



TERMS AND CONDITIONS FOR THE OPENING AND USE OF THE M-SHWARI ACCOUNT

1. THE AGREEMENT

1.1. This Agreement sets out the complete Terms and Conditions (hereinafter called "these Terms and Conditions") which shall be applicable to the M-Shwari Account (as hereinafter defined) opened by you (as hereinafter defined) with the Bank (as hereinafter defined).

1.2. These Terms and Conditions and any amendments or variations thereto take effect on their date of publication.

2. DEFINITIONS

2.1. In these Terms and Conditions, the following words and expressions (save where the context requires otherwise) bear the following meanings:

2.1.1. **"M-Shwari Account"** means a bank account held by a Customer with the Bank and which is opened and operated in accordance with the terms and conditions herein contained;

2.1.2. **"Bank"** means NCBA Bank Kenya Plc incorporated in Kenya as a limited liability company under the Companies Act (Chapter 486 of the Laws of Kenya) and duly licensed as a bank under the Banking Act (Chapter 488 of the Laws of Kenya) and includes subsidiaries of the Bank as may from time to time be specified by the Bank to you;

2.1.3. **"Credit Reference Bureau"** means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2008 to inter alia, collect and facilitate the sharing of customer credit information;

2.1.4. **"Customer"** means the person in whose name the M-Shwari Account with the Bank is existing;

2.1.5. **"Customer Care Centre"** means any Safaricom Retail Shops or such other retail outlets or outlets as may be notified to the Customer by the Bank from time to time;

2.1.6. **"E-Money"** means the electronic monetary value depicted in your M-PESA Account representing an equal amount of cash;

2.1.7. **"Equipment"** includes your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access the Network;

2.1.8. **"Fuliza"** means the M-PESA Account overdraw service which allows M-PESA Subscribers to overdraw their M-PESA Accounts in order to complete transactions. This service is provided by KCB Bank Kenya Limited (KCB), Safaricom PLC and the Bank.

2.1.9. **"IPRS"** means the Integrated Population Registration System set up and maintained by the Government of Kenya under the Ministry of State for Immigration and Registration of Persons;

2.1.10. **"KCB"** means KCB Bank Kenya Limited incorporated in Kenya as a limited liability company under the Companies Act and duly licensed as a bank under the Banking Act and includes affiliates or subsidiaries of KCB Bank as may from time to time be specified by KCB to you.

2.1.11. **"KCB M-PESA"** means the KCB M-PESA service offered by KCB in partnership with Safaricom.

2.1.12. **"Lock Savings Account"** means a bank account held by a Customer with the Bank and which is opened and operated in accordance with these Terms and Conditions;

2.1.13. **"Lock Savings Account System Menu"** means the menu for operating the Lock Savings Account that shall be accessible through the Lock Savings System.

2.1.14. **"Lock Savings Account System"** means the Unstructured Supplementary Service Data System or the MPesa System functionality through which the Customer on the Network may use to operate the Lock Savings Account and instruct the Bank.

2.1.15. **"Lock Period"** means such minimum period of time not less than one (1) month and not exceeding six (6) months, or such other period communicated by the Bank from time to time in which the Customer requires that the Principal Amount be kept in the Lock Savings Account and during which period the Principal Amount will not be available to the Customer subject to the provisions of these Terms and Conditions (Accessing Locked Funds).

2.1.16. **"M-Shwari Menu"** means the M-Shwari Menu on the M-PESA System;

2.1.17. **"M-PESA Account"** means your mobile money store of value, being the record maintained by Safaricom of the amount of E-Money from time to time held by you in the M-PESA System;



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- 2.1.18. **“M-PESA Service”** means the money transfer and payments service provided by Safaricom through the M-PESA System;
- 2.1.19. **“M-PESA System”** means the system operated by Safaricom in Kenya for the provision of the M-PESA Service using the Network;
- 2.1.20. **“M-PESA PIN”** means your personal identification number being the secret code used to access and operate the M-PESA System and your M-Shwari Account;
- 2.1.21. **“M-PESA Subscriber”** means any person registered to use the M-PESA System to send or receive money or make payments;
- 2.1.22. **“Network”** means the mobile cellular network operated by Safaricom in Kenya;
- 2.1.23. **“Privacy Policy”** means the Bank’s policy on how we collect and process your Personal Data;
- 2.1.24. **“Personal Data”** means any information relating to an identified or identifiable natural person;
- 2.1.25. **“Personal Information”** means personal identifiable information as prescribed in the Data Protection Act which includes but is not limited to name, address, phone number, identification number and location data.
- 2.1.26. **“Principal amount”** means such minimum amount prescribed by the Bank;
- 2.1.27. **“Request”** means a request or instruction received by the Bank from you or purportedly from you through the Network and the System and upon which the Bank is authorized to act;
- 2.1.28. **“Safaricom”** means Safaricom PLC incorporated in Kenya as a limited liability company under the Companies Act;
- 2.1.29. **“Services”** shall include any form of banking services or products that the Bank may offer you pursuant to this Agreement and as you may from time to time subscribe to and “Service” shall be construed accordingly;
- 2.1.30. **“SIM Card”** means the subscriber identity module which when used with the appropriate mobile phone handset enables you to access the Network and to use the M-PESA System; **“SMS”** means a short message service consisting of a text message transmitted from one mobile phone to another;
- 2.1.31. **“System”** means the Bank’s electronic banking and communication software enabling the Customer to communicate with the Bank for purposes of the Services. The System and the Services will for the purpose of this Agreement be accessed through the M-PESA System;
- 2.1.32. **“Transaction Fees”** includes the Facility Fee (as defined at clause 5.2.6), the Rollover Fee (as defined at clause 5.2.9) and any other fees and charges payable for the use of the Services as published by the Bank on the Bank’s website and/or Safaricom’s website and/or the daily newspapers in Kenya or by such other means as the Bank shall in its sole discretion determine. Transaction Fees are subject to change at any time at the Bank’s sole discretion;
- 2.1.33. **“Unregulated Currencies”** means any currency that is not regulated by the Central Bank of Kenya.
- 2.1.34. **“We,” “our,” and “us,”** means the Bank and includes the successors and assigns of the Bank;
- 2.1.35. **“You” “you” or “your”** means the Customer and includes the personal representatives of the Customer.
- 2.2. The word “Customer” shall include both the masculine and the feminine gender as well as juristic persons;
- 2.3. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.4. Headings in these Terms and Conditions are for convenience purposes only and they do not affect the interpretation of this Agreement.
- 3. ACCEPTANCE OF THE TERMS AND CONDITIONS**
- 3.1. Before applying to open the M-Shwari Account via the M-PESA System you should carefully read and understand these Terms and Conditions which will govern the use and operation of the M-Shwari Account.
- 3.2. If you do not agree with these Terms and Conditions, please click “Decline” on the M-Shwari Menu.
- 3.3. You will be deemed to have read, understood and accepted these Terms and Conditions:
- 3.3.1. upon clicking on the “Accept” option on the M-Shwari Menu requesting you to confirm that you have read, understood and agreed to abide with these Terms and Conditions; and/or



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3.3.2. by using or continuing to use and operate the M-Shwari Account.

3.4. By applying to open the M-Shwari Account with the Bank, you agree to comply with and be bound by these Terms and Conditions for the time being and from time to time in force governing the operation of the M-Shwari Account and you affirm that these Terms and Conditions herein are without prejudice to any right that the Bank may have with respect to the M-Shwari Account in law or otherwise.

3.5. These Terms and Conditions including the Privacy terms may be amended or varied by the Bank from time to time and the Bank will issue you with a thirty (30) days' notice prior to the change. Continued use of your M-Shwari Account after this notice period constitutes your agreement to be bound by the terms of any such amendment or variation.

3.6. You acknowledge and accept that the Bank offers the M-Shwari Account only electronically and you agree to do business with the Bank and to operate the M-Shwari Account only by electronic means via the M-Shwari Menu on the M-PESA System. Any query and complaint you may have relating to the Services shall be addressed to the Bank through the Customer Care Centre. For the avoidance of doubt, you acknowledge and accept that you will not be allowed or entitled to receive or demand the Services pertaining to the M-Shwari Account at any branch or branches of the Bank unless otherwise advised by the Bank in its sole discretion. You further acknowledge and accept that the Customer Care Centre is not a branch of the Bank or the Bank's Agent for purposes of conducting banking business or transactions and that it will not act as such.

4. ACCOUNT OPENING

4.1. In order to open an M-Shwari Account with the Bank, you must be at least 18 years old and a registered and active M-PESA Subscriber. The Bank reserves the right to verify with Safaricom the authenticity and status of your M-PESA Account.

4.2. You may open an M-Shwari Account solely by way of an electronic application made by you using your Equipment via the M-Shwari Menu on the M-PESA System.

4.3. The Bank may request Safaricom for your personal information held by Safaricom pursuant to the agreement between you and Safaricom for the provision

of Safaricom products and services and M-PESA Service including your phone number, name, date of birth, ID or Passport Number and such other information that will enable the Bank to identify you and comply with the regulatory "Know Your Customer" requirements. The Bank may request Safaricom for information relating to your use of the M-PESA Service and M-PESA System as the Bank shall require for purposes of providing you the Services ("M-PESA Information"). The Bank may seek your consent to approve the disclosure of the Personal Information and the M-PESA Information by Safaricom to the Bank and to the aforesaid use of the Personal Information and the M-PESA Information by the Bank. We employ a range of technologies and internal policy framework to protect the information and data maintained on our systems from loss, unauthorized access, disclosure, alteration, or destruction and has at all times taken and takes all steps reasonably necessary to ensure the confidentiality and integrity of such Personal Information and information and the way it is processed. These policies and standards are periodically updated to keep them up to date with regulations and market developments.

4.4. You hereby agree and authorize the Bank to obtain and procure your Personal Information from the Government of Kenya's repositories, which includes but is not limited to IPRS and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to us.

4.5. You hereby further acknowledge and authorize the Bank to verify your Personal Information received from Safaricom pursuant to Clause 4.3 against the information received from the Government of Kenya repositories (including but not limited to IPRS).

4.6. The Bank reserves the right to request for further information from you pertaining to your application for an M-Shwari Account at any time. Failure to provide such information within the time required by the Bank may result in the Bank declining to accept your application for an M-Shwari Account.

4.7. You hereby expressly consent and authorize us to disclose, receive, record or utilize your Personal Information or information or data relating to your M-Shwari Account with respect to the Service and any details on your use of the KCB M-Pesa and Fuliza services for the purposes of this Service and other services as we shall advise you between the Bank, KCB and Safaricom for the purposes of this Service and other services as we shall advise you.



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- 4.8. Acceptance by the Bank of your application for an M-Shwari Account shall be done via SMS sent to the Safaricom Mobile Phone Number associated with your M-PESA Account. You acknowledge and accept that the acceptance by the Bank of your application for an M-Shwari Account does not create any contractual relationship between you and Safaricom beyond the terms and conditions that apply to your M-PESA Account from time to time.
- 4.9. The Bank reserves the right to decline your application for an M-Shwari Account or to revoke the same at any stage at the Bank's sole discretion and without assigning any reason or giving any notice thereto.
- 4.10. The Bank will adhere to the Privacy Clause herein to undertake its obligations herein.

5. TYPES OF ACCOUNT

As a holder of an M-Shwari Account, you will be entitled, subject to these Terms and Conditions, to operate an M-Shwari Lock savings account (hereinafter the "M-Shwari Lock Savings Account") and M-Shwari deposit account (hereinafter the "M-Shwari Deposit Account") into which you may transfer money from your M-PESA Account and/or make withdrawals therefrom into your M-PESA Account, and/or to borrow money from the Bank as follows:

5.1. *M-Shwari Deposit Account*

- 5.1.1. As a holder of the M-Shwari Account, you may make deposits into or withdrawals from your M-Shwari Deposit Account using the M-Shwari Menu on your Equipment. The transaction fees payable to Safaricom for transactions effected in respect of your M-PESA Account from time to time will apply to any transactions effected in respect of your M-Shwari Account using the M-PESA System.
- 5.1.2. Interest may be paid on the M-Shwari Deposit Account at periodic intervals as determined by the Bank and/or upon respective maturity dates of such deposits at such rate as may be determined by the Bank.

5.2. *M-Shwari Loan Account*

- 5.2.1. As a holder of the M-Shwari Account, you may, subject to these Terms and Conditions, apply for a loan from the Bank using the M-Shwari Menu on your Equipment.

- 5.2.2. Where you apply for a loan from the Bank, your application shall be appraised according to the applicable loan appraisal processes of the Bank. The Bank reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.
- 5.2.3. Subject to approval of your application for a loan the Bank shall disburse to you a loan of an amount to be determined by the Bank in its sole discretion subject to a minimum amount of Kenya Shillings One Hundred (Kshs. 100/=) and a maximum amount of Kenya Shillings Twenty Thousand (Kshs. 20,000/=) or such other minimum or maximum amount as the Bank may from time to time in its sole discretion determine (the "Loan").
- 5.2.4. The proceeds of the Loan shall be credited into your M-PESA Account subject to any deductions on account of applicable Transaction Fees.
- 5.2.5. You shall repay the Loan within thirty (30) calendar days of the date of disbursement of the Loan.
- 5.2.6. In consideration of the Bank granting you the Loan, you shall pay the Bank a facility fee being 7.5% of the Loan amount (the "Facility Fee"). The Facility Fee shall be paid by you in arrears in addition to the Loan.
- 5.2.7. You shall make all payments due from you to the Bank in respect of the Loan and Transaction Fees using the M-PESA Service and the System only unless otherwise agreed by the Bank in its discretion.
- 5.2.8. In the event that you do not repay the Loan in full within thirty (30) calendar days of the date of disbursement of the Loan, the Bank will automatically roll over any outstanding amount in respect of the Loan including the Facility Fee for a further period of thirty (30) calendar days.
- 5.2.9. In consideration of the Bank forbearing to demand the immediate payment of the outstanding amount due in respect of your Loan and rolling over the same pursuant to Clause 5.2.8, you shall, in addition to paying the outstanding amount in respect of the Loan any outstanding Facility Fee, pay to the Bank a roll-over fee being 7.5% of the outstanding amount in respect of the Loan (the "Roll-Over Fee").
- 5.2.10. The Bank shall be entitled to terminate this Agreement and close your M-Shwari Account in accordance with the provisions of Clause 13 without prejudice to any of its rights accruing hereunder if you fail to repay the Loan and/or the Transaction Fees due



thereon within sixty (60) calendar days of the disbursement of the Loan.

your regular M-Shwari Account to the Lock Savings Account.

- 5.2.11. The Bank shall hold your funds in your M-Shwari Deposit Account as collateral and security for any amounts outstanding and due from you to the Bank in respect of your M-Shwari Loan Account. You hereby agree and confirm that the Bank is entitled in its discretion to prevent or restrict you from withdrawing in whole or in part the funds in in your M-Shwari Deposit Account for so long as and to the extent of the amount outstanding in respect of your M-Shwari Loan Account without the Bank giving any notice to you and/or without incurring any liability to you whatsoever in that connection.
- 5.2.12. The Bank reserves the right to vary the terms of the Loan including the fees payable thereon from time to time having regard to the prevailing rules and regulations of the Central Bank of Kenya and the policies of the Bank. The Bank shall issue the customer with a thirty (30) days' notice prior to varying any of the terms of these Terms and Conditions.
- 5.2.13. The Bank shall have a right of lien and set off over funds held by you in your M-Shwari Deposit Account, any other M-Shwari Account held by you and/or any other account held by you in the Bank.
- 5.2.14. You hereby expressly consent and authorize the Bank to disclose, respond, advise exchange and communicate the details or information pertaining to your M-Shwari Account to Credit Reference Bureaus as required under the Banking Act or any other regulatory body.
- 5.3. M-Shwari Lock Savings Account**
- 5.3.1. In order to use the Lock Savings Account with the Bank, you must be a registered Safaricom subscriber, an M-Shwari Account holder and you must have activated your Lock Savings Account in accordance with this clause 5.3.
- 5.3.2. All instructions to the Bank to activate, manage and operate the Lock Savings Account and to move money to and from your M-Shwari Account for purposes of the Lock Savings Account shall be made electronically through the Lock Savings System Menu.
- 5.3.3. To activate your Lock Savings Account, you must select the Open Lock Savings option, or such other option made available for that purpose on the Lock Savings System Menu and transfer the Principal Amount from
- 5.3.4. Upon activation and successful transfer of the Principal Amount to the Lock Savings Account, you will receive an SMS confirming activation, the Principal Amount and the Lock Period.
- 5.3.5. You will be required to maintain the Principal Amount for the duration of the Lock Period during which period such Principal Amount shall be unavailable for use.
- 5.3.6. At the end of the Lock Period, the Bank will credit your regular M-Shwari Account with the Principal Amount and the Interest accrued.
- 5.3.7. Without prejudice to the foregoing, you may add more funds to the Lock Savings Account and set a different Lock Period. Such funds may be accessible at the end of such Lock Periods or in accordance with the provisions of clause 5 of these Terms and Conditions.
- 5.3.8. Any query and complaint you may have relating to the Lock Savings Account shall be addressed to the Bank through Safaricom's Customer Care Centre or Retail Shops.
- 5.3.9. Subject to the provisions of this clause, you may access the Principal Amount before the end of the Lock Period.
- 5.3.10. In order to access the Principal Amount before the end of the Lock Period the Customer shall Request the Bank through the Lock Savings System Menu by selecting the Withdraw Funds option or such other option made available on the Lock Savings System Menu for that purpose (hereinafter in this clause referred to as "Withdraw Funds").
- 5.3.11. The Bank will credit your regular M-Shwari Account with the Principal Amount and the Interest accrued up to the point of withdrawing funds after forty-eight (48) hours from the time in which the Customer makes a Withdraw Funds request in accordance with clause above.
- 5.3.12. Upon the successful completion of the Withdraw Funds Request, you will be informed by way of an SMS from the Bank that the Principal Amount and the Interest accrued to date have been transferred to your regular M-Shwari Account.
- 5.3.13. You may check the balance of the funds in your Lock Savings Account by way of the Check Balance option or such other option made available for that purpose on the Lock Savings System Menu using your Equipment. You will receive a USSD System pop up



message or an SMS disclosing the balance in your Lock Savings Account.

5.3.14. You may obtain a mini statement based on the last five (5) transactions of your Lock Savings Account by way of the Mini Statement option or such option made available for that purpose on the Lock Savings System Menu using your Equipment. You will receive a USSD System pop up message or an SMS disclosing the last five (5) transactions of your Lock Savings Account.

5.3.15. You may request for one bank statement per year with regards to the funds in your account free of charge at any Safaricom Retail Shop. Any additional statements within that year will be provided at a cost of twenty-five (25) shillings, or such other fees as notified by the Bank from time to time, per page over the counter.

6. FEES

6.1. You hereby agree to pay all Transaction Fees payable in connection with your use of the Services.

6.2. You shall pay to the Bank and the Bank is entitled deduct from your M-Shwari Account (without reference to you):

6.2.1. any Transaction Fees payable in respect of the Services;

6.2.2. any legal charges including advocate and client costs incurred by the Bank in obtaining legal advice in connection with your M-Shwari Account and your dealings with the Bank or incurred by the Bank in any legal, arbitration or other proceedings arising out of any dealings in respect of your M-Shwari Account; and

6.2.3. all other fees, expenses and taxes, duties, impositions and expenses incurred in complying with your Requests.

6.3. You hereby agree to pay costs charges and expenses incurred by the Bank in obtaining or attempting to obtain payment of any loan owed under your M-Shwari Loan Account.

7. STATEMENTS

7.1. You may request for a statement or activity report in respect of your M-Shwari Account from the Bank using your Equipment ("M-Shwari Mini Statement").

7.2. An M-Shwari Mini Statement shall provide details of the last 5 (five) transactions (or such other number of transactions as determined by the Bank) in your M-Shwari Account initiated from your Equipment.

7.3. An M-Shwari Mini Statement shall not be sent to you in printed form but shall be delivered to you either by SMS to the Safaricom Mobile Phone Number associated with your M-PESA Account or such other electronic means as the Bank may in its discretion determine. You shall be responsible for the payment of any charges levied by Safaricom in delivering the M-Shwari Mini Statement to you.

7.4. You may obtain printed M-Shwari Mini Statements or a printed bank statement pertaining to your M-Shwari Account from the Customer Care Centre. You shall be responsible for the payment of any charges levied by the Customer Care Centre for such printed statements.

7.5. Save for a manifest error, an M-Shwari Mini Statement or bank statement issued to you aforesaid in respect of your M-Shwari Account shall be conclusive evidence of the transactions carried out on your M-Shwari Account for the period covered in the M-Shwari Mini Statement and/or bank statement.

8. IRREVOCABLE AUTHORITY OF THE BANK

8.1. You hereby irrevocably authorize the Bank to act on all Requests received by the Bank from you (or purportedly from you) through the System and to hold you liable in respect thereof, notwithstanding that any such requests are not authorized by you or are not in accordance with any existing mandates given by you.

8.2. If you request the Bank to cancel any transaction or instruction after a Request has been received by the Bank from you, the Bank may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.

8.3. The Bank shall be entitled to accept and to act upon any Request, even if that Request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, the Bank believes that it can correct the incomplete or ambiguous information in the Request without any reference to you being necessary.

8.4. The Bank is authorized to effect such orders in respect of your M-Shwari Account as may be required by any court order or competent authority or agency under the applicable laws.

8.5. In the event of any conflict between any terms of any Request received by the Bank from you and these Terms and Conditions, these Terms and Conditions shall prevail.



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9. CUSTOMER'S EQUIPMENT AND CUSTOMER'S RESPONSIBILITIES

- 9.1. You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the System and the Services.
- 9.2. You shall be responsible for ensuring the proper performance of your Equipment. The Bank shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall the Bank be responsible for any computer virus or related problems that may be associated with the use of the System, the Services and the Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and the Bank shall not be responsible for losses or delays caused by any such service provider.
- 9.3. You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by the Bank concerning the use of the System and Services.
- 9.4. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your M- PESA PIN secret and secure. You shall ensure that your M-PESA PIN does not become known or come into possession of any unauthorized person. The Bank shall not be liable for any disclosure of your M-PESA PIN to any third party and you hereby agree to indemnify and hold the Bank harmless from any losses resulting from any M-PESA PIN disclosure.
- 9.5. You shall take all reasonable precautions to detect any unauthorized use of the System and the Services. To that end, you shall ensure that all communications from the Bank are examined and checked by you or on your behalf as soon as practicable after receipt by you in such a way that any unauthorized use of and access to the System will be detected.
- 9.6. You shall immediately inform the Bank through the Customer Care Centre in the event that:
 - 9.6.1 You have reason to believe that your M-PESA PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or
 - 9.6.2 You have reason to believe that unauthorized use of the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.

9.7. You shall at all times follow the security procedures notified to you by the Bank from time to time or such other procedures as may be applicable to the Services from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your M-Shwari Account's confidentiality. In particular, you shall ensure that the Services are not used, or Requests are not issued, or the relevant functions are not performed by anyone other than a person authorized to do so.

9.8. You shall not at any time operate or use the Services in any manner that may be prejudicial to the Bank.

10. EXCLUSION OF LIABILITY

- 10.1. The Bank shall not be responsible for any loss suffered by you should the Services be interfered with or be unavailable by reason of (a) the failure of any of your Equipment, or (b) any other circumstances whatsoever not within the Bank's control including, without limitation, force majeure or error, interruption, delay or non- availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.
- 10.2. The Bank will not be liable for any losses or damage suffered by you as a result of or in connection with:
 - 10.2.1. unavailability of sufficient funds in your M- PESA Account and/or in your M-Shwari Account;
 - 10.2.2. failure, malfunction, interruption or unavailability of the System, your Equipment, the Network, M-PESA System and/or M- PESA Service;
 - 10.2.3. the money in your M-Shwari Account being subject to legal process or other encumbrance restricting payments or transfers thereof;
 - 10.2.4. your failure to give proper or complete instructions for payments or transfers relating to your M-Shwari Account;
 - 10.2.5. contributory fraud/negligence/deficiency on your part leading to any fraudulent or illegal use of the Services, the System and/or your Equipment and whereupon you fail to immediately report suspected or known breaches to the Bank; or
 - 10.2.6. 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.

- 10.3. If for any reason other than a reason mentioned in subparagraphs 10.1 or 10.2, 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.
- 10.4. Save as provided in subparagraph 10.3 the Bank shall not be liable to you for any interference with or unavailability of the Services, howsoever caused.
- 10.5. 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.
- 10.6. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

11. INTELLECTUAL PROPERTY RIGHTS

You acknowledge that the intellectual property rights in the System (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that the Bank provides to you 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. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of the Bank.

12. INDEMNITY

- 12.1. In consideration of the Bank complying with your instructions or Requests in relation the M- Shwari Account, you undertake 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 you absolve the Bank from all liability for loss or damage which you may sustain from the Bank acting on your instructions or requests or in accordance with these Terms and Conditions.
- 12.2. The indemnity in clause 12.1 shall also cover the following:
 - 12.2.1. All demands, claims, actions, losses and damages of whatever nature which may be brought against the

Bank or which it may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Bank's control interruption, or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by the Bank.

- 12.2.2. Any loss or damage that may arise from your 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.
- 12.2.3. Any unauthorized access to your M-Shwari Account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment.
- 12.2.4. Any loss or damage occasioned by the failure by you to adhere to these Terms and Conditions 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 these Terms and Conditions.
- 12.2.5. Any damages and costs payable to the Bank in respect of any claims against the Bank for recompense for loss where the particular circumstance is within your control.

13. VARIATION AND TERMINATION OF RELATIONSHIP

- 13.1. The Bank may at any time, upon notice to you, terminate or vary its business relationship with you and close your M-Shwari Account and in particular but without prejudice to the generality of the foregoing the Bank may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine.
- 13.2. Without prejudice to the Bank rights under clause 13.1, the Bank may at its sole discretion suspend or close your M-Shwari Account:
 - 13.2.1. if you use the M-Shwari Account for unauthorized purposes or where the Bank detects any abuse/misuse,



NCBA

- breach of content, fraud or attempted fraud relating to your use of the Services;
- 13.2.2. if your M-PESA Account or agreement with Safaricom is terminated for whatever reason;
- 13.2.3. 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;
- 13.2.4. if the Bank reasonably suspects or believes that you are in breach of these Terms and Conditions or other terms and conditions relating to Fuliza and KCB M-PESA (including non-payment of any Loan amount due from you where applicable);
- 13.2.5. where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
- 13.2.6. to facilitate update or upgrade the contents or functionality of the Services from time to time;
- 13.2.7. where you remain inactive for any period of time determined by the Bank in its reasonable discretion; or
- 13.2.8. 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.
- 13.3. The Bank may at any time, without notice to you, terminate its business relationship with you and in particular but without prejudice to the generality of the foregoing, the Bank may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine. The Bank may further terminate or freeze any account in your name without prior notice to you if:
- 13.3.1. You are found to be using, holding or trading in Unregulated Currencies.
- 13.3.2. You are found to be trading or is part of businesses associated with using, holding or trading in Unregulated currencies, gambling and or betting.
- 13.3.3. You are found to be engaging in Forex trading or operating Foreign Exchange Bureaus without the prerequisite approvals from relevant statutory bodies including the Central Bank of Kenya and the Capital Markets Authority.
- 13.4. The Bank will conduct due diligence and vigilance on accounts and transactions at any given time and without notice to You, in a bid to ensure that there are no activities ongoing therein that are contrary to this clause.
- 13.5. The Bank retains the right to refuse to open an account or to process a transaction where it is suspected that You are or the transaction is criminal, fraudulent, or in contravention of the provisions of this clause.
- 13.6. You undertake 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 as a result of your involvement in the activities prohibited under this clause.
- 13.7. You may close your M-Shwari Account at any time at any Customer Care Centre.
- 13.8. If your M-Shwari Account has any credit balance at the time of its closure, we will return any such balance to you, less any applicable fees. If your M-Shwari Loan Account is in arrears at the time of closure of your M-Shwari Account, you agree to pay to us immediately all amounts you owe us.
- 13.9. Termination shall however not affect any accrued rights and liabilities of either party.
- 13.10. If the Bank receives notice of your demise, the Bank will not be obliged to allow any operation or withdrawal from your M-Shwari Account by any person except upon production of Grants of Letters of Administration or Probate by your legal representatives duly appointed by the Court.
- 14. PRIVACY**
- 14.1. Collection of information and Processing of Personal Data. You consent to us collecting your Personal Data from you or Safaricom and where we are required by law to collect certain personal information and are legally obligated to deny you the service if such information is not available. Apart from the legal obligation mentioned above, You consent to us processing your Personal Data:
- 14.1.1. To provide you with a quality Service delivery, without which, we shall not be able to provide you with quality service;
- 14.1.2. To carry our statistical and other analyses to identify potential market trends, evaluate and improve our services;

14.1.3. For marketing purposes where you have consented to marketing; and for other purposes as set out in the Privacy Policy.

14.2. Privacy

14.2.1. We are committed to respecting and protecting the privacy of the information we collect from You. You shall have the right to:

14.2.1.1 Request access to your Personal Data, request correction and erasure of your Personal Data, object to processing of your Personal Data, request restriction of processing of your Personal Data, request the transfer of your Personal Data to you or to a third party, withdraw consent at any time where we are relying on consent to process your Personal Data.

14.2.2. You agree and confirm that the above rights over your Personal Data are to be enjoyed subject to our Privacy Policy, as updated from time to time, which explains how we treat your personal information, who we share your information with, and measures taken protect your privacy when you use our Service. This can be found on NCBA Data Privacy Policy at the NCBA website and Safaricom Data Privacy Statement. If unable to access the link or our website, please reach us on any of our customer care channels to receive a copy.

15. MISCELLANEOUS

15.1. These Terms and Conditions (as may be amended from time to time) shall be read together with the Fuliza and KCB M-Pesa terms and conditions and shall form a legally binding agreement binding on you and your personal successors.

15.2. The Fuliza, M-Shwari and KCB M-Pesa terms and conditions are available on www.safaricom.co.ke, (for all three terms and conditions) www.kcbgroup.com (for KCB M-Pesa & Fuliza terms and conditions) and www.ke.ncbagroup.com (for M-Shwari and Fuliza terms and conditions). Where you are unable to read and understand these terms and conditions from an electronic device you are requested to collect a printed version from a Safaricom Shop.

15.3. This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.

15.4. The Bank may vary or amend these Terms and Conditions including the Privacy Terms and the

Transaction Fees, upon issuing You with a thirty (30) days' notice. Any such variations or amendments may thereafter be published in posters or pamphlets available at Safaricom's Agents outlets, in the daily newspapers, on the Bank and/or Safaricom's website and/or by any other means as determined by the Bank and any such variations and amendments shall take effect immediately upon publication.

15.5. No failure or delay by either yourself or the Bank in exercising any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise thereof or the exercise of any other right or remedy.

15.6. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

15.7. If any provision of these Terms and Conditions shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.

15.8. Any addition or alteration to these Terms and Conditions may be made from time to time by the Bank and of which notice has been given to you by way of publication as provided in subparagraph 15.3 shall be binding upon you as fully as if the same were contained in these Terms and Conditions.

16. NOTICES

16.1. Without prejudice to any other clause in these terms and conditions, all notices concerning the Service shall be sent via SMS to the Safaricom mobile phone number (MSISDN) associated with your M-PESA Account or published in a national newspaper and shall be deemed received if we do not receive a delivery failure notice.

16.2. 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 M-Shwari Account.

17. DISPUTES

17.1. You may contact the Customer Care Center to report any disputes, claims or M-Shwari Account discrepancies.



NCBA

- 17.2. Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to a Kenyan court of competent jurisdiction.
- 17.3. To the extent permissible by Law, the determination of the court shall be final, conclusive and binding upon the parties hereto.
- 17.4. This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

18. CUSTOMER COMPLAINTS

We, on receiving a complaint, shall provide the complainant with a prompt written acknowledgement within seventy-two (72) hours and resolve the complaint in seven (7) working days. For complaints not resolved within seven (7) working days, we shall provide you with written updates on the progress in resolving the complaint once in every seven (7) working days.

You the Customer have the right to seek independent legal counsel in order to fully understand the implications and potential consequences of agreeing to these Terms and Conditions prior to “opting-in”. The Customer shall be deemed to have read, understood and accepted to be bound by these Terms and Conditions (which may be amended by the Bank from time to time) by creating an M-Shwari Account.