

TERMS AND CONDITIONS FOR USE OF e-CHAMA BANKING SERVICE

1. INTRODUCTION

1.1 The relationship between the Bank and the Customer with regard to E-Chama Banking Service shall be governed by the following terms and conditions (the "E-Chama Terms and Conditions") including any amendments made from time to time thereto and notified to the Customer.

2. DEFINITIONS AND INTERPRETATIONS:

2.1 In these e-Chama Terms and Conditions the following words and phrases have the meaning set below unless the context indicates otherwise:

"Account(s)" refers to a Bank account of any type opened and maintained by the Customer with the Bank;

"Alert(s)" shall mean the customized messages sent to the Customer's Mobile Phone Device as Short Messaging Service (SMS) and/or other modes of communication;

"Customer" means a person who holds and maintains an account with the Bank and shall include any person or persons, firm or corporate body;

"Bank" shall mean the Bank of Africa Kenya Limited and includes its successors in title and assigns;

"e-Chama Banking Service" or "the Service" means the Bank of Africa Kenya Limited e-Chama Banking Service availed to the Customer which shall enable the Customer through the use of the Mobile Phone Device to perform such transactions on the Account as the Bank shall from time to time allow;

"Cellular Service Provider" shall mean any mobile telecommunications operator duly licensed by the Communications Commission of Kenya to *inter alia* operate and maintain a mobile cellular network and to provide telephony services whose services the Bank uses in relation to the e-Chama Banking Service in any capacity;

"General Terms and Conditions" shall mean the General Terms and Conditions which govern the Bank Customer relationship including any and all annexure schedules appendices attached to it or incorporated by reference from time to time which have been duly executed by the Customer. The e-Chama Terms and Conditions are in addition to the General Terms and Conditions and in the event that there is any conflict between the covenants agreements conditions restrictions stipulations and provisions in these e-Chama Terms and Conditions and the General Terms and Conditions the covenants agreements conditions restrictions stipulations and provisions contained herein shall prevail;

"Instructions" shall mean the instructions given to the Bank by the Customer in relation to the Service;

"Mobile Phone Device" shall mean the telecommunication devices used by the Customer for purposes of communication and in this instance accessing the services offered by the Bank through the Service.

"Mobile Phone Numbers" shall mean the numbers specified by the Customer on the e-Chama Application Form or such other numbers as shall be notified to the Bank by the Customer in writing through which the Customer shall be able to access and use the Service;

"Password" or "PIN" shall mean the personal identification number availed by the Bank to the Customer for accessing the Service and for authentication or verification by the Bank of the Customer's identity. The Customer will be able to obtain a range of financial information as determined by the Bank related to its relevant account through the use of the Password and such other means of identification assigned to the Customer in connection with the Account and the Services;

"Personal Information" shall mean information in relation to or pertaining to the Account held by the Customer;

"SMS" shall mean the Short Messaging Service a communication protocol allowing the interchange of short text messages between Mobile Phone Devices;

"e-Chama Terms and Conditions" refers to these terms and conditions for use of the E-Chama Banking Service as amended from time to time at the sole and absolute discretion of the Bank.

2.2 Words in the singular include the plural and vice versa;

2.3 Words importing the masculine gender only include the feminine and neuter genders and words denoting natural persons include corporations and firms and all such words shall be constructed interchangeably in that manner;

2.4 If the Customer comprises more than one person the obligations and liabilities of such persons hereunder are joint and several;

2.5 The headings of clauses are intended for convenience only and shall not affect the construction or interpretation of these e-Chama Terms and Conditions.

2.6 Where words have been defined in the body of these e-Chama Terms and Conditions such words will have the meaning so assigned unless the context clearly otherwise requires.

2.7 Where any period is prescribed in these e-Chama Terms and Conditions that period shall be reckoned inclusively of the first day and inclusively of the last day unless the last day is not a business day in which case the last day shall be the next succeeding business day.

3. APPLICABILITY OF e-Chama TERMS AND CONDITIONS

3.1 By applying for and allowing the Customer access to the Service for the first time (and every time thereafter) the Customer acknowledges and accepts (and reaffirms its acknowledgment and acceptance of) these e-Chama Terms and Conditions to the fullest extent possible.

3.2 The Customer understands that if the Customer chooses to use the Service or issue any Instructions based thereon the Customer shall be bound by these Terms & Conditions and the General Terms & Conditions.

3.3 The Customer acknowledges and confirms that the Customer shall read and accept and be bound by these Terms & Conditions and the General Terms & Conditions (as well as any amendments or modifications thereto as and when updated and/or posted).

3.4 The Customer understands that the Bank may from time to time amend/modify/substitute these Terms & Conditions at its sole and absolute discretion and the Customer agree to be unconditionally bound by the same.

3.5 The Customer understands and agrees that the Bank may, upon notice, at its sole and absolute discretion terminate the Customer's use of the Service and/or the use of the Service by all the Customers of the Bank.

4. REGISTRATION FOR THE SERVICE

Once the Customer's application for the Service is accepted by the Bank the Customer shall receive an SMS with a Password. The Customer shall be required to activate the Service by following the instructions provided by the Bank.

4.1 **Change of Mobile Phone Number and or Loss of the Mobile Phone Device:**

- a) It shall be the sole responsibility of the Customer to notify the Bank in writing about any change with regard to the Mobile Phone Numbers and/or loss or theft of the Mobile Phone Devices and the Bank shall not in any way be liable or responsible for any loss damage costs charges or expenses suffered/incurred by the Customer by reason of its failure to do so;
- b) Unless and until notice (in accordance with Clause 15 herein) is received by the Bank the Bank is authorized and shall remain authorized to effect any Instructions sent using the Customer's Mobile Phone Number (or any of the numbers registered by the Customer for use of the Service);
- c) The Customer will give the Bank and any person acting on the Bank's behalf all necessary assistance in any investigations and avail all the information in the Customer's possession as to the circumstances of the loss or theft of the Customer's Mobile Phone Devices and/or any misuse of the Customer's Mobile Phone Number. In the event of any such loss theft or misuse being suspected the Bank may provide the police with any information it considers relevant;
- d) If the Customer changes its Mobile Phone Number loses its Mobile Phone Device forgets the Password or is barred from using the Service for any reason whatsoever it shall immediately notify the Bank. Upon receipt of such notice from the Customer the Bank shall immediately block the Customer's access to the Service;
- e) The Customer shall be required to visit its Bank branch (where the Account is domiciled) and request for reactivation of the Service. The Bank shall be entitled to make any enquiries (including requirements for submission by the Customer of such information and/or documentation as the Bank shall deem necessary) before reactivating the Service and the Customer hereby authorises the Bank to make any such enquiries and agrees to cooperate and comply with all requests made by the Bank in this regard;
- f) The Bank retains the right to change the procedure and/or process set out in this Clause as it may from time to time deem necessary (at its sole and absolute discretion) and the Customer agrees to comply with and follow such other procedures as may be set by the Bank.
- 5.4 The Customer agrees at all times to use the Service via a Mobile Phone Number that is properly and validly registered in the individual name(s) of the persons comprising the Customer with a Cellular Service Provider.
- 5.5 By accepting these e-Chama Terms and Conditions while registering for the Service the Customer agrees to use the Service for financial and nonfinancial transactions offered by the Bank from time to time.
- 5.6 The Customer irrevocably authorizes the Bank to debit the Account(s) which has been enabled for the Service with all amounts relating to and or as a result of all transactions effected using the Service.
- 5.7 The Customer agrees that it is aware and accepts that the Service offered by the Bank will enable it to transact within the limits prescribed by the Bank and/or the Cellular Service Provider.
- 5.8 The Bank shall be entitled to rely on all Instructions emanating out of the Customer's Mobile Phone Numbers and to treat the same as genuine and valid instructions and to effect them whether or not they are actually initiated by the Customer. The Customer agrees not to dispute such transactions and Instructions unless it has notified the Bank of:
- the loss of its Mobile Phone Devices; and/or
 - the unauthorized disclosure of its Password to a third party
- BEFORE the transaction or Instruction in question has been effected by the Bank.
- 5.9 Once the Customer successfully activates the Service the Customer shall receive such Alerts by SMS pertaining to transactions in the Customer's Account(s) as well as such other Alerts as may be decided by the Bank from time to time. The Bank however at its sole and absolute discretion may add or remove the Alerts to be sent to the Customer.
- 5.10 The Customer hereby authorizes the Bank to use the Service to send out Alerts containing any commercial or marketing information and or any information of an advisory nature that the Bank may wish to relay to the Customer (whether or not the Customer has solicited or requested for them). Alerts shall be sent to the Customer through the Mobile Phone Numbers. The Bank may at its discretion from time to time change the features of any Alerts or the Service. The Customer will be solely responsible for keeping itself updated of the available Alerts which shall on best effort basis be notified by the Bank through its website or through other legally recognized medium of communication.
- 5.11 The Customer authorizes the Bank to use the Service to send notices of any nature relating to the Service and or relating to the Bank Customer relationship with the Customer and the Customer shall be deemed to have received and to have read such notices provided that they are sent to the Customer's Mobile Phone Number.
- 5.12 The Bank will not acknowledge receipt of any Instructions by the Customer nor shall the Bank have the responsibility of verifying any Instructions.
- 5.13 The Customer hereby agrees that the Bank shall not be liable for non delivery or delayed delivery of Instructions nor availability of the Service errors losses or distortion in transmission in the use of the Service.
- 5.14 The Customer hereby confirms that it understands and agrees that transactions originated using the Mobile Phone Devices are non retractable as these are instantaneous/real time.
- 5.15 The Customer understands and explicitly agrees that the Bank has the absolute and unfettered right to revise the prescribed transaction ceilings relating to the Service from time to time which will be binding upon it.
- 5.16 To access the Service the Customer may select and set any or all of the products available for use by it. The Bank shall not be responsible for any errors made by the Customer while setting and/or selecting the products and/or using the Service.
- 5.17 The Customer shall be required to acquaint itself with the process of using the Service and the Customer shall be wholly responsible for any errors made while using the Service.
- 5.18 The Customer shall inform the Bank immediately on surrendering or discontinuing the use of any Cellular Service Provider's mobile connection.
5. **USAGE OF THE SERVICES/USER CONDUCT**
- 5.1 Only the Customer will be eligible to access the Service.
- 5.2 **The Password:-**
- The Password communicated by the Bank to the Customer is confidential and the Customer must therefore take all measures to ensure its security. The Customer must keep it absolutely secret and not communicate it or disclose it to anyone.
 - The Customer should delete the SMS sent by the Bank containing the Password immediately upon receipt and always keep any record of it (or any other Password used for the Service) in a secure place known only by the Customer.
 - The Customer shall be solely responsible for the maintenance of the secrecy and confidentiality of the Password and the Mobile Phone Number without any liability to the Bank. Any usage of the Mobile Phone Number and the Password whether by a third party or any other person shall be deemed to be a usage by the Customer.
 - The Customer shall use the Password to access the Service.
 - The Customer assumes full responsibility for the security and confidentiality of its Mobile Phone Number Mobile Phone Devices and Password.
- 5.3 The Bank however at its discretion may put any restriction with respect to the provision of the Service as it may from time to time at its sole discretion determine necessary.

5.19 The Customer agrees not to use the Service or the content or information delivered through the Service in any way that would:

- a) infringe any third-party copyright patent trademark trade secret or other intellectual property or rights of publicity or privacy;
- b) be fraudulent or involve the sale of counterfeit or stolen items including but not limited to use of the Service to impersonate another person or entity including but not limited to a Bank official or its affiliates or service providers fellow user or falsely utter or otherwise misrepresent the Customer's affiliation with a person or entity;
- c) intentionally or unintentionally violate any local or international laws statute ordinance or regulations having the force of law;
- d) be false misleading or inaccurate;
- e) create liability for the Bank or its affiliates or service providers or cause the Bank to lose (in whole or in part) the services of any of its service providers;
- f) be harmful abusive tortuous vulgar obscene invasive of another's privacy hateful or racially or ethnically or otherwise objectionable defamatory trade libelous unlawfully threatening or unlawfully harassing;
- g) potentially be perceived as illegal offensive or objectionable;
- h) interfere with or disrupt computer networks connected to the Service including but limited to any and all of the Bank's and other Cellular Service Provider's systems and software;
- i) interfere with or disrupt the use of the Service by any other user or disobey any requirements procedures policies or regulations of networks connected to the Service;
- j) use the Service in such a manner as to gain unauthorized entry or access to the computer systems of others;
- k) cause or permit the uploading posting emailing transmission or otherwise making available any content or information that the Customer has no right to make available under any law or under contractual or fiduciary relationships; or
- l) cause or permit the uploading posting emailing transmission or otherwise making any material that contains software viruses or any other computer code files or programs designed to interrupt destroy or limit the functionality of the Service.
- m) In any manner obtain or transfer or be involved in obtaining or transferring monies fraudulently from the Bank or an account held at the Bank or any other person or entity.

The Customer agrees that when in breach of this Sub-clause 5.19, the Bank shall immediately terminate the services offered under this contract immediately upon knowledge of the Breach and without any notice.

6 CHARGES/FEES

- 6.1 The Customer acknowledges and agrees that provision of the Service shall be subject to such charges fees tariffs commissions disbursements costs expenses taxes and duties as the Bank shall from time to time in its sole and absolute discretion determine. The Customer agrees to pay such charges fees and commissions as and when they fall due and hereby authorizes the Bank to debit its Account with any and/or all the above mentioned charges fees tariffs commission disbursements taxes duties costs and expenses whatsoever without further reference to the Customer.
- 6.2 The Customer acknowledges and agrees that the aforesaid charges fees tariffs commissions and disbursements payable to the Bank are in addition to the charges fees and commissions payable to the Cellular Service Provider. In particular the Customer accepts and agrees that it shall be liable for payment of airtime or any/all other charges which may be levied by any Cellular Service Provider in connection with the Service and the Bank shall in no way be deemed liable for the same.
- 6.3 The Customer understands that the contracts with the Cellular Service Providers may provide for fees limitations and restrictions which might impact the use of the Service including but not limited to data usage or SMS charges imposed on the Customer by the Cellular Service Provider for use

of or interaction with the Service and the Customer agrees to be solely responsible for all such fees limitations and restrictions.

- 6.4 The Bank shall at all times have the discretion to vary or amend and/or revise the costs expenses charges fees tariffs commissions disbursements payable for the Service.
- 6.5 The Bank shall notify the Customer of any changes to the costs expenses charges fees tariffs commissions and disbursements by such means as the Bank shall determine suitable.
- 6.6 Any transactions conducted on behalf of the Customer after a notification by the Bank to the Customer of a change in charges fees tariffs commissions and/or disbursements (howsoever effected) shall imply the Customer's acknowledgement and acceptance of the fees.

7 AVAILABILITY OF THE SERVICE

- 7.1 The Bank shall provide to the Customer through the Service such products as the Bank may decide from time to time. The Bank reserves the right to decide what products may be offered to a Customer and such offers may differ from Customer to Customer. The Bank at its sole discretion may, upon notice to the Customer, also make such modifications or amendments to the products and the Service as it shall from time to time determine necessary.
- 7.2 The provision of the Service is subject to at all times the contracts in place with the Cellular Service Providers and other third party service providers and the Bank may thus :
 - 7.2.1 modify any features of the Service as a result of modification by the Cellular Service Providers and/or by the third party service providers of any features of the Service; and/or
 - 7.2.2 terminate the Service as a result of the termination of the contracts with any or all of the Cellular Service Providers and/or by the third party service providers.
- 7.3 All payment transactions initiated from the Customer's Mobile Phone Numbers using the Customer's password will be treated bonafide expressly authorizing the Bank to make such payment.
- 7.4 The Bank shall not authenticate verify or make further inquiry into the identity of the sender or the message integrity of any Instructions communications orders or messages sent using the Customer's Mobile Phone Number and the Password. The Customer shall in no circumstance dispute such reliance by the Bank.
- 7.5 The Customer agrees that the availability timeliness and proper functioning of the Service depends on many factors including the location network availability and signal strength of the Mobile Phone Device and the proper functioning and configuration of the software of the Mobile Phone Device.
- 7.6 The Service will be available to the Customer only if the Customer is within the cellular service range of the particular Cellular Service Provider.
- 7.7 Neither the Bank nor any of the Cellular Service Providers nor any third party service providers warrant that the Service will meet the Customer's requirements operate without interruption or be error-free and neither the Bank nor the service providers shall be liable for any loss or damage caused by any unavailability or improper functioning of the Service or for any actions taken in reliance thereon for any reason including service interruptions inaccuracies delays loss of data or loss of personalized settings.
- 7.8 Right to Monitor the use of the Service

The Bank its affiliates the Cellular Service Providers and any of the Bank's service providers contracted to enable the Bank render the Service to the Customer reserve the right to monitor the use of the Service for purposes

of verifying compliance with all laws and regulations these Terms and Conditions and any applicable licences but disclaim any obligation to monitor filter or edit any content.

7.9 Suspension of the Service

- A. The Bank shall have the right to suspend the Service whether generally or specifically in relation to a Customer if :
- i. the Bank and or the Cellular Service Provider has reason to believe that the operation of the Service or acting upon any Instructions of a Customer may lead to a direct or indirect loss to the Bank or the Cellular Service Provider; or
 - ii. may require an indemnity from the Customer before continuing to operate the Service; or
 - iii. the Customer fails to comply with any rules or regulations of the Republic of Kenya regarding the Service; or
 - iv. the Customer fails to observe any of the e-Chama Terms and Conditions set out herein.
- B. The Bank may without prior notice suspend the Service at any time during which any maintenance work or repair is required to be carried out or in case of any emergency or for security reasons which require the suspension of the Service.

8 ACCURACY OF INFORMATION

- 8.1 The Customer undertakes to provide accurate current and complete information and disclosures or render such assistance whenever required by the Bank and shall be responsible for the correctness and authenticity of the information provided to the Bank at all times including for the purposes of availing the Service.
- 8.2 The Bank shall not be liable for any consequences arising out of erroneous information supplied by the Customer.
- 8.3 While the Bank will take all reasonable steps to ensure the accuracy of the information supplied to the Customer the Bank shall not be liable for any inadvertent error which results in the provision of inaccurate information. The Customer shall not hold the Bank liable for any loss or damage that may be incurred or suffered by the Customer if the information supplied to the Customer turns out to be inaccurate or incorrect.
- 8.4 The Bank shall not be liable in contract tort or otherwise for any direct indirect or consequential loss or damage sustained by the Customer by any direct or indirect use of or reliance on the electronic communication orders or messages sent using the Service whether with or without the utilization of any security measures including but not limited to any loss or damage resulting as a consequence of any defects delays interruptions errors inaccuracies or failures in the various communications and the Bank hereby specifically excludes the same to the fullest extent permitted by law even if the Bank shall have been advised in advance of the possibility of such damages.

9 LIMITATION OF LIABILITY

- 9.1 The Bank shall not be liable to the Customer for any unavailability of the Service for any reason whatsoever including but not limited to:
- 9.1.1 failure of the Bank's systems; and/or
 - 9.1.2 Non availability of the Service if the Customer is in an area not covered by any and/or all of the Cellular Service Providers or non-performance by the Cellular Service Providers and/or any other service providers contracted by the Bank to enable it render the Services.
- 9.2 The Customer shall not hold the Bank liable for any loss or damage caused to the Customer as a result of use of the Service (including relying on the Alerts for the Customer's commercial investment or business purposes) for any cause.

9.3 The Bank shall not be liable in any manner to the Customer in connection with any use of the Service whatsoever including but not limited to the following:

- a) If the transaction amount sought by the Customer being below the minimum or above the maximum limits set by the Bank and/or the Cellular Service Provider;
- b) If the Customer has entered an incorrect Password and/or number and the payment is made to the wrong recipient provided that the Bank shall where possible use its best endeavours to reverse such erroneous transaction upon notification by the Customer if the notification is received by the Bank before the transaction or Instruction has been effected;
- c) If the Customer has exceeded transaction daily or monthly or annual limits for transactions and other usage on their Account;
- d) If the Customer's Mobile Phone Device hardware and/or software is not functioning properly;
- e) If the transaction is unauthorized or fraudulent and the Customer incurs any loss as a result of such transaction;
- f) If the transaction details received do not contain the correct information to enable the Bank to render the Service;
- g) If the Customer's receipt of funds is intercepted by due legal process or other encumbrance restricting the transfer; or
- h) If any force majeure events occur which prevent the execution of the Customer's Instruction despite any reasonable precautions taken by the Bank.

9.4 Without limitation to any other provision the Bank its employees agents or contractors and its affiliates shall not be liable for and in respect of any loss or damage whether direct indirect or consequential including but not limited to loss of revenue profit business contracts anticipated savings or goodwill loss of use or value of any equipment including software whether foreseeable or not suffered by the Customer or any person howsoever arising from or relating to any delay interruption suspension resolution or error of the Bank in receiving and processing an Instruction and in formulating and returning responses or any failure delay interruption suspension restriction or error in transmission of any information or message to and from the telecommunication equipment of the Customer and the network of any Cellular Service Provider and the Bank's system or any breakdown interruption suspension or failure of the telecommunication equipment or the illegal or improper use of the Service by the Customer.

9.5 The Bank will not be liable for any unauthorised use of any Password (s) given to the Customer or Mobile Phone Numbers or for any fraudulent duplicate or erroneous instructions given using the Customer's Password and Mobile Phone Numbers.

9.6 The Customer shall update itself on the features of all products provided through the Service and the Bank shall not be liable to the Customer for any failure and or oversight on the part of the Customer to update itself.

9.7 The Customer agrees that when using the Service the Customer remains subject to the terms and conditions of existing contracts with the Cellular Service Providers and that these e-Chama Terms and Conditions do not amend or supersede any of those agreements.

9.8 The Customer agrees that only the Cellular Service Provider is responsible for its products and services. The Customer shall be liable and responsible for all legal compliance and adherence of all commercial terms and conditions in respect of the mobile connection or SIM card or Mobile Phone Device through which the Service is availed and the Bank accepts no liability or responsibility in this regard. Accordingly the Customer agrees to resolve any problems with the Cellular Service Provider directly without involving the Bank.

10 AUTHORITY TO BANK

10.1 The Customer irrevocably and unconditionally authorizes the Bank to access the Account and the Customer's Personal Information (held by the Bank or by any of the Cellular Service Providers) to enable the provision of the Service.

- 10.2 The Customer agrees with the Bank that the Bank may:
- hold and process by computer or otherwise any information obtained about the Customer;
 - include personal data in the Bank's systems which may be accessed by other companies in the Bank's group for credit assessment statistical analysis including behaviour and scoring and to identify products and services (including those supplied by third parties) which may be relevant to the Customer; and
 - permit other companies within the Bank's group to use personal data and any other information it holds about the Customer to bring to its attention products and services which may be of interest to the Customer.

10.3 The Customer further agrees that the Bank may disclose its personal data and/or information relating to the assets business or affairs of the Customer outside the Bank's group whether such personal data and/or information is obtained after the Customer ceases to be the Bank's client or during the continuance of the banker-customer relationship or before such relationship was in contemplation:

- to the Cellular Service Providers;
- to any third parties contracted by the Bank to enable the Bank render the Service;
- for fraud prevention purposes;
- to licensed credit reference agencies or any other bank or financial institution;
- to its external lawyers auditors and other sub-contractors or persons acting as the Bank's agents;
- to any person who may assume the Bank's rights;
- if the Bank has a right or duty to disclose or is permitted or compelled to do so by law; and/or
- for the purpose of exercising any power remedy right authority or discretion relevant to these e-Chama Terms and Conditions or the General Terms and Conditions.

10.4 The Customer acknowledges and agrees that notwithstanding the terms of any other agreement between the Customer and the Bank a disclosure of information by the Bank in the circumstances contemplated by this clause does not violate any duty owed to the Customer either in common law or pursuant to any agreement between the Bank and the Customer or in the ordinary course of banking business and the customs usage and practice related thereto and further that disclosure as aforesaid may be made without reference to or further authority from the Customer and without inquiry by the Bank as to the justification for or validity of such disclosure.

10.5 The Customer hereby agrees and undertakes to submit to the Bank such information and or documentation that the Bank may from time to time require from the Customer for purposes of this Clause.

10.6 The Customer hereby waives the right of privacy privilege and privacy.

11 RECORDS

11.1 The authority to record the Instructions and transaction details is hereby expressly granted by the Customer to the Bank.

11.2 The Customer understands and agrees that the Bank may at its sole and absolute discretion record any and all the transaction details information or Instructions relayed from and or to the Mobile Phone Numbers and or the Mobile Phone Devices and collect and store the same in such form and manner as it deems necessary and appropriate.

11.3 The Customer further agrees that the transaction details information and/or Instructions so stored may be relied upon by the Bank or its affiliates and may be made known to any person who may reasonably require the same and/or produced in evidence in any proceedings or otherwise.

11.4 All records of the Bank relating to the Account and/or arising out of the use of the Service including the recorded time of the transaction and the Customer originating the transaction shall be conclusive proof of the authenticity and accuracy of the transactions in the Account.

12 WARRANTY

12.1 Notwithstanding any term or condition herein contained the Bank makes no express or implied warranty with respect to the Service including without limitation any warranties of non-infringement of third party rights title marketability satisfactory quality or fitness for a particular purpose.

12.2 The Bank does not warrant the confidentiality or security of the messages whether personal or otherwise transmitted through the Service.

13 CORRECTION OF ERRORS

The Bank reserves the right without prior notice to the Customer to correct any entries made on the Account by mistake.

14 TERMINATION

14.1 The Customer may at any time discontinue or unsubscribe from the Service thereby terminating the provision of this Service to the Customer. The Customer may request for termination in part or in whole of the Service any time by giving a written notice of at least twenty four (24) hours to the Bank (provided that if the notice is sent on a day that is not a business day it shall be deemed to have been received at the opening of business on the next business day).

14.2 The Customer will remain responsible for any transactions originating from the Mobile Phone Numbers through the Service prior to the conclusion of the aforementioned 24 hours.

14.3 The Bank may at its discretion withdraw temporarily or terminate the Service either wholly or in part at any time without giving prior notice to the Customer for any reason including but not limited to:

- the Customer's use or suspected use of the Service in furtherance of any unlawful or criminal activity including without limitation tax evasion money laundering or terrorism funding activities;
- when prohibited by law or an order of a Court or by a regulatory authority;
- if the Customer has breached these e-Chama Terms and Conditions ; or
- if the Bank learns of the existence of any circumstance which in its opinion would result in the Customer being unable to carry on its obligations herein to the fullest extent possible.

14.4 The closure of the Accounts by the Customer will automatically terminate the Service.

14.5 The termination of this Contract shall be without prejudice to all accrued rights and obligations of the Bank and the Customer under this Contract and to all obligations under this Contract expressed to continue or take effect after expiration or termination.

15 NOTICES

a) All notices, statements, letters and other communication from the Bank may be sent to the last address given by the Customer (including electronic mail) or may be published in the local daily newspapers or displayed at the Bank's branches and the date on the Bank's copy of any such communication is taken to be the date of such dispatch in the absence of proof to the contrary. Such notices will be deemed to have been served individually to each Customer.

b) Any written communication from the Bank to the Customer including but not limited to any notice given pursuant to these e-Chama Terms and Conditions shall be deemed to have been received by the Customer (i) if delivered by hand, at the time of delivery, (ii) if sent by facsimile or electronic mail, at the time of transmission (provided that if the date of transmission is not a business day it shall be deemed to have been received at the opening of business on the next business day), and (iii) if sent by post then four days after posting if sent to an address in Kenya and seven days after posting if sent to an address outside Kenya; and in proving such dispatch by post it shall be sufficient to prove that the

communication was properly stamped and addressed.

- c) The Customer has no claim on the Bank for damage resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication whether to or from the Customer, the Bank or any other third party by hand delivery, post, telegraph, telephone, telex, facsimile, electronic mail or any other means of communication.
- d) The Customer authorizes the Bank to send notices under this clause 15, to the address given on the e-Chama Application Form or at the last known address as shall be advised in writing by the Customer.

16 COMPLAINTS HANDLING PROCEDURE

- 16.1 The Bank shall provide customer service support to the Customer and shall address any issues escalated by the Customer regarding the use of the Service.
- 16.2 If the Customer has any complaint regarding the use of the Service or would like to notify the Bank of any matter such as the loss of a Mobile Phone Device the Customer is advised to contact its branch and/ or relationship manager. Such complaint must be confirmed in writing immediately by post or email to: -

The Customer Service Manager
Bank of Africa Kenya Limited
Reinsurance Plaza
Taifa Road P. O. Box 69562-00400 - NAIROBI
Telephone: +254 703 058 120 / +254 020 3275 120
Email: yoursay@boakenya.com

17. REMEDIES AND WAIVERS

No delay or omission on the part of the Bank in exercising any right or power or remedy shall impair such right or power or remedy and any single or partial exercise shall not preclude any other or further exercise of any such right or power or remedy or the exercise of any other right or power or remedy. The rights and remedies of the Bank are cumulative and not exclusive of any right or remedy provided by law.

18. SEVERABILITY

Any provision of these e-Chama Terms and Conditions held by a court of competent jurisdiction to be contrary to any law shall be severed from these e-Chama Terms and Conditions but such severance shall not render the remaining provisions of these e-Chama Terms and Conditions ineffective. The remaining provisions of these e-Chama Terms and Conditions will remain in full force and effect.

19. AMENDMENT OF TERMS & CONDITIONS GOVERNING ACCOUNTS

The Bank reserves the right to modify vary or amend these e-Chama Terms and Conditions and or the tariffs and charges payable for the Service at any time. The Customer will be notified of any such changes by circular letter and other appropriate means including but not limited to notice displayed at the principal place of business of the Bank. The Customer agrees that any addition to or alteration of these e-Chama Terms and Conditions or any variation to the tariffs and charges made from time to time by the Bank of which notice has been given to the Customer in the manner aforesaid shall be binding upon the Customer as if the same were set out and contained in these e-Chama Terms and Conditions.

20. FORCE MAJEURE

The Bank shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of its obligations under these e-Chama Terms and Conditions if the delay or failure was due to any cause beyond the Bank's control. Without prejudice to the generality of the foregoing the following shall be regarded but not limited to as causes beyond the Bank's control: acts of God national emergency war prohibitive governmental action riots strikes civil disturbance storm fire flood earthquake terrorist activities and bomb explosions.

21. APPLICABLE LAW AND JURISDICTION

21.1 These e-Chama Terms and Conditions and any agreement incorporating them shall be construed and governed in all respects by and in accordance with the laws of Kenya and the Customer irrevocably submits to the jurisdiction of the Kenyan courts.

21.2 Notwithstanding what is stated hereinabove the Bank may bring any action against the Customer or in relation to the Customer's account(s) before the courts of any other jurisdiction as it deems fit and nothing shall preclude the Bank from taking any such action or proceedings against the Customer in one or more jurisdictions either concurrently or not.

ACCEPTANCE:

ACCEPTANCE By JOINT GROUP (as applicable)

We _____ and _____ of _____ confirm that we have read and understood the contents of these e-Chama Terms and Conditions. We confirm that we acknowledge that the Conditions form an integral part of and are not divisible from the Application.

The Customer hereby accepts the terms and conditions contained herein.

Signatures of the authorized signatories of the Customer:

Names of the authorized signatories of the customer:

.....
.....
.....
.....

.....
.....
.....
.....

Date.....

In the presence of:

.....
Bank official

[SAMPLE RESOLUTION: TO BE EXECUTED BY ALL MEMBERS OF A CHAMA/GROUP/CUSTOMER]

Minutes of a Meeting of (name of the Customer/Group) duly convened, constituted and held aton the day of, 20.....

Present: Member

- Member
- Member

At a duly convened meeting of the members of (name of the Customer/Group), held at on theday of 200....

The Members noted that Bank of Africa Kenya Limited has, among its various other products, a product called e-Chama which would be suitable for use by the Members, and a copy of the e-Chama Terms and Conditions as well as the brochures and key fact document of the product tabled at the meeting. Following due deliberation, it was resolved and agreed by the Members that:

1. The(name of the Customer/Group) signs up for the e-Chama product on the terms and conditions required by the Bank and the following Members be authorized and instructed to sign the e-Chama Terms and Conditions and any other documentation relating thereto:
 - a)
 - b)
 - c)
2. The aforementioned persons be appointed as signatories for the e-Chama Service;
3. A certified copy of these resolutions be provided to the Bank.

We certify that the above is a true extract from the minutes of a meeting of the Members and that the resolutions set forth were duly passed in accordance with and the rules and or constitution of the (name of the Customer/Group)

Signed by all the Members

	Name of Member	Signature	Date of Acceptance
1.
2.
3.
4.

ACCEPTANCE BY COMPANY (as applicable)

We _____ a director and _____ another director/company secretary of the Company having been duly authorized to witness the affixation of the common seal of the Company to these General Terms and Conditions Letter pursuant to a Resolution of the board of Directors dated _____ (which is attached herewith) hereby confirm that we have read and understood the contents of these General Terms and Conditions and affix the Company Seal and our signatures in acceptance thereof.

The Common Seal of

.....
(Customer)

Was affixed in presence of: -

.....
Director

.....
Director / Company Secretary

[SAMPLE BOARD RESOLUTION: TO BE PRINTED ON COMPANY LETTERHEAD]

Minutes of a Meeting of the Board of Directors of the above Company duly convened, constituted and held at the offices of the Company on theday of....., 20.....

Present: Director/Chairman

..... Director
..... Director

At a duly convened meeting of the Directors of Limited, held at on theday of 200....

The Members noted that Bank of Africa Kenya Limited has, among its various other products, a product called e-Chama which would be suitable for use by the Company, and a copy of the e-Chama Terms and Conditions as well as the brochures and key fact document of the product tabled at the meeting. Following due deliberation, it was resolved and agreed by the Directors that:

1. The Company signs up for the e-Chama product on the terms and conditions required by the Bank and the following directors of the Company be authorized and instructed to sign the e-Chama Terms and Conditions and any other documentation relating thereto:
 - a)
 - b)
 - c)
2. The aforementioned persons be appointed as signatories for the e-Chama Service;
3. A certified copy of these resolutions be provided to the Bank.

We certify that the above is a true extract from the minutes of the Board of Directors and that the resolutions set forth were duly passed in accordance with and comply with the Memorandum and Articles of Association of the Company.

Certified:

Chairman

Director/Company Secretary

Dated at this day of 20.....