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# EAZZYPAY MERCHANT SERVICES TERMS AND CONDITIONS

# EAZZYPAY MERCHANT SERVICES TERMS AND CONDITIONS

The EazzyPay Merchant and the Bank (each "Party" or collectively the "Parties") have agreed to enter into an arrangement ("EazzyPay Merchant Services") under which mobile money Customers will be allowed to use their mobile phones to pay for goods and services, to the EazzyPay Merchant as set out in these terms and conditions.

These Terms and Conditions together with the annexures hereto (together "the terms and conditions") contain the complete terms and conditions that apply to the Merchant's participation in the EazzyPay Merchant Services and supersedes all other agreements entered into between the MerchantParties in relation to the EazzyPay Merchant Services.

By executing the application form, the EazzyPay Merchant agrees that it has carefully read and understood the terms and conditions set forth herein and agrees to be bound by the said terms and conditions.

The Bank reserves the right to amend these terms and conditions at any time for any technical or commercial reasons which amendment shall take effect as designated by the Bank. Any amendment to these terms and conditions will be effected on the Equity Bank website at <http://www.ke.equitybankgroup.com>, the EazzyPay Merchant shall be notified of any such amendments.

## 1. DEFINITION

**"Applicable Law"** means applicable Kenyan law including statutes, regulations, regulatory guidelines and judicial or administrative interpretations .

**"Authorization"** means a process through which the Bank's integrated mobile system approves a mobile payment Transaction.

**"Bank"** means Equity Bank (Kenya) Limited

**"Bank Customer Information"** means information provided by a Bank Customer to the Bank for storage and subsequent use by a Bank Customer or by the Bank including a Bank Customer's identity, address, telephone number, personal information, purchasing preferences or history, or similar information.

**"Business Day"** means Monday through Friday, excluding Banking holidays and gazetted public holidays in Kenya.

**"Cashback"** means one of the services offered by the Merchant where a Bank Customer can withdraw money from their account at the EazzyPay Merchants outlet.

**"Confidential Information"** under these terms and conditions means, the Customer Data and all information, materials or reports provided to or in connection with either Party's performance under these terms and conditions, including without limitation, Registration information or other **EAZZYPAY MERCHANT** Customer Information, all names, address, demographic, behavioral and credit information relating to the Equity EazzyPay Customers or potential EazzyPay Customer Account, EazzyPay Customers, EazzyPay Customer communication materials and issuance strategies or methods, business objectives, assets and properties, marketing programs and methods; and programming techniques and technical, developmental, cost and processing information.

**"Worldwide"** means all jurisdictions that use mobile payments.

**"Customer Data"** means all information, whether personally identifiable or in aggregate, that is submitted and/or obtained for an EazzyPay Customer, including without limitation to, Bank Customer Information, credit information, financial standing and demographic data, and primary transactional data generated by the Customer's use of EazzyPay Merchant Services

**"Customer"** means a mobile money subscriber who wishes to procure the services of the EazzyPay Merchant and make payments or perform payments to the EazzyPay Merchant.

**"EazzyPay"** is a registered trademark by Equity Group Holdings Limited which has licensed the Bank to use it for inter alia mobile payment services through the till number(s)

**"EazzyPay Merchant"** means any individual or business recruited for purposes of facilitating payments of goods and services through EazzyPay.

**"EazzyPay Merchant's account"** means the designated account domiciled in the Bank as shall be advised by the Merchant, where all payments received in respect of EazzyPay Merchant Payment from Customers shall be credited.

**"EazzyPay Merchant Services Commissions"** means the monies payable to the Bank by the Merchant for every EazzyPay transaction as agreed with the Bank.

**"EazzyPay Merchant Services"** means the payment services provided by the Bank which the EazzyPay Merchant will use in order to receive payments from Customers and may be used for other transactions including but not limited to availing cashback services and any other that may be agreed from time to time.

**"Effective Date"** means the date of execution of the EazzyPay Merchant application form.

**"Intellectual Property"** means in respect of each party, such party's proprietary rights, title and interest in and to any and all names, logos, trademarks, copyrights, patents and all other intellectual property of whatever nature, description, form, vesting in that party as at the effective date or acquired by such party at any time after the effective date

**"Marketing Materials"** means badges, links, sponsored e-mails, micro-sites, splash pages, other placements on the websites and trade, broadcast or banner advertisements, press communications and any printed physical elements designed to promote EazzyPay or a Party hereto. It shall also include information on value added products and services provided directly or indirectly by a marketing partner of the Bank and delivered by the Bank to the Equity mobile account Customers;

**"Material Adverse Effect"** includes, among other things, any change in Applicable Law that has a significant impact on the financial or operational burdens or rewards of either Party under these terms and conditions; "Payment" means the transfer of money from a Customer to the EazzyPay Merchant for payment of goods and services by following prompts on the mobile phone.

**"Reference code"** means a code provided to the EazzyPay Merchant to indicate approval by EazzyPay management system of a mobile payment Transaction, either through the tablet or telephone;

**"Shared Customer Data"** may include application-level information (other than the information specifically described here above) that the parties mutually agree to request from applicants, and shall exclude any Customer Data that the Bank reasonably determines would result in the Bank becoming a consumer reporting agency or, if provided by the Bank to the Merchant, would constitute a violation under Applicable Law.

**"EazzyPay Transaction"** means as the context requires payments made by Customers to the Merchant

**"Transaction Data"** means, transaction amount, Merchant description and transaction date, individually identifiable for each EazzyPay transaction.

**"Transaction Fee"** shall mean the fee levied to Bank Customers when they obtain Cashback from EazzyPay Merchants.

**"We" "Our" and "Us"** means the Bank and includes its successors in title and assigns.

**"You" or "your"** means the Merchant and includes your personal representatives and heirs.

The word **"Customer"** shall include both the masculine and the feminine gender as well as juristic persons.

Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

The Schedules form part of these terms and conditions and shall have effect as if set out in full in the body of this agreement.

## 2. PAYMENTS AND APPROVALS

2.1 The EazzyPay Transaction details shall be routed to the Bank's management system for authorization.

2.2 The Bank shall have complete discretion to approve EazzyPay Transactions. Nothing in these terms and conditions shall require the Bank to give a reason (s) for rejecting a transaction.

## 3. EAZZYPAY MERCHANT AND BANK OBLIGATIONS.

### 3.1 Obligation to mobile money Customer.

The EazzyPay Merchant shall;

3.1.1 Allow mobile money Customer to use the EazzyPay option to pay for goods and services to the Merchants worldwide;

3.1.2 Not set any minimum or maximum limit on EazzyPay payment amounts.

3.1.3 Not use the list of EazzyPay Customers in any other way other than as agreed with the Bank

3.1.4 Take all reasonable steps to assist the Bank in handling claims by EazzyPay Customers against the Bank

3.1.5 Seek the direction of the Bank where the identity of the EazzyPay Customer is in doubt or suspicious

3.1.6 The EazzyPay Merchant undertakes not to surcharge EazzyPay Customers the EazzyPay Merchant Services commission it pays to the Bank

3.1.7 The EazzyPay Merchant shall not permit or undertake EazzyPay transactions on behalf of Merchant any other entity or person

3.1.8 The EazzyPay Merchant shall not permit or undertake an EazzyPay Transaction other than for purposes of settlement of the price due for goods and services supplied at the time of payment. For the avoidance of doubt, an EazzyPay Customer shall not be allowed to use the EazzyPay Services to refinance a bad cheque or a past due amount.

3.2 The EazzyPay Merchant undertakes to validate an EazzyPay Customer's identity.

By verifying that the message received by the EazzyPay Customer on the phone matches the message received by the Merchant.

### 3.3 Obligations of the Merchant.

3.3.1 Allow customers to use the till number (s) to pay for goods and services

3.3.2 Reconcile payments received from customers on the EazzyPay Merchant Services within twenty four (24) hours after payment

3.3.3 Where applicable, publish the prevailing Bank charges for services offered by the Merchant such as Cashback;

3.3.4 Where a legal obligation exists, promptly issue the customer with a receipt or remittance advice slip (as the case may be) for each payment made and in a form compliant with the applicable obligation;

3.3.5 Authorize the Bank to debit charges and commissions from the Merchant Collection Account for providing services in the EazzyPay Merchant Services;

3.3.6 Seek the Bank's direction on transaction limits and notify the Bank of any suspicious transactions

3.3.7 It shall be the Merchant's responsibility to discharge any obligations imposed in relation to pricing of goods and services supplied.

### 3.4 The Merchant warrants that:

3.4.1 All intellectual property used by The EazzyPay Merchant in connection with its obligations under these terms and conditions is either owned or properly licensed to the EazzyPay Merchant for the uses contemplated herein and that such intellectual property does not infringe the rights of any third parties;

3.4.2 The services to be provided by The EazzyPay Merchant shall be performed in a diligent and professional manner and in accordance with the law;

3.4.4 The EazzyPay Merchant shall indemnify, defend and hold the Bank blameless from and against all claims, actions, suits or other proceedings, and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to:

- (i) Any actual or alleged violation or inaccuracy of any representation or warranty of the EazzyPay Merchant contained herein,
- (ii) Any actual or alleged infringement of any trademark, copyright, trade name or other proprietary ownership interest resulting from the use by the Bank of the Merchant Copyrights and Marks as contemplated by these terms and conditions,
- (iii) Any negligent act or omission or willful misconduct of the EazzyPay Merchant or its directors, officers, employees, agents or assigns in connection with the entry into or performance of these terms and conditions, and
- (iv) Any use or disclosure by the EazzyPay Merchant of the Shared Customer Data in a manner not in accordance with the Applicable Law

3.4.5 The EazzyPay Merchant shall not supply equipment and other materials used for EazzyPay transactions to any other person and shall take reasonable care of all items supplied by the Bank.

### 3.5 Obligations of the Bank

3.5.1 Make available to Customers and the EazzyPay Merchant the EazzyPay Merchant Services by allocating a Till Number (s) through which Customers payments shall be credited to the Merchant's collection account.

3.5.2 The Bank warrants that:

- (i) It is not currently aware of any claims, and is not currently involved in any litigation, challenging the Bank's rights use of the EazzyPay Marks;
- (ii) All intellectual property used by the Bank in connection with its obligations under these terms and conditions is either owned or properly licensed by the Bank for the uses contemplated herein and that such intellectual property does not infringe the rights of any third parties.

3.5.3 Provide support services to the EazzyPay Merchant on the systems and payment

3.5.4 Credit the Merchant's collection account with payments received from Customers through the EazzyPay system.

3.5.5 The Bank shall reserve the right, if required by law, to hold funds beyond the normal distribution period for transactions that it reasonably deems suspicious of money laundering, financing terrorism and other criminal activities

## 4. EAZZYPAY MERCHANT COLLECTION ACCOUNT

4.1 The EazzyPay Merchant shall open a collection account with the Bank to facilitate payment of the EazzyPay Merchant Sales and Commissions. The Collection Account number shall be the only account upon which such payments shall be made. Any change of the Collection Account shall be in writing and shall be subject to the approval of the Bank

4.2 The Bank shall promptly credit the Merchant's collection account, with all purchases made by the Merchant's Customers using EazzyPay.

4.3 The bank shall net off the Merchant Service commission at the mutually agreed rate.

4.4 The receipt or acceptance by either party of any statement furnished whether audited or not pursuant to these terms and conditions, shall not preclude that party from questioning their accuracy at any time. If any inconsistencies or mistakes are discovered in such statements or payments, the parties shall make appropriate adjustments within thirty (30) days. During the Term of the engagement

(as provided under clause 8.1) and for seven (7) years thereafter (or such other period of time as may be required by Applicable Law), the Bank shall keep full and accurate books of account and copies of all documents and other material relating to these terms and conditions at the parties' respective principal offices. Each party shall be obliged upon being requested to do so by the other party having given a reasonable notice, to provide an authorized employee to assist in the examination of the statements and records. Any amount found due to the other party shall be promptly paid.

## 5. OWNERSHIP, COPYRIGHTS AND LICENSE

### 5.1 Till numbers

The Bank together with its affiliates retain the ownership and rights to the Till number(s) and may with reasonable notice to the Merchants, re-number, re-assign, re-allocate or withdraw a Till number (s); provided that the Bank shall not tamper with the balances held in the Merchant's Collection Account.

### 5.2 Customer Data

The Bank shall collect, maintain and shall have the sole ownership and control of Customer data.

### 5.3 Merchant Data

You hereby expressly consent and authorize the Bank to disclose, receive, record or utilize your personal information or information or data relating to your Merchant Account and any details of your use of the Services :

5.3.1 To and from any local or international law enforcement or competent regulatory or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud;

5.3.2 To and from the Bank's service providers, dealers, agents or any other company that maybe or become the Bank's subsidiary or holding company for reasonable commercial purposes relating to the Services;

5.3.3 To the Bank's lawyers, auditors or other professional advisors or to any court or arbitration tribunal in connection with any legal or audit proceedings;

5.3.4 To Mobile Network Operator in connection with the Mobile Money Service and other Services;

5.3.5 For reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities; and

5.3.6 In business practices including but not limited to quality control, training and ensuring effective systems operation

### 5.4 Intellectual Property

5.4.1 The Parties' Copyrights and Marks. Each Party's trademarks and Copyrights shall be the Property of the respective Party; and each Party hereby grants the other a nonexclusive, nontransferable, restricted and royalty, free license to use its Copyrights and Marks only in a manner and at such times as are expressly authorized by these terms and conditions, as follows:

5.4.2 each party shall obtain consent from the other party to produce material including advertising materials which utilize the copyrights or marks of the other party;

5.4.3 Except as specified in these terms and conditions, all uses of the Marks will accrue to the benefit of the Parties; provided that nothing in this Section shall be read to imply that the EazzyPay Merchant shall have any right, title or interest the Bank's Intellectual Property

5.5 Upon termination or expiration of this terms and conditions, each Party shall, except where authorized in writing by the other Party cease the use or reference to the other Party's name, Marks, images, Copyrights and hyperlinks in any manner whatsoever, and destroy, at its own expense, all Marketing Materials or other publications and promotional materials bearing the other Party's name, Marks, Images and Copyrights in its possession and in the possession of its agents, employees, and independent contractors.

## 6. MARKETING AND PROMOTION

6.1.1 Each Party undertakes at its own cost and expense to market and promote the EazzyPay Merchant Services to its Customers;

6.1.2 The Parties may however set up a marketing fund to promote awareness among their respective Customers of the existence of EazzyPay.

6.1.3 The EazzyPay Merchant shall display prominently the EazzyPay insignia, promotional signs and other advertising materials provided to it by the Bank to indicate that the EazzyPay Merchant accepts payment and/or renders such range of services as may from time to time be available via the EazzyPay Merchant Platform.

6.1.4 The EazzyPay Merchant shall not use any promotional material whatsoever to advertise EazzyPay unless such material is supplied by or approved in writing by the Bank.

### 6.2 Loyalty Program Option.

The Bank shall promote EazzyPay by developing customer Loyalty Programs. The EazzyPay Merchant shall collaborate in sensitizing the EazzyPay Customers of such Loyalty Programs

## 7. ENROLLMENT:

All EazzyPay Merchants shall automatically be enrolled to any new products, services or payment channels that shall be offered by the Bank through EazzyPay Merchant Services.

7.1 The EazzyPay Merchant Services Sign-up Requirements subject to the type of business indicated in the schedule are as follows:

- (i) Fully completed and signed Application Form.
- (ii) Valid Identity Card copies of business Owners/ Directors.
- (iii) Copies of Certificate of Incorporation/ Registration Certificate/Business Permit/ Partnership Deed.
- (iv) Memorandum and Articles of Association for Companies.
- (v) Kenya Revenue Authority PIN/VAT Certificates

## 8. DURATION AND TERMINATION

8.1 These terms and conditions shall come into effect once the Merchant accepts them by signing the application form and shall remain in force for the period the Merchant shall use the EazzyPay Merchant Services.

8.2 These terms and conditions may be terminated by any Party giving a seven (7) day written notice to the other Party of its intention; provided that such termination shall not affect any activities that would have been transacted at the date of notice or absolve either Party from any liabilities accrued at the date of termination.

8.3 Either party shall be entitled to terminate these terms and conditions by giving seven (7) day written notice to the other if:

8.3.1 These terms and conditions are or become (or is alleged to be) unlawful or unenforceable in any respect; or

8.3.2 That other party commits a breach under these terms and conditions (not being a repudiatory breach of these terms and conditions);

8.3.3 An encumbrancer takes possession or a receiver is appointed over any of the property or assets of that other party;

8.3.4 That other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;

8.3.5 That other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under these terms and conditions);

8.3.6 If either Party enters into any merger, acquisition, transfer of control, or sale of substantially all of its assets, or any similar transaction resulting in a change of control (the "Acquired Party"), then the other Party (the "Non-Acquired Party") shall have the right to

terminate these terms and conditions without breach or penalty upon Fourteen (14) days' notice; provided that, the foregoing provision shall not affect the sale, assignment, pledge or other hypothecation by the Issuer of any receivable(s), including any finance charge, fee or other obligation owed to the Issuer by any EazzyPay Customer.

8.3.7 Anything which, under the law of any jurisdiction is analogous to any of the acts or events specified in clauses 8.3.3, 8.3.4, 8.3.5, 8.3.6 and 8.3.7. That other party ceases, or expresses interest to cease, to carry on business

8.4 The rights to terminate these terms and conditions given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

8.5 Process upon Termination.

Upon termination, expiration or breach of these terms and conditions, the provisions of this subsection shall apply and, remain consistent here with:

8.5.1 The EazzyPay Merchant and the Bank shall work together to ensure an orderly termination of the services in the EazzyPay Services; and

8.5.2 Each Party shall promptly return to the other Party any materials that have been supplied by such Party to the other, if any.

8.5.3 Each Party shall promptly reconcile its accounts and pay any monies owed to the other Party.

8.5.4 These terms and conditions shall survive termination for purposes of enforcement of any accrued rights of the other party or enforcing any breaches thereof.

## 9. REPORTING

9.1 The EazzyPay Merchant shall from time to time provide to the Bank such information as the Bank may reasonably require concerning the activities under these Terms and Conditions.

9.2 The EazzyPay Merchant shall bring to the notice of the Bank any information received by the EazzyPay Merchant which is likely to be of significant use or benefit to the Bank in relation to the marketing and or promotion of the service including (but not limited to) information regarding business practices which might affect sales of the products and shall supply details of any suggested or required improvements.

9.3 The Bank may at any time and from time to time inspect with notice during the Merchant's normal working hours any of the Merchant's premises for the purposes of ascertaining if the EazzyPay Merchant is complying with its obligations under these Terms and Conditions and/or for the purposes of detection or prevention of fraud. Such inspection shall be carried out by the Bank with a minimum interference and with due regard to the Bank carrying on its normal business. If as a result of such inspection the EazzyPay Merchant is found in the Bank's opinion to be conducting or to have conducted its business in any way that falls below the reasonable standard expected of an EazzyPay Merchant neither acting in the best interest of the Bank and its Customers; the Bank may immediately suspend or terminate these terms and conditions by written notice to the EazzyPay Merchant without prejudice to any other right which the Bank may be entitled to.

9.4 The EazzyPay Merchant shall not directly or indirectly be involved or knowingly recklessly or negligently permit any other person to be involved in any fraud and shall notify the Bank immediately upon becoming aware of any such fraud. The EazzyPay Merchant shall implement without delay and comply with such procedures and rules as advised by the Bank from time to time concerning fraud.

9.4.1 The EazzyPay Merchant shall be liable for any disputed transaction if it is as a result of the transaction not being performed in accordance with the EazzyPay Merchant terms and conditions.

9.4.2 The Bank affirms its right to withhold monies paid through EazzyPay or EazzyPay Merchant Commissions pending investigation where fraudulent activity is suspected or confirmed. Such funds will be used to offset the incurred losses

9.4.3 The EazzyPay Merchant shall immediately inform the Bank of any inadvertent data leakage or disclosure to disparate parties. Information or Notices shall be delivered to the nearest Bank branch or through calling equity Bank contact center or any other information channel or other platforms availed by the Bank

## 10. CONFIDENTIAL INFORMATION

10.1.1 Each party undertakes not to divulge at any time during the course of or following termination of the terms and conditions, any Confidential Information relating to the Services, business or affairs of the other party to any third party without the consent of the other party save as is necessary for the proper performance of its duties hereunder or as is required by law;

10.1.2 Each party may disclose the Confidential Information to its employees as may be reasonably necessary or desirable provided that before any such disclosure shall be made such employees are aware of the obligations of confidentiality under these terms and conditions and shall at all times procure compliance by such employees there with.

## 11. REVERSALS

The EazzyPay Merchant shall initiate reversals for erroneous transactions the same day the transaction takes place and the Bank shall complete the reversal within 72 hours. In case the EazzyPay Merchant fails or refuses to complete the reversal in accordance with this clause, the Bank, shall having due regard to the circumstances of the erroneous payment, complete the reversal. Where a dispute arises due to such reversal, the Bank shall suspend the EazzyPay Merchant Account pending amicable settlement of the dispute. The EazzyPay Merchant and the Customer shall be notified of such reversal via SMS.

## 12. SUSPENSION

The Bank shall with reasonable notice where practicable, suspend the availability of the service to the EazzyPay Merchant wholly or partially for any valid reason, including without limitation, where the service is used in a manner contrary to the representations made to the Bank by the EazzyPay Merchant, in a manner inconsistent with the conditions of any regulatory approval granted to the Merchant, investigations are contemplated or being carried out by the Bank; or any regulatory approval for the service granted to the EazzyPay Merchant is subsequently revoked or expires.

## 13. WARRANTIES

The EazzyPay Merchant represents and warrants that none of its senior officers or directors or him/herself have ever been convicted of any crime and has never been charged, convicted (or pleaded guilty or no contest to) any crime relating to fraud, embezzlement, theft, money laundering, financing terrorism or terrorist organizations, receiving stolen property, or illegal drugs or other controlled substances.

The Merchant shall notify the Bank within 48 hours if any of the warranties ceases

The EazzyPay Merchant warrants that it has satisfied all the EazzyPay sign up requirements as indicated herein.

## 14. SURVIVAL

If any provision of the contract, including any part of any sub-clause, be held as void, contrary to the law or unenforceable, the validity and enforceability of the remainder of the Contract shall not be affected

## 15. INDEPENDENCE OF PARTIES

For all purposes of these terms and conditions, each party shall be and act as an independent contractor and not as partner, joint venture, or agent of the other and shall not bind nor attempt to bind the other to any contract.

## 16. ENTIRE AGREEMENT

These terms and conditions terminate and supersede all prior understandings and agreements on the subject hereof. These terms and conditions may be modified only by a further writing that is duly executed by both parties

## 17. COUNTERPARTS

These terms and conditions may be executed in counterparts, and each counterpart shall together constitute one document.

## 18. AMENDMENTS

These Terms and Conditions, including its schedules may be amended by the Bank and shall be effected on the Equity Bank website at <http://www.ke.equitybankgroup.com>. You acknowledge that such amendments shall be binding and shall have full legal force as if they were contained in these terms and conditions.

## 19. NON ASSIGNMENT

These terms and conditions are personal to the EazzyPay Merchant and no assignment of any kind whatsoever shall be permitted but in the event of individuals, the obligations set out in these terms and conditions shall bind the personal representatives of the EazzyPay Merchant and in case of corporate bodies it shall bind its successors and permitted assignees. The Bank may however assign its duties and obligations to an appointed designee upon written notice of the same to the Merchant.

## 20. LIMITATION OF LIABILITY

a. Equity Bank shall not be liable to the EazzyPay Merchant or any other person where:

- The Customer enters incorrect details and payment is made to the wrong EazzyPay Merchant.
- The Merchant's hardware, software or internet provider's malfunction or experiencing downtime
- The transaction is suspicious or fraudulent resulting in losses to a third party
- Unforeseen circumstances prevent the execution of a transaction despite any reasonable precautions by the Bank

b. In no event will either party be entitled to recover special, punitive, incidental or consequential damages, including damages based on lost profits or lost business opportunities, arising out of a breach of the other party's obligations hereunder, even if the party in breach has been advised of the possibility of such damages

## 21. FORCE MAJEURE

Neither party will be liable for non-performance hereunder to the extent such performance is prevented by fire, earthquake, tornado, flood, explosion, embargo, war, riot, governmental regulation or act, act of God, act of public enemy, or by reason of any other cause beyond such party's reasonable control. A party's obligations to perform timely will be excused to the extent, but only to the extent, that such performance is prevented by a force majeure event.

## 22. GOVERNING LAW AND ARBITRATION

These terms and conditions shall be governed in all respects by Kenyan law. The parties agree that any dispute arising from these terms and conditions shall be referred, for final determination, to one arbitrator appointed by agreement of the Parties in accordance to the provision of the Arbitration Act (No.5 of 1995) or such other statutory modification or enactment in place thereof. If the Parties cannot agree on an arbitrator within seven (7) days of either Party indicating in writing to the other the need to have an arbitrator appointed, the arbitrator shall be appointed at the request of either Party by the Chairman for the time being of the Kenya Chapter of the Chartered Institute of Arbitrators. The place of arbitration shall be Nairobi and the language of the arbitration proceedings shall be English.