

## ANNEX 1B

### TERMS AND CONDITIONS FOR MOBILE BANKING

#### 1. INTRODUCTION:

These terms and conditions apply to the use of our mobile banking services and shall be read in conjunction with our internet banking terms and conditions to the extent that they are relevant and applicable. It enumerates your rights and responsibilities and those of Consolidated Bank of Kenya Limited regarding the use of internet and mobile banking services.

#### 2. DEFINITIONS:

2.1 “We”, “us”, “our”, “the bank” means Consolidated Bank of Kenya Limited

2.2 “You”, “your” means:

- i) in the case of an individual, the customer who has an account(s) with us on which the service is available. If you have a joint account, references in these conditions to “you” include each of you together and separately; or
- ii) in the case of a limited company, any director, official and any other persons authorised by the customer to give instructions on the account(s);  
or
- iii) in the case of a partnership, the individual partners (in their separate capacities of partners and individuals) and any other persons authorised by the customer to give instructions on the account(s); or
- iv) in the case of a limited liability partnership, any member and any other person(s) authorised by the customer to give instructions on the account(s); or
- v) in the case of a sole trader or professional practitioner, the Customer who has the account(s) and any other person(s) authorised by the customer to give instructions on the account(s); or
- vi) in the case of a club, society or unincorporated body, any official and any other person(s) authorised by the customer to give instructions on the account(s); or
- vii) in the case of a trust, any trustee and any other person authorised by the trustees to give instructions on the account(s).

- 2.3 “Security Details” means the identifying words, codes and numbers agreed between you and us that are used in the security procedure. They may include Personal Identification Number (PIN), user identification, password, or any other means of secure identification
- 2.4 “Service” means the Consolidated Bank internet and mobile banking services when accessed using the internet or mobile terminal device.
- 2.5 Software is deemed to include software to be installed on the user’s mobile phone subject to any changes as may be proposed by the bank from time to time.
- 2.6 “Bank” means Consolidated Bank of Kenya Limited as a limited liability company under the Companies Act and duly licensed as a bank under the Banking Act and includes subsidiaries of the Bank as may from time to time be specified by the Bank to you.
- 2.7 “Customer” means the person who holds an Account with the bank

3. *REGISTRATION & ELIGIBILITY:*

- 3.1 In order to use the mobile banking service you must be registered by the bank and comply with the registration and activation procedures by the bank.
- 3.2 By agreeing to be bound by the terms of this agreement you agree that mobile banking services will be available on all eligible accounts with the bank provided that the bank will advise you from time to time as to which accounts may ineligible for mobile banking.

4. *SPECIFICATIONS, CONFIGURATIONS AND AVAILABILITY:*

- 4.1 The mobile banking service will only be available for mobile phones and data connections which meet the required specifications and configurations as may be specified by the bank from time to time. You agree to procure and maintain a mobile phone and data connection in keeping with the prescribed specifications and configurations.
- 4.2 The bank will make available to you all relevant user guidance to enable you access and operate the mobile banking service and notify you from time to time of any changes to the access and operation procedures. It is your responsibility to familiarize yourself with the operating procedures of the Service as will be provided by the bank when you register for

the service. The Bank will not be liable for any losses incurred as a result of your errors either of commission or omission.

4.3 The bank intends to make available the mobile banking service seven days a week, twenty four hours a day. However the provision of the Services is subject to the availability of the mobile telephony connectivity. The bank will not be held liable for non-delivery or delay in delivery or wrongful delivery of the services resulting from failure of the mobile telephony connectivity. but the bank does not warrant that this will always be so. Provided that the bank may in its discretion and without notice temporarily suspend the availability of the mobile banking service for maintenance and upgrading purposes as necessary but the bank shall not be liable for any loss, liability or damage that may result therefrom.

4.4 The bank may in its sole discretion and without notice from time to time, vary, alter, suspend, or remove any part or all of the mobile banking service or any function or feature, without giving any reason and without incurring any liability whatsoever.

4.5 Where conflicting or inconsistent instructions are received from two or more joint account holders, the bank shall be entitled to act on any one of these instructions without any liability for any failure to act on the other instructions.

## 5. *SECURITY AND ACCESS PROCEDURES:*

5.1 Security codes will be issued by the bank for access to the mobile banking service, which may be different from those issued for the other services. The bank may also issue separate requirements, restrictions, instructions, activation and access procedures, or any additional conditions pertaining to the access and use of the mobile banking services, the software, the security codes for the mobile banking service, and the transmission of Instructions. All procedures may be varied by the bank from time to time. You must take all reasonable steps to prevent unauthorized or fraudulent use of the service and agree and undertake to be bound by and to comply with all of the procedures as may be issued by the bank from time to time.

5.2 The bank shall not be bound by or obliged to take any action on any instructions which do not properly comply with the prescribed procedure and the bank may reject such non-compliant instructions.

5.3 You must secure the software and the security codes installed in your mobile phone with a password. All such passwords and the security codes must be kept strictly confidential

and must not be disclosed to anyone else.

5.4 You must not leave your mobile phone unattended or permit any person access to your mobile phone in such a manner that he may access your software, security codes or the mobile banking service, whether with or without your consent.

5.5 In the event that you lose or replace or part with possession or control of your mobile phone in which the software and/or security codes are installed, or if you have reason to believe that someone has accessed your bank account(s) using the software or security codes, you must immediately notify and instruct the bank through its Customer Contact Centre to revoke the security codes immediately, and make a fresh application to register for the mobile banking service.

5.6 Until and less you notify the bank in accordance with Clause 5.5, all instructions received by the bank which are associated with your security code shall be deemed to have come from you, and the bank shall be entitled to rely on such instructions, whether they actually originated from you or not. You acknowledge that the bank may not be able to reverse or annul any transaction executed based on instructions received prior to your notice to the bank and the bank shall not be held liable for any losses resulting from the loss of your mobile phone

5.7 Without prejudice to the foregoing and for the avoidance of doubt, all provisions in the internet banking terms and conditions relating to security matters, confidentiality, changing of security codes and passwords, including your liability for unauthorized instructions shall also apply to mobile banking service unless the same is impracticable.

## 6. *SOFTWARE:*

6.1 Upon completion of the prescribed registration and activation procedures, you will be permitted to download the software for installation into your mobile phone and be granted the non-exclusive, non-transferable right to use the software, but based upon and subject always to your agreement to the following conditions;

6.1.1 You will not use the software for any purpose other than to access your own account(s) via the mobile banking service on your own mobile phone;

- 6.1.2 You will not download or install the software into a mobile phone which you do not own or have exclusive control;
- 6.1.3 You will not permit or enable any person to access the software, or leave your mobile phone unattended in such a manner as to enable a person to access the software;
- 6.1.4 You will not reproduce, modify or reverse engineer the software or permit another person to do so;
- 6.1.5 You will not permit any person to access your security codes or activation codes or otherwise enable him to download a copy of the software; and
- 6.1.6 The software is made available to you strictly on an "as is" basis, and no warranty is made in relation to the software, including any warranty in relation to its merchantability, fitness for purpose, satisfactory quality or compliance with description, and all warranties which may be implied by law or custom are hereby excluded. In addition, you agree that the bank cannot ensure that the software will be compatible or may be used in conjunction with any mobile phone, and you agree that you will not hold the bank liable for any such incompatibility or for any loss or damage to any mobile phone which may be caused by the software or the installation process.

## 7. *LIABILITY AND INDEMNITY:*

7.1 For the avoidance of doubt, you agree that all provisions in the internet banking terms and conditions relating to the bank's liability including qualifications, exclusions and limitations shall apply to the mobile banking terms and conditions, and the mobile banking service.

7.2 In 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

7.3. The Bank will not be liable for any losses or damage suffered by you as a result of or in connection with:-

7.3.1. Failure, malfunction, interruption or unavailability of the System, your mobile phone/sim, the Network, MOBILE banking System and/or MOBILE banking Service;

7.3.2. Your failure to give proper or complete instructions for payments or transfers

7.3.4 Any fraudulent or illegal use of the Services, the System and/or your mobile phone; or

7.3.5 Your failure to comply with these Terms and Conditions and any document or information provided by the Bank concerning the use of the System and the Services.

7.4 If for any reason other than a reason mentioned above , the Services are interfered with or unavailable, the Bank's sole liability under this Agreement in respect thereof shall be to re-establish the Services as soon as reasonably practicable.

7.5 Save as provided in subparagraph 7.4 the Bank shall not be liable to you for any interference with or unavailability of the Services, howsoever caused.

7.6 Under no circumstances shall the Bank be liable to you for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Services even where the possibility of such loss or damage is notified to the Bank.

7.7 If for any reason other than a reason mentioned above, 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 for any interference with or unavailability of the Service, howsoever caused

7.8 We do not exclude our duties or liabilities under the Banking Act or Rules or the Central Bank of Kenya Prudential Guidelines for the conduct of business

## 8. *CHARGES:*

The bank has the right to charge a fee for the provision of the services and for the use of all or part of the service. The current fees chargeable are as provided in Annexure I here below. You will be liable to pay the bank for any fees levied for the use of the service, unless the bank in its sole discretion has waived such fees. By accepting these terms and conditions, you provide the bank with the authority to debit these fees from your account immediately the transaction is completed. These charges will reflect in your normal bank statement. The Bank has the right to revise the fees chargeable for this Service from time to time subject to a Thirty days' Notice and the bank has the right to terminate this Agreement if you fail to pay any fees levied for the provision of the service.

9. *SUSPENSION OR TERMINATION OF SERVICES:*

9.1 Notwithstanding anything herein to the contrary, the bank may at any time, upon Thirty days' notice to you, suspend or terminate your right of access to any of the mobile banking services for any reason whatsoever and without any obligation to give any reasons;

9.1.1 The bank will automatically terminate your right of access to the mobile banking services should you cease to maintain any account with the bank which can be accessed via the mobile banking services or should your access to such account be restricted by the bank or any other party for any reason;

9.1.2 You may terminate the mobile banking services by giving prior written notice to the bank. The mobile banking services will be cancelled within seven (7) days from the date of the bank's receipt of the notice of termination and you agree that the bank shall not be obliged to effect any of your instructions received on any day falling after the receipt of your notice of termination. The bank reserves the right to terminate the mobile banking services for any reasons whatsoever, provided the bank gives you thirty (30) days prior written notice.

9.1.3 You acknowledge that termination will not affect your liability or obligations in respect of instructions processed by the bank on your behalf

9.2 Without prejudice to the Bank rights under clause 9.1, the Bank may at its sole discretion and where possible upon reasonable notice suspend services:

9.2.1. if you use the services for unauthorized purposes or where the Bank detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;

9.2.2. if the Bank is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;

9.2.3. if the Bank reasonably suspects or believes that you are in breach of these Terms and Conditions;

9.2.4. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;

9.2.5. to facilitate maintenance, repair activities, update or upgrade the contents or functionality of the Services from time to time or for any emergency reason as deemed necessary;

9.2.6. where you remain inactive for any period of time determined by the Bank in its reasonable discretion; or

9.2.7. If the Bank decides to suspend or cease the provision of the Services for commercial reasons or for any other reason as it may determine in its absolute discretion.

9.2.8. Termination shall however not affect any accrued rights and liabilities of either party.

9.2.9. If the Bank receives notice of your demise, the Bank will not be obliged to allow any operation or withdrawal from your Account by any person except upon production of Grants of Letters of Administration or Probate by your legal representatives duly appointed by the Court.

#### 10. *EVIDENCE:*

10.1 You agree that all instructions transmitted by your mobile phone or otherwise issued by you, though in electronic form:

10.1.1 are written documents, and you agree not to dispute or challenge the validity or enforceability of any instruction on the grounds that it is not a written document and you hereby waive any such right you may have at law;

10.1.2 are original documents and you agree not to challenge the admissibility of any instruction on the grounds that it is made in electronic form; and

10.2 You acknowledge and agree that the bank's records and any records of your instructions made or performed, processed or effected through the mobile banking service by you or any person purporting to be you, or any record of transactions relating to the mobile banking service and any record of any transactions maintained or by any relevant person authorized by the bank relating to or connected with the mobile banking service, whether stored in electronic or printed form, shall be binding and conclusive on you for all purposes whatsoever and shall be conclusive evidence of the instruction and transactions and your liability to the bank. You hereby agree that all such records are admissible in evidence and that you shall not challenge or dispute the admissibility, reliability, accuracy or the authenticity of the contents of such records merely on the basis that such records were incorporated and/or set out in electronic form or were produced by or are the output of a computer system, and hereby waive any of your rights (if any) to so object.

#### 11. *FORCE MAJEURE:*

The Bank shall not be liable for any failure to perform its obligations under this terms and conditions if the failure results from event which may include but not be limited to acts of God, government, civil or military authority, civil of labour disputes/disturbances, strikes,

criminal or terrorist activity, wars, fires, explosions, earthquakes, storms, floods, disease or health quarantines, government or regulator action, lack of available resources from persons other than Us, electrical equipment or mobile network failures, or any other causes not within our control and which by the exercise of reasonable diligence we are unable to prevent, whether of the class of causes hereinbefore mentioned or not. If any force majeure even occurs, the bank will give prompt written notice and will use commercially reasonable efforts to minimize the impact of such event.

## 12. *ASSIGNMENT & SUB-CONTRACT:*

12.1 These terms and conditions are personal to you, and you shall not be entitled to assign, charge or otherwise deal with them in any way.

12.2 The bank may at any time delegate or sub-contract any rights or obligations under this Agreement to any third party, and appoint third party agents or sub-contractors to provide the whole or part of the mobile banking service.

## 13. DISCLOSURE OF INFORMATION

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

13.1.1. 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;

13.1.2. 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;

13.1.3 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;

13.5. to Mobile Network in connection with the MOBILE MONEY Service and the Services;

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

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

#### 14. NOTICES

14.1 The Bank may send information concerning the Services via SMS to the Mobile Network Mobile Phone number associated with your Account.

14.2 You acknowledge that you have no claim against the Bank for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the Account

#### 15 DISPUTE RESOLUTION, JURISDICTION AND ARBITRATION

15.1 You may contact the Contact Centre to report any disputes, claims or discrepancies through telephone number 0703-016-016 or email; *tellus@consolidated-bank.com*.

15.2 Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.

15.3 To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.

15.4 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

## 16 TRANSACTIONAL LIMIT

16.1 The Bank can , at any time , set Mobile Banking Transaction limits and daily limits that restricts your ability to withdraw or pay out of an Account through Internet Banking. The current maximum transactional limit per day is Kes 140,000 as set by the Mobile Telephony companies and Kes 999,999 for Pesalink transactions as set by IPSL. The bank however reserves the discretion to review the aforesaid limit from time to time subject to reasonable notification.

## 17. INTELLECTUAL PROPERTY RIGHTS

17.1 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.

17.2 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.

## 18. 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.

## 19. RELATIONSHIP

Nothing in these Terms and Conditions shall create any agency, fiduciary, joint venture or partnership relationship between customer and the Bank.

## 20. 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.

## 21. 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.