

▶ Credit Card General Terms & Conditions

[www.cbagroup.com](http://www.cbagroup.com)

CBA is regulated by the Central Bank of Kenya





## 1. DEFINITIONS

In these conditions:

1. "Terms and Conditions" means these terms and Conditions which govern the relationship between the Bank and the Card holder, as may be varied from time to time;
  2. "Cardholder" means any person corporate body or other legal entity for whose use a Card is issued by the Bank;
  3. "Authorized User" means a person other than the Principal Cardholder nominated under condition 13 to whom the Bank shall have issued a Card;
  4. "The Bank" means Commercial Bank of Africa Limited or CBA;
  5. "ATM" means an Automated Teller Machine;
  6. "Card" means the CBA Visa Gold Credit Card or CBA Visa Classic Credit Card issued to the Cardholder;
  7. "Account" means a record or statement of financial expenditure or receipts relating to a particular period or purpose
  8. "Card Account" means an Account maintained by the Bank in relation to Card transactions;
  9. "Transactions" means any payment made or cash advanced obtained using the card, the card number or in any manner authorized by a Cardholder for the debit to the Card Account.
  10. "Charges" or "charges" means such charges as are set out in in the Terms and Conditions. All details of Charges mentioned herein shall be as provided in the Banks Tariff unless specifically communicated to the Cardholder, as amended from time to time.
  11. "Credit Limit" means the maximum debit balance permitted to the Card Account as determined by the Bank in its sole discretion and notified to the Principal Cardholder.
  12. "Due Date" means the date as indicated in the statement referred to in clause 5 below or as determined by the Bank pursuant to these Terms & Conditions;
  13. "Merchant Establishment" means establishment wherever located which honours the Card and shall include among others, stores, shops, restaurants, hotels, airlines, cash advance points including ATMs and mail order advertisers (whether retailers, distributors or manufacturers).
  14. "Merchant" means any person who owns or manages or operates the Merchant Establishment, its successors and permitted assigns.
  15. "Minimum Amount Due" means the amount stated as such in the Statement.
  16. "Total Amount Due" means is the amount stated as such in the Statement.
  17. "Payment Due Date" means the date every month, on which the payment in respect of the charges incurred by usage of the Card by the Cardholder falls due as communicated through the Statement.
  18. "PIN" means any Personal Identification Number issued to the Principle Cardholder and supplementary Cardholder or subsequently selected by the Principal Cardholder where self-selection is available;
  19. "Principal Cardholder" means a person in whose name a Card Account is maintained pursuant to such person's application for establishment of a Card Account.
  20. "Statement" means monthly statement/s of account sent by the Bank to a Cardholder setting out the financial liabilities on that date, of the Principal Cardholder and any Supplementary Cardholder to the Bank in respect of the Card Account.
  21. "Supplementary Cardholder" means any person appointed by the Principal Cardholder and who becomes a Cardholder by virtue of his relationship with the Principal Cardholder.
  22. "Kenya" means the Republic of Kenya.
- determination by, or interpretation of any of the foregoing by Reference to an "amendment" includes a supplement, modification, novation, replacement or re- enactment and "amended" is to be construed accordingly;
  - Reference to "authorisation" or "approval" includes an authorisation, consent, clearance, approval, permission, resolution, license, exemption, filing and registration;
  - Reference to "law" includes any constitution, statute, law, rule, regulation, ordinance, judgement, order, decree, authorisation, or any published, directive, guideline, requirement or governmental restriction having the force of law, or any, any judicial authority, whether in effect as of the date of signing/submission of the Application Form or thereafter and each as amended from time to time.
  - reference to the words "include" or "including" shall be construed without limitation;
  - reference to a gender shall include references to the female, male and neuter genders;
  - references to VISA regulations pertains to the guidelines issued by VISA to all the member banks of its network.
  - the singular includes the plural (and vice versa);
  - the headings in these Terms and Conditions are inserted for convenience of reference only and are to be ignored in construing and interpreting the Terms and Conditions;
  - all approvals, permissions, consents or acceptance required from the Bank for any matter shall require the prior, written approval, permission, consent or acceptance of the Bank;
  - in the event of any disagreement or dispute between the Bank and the Cardholder regarding the materiality of any matter including of any event, occurrence, circumstance, change, fact, information, document, authorisation, proceeding, act, omission, claims, breach, default or otherwise, the opinion of the Bank as to the materiality of any of the foregoing shall be final and binding on the Cardholder.

## 2. THE CARDHOLDER'S OBLIGATION

The Cardholder agrees and undertakes that they shall comply with these Terms and Conditions and shall not be entitled to deny or dispute either authority or the signatories to these Terms and conditions including the Application Form or the authority or actions of any Cardholders' or to avoid liability arising from these Terms and Conditions and the Card Transactions.

The Bank may, in its own discretion and at any time request the cardholders to provide a Guarantee or other security in a form acceptable to the Bank as security for the Cardholders indebtedness incurred or to be incurred pursuant to these Terms and Conditions.

### 3. CREDIT LIMIT

The Cardholder will not permit indebtedness to exceed the credit limit established by the Bank from time to time. The credit limit appears on the Bank's monthly statement

### 4. LIABILITY FOR INDEBTEDNESS

The Cardholder is liable to the Bank for all indebtedness, including indebtedness incurred by any person authorized by such Cardholder together with applicable rates or interest, which exceeds the credit limit. The Cardholder's liability to the Bank with each supplementary card shall be joint and several for all indebtedness.

### 5. PAYMENT OPTIONS

The indebtedness of the Cardholder to the Bank shall be paid by the payment due date appearing on the statement issued in the name of the Cardholder as follows:

In full;

- a. By a part payment equal to 20% of the unpaid balance shown on the statement (Minimum Amount Due), or
- b. Such other payment notified to the Cardholder from time to time. In addition, any indebtedness exceeding the full credit limit will be paid immediately, and if the balance shown on a statement is less than Kshs. 5000 or USD 80, it will be paid in full by the payment due date appearing on the statement.

All payments to the Bank must be made at a CBA branch or duly authorized agent

Payments to reduce indebtedness shall be applied by the Bank in the following order; interest charges; transaction fees and other charges including legal fees; billed cash advances; billed purchases; unbilled cash advances and unbilled purchases.

The Cardholder expressly accepts that if he fails to pay any money when due, or which may be declared due prior to the date when it would otherwise have become due, or commits any default under agreement with the Bank under which the Cardholder is enjoying any financial/credit/other facility, then, the Bank shall, at its sole discretion, without prejudice, exercise all or any of its rights and remedies available to it in these Terms and Conditions and/or applicable laws.

Without prejudice to the other rights of the Bank hereunder, in case of delay in payment the Bank reserves the right to withdraw the Credit Card privileges by instructing the Merchant Establishments not to honour the Credit Card. The Cardholder accepts that, at its sole discretion, the Bank or its appointed representatives/agents, may at any time follow up with them for payment against amounts due on the Card. The Cardholder also agrees to pay all costs (including legal costs) of collection of all dues, all charges incurred by the Bank for related and incidental matters including, charges for renewal/replacement of a Card, for duplicate Statement/charge-slip, transaction fee for cash advance, collection charges for outstation cheques, penal fees for returned payments and similar expenses, and in the event of legal action initiated, all legal expenses and decretal amount with interest.

### 6. INTEREST

The cardholder shall pay interest to the Bank on the indebtedness, at the rate of interest set out in the application or such other rate or rates as may be set by the Bank from time

to time, subject however to the maximum rate chargeable under the applicable law and subject to a 30 days' Notice.

The rate of interest will be notified to the Cardholder in the monthly statement from time to time and will be calculated as follows:

- a. Cash advances: Interest is charged on cash advances from and including the day it is obtained.
- b. Other indebtedness: Interest is charged on all indebtedness, other than cash advances from and including the day it is charged to the account, except that interest is not charged on indebtedness, other than cash advances which appear on the statement for the first time if all indebtedness shown on the statement is paid in full by the statement's payment due date.
- c. If the Cardholder pays any amount less than the Total Amount Due to the Bank, the Cardholder is requesting the Bank to extend the credit period for which interest will continue to accrue from the day the indebtedness is charged to the account until all amounts outstanding together with the accrued interest is paid in full.
- d. Unbilled purchases shall be charged as set out in section 6(b) herein above.

### 7. FEES AND OTHER CHARGES

- 7.1 Where applicable, the Cardholder will pay the Bank:-
  - a. A joining fee in respect of the account for the cards and any additional cards thereof;
  - b. An annual subscription fee per card and all additional cards thereafter;
  - c. A transaction fee for each cash advance charged to the account;
  - d. An administration fee and which can vary from time to time for each cheques auto pay/standing order received by the Bank in payment of the indebtedness which is subsequently dishonoured;
  - e. Where the Minimum Amount Due is not paid by the payment due date, A late payment charge on all overdue amounts, calculated at the rate of 1% per month for every month that an amount due remains outstanding or at such other rate or rates as advised by the bank from time to time and calculated from the date of default as recorded on each statement to the date the outstanding amount is paid in full.
- 7.2 The Bank will have the right to debit the cardholders Account with all fees and other charges payable in connection with the use of the Card from time to time. These include, but are not limited to, a subscription fee, card replacement fee, bulletinized card fee, returned payment fee, over-facility fee, handling fee, currency conversion fee and copy document fee in respect of the issuance of the Card or the use thereof by the Cardholder.
- 7.3 If the Bank gives a provisional credit for any disputed Card transaction while investigating such Card Transaction but thereafter reverses such credit, the Cardholder will be liable for interest from the Statement date of the Card Transaction concerned.
- 7.4 The Bank is hereby authorized to debit the Card Account with all legal costs, which may be incurred in exercising any rights in terms of these Terms and Conditions. These charges shall include all legal charges, investigation charges, tracing fees and debt collection charges.
- 7.5 The Bank's record of the amount of any Charge,

specified herein above, shall, in the absence of manifest error, be final and binding on the Cardholder, and shall be conclusive in any case where the Bank has effected any payment pursuant to a transaction. All taxes, and all duties (including stamp duty and relevant registration charges, if any, in connection with the Card) and taxes (of any description whatsoever) as may be levied from time to time by the Government or other authority in respect of or in connection with the Card.

## **8. INSURANCE**

- 8.1 The Bank will require the Cardholder to take out insurance to cover death, disability and retrenchment through the Bank's insurance plan. The Bank's preferred Insurance Agency and Insurance provider is Commercial Bank of Africa Insurance Agency Limited (CBAI). However the Cardholder is at liberty to use an Insurance Agency of their choice. However, the Bank reserves the right to decline the Cardholder's choice on reasonable grounds.
- 8.2 If the Cardholder opts for another insurance provider, they shall be required to arrange with the preferred insurance provider to assign the insurance policy to the Bank to the extent of the credit limit and the Bank will reserve the right to verify the details of the assigned policy. The Cardholder should present the assigned policy document to the Bank prior to issuance of the credit card.
- 8.3 The Cardholder undertakes to pay without delay the insurance premiums stipulated by the Bank from time to time. The Cardholder also understands and accepts that in the event of default on the card account or delay in payment of insurance premiums, the insurance may not be valid and the Cardholder will continue to be liable for repayment of all monies due to the Bank.
- 8.4 The Cardholder also acknowledges and accepts the benefits, scope of cover and exclusions detailed in the CBA insurance form.
- 8.5 The Cardholder will continue to be liable for any shortfall in the amount received from the insurers.
- 8.6 The Cardholder shall give written notice to the Bank within 48 hours of any occurrence which gives rise or might give rise, to a claim under the policy of insurance and, except with the prior written consent of the Bank, the Cardholder shall not agree to settlement of any such claim.
- 8.7 All proceeds received by the Bank in respect of any claim made under the insurance will be applied by the Bank in repayment of the outstanding card balance. Any surplus after such application will be paid to the Cardholder's account or to the nominated beneficiaries in the event of death.

## **9. AUTOMATED TELLER MACHINE TRANSACTIONS**

The Cardholder may use the Card together with such Cardholder's PIN to execute a transaction at any of the automated teller machines or terminals designated by the Bank from time to time, provided such Cardholder has selected such PIN subject to the security procedures regarding the issuing of such. If the Cardholder has selected such PIN, those procedures in addition to the Terms hereof, apply to each transaction executed by such Cardholder's card together with such Cardholder's PIN. The Cardholder must exercise all necessary precautions against loss or theft of the card or disclosure of the PIN ensuring that any record of the PIN is kept separate from the card.

A transaction fee shall be levied on all cash withdrawals and shall be billed to the Cardholder in the Statement communicated thereafter. In addition, all cash withdrawals shall also attract interest calculated on an average daily outstanding balance method from the date of such withdrawal till the payment is received by the Bank.

## **10. STATEMENTS, ERRORS IN STATEMENTS; COPIES OF DOCUMENTS**

- 10.1 The number of days covered by each statement will vary between 28 days and 32 days
- 10.2 If the Cardholder does not notify the Bank in writing within 7 days after the date of statement of any error or omission, the statement will be conclusively settled to be complete and correct except for any amount improperly credited to the account. A microfilm or other copy whether signed or not of the sales voucher, cash advance voucher, or other document, in electronic or other form, relating to a transaction involving a card or other use of the account will be sufficient to establish liability.

## **11. PURCHASES AND CASH ADVANCES MADE WITHOUT A CARD**

- 11.1 If the Cardholder or anyone authorized to use the card provides a mandate whether such comprises a signed coupon, subscription voucher or telephone instruction or a request for cash advance, or gives the account number, to make a purchase or obtain a cash advance without presenting the card (such as for a mail order or telephone order purchase) the legal effect shall be the same as if the card was presented and used by the cardholder and a sales voucher or other document or cash advance voucher was signed by the Cardholder. The Bank shall debit the account with the amount of all card transactions and the Cardholder will be liable to pay the Bank all the amounts so debited whether or not such a voucher or other document is signed by the Cardholder and irrespective of any rights or obligations as between the merchant and the Cardholder.
- 11.2 Notwithstanding any other provision contained in this Agreement, The Cardholder shall be liable for any indebtedness resulting from the use of the card by any other person using the card with the express or implied consent of the Cardholder.

## **12. OWNERSHIP OR CANCELLATION OF CARD**

The card is not transferable and remains the Bank's property at all times. Any card may be cancelled and its privileges revoked at any time by the Bank or its Agent at its sole discretion. The cardholder shall not be entitled to use a card, which has been cancelled, and shall be required to surrender the card upon demand to the Bank or its Agent. The Cardholder shall be liable for any expenses incurred by the Bank in reclaiming a cancelled card.

## **13. SUPPLEMENTARY CARD**

Upon receipt of a request by the Principal Cardholder for issuance of a supplementary card to the person appointed by the principal Cardholder, the Bank shall at its sole discretion issue a Supplementary Card on such terms and conditions as set by the Bank from time to time.

The usage of the Supplementary Card shall be deemed

acceptance of these Terms and Conditions. The holder of any Supplementary Card and the Principal Cardholder, authorising its issuance, are jointly and severally bound /liable by these Terms and Conditions/for payment, however it shall be the Principal Cardholder's responsibility to ensure payment of all charges due and payable under the Supplementary Card. The facility of a Supplementary Card, being a special facility at such fee/rate as may be stipulated by the Bank from time to time, continuation of the membership of the Supplementary Card Member will be solely dependent on the continuation of membership of the Primary Card Member.

#### **14. ENTIRE BALANCE DUE**

Notwithstanding any other provision, all indebtedness shall, at the Bank's option, and without notice or demand being given, be immediately due and payable,

The Bank reserves the right to set-off any indebtedness against any deposit to the account or accounts of the Cardholder.

#### **15. BILLING**

All Cardholders will be billed on a monthly basis for all transactions made using the Card incurred by the use of Card and for all charges applicable to the Card Account. The Bank shall endeavor that no delay is caused in dispatching the Statement to the Cardholder. However, there may be no statement generated for the period in which there has been no balance due and no transaction made on the Card Account in the preceding month.

The Bank shall endeavor to provide Statement online with suitable security to ensure that the Statement can be accessed only by the Cardholder. In the event of non-receipt of the Statement for any reason whatsoever, there being no delay on part of the Bank in dispatching them, the Cardholder shall pay the Bank the sum total of all dues calculated by using copies of the charge slips in his possession by the Payment Due Date or by enquiring the same by calling the Bank 24 Hour Customer Care Centre.

#### **16. AUTO DEBIT FACILITY**

The Cardholder may avail of auto debit facility for making the payments of the Card dues. On availing the auto debit facility, the bank account of the Cardholder (details of which shall be provided to the Bank) will be debited, for the amount due as above, on the Payment Due Date as indicated in the Statement sent to the Cardholder. Provided, however, that the Payment Due Date should be a Business Day otherwise the bank account shall be debited on next Business Day. In the event of the said bank account not having sufficient funds on the Payment Due Date, the Cardholder shall be liable to pay all the Charges applicable in addition to the Card dues. The Cardholder agrees and confirms that all the particulars submitted to the Bank by the Cardholder for availing of the auto debit facility shall be correct and complete. The Bank shall not be liable if the auto debit transaction is delayed or not effected at all for reasons of incomplete or incorrect information or for any reason whatsoever. The Cardholder further agrees and undertakes to inform the autopay Cardholder's bank (including CBA account) of the auto debit instructions issued in favour of the Bank and not to close the said bank account without the prior consent of the Bank. Such instructions cannot be withdrawn/cancelled except with the written consent of the Bank.

#### **17. RETURNED PAYMENTS**

In case the cheque, or any other payment instrument or instruction given by the Cardholder, towards payment of his Card dues, is not honoured, or must be returned to the Cardholder because it cannot be processed, the Bank reserves the right to initiate legal proceedings against the Cardholder and will levy fee at its sole discretion and/or temporarily/permanently cancel the Card. The Cardholder will also be liable to pay the cheque return charges and late payment charges or any other charges as may be decided by the Bank.

#### **18. SECURITY**

In case of a secured Credit Card the whole of the outstanding balance on the Card Account, together with the amount of any outstanding Card transactions along with interest and all other cost, charges as mentioned hereunder, effected but not yet charged to the Card Account during the usage of the Credit Card by the Cardholder will be secured by way of pledge/hypothecation of such securities/fixed deposits/such other assets as approved by the Bank standing in the name of the Cardholder singly or jointly with any other person or securities standing in the name of the third party, in the form and manner as prescribed by the Bank. The Cardholder shall execute all such documents in the form and manner satisfactory to the Bank creation of the security. Costs involved in creation of security and completion of all other formalities, including but not limited to stamp duty, etc. shall be borne by the Cardholder.

#### **19. COLLECTIONS**

The Bank shall be entitled, at the sole risk and cost of the Cardholder, to engage one or, more person(s) to collect the Cardholder's dues and/or to enforce any security provided by the Cardholder, and the Bank may (for such purposes) furnish to such person(s) such information, facts and figures pertaining to the Cardholder and the security as the Bank deems fit. The Bank may also delegate to such person(s) the right and authority to perform and execute all acts, deeds, matters and things connected therewith, or incidental thereto, as the Bank deems fit.

#### **20. RESPONSIBILITY FOR SERVICE**

The Bank incurs no liability to the Cardholder if any merchant denies or fails to honour the card or if there is a dispute as to the nature, quality of any goods or services acquired from the merchant it being acknowledged that no merchant is an agent of the Bank. All claims, including any rights of set-off by the Cardholder, and any dispute regarding any sales voucher or credit voucher, or any transaction involving a card or other use of account, shall be settled directly between the merchant and the Cardholder and shall have no effect on the indebtedness. Any refund made by means of a credit voucher or other document issued by a merchant will be credited to the card account upon its receipt by the Bank from the merchant. Until the credit voucher or other document or the value thereof is received by the Bank, the indebtedness is payable to the Bank in accordance with the provisions of this agreement.

#### **21. TRANSACTION IN A DIFFERENT CURRENCY**

The Cardholder must be fully familiar and comply with all the applicable Exchange Control Regulations when the card is used for transactions in a currency that is different from the card currency. Card transactions made in different currency will be shown on the statement in the card currency and are payable in the card currency converted at the exchange rate

charged to the Bank on the date of conversion together with a conversion fee which is a percentage of the value of the foreign transaction and which percentage can vary from time to time. This exchange rate may not be the rate in effect on the date of the transaction.

## **22. CARD LOSS OR THEFT**

The Cardholder agrees to immediately notify the Bank if any card is lost or stolen or is used without Cardholder's authority. Such notification may be verbally but must be confirmed in writing within 48hrs. Delay in notification or written confirmation will be construed as negligence.

Until notification of the loss, theft or unauthorized use of such card has been received by the Bank, the Cardholder shall be liable for:

- a. All indebtedness resulting from the loss, theft or unauthorized use of such card which has been incurred pursuant to any one or more transactions in which only such Cardholder's card is being used to execute such transaction(s) concluded before the Bank is reasonably able to act, the Cardholder will only be liable for indebtedness up until receipt of the aforesaid written notice by the Bank; and
- b. All indebtedness resulting from the loss, theft or unauthorized use of such card which is incurred pursuant to any one or more transaction in which such Cardholder's card and PIN have been used together to execute such transaction(s).

No liability shall attach to the Cardholder for any unauthorized transactions done on the Card after the reporting of the loss/theft/damage of the Card and upon the Bank having suspended the Card Account. Liability of any transaction made on the Card post reporting its loss/theft/ damage shall fall upon the Bank. However, in case of any dispute relating to the time of reporting and/ or transaction/s made on the Card, post reporting of the said Card as being lost/ stolen/ misused, the Bank shall reserve the right to ascertain the time and/ or the authenticity of the disputed transaction.

## **23. CREDIT INFORMATION**

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

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

## **24. SAFEGUARDING THE CREDIT CARD AND THE PIN**

The Cardholder will exercise all care necessary to ensure the safety of the card and the secrecy of the PIN at all times.

- a. The Cardholder will not disclose the Credit Card Number to any third party except in connection with encashment usage or for the purpose of a Credit Card transactions or when reporting the actual loss or theft of the Card.
- b. A Cardholder may only reveal the PIN to an Authorized

User.

- c. A Cardholder shall never allow any other person to use the card with or without the PIN.
- d. A Cardholder shall always take due care to safeguard the safety and secrecy of the PIN and shall not write the PIN on the card or any document usually kept with the Card.

If the card is lost, stolen or for any other reason becomes liable to misuse, or the PIN has been disclosed to anyone other than the Authorized user, the Cardholder must immediately notify the Bank Card Centre at the address as contained in this Agreement and/or on the Card. If this notification is given orally, it shall not take effect unless followed by a confirmation in writing to the Credit Card Manager P.O. Box 30437, 00100 Nairobi.

Until the Bank receives the formal notification, the Principal Cardholder will be liable in respect of any use of the card. After the Bank has been effectively notified, the Principal cardholders liability for any subsequent use of the card other than the by a Cardholder will cease provided that the Credit Card has not been used by a person who acquired possession of it with the cardholders express or implied consent.

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

## **25. REFUNDS AND CREDIT CARDHOLDER CLAIMS**

- a. The Credit Card Account will only be credited with a refund in respect of a Credit Card transactions if the Bank receives a refund voucher or refund verification acceptable to it. No claim by the Cardholder against a third party may be subject of a defense or counterclaim against the Bank.
- b. No rights of the Cardholder against the Bank may be assigned or otherwise disposed of;
- c. The Principal Cardholder shall not be entitled to interest on any credit balances there may be in the Credit Card Account.
- d. No Credit Card holder shall return for cash refund any goods and tickets for services obtained with the card. Any such refunds must be credited only through the Credit Card Account.

## **26. AUTHORIZED USE OF THE CARD**

- a. The Bank may issue a Credit Card for use by any natural person nominated by the Principal Cardholder as an Authorized User on the Credit Card Account. The Principal Cardholder shall be liable for all claims arising from or losses incurred by the Bank in connection with the use of the card by an Authorized User (including any use in breach of these Terms and Conditions which the Bank shall be under no responsibility to prevent) and any expenses or charges therefrom shall be debited to the account. Without limitations to the Bank powers, the Bank may cancel any Authorized Users Credit Card at any time upon



- the request in writing of the Principal Cardholder and the return of such Credit Card to the Bank, or upon the surrender of such card to the Bank by the Authorized User.
- b. Neither the principal Cardholder nor any authorised user may use a card for any unlawful activity (including a purchase of goods or services that is illegal or prohibited by the laws of Kenya or by the laws of the country where the purchase is made); or to pay debts incurred in connection with online gambling, wagering or betting activities conducted via internet.
  - c. The Bank may refuse to approve transactions made using a card if we believe or suspect the transactions are illegal, fraudulent, dishonest or unauthorised. However, the Bank need not determine or enquire into the purpose or legality of the transaction.
  - d. The Cardholder may use the card to pay for goods and services at merchants who accept the card. When paying you must sign a transaction slip. The cardholder will not have to sign a transaction slip when carrying out remote transactions or using other delivery channels, such as ordering by mail, telephone or through the internet.
  - e. When the cardholder uses the card to access and carry out remote transactions, the rules of that channel shall apply in addition to these terms and conditions.

## 27. GENERAL PROVISIONS

- a. The Bank shall not be liable if it is unable to perform its obligation under these Terms and Conditions due (directly or indirectly) to the failure of any machine, data processing system or transmissions link or to industrial dispute, strikes, lock outs, acts of any public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, flood, civil disturbances, terrorism, governmental regulations and directions and anything outside the direct control of the Bank, its agents or sub-contractors;
- b. If the Bank is unable to produce or send a monthly statement in respect of the Card Account, the Principal Cardholder's liability for the overdue payment charge shall continue to accrue. For the purpose of calculating such charge, and in establishing the date on which payment is due, the Bank may select a date in each calendar month as the statement date.
- c. The Bank shall not be liable, responsible or accountable in any way whatsoever for any loss, injury or damage howsoever arising from the use of the ATM and the Principal Cardholder agrees to indemnify the Bank against all losses, costs, charges and expenses which the Bank may suffer or incur directly or indirectly arising from any use by a Credit Cardholder of an ATM or any breach of this Agreement howsoever, whensoever and heresover arising.
- d. The Principal Cardholder shall immediately notify the Credit Card Manager CBA Card Centre, P.O. Box 30437 00100 Nairobi, Kenya in writing of any change of name of address.
- e. Any other facilities or benefits made available to Credit Cardholders as such and not forming part of this facility may be withdrawn at any time without reference to these Terms and Conditions.
- f. The Cardholder warrants the complete accuracy of the information given upon the application to establish the Credit Card Account and any subsequent communication with Bank.
- g. The Cardholder shall not make any payment to any person except the Bank in respect of goods or services obtained with the use of the card.
- h. The Cardholder agrees and acknowledges that the Bank may file a claim in a court of competent jurisdiction to recover any levies due as at the date of instituting the proceedings.
- i. Any waiver indulgence or concession the Bank may give the cardholder will not affect any of the Banks rights against the Cardholder.
- j. The Cardholder will pay all our expenses and other costs in recovering any outstanding amounts owed to the Bank, including legal fees on an attorney and own client scale, collection, tracing and penalty fees.
- k. A certificate signed by any of the Bank managers (whose appointment need not be proved) as to the amount of outstanding debt to the Bank, the fact that the amount is payable, the rate of interest payable and the date from which such interest is calculated and any other matter relating to the debt, will on its mere production, be sufficient proof of the facts stated in the certificate, unless the contrary is proved.
- l. The Bank may without any Notice to the Cardholder, restrict the, reduce the limit or suspend access to the card account if the Bank in any way knows or suspects that the card account is being used fraudulently, negligently or for illegal activities or if the bank is obligated to do so to comply with the law.
- m. If the Bank closes or suspends access to the Card account for any reason, the Bank will not incur any liability for any direct, indirect, consequential or special damages arising from any act or omission by the Bank or any third party for whom the Bank is are responsible, whether arising in contract, or statute.
- n. These Terms and Conditions are in addition to any other Terms and Conditions governing any accounts with the Bank and will be governed by and interpreted in accordance with the laws of Kenya.
- o. The Cardholder shall not assign any benefit or any rights arising hereunder without the prior written consent on confirmation from the Bank.
- p. No waiver by the Bank of any breach by the Cardholder 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 Cardholder.
- q. The Cardholder acknowledges:
  - i. That it has not relied any representation, warranty, promises, statement or 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
  - ii. No person has or has authority on behalf of the Bank whether before, on or after the subscription to make or give any such representation, warranty, promise, statement or opinion or other inducement to the Cardholder or to enter into any collateral or side agreement of any kind with the Cardholder in connection with the Service.
- r. The terms and conditions hereof supersede all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. For the avoidance of doubt, nothing herein shall vary, discharge or in any other way affect or prejudice any security granted



by the Cardholder or any third party in favour of the Bank in relation to any obligations of the Cardholder which may arise if any Request from the Cardholder hereunder is acted upon by the Bank.

- s. If any provision of these terms and conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remaining provisions of these terms and conditions.
- t. 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:
  - i. To the Manager of the Branch or of the Bank at the address of the Branch or the Bank set out in this Agreement, if to be served on the Bank.
  - ii. To the Cardholder at the address given for the Cardholder in this Agreement, if to be served on the Cardholder and shall be deemed to have been served five (5) Banking days after posting.

## 28. CONFIDENTIALITY AND DISCLOSURE

- a. The Bank may hold and process, by computer or otherwise, any information obtained about the Cardholder as a consequence of the application for the Credit Card facility.
- b. The Cardholder confirms that the Bank may at any time and from time to time at its sole discretion carry out credit checks with any of the licenced credit reference agencies on the Cardholder and where the cardholder is a company, on any of the cardholder's directors.
- c. The Cardholder agrees that the Bank may:-
- d. include personal data of the Cardholder in the Bank's customers' computer systems which may be accessed by other companies in the Bank's group for credit assessment, statistical analysis including behaviour and scoring and to identify products and services (including those supplied by third parties) which may be relevant to the Cardholder; and
- e. permit other companies within the Bank's group to use personal data and any other information it holds about the Borrower on the Bank's customers' computer systems to bring to its attention products and services which may be of interest to the Cardholder.
- f. The Cardholder agrees that the Bank may disclose any information relevant to the cardholder and the Facilities in the Bank's possession relating to the Cardholder and its subsidiaries on terms that such recipient is to treat in confidence any confidential information so disclosed to it and further agrees that the Bank may disclose personal data and/or information relating to the Cardholder or any Relevant Party outside the Bank's group whether such personal data and/or information is obtained after Cardholder ceases to be the Bank's customer or during the continuance of the Bank-customer relationship or before such relationship was in contemplation:-
- g. for fraud prevention purposes;
- h. to licensed credit reference agencies or any other creditor if the Borrower is in breach of its obligations to the Bank and the Cardholder agrees that such information may be used by other Banks or institutions in assessing credit applications and for debt tracing;
- i. to licensed credit reference agencies or any other creditor for determining the Cardholder's payment history and the Cardholder agrees that his/her payment history may be

used by other Banks or institutions in assessing credit applications and for debt tracing;

- j. to the Bank's external lawyers, auditors and sub-contractors or other persons acting as agents of the Bank;
- k. to any person who may assume the Bank's rights under the Application and these Terms and Conditions;
- l. to any regulatory, fiscal or supervisory authority;
- m. if the Bank has a right or duty to disclose or is permitted or compelled to do so by law;
- n. any potential assignee of the Bank or other participant in any of its rights and/or obligations in relation to the Borrower's facility including any guarantors, third party pledge or security providers and the Bank's agents; and
- o. for purposes of exercising any power, remedy, right, authority or discretion relevant to the Application, the Conditions or the Security following the occurrence of an Event of Default, to any other person or third party as well.
- p. The Cardholder hereby agrees and confirms (i) that the Bank may in its discretion record any telephone conversations between the Cardholder and the Bank made in connection with the facility and (ii) that the cardholder will not object to such recordings being produced in evidence in a court of law.
- q. The Cardholder acknowledges and agrees that, notwithstanding the terms of any other agreement between the Cardholder and the Bank, the disclosure by the Bank of information relevant to the Cardholder and the credit card facility in the circumstances contemplated in this clause does not violate any duty owed to the Cardholder either in common law pursuant to any agreement between the Bank and the Cardholder or in the ordinary course of Banking business and the customs, usage and practice related thereto and further that the disclosure as aforesaid may be made without reference to or further authority from the Cardholder and without inquiry by the Bank as the justification or validity of such disclosure.
- r. The Cardholder undertake to maintain strict confidentiality of its ID, Password and PIN and any other information and materials of any nature supplied to it by the Bank in relation to the Service.
- s. The Cardholder agrees to notify its agents, 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.
- t. The Cardholder 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.

## 29. FOREIGN ACCOUNT TAX COMPLIANCE ACT

- a. The Cardholder hereby expressly acknowledges and agrees that pursuant to the Foreign Account Tax Compliance Act (FATCA) enacted under the Laws of the United States of America (US), the Bank is or may be required for US citizens or residents to disclose and report certain information concerning his/her/their account to the relevant authorities including but not limited to the US Internal Revenue Service ("US Authorities"). Additionally FATCA may require the Bank to deduct, withhold and remit such taxes or monies to the US Authorities as may be directed by them from time to time.
- b. The Cardholder hereby expressly consents and authorizes

the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Cardholder's account(s) to the US Authorities and to deduct, withhold and remit such monies or taxes as may be directed by the US Authorities to enable the Bank to fulfil its obligations under FATCA and other enabling US statutes.

- c. The Cardholder hereby irrevocably releases and fully discharges CBA, its directors, officers, employees, servants and agents and related parties from any and all claims, liabilities, damages, loss or expense arising from CBA disclosing and reporting any such information concerning the Cardholder's account(s) to the US Authorities and/or deducting, withholding and remitting any monies to the US Authorities.

### 30. INTELLECTUAL PROPERTY RIGHTS

The Cardholder acknowledges that the intellectual property rights in the system (and any amendments thereto from time to time) and all associated documentation that the Bank provides to the Cardholder 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 Cardholder shall not infringe any such intellectual property rights. The Cardholder shall not duplicate, reproduce or in any way tamper with the system and associated documentation without the prior written consent of the Bank.

### 31. INDEMNITY

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

- a. All demands, claims, actions, losses and damages of whatever nature may be brought against the Bank or which it may suffer or incur arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Bank's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any request received by the Bank.
- b. Any loss or damage that may arise from the Cardholder's use, misuse abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs.
- c. Any authorized access to the Cardholder's accounts or any breach of security or any destruction or theft of or damage to any of the Cardholder's equipment.
- d. Any loss or damage occasioned by the failure by the Cardholder to adhere to any terms and conditions applicable to the service and/or by supplying of incorrect information or loss or damage occasioned by the failure

or unavailability of third party facilities or systems or the inability of a third party to process a transaction or any loss which may be incurred by the Bank as a consequence of any breach by the Cardholder of the terms of this agreement.

- e. Any damages and costs payable to the Bank in respect of any claims against the Bank for recompense for loss caused by (a), (b) and/or (c) of subparagraph 15.8.1 where the particular circumstance is within the Cardholder's control.

### 32. VARIATION AND TERMINATION OF RELATIONSHIP

The Bank may terminate vary, amend or substitute these Terms and Conditions by a written notice sent to Cardholder or either the postal or physical address (which physical address shall be Cardholder's last known postal address appearing in the Bank's records) or by any other means. An amendment may apply both to existing indebtedness and to indebtedness arising after the amendment is made. Continued use of the card by any Cardholder or maintenance of any indebtedness following the effective date mentioned in the Bank's notice shall be deemed acceptance by the Cardholder of such new provisions as of such effective date and no amendment of these terms and Conditions nor the renewal or replacement of a card will constitute a negation of the Terms and Conditions.

The Bank may terminate the Credit Card account and require immediate payment of indebtedness at any time without notice, in the event of:-

- a. The death or insolvency of any Cardholder or failure by Cardholder to pay any indebtedness hereunder or any other obligation of Cardholder to the Bank;
- b. The institution of garnishee, criminal proceedings, attachment or execution proceedings involving any Cardholder, or Cardholder's property, or criminal action;
- c. A breach or default of any provision of this Agreement. The Cardholder shall be liable for all legal fees and expenses on an attorney and own client scale

All notices to the Bank must be posted by prepaid registered post to the Bank's Card Centre at P.O. Box 30437, 00100 Nairobi. For the purpose of delivery or service of judicial process the Bank advises its address as being Commercial Bank Building, Mezzanine Floor, Mara/Ragati Roads Upper Hill, a receipt stating the date and time of delivery must be obtained. Should Cardholder cancel this agreement, notice of cancellation must be accompanied by the card; failing which cancellation will not be effective.

The Bank may at any time freeze any account of the Cardholder if and so long as there is any dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same, without any obligation to institute interpleader proceedings or to take any step of its own initiative for the determination of such dispute or doubt.

### 33. EXCLUSION OF LIABILITY

Without prejudice to the remedies available to the Bank and these Terms and Conditions, the Bank shall be under no liability whatsoever to the Cardholder in respect of any loss or damage arising directly or indirectly out of:

- a. any defect in any goods or services supplied;
- b. the refusal of any person/Merchant Establishment to honour or accept a Card;

- c. the malfunction of any computer terminal;
- d. the giving of transaction Instruction by any person other than by a Cardholder;
- e. handing over of the Card by the Cardholder to anybody other than the Bank or its representatives;
- f. The Bank exercising its right to demand and procure the surrender of the Card prior to the expiry date appearing on its face;
- g. the exercise by the Bank of its right to terminate any Card and the Card Account;
- h. any injury to the credit character and reputation of the Cardholder alleged to have been caused by the repossession of the Card and/or, any request for its return or the refusal of any merchant establishment/ mail order establishment to honour or accept the Card;
- i. any mis-statement, misrepresentation, error or omission in any details disclosed by the Bank. In the event a demand or claim for settlement of outstanding dues from the Cardholder is made, either by the Bank or any person acting on behalf of the Bank, the Cardholder agrees and acknowledges that such demand or claim shall not amount to be an act of defamation or an act prejudicial to or reflecting upon the character of the Cardholder, in any manner.

The Cardholder acknowledges that the provision of the facility of receiving alerts on mobile phone number or e-mail, provided by the Cardholder while applying for the credit card facility, is dependent on the infrastructure, connectivity and services to be provided by service providers engaged by the Bank or otherwise. The Cardholder accepts that timelines, accuracy and readability of alerts sent by the Bank will depend on factors affecting other service providers engaged by the Bank or otherwise. The Bank shall not be liable for non-delivery or delayed delivery of alerts, error, loss or distortion in transmission of alerts to the Cardholder.

#### **34. VALIDITY OF DOCUMENTS**

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

#### **35. HOLDINGS AND CREDIT IN FOREIGN CURRENCY**

Subject to all laws and Government regulations applicable:-

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

#### **36. ACCOUNTS IN FOREIGN CURRENCY**

Subject to all laws and government Regulations, where an account is in foreign currency any demand on the Bank for payment from such an account is properly met by the Bank

issuing draft or e effecting a transfer or making payment in any manner in foreign currency at the discretion of the Bank.

#### **37. APPLICATION TO ALL ACCOUNTS**

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

#### **38. COMMUNICATION**

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

#### **39. MARGINAL NOTES**

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

#### **40. AMENDMENTS**

Any addition or alteration to these General Terms and Conditions may be made from time to time by the Bank and of which notice has been given to the Cardholder shall be binding upon the Cardholder as fully as if the same were contained in these Terms and Conditions.

#### **41. GOVERNING LAW**

These Terms and conditions shall be governed by and shall be construed according to the Laws of Kenya.

The Bank and Cardholder hereby submit to the non-exclusive jurisdiction of the Courts of Kenya and the Bank shall be at liberty to enforce a judgment anywhere in any jurisdiction where the Cardholder carries on business or has any asset.

