

## **MERCHANT CASH FLOW FINANCING LOAN FACILITY TERMS AND CONDITIONS**

---

### **1. THE AGREEMENT**

- 1.1. This Agreement sets out the complete Terms and Conditions (hereinafter called "these Terms") which shall be applicable to the Merchant Cash Flow Loan Facility (as hereinafter defined) applied for by you (as hereinafter defined) and granted by the Bank (as hereinafter defined).
- 1.2. You accept and acknowledge that this is a legal and binding agreement between You and the Bank once accepted by both parties.
- 1.3. "We," "our," and "us," means the Bank and includes its successors in title and assigns.
- 1.4. "You" or "your" means the Customer and includes your personal representatives and heirs.
- 1.5. The word "Customer" shall include both the masculine and the feminine gender as well as juristic persons.
- 1.6. Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.7. Headings in these Terms are for convenience purposes only and they do not affect the interpretation of this Agreement.
- 1.8. Please read these Terms carefully before you apply for and utilizing the Facility. By applying for and/or utilizing the Facility, you acknowledge and agree to be bound by these Terms. You are deemed to have read, understood and accepted all the conditions set out in these Terms, as may be amended, modified or supplemented from time to time.
- 1.9. These Terms supplement and are to be read together with:
- 1.10. (a) our General Account Opening Terms and Conditions;
- 1.11. (b) the terms and conditions governing the specific Product or Service offered by us alone or by us together with third parties ("Specific Terms"); and
- 1.12. (c) the terms and conditions of any other document or agreement governing your relationship with us as may be amended, modified or supplemented from time to time (together, the "Other Terms").
- 1.13. (d) the Data Privacy Statement available at <https://ke.kcbgroup.com/data-privacy-statement>, in effect from time to time.
- 1.14. These Terms and any amendments or variations thereto take effect on their date of publication.

### **2. DEFINITIONS & INTERPRETATIONS**

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

- 2.1. **"Bank"** means KCB Bank Kenya Limited 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 affiliates of the Bank as may from time to time be specified by the Bank to you.
- 2.2. **"Bank Account"** means a transactional account held and operated with the Bank by a KCB customer and registered for use on the Mobile Banking Service.

2.3   **“Bank Rate”** means the interest rate on loans or savings as may be set and communicated by the Bank from time to time.

2.4   **“Business Day”** means the hours in a day when the Bank is generally open for all classes of business and transactions, as may be determined by the Bank, in respect of each of the Bank’s Branches from time to time not being a Sunday or a Public Holiday.

2.5   **“Contact Centre”** means the Customer Care Centre or KCB Branch, or KCB Mtaani outlets as may be notified to the Customer by the Bank from time to time.

2.6   **“Credit Limit”** means the maximum pre- approved amount that a customer can borrow on this facility.

2.7   **“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.

2.8   **“Customer”** means the person (Merchant) in whose name the Merchant Cash Flow Financing Loan Facility Account exist in the Bank.

2.9   **“Default Penalty”** means penalty charged at per annum rate for the principal or interest amount in default. The default penalty for this facility is 10% per annum.

2.10   **“E-Money” means** the electronic monetary value depicted in your Mobile Money Account representing an equal amount of cash.

2.11   **“Equipment”** includes your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access mobile Network.

2.12   **“Immediate payment”** means voluntary instant repayment of Merchant cash flow Loan facility advanced before the due date.

2.13   **“Interest Fee”** means the fee charged for the Loan facility. The Interest fee is subject to change at any time at the Bank’s sole discretion subject to giving you thirty (30) days’ notice of the proposed change.

2.14   **“Equated Daily installments (EDI)”** means fixed payments made by the borrower at specified date each calendar day as payment for the merchant cash flow loan borrowed.

2.15   **“Facility”** shall refer to the Merchant Cash Flow Financing Loan Facility as herein after defined.

2.16   **“Interest rate”** means the rate charged for credit facilities or bank credit facilities (including where applicable a variable Margin). The Interest rate will be a daily rate charged on the outstanding principal amount as stated in Table A.

2.17   **“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.

2.18   **“Kenya Shillings”** means the lawful currency for the time being of the Republic of Kenya

2.19   **“Loan”** means the Merchant Cash Flow Financing Loan Facility.

2.20   **“Loan Auto Recovery”** means automated recovery of the loan advanced from the customers Bank Account(s) on/ after the due date.

2.21   **“Merchant”** means any individual or business recruited for purposes of facilitating the payments of goods and services through the Bank’s Point of Sale terminal or E-Commerce platforms.

2.22   **Merchant Account means** a bank account that facilitates credit or debit card payments from customers to a business by holding card payments and then depositing them into a

business's bank account. It enables a business to accept credit or debit card payments and facilitate payment deposits through multiple other payment methods.

2.23 **"Merchant board resolution"** means a formal legally binding document that functions as a compliance record to produce evidence of decisions made by the board of directors regrading pivotal company matters.

2.24 **"Merchant Cash Flow Financing Facility"** means a loan facility applied for digitally and provides a lump sum of cash to the Merchants to be repaid within a fixed period at agreed pricing.

2.25 **"Mobile Banking Service"** means the money transfer and payments service provided by KCB through the Mobile banking System.

2.26 **"Mobile Banking System"** means the system operated by KCB for the provision of the Mobile Banking Service using the Mobile Networks.

2.27 **"Mobile Banking PIN"** means your personal identification number being the secret code used to access and operate the Mobile Banking System and your Merchant Cash Flow Financing Loan Account.

2.28 **"Mobile Banking Subscriber"** means any person registered to use the Mobile Banking System to send or receive money or make payments.

2.29 **"Network"** means the mobile cellular network operated by various mobile networks.

2.30 **"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.

2.31 **"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.

2.32 **"Services"** shall include any form of Banking services or facilities 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.

2.33 **"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 Mobile banking System.

2.34 **"SMS"** means a short, customized message service consisting of a text message transmitted from one mobile phone to another.

2.35 **"System"** means the Bank's Digital Banking Platform and communications 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 Mobile banking System.

2.36 **"Taxes"** includes all existing and future taxes, levies, duties, charges, assessments, deductions, or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereto, wherever imposed, levied, collected or withheld pursuant to any requisite regulation.

2.37 **"Transaction Fees"** includes the interest fee, the penalty fee 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 the daily newspapers in Kenya or by such other means as the Bank shall in its sole discretion determine.

### **3. GRANT AND UTILIZATION OF THE FACILITY**

- 3.1 The availability of the Facility is subject to our credit approval process and lending criteria. We reserve the right to decline the Application.
- 3.2 We may, in our sole discretion, offer/ approve the full Facility applied for or lesser sum than requested for without giving reasons.
- 3.3 The Facility amount sanctioned to you shall be in the aggregate not exceeding the amounts specified in the request.

### **4. ELLIGIBILITY AND LIMIT CREATION**

- 4.1 To be eligible for grant of the Facility, you must be a KCB customer with a minimum 12 months account relationship with the Bank.
- 4.2 The limit that will be assigned to you will depend on account turnover and previous credit history.
- 4.3 The Loan product credit limits shall range from Kes 5,000 to Kes. 5,000,000.

### **5. ACCEPTANCE OF THE TERMS AND CONDITIONS**

- 5.1 Before applying for funds under the Facility via the Mobile banking System you should carefully read and understand these Terms which will govern the use and operation of the facility.
- 5.2 If you do not agree with these Terms, please select “No” on the opt in Menu.
- 5.3 You will be deemed to have read, understood, and accepted these Terms:
  - 5.3.1. Upon selecting “Yes” option on the Opt in Menu requesting you to confirm that you have read and accepted the Terms as stated on the website <https://ke.kcbgroup.com>; and/or
  - 5.3.2. Upon subscription to the Merchant Cash Flow Financing Loan Facility and/or by using or continuing to use and access the Merchant Cash Flow Financing Loan Facility.
- 5.4. By applying to access and use the Facility with the Bank, you agree to comply with and be bound by these Terms for the time being and from time to time in force governing the operation of the Facility and you affirm that these Terms herein are without prejudice to any right that the Bank may have with respect to the Facility in law or otherwise.
- 5.5. These Terms may be amended or varied by the Bank from time to time subject to at least thirty (30) days prior notice to you. The continued use of the Facility after lapse of the said notice period constitutes your agreement to be bound by the terms of such amendment or variation.
- 5.6. You acknowledge and accept that the Bank offers the Facility digitally only and you agree to do business with the Bank and to operate the Facility only by electronic means via the Merchant Cash flow Financing Loan Facility menu on the Mobile banking System. Any query and complaint you may have relating to the Facility shall be addressed to the Bank through the Contact 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 Facility 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 Contact 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.

## **6. ACCESSING THE FACILITY**

- 6.1 In order to access the Facility with the Bank, you must be at least 18 years old, a registered and active mobile subscriber with a mobile service provider. The Bank reserves the right to verify with the IPRS the authenticity of your details.
- 6.2 You may apply for the Facility solely by way of an electronic application made by you using your Equipment via the Merchant Cash Flow Loan Facility Menu on the Mobile banking System. After successful application, access to funds will be via over-the-counter withdrawal or other bank channels ATM, Mobile Banking, I Bank, Agent Banking.
- 6.3 You hereby agree and authorize the Bank to request IPRS for your personal information held by IPRS pursuant to the agreement between you and KCB for the provision of Mobile Banking facilities and services and Banking 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 (together the "Personal Information"). You also hereby agree and authorize the Bank to request IPRS for information relating to your ID as the Bank shall require for purposes of providing you the Services. You hereby consent to the disclosure of the Personal Information by IPRS to the Bank and to the aforesaid use of the Personal Information by the Bank and in particular to determine your credit limit.
- 6.4 You hereby agree and authorize the Bank to obtain and procure your Personal Information contained in the IPRS from the Government of Kenya and you further agree and consent to the disclosure and provision of such Personal Information by the Government of Kenya to the Bank.
- 6.5 You hereby further acknowledge and authorize the Bank to verify your Personal Information received from Mobile Network pursuant to Clause 6.3 against the information received from the Government of Kenya in your respect as contained in the IPRS.
- 6.6 The Bank reserves the right to request for further information from you pertaining to your access of the Facility at any time. Failure to provide such information within the time required by the Bank may result in the Bank declining to accept your request to access the Facility, limit on usage of the services, suspension, or termination of the Facility.
- 6.7 You undertake to update the personal information provided when opening the Bank Account within 30 days from the date of any changes to the information provided therein.
- 6.8 You shall link and retain a mobile phone number that will be associated with the bank account accessing the Facility.
- 6.9 Confirmation of your application acceptance for the Facility shall be done via SMS sent to the Mobile Network Operator Mobile Phone Number associated with you.
- 6.10 You shall retain a KCB account for the purposes of accessing and utilizing the Facility.

## **7. MERCHANT CASH FLOW LOAN FINANCING FACILITY**

- 7.1 As a KCB Bank account holder and a Mobile banking Subscriber and having received a confirmation message bearing your limit, you may, subject to these terms apply for a Facility using the menu on your equipment. The transaction fees payable to Mobile Network for transactions effected in respect of your access to the Facility from time to time

will apply to any transactions effected in respect of the Facility using the Mobile banking System.

- 7.2. 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.
- 7.3. 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. Disbursement will be transferred to your KCB account and a notification sent to you.
- 7.4. You will be entitled to only one active loan at a time.
- 7.5. This Facility is for maximum 2 months (Sixty Days) and instalments shall be repaid daily. The amounts drawn and outstanding under the Facility together with interest and other sums payable with respect to the Facility are due and re-payable strictly on demand. Monthly instalments if not met will fall into arrears and attract other charges as per Table A below.
- 7.6. The Interest rate chargeable, for the various repayment periods is as stated in Table A below.
- 7.7. In consideration of the Bank granting you the Loan, you shall pay the Bank an Interest charge being of not more than **20.2% per annum**. The Interest fee shall be paid by you upon repayment of the Loan. Transaction Fees are subject to change at any time at the Bank's sole discretion subject to thirty (30) days' notice to you.
- 7.8. In the event that you do not repay the Equated Monthly instalments within the agreed repayment date, the loan will run into arrears and attract a Penalty fee of 10% per annum on the outstanding principal and the amount in arrears.
- 7.9. You may at any time partially or fully repay the loan before the expiry of the term.
- 7.10. The Bank shall be entitled to terminate this Agreement and close your Facility in accordance with the provisions of these Terms without prejudice to any of its rights accruing hereunder if you fail to repay the Loan and/or the Transaction Fees due thereon within ninety (90) calendar days of the disbursement of the Facility.
- 7.11. The Bank shall utilize funds in any of accounts opened and operated by you to offset any amounts outstanding and due from you to the Bank in respect of your Facility. 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 your Bank Account for so long as and to the extent of the amount outstanding in respect of the Facility without the Bank giving any notice to you and/or without incurring any liability to you whatsoever in that connection.
- 7.12. The Bank reserves the right to vary the terms of the Facility 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. Provided that such varied Loan terms shall take effect only upon the lapse of an advance written notice, which we shall deliver to you at least of thirty (30) days in advance of the effective date of variations.
- 7.13. The Bank shall have a right of lien and set off over funds held by you in any Bank.

## 8. INSURANCE

- 8.1. You are entitled to and hereby undertake to, at all times during the continuance of this Facility, maintain the Credit Life Insurance and any other insurance required in this Agreement with an insurer of your choice, of reputable standing acceptable to the Bank, and at your cost with the Bank's interest being noted on the policy. You acknowledge that

the Bank has informed you about the right to select an insurer from the list of licensed insurers, which you hereby confirm receipt, adequacy and acceptance by signing the same. You further acknowledge that the Bank has advised and you understand that you are entitled to waive the right to select an insurer or broker of your choice, provided that you issue the Bank with written notice confirming the waiver or otherwise forfeit the right to choose the insurer as provided in this Agreement.

- 8.2 The Bank has explained and you have understood that the Bank reserves the right to determine whether the insurance cover provided by You is adequate for the Facility. You may expressly consent and authorize the Bank to prescribe or appoint an insurer at your cost, where the Bank at any time determines that the insurance cover procured by You is inadequate or where You waive or in any other way forfeit the right to choose an insurer. Where You issue the Bank express authority under this clause, You shall further authorize the Bank to debit the cost of procuring adequate insurance cover from any of Your Bank accounts.
- 8.3 Prior to the expiry of any insurance cover, the Bank shall issue a thirty (30) days renewal notice to the Borrower. The Borrower shall be required to deliver to the Bank the relevant renewal advice at least seven (7) days before expiry of the notice, failing which the Borrower hereby authorizes the Bank to effect such insurance at the Borrower's cost and through an insurer of the Bank's choice without further reference to the Borrower and to debit any of the Borrower's accounts with any amount paid by the Bank in respect of such insurance cover.
- 8.4 A nonrefundable risk margin premium will be charged on a once off basis before drawdown to cover death and permanent disability to You arising from an accident. The amount payable under this cover will be solely for clearing the outstanding loan or part thereof as at the date of the accident, depending on the extent of disability caused. You will make necessary prior arrangements to ensure that in the event of an accident involving yourself and which results in the eventualities indicated above, covered by the risk margin, the matter is reported to the Bank without delay to facilitate lodging of a claim. Any claim made after 6 months from the date of the accident will be time barred and will not be honoured. The continuance of the facility is dependent upon the account being always conducted to our satisfaction and on the understanding that a loan facility is always payable on demand, should the Bank deem it advisable to make such demand. The Bank reserves the right to set off or combine all or any of Your accounts whatever their nature.

## 9. FEES

- 9.1. You hereby agree to pay all Transaction Fees payable in connection with your use of the Services as indicated in Table A below.
- 9.2. You shall pay to the Bank and the Bank is entitled deduct from any of your Bank Accounts (without further reference to you):
  - 9.2.1. Any Transaction Fees payable in respect of the Services.
  - 9.2.2. Any legal charges including advocate and client costs incurred by the Bank in obtaining legal advice in connection with your Facility 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 Bank Account; and
  - 9.2.3. All other fees, expenses and taxes, duties, impositions, and expenses incurred in complying with your Requests.

- 9.3. 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 Facility.
- 9.4. You shall pay Credit Life Insurance at the rate of 0.068% of the disbursed amount.

## **10. TAXES**

- 10.1 All payments to be made by you in connection with these Terms are calculated without regard to any taxes and duties payable by you. If any taxes are payable in connection with the payment, you must pay the Bank an additional amount equal to the payment multiplied by the appropriate rate of tax. You must do so at the same time as making the payment.
- 10.2 Amounts in your Bank Account may be subject to withholding tax in accordance with applicable Kenyan, foreign or international law.
- 10.3 You consent and agree that the Bank may withhold amounts in your Bank Accounts at any time, if any Kenyan or foreign tax authority requires the Bank to do so, or whenever the Bank is otherwise required by such law or needs to comply with internal policies or with any applicable order or sanction of such tax authority.

## **11. STATEMENTS**

- 11.1. You may request a statement or activity report in respect of your Facility from any KCB Branch or digitally using your Mobile phone. The Digital statement shall be delivered to you via SMS to the mobile phone number associated with your wallet.
- 11.2. The Digital Statement shall provide details of the last 5 (five) transactions, or such other number of transactions as determined by the Bank.
- 11.3. Where a printed Bank statement pertaining to your Facility is obtained from the Bank's branches, you shall be responsible for the payment of any charges levied by the Bank for such printed statements.
- 11.4. Save for a manifest error, the Merchant Cash Flow Loan Mini Statement or Bank statement issued to you aforesaid in respect of your Merchant Cash Flow Loan Facility shall be conclusive evidence of the transactions carried out on your Facility for the period covered in the Merchant Cash Flow Financing Loan Facility Mini Statement and/or Bank statement.
- 11.5. We reserve the right to rectify discrepancies, add and/or alter the entries in your statements, without prior notice to you. You will however be informed of any rectification, additions and or alterations effected on your statements within a reasonable time after the changes are effected.
- 11.6. All notifications of transactions related to the Facility shall be by way of SMS.

## **12. IRREVOCABLE AUTHORITY OF THE BANK**

- 12.1. It is your sole responsibility to familiarize yourself with the operating procedures that will be provided by the Bank upon your application for the Facility. The Bank will not be liable for any losses incurred as a result of your errors either of commission and/or omission.
- 12.2. 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.

- 12.3. 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.
- 12.4. 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.
- 12.5. The Bank is authorized to effect such orders in respect of your Facility as may be required by any court order or competent authority or agency under the applicable laws.
- 12.6. In the event of any conflict between any terms of any Request received by the Bank from you and these Terms, these Terms shall prevail.

### **13. CUSTOMER'S EQUIPMENT AND CUSTOMER'S RESPONSIBILITIES**

- 13.1. 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.
- 13.2. 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.
- 13.3. You shall follow all instructions, procedures and terms contained in these Terms and any document provided by the Bank concerning the use of the System and Services.
- 13.4. You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your Mobile Banking PIN secret and secure. You shall ensure that your Mobile Banking PIN does not become known or come into possession of any unauthorized person. The Bank shall not be liable for any disclosure of your Mobile Banking PIN to any third party and you hereby agree to indemnify and hold the Bank harmless from any losses resulting from any Mobile Banking PIN disclosure.
- 13.5. 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.
- 13.6. You shall immediately inform the Bank through the Contact Centre if:
  - 13.6.1. You have reason to believe that your Mobile Banking PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or
  - 13.6.2. 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.
- 13.7. You shall always, 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.
- 13.8. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your Merchant Cash Flow Financing Loan Facility

confidentiality. 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.

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

#### **14. EXCLUSION OF LIABILITY**

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

- 14.1.1. Unavailability of sufficient funds in your Bank Account.
- 14.1.2. the money in your Bank Account being subject to legal process or other encumbrance restricting payments or transfers thereof.
- 14.1.3. Your failure to give proper or complete instructions for payments or transfers relating to your Merchant cash flow Loan Facility.
- 14.1.4. Device, the Network, or the Service.
- 14.1.5. The Services, the System and/or your Mobile Device not functioning properly at the time you attempted to initiate the transaction, and it was evident to you at the time you began the transaction.
- 14.1.6. Failure of any other telecommunication system or data transmission data system other than KCB Mobile Banking System.
- 14.1.7. Transactions made from your registered Mobile Banking channel by unauthorized third party who passes all the identity and verification checks.
- 14.1.8. Transactions made by input of incorrect amounts by you.
- 14.1.9. Disclosure of information to third parties, non-delivery, delayed delivery, mishandling of or inaccurate content in information sent through an Alert.
- 14.1.10. Unauthorized access to the service due to loss of your mobile device.
- 14.1.11. The quality of service of your mobile service provider.
- 14.1.12. Any fraudulent or illegal use of the Services, the System and/or your Equipment; or
- 14.1.13. Your failure to comply with these Terms and any document or information provided by the Bank concerning the use of the System and the Services.

14.2. 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.

14.3. If for any reason other than a reason mentioned in these Terms 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 practical.

14.4. All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

#### **15. INTELLECTUAL PROPERTY RIGHTS**

15.1 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.

## **16. INDEMNITY**

- 16.1. In consideration of the Bank complying with your instructions or Requests in relation to the Facility 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.
- 16.2. The indemnity in clause 16.1 shall also cover the following:
  - 16.2.1. 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.
  - 16.2.2. 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.
  - 16.2.3. Any unauthorized access to your Facility 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.
  - 16.2.4. 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.
  - 16.2.5. 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.
- 16.3. Any claim brought against the Bank by a third party resulting from your breach of these Terms.

## **17. SUSPENSION AND/ OR TERMINATION**

- 17.1. The Bank may upon issuance of thirty (30) days' notice to you, terminate its business relationship with you and close your bank account and in particular but without prejudice to the generality of the foregoing the Bank may cancel the credit limit which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine.

17.2. Without prejudice to the Bank rights under clause 17.1, the Bank may at its sole discretion suspend, decline loan application, or close your bank account:

- 17.2.1. If you use the Bank Account 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.
- 17.2.2. If your Bank Account or agreement with the bank is terminated for whatever reason.
- 17.2.3. 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.
- 17.2.4. If the Bank reasonably suspects or believes that you are in breach of these Terms (including non-payment of any Loan amount due from you where applicable).
- 17.2.5. Where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety.
- 17.2.6. To facilitate update or upgrade the contents or functionality of the Services from time to time.
- 17.2.7. Where you remain inactive for any period determined by the Bank in its reasonable discretion; or
- 17.2.8. 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.

17.3. You may close your Bank Account at any time upon payments of all outstanding amounts owed to the Bank.

17.4. If your Facility is in arrears at the time of closure of your Bank Account, you agree to pay to us immediately all amounts you owe us.

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

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

## **18. PRIVACY POLICY**

### **COLLECTION OF INFORMATION**

We collect certain Personal Information for compliance with our legal and contractual obligations to you or to take steps to enter into an agreement with you without which we are legally obligated to deny you the service. Apart from the legal obligation mentioned above, we also need to collect your Personal Information for quality service delivery. Please note that although this is voluntary, without such information we may not be able to provide quality service.

### **PRIVACY**

We are committed to respecting and protecting the privacy of the information we collect from you. Our privacy statement, as updated from time to time, explains how we treat your Personal Information, who we share your information with, and measures taken to protect your privacy when you use our Service. This can be found on the KCB Privacy Policy on our website.

## 19. DATA PROTECTION & PRIVACY

- 19.1 The Bank is required by law to collect certain personal data and are legally obligated to deny the Customer the service if such information is not availed. Apart from the legal obligation mentioned above, the Bank also needs to collect the Customer's personal data for quality service delivery. Although this is voluntary, without such information the Bank may not be able to provide quality service.
- 19.2 The Bank acknowledges the importance of the protection and privacy of all information provided and warrants in dealing with data collected from you shall at all times strictly comply with Data Protection Legislations including the Kenya Data Protection Act 2019.
- 19.3 The Bank shall collect your personal information with your knowledge and consent with exception to cases where prior consent cannot be obtained for real reasons and the processing of the data is permitted by law.
- 19.4 KCB is committed to respecting and protecting the privacy of Personal Data. KCB Group Plc Data Privacy Statement ("the Privacy Notice"), as updated from time to time, explains how KCB treats Personal Data, who we share Personal Data with, and measures taken to protect Personal Data.
- 19.5 By accessing the Service, you agree to have read and accept the terms of the Privacy Notice available at [www.kcbgroup.com](http://www.kcbgroup.com) (<https://ke.kcbgroup.com/data-privacy-statement>) and the consent and authorize KCB, to collect, use, store, disclose, process and transfer your Personal Data between the Bank and affiliates for the purpose of effecting/implementing and administering the Service provided and obtained on the Platform in accordance with the Privacy Notice.
- 19.6 The Bank may hold and process, by computer or otherwise, any information obtained about You as a consequence of your access to the Facility.
- 19.7 You agree that the Bank may disclose any information relevant to on terms that such recipient is to treat in confidence any confidential information so disclosed to it and further agree that the Bank may disclose personal data and/or information relating to You or any relevant party outside the Bank's group whether such Personal data and/or information is obtained after You cease to be the Bank's customer or during the continuance of Your relationship with the Bank or before such relationship was in contemplation:-
  - 19.7.1 To any person or organization providing electronic or other services to us, for the purpose of providing, updating, maintaining, and upgrading the services (including any investigation of discrepancies, errors or claims).
  - 19.7.2 To any person or organization engaged for the purpose of performance of services or operational functions where these have been outsourced.
  - 19.7.3 For fraud prevention purposes.
  - 19.7.4 To debt collection agencies, credit reference agents or any other financial institution, only for credit information on you and you agree that such information may be used by other financial institutions in assessing credit applications and for debt tracing.
  - 19.7.5 To the Bank's lawyers, valuers, surveyors, research agencies, insurers, auditors, software developers, professional advisors, sub-contractors or any persons acting as agents of KCB, to the extent that they comply with its contractual obligations.
  - 19.7.6 To any person who may assume KCB's rights within the confines of the law.
  - 19.7.7 To credit card companies and financial institutions in connection with credit card enquiries or use of the ATM card.
  - 19.7.8 Providing income tax-related information to tax authorities.

19.7.9 To any regulatory, fiscal or supervisory authority, any local or international law enforcement agencies, governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities and law enforcement agencies where demand for any Personal Data and/or information is within the law.

19.7.10 To any person who stands as guarantor or surety for your Liability or is jointly or jointly and severally liable with you.

19.7.11 To any receiver appointed by us.

19.7.12 To any rating agency, business alliance partner, insurance company, insurer, insurance broker or direct or indirect provider of credit protection.

19.7.13 To any, court or other judicial bodies in any judicial proceeding, tribunal, statutory body, or authority (including any tax authorities in any jurisdiction), whether governmental or quasi-governmental.

19.7.14 To any person whom KCB are required to disclose to under the laws, regulations, guidelines, directives or by any lawful authority, of any country.

19.7.15 For purposes of exercising any power, remedy, right, authority or discretion relevant to these terms following the occurrence of an Event of Default, to any other person or third party as well.

19.7.16 Where KCB has a public duty to disclose.

19.7.17 In accordance with KCB's Privacy Policy.

19.8 You acknowledge that the Bank may retain your personal data and/or information for a period of up to TEN (10) years or as may be required by law.

19.9 You acknowledge that from time-to-time KCB may need to transfer Personal Data outside the country where you are located, to facilitate a service or to a third-party domiciled outside Kenya for performance of a contractual obligation.

19.10 You acknowledge and agrees that you understand rights as data subject and may make a written request to access your Personal Data in custody of the Bank in a portable format, correct or delete false or misleading information, restrict or object to the processing of all or part of their Personal Data and withdraw consent at any time.

19.11 Some of KCB decisions are automated, based on information KCB hold about you. If you would like KCB to review a decision made about you (whether or not automated), you are required to inform KCB within 21 days of being notified of the decision.

19.12 You can contact KCB at any time in relation to the use, access, rectification, restriction of your Personal Data through any of the available Contact Centre channels which include telephone 0711 087000 or 0732 187000, SMS: 22522 or by writing an email to: [contactcentre@kcbgroup.com](mailto:contactcentre@kcbgroup.com) .

19.13 You may withdraw your consent to receive electronic communications in the manner described below. Once consent is withdrawn, no further Service or Loan applications will be allowed, and any pending loan application shall be considered cancelled. The withdrawal of your consent will not affect the legal validity and enforceability of existing loans, or any electronic communications provided or business transacted prior to the withdrawal of your consent.

## **20. MISCELLANEOUS**

- 20.1. These Terms (as may be amended from time to time) form a legally binding agreement binding on you and your personal successors.
- 20.2. This Agreement and any rights or liabilities accruing thereunder may not be assigned by you to any other person.

- 20.3. The Bank may vary or amend at any time these Terms and the Transaction Fees. Any such variations or amendments may be published in posters or pamphlets available at bank's branch outlets, in the daily newspapers, on the Bank website and/or by any other means as determined by the Bank and any such variations and amendments shall take effect immediately upon the lapse of thirty (30) days written notice issued by the Bank informing you about the variations or amendments.
- 20.4. 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.
- 20.5. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 20.6. If any provision of these Terms shall be found by any 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.
- 20.7. Any addition or alteration to these Terms may be made from time to time by the Bank and of which notice has been given to you by way of publication shall be binding upon you as fully as if the same were contained in these Terms.

## **21. NOTICES**

- 21.1. The Bank may send information concerning the Facility via calls, electronic mail (email) SMS to the Mobile Network Mobile Phone number associated with your Bank Account. You hereby expressly consent to receiving notifications, electronic mail, and other forms of communication from the Bank in respect to the Facility
- 21.2. 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 Facility.
- 21.3. You understand and agree that the information sent through the above-mentioned forms of communication may not be encrypted and may include personal information about you such as your account activity or account status, and anyone with access to your equipment may be able to access the information.
- 21.4. You confirm that you are the primary user for the mobile number associated with your Bank Account.
- 21.5. You shall notify the bank in writing of any change of name or address. Until such notice is received your address shall be that stated in the application form.

## **22. CUSTOMER COMPLAINTS**

- 22.1. Complaints and inquiries may be made in person, in writing, email or by telephone.
- 22.2. For purpose of making an inquiry or reporting a complaint, the following may be used:  
SMS number: 5222  
WhatsApp number: 0711 087087  
Telephone: +254 711 087000, +254 732 187000, +254 20 2287000.  
Email: [contactcentre@kcbgroup.com](mailto:contactcentre@kcbgroup.com)
- 22.3. You should bring your complaint to our attention with your contact information, and we will aim to deal with any complaints promptly and fairly. A copy of our complaint's procedure is available on request from any branch or our Contact Centre

- 22.4 The Bank will take all measures within its means to resolve your complaints within Thirty (30) days. All complaints will be handled in accordance with the Bank's complaints handling procedures and, the Bank's Service Charter which is available on request from any Contact Centre. Where a notification regarding your complaint or any other matter is expected from the Bank but not received, you may make a further complaint after non-receipt of such notification.
- 22.5 Applicable tariffs will be charged by your telephone and internet service provider(s) when communicating with the Borrower Care Centre.

## **23. LAW**

- 23.1 These Terms of Use shall be governed by and construed in all respects in accordance with the Laws of Kenya.
- 23.2 Unless otherwise provided herein, any and all disputes arising under, pertaining to or touching upon this Letter or the statutory rights or obligations of either party hereto, shall, if not settled by negotiation, be subject to mediation before an independent mediator selected by the parties.
- 23.3 Nothing in this paragraph shall limit the right of the Bank to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking or proceedings at one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

**KCB Bank Kenya Limited is regulated by the Central Bank of Kenya.**

**Signed by the Applicant:**

Name .....

Signature: .....

ID No.: .....

Date: .....

**In the presence of:**

Name .....

Signature: .....

ID No.: .....

Date: .....

**Bank Official:**

Name: .....

Signature .....

Date: .....

## ANNEXURE 1

### CONSENT TO THE COLLECTION AND PROCESSING OF PERSONAL DATA

By completing this form, I confirm that I have read the KCB Data Privacy Statement available at [www.kcbgroup.com](http://www.kcbgroup.com) which provides information on how KCB will use and process my personal data. I acknowledge and agree to the collection, processing and/ or storage of my personal data by KCB to facilitate provision of banking and incidental services, administration and/or management purposes, compliance with statutory obligations prescribed by relevant legal regulations and as required by law.

I understand that the Bank will collect my personal data including my title, name, photographs, marital Status, nationality, occupation, residence, physical and postal address, phone number, identity document type and number, date of birth, age, gender, email and social media address, signature specimen, employment details, estimated monthly income levels, education, transaction and account status information, cookie ID, mobile ID, IP address, next of kin details and other necessary personal data needed to enable use of my account as per clause 19 of this Terms and Conditions.

I acknowledge that my personal data may be collected, processed, and stored by KCB employees, service providers/ suppliers, agents, contractors, marketing and advertising agencies, financial institutions, selected partners, or third-party software providers on behalf of KCB, and who are contractually and statutorily obligated to keep my personal data confidential subject to appropriate safeguards.

I acknowledge that from time-to-time KCB may need to transfer my personal data outside the country where I am located, to facilitate a service or to a third-party domiciled outside Kenya for performance of a contractual obligation. These includes countries that do not have laws that provide specific protection to personal data. I acknowledge that in case of transfer of my personal data outside Kenya, KCB shall ensure that there is proof of adequate data protection safeguards in the recipient country or conclusion of a standard contractual clause on protection of personal data-.

I understand that my personal data will be stored in accordance with the record retention requirements applicable to KCB. I acknowledge that as a data subject I have the right to request the access to, the correction and/or deletion, restriction of, as well as right to object against the processing of my personal data. These rights are more specifically described in the **KCB Data Privacy Statement**.

I understand that I can contact KCB at any time in relation to the use, access, rectification, restriction of my personal data through any of the available Contact Centre channels which include telephone 0711 087000 or 0732 187000, SMS: 22522 or by writing an email to: [contactcentre@kcbgroup.com](mailto:contactcentre@kcbgroup.com) . I also understand that I can withdraw my consent at any time.

I hereby voluntarily and expressly give consent to the to the Bank, its respective officers, agents, affiliates, in any jurisdiction to process my personal data as described above and any sensitive personal data provided regarding the products and services offered by the Bank, or to process my requests and for any other purposes required by law.

Name of data subject.....

Address .....

Telephone .....

Signature .....

Date.....

I consent

I do not consent

## ANNEXURE 2

### TO SUBSCRIBE TO MARKETING UPDATES

I understand that KCB would like to send to me news, promotional or marketing information and carry out market research about its products and services. Contact may be in person or through automated or electronic means including phone, e-mail, mobile apps, automated calls or KCB website.

I hereby consent to the processing of my personal data, which personal data I hereby voluntarily provide for the following purposes:

- a) Marketing purposes relating to KCB's offers of products and services.
- b) Sending information about organized events and other activities.
- c) Contacts for the purpose of market research.
- d) Contacts for the purpose of holidays greetings.
- e) Sending discount vouchers, gifts, prize competition.
- f) Profiling (marketing scores).
- g) Respond to or participate in a survey.
- h) Marketing purposes relating to third party's offers of products and services.

*By filling out below, I subscribe to updates by KCB and agree to receive promotional or marketing offers in accordance with **KCB Data Privacy Statement**.*

Name

Enter your phone number

Enter your email address

I acknowledge that I can contact KCB at any time if I wish to unsubscribe from direct marketing messages vide Contact Centre on 0711 087000 or 0732 187000, SMS: 22522 or by writing an email to: [contactcentre@kcbgroup.com](mailto:contactcentre@kcbgroup.com).

Name of Individual providing Consent:

Address of Individual providing Consent:

Signature:

Date of Signature: \_\_\_\_\_

\_\_\_\_\_ I consent

\_\_\_\_\_ I do not consent

TABLE A:

<b>MERCHANT CASH FLOW LOAN FINANCING FACILITY: PRICING SCHEDULE</b>	
<b>Interest Rate</b>	20.2% per annum
<b>Credit Life Insurance</b>	0.068% per month
<b>Merchant Cash Flow Loan facility duration</b>	Minimum period is 15 days Maximum period is 2 months (60 days)
<b>Default penalty</b>	10% per annum