

NON-DISCLOSURE AGREEMENT

BETWEEN

AND

CHASE BANK (KENYA) LIMITED

THIS AGREEMENT is made the _____ day of _____ Two Thousand and fourteen between _____ (hereinafter referred to as _____ which expression where the context so admits shall include its successors and assigns) of the one part, AND **CHASE BANK (KENYA) LIMITED** of Post Office Box Number 66049-00800 having its registered office situated in Nairobi (hereinafter referred to as the Bank which expression where the context so admits shall include its successors and assigns) of the other part;

WHEREAS

1. The Bank is desirous of engaging _____ as a _____,
2. _____ is willing to accept, carry out such services and exchange such information as may be necessary for the purposes of all the services that may be provided herein, and or for such other purposes as the Bank and _____ may agree in writing;

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

IN CONSIDERATION of the mutual promises, confidence and covenants made herein and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Bank and _____ intending to be legally bound, agree as follows;

1. CONFIDENTIAL INFORMATION

The Bank and _____ understand that their relationship is one of mutual trust and confidence and that, through such discussions and other exchanges of information, either Party may gain access to Confidential Information (as defined in **Clause 1.1.3.**) of the other. Each of the Parties agrees that it and each of its officers, directors, employees and counsel will be legally bound by the terms of this Agreement, and shall maintain the confidentiality of all such Confidential Information in accordance with this Agreement.

1.1 DEFINITIONS

- 1.1.1. "Disclosing Party"** means the Party disclosing Confidential Information to the other Party pursuant to this Agreement.
- 1.1.2 "Receiving Party"** means the Party receiving Confidential Information from the other Party pursuant to this Agreement
- 1.1.3 "Confidential Information"** means all information and know-how, regardless of whether or not in writing, of a private, secret or confidential nature that relates to the services as provided by either of the parties herein, technical, legal, marketing, sales, information technology, or financial affairs of the Disclosing Party, its subsidiaries, affiliates, customers, potential customers, suppliers or potential suppliers, provided or disclosed to the Receiving Party or which becomes known to the Receiving Party, whether or not marked or otherwise designated as "confidential", "proprietary" or with any other legend indicating its confidential nature. Confidential Information includes, by way of illustration and not limitation, all forms and types of financial, business, technical, economic, products, methods, techniques, processes, procedures, computer programs and software (whether as source code or object code), documentation, vendor information, customer information, research, and reports whether tangible or intangible, and whether or not stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing. Confidential Information shall further include any such

information, materials, tangible or intangible property of customers of, suppliers to or any other third party with whom the Disclosing Party does or considers doing business/services and who may have disclosed or entrusted such information to a Receiving Party pursuant to or in furtherance of the discussions and exchanges under this Agreement.

- 1.1.4 **“Confidential Record”** means any Document, computer software or other material containing confidential information.
- 1.1.5 **“Effective Date”** means the date of this Agreement.
- 1.1.6 **“Party” and “Parties”** means either party or both parties to this agreement.
- 1.1.7 Unless the context clearly indicates a contrary intention, expressions which denote:
 - a) any **gender** shall include the other gender;
 - b) **natural persons** shall include artificial persons and *vice versa*
 - c) the **singular** shall include the plural and *vice versa*.

2. MAINTENANCE OF CONFIDENTIALITY

- 2.0.1 Both parties agree that except as provided by the provisions of any law, order, rule or regulation under which the parties are obligated regarding their ordinary service operations, or unless otherwise agreed in writing both parties shall not disclose publicly or otherwise or describe any technical, legal, marketing, sales, information technology and all other information that relates to the service and the business relationship thereto and agree that they shall secure and keep such Information Confidential and:
- 2.0.2 Both parties shall protect and safeguard the Confidential Information against any unauthorized use, disclosure, report, transfer or publication with at least the same degree of care as it uses for their own confidential or proprietary information, but in no event use less than reasonable care;
- 2.0.3 Both Parties shall restrict Disclosure to those of its directors, officers, employees or attorneys who clearly have a need-to-know such Proprietary Information, and then only to the extent of such need-to-know, and only in furtherance of the specific purposes of this Agreement;
- 2.0.4 Use such Confidential Information only for the purposes of entering into the service transaction with the Disclosing Party, and not disclose such Confidential Information other than as set forth above unless the Disclosing Party shall have expressly authorized in writing such disclosure and;
- 2.0.5 Neither party shall use any Confidential Information to compete or obtain any competitive or other advantage to the disadvantage of the other party.
- 2.0.6 Notwithstanding the foregoing, the Receiving Party shall be entitled to release Confidential Information to permit it to prosecute or defend any claim under this Agreement or pursuant to an order of a court or government agency; provided, however, in case of release pursuant to this Section, the Receiving Party shall limit the release to the greatest extent reasonably possible under the circumstances and shall have provided the Disclosing Party with sufficient advance notice to permit the

Disclosing Party to seek a protective order or other order protecting its Confidential Information from disclosure.

2.0.7 Confidential Information shall **not** include information that:

- a. Has become public knowledge through legal means without fault by the Receiving Party
- b. Is already public knowledge prior to the Disclosing Party's disclosure of the same to the Receiving Party
- c. Is known to the Receiving Party prior to the Disclosing Party's disclosure of the same pursuant to this Agreement, or:
- d. Is independently developed by the Receiving Party without reference to or use of the Confidential Information.

2.1 OWNERSHIP

All Confidential Information, including that which is contained in files, letters, memoranda, reports, records, data, sketches, notebooks, program listings, or other written, photographic, or other tangible, intangible, or other materials, or which shall come into a Receiving Party's custody or possession, is and at all times shall be exclusive property of the Disclosing Party, to be used by the Receiving Party only for the purposes expressly contemplated by this Agreement.

2.2 NO RIGHTS OR LICENSES GRANTED

The Receiving Party shall not acquire hereunder any right whatsoever to any Confidential Information, including without any limitation any right or license of any patent, trademark, copyright, trade secret, moral right, or any other right now or later recognized by any law or regulation of any jurisdiction throughout the universe (collectively, "**Intellectual Property Rights**") as a result of or in connection with any disclosure hereunder. Accordingly, nothing in this Agreement is intended or shall be construed as a transfer, grant, license, release or waiver of any Intellectual Property Rights in any Confidential Information.

2.3 RETURN OF CONFIDENTIAL INFORMATION

At the request of the Disclosing Party, or upon termination of this Agreement, the Receiving Party shall promptly destroy all its copies/data of such Confidential Information or return the same to Disclosing Party and in either case shall, within thirty (30) days of receiving such request, certify in writing its compliance with the terms of this provision. After such destruction or delivery, the Receiving Party shall not retain any copies/data thereof.

2.4 NO OBLIGATION

Nothing in this Agreement shall be deemed to obligate either Party to disclose any Confidential Information to the other, or to accept any Confidential Information of the other.

2.5 REMEDY

Each Party acknowledges the insufficiency of money damages as a remedy for any breach of this Agreement by a Receiving Party, and that any such breach could cause the Disclosing Party irreparable harm. Accordingly, the Disclosing Party, as the case may be, in addition to any other remedies available at law, shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach. If litigation arises relating to this Agreement, and a court of competent jurisdiction determines that a Party, or any of its respective employees, has breached this Agreement, such Party shall be liable and shall pay the other Party the reasonable legal expenses incurred by the prevailing Party in connection with such litigation, including any appeals therefrom.

2.6 TERM AND TERMINATION

The term of this agreement shall commence on the effective date and shall continue for the period of the service negotiations, agreement and transactions between the parties unless sooner terminated upon prior written notice of at least one (1) month by one party to the other. The obligations of confidentiality with respect to all confidential information shall survive the termination or expiration of this agreement.

- 2.6.1 Upon any breach by the other party, the other party may terminate this agreement by giving a seven (7) days' notice.

3 MISCELLANEOUS

3.1 SEVERABILITY

- 3.1.1 The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

3.2 NO WAIVER

- 3.2.1 No delay or omission by the Disclosing Party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by Disclosing Party on any occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.

3.3 GOVERNING LAW

- 3.3.1 This Agreement shall be governed by and construed in accordance with the laws of Kenya. Each Party irrevocably agrees to submit to the jurisdiction of the High Court of Kenya over any claim or matter arising under or in connection with this Agreement or the legal relationships established by this Agreement.

3.4 ARBITRATION

- 3.4.1 The Parties shall, in the first instance, use their best efforts to amicably settle all disputes arising out of or in connection with this Agreement or its interpretation. In the events that no amicable solution shall be reached with respect to any dispute arising out of or in connection with this Agreement, the same shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such

Agreement within fourteen (14) days of the notification of the dispute, upon the application of either Party, to the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom.

- 3.4.2 Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
- 3.4.3 To the extent permissible by law, the determination of the arbitrator shall be final conclusive and binding upon the parties.
- 3.4.4 Nothing in this Agreement shall prevent a Party from seeking urgent injunctive or interlocutory relief in a court of competent jurisdiction.

3.5 NO RELATIONSHIP CREATED

- 3.5.1 Nothing in this Agreement shall be construed as establishing or implying any partnership, agency or joint venture relationship between the Parties, or authorize a Party to commit or bind the other Party in any way whatsoever without obtaining the other Party's prior written consent.

3.6 NON COMMITMENT

- 3.6.1 Nothing contained in this Agreement shall be construed as implying any commitment or agreement by either Party to make any investment in the other Party or in any business of the other Party or to enter into any other business arrangements of any nature whatsoever with respect to the other Party.

3.7 AMENDMENTS IN WRITING

- 3.7.1 No amendment or modification of any term of this Agreement shall be valid and binding on the Parties unless made in writing and executed on behalf of each Party by a duly authorized representative.

3.8 NO WARRANTY

- 3.8.1 No disclosure of any Confidential Information by the Parties shall constitute any representation or warranty by that Party regarding the accuracy of the same or the non-infringement of any patent, trademark, copyright or any other intellectual property or proprietary right.

3.9 NO PUBLICATION

- 3.9.1 Neither Party shall disclose, publicize or advertise in any manner the discussions or negotiations contemplated by the Agreement without the prior written consent of the other Party, except as may be required by law.

3.10 ENTIRE AGREEMENT

3.10.1 This Agreement constitutes the entire Agreement between the Parties hereto concerning the subject matter hereof and supersedes any prior or contemporaneous agreements and understandings concerning the subject matter hereof.

3.11 NON CIRCUMVENTION

3.11.1 Each of the Parties unconditionally and irrevocably undertakes with the other that it will not for a period of twelve (12) months from the date of this Agreement solicit or entice away from the other Party any person presently in the employment of the other Party whether or not such person knows of any of the Confidential Information or would commit a breach of his contract of employment by reason of his leaving the employment of the other Party.

3.11.2 Each of the Parties unconditionally and irrevocably undertakes with the other that it will not for a period of twelve (12) months from the date of this Agreement solicit or entice away from the other Party any customer of the other Party who has not (prior to this agreement) been a customer of that Party.

3.12 COUNTERPARTS

3.12.1 This Agreement and any amendments hereto may be executed in counterparts, each of which when executed and delivered shall be deemed an original and all of which taken together shall constitute one and the same instrument. This Agreement may be delivered by facsimile.

3.13 NOTICES

3.13.1 Any notice or other communication to be given under this Agreement shall be in writing and shall be sufficiently served if:

- (a) delivered in a prepaid envelope by certified mail five (5) days from the date of such delivery
- (b) personally delivered on the date of such delivery
- (c) by facsimile one (1) business day after the date of such transmission if confirmed to the following addresses;

P.O. Box _____.
Kenya

CHASE BANK (KENYA) LIMITED
Riverside drive, Riverside Mews,
P.O. Box 66049 00800
Nairobi, Kenya
Fax: 020 – 4454816

3.14 HEADINGS

3.14.1 Headings used in this Agreement are for reference only and shall not affect the interpretation of this Agreement in any way.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date and agree to be legally bound by all terms and conditions contained herein.

SIGNED BY

_____ }
_____ }

In the presence of

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} _____
} **Signature**

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} _____
} **Signature**

SIGNED by the duly authorized Attorney of
CHASE BANK (KENYA) LIMITED

In the presence of

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} _____
} **Signature**
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