

## HFCB GENERAL TERMS AND CONDITIONS

### 1.0 THE AGREEMENT

- 1.1 This Agreement sets out the complete Terms and Conditions (hereinafter called “these Terms and Conditions”) which shall be applicable to the Whizz Account (as hereinafter defined) opened by you (as hereinafter defined) with HFCB (as hereinafter defined).
- 1.2 These Terms and Conditions and any amendments or variations thereto take effect on their date of publication.

### 2.0 DEFINITIONS

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

- 2.1 “Bank” means HFCB 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 subsidiaries of HFCB as may from time to time be specified by HFCB to you;
- 2.2 “Credit Reference Bureau” means a credit reference bureau duly licensed under the Banking Act pursuant to the Banking (Credit Reference Bureau) Regulations, 2013 to inter alia, collect and facilitate the sharing of customer credit information;
- 2.3 “Customer” means the person in whose name the Whizz Account with HFCB is open and existing;
- 2.4 “Customer Care Centre” means the HFCB Customer Care Department, any HFCB Branch or such other retail outlets or outlets as may be notified to the Customer by HFCB from time to time;
- 2.5 “E-Money” means the electronic monetary value depicted in your Whizz Account representing an equal amount of cash;
- 2.6 “Equipment” includes your mobile phone handset, SIM Card and/or other equipment which when used together enables you to access the Network;
- 2.7 “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;
- 2.8 “KYC/AML” (Know your customer/Anti-money Laundering) means the process of a business identifying and verifying the identity of its clients towards averting illegal transfer of funds through an account;
- 2.9 “Whizz Menu” means the Menu on the Whizz App System;
- 2.10 “Whizz Account II” means your mobile money store of value, being the record maintained by HFCB of the amount of E-Money from time to time held by you in the Whizz System;
- 2.11 “Mobile Money Account” means your mobile money store of value, being the record maintained by Mobile Money Providers in Kenya of the amount of E-Money from time to time held by you in the Mobile Money Provider’s System;
- 2.12 “Mobile Money” means the money transfer and payments service operated by the Mobile Money Providers in Kenya;
- 2.13 “Mobile Network Operator” means a mobile network operator in Kenya registered with the Communications Authority of Kenya;
- 2.14 “Mobile Money Provider” means a Mobile Network Operator that has been duly authorised by the Central Bank of Kenya under applicable law to offer Mobile Money Services in Kenya;
- 2.15 “Mobile Money Service” means the money transfer and payments service provided by the Mobile Money Providers through the Mobile Money System;
- 2.16 “Network” means a mobile cellular network operated by a Mobile Network Operator;
- 2.17 “Request” means a request or instruction received by HFCB from you or purportedly from you through the Network and the System and upon which HFCB is authorised to act;
- 2.18 “Services” shall include any form of banking services or products that HFCB may offer you pursuant to this Agreement and as you may from time to time subscribe to and “Service” shall be construed accordingly;
- 2.19 “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 money System;
- 2.20 “SMS” means a short message service consisting of a text message transmitted from one mobile phone to another;
- 2.21 “System” means HFCB’s electronic banking and communications software enabling the Customer to communicate with HFCB for purposes of the Services;

- 2.22 “Transaction Fees” includes any fees and charges payable for the use of the Services as published by HFCB on HFCB’s website and/or the daily newspapers in Kenya or by such other means as HFCB shall in its sole discretion determine. Transaction Fees are subject to change at any time at HFCB’s sole discretion.
- 2.23 “We,” “our,” and “us,” means HFCB and includes the successors and assigns of HFCB;
- 2.24 “You” or “your” means the Customer and includes the personal representatives of the Customer;
- 2.25 The word “Customer” shall include both the masculine and the feminine gender as well as juristic persons;
- 2.26 Words importing the singular meaning where the context so admits include the plural meaning and vice versa;
- 2.27 Headings in these Terms and Conditions are for convenience purposes only and they do not affect the interpretation of this Agreement.

### **3.0 ACCEPTANCE OF THE TERMS AND CONDITIONS**

- 3.1 Before applying to open the Whizz Account you should carefully read and understand these Terms and Conditions which will govern the use and operation of the Whizz Account.
- 3.2 If you do not agree with these Terms and Conditions, please click “Decline” on the Whizz Menu.
- 3.3 You will be deemed to have read, understood and accepted these Terms and Conditions:-
  - 3.3.1 upon clicking on the “Accept” option on the Whizz Menu requesting you to confirm that you have read, understood and agreed to abide with these Terms and Conditions; and/or
  - 3.3.2 by using or continuing to use and operate the Whizz Account.
- 3.4 By applying to open the Account with HFCB, you agree to comply with and be bound by these Terms and Conditions for the time being and from time to time in force governing the operation of the Whizz Account and you affirm that these Terms and Conditions herein are without prejudice to any right that HFCB may have with respect to the Whizz Account in law or otherwise.
- 3.5 These Terms and Conditions may be amended or varied by HFCB from time to time and the continued use of your Whizz Account constitutes your agreement to be bound by the terms of any such amendment or variation.
- 3.6 You acknowledge and accept that HFCB offers the Whizz Account only electronically and you agree to do business with HFCB and to operate the Whizz Account only by electronic means via the Whizz App.
- 3.7 The Borrower agrees that HFCB may engage third-party service providers, agents or technology platforms for purposes of assessing, verifying, processing and analysing financial information, financial statements and supporting documents submitted by the Borrower, or available on third party platforms in connection with this Facility.
- 3.8 HFCB shall ensure that any such third parties are contractually bound to maintain the confidentiality of the Borrower’s information and to implement appropriate security safeguards, and shall process such information strictly in accordance with applicable laws and regulations, including the Data Protection Act, 2019, and HFCB’s internal data protection and privacy requirements.

### **4.0 ACCOUNT OPENING**

- 4.1 In order to open a Whizz Account with HFCB, you must be at least 18 years old and a holder of a Kenya National Identity Card.
- 4.2 You may open a Whizz Account solely by way of an electronic application made by you using your Equipment via the Whizz App available on Android and iOS.
- 4.3 You hereby agree and authorise HFCB to request any of the Mobile Network Operators with whom HFCB has entered into an agreement to provide this service for your personal information held by the, pursuant to the agreement between you and the Mobile Network Operator for the provision of products and services including your phone number, name, date of birth, ID or Passport Number and such other information that will enable HFCB to identify you and comply with the regulatory “Know Your Customer” requirements (together the “Personal Information”). You also hereby agree and authorise HFCB to request the Mobile Network Operator for information relating to your use of their networks, mobile money systems and other services as HFCB shall require for purposes of providing you the Services (“Mobile Usage Information”). You hereby consent to the disclosure of the Personal Information and the Mobile Usage Information to HFCB and to the aforesaid use of the Information by HFCB.
- 4.4 You hereby agree and authorise HFCB 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 HFCB.
- 4.5 You hereby further acknowledge and authorise HFCB to verify your Personal Information received from a Mobile Network Provider pursuant to Clause 4.3 against the information received from the Government of Kenya in your respect as contained in the IPRS.
- 4.6 HFCB reserves the right to request for further information from you pertaining to your application for a Whizz Account at any time. Failure to provide such information within the time required by HFCB may result in HFCB declining to accept your application for a Whizz Account.

- 4.7 Acceptance by HFCB of your application for a Whizz Account shall be done via pop-up message on the Whizz menu and/or an SMS sent to the Mobile Phone Number associated with your Whizz Account. You acknowledge and accept that the acceptance by HFCB of your application for a Whizz Account does not create any contractual relationship between you and HFCB beyond the terms and conditions that apply to your Whizz Account from time to time.
- 4.8 HFCB reserves the right to decline your application for a Whizz Account or to revoke the same at any stage at HFCB's sole discretion and without assigning any reason or giving any notice thereto.

## **5.0 YOUR REQUESTS**

- 5.1 You hereby irrevocably authorise HFCB to act on all Requests received by HFCB from you (or purportedly from you) through the System and to hold you liable in respect thereof. HFCB may nevertheless refuse to carry out any Requests which would result in there being an overdraft on your Whizz Account.
- 5.2 HFCB 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, HFCB believes that it can correct the incomplete or ambiguous information in the Request, without any reference to you being necessary.
- 5.3 HFCB shall be deemed to have acted properly and to have fully performed all the obligations owed to you notwithstanding that the Request may have been initiated, sent or otherwise communicated in error or fraudulently, and you shall be bound by any Requests on which HFCB may act if HFCB has in good faith acted in the belief that such instructions have been sent by you.
- 5.4 HFCB may, in its absolute discretion, decline to act on or in accordance with the whole or any part of your Request pending further enquiry or further confirmation (whether written or otherwise) from you. HFCB shall not be under any obligation to so decline in any case, and shall in no event or circumstance be liable for not so declining.
- 5.5 You agree to and shall release from and indemnify HFCB against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to HFCB having acted in accordance with the whole or any part of any of your Requests (or failed to exercise) the discretion conferred upon it.
- 5.6 You acknowledge that to the full extent permitted by law HFCB shall not be liable for any unauthorised drawing, transfer, remittance, disclosure, any activity or any incident on your account by the fact of the knowledge and/or use or manipulation of your Whizz PIN, password, ID or any means whether or not occasioned by your negligence.
- 5.7 HFCB may refuse to make a payment if you do not have sufficient funds in your Whizz Account. In deciding whether you have sufficient funds, HFCB will take account of any instructions to make payments and regular payments which have not yet been paid from your Whizz Account. HFCB will not be obliged to take account of regular credits or any amounts received after it has decided not to make the payment.
- 5.8 HFCB is authorised to effect such orders in respect of your Whizz Account as may be required by any court order or competent authority or agency under the applicable laws.
- 5.9 In the event of any conflict between any terms of any Request received by HFCB from you and these Terms and conditions, these Terms and conditions shall prevail.

## **6.0 OVERDRAWING YOUR WHIZZ ACCOUNT**

- 6.1 No Overdraft will be allowed on your Whizz Account.
- 6.2 HFCB is entitled to demand repayment of any money overdrawn from your account together with interest and penalties.

## **7.0 LIEN**

- 7.1 HFCB shall have a general lien over all your property/assets in its possession in the event that you owe any money to HFCB including but not limited to cash, goods, securities or valuables deposited for safe custody as security, cheques presented, bills and any other movable or immovable property charged to secure repayment of any money, whether or not that money has been repaid, and also over all property in respect of which, by the general law, HFCB has lien.
- 7.2 Where you are indebted to HFCB in circumstances giving HFCB a right of set off, all property held under lien in terms of sub-clause 7.1 hereof shall be deemed to be held as security for the debt.
- 7.3 HFCB may at any time give you notice in writing that if an accrued debt is not paid within a period being not less than 14 days (or such other period specified in the notice) from the date of receipt by you of the notice then HFCB may, without further notice, realise sufficient of your assets to discharge the debt. Any part payment made will be accepted strictly on account and without prejudice to HFCB's rights.
- 7.4 You hereby constitute us as your attorney for the purposes of any transaction will be held on your behalf in relation to your assets for purposes of discharging the debt.

## **8.0 SET-OFF**

- 8.1 HFCB may, upon notice, combine/consolidate your Whizz Account with any of your other accounts held in HFCB, whether current, loan, savings, deposit, term deposit, joint or any other type and thereafter set off any amount held to your credit against any indebtedness you owe to HFCB.
- 8.2 HFCB may, upon notice to you, set off any amount held to your credit on your Whizz Account against any indebtedness you owe to HFCB.
- 8.3 HFCB may, upon notice to you, set off your Whizz Account against any other account or indebtedness in respect of which you are liable, notwithstanding that some other person may also be liable in respect thereof. In such circumstances, upon receipt of an indemnity acceptable to HFCB (against costs) and at your expense, HFCB will give you any assistance necessary in obtaining a refund.
- 8.4 If the set off is for debt recovery, HFCB will provide you with a detailed breakdown of the costs and expenses recovered from you together with a justification for such costs and expenses.

## **9.0 STATEMENTS**

- 9.1 You may request for a statement or activity report in respect of your Whizz Account from HFCB using your Equipment ("Whizz Account Mini Statement").
- 9.2 A Whizz Account Mini Statement shall provide details of the last 4 (four) transactions (or such other number of transactions as determined by HFCB) in your Whizz Account initiated from your Equipment.
- 9.3 A Whizz Account Mini Statement shall not be sent to you in printed form but shall be delivered to you either by SMS to the Mobile Phone Number associated with your Whizz Account or such other electronic means as HFCB may in its discretion determine. You shall be responsible for the payment of any charges levied by HFCB and the Mobile Network Operator in delivering the Whizz Account Mini Statement to you.
- 9.4 You may obtain printed Whizz Account Mini Statements or a printed bank statement pertaining to your Whizz Account from HFCB. You shall be responsible for the payment of any charges levied by HFCB for such printed statements.
- 9.5 Save for a manifest error, a Whizz Account Mini Statement or bank statement issued to you aforesaid in respect of your Whizz Account shall be conclusive evidence of the transactions carried out on your Whizz Account for the period covered in the Mini Statement and/or bank statement.
- 9.6 Your statement will show all amounts added or taken from your Whizz Account during the period requested and/ or since the previous statement. You must check your statement carefully and tell HFCB as soon as possible if it includes any transaction or other entry which appears to you to be wrong or not made in accordance with your instructions.
- 9.7 HFCB reserves the right to rectify discrepancies, add and/or alter the entries in your statements, without prior notice to you. HFCB will however inform you of any rectification, additions and or alterations effected on your statements within a reasonable time after the changes are effected.
- 9.8 You will be notified of all transactions on your Whizz Account by way of SMS and the charges for this service will be debited to your Whizz Account.

## **10. CUSTOMER COMPLAINTS**

- 10.1 Complaints may be made in person, in writing, by post, fax, email or by telephone.
- 10.2 HFCB will take all measures within its means to resolve your complaints within a reasonable time. All complaints will be handled in accordance with HFCB's complaints handling procedures, which are available on request from any Bank Branch. Where a notification regarding your complaint or any other matter is expected from HFCB but not received, the complaint must be made within a reasonable time after non-receipt of such notification.
- 10.3 Applicable tariffs will be charged by your telephone and internet service provider(s) when communicating with HFCB Branch.

## **11. INOPERATIVE AND DORMANT ACCOUNTS**

- 11.1 Your Whizz Account will automatically be classified as inactive if you do not initiate any transactions on the account for a continuous period of 12 months.
- 11.2 HFCB shall make reasonable endeavors to inform you of the intended classification of your Whizz Account as inactive at least one (1) month before such classification. HFCB shall, no later than seven (7) days from the date of such classification, inform you of such classification by way of SMS alerts addressed to your mobile telephone number.
- 11.3 Your Whizz Account will be classified as Dormant if it remains inactive for a further period of 12 months, in which case the account balances shall be transferred from your Whizz Account to a central account for security reasons.

- 11.4 You will not be allowed to transact on an inactive or dormant account but HFCB shall, upon your written request, inform you of the procedure to be followed to activate your inactive/dormant account.
- 11.5 HFCB may (including without limitation) apply any one or more of the following conditions to Whizz Account upon its classification as Dormant:
  - 11.5.1 confirm the validity and authenticity of the first transaction reactivating the account;
  - 11.5.2 suspend the payment of interest (if applicable);
  - 11.5.3 suspend the issuance of statements;
  - 11.5.4 charge a maintenance fee as we may determine from time to time;
  - 11.5.5 If your Whizz Account will not have any transactions initiated by you for a continuous period of five (5) years or if you shall not have communicated with us for a continuous period of five (5) years regarding your Whizz Account, such account will be presumed abandoned and transferred to the Unclaimed Financial Assets Authority as such.

## 12. BANK CHARGES AND EXPENSE INTEREST

- 12.1 HFCB may debit your Whizz Account with bank fees, interest, commissions, costs and other charges in respect of HFCB's products and services provided to you, including but not restricted to the following:
  - 12.1.1 Unless otherwise agreed in writing, interest on overdrawn accounts, loan accounts or any other facility granted, at any rate or rates as HFCB may determine from time to time, but not exceeding the maximum allowed by law, which rate or rates may be different for different accounts. Such interest will be calculated on daily balances and debited monthly. HFCB will notify you within reasonable time prior to effecting any change(s) as regards interest rates. Where a higher rate of interest has been agreed, HFCB may charge such higher rate on any of your accounts. Such interest is payable notwithstanding the determination of your relationship with HFCB and until you repay the full amount you owe HFCB in full.
  - 12.1.2 Legal charges: Advocate and client charges, costs and expenses incurred in any legal, arbitration or other proceedings arising out of or connected with your Whizz Account;
  - 12.1.3 Commissions: Commissions at such rates as HFCB may determine from time to time.
  - 12.1.4 Other charges and expenses: In addition to the debits authorised by this clause, all other proper expenses and charges including but not limited to ledger fees, postage, cables, telephone calls, taxes, duties and impositions, HFCB may also debit your account with expenses incurred:
    - i. In complying with your requests;
    - ii. In complying with the requests of authorised and accredited Government or other agencies in relation to your account;
    - iii. In maintaining your Account;
    - iv. In collecting or attempting to collect any amount of money you owe HFCB; and
    - v. Expenses incurred in realizing any security or protecting the subject matter of any security issued to HFCB.
  - 12.1.5 Such penalties as are provided in these Terms and Conditions at any rate or rates as HFCB may determine from time to time. The penalties will be calculated on daily balances and debited monthly. Penalties shall be due and payable notwithstanding the determination of your relationship with HFCB until settlement in full;
  - 12.1.6 HFCB will provide you with a detailed breakdown of the costs, charges and expenses incurred under sub-clauses (1), (2), (3), (4) and (5) of this clause in the account statements. Please visit your nearest Bank branch for a copy of the complete guide on HFCB's Tariffs. The Tariffs are also available on our website at [www.hfgroup.co.ke](http://www.hfgroup.co.ke)
  - 12.1.7 HFCB will give you at least seven (7) days' notice of intention to effect new charges, fees, costs and/or commissions by way of email, SMS, letter and/or notices in the daily newspapers.

## 13. TAXES

- 13.1 All payments to be made by you in connection with these terms and conditions are calculated without regard to any taxes payable by you. If any taxes are payable in connection with the payment, you must pay HFCB 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.
- 13.2 Amounts in your Whizz Account may be subject to withholding tax in accordance with applicable law.
- 13.3 You consent and agree that HFCB may withhold amounts in your Whizz Account or any other of your accounts held in HFCB at any time, if any tax authority requires HFCB to do so, or HFCB is otherwise required by law or pursuant to agreements with any tax authority to do so, or if HFCB needs to comply with internal policies or with any applicable order or sanction of a tax authority.

## 14. WHIZZ VIRTUAL DEPOSIT ACCOUNT

- 14.1 As a holder of a Whizz Account, you will be entitled, subject to these Terms and Conditions, to transfer money from your mobile money account and/or make withdrawals therefrom into your mobile money account, send money from one Whizz account to another customer's Whizz account, and/or to borrow money from HFCB. Mobile money limits and charges will be applicable.
- 14.2 You may make deposits into your Whizz Account or withdraw funds therefrom using the Whizz Menu on your Equipment.
- 14.3 You will not be required to notify HFCB in advance of making a deposit or withdrawal into or from your Whizz Account.
- 14.4 HFCB shall channel withdrawals from your Whizz Account into your mobile money Account.
- 14.5 Transaction Fees and applicable Bank fees, commissions and other charges will be charged on all transactions between your other Bank account(s) and your Whizz Account, as well as on any transactions on your Whizz Account facilitated through any designated Bank Agents.
- 14.6 There will be no restrictions on the number of deposits into your Whizz Account over any period of time subject to a minimum deposit of KShs. 1.
- 14.7 Subject to availability of sufficient funds to your credit, HFCB shall impose no restrictions on the number of withdrawals you may make from your Whizz Account over any period of time. You may withdraw up to the daily maximum allowable limit of Kenya Shillings Two Hundred Thousand Only (KShs. 200,000/-)
- 14.8 Any deposits exceeding KShs. 1,000,000/- shall require compliance with HFCB's KYC/AML conditions or other conditions and documentation as may be required by HFCB.
- 14.9 Through the Whizz Menu on your Equipment, and subject to providing HFCB with such further documentation and comply with any other or further conditions as may be required by HFCB, you may order for an ATM and cheque book for a HFCB account, and establish standing orders and instruct HFCB to make loan repayments and establish term deposits using funds from your Whizz Account or any other Current or Transactional Account held with HFCB.
- 14.10 As a holder of a Whizz Account, you may, subject to these terms and conditions, apply for a loan from HFCB using the Whizz Menu on your Equipment.

## 15. WHIZZ LOANS

- 15.1 In order to qualify for a Whizz Loan, you must be a holder of a Kenyan National Identity Card.
- 15.2 Upon opening your Whizz Account, you will receive a confirmation message bearing your allowable credit limit. You may thereafter, subject to these terms and conditions, apply for a loan using the request loan menu on the Whizz Menu on your Equipment. The Transaction Fees payable for transactions effected in respect of your Whizz Account from time to time will apply to any transactions effected in respect of your Whizz Loan.
- 15.3 The loan tenor shall be 1 calendar day, 7 calendar days, 30 calendar days, 90 calendar days and 180 calendar days. As you apply for the loan, you will be able to select your preferred loan repayment period from the Whizz Menu on your Equipment. The available repayment period options on the Whizz Menu will be for repayment within 1 calendar day, 7 calendar days, 30 calendar days respectively.
- 15.4 Your Whizz Loan application will be appraised according to the applicable loan appraisal processes of HFCB. HFCB reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.
- 15.5 Notification of acceptance or rejection by HFCB of your application for a Whizz Loan shall be done via a pop-up message sent on the loan menu of the Whizz Account.
- 15.6 Subject to approval of your application for a loan, HFCB shall disburse to you a loan of an amount to be determined by HFCB in its sole discretion subject to a minimum amount of Kenya Shillings One Thousand (KShs. 1000/-) and a maximum amount of Kenya Shillings Fifty Thousand (KShs. 50,000/-) or such other minimum or maximum amount as HFCB may from time to time in its sole discretion determine.
- 15.7 HFCB will directly credit the loan proceeds into your Whizz Deposit Account subject to any deductions on account of applicable Transaction Fees and interest charges.
- 15.8 You may only withdraw the loan from your Whizz Account in accordance with Clause 14.1. Transactions between your Whizz Account will be subject to the deposit and withdrawal limits under the Service.
- 15.9 In consideration of HFCB granting you the loan, you shall pay HFCB interest at the prescribed Central Bank of Kenya Rate (CBR) plus 4%, together with a commission charge at rate of 6% to be deducted upfront at disbursement, or such other rate or charge to be determined by HFCB.
- 15.10 The Customer loan will be issued net of commission and charges but subject to interest on repayments.
- 15.11 You shall make all payments due from you to HFCB in respect of the loan and Transaction Fees through your mobile money Account, your Whizz Account, HFCB branch.

- 15.12 In the event that you do not repay any loan within the agreed repayment period, HFCB will be authorised to apply a one-time late payment fee of 6% to the outstanding loan. The amount outstanding shall continue to accrue interest until repaid in full, and you shall not be eligible to apply for a further loan until the outstanding loan is fully repaid.
- 15.13 You hereby agree to pay costs, charges and expenses incurred by HFCB in obtaining or attempting to obtain payment of any loan owed under your Whizz Loan Account.
- 15.14 HFCB shall be entitled to terminate this Agreement and close your Whizz Account in accordance with the provisions of Clause 21 without prejudice to any of its rights accruing hereunder if you fail to repay the loan and/ or the Transaction Fees due thereon within the agreed repayment period.
- 15.15 HFCB shall utilise funds in any other accounts opened and operated by you to offset any amounts outstanding and due from you to HFCB in respect of your loan.
- 15.16 HFCB shall utilise the funds held in your Whizz Account to pay off any amounts outstanding from your loan. HFCB shall only exercise this option after giving you notice and after setting off all other funds held by the Bank.
- 15.17 HFCB reserves the right to vary the terms of the loan including the interest rate and 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 HFCB.

## **16. DISCLOSURE**

- 16.1 You hereby expressly consent and authorise HFCB to disclose receive record or utilise your personal information or information or data relating to your Whizz Account and/or loan and any details of your use of the Services: to and from HFCB's service providers, dealers, agents or any other company that may be or become the Bank's subsidiary or holding company for reasonable commercial purposes relating to the Services;
- 16.1.1 to and from HFCB's service providers, dealers, agents or any other company that may be or become the Bank's subsidiary or holding company for reasonable commercial purposes relating to the Services;
- 16.1.2 to Credit Reference Bureaus or any regulator or authority as required under the Banking Act, the Banking Act (Credit Reference Bureau Regulations), 2013, as published, amended or revised from time to time or any other law;
- 16.1.3 to HFCB's lawyers, auditors or other professional advisers or to any court or arbitration tribunal in connection with any legal or audit proceedings;
- 16.1.4 to the Mobile Network Operator in connection with the mobile money service and the Services;
- 16.1.5 for reasonable commercial purposes connected to your use of the Services, such as marketing, underwriting of insurance policies, updating of databases, provision of user support and research related activities; and
- 16.1.6 in business practices including but not limited to quality control, training and ensuring effective systems operation.
- 16.2 You authorise HFCB to disclose any information relating to your Whizz Account to any local or international law enforcement or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud or to any other institution or third party as required by the laws of any country and as HFCB may deem necessary.
- 16.3 In the event of death, your estate administrator will be granted access to your Whizz Account upon production of administration letters from a competent authority or confirmed grant of letters of administration or confirmed grant of probate by your legal representatives duly appointed by the Court.

## **17. YOUR EQUIPMENT AND RESPONSIBILITIES**

- 17.1 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.
- 17.2 You shall be responsible for ensuring the proper performance of your Equipment. HFCB shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall HFCB 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 HFCB shall not be responsible for losses or delays caused by any such service provider.
- 17.3 You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by HFCB concerning the use of the System and Services.
- 17.4 You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your Account PIN secret and secure. You shall ensure that your Account PIN does not become known or come into possession of any unauthorised person. HFCB shall not be liable for any disclosure of your PIN to any third party and you hereby agree to indemnify and hold HFCB harmless from any losses resulting from any PIN disclosure.

- 17.5 You shall take all reasonable precautions to detect any unauthorised use of the System and the Services. To that end, you shall ensure that all communications from HFCB are examined and checked by you or on your behalf as soon as practicable after receipt by you in such a way that any unauthorised use of and access to the System will be detected.
- 17.6 You shall immediately inform HFCB through the Customer Care Centre in the event that:
- 17.6.1 You have reason to believe that your Whizz PIN is or may be known to any person not authorised to know the same and/or has been compromised; and/or
- 17.6.2 You have reason to believe that unauthorised use of the Services has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 17.7 You shall at all times follow the security procedures notified to you by HFCB from time to time or such other procedures as may be applicable to the Services from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your Whizz Account's confidentiality. In particular, you shall ensure that the Services are not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorised to do so.
- 17.8 You shall not at any time operate or use the Services in any manner that may be prejudicial to HFCB.

## **18. EXCLUSION OF LIABILITY**

- 18.1 HFCB shall not be responsible for any loss suffered by you should the Services be interfered with or be unavailable by reason of (a) the failure of any of your Equipment, or (b) any other circumstances whatsoever not within HFCB's control including, without limitation, force majeure or error, interruption, delay or non-availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.
- 18.2 HFCB will not be liable for any losses or damage suffered by you as a result of or in connection with:
- 18.2.1 unavailability of sufficient funds in your Bank Account, mobile money Account and/or in your Whizz Account;
- 18.2.2 failure, malfunction, interruption or unavailability of the System, your Equipment, the Network, Mobile Network Operator System and/or mobile loan service;
- 18.2.3 the money in your Whizz Account being subject to legal process or other encumbrance restricting payments or transfers thereof;
- 18.2.4 your failure to give proper or complete instructions for payments or transfers relating to your Whizz Account;
- 18.2.5 any fraudulent or illegal use of the Services, the System and/or your Equipment; or
- 18.2.6 your failure to comply with these Terms and conditions and any document or information provided by HFCB concerning the use of the System and the Services.
- 18.3 If for any reason other than a reason mentioned in subparagraphs 18.1 or 18.2, the Services are interfered with or unavailable, HFCB's sole liability under this Agreement in respect thereof shall be to re-establish the Services as soon as reasonably practicable.
- 18.4 Save as provided in subparagraph 18.3 HFCB shall not be liable to you for any interference with or unavailability of the Services, howsoever caused.
- 18.5 Under no circumstances shall HFCB 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 HFCB.
- 18.6 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

## **19. INTELLECTUAL PROPERTY RIGHTS**

You acknowledge that the intellectual property rights in the System (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that HFCB provides to you through the System or otherwise are vested either in HFCB or in other persons from whom HFCB 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 HFCB.

## **20. INDEMNITY**

- 20.1 In consideration of HFCB complying with your instructions or Requests in relation to the Whizz Account, you undertake to indemnify HFCB and hold it harmless against any loss, charge, damage, expense, fee or claim which HFCB suffers or incurs or sustains thereby and you absolve HFCB from all liability for loss or damage which you may sustain from HFCB acting on your instructions or requests or in accordance with these Terms and conditions.

20.2 The indemnity in clause 20.1 shall also cover the following:

- 20.2.1 All demands, claims, actions, losses and damages of whatever nature which may be brought against HFCB 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 HFCB'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 HFCB.
- 20.2.2 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
- 20.2.3 Any unauthorised access to your Whizz Account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment.
- 20.2.4 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 HFCB as a consequence of any breach by these Terms and conditions.
- 20.2.5 Any damages and costs payable to HFCB in respect of any claims against HFCB for recompense for loss where the particular circumstance is within your control.

## **21. VARIATION AND TERMINATION OF RELATIONSHIP**

- 21.1 HFCB may at any time, upon notice to you, terminate or vary its business relationship with you and close your Whizz Account and in particular but without prejudice to the generality of the foregoing HFCB may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as HFCB may determine.
- 21.2 Without prejudice to HFCB rights under clause 21.1, HFCB may at its sole discretion suspend or close your Whizz Account:
  - 21.2.1 if you use the Whizz Account for unauthorised purposes or where HFCB detects any abuse/misuse, breach of content, fraud or attempted fraud relating to your use of the Services;
  - 21.2.2 if your agreement with the Mobile Network Operator you registered the Whizz Account service is terminated for whatever reason;
  - 21.2.3 if HFCB is required or requested to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
  - 21.2.4 if HFCB reasonably suspects or believes that you are in breach of these terms and conditions (including non-payment of any Loan amount due from you where applicable);
  - 21.2.5 where such a suspension or variation is necessary as a consequence of technical problems or for reasons of safety;
  - 21.2.6 to facilitate update or upgrade the contents or functionality of the Services from time to time;
  - 21.2.7 where your account becomes inactive or dormant;
  - 21.2.8 if HFCB 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.
- 21.3 You may close your Whizz Account at any time at any Bank Branch.
- 21.4 If your Whizz Account has any credit balance at the time of its closure, we will return any such balance to you, less any applicable fees. If your Whizz Loan Account is in arrears at the time of closure of your Whizz Account, you agree to pay to us immediately all amounts you owe us. You agree that HFCB shall first offset any outstanding Loan amounts prior to returning any balance to you.
- 21.5 Termination shall however not affect any accrued rights and liabilities of either party.
- 21.6 If HFCB receives notice of your demise, HFCB will not be obliged to allow any operation or withdrawal from your Whizz Account by any person except upon production of administration letters from a competent authority or confirmed grant of letters of administration or confirmed grant of probate by your legal representatives duly appointed by the Court.

## **22. MISCELLANEOUS**

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

- 22.3 HFCB may vary or amend these terms and conditions and the Transaction Fees at any time and without notice to you. Any such variations or amendments may be published in posters or pamphlets available at HFCB branches, in the daily newspapers, on HFCB website and/or by any other means as determined by HFCB and any such variations and amendments shall take effect immediately upon publication.
- 22.4 No failure or delay by either yourself or HFCB 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.
- 22.5 The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.
- 22.6 If any provision of these Terms and Conditions shall be found by any duly appointed arbitrator, court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions herein.
- 22.7 Any addition or alteration to these Terms and Conditions may be made from time to time by HFCB and of which notice has been given to you by way of publication as provided in subparagraph 22.3 shall be binding upon you as fully as if the same were contained in these terms and conditions.

### **23. NOTICES**

- 23.1 HFCB may send information concerning the Whizz Account via SMS to the Mobile Phone number associated with your Whizz Account.
- 23.2 You acknowledge that you have no claim against HFCB for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication pertaining to the Whizz Account.

### **24. DISPUTE RESOLUTION, JURISDICTION AND ARBITRATION**

- 24.1 24.1 You may contact the Customer Care department or Bank Branch to report any disputes, claims or Whizz Account discrepancies.
- 24.1.1 Any dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives shall be referred to arbitration by a single arbitrator to be appointed by agreement between the parties or in default of such agreement within 60 days of the notification of a dispute, upon the application of either party, by the Chairman for the time being of the Chartered Institute of Arbitrators (Kenya Branch). Such arbitration shall be conducted in the English language in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act.
- 24.1.2 To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.
- 24.1.3 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.