words denoting the singular number shall include the plural and vice versa and reference to the masculine gender includes a reference to the feminine gender and neuter and vice versa;
(c) any obligation imposed by or resulting from these Next Generation Terms and Conditions which is undertaken by more than one person shall be a joint and several obligation of each of the persons who has undertaken it whether as principal, guarantor, indemnifier, surety or otherwise.
- 2. SUBSCRIPTION BY CUSTOMER**
2.1 Upon approval of the Subscription by the Bank as well as payment by the Customer of the fees and charges set out in paragraph 7 below to the Bank, the Bank shall provide to the Customer the Service subject to and in accordance with the Next Generation Terms and Conditions as well as the General Terms and Conditions.
2.2 Where the Customer subscribes for the I&M Infomail service, the Customer shall, indicate an email address in the Application Form, which email address shall be registered by the Bank. Only Requests received through the Customer's said registered email address shall be acted upon by the Bank.
2.3 Where the Customer subscribes for the I&M M-Banking service, the Customer shall, indicate a Phone number in the Application Form, which Phone number shall be registered by the Bank. Only Requests received through the said Phone number shall be acted upon by the Bank. The Customer can only register one Phone number with the Bank.
2.4 Where the Customer subscribes for the I&M Call Centre service, the Customer shall, indicate either their date of birth or date of incorporation or date of registration (as the case may be) in the Application Form, which date shall be registered by the Bank. The Bank shall only act upon Requests in respect of the I&M Call Centre service after the said date has been verified.
2.5 The Customer undertakes to provide accurate information in the Subscription and further undertakes that the Customer and/or the Nominated User shall promptly provide accurate information in furtherance of the Subscription whenever required to do so by the Bank. The Customer and/or the Nominated User shall be responsible for the correctness and authenticity of any and all information provided by them to the Bank. The Bank shall not be liable to the Customer and/or the Nominated User and/or any third party for any loss and/or damage arising out of any inaccurate information provided by the Customer and/or the Nominated User, however so caused. The Customer and/or the Nominated User unconditionally and irrevocably undertake and agree to fully indemnify the Bank against all claims, demands, losses, costs, damages, liabilities or expenses whatsoever which the Bank may at any time incur, sustain or suffer as a result of relying on any inaccurate information provided by the Customer and/or the Nominated User and also agree to reimburse the Bank in full, upon demand, for all payments, losses, costs, damages, liabilities and expenses made, suffered or incurred by the Bank as a consequence thereof or arising there from.
2.6 The Bank reserves the right to add, modify, replace or withdraw any Service at any time, for any reason whatsoever, without prior notice to the Customer.
- 3. CUSTOMER'S FACILITIES AND CUSTOMER RESPONSIBILITIES**
3.1 The Customer shall at their own expense provide and maintain in safe and efficient operating order such hardware, software, phone, fax machine, and other communication equipment and facilities (including access to any public telecommunications systems) and any communications network (collectively "the Facilities") necessary for the purpose of accessing the System and the Service.
3.2 The Customer shall be responsible for ensuring proper performance of the Facilities including any losses or delays that may be caused by the Facilities. The Bank shall neither be responsible nor liable for any errors or failures caused by any malfunction of the Facilities nor shall the Bank be responsible or liable for any computer virus or related problems that may be associated with the use of the System, the Service and the Facilities. The Customer shall be responsible for charges due to any service provider providing the Customer with connection to the internet, cellular phone, telephone or any other applicable media services and the Bank shall not be responsible or liable for losses or delays caused by any such service provider.
3.3 The Customer shall obtain all licenses and consents necessary to have access to and use of the System and shall ensure that all persons they allow to have access to the System shall comply with all laws and regulations applicable to the use of the System and shall follow all instructions, procedures and terms contained in the Next Generation Terms and Conditions and any document provided by the Bank concerning the use of the System and Service.
3.4 The Customer shall prevent any unauthorised access to and/or use of the System and Service by keeping their M-Banking PIN secret at all times. The Customer shall ensure that their M-Banking PIN does not become known or come into possession of any unauthorised person.
3.5 The Customer shall take all reasonable and necessary precautions to detect any unauthorised use of the System and Service. To that end, the Customer shall ensure that all communication from the Bank is examined and checked by or on behalf of the Customer as soon as practicable after receipt by the Customer in such a way that any unauthorised use of and access to the System shall be detected.
3.6 The Customer shall immediately inform the Bank by telephone followed by a written confirmation sent on the same day in the event that:
(a) the Customer has reason to believe that M-Banking PIN is or may be known to any unauthorised person and/or has been compromised; and/or
(b) the Customer has reason to believe that unauthorised use of the System and/or the Service has or may have occurred or could occur and/or a transaction in respect of the Service may have been fraudulently inputted or compromised.
3.7 The Customer and/or the Nominated User 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.
3.8 The Customer and/or the Nominated User 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 on the Bank's internet website or product literature. The Customer acknowledges that any failure on the part of the Customer and/or the Nominated User to follow the recommended security procedures may result in a breach of the Access Profile confidentiality and may lead to unauthorised use of the System and/or Service. 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.

- 3.9 The Customer and/or the Nominated User shall not at any time operate or use the Service in any manner that may be prejudicial to the Bank.
- 3.10 The Customer understands and accepts that it may link a Bank Account with multiple signatories to the Customer's Access Profile and Service only if the Customer has submitted to the Bank an original Application Form executed by all signatories to the said Bank Account confirming that the Bank is authorised to act on all Requests. It shall be the sole responsibility of the Customer to ensure that no unauthorised persons have access to the said Bank Account.
- 3.11 The Bank shall be entitled and authorised to debit the Customer's Bank Account with the amounts of the transactions effected via the Service as well as to debit the Customer's Bank Account with the amount of any fees applicable to the Service from time to time.
- 4. IRREVOCABLE AUTHORITY TO THE BANK**
- 4.1 The Bank is irrevocably authorised by the Customer to act on all Requests and to hold the Customer liable therefore, notwithstanding that any such Requests are not issued by/and or authorized by the Customer and/or Nominated User or are not in accordance with any existing mandates given by the Customer. If the Customer and/or the Nominated User requests the Bank to cancel any transaction or instruction after a Request has been received by the Bank from the Customer, the Bank may in its sole and absolute discretion cancel such transaction or instruction.
- 4.2 The Bank shall be entitled to accept and to act upon any Request, even if that Request is for any reason incomplete or ambiguous if, the Bank, in its sole and absolute discretion believes that it can act upon the Request the incompleteness or ambiguity of the Request notwithstanding.
- 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 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 and the Customer. In the event that the Bank does accept or act upon any such Request, the Customer shall remain liable for and indemnify the Bank against all claims, demands, losses, costs, damages, liabilities or expenses whatsoever which the Bank may at any time incur, sustain or suffer as a result of accepting or acting upon such Request.
- 4.4 In the event of any conflict between any terms of any Request from the Customer and the Next Generation Terms and Conditions the Next Generation Terms and Conditions shall prevail. The Next Generation Terms and Conditions and all authorizations and other procedures arising here from supplement the General Terms and Conditions and any other mandates, which apply to the Bank Account(s).
- 5. LIMITS OF ELECTRONIC BANKING TRANSACTIONS**
- The Customer and/or the Nominated User may transfer or effect a payment for any amount subject to the provisions of paragraph 3.9 of the Next Generation Terms and Conditions provided that such transaction in respect of the Service does not cause the balance in the Deposit Account to fall below the prescribed minimum balance of the Deposit Account or exceed the limit of any overdraft facility extended and approved by the Bank in respect of a Deposit Account) unless the Customer has a separate term Deposit Account duly pledged with the Bank to cover excesses that may arise in the affected Deposit Account from time to time in which event the said Deposit Accounts must be linked in the System for that purpose and the said transaction cannot cause the excess balance in the affected Deposit Account to exceed the amount pledged in the term Deposit Account.
- 6. RECORDS OF TRANSACTIONS AND A CUSTOMER'S RIGHTS TO THIS INFORMATION**
- 6.1 All transactions in respect of the Service performed by the Customer and/or the Nominated User once allowed access into the System shall be logged for the period that the Customer and/or the Nominated User has access to the System. The Bank shall maintain copies of all Requests in applicable multi-media form. In addition, any hard copies of documentation prepared and/or held by the Bank for the purpose of effecting a transaction as per a Request shall be maintained by the Bank;
- 6.2 All documents and other records of whatever nature held and/or issued and/or maintained by the Bank in respect of a Request and/or the Service, shall, in the absence of manifest error, be conclusive evidence of the Request and/or the Service and all transactions relating thereto and shall not be subject to challenge by the Customer and/or the Nominated User on any ground, whatsoever.
- 6.3 The Customer shall be deemed to have unconditionally accepted and shall not subsequently challenge or object to any of the transactions in respect of a Request and/or Service or any other transaction in respect of the Bank Account contained in any statement of account issued by the Bank to the Customer in respect of a Request and/or the Service unless the Customer objects to the Bank in writing in respect of the said transactions as contained in the said statement of account within 15 days from the date the said statement of account is issued or deemed to have been issued by the Bank to the Customer.
- 7. CHARGES**
- 7.1 The Customer shall pay to the Bank an initial set up fee and a monthly subscription fee for the Service in addition to transaction charges applicable to various transaction types in respect of the Service as advised by the Bank from time to time. The Bank may in its sole discretion revise these charges and fees after giving the Customer fourteen (14) days notice of such revision. The Bank may also in its sole discretion waive the initial set up fees and/or the monthly subscription fees or a portion thereof.
- 7.2 The Customer shall pay any tax chargeable upon any sums payable by the Customer to the Bank and also any other charges or duties levied on the Customer or the Bank by any governmental or statutory body relating to the provision of the Service.
- 7.3 The Bank is hereby irrevocably authorised from time to time to debit any amounts payable by the Customer under the provisions of subparagraphs 7.1 and/or 7.2 to any Bank Account in any currency. In addition to the fees payable under the Next Generation Terms and Conditions, the charges and fees applicable to the Customer's Bank Account(s) shall also apply.
- 8. EXCLUSION OF LIABILITY**
- 8.1 Circumstances Not Within the Bank's Control
- The Bank shall not be responsible or liable for any loss or damage suffered by the Customer and/or the Nominated User, whether direct, indirect or consequential, including but not limited to loss of revenue, profit, business, contracts, anticipated savings or goodwill, loss of use or value of any equipment including software, whether foreseeable or not, 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 systems.
- 8.2 Electronic Bill Payments and Transfer of Funds
- (a) The Bank shall not be liable for any losses or damage suffered by the Customer and/or the Nominated User, whether direct, indirect or consequential, including but not limited to loss of revenue, profit, business, contracts, anticipated savings or goodwill, loss of use or value of any equipment including software, whether foreseeable or not, as a result of delay, failure and/or refusal by the Bank to act on a Request in time or at all in anyone or more of the following circumstances (as the case may be):-
- (i) If the Customer does not have a sufficient amount in the Deposit Account in terms of the provisions of paragraph 5 above;
- (ii) If the Customer and/or Nominated User 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;
- (iii) If the System or the Facilities are not fully functional;
- (iv) If circumstances beyond the Bank's control including those specified in sub paragraph 8.1 above prevent the Bank from making a payment or transfer;
- (v) If the amount in the Deposit Account is subject to legal process court order or other encumbrance restricting the payment or transfer;
- (vi) If the Customer and/or Nominated User does not give proper or complete instructions for the payment or transfer or the Customer and/or the Nominated User does not follow the procedures in these Next Generation Terms and Conditions or other applicable agreement with the Bank in respect of a request for a payment or a transfer;
- (vii) If the Bank has reason to believe that the Customer and/or the Nominated User and/or any other party is using the Service for fraudulent or illegal purposes;
- (viii) If a payment or a transfer request would be in respect of an amount deposited in a form or by a method that has not yet made the said amount available for withdrawal;
- (ix) If the payment or transfer request is in contradiction or conflict with other existing agreements in respect of the Bank Accounts.
- (b) If the Bank makes a timely payment or transfer but the payee nevertheless fails to credit the Customer's payment promptly after receipt, the Bank shall not be liable for any loss or damage suffered by the Customer and/or the Nominated User as a result of such failure on the part of the payee.
- 8.3 Indemnity
- (a) The Customer shall indemnify and keep the Bank harmless on a full and unqualified indemnity basis against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses whatsoever suffered sustained or incurred by the Bank in connection with or arising from (a), (b) and/or (c) of subparagraph 8.1 where the particular circumstance is within the Customer's and/or Nominated User's control and against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses suffered or incurred by the Bank as a consequence of any breach by the Customer and/or the Nominated User of any term or condition hereof.
- (b) The Customer shall indemnify and keep the Bank harmless against any demands, claims, actions, losses, damages, costs or expenses whatsoever which the Bank may at any time incur, sustain or suffer as a result of provision of the Service unless such demands, claims, actions, losses, damages, or costs arose as a direct consequence of the gross negligence or wilful misconduct of the Bank or any of its employees.
- (c) The Customer shall indemnify and keep the Bank harmless against the following:-
- (i) All demands, claims, actions, losses and damages of whatever nature which may be brought against the Bank or which it may suffer sustain or incur arising from the Bank's reliance on any incorrect, illegible, incomplete or inaccurate information or data contained in the Subscription or in any Request.
- (ii) Any loss or damage that may arise from the Customer's and/or the Nominated User's use, misuse, abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs.
- (iii) Any unauthorised access to the Bank 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 Facilities.
- (iv) Any loss or damage occasioned by the failure by the Customer and/or the Nominated User 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.
- 8.4 If for any reason other than a reason mentioned in subparagraph 8.1 the Service is interfered with or unavailable, the Bank's sole liability 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.
- 8.5 Save as provided in subparagraph 8.4, the Bank shall not be liable to the Customer and/or the Nominated User for any interference with or unavailability of the Service, howsoever caused.
- 8.6 Under no circumstances shall the Bank be liable to the Customer and/or the Nominated User 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.
- 8.7 Except in respect of death or personal injury caused by the gross negligence or wilful misconduct of the Bank, the Bank shall be under no liability for any claim whatsoever in respect of these Next Generation Terms and Conditions or their performance thereof or any transactions effected by the Bank in response to any Request unless the Bank has received notice in writing of any such claim from the Customer as follows:
- (a) In the case of any claim relating to a transaction, within thirty (30) days from the date of the alleged transaction on which such claim is based; and
- (b) In all other cases within ninety (90) days of the date of the alleged action or inaction by the Bank on which such claim is based.
- 8.8 To the extent permitted by law, the Bank:
- (a) Disclaims all warranties with respect to the System and Service, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a certain result.
- (b) Makes no warranty that the System is error free or that its use shall be uninterrupted and the Customer acknowledges and agrees that the existence of such errors shall not constitute a breach of these Next Generation Terms and Conditions.
- 9. VARIATION**
- The Bank may vary these Next Generation Terms and Conditions either in whole or in part at any time. Notification of any such variation may be given to the Customer either in writing or by publication thereof by such means as the Bank may decide but any variation whether notified or not shall be binding on the Customer and/or the Nominated User.
- 10. TERMINATION**
- 10.1 Notwithstanding anything contained in these Next Generation Terms and Conditions, the Service may be terminated at any time by either the Bank or the Customer giving the other one calendar month's notice, PROVIDED that in the event of any change in law or the application thereof, or any other event which, in the judgment of the Bank, would have the effect of prejudicing the Bank should it continue with the rendering of the Service to the Customer, the Bank shall be entitled to terminate the Service at any time without notice to the Customer.
- 10.2 If the Customer terminates the Service, the Bank may continue to make electronic bill payments, transfer of funds and other transactions that the Customer would have previously authorized until such time as the Bank shall have had a reasonable opportunity to act on the Customer's notice of termination.
- 10.3 The termination of the Service shall not, in itself, terminate or affect the relationship of Banker and Customer between the Bank and the Customer.
- 10.4 Paragraphs 8, 11.3, 11.6 and 12 shall survive termination of the Service.
- 11. GENERAL PROVISIONS**
- 11.1 The Customer shall not assign any benefit or any rights arising hereunder without the prior written consent or confirmation from the Bank.
- 11.2 No waiver by the Bank of any breach by the Customer and/or the Nominated User of any of these Next Generation Terms and Conditions shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Customer and/or the Nominated User.
- 11.3 The Customer acknowledges:
- (a) that they have not relied upon any representation, warranty, promise, statement of opinion or other inducement made or given by or on behalf of or purportedly by or on behalf of the Bank in Subscription; and that no person has or has had authority on behalf of the Bank whether before, on or after Subscription to make or give any such representation, warranty, promise, statement of opinion or other inducement to the Customer or to enter into any collateral or side agreement of any kind with the Customer in connection with the Service.
- 11.4 These Next Generation Terms and Conditions hereof supersede all prior agreements, arrangements and understandings between the parties and, together with the General Terms & Conditions, constitute the entire agreement between the parties relating to the subject matter hereof. For the avoidance of doubt, nothing herein shall vary, discharge or in any other way affect or prejudice any security granted by the Customer or any third party in favour of the Bank in relation to any obligations of the Customer which may arise if any Request from the Customer hereunder is acted upon by the Bank.
- 11.5 Each of the provisions of these Next Generation Terms and Conditions is severable and distinct from the others. If at any time any of the Next Generation Terms or Conditions hereof is or becomes illegal, invalid or unenforceable in any respect, neither the legality, validity nor enforceability of the remaining Next Generation Terms and Conditions shall in any way be affected or impaired thereby.
- 11.6 Any notice required to be given in writing under these Next Generation Terms and Conditions shall be sufficiently served if sent by registered post, stamped and properly addressed;
- (a) to the Manager of the Branch or of the Bank at the postal address of the Branch or the Bank, if to be served on the Bank; or
- (b) to the Customer at the address as recorded with the Bank with respect to the Bank Account, if to be served on the Customer; and shall be deemed to have been served five Banking Days after posting.
- 12. CONFIDENTIALITY AND DISCLOSURE**
- 12.1 The Customer undertakes to maintain strict confidentiality of their M-Banking PIN and any other information and materials of any nature supplied to them by the Bank in relation to the Service. The Customer agrees to notify their agents, employees and/or sub-contractors of the provisions of this paragraph and to impose this confidentiality requirement on their agents, employees and/or sub-contractors by 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 themselves, their employees, agents and/or sub-contractors.
- 12.2 The Customer hereby agrees that, if necessary for the provision of the Service, the Bank may disclose information about the Customer to any member of the Bank's Associates or the Customer's Associates.
- 12.3 The Customer further agrees that the Bank may disclose information about the Customer to third parties' in the following circumstances:-
- (a) Where such disclosure is necessary in order for the Bank to act on a Request.
- (b) In order to comply with any law regulation, court order and/or contractual obligation of the Bank. If the Bank has to obey an order for information from an authorised government body, the Bank shall, to the extent required by law, notify the Customer before giving out the information.
- (c) Disclosure to the Bank's agents, sub-contractors, auditors, attorneys and other professional service providers to the extent required in the normal course of their duties.
- (d) Disclosure to a licensed credit reference agency the services of whom the Bank may have subscribed to.
- (e) If it involves a claim by or against the Bank in respect of an item deposited or drawn against the Bank Account.
- (f) If the Customer authorises the disclosure.
- 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 These Terms and Conditions shall be governed by and shall be construed according to the Laws of the Republic of Kenya.
- 14.2 The Bank and Customer hereby submit to the non-exclusive jurisdiction of the Courts of Kenya and the Bank shall be at liberty to enforce anywhere a judgment in any jurisdiction where the Customer carries on business or has any asset.

TERMS AND CONDITIONS OF USE OF THE I&M BANK LIMITED DEBIT CARD

1. DEFINITIONS

- (a) **"Account"** means in relation to a Card any account(s) held by the Card Holder with the Bank, either solely in the name of the Card Holder or jointly with other account holders, designated by the Bank at the request of the Card Holder to be the eligible account(s) for effecting a Transaction for the Card and to which all amounts due from the Card Holder for the Card are to be debited provided that where the Account is a joint account(s) all the Account holders of the joint account(s) must complete and execute the Application Form;
- (b) **"Application Form"** means the Application Form for the Card or the request made in the Application completed by the Customer in respect to the establishment and operation of an Account;
- (c) **"ATM"** means any Automated Teller Machine whether in Kenya or elsewhere of the Bank or of a specified Shared Network Partner of the Bank including the VISA network, at which the Card Holder can effect a Transaction;
- (d) **"Bank"** means I&M Bank Limited.
- (e) **"Card"** means the Visa Electron Debit Card issued by the Bank at the request of and in the name of the Card Holder for use in connection with debit card services provided by the Bank;
- (f) **"Card Holder"** means a person (being an individual or a body corporate) to whom a Card has been issued and whose name appears on it;
- (g) **"Merchant Establishment"** means an establishment wherever located which accepts the Card and shall include but not be limited to stores, shops restaurants, hotels or airline organisations which display the Bank's logo or a Shared Network Partner's logo including any VISA branded logo, as a sign of acceptance of the Card and at which a POS Terminal has been installed;
- (h) **"PIN"** means in relation to a Card Holder, the personal identification number required to gain access via an ATM or POS Terminal to effect a Transaction;
- (i) **"POS Terminal"** means a point of sales terminal installed at a Merchant Establishment capable of processing a Transaction;
- (j) **"Shared Network Partner"** means any body with which the Bank enters into an arrangement by which Card Holders of the Bank can effect Transactions on ATMs and/or POS Terminals owned by or affiliated to the body;
- (k) **"Transaction"** means any transaction effected by use of the Card in accordance with these Terms and Conditions.

2. ATM USAGE

- (a) The Card may be utilized at any ATM for the following Transactions:
 - i) to effect a debit to the Account by withdrawal of cash, any such debit being effected immediately;
 - ii) to effect a credit to the Account by the deposit of cash or cheque, any such credit being effected either on the next working day (for cash deposit) or on the day of receipt of cleared funds (for cheque deposits).
 - iii) to display the current balance of the Account on the ATM;
 - iv) to give an account mini statement to the Card Holder;
 - v) to order a cheque book or Statement relating to the Account; and
 - vi) such other Transaction as may from time to time be made available by the Bank to the Card Holder including top-up of mobile phone airtime and transfer of funds between accounts.
- (b) All withdrawals of cash from ATMs for each Card shall be subject to the daily cash withdrawal limit as notified from time to time by the Bank as well as subject to sufficient funds being held in the Account. The Card Holder agrees not to attempt to effect a withdrawal of cash unless a sufficient balance of funds is available in the Account. The onus of ensuring an adequate Account balance is entirely on the Card Holder.
- (c) The Bank may, at its discretion, reserve a certain minimum amount to be maintained in the Account, below which a withdrawal Transaction will not be allowed, even if sufficient funds are available in the Account to allow the Transaction.
- (d) In the absence of manifest error the Bank's records as to any Transaction or its consequences shall be conclusive.
- (e) When a Card Holder completes a Transaction through an ATM, s/he can opt to receive a printed Transaction record. However, for all cash/cheque deposit transactions at the ATM the Card Holder agrees that no receipt shall be issued by the ATM other than an acknowledgement of receipt of a cheque or envelope as the case may be and without express reference to the amount deposited.
- (f) All cash and cheque deposits shall be subject to verification by the Bank and such verified amount shall be binding on the Card Holder.
- (g) The Card Holder agrees that requests on the ATM such as cheque book requisitions shall be processed on the next working day.
- (h) The Card Holder is advised to retain the record of a Transaction generated by the ATM.

3. MERCHANT ESTABLISHMENT USAGE

- (a) The Card may be utilized at any Merchant Establishment. The Card is for electronic use only.
- (b) Once authenticated and approved, the Transaction is complete and a Transaction print out shall be generated at the POS Terminal for execution by the Card Holder.
- (c) The Card Holder is also advised to check the Transaction details before taking delivery of the items purchased and/or services provided and leaving the counter of the Merchant Establishment.
- (d) Once the Card is swiped and verified and the Transaction approved, the Account shall be debited with the full value of the Transaction immediately.
- (e) The Bank shall not accept responsibility for any arrangement or negotiations the Card Holder may have with the Merchant Establishment including but not limited to the nature or quality of the goods supplied and/or services provided or any representations or warranties made by the Merchant Establishment. Should the Card Holder have any complaint concerning any Merchant Establishment as to the merchantability or quality of goods supplied and/or services provided, such complaint shall be resolved by the Card Holder directly with the Merchant Establishment. Failure to do so however shall not relieve the Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders jointly and severally) of any obligations to the Bank. The Card Holder is also advised to notify the Bank of any grievances, complaints or disagreements with a Merchant Establishment immediately.
- (f) The Bank does not accept any responsibility for a surcharge levied by any Merchant Establishment.
- (g) In case a Card Holder wishes to reverse a completed Transaction due to an error or on account of return of merchandise by the Card Holder to the Merchant Establishment, the earlier sales receipt issued by the Merchant Establishment must be cancelled by the Merchant Establishment, and a copy of the cancelled receipt must be retained in the Card Holder's possession. Reversal/ refund of debits due to such Transactions shall be processed manually and shall only be made by the Bank upon the Bank's receipt of:-
 - i) an appropriate refund from the Merchant Establishment, either directly or through the respective Shared Network Partner's settlement process; and
 - ii) the cancelled sales slip from the Card Holder.
- (h) If the Card holder, or anyone authorised to use the Card, provides a mandate whether such comprises but is not limited to a signed coupon, subscription voucher or telephone instruction or gives the Card number to make a purchase or obtain cash advance, without presenting the Card (such as for mail order, telephone order or internet), the legal effect shall be the same as if the Card was used by the Card Holder and a sales voucher or any other document or cash advance voucher was signed by the Card Holder. The Bank shall debit the Card Account with the full amount of all Card transactions and the Card Holder will be liable to pay the Bank all the amounts so debited whether or not such a voucher or other document is signed by the Card Holder and irrespective of any rights or obligations as between the Merchant Establishment and the Card Holder.

4. LOSS OR THEFT OF CARD OR PIN

A Card Holder must exercise all due care and attention to ensure the safety of the Card and the secrecy of the PIN at all times and to prevent the loss of and/or use of the Card or PIN by any third party. Consequently, a Card Holder must not disclose their PIN to anyone in any circumstances. If a Card is lost or stolen or if a PIN is disclosed to any unauthorized person, the Card Holder must immediately notify the Bank of such loss, theft or disclosure. Any oral notification must be confirmed in writing immediately. The Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders jointly and severally) shall be liable in respect of any Transaction undertaken prior to receipt by the Bank of notification in writing of such loss, theft or disclosure of the Card or the PIN (as the case may be).

5. FEES AND SERVICE CHARGES

In respect of each Card Holder the Bank shall be entitled at its sole and absolute discretion to charge and debit from the Account such fees and charges as it may from time to time notify the Card Holder including but not limited to an initial Card issuance fee, a Card renewal and/or replacement fee, a service fee for an amount to be prescribed by the Bank from time to time for the use of the Card and a charge for undertaking such Transactions as may from time to time be specified by the Bank. Any failure however by the Bank to so notify the Card Holder shall not prejudice in any way whatsoever the recovery by the Bank of such fees and charges from the Card Holder (and in case of a Card issued in respect of a joint Account any of the joint Account holders). If the Card is utilized at ATMs belonging to Shared Network Partners of the Bank, a service fee may be charged by the operator and/or an automated transfer network for undertaking the Transaction.

6. PERSONAL IDENTIFICATION NUMBER

To enable the Card Holder to utilise the Card, a PIN shall be issued to the Card Holder. The PIN shall be mailed and/or personally delivered to the Card Holder on identification and the Card Holder shall ensure that the same is received in a sealed envelope. This PIN may subsequently be changed by the Card Holder at his/her own risk at any ATM that offers such a service. The security of the PIN is important and must be maintained by the Card Holder at all times. The Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders jointly and severally) may incur liability for unauthorised use of the Card and any instruction given by means of the Card and the PIN, whether in conjunction or independently, may be deemed by the Bank at its sole and absolute discretion to be instructions given by the Card Holder. The Card Holder must ensure that s/he does not reveal the PIN to any third party and takes adequate precautions to prevent anyone else seeing his/her PIN being entered in at an ATM or POS Terminal. It is recommended that the Card Holder memorize his/her PIN and then destroy any record of it.

7. PIN SECURITY

- The Card Holder shall:
- (a) Not divulge the PIN to anyone including but not limited to another Card Holder, a family member or friend
 - (b) Take precaution to prevent anyone else seeing the PIN being entered in an ATM or POS Terminal.
 - (c) Not write or indicate the PIN on the Card or elsewhere, even if it is disguised.
 - (d) Commit the PIN to memory and destroy any record thereof.

8. SURRENDER / REPLACEMENT OF CARD

The Card issued to the Card Holder shall remain the property of the Bank and must be surrendered to the Bank on request. The Card Holder must return the Card to the Bank for cancellation in the event the Card Holder no longer wishes to utilize the Card or if the Bank for any reason whatsoever withdraws the services. The Card Holder must not use or attempt to use the Card after any notification of cancellation or withdrawal has been given. On receipt of a writ ten request for replacement of a Card either damaged or lost the Bank after due verification may issue a replacement Card and debit the Account with the appropriate replacement fee applicable from time to time.

9. TERMINATION

The Card Holder may discontinue utilizing the Card and the debit card services provided by the Bank at any time by a written notice to the Bank accompanied by the return of the Card cut into two pieces. The Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders jointly and severally) shall be liable for all Transactions undertaken by the Card Holder and/or charges incurred up to the receipt, as duly acknowledged by the Bank, of the written notice of termination to the Bank. The Bank shall be entitled to discontinue the debit card services at any time by canceling the Card without assigning any reason whatsoever upon issuance of 7 days notice, which notice shall be issued either by posting to the Card Holder's address last notified in writing to the Bank or by electronic mail to the Card Holder's electronic mail address as indicated in the Application Form. The notice shall be deemed to have been served upon the Card Holder 7 days after the date of posting or 7 days after the date of sending the electronic mail as the case may be. Upon termination either at the request of the Card Holder or by the Bank, the Bank shall not be required to refund any amounts to the Card Holder (and in case of a Card issued in respect of a joint Account any of the joint Account holders), whether in respect of prepaid fees or otherwise.

10. STATEMENT OF ACCOUNT

All Transactions undertaken using the Card shall appear in the monthly Account Statement, which Statement shall be subject to the General Terms & Conditions governing the Account.

11. GOVERNMENT FEES AND CHARGES

Any Government duties, rates, taxes or charges as and when levied by the Government or any other competent taxing authority in respect of any Transaction shall be payable by the Card Holder and debited by the Bank to the Account.

12. VALIDITY

The Card is valid up to the last working day of the month indicated on the Card. Terms and Conditions of use of the I&M Bank Limited Debit Card

13. MULTIPLE ACCOUNTS AND CARDS

- (a) The daily cash withdrawal limit for a Card shall be in respect of the total daily cash withdrawals made from all the Accounts for the Card.
- (b) Where the Account is a joint Account and mandate is either or survivor to sign, upon completion and execution of the Application Form by each account holder of the joint Account, any of the joint Account holders may be issued with a Card in respect of the said joint Account.
- (c) Where the Account is a joint Account and Cards are issued to more than one or all of the joint Account holders, each Card so issued shall be separately subject to the daily cash withdrawal limit.

14. EXPENSES OF ENFORCEMENT

A Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders jointly and severally) shall be liable to indemnify the Bank (on a full and unqualified indemnity basis) in respect of any and all expenses incurred by the Bank in enforcing or attempting to enforce these Terms and Conditions or the recovery of any amounts due from a Card Holder to the Bank including all legal fees and court filing fees and disbursements.

15. GENERAL

- (a) A Card is not transferable and must not be used by any person other than by the Card Holder.
- (b) A Card remains the property of the Bank and upon cancellation must be surrendered on demand to the Bank.
- (c) An issued Card shall have a limited validity period, on expiry of which a new Card may be issued by the Bank at its sole and absolute discretion.
- (d) The Card is neither a credit card nor a cheque guarantee card and the Card Holder shall not represent the Card as such.
- (e) The Account may not be overdrawn by a Card Holder by effecting a Transaction.
- (f) Cash or Cheques deposited in an ATM for credit to an Account shall be collected by the Bank and the proceeds shall not be available until the relevant funds have been received for value by the Bank.
- (g) The execution of a Transaction shall be subject to any operating limitations mandated on the Account.
- (h) The use of the Card is subject to the rules and regulations of the Shared Network Partners including VISA
- (i) The Card Holder hereby gives consent to the Bank to make inquiries regarding the verification of any information that has been provided by the Card holder in the Application Form.
- (j) The Bank may assign its rights and benefits at any time.

16. LIABILITY OF CARD HOLDER AND BANK

- (a) A Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders jointly and severally) shall be fully liable in respect of each Transaction undertaken by the use of the Card. A Transaction must be carried out in such a way that any confidential information displayed on a POS Terminal is not disclosed to a third party. The Bank shall not be liable for any disclosure to any third party arising out of effecting of a Transaction.
- (b) A Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders) shall not hold the Bank liable, responsible or accountable in any way whatsoever for any loss, injury or damage whatsoever arising out of the use of an ATM including inability to make a cash withdrawal due to lack of funds at the ATM where the transaction is being processed.
- (c) The Bank shall not be liable for the refusal or inability of any Merchant Establishment, POS Terminal or ATM to accept or honour a Card or to complete a Transaction or for the retention of a Card by an ATM or POS Terminal.
- (d) The Bank shall not be liable for any loss incurred as a result of malfunction of an ATM or POS Terminal.

17. CIRCUMSTANCES BEYOND THE CONTROL OF THE BANK

- (a) The Bank shall bear no liability for inability to perform its obligations with regard to the ATM operations due to anything whatsoever outside the control of the Bank.
- (b) The Bank shall not be liable if it is unable to perform its obligations due (directly or indirectly) to but not limited to the failure of any machine, data processing system or transmissions link or to industrial dispute, strikes, lock outs, acts of any public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, flood, civil disturbances, terrorisms, governmental regulations and directions and anything outside the direct control of the Bank, its agents or sub contractors.

18. AMENDMENT

- (a) These Terms and Conditions may be amended, modified and/or replaced in whole or in part at any time by the Bank in its sole and absolute discretion. The Bank may notify the Card Holder of any such amendments, modifications and/or replacements but any failure by the Bank to so notify the Card Holder shall not prejudice in any way whatsoever the validity and/or enforceability of the Terms and Conditions as so amended, modified and/or replaced.
- (b) Upon any such amendment, modification and/or replacement of these Terms and Conditions by the Bank any subsequent use of the Card shall be deemed to constitute acceptance of such amendments, modifications and/or replacements.

19. LAW

The Terms and Conditions shall be construed and the provision of the Card shall be regulated exclusively in accordance with the laws of the Republic of Kenya and the Card Holder (and in case of a Card issued in respect of a joint Account all joint Account holders) agree to submit to the non-exclusive jurisdiction of the High Court of Kenya.

TERMS AND CONDITIONS GOVERNING THE USE OF I&M INTERNET BANKING FACILITY

1. Definitions and interpretation

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

- a) **"Bank"** means I & M Bank Limited, incorporated in Kenya as a limited liability company under the Companies Act (Cap 486 of the Laws of Kenya) and includes such Branch or Subsidiaries of the Bank as may from time to time be specified by the Bank to the Customer;
- b) **"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;
- c) **"Bank Subsidiary"** means the subsidiary or subsidiaries of the Bank which may from time to time be specified by the Bank to the Customer;
- d) **"Branch"** means a branch or branches of the Bank which may from time to time be specified by the Bank to the Customer;
- e) **"Bank Account"** means the Customer's personal and business transaction account(s), current overdraft facility account(s) and term and call deposit accounts (as the case may be) with the Bank;
- f) **"Customer"** means the Bank's Customer who is operating an active Bank Account
- g) **"Customer Group"** means the Customer and where the Customer is a company, its holding company (if any) and their respective subsidiaries from time to time;
- h) **"Corporate administrator"**-The person appointed by the account signatories of a Bank Account held by a corporate Customer, to create other Internet Banking operators.
- i) **"Corporate user/Maker"** Internet Banking operator with system rights to create or initiate new instructions (payments and other requests) on internet banking system, as created by a corporate administrator.
- j) **"Corporate Dual user"** Internet Banking operator with rights to both create and authorize instructions (payments and requests) on Internet Banking system, as created by a Corporate administrator.
- k) **"Corporate Authoriser /Checker"** Internet Banking user with rights for authorizing instructions created by Corporate Maker, as created by a Corporate Administrator.
- l) **"Deposit Account"** means a Bank Account with an available credit balance;
- m) **"General Terms and Conditions"** means the Bank's General Terms and Conditions signed by the Customer at the time the Customer opens a Bank Account;
- n) **"Nominated User/s"** means the representative or representatives of the Customer authorized by the Customer to hold and change the Password and hence to access the System and Service on behalf of the Customer;
- o) **"Password"** means the secret password known only to the Customer or Customer's Nominated User for access to the System. The Customer or Nominated User may change the password at will;
- p) **"Request"** means a request or instruction received by the Bank from the Customer or purportedly from the Customer through the System and upon which the Bank is authorized to act on;
- q) **"Service"** means such of the internet banking services, offered by the Bank which may be collectively branded by a product name, as the Customer may from time to time subscribe for;
- r) **"System"** means the electronic banking and communications software enabling the Customer to communicate with the Bank for the purposes of the Service. The System and Service will for the purpose of the Subscription be accessed through the internet via the Bank's website, www.imbank.com
- s) **"Application"** means application for the Internet Banking Service by a Customer;
- t) **"User ID"** means a unique identifier of the customer in the Internet Banking system and typically, it is the retail customer's Customer Identification File (CIF) as recorded in the Bank's core banking system;
- u) **"Corporate ID"** means a unique identifier of the Corporate in the Internet Banking system and typically, it is the corporate customer's Customer Identification File (CIF) as recorded in the Bank's core banking system;

1.2 In these Terms and Conditions

- a. where "the Customer" is more than one person, references to "the Customer" shall include all and/or persons and the obligations of the Customer shall be joint and several;
- b. words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;
- c. The Customer agrees that the Terms and Conditions set out hereunder shall apply to the use of the Service, as provided by the Bank to the customer.
- d. The customer further agrees to accept and abide by such Terms and Conditions and instructions from time to time in force.

2. Application by Customer

- 2.1 In consideration of the customer paying to the bank the fees and charges set out in the tariff, the bank shall provide the Customer certain internet banking services subject to and in accordance with these terms and conditions.
- 2.2 The Customer will apply for the Bank's internet banking services by completing an application form provided by the Bank or by accepting these Terms and Conditions online through the Bank's website www.imbank.com. The Application shall be subject to the Bank's approval.
- 2.3 Once the Bank has approved the Application and the Customer has been maintained in the Bank's records as an authorized user of the Service, the Bank will provide the Customer with a User ID for retail Customers or Corporate ID for corporate Customers. The Customer shall create their preferred Password known only to them, and this Password along with their User ID or Corporate ID will allow them access for use of the Service...
- 2.4 Further additional internet banking services may be provided to the customer by the bank, provided the customer completes an application form in respect of such additional services, or accepts the additional terms and conditions online, and the Bank reserves the right to modify, replace or withdraw any Service at any time, for any reason whatsoever, without prior notice to the Customer.
- 2.5 The Customer's application for and use of the Service shall be subject to these terms and conditions and any personal or business transaction, term, call and overdraft accounts agreements between the Bank and Customer and shall be additional to and read together with the Bank's General Terms and Conditions signed by the Customer. Where there is any conflict between these Terms and Conditions and the Bank's General Terms and Conditions, these Terms and Conditions shall apply.

3. Joint accounts

- 3.1 Holders of joint accounts are jointly and severally liable under these Terms and Conditions. Application for the Service made by any of the joint account holders acting alone as per paragraph 2 above will be deemed to be binding on all the holders of the joint accounts. Each joint account holder acting alone, under an assigned User ID and Password may use the Service. The Bank shall not be required to obtain the consent of or notify any other joint account holder of the Requests. However each joint account holder may access the Service for the accounts for which they are an owner, joint owner or Nominated User using the assigned User ID and Password
- 3.2 Each joint account holder releases the Bank from any and all liability and agrees not to make any claim or bring any action against the Bank for honouring or allowing any actions or requests whether the person performing the transaction is one of the joint account holders or is otherwise authorized to use the Service.

4. Corporate Customers

- 4.1 For corporate customers, the account signatories shall nominate a Corporate administrator thus granting him the rights to create other Internet banking operators i.e. the makers and checkers
- 4.2 The Corporate administrator will be responsible for creating other Internet Banking operators (Corporate users/Maker, Dual User, Authoriser/Checker) and assigning them limits, as per approved authorization matrix by account signatories.
- 4.3 Any instructions coming through internet banking through maker checker mandate as set-up by Corporate administrator as per subparagraph 4.2 above will be considered to have come through the account signatories as per operating mandate of the account.

5. Customer's Facilities and Customer's Responsibilities

- 5.1 The Customer shall at their 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 (collectively "the Facilities") necessary for the purpose of accessing the System and the Service.
- 5.2 The Customer shall be responsible for ensuring proper performance of the Facilities including any losses or delays that may be caused by the Facilities. The Bank shall neither be responsible nor liable for any errors or failures caused by any malfunction of the Facilities nor shall the Bank be responsible or liable for any computer virus or related problems that may be associated with the use of the System, the 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 or liable for losses or delays caused by any such services provider.
- 5.3 The Customer shall obtain all licenses 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 shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by the Bank concerning the use of the System and Service.
- 5.4 The Customer shall prevent any unauthorized access to or use of the System and Service by keeping their User ID/Corporate ID and Password secret at all times. The Customers shall ensure that their User ID/Corporate ID and Password do not become known or come into possession of any unauthorized person.
- 5.5 The Customer shall take all reasonable and necessary precautions to detect any unauthorized 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 unauthorized use of and access to the System will be detected.
- 5.6 The Customer shall immediately inform the Bank by telephone with a written confirmation sent the same day in the event that:
 - (a) 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 authorized to know the same and/or has been compromised; and/or
 - (b) The Customer has reason to believe that unauthorized use of the Service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 5.7 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.
- 5.8 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 on 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 confidentiality and may lead to unauthorized transactions in account(s) 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 authorized to do so.
- 5.9 The Customer shall not at any time operate or use the Service in any manner that may be prejudicial to the Bank.
- 5.10 The Bank shall be entitled and authorized to debit the Customer's Bank Account with the amounts of the transactions effected via the Service as well as debit the Customer's Bank Account with the amount of any fees applicable to the Service from time to time.

6. Irrevocable Authority of the Bank

- 6.1 The Bank is irrevocably authorized 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 authorized 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 in its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.
- 6.2 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.
- 6.3 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 Bank Subsidiary 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 Bank Subsidiary (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.
- 6.4 In the event of any conflict between any terms of any Request from the Customer and the terms of these Terms and Conditions, the terms of these Terms and Conditions shall prevail. These Terms and Conditions and all authorizations and other procedures agreed under these Terms and Conditions supplement any General Terms and Conditions and any mandates, which apply to the Customer's Bank Accounts with the Bank.

7. Limits of Internet Banking Transactions

- 7.1 The Customer may transfer or effect a payment for any amount 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 approved 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.
- 7.2 If the Customer has an approved overdraft facility or 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 Account.

8. Records of Transactions and Customer Rights to This Information.

- 8.1 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.
- 8.2 The Account statement (hereinafter "the Account Statement") that the customer receives at the determined product frequency will reflect all the Service transactions.
- 8.3 The Customer shall be deemed to have accepted and shall not subsequently challenge or object to any of the transactions contained in the Account Statement if the Customer fails to object to the Account Statement in writing within 30 days from the date the Account Statement was sent or deemed to have been sent to the Customer by the Bank.

9. Charges

- 9.1 The Customer shall pay to the Bank transaction charges applicable to various transaction types as advised by the Bank from time to time. The Bank may in its sole discretion revise these charges and fees.
- 9.2 The Customer shall pay any tax chargeable upon any sums payable by the Customer to the Bank and also any other charges or duties levied on the Customer or the Bank by any governmental or statutory body relating to the provision of the Service.

- 9.3 The Bank is hereby irrevocably authorized from time to time to debit any amounts payable by the Customer under the provisions of subparagraphs 9.1 and/or 9.2 to any account in any currency maintained by the Bank, the Branch and/or the Bank subsidiaries (as applicable) in the name of the Customer. In addition to the fees payable under these Terms and Conditions, the charges and fees applicable to the Customer's Bank Accounts will apply.

10. Exclusion of Liability

- 10.1 Circumstances not within the Bank's control
The Bank shall not be responsible or liable 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.
- 10.2 Electronic Bill Payments and Transfer of Funds
(a) 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 any one or more of 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 result in the Customer's approved overdraft facility limit being exceeded;
 - (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 sub paragraph 10.1 above prevent the Bank from making a payment or transfer;
 - (vi) If the money in the Customer's account is subject to legal process court order 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 or conflict with other existing account agreements with the customer;
 - (xi) If the payment or transfer request is received at a time when it is operationally not possible to effect the same within working hours of that day
 - (b) If the Bank makes a timely payment or transfer but the payee nevertheless fails to credit the Customer's payment promptly after receipt, the Bank shall not be liable for any loss or damage suffered by the Customer as a result of such failure on the part of the payee.
- 10.3 Indemnity
(a) The Customer shall indemnify and keep the Bank indemnified on a full and unqualified indemnity basis against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses suffered or incurred by the Bank in connection with or arising from (a), (b) and/or (c) of subparagraph 10.1 or where the particular circumstances is within the Customer's control and against all and any costs (including legal costs), claims, actions, proceedings, losses, damage, demands, liabilities, and expenses suffered or incurred by the Bank as a consequence of any breach by the Customer of any term or condition hereof.
- (b) The Customer shall indemnify and keep indemnified the Bank against any demands, claims, actions, losses, damages or costs relating to or in connection with the Service, whether directly or indirectly, unless such demands, claims, actions, losses,

- damages, or costs arose as a direct consequence of the gross negligence or willful misconduct of the Bank or any of its employees.
- (c) The Customer shall indemnify and keep indemnified the Bank against the following: -
- (i) All demands, claims, actions, losses and damages of whatever nature which may be brought against the Bank or which it may suffer or incur arising from the Bank's reliance on any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by the Bank.
- (ii) Any loss or damage that may arise from 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.
- (iii) Any unauthorized 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.
- (iv) 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.
- (v) Any loss or damage that may arise from the use of the Service by the Customer, any joint account holder, Corporate Administrator, Corporate User/Maker, Corporate Dual user and/or Corporate Authoriser/Checker.
- 10.4 If for any reason other than a reason mentioned in subparagraph 10.1 the Service is interfered with or unavailable, the Bank's sole liability 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.
- 10.5 Save as provided in subparagraph 10.4, the Bank shall not be liable to the Customer for any interference with or unavailability of the Service, howsoever caused.
- 10.6 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.
- 10.7 Except in respect of death or personal injury caused by the negligence of the Bank, the Bank shall be under no liability for any claim whatsoever in respect of any terms and conditions contained hereof or their performance thereof or any transactions effected by the Bank in response to any Request unless the Bank has received notice in writing of any such claim from the Customer.
- (a) In the case of any claim relating to a transaction, within thirty (30) days from the date of the alleged transaction on which such claim is based; and
- (b) In all other cases within ninety (90) days of the date of the alleged action or inaction by the Bank on which such claim is based.
- 10.8 To the extent permitted by law, the Bank:
- (a) Disclaims all warranties with respect to the System and Service either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a certain result.
- (b) Makes no warranty that the System is error free or that its use will be uninterrupted and the Customer acknowledges and agrees that the existence of such errors shall not constitute a breach of these Terms and Conditions.
- 11. Amendments**
The Bank may vary these Terms and Conditions at any time. Notification of any such variation may be given to the Customer either in writing or by publication thereof by such means as the Bank may decide but any variation whether notified or not shall be binding on the Customer.
- 12. Termination**
- 12.1 Notwithstanding anything contained in these Terms and Conditions, the Subscription may be terminated at any time by either party.
- 12.2 Upon termination, if the Customer re-applies for a Subscription, a reconnection fee may be payable.
- 12.3 The Bank may unilaterally terminate the Subscription for any reason, including but not limited to in the event that the Customer's Bank Account does not have sufficient available balances for the Bank to debit the applicable charges for the Subscription.
- 12.4 If the Customer terminates the Subscription, the Bank may continue to make electronic bill payments, transfer of funds and other transactions that the Customer would have previously authorized until such time as the Bank will have had a reasonable opportunity to act on the Customer's notice of termination.
- 12.5 The termination of this Subscription shall not, in itself, terminate or affect the relationship of Banker and Customer between the Bank and the Customer.
- 12.6 Paragraphs 10, 14 and 17 shall survive termination of the Subscription.
- 13. General Provisions**
- 13.1 The Customer shall not assign any benefit or any rights arising hereunder without the prior written consent or confirmation from the Bank.
- 13.2 No waiver by the Bank of any breach by the Customer of any of the terms and conditions hereof 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.
- 13.3 The Customer acknowledges:
- (a) 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; and that
- (b) no person has or has had authority on behalf of the Bank whether before, on or after the subscription to make or give any such representation, warranty, promise, statement of opinion or other inducement to the Customer or to enter into any collateral or side agreement of any kind with the Customer in connection with the Service.
- 13.4 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 rise if any Request from the Customer hereunder is acted upon by the Bank.
- 13.5 If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or enforceability shall not affect the legality, validity or enforceability of the remaining provisions of these terms and conditions.
- 13.6 Any notice required to be given in writing under these terms and conditions shall be sufficiently served if sent by registered post, stamped and properly addressed;
- (a) to the manager of the Branch or of the Bank at the address of the Branch or the Bank, if to be served on the Bank; or
- (b) To the Customer at the address of the Customer as per the Bank's records, if to be served on the Customer. And shall be deemed to have been served five banking days after posting.
- 14. Confidentiality and Disclosure**
- 14.1 The Customer undertakes to maintain strict confidentiality of its User ID/Corporate ID and Password and any other information and materials of any nature supplied to it by the Bank in relation to the Service. The Customer agrees to notify its agents, employees and/or sub-contractors of the provisions of this paragraph and to impose this confidentiality requirement on its 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 itself, its employees, agents and/or sub-contractors.
- 14.2 The Customer hereby agrees that, if necessary for the provision of the Service, the Bank may disclose information about the Customer to any member of the Bank Group or the Customer Group.
- 14.3 The Customer also hereby agrees that the Bank may disclose information about the Customer to third parties' in the following circumstances:-
- (a) Where such disclosure is necessary in order for the Bank to act on a Request.
- (b) In order to comply with any law regulation or court order. If the Bank has to obey an order for information from an authorized government body, the Bank may, to the extent required by law, notify the Customer before giving out the information.
- (c) Disclosure to the Bank's agents, sub-contractors, auditors, attorneys and other professional service providers to the extent required in the normal course of their duties.
- (d) Disclosure to a licensed credit reference agency the services of whom the Bank may have subscribed to.
- (e) If it involves a claim by or against the Bank in respect of an item deposited or drawn against the Customer's account.
- (f) If the Customer authorizes the disclosure.
- 15. Intellectual Property Rights**
- 15.1 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.
- 15.2 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.
- 16. Protection from Third Parties**
The customer shall indemnify the Bank against, and hold it harmless from, any and all liabilities, claims, costs, expenses and damages of any nature in any way arising out of or relating to disputes or legal actions by third parties concerning the use or Bank's provision of the Services.
Customer's obligations under this section shall survive termination of the Subscription.
17. Relationship
Nothing in these Terms and Conditions shall create any agency, fiduciary, joint venture or partnership relationship between customer and the Bank.
- 18. Headings**
The headings contained in these Terms and Conditions are for convenience of reference only, and shall not be deemed to be a part of these Terms and Conditions neither be referred to in connection with the interpretation of these Terms and Conditions.
- 19. Severability**
In the event that any provision of these Terms and Conditions or the application of any such provision to any person or set of circumstances shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of these Terms and Conditions and the application of such provision to persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
If there are two or more persons comprised in the expression "the customer" then the undertakings and liabilities of the Customer under these Terms and Conditions shall be joint and in solid undertakings and liabilities shall be construed accordingly and reference herein to the "customer" shall mean any or more of them.
If the customer is a corporate body, then these Terms and Conditions shall continue in full force and effect and continue to bind each of its assigns and successors.
- 20. Governing Law**
These Terms and Conditions shall be governed by and construed in accordance with the law of the Republic of Kenya and all disputes, actions and other matters relating thereto will be determined in accordance with such law.

