

USER TERMS & CONDITIONS



TERMS AND CONDITIONS

This document lays out the terms & conditions and rules (hereinafter called "T&Cs") for the Services (as hereinafter defined) which shall be applicable to both the Equity Bank Limited Mobile Banking Services (as hereinafter defined) and the Finserve Africa Limited Mobile Telephony Services Mobile Telephony Services (as hereinafter defined) to be provided respectively by the Bank (as hereinafter defined) and Finserve (as hereinafter defined) .

These T&Cs and any amendments or variations thereto take effect on their date of publication.

The Customer accepts and acknowledges that this is a legal and binding agreement between the Customer and the Bank once accepted by both parties.

The Customer agrees to comply with and be bound by the T&Cs for the time being and from time to time in force governing operation of the services and recognizes that the T&Cs herein are without prejudice to any right that the Bank or Finserve may have with respect to the services or otherwise.

In these T & Cs the words and expressions (save where the context requires otherwise) bear meanings as defined in the respective definitions.

EQUITY BANK LIMITED MOBILE BANKING SERVICES

"Account" means an Equity bank account which is existing, may be opened now or in the future with the Bank;

"Alerts" means the customised messages sent to the Customer's Mobile Phone as an SMS or by email, fax or other modes of communication;

"Bank" Means Equity Bank Limited of P.O BOX

75104 -00200 NAIROBI incorporated in Kenya as a Limited company under the Companies Act(Cap 486 of the Laws of Kenya) and includes such branch or subsidiaries of the Bank as may from time to time be specified by the Bank to the Customer;

"Contact Centre" means the Customer Care Centre or Equity Branch as may be notified to the Customer by the Bank from time to time;

"Credit Reference Bureau" Means a credit reference Bureau duly licensed under the banking (Credit Reference Bureau) regulations, 2008 to collect customer credit information;

"Customer" means the person(s) who registers for the Equity Bank Limited Mobile Banking Services and to whom the Equity Bank Limited Mobile Banking Services is provided by the Bank. The word Customer shall include both the masculine and the feminine gender as well as juristic persons and all such words shall be construed interchangeably in that manner though for the sake of convenience the term is herein referred to in the Masculine gender;

"Equity Bank Limited Mobile Banking Services" means the mobile banking service linked to the Customer's bank account through the mobile line provided by Equitel;

"Equitel" means the commercial brand name utilized by Finserve for marketing and distributing its telephony services;

"Finserve" means Finserve Africa Limited, a limited liability company incorporated in Kenya under Registration Number C.149227 and licensed by CAK, Communications Authority of Kenya to provide mobile telecommunication services as a mobile virtual network operator and shall include its successors in title and assigns;

“Mobile network Provider” means an entity, other than a party to this T&Cs, which operates a mobile telecommunications operator and is licensed by the Communications Authority of Kenya to operate and maintain a mobile telecommunications network in Kenya and whose services are used by Finserve in the provision of mobile telecommunication services; **“Network”** means the mobile cellular network covering such areas as stipulated by the Mobile network providers;

“PIN” means Personal Identification Number being the secret code used to access and operate the Equity Bank mobile banking service;

“Services” Shall include any form of banking services or products that the Bank offer Customers from time to time including any access codes;

“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 Equity Bank Limited Mobile Banking Services;

“Static Data” refers to any Customer personal information, e.g. Names, address, next of kin, employer etc and does not include change of signature or mandate/mode of account operation.

“Terms & Conditions” mean these or any other terms and conditions made by the Bank from time to time;

Where the context so admits the expressions **“the Bank”** and **“the Customer”** includes their respective successors, personal representatives (as the case may be) and assigns of the Bank;

Words importing the singular meaning where the context so admits include the plural meaning and vice versa;

Reference to writing shall include email and short text messages.

1. The Customer accepts responsibility for making sure he understands how to use the Equity Bank Limited Mobile Banking Services. The Bank shall not be responsible for any losses caused by the Customer's failure to properly use the Service.
2. Any person applying for Equity Bank Limited Mobile Banking Services with the Bank will be deemed to have read understood and agreed to be bound by these T & Cs and the applicable schedule of Bank charges and product features issued and amended from time to time by the Bank.
3. The Bank reserves the right to determine the Services that will be offered and will from time to time determine or specify the scope and features of the Equity Bank Limited Mobile Banking Services and entitled to modify, expand or reduce the same at any time without notice to the Customer. By making an application to use Equity Bank Limited Mobile Banking Services the Customer agrees to be bound by any future modifications, expansions, enhancements, deletions or reductions made by the Bank.
4. The Customer shall indemnify and keep the Bank and Finserve free and harmless from and against all actions, claims, demands, liabilities, losses, damages, legal fees, costs, and expenses of whatever nature that may result or which the Bank may sustain, suffer or incur as a result of negligence, fraud, collusion or violation of the terms of this agreement on the part of the Customer or third party. The Customer further agrees and confirms that this indemnity shall remain valid, subsisting and binding upon him notwithstanding withdrawal, either partially or in

totality, of the Equity Bank Limited Mobile Banking Services.

5. The Customer assumes full responsibility for the security and confidentiality of his SIM card, Mobile phone, mobile phone number and personal identification number (PIN) to be used in gaining access to the Equity Bank Limited Mobile Banking Services through the use of his mobile phone.
6. The Customer is duly bound to acquaint himself with the detailed process and operating instructions for using the Services upon registration. The Bank and Finserve will not be held responsible for any error or omissions by the Customer.
7. The Customer can register only one mobile phone number for multiple accounts but cannot register multiple mobile numbers for one account number. The Customer hereby confirms, declares and acknowledges that the phone number provided to the Bank is owned by him and is in his control and that any communication from and to the said phone is and shall be within his knowledge and within his control. The Customer shall in all circumstances accept full responsibility for any and all instructions sent to the Bank from the phone number and hereby authorize the Bank to act on the instructions and process any and all transactions. No Customer will be registered to Equity Bank Limited Mobile Banking Services unless the Bank's mobile banking form is completed and signed and the required supporting documents attached and attested to by the required authorities (if any).
8. Valid and acceptable means of identification that complies with the Banks "know your Customer" procedures will be required before the Bank registers any Customer in Equity Bank Limited Mobile Banking Services. Upon submission of duly

completed mobile banking forms the Bank will register the Customer in accordance with Bank's policies and procedures on Equity Bank Limited Mobile Banking Services. The Bank has a statutory responsibility to apply any applicable tax on all charges for the Services.

9. The Services may, without prior notice, be suspended or terminated for any reason whatsoever, including, without limitation, invalid data, closure of related account (s), death of a Customer, breakdown, maintenance, modification, expansion and/or enhancement work caused or initiated by the telecommunications company(s) concerned in relation to the Network or by any Mobile network Provider in respect of the Services. The Bank will not assume any liability or responsibility for any such suspension or termination.
10. Any change in Static Data should be immediately communicated in writing to the Bank. In addition, the Customer shall promptly inform the Bank of any loss or theft of his mobile phone by calling the Bank's Contact Centre on telephone numbers provided from time to time. The Bank shall not be liable for any loss or claim resulting from the relaying of any information to the designated mobile phone number prior to receipt of any notification of loss or theft. Following receipt of notification of loss or theft, the Bank shall deactivate the subscription until further instructions are received.
11. The post office, courier firms, Equitel, and other agents of mail delivery or telecommunication shall be considered agents of the Customer for delivery of statements letters and other related communication. No responsibility shall be accepted by the Bank for access by third parties,

loss delay or non-delivery of notices information or such items sent by post/courier at the request of the Customer.

12. The Equity Bank Limited Mobile Banking Services may be terminated at any time by notice from the Customer to the Bank in the form of an application form (available at any of the Bank branches). Any such termination shall be effective within (2) days of receipt of the termination notice by the Bank. The Bank and Finserve shall not assume any liability or responsibility for any such suspension or termination.
13. The Customer shall be solely responsible for all the transactions and consequences arising out of the messages emanating from the registered mobile phone instrument. The Bank will not assume any responsibility or liability for unauthorized messages sent by any other person. The Bank will take due care to see that the credit and debit entries are correctly recorded in the accounts of the Customer. Any discrepancy in the statement of account should be promptly brought to the notice of the Bank in writing within fourteen days of dispatch of statements failure to which the statement of account shall be deemed to be final and conclusive for all purposes whatsoever. In the case of any error the Bank reserves the right, at all times to make adjusting entries to rectify the error without notice, and recover any amount wrongly paid or credited to any person together with any accrued interest or profit. However the Bank shall not be liable for any loss or damage due to such error or any consequential loss arising there from to any party.
14. The Bank and Finserve are not bound to acknowledge the receipt of any query or instructions nor shall the Bank or Finserve be held responsible to verify any instructions. The Bank

shall endeavor to do so, on best effort basis and whatever operationally possible for the Bank.

15. The Bank and Finserve reserve the right to make any additions or deletions in the Services offered through the Equity Bank Limited Mobile Banking Services at any time. The Bank and Finserve may at their discretion from time to time change the features of any of the Alerts and Services. The Customer will be solely responsible for keeping himself updated of the available Alerts and Services, which shall, on best-effort basis, be notified by the Bank and or Finserve through its website or through any other legally recognized medium of communication.
16. The Customer acknowledges that the Services are dependent on the telecommunications infrastructure, connectivity and mobile signal accessibility within Kenya. The Customer accepts that timeliness of Alerts sent by the Bank will depend on factors affecting the telecommunication industry. Neither the Bank nor the Mobile network Providers shall be liable for non-delivery of Alerts, error, loss, distortion in transmission of and wrongful transmission of Alerts to the Customer.
17. The Bank shall not assume any liability or responsibility for any failure or delay in transmitting information or any error in such information, unless this results from negligence or willful default on the Banks part. In particular, the Bank shall not assume any liability or responsibility for the consequences arising from any cause beyond its control including, without limitation, failure of telecommunications equipment to receive information for whatever reason, any telecommunications breakdown,

mechanical failure, path failure, malfunction, breakdown, interruption or accuracy of equipment or installation, force majeure event such as sabotage, fire, floods, explosion, acts of God, civil commotion, strikes, act of Government, computer hacking, unauthorized access to computer data, computer crashes terrorist or any enemy action equipment failure etc.

18. The Bank shall endeavor to provide the Services on a best effort basis and the Customer shall not hold the Bank or its Mobile network Provider(s) responsible or liable for non-availability of the Services or any loss or damage caused to the Customer as a result of the use of the Services. The Bank or its Mobile network Providers shall not be held liable in any manner to the Customer in connection with the use of the Services.
19. Where the Customer is issued with mobile phone access codes, PIN, or any other tool or code for the purpose of gaining access to mobile banking service, the Customer undertakes not to transfer the same to any other person and undertakes to exercise due care and attention to ensure the safety of the mobile phone access codes and the secrecy of the PIN thereof. If the PIN is disclosed to unauthorized person(s) the Customer must immediately notify the Bank in writing and will be liable for any transaction made prior to the receipt by the Bank of such notification. The Customer may at any time cancel his mobile phone access codes, PIN, or any other tool or code for the purpose of gaining access to Equity Bank Limited Mobile Banking Services and return the same to the Bank provided that the Customer must not attempt to use the mobile phone access codes, PIN, or any other tool or code for the purpose of gaining access to the Equity Bank Limited Mobile Banking Services, after such notification of cancellation. The

Customer undertakes to indemnify and hold harmless the Bank, Finserve and the Mobile network providers in respect of breach of this clause.

20. The Customer shall not hold the Bank, Finserve and the Mobile network Providers liable for any loss sustained due to fraud on the Equity Bank Limited Mobile Banking Services occasioned by the Customer's acts or omissions.
21. The Bank shall not be liable for any losses or damage caused (a) by the disclosure of confidential information; b) by the disclosure of information to the designated mobile phone where such designated mobile phone is in another person's possession with the Customers consent; or (c) to Customers data, designated mobile phone, communications equipment or other equipment, in each case caused by the Customers use of the Equity Bank Limited Mobile Banking Services unless such loss or damage is directly and solely caused by the Banks wilful default or negligence.
22. The Bank is authorized to effect such orders in respect of the Equity Bank Limited Mobile Banking Services as may be required by any court order or competent authority or agency under the applicable laws of the land
23. The Bank reserves the right to send the Customer messages over his mobile phone for marketing or regarding the provision of other Services or products or for any other purpose the Bank deem fit unless specifically instructed otherwise by the Customer in writing.
24. The Customer understand and confirm that the Bank may, at its sole discretion, record any and all information or instructions relayed from Customers phone to the Bank and to the Customer from the Bank and collect and store the

same along with all information in such form and manner as it deems necessary and appropriate. The information may be relied upon by the Bank or any person who may reasonably require the same and or produced in any proceedings or otherwise.

25. Any notice from the Bank to the Customer may be in such manner and by such means of communication as the Bank shall deem fit, including, without limitation, use of direct mailing material, advertisement, branch display, electronic communication such as e-mail or via the Equity Bank Limited Mobile Banking Services. Any notice from the Customer to the Bank shall be in writing at the following address unless otherwise indicated in these Terms & Conditions: Card Center, Equity Bank, P. O. Box 75104-00200 Nairobi Kenya.
26. The Bank may from time to time and at any time revise, amend, delete or supplement any of these terms and conditions whether in whole or part including without limitations the charges to levy in respect to its Services. Such charges shall be effective from the date specified by the Bank for such modification. These amendments/alterations shall be notified to the /or displayed at the Banks premises/website from time to time and shall be binding on the Customer. The Bank reserves the right at any time and without notice to impose charges for the use of its Services at any time.
27. Where a Customer has taken up a micro insurance policy with any insurance company which is available to Equity mobile banking service, the Customer hereby irrevocably agrees and authorizes the Bank on a standing order basis to debit his

account and remit to the insurer or the insurance agent such premium as are payable on such a policy.

28. Where the Customer applies for credit advance (microcredit), the Customer shall be appraised according to the applicable appraisal processes of the Bank. The Bank reserves the right at its sole discretion and without assigning any reason to approve or decline a request.
29. Subject to approval of a Customer's application for credit advance the Bank shall disburse to the Customer a loan of an amount ("The loan") to be determined by the Bank. The proceeds of the loan shall be credited into the Customer's account linked to the Equity Bank Limited Mobile Banking Services net of all applicable charges and commissions.
30. Terms and conditions of the loan shall be as determined by the Bank from time to time. The Bank reserves the right to vary the terms of the loan including the rate of interest chargeable from time to time having regard to the prevailing rules and regulations of the Central Bank of Kenya and the policies of the Bank.
31. Any additional product being offered under the Services by the Bank or a third party, the Customer hereby irrevocably agrees and authorizes.
32. The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange, and communicate the details or information pertaining to the Customers Equity Bank Limited Mobile Banking Services for purposes of cross referencing data, bonafide enquiry or collection of any data to licensed Credit Reference Bureaus, marketing and research related activities; in business practices including quality control,

training and ensuring effective systems operation; to the bank's lawyers, auditors or other professional auditors or to any court or arbitration tribunal in connection with any legal or audit proceedings; to regulatory or governmental agencies to assist in prevention, detection, investigation or prosecution of criminal activities or fraud.

33. The Customer may contact the Contact Centre to report any disputes, or claims regarding Equity Bank Limited Mobile Banking Services. Any claim or dispute arising out of or in connection with this Agreement that is not resolved by Customer Care Centre representatives or Equity bank staff 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 1995. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the parties hereto.
34. The Bank solely reserves the right to terminate any type of relationship with the Customer without assigning any reason.
35. These Terms & Conditions shall be governed by and construed in accordance with the Laws of the Republic of Kenya. The T&Cs shall be deemed to be an integral part of Equity Bank Limited Mobile Banking Services registration form executed by the Customer.
36. Upon clicking on the "Accept" option on the

Equity mobile banking registration form or signing at the bottom of the form the Customer agrees to have understood, and accepted to abide by all the Terms & Conditions governing the Equity Bank Limited Mobile Banking Services including any subsequent variations or amendments.

The services under "My Money" are offered by Equity Bank Limited using the mobile platform of Finserve Africa Limited. Equity Bank Limited is regulated by the Central Bank of Kenya.

FINSERVE AFRICA LIMITED

MOBILE TELEPHONY SERVICES

1. Definitions and Interpretations

- 1.1 The following words and expressions shall have the following correspondent meanings where appropriate:-
- 1.1.1 **"Account(s)"** means any account, including any card linked to an account, held with the Bank (as hereinafter defined) and operated and maintained by the Customer and for which the Customer is solely responsible;
- 1.1.2 **"Affiliate"** means in relation to a body corporate any subsidiary or holding company of any such body corporate and any subsidiary of any such holding company for the time being;
- 1.1.3 **"Alerts"** means the customized messages sent to the Customer's Mobile Phone as an SMS or by email, fax or other modes of communication;
- 1.1.4 **"Application"** means the Customer's written request for access to the Finserve Services and the term **"Application Form"** shall be construed accordingly;
- 1.1.5 **"Authorized User"** means the Customer or such other person as may be nominated in writing

- by the Customer authorizing such person to have access to the Account and thereby use the Finserve Services for and on behalf of the Customer;
- 1.1.6 **“Bank”** means Equity Bank Limited, a limited liability company licensed to conduct banking business in Kenya under the Banking Act (Chapter 487, Laws of Kenya) and includes its successors in title and assigns;
- 1.1.7 **“Booklet”** means this booklet setting out the Terms and Conditions for the use and access of the Finserve Services by the Customer;
- 1.1.8 **“Business Day”** means any day other than a Saturday, Sunday or Gazetted Public Holiday on which banks are open for the conduct of normal banking business in Kenya;
- 1.1.9 **“CAK, Communications Authority of Kenya”** means the Communications Commission of Kenya established under the Kenya Information and Communications Act (Chapter 411A, Laws of Kenya);
- 1.1.10 **“Charges”** means the charges, fees, tariffs, commissions, disbursements, costs, taxes and duties imposed upon the Customer by Finserve for the use of the Finserve Services and as published in the Tariff Guide;
- 1.1.11 **“Commencement Date”** the date these Terms and Conditions will take effect as set out in the Application;
- 1.1.12 **“Equity world Service”** means the SIM Application Toolkit Service (**“STK”**) which allows Customers to have access to information that is relevant to their lives such as health, education, financial literacy, agriculture and Wikipedia;
- 1.1.13 **“Equipment”** means and includes a Mobile Phone, accessories, SIM Cards, starter packs, promotional items and other items as purchased by the Customer from any of Finserve’s designated Service Outlets;
- 1.1.14 **“Finserve”** means Finserve Africa Limited, a limited liability company incorporated in Kenya under Registration Number C.149227 and licensed by CAK, Communications Authority of Kenya to provide mobile telecommunication services as a mobile virtual network operator and shall include its successors in title and assigns;
- 1.1.15 **“Finserve Agents”** means the agents stationed at the Finserve designated Service Outlets and who are tasked with the responsibility of assisting the Customers in subscribing for the Finserve Services, SIM Card registration, activation and account linkage where applicable;
- 1.1.16 **“Finserve Services”** means the Finserve Services offered by Finserve to the Customer through which the Customer can access and use the products and the services offered on the Finserve platform.
- 1.1.17 **“Instructions”** means the instructions initiated by the Customer through the Mobile Phone and transmitted to Finserve for access to the Finserve Services;
- 1.1.18 **“Intellectual Property Rights”** means patent rights, registered and unregistered design rights, copyrights including rights in computer software, rights relating to registered and unregistered trade marks or service marks or logos, jingles, get-up, livery, trade names, domain names, applications or rights to apply for any of the foregoing, any similar rights to any of the

foregoing anywhere in the world, and rights of confidentiality in information of any kind;

- 1.1.19 **“KYC Policy”** means the due diligence policy as developed and amended by Finserve from time to time and which sets out the guidelines that Finserve should adhere to in ensuring the proper identification and verification of Finserve’s Customers;
- 1.1.20 **“Customer”** means the person(s) who registers for the Finserve Africa Limited Mobile Telephony Services and to whom the service is provided by Finserve. The word Customer shall include both the masculine and the feminine gender as well as juristic persons and all such words shall be construed interchangeably in that manner though for the sake of convenience the term is herein referred to in the Masculine gender;
- 1.1.21 **“Mobile Service Provider”** means an entity, other than a party to this Agreement, which operates a mobile telecommunications operator and is licensed by CAK, Communications Authority of Kenya to operate and maintain a mobile telecommunications network in the Territory and whose services are used by Finserve in the provision of the Finserve Services;
- 1.1.22 **“Mobile Phone”** means the mobile phone handset or other equipment owned, possessed or in the control of the Customer for purposes of communication and for purposes hereof, accessing the Finserve Services;
- 1.1.23 **“Mobile Phone Number”** means the number notified by Finserve to the Customer in writing through which the Customer shall access and use the Finserve Services;

- 1.1.24 **“Network”** means the mobile cellular network covering such areas as stipulated by the Mobile Service Providers;
- 1.1.25 **“Parties”** means both the Customer and Finserve and **“Party”** shall refer to either of them as the context may permit;
- 1.1.26 **“person”** includes any individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator, or other legal representative;
- 1.1.27 **“Post-paid Customer”** means a Customer who has subscribed for the use of the Finserve Services and who pays for the use and access to the Finserve Services after a period of time as set by Finserve;
- 1.1.28 **“Pre-paid Customer”** means a Customer who has subscribed for the use of the Finserve Services and purchases credit in advance before using the Finserve Services;
- 1.1.29 **“Service Outlets”** means the Finserve Agents spread throughout the Territory through which the Finserve Services are marketed, distributed and sold and whose agents have the responsibility of assisting the Customers in subscribing for the Finserve Services, SIM Card registration, activation and account linkage where applicable;
- 1.1.30 **“SIM Card”** means the subscriber identity module issued by the Service Outlets to the Customer and which when installed and used in the Customer’s Mobile Phone allows access by the Customer to the Finserve Services;

- 1.1.31 **“SMS”** means the short messaging service which allows the interchange of short text messages between Mobile Phones;
- 1.1.32 **“Tariff Guide”** means Finserve’s list of Charges for the Finserve Services as published from time to time;
- 1.1.33 **“Territory”** means Kenya;
- 1.1.34 **“Terms and Conditions”** means the Terms and Conditions in this Booklet including any amendments and any and all annexures, schedules, exhibits, appendices thereto or incorporated by reference from time to time; and
- 1.2 Clause headings are for convenience only and are not to be used in its interpretation;
- 1.3 An expression which denotes one gender includes the other gender; a natural person includes a juristic person and vice versa; and the singular includes the plural and vice versa;
- 1.4 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of the Agreement;
- 1.5 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement;
- 1.6 Subject to clause 1.7 below, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning;

- 1.7 Reference to **“days”** shall be construed as calendar days unless qualified by the word **“Business”**, in which instance a **“Business Day”** will be any day other than a Saturday, Sunday or public holiday as gazetted by the Government of the Republic of Kenya from time to time. Any reference to **“business hours”** shall be construed as being the hours between 08h30 and 17h00 Kenyan time;
- 1.8 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day;
- 1.9 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention; and
- 1.10 No provision herein shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision.
- ## 2. Applicability of the Terms and Conditions
- 2.1 These Terms and Conditions for the use of the Finserve Services shall form the contract between the Customer and Finserve and shall be subject to such terms as Finserve may agree with other service providers assisting Finserve in the provision of the Finserve Services and shall be construed and read mutatis mutandis to this Terms and Conditions in this Booklet.
- 2.2 The Customer understands that by applying for and accepting to use the Finserve Services for the first time and every time thereafter, the

Customer has agreed to be unconditionally bound by these Terms and Conditions to the fullest extent possible.

- 2.3 The Customer understands that Finserve may at its sole and absolute discretion amend, modify or substitute these Terms and Conditions from time to time and the Customer understands that by choosing the use of the Finserve Services, the Customer has agreed to be unconditionally bound by any such amendment, modification or substitution.

3. Term

These Terms and Conditions shall, unless earlier terminated in accordance with the provisions of Clause 19 (Termination) below, take effect on the Commencement Date and continue for an indefinite period.

4. Access to the Finserve Services

Finserve reserves the right to accept or decline any application for the use of the Finserve Services without the necessity of giving any reasons therefor.

5. Registration and Activation of the Finserve Services

- 5.1 Finserve shall provide the Finserve Services to the Customer through the Customer's Mobile Phone Number and a sim card.
- 5.2 Finserve may use the Finserve Services to send out Alerts through the Mobile Phone Number containing any commercial or marketing information and or any information of an advisory nature that Finserve may wish to relay to the Customer (whether or not the Customer has solicited or requested for them).

- 5.3 The Customer shall be solely responsible for keeping himself updated of the available Alerts which shall on best effort basis be notified by Finserve through its website or through other legally recognized media of communication.

6. Acceptance and Usage of the Finserve Services

- 6.1 The Customer is deemed to have accepted these Terms and Conditions upon the initial activation of the Customer's SIM Card and if applicable the linkage of the SIM Card to the Account provided by the Customer.
- 6.2 The Customer shall be solely responsible and liable for the accuracy and authenticity of the Instructions provided to Finserve and the use of the Finserve Service by the Authorized User.
- 6.3 Where Finserve considers the Instructions to be inconsistent or contradictory it may seek clarification from the Customer or Authorized User from whom the Instructions have originated before acting on such Instructions. Finserve may, however, in its discretion, act upon any such Instruction as it may deem fit and the Customer agrees to be bound to such actions of Finserve.
- 6.4 By accepting these Terms and Conditions while registering for the Finserve Services, the Customer:-
- 6.4.1 agrees to use the Finserve Services for financial and non-financial transactions offered by the Bank from time to time;
- 6.4.2 agrees that the transactions originated using the Mobile Phones are non retractable as these are instantaneous/real time; and

- 6.4.3 agrees to access the Finserve Services on a Mobile Phone properly and validly registered in his name and use the Finserve Services only through the Mobile Phone Number used to register for the Finserve Services.

7. Availability of the Finserve Services

- 7.1 The Finserve Services shall be available to the Customer only if the Customer is within the cellular service range of the particular Mobile Service Provider used by Finserve in the provision of Finserve Services.
- 7.2 Finserve shall use all reasonable efforts to maintain the Customer's access to the Network and Finserve Services. However, the Customer acknowledges and agrees that the provision of the Finserve Services and is subject to the availability and ability to have full access to the Network within the coverage area and factors including without limitation, acts of God, geographical topography, weather conditions, planned maintenance or rectification work on the SIM Card or on the Network may adversely interfere with the quality and provision of the Finserve Services.
- 7.3 The Customer also agrees that the availability timeliness and proper functioning of the Finserve Services depends on many factors including the location Network availability and signal strength of the Mobile Phone and the proper functioning and configuration of the software of the Mobile Phone.
- 7.4 Neither Finserve nor any of the Mobile Service Providers nor any third party service providers warrants that the Finserve Services will meet the Customers' requirements, operate without interruption or be error-free and neither Finserve

nor the service providers shall be liable for any loss or damage caused by any unavailability or improper functioning of the Finserve Services or for any actions taken in reliance thereon for any reason including service interruptions, inaccuracies, delays, loss of data or loss of personalized settings.

8. Use of the Finserve SIM Cards and Equipment

- 8.1 The SIM Card shall at all times remain the property of Finserve and is issued to the Customer subject to these Terms and Conditions and may be returned to Finserve upon request or if the Mobile Phone Number is disconnected from the Network.
- 8.2 It is the Customer's responsibility to keep the SIM Card as well as the Equipment secure, free from damage and to ensure that the SIM Card is not tampered with in any manner. Finserve shall have no liability for any loss or damage incurred resulting from the unauthorized use or damage of the SIM Card from the point of delivery to the Customer.
- 8.3 The Customer shall immediately notify Finserve of any loss, theft or damage to the SIM Card and shall be responsible for its replacement costs. Notwithstanding the foregoing, the blocking of the Mobile Phone or the SIM Card is dependent on a number of factors, which may be beyond Finserve's control. For this reason, Finserve shall not be held liable for any delays in such blocking.

9. Warranty

- 9.1 The Customer shall immediately but not later than within ten (10) Business Days of the purchase, return any SIM Card or Equipment which is found to be faulty or defective together

with the original receipt for the purchase at the point of sale.

- 9.2 Finserve shall only be responsible for the replacement of the SIM Card or the Equipment in the case of manufacturer's defects.
- 9.3 Finserve shall make its best efforts to extend to the Customer the benefit of any warranty as given to Finserve (subject to any limitations and restrictions thereof) by the manufacturer provided that any expense reasonably incurred by Finserve in extending such benefit shall be to the Customer's account. This warranty is the only warranty given by Finserve to the Customer and constitutes Finserve's entire liability including liability for negligence and in particular but without limitation all statutory or other collateral terms whether express or implied. Conditions or warranties are excluded to the fullest extent provided by law including but not limited to any warranties and conditions expressed or implied by the Consumer Protection Act, 2012 and the Sale of Goods Act (Chapter 31 of the Laws of Kenya) as amended or replaced from time to time.

10. Intellectual Property Rights in the SIM Card

- 10.1 The Intellectual Property Rights, as reserved from time to time, in the SIM Card (including the software therein) shall at all times remain the inalienable and non transferable property of Finserve and are supplied to the Customer, under licence from Finserve for the proper use in the Finserve Services.
- 10.2 The Customer shall not copy, change or re-engineer the software in the SIM Card in any manner whatsoever.
- 10.3 Finserve reserves the right at any time to

substitute or replace the SIM Card(s) at no cost to the Customer.

11. Rights and Obligations of Finserve

- 11.1 Finserve may at its sole and absolute discretion place any restrictions with respect to the provision of the Finserve Services as it may deem necessary.
- 11.2 Finserve reserves the right to enhance the Finserve Services at any time without prior notice to the Customer and Finserve shall make reasonable efforts to notify the Customer of any such change.
- 11.3 Finserve reserves the right to lock the SIM Card so that it will only operate on the Network and may be restricted from certain services.
- 11.4 Finserve reserves the right to immediately change the terms, conditions, notices and charges under which it offers the Finserve Services, or any product or service offered thereunder, as a direct result of new or amended legislation, statutory instrument, Government regulations, policy or licence. In the event of any review of Finserve's business planning, technical, public interest or operational reasons, changes within the industry, recommendations from regulatory bodies or similar events, and where circumstances permit, Finserve shall notify the Customer of such change by SMS, e-mail or through the media.
- 11.5 Finserve shall in the provision of the Finserve Services ensure that it complies with the provisions of the consumer protection laws and regulations as enacted, amended or replaced from time to time and in so doing shall ensure that:-

- 11.5.1 the Customers are charged only for the products and services they subscribe to;
- 11.5.2 subject to Clause 14.2 (disclosure of information) below, the personal privacy and protection against unauthorized use of personal information is observed;
- 11.5.3 that all the Customers shall be provided with an equal opportunity for access to the same type and quality of Finserve Services as other Customers in the same area at substantially the same tariff limiting variations to available or appropriate technologies required to serve specific Customers; and
- 11.5.4 it has taken proper measures to safeguard the security of the SIM Card.

12. Responsibilities and Obligations of the Customer

- 12.1 The Customer shall be required to activate the Finserve Services and acquaint himself with the operating procedures and process of using the Finserve Services as provided at the time of registration for access to the Finserve Services.
- 12.2 The Customer agrees to be bound by and comply with all operating procedures and use the Finserve Services in accordance with the operating procedures and shall be responsible for any errors and omissions made while using the Finserve Services.
- 12.3 The Customer shall be responsible for all transactions including fraudulent erroneous transactions made through the use of his Mobile Phone or any unauthorized access to the Finserve Services, regardless of whether such transactions are in fact entered into, made or authorized by the Customer.

- 12.4 The Customer shall immediately notify Finserve in writing of any change with regard to the Account, Mobile Phone Number and/ or loss or theft of the Mobile Phone, address or any other information that may affect the Customer's ability to access the Finserve Services and Finserve shall not in any way be liable or responsible for any loss damage costs charges or expenses suffered/ incurred by the Customer by reason of his failure to do so. Unless and until notice is received by Finserve from the Customer in the manner stipulated herein, Finserve is authorized and shall remain authorized to effect any Instructions sent using the Customer's Mobile Phone Number.
- 12.5 The Customer is responsible for all applicable Charges for using the Finserve Services used by the Customer, Authorized User or a third party with or without the Customer's knowledge or authority.
- 12.6 The Customer shall be solely responsible for the legal compliance and security of the Mobile Phone used to access the Finserve Services. The Customer is advised to read and understand the manufacturer's instructions for the use of the Mobile Phone. Finserve shall not accept any malfunction of the Mobile Phone, injury, loss of data or damage to the Mobile Phone.
- 12.7 The Customer shall keep confidential all information acquired by virtue of these Terms and Conditions for any purpose other than the performance of his obligations and after its termination or expiry for any reason, except with Finserve's prior written consent or to the extent that disclosure is reasonably

necessary for the purposes of these Terms and Conditions. This Clause shall not apply to confidential information which as at the date hereof, or at any time thereafter, becomes publicly known other than by the Customer's breach of these Terms and Conditions or is required to be disclosed by an order of the Court or as required by any statutory or other competent authority.

- 12.8 The Customer shall keep confidential and his own security, all details of the Customer's Account, electronic serial number of any Mobile Phone, and any lock code(s) or personal identification numbers used by the Customer.
- 12.9 The Customer agrees not to use the Finserve Service or the content or information delivered through the Finserve Service in any way that would:-
 - 12.9.1 infringe any third-party Intellectual Property Rights;
 - 12.9.2 be fraudulent or involve the sale of counterfeit or stolen items including but not limited to use of the Finserve Service to impersonate another person or entity including but not limited to a Finserve or Bank official, its Affiliates, service providers, fellow Customers or falsely utter or otherwise misrepresent the Customer's affiliation with a person or entity;
 - 12.9.3 intentionally or unintentionally violate any local or international laws statute ordinance or regulations having the force of law;
 - 12.9.4 be false misleading or inaccurate;
 - 12.9.5 create liability for Finserve or its Affiliates or service providers or cause Finserve to lose (in whole or in part) the services of any of its

service providers;

- 12.9.6 be harmful abusive tortuous vulgar obscene invasive of another's privacy hateful or racially or ethnically or otherwise objectionable defamatory trade libellous unlawfully threatening or harassing;
- 12.9.7 be potentially perceived as illegal offensive or objectionable;
- 12.9.8 interfere with or disrupt computer networks connected to the Finserve Service including but limited to any and all of Finserve's systems and software;
- 12.9.9 interfere with or disrupt the use of the Finserve Services by any other user or disobey any requirements, procedures, policies or regulations of Networks connected to the Finserve Services;
- 12.9.10 use the Finserve Services in such a manner as to gain unauthorized entry or access to the computer systems of others;
- 12.9.11 cause or permit the uploading posting emailing transmission or otherwise making available any content or information that the Customer has no right to make available under any law or under contractual or fiduciary relationships;
- 12.9.12 cause or permit the uploading, posting, emailing, transmission or otherwise making any material that contains software viruses or any other computer code files or programs designed to interrupt destroy or limit the functionality of the Finserve Services; or
- 12.9.13 in any manner obtain or transfer or be involved in obtaining or transferring monies

fraudulently from Finserve or an Account held at Finserve or any other person or entity.

- 12.10 The Customer agrees that in the event of a breach of Clause 12.9 above, Finserve shall have the right but not the obligation to immediately and without any notice terminate the Finserve Services offered under these Terms and Conditions immediately upon knowledge of any such breach.

13. Charges

- 13.1 The Customer acknowledges and agrees that provision of the Finserve Services shall be subject to such Charges as Finserve shall from time to time and in its sole and absolute discretion determine.
- 13.2 The Tariff Guide shall be made available for the Customers to pick their preferred option for the use of the Finserve Services. For the avoidance of doubt, the Charges are available to the Customer only as a guide and are not legally binding.
- 13.3 The Customer agrees to pay such Charges as and when they fall due and hereby authorizes Finserve to debit his Account with any and/or all the Charges whatsoever without further reference to the Customer.
- 13.4 Finserve shall at all times have the discretion to vary or amend and/or revise the Charges and shall notify the Customer of any such change by such means as Finserve shall determine suitable. Unless otherwise provided therein, all Charges listed in the Tariff Guide include Value Added Tax but are subject to other applicable levies and taxes at the Bank's prevailing rate.
- 13.5 Any transactions conducted on behalf of the

Customer after a notification by Finserve to the Customer of a change in Charges (howsoever effected) shall imply the Customers acknowledgement and acceptance of the Charges.

- 13.6 Finserve reserves the right to offset any sums owed by the Customer against any sums Finserve holds to the Customer's credit or as a deposit under these Terms and Conditions.

14. Authority to Finserve

- 14.1 The Customer understands and accepts that Finserve is bound to observe and adhere to the Bank's terms and conditions with regard to the handling of Customer data information. Accordingly, the Customer irrevocably and unconditionally authorizes Finserve and the Bank to access the Accounts and the Customer's personal information for purposes of effecting the Instructions and providing the Finserve Services to the Customer, as well as for analysis, credit scoring and marketing.
- 14.2 The Customer hereby consents to the disclosure by Finserve and any of its officers or employees for any purposes any information concerning the Customer to any of the following:-
- 14.2.1 any office or branch of Finserve or its Affiliates;
- 14.2.2 any agent, contractor or third party service provider, or any professional adviser engaged by Finserve to enable Finserve provide the Finserve Services;
- 14.2.3 Licensed credit reference bureaus, banks or financial institutions;
- 14.2.4 any person who may assume Finserve's right;

- 14.2.5 any regulatory, supervisory, governmental, quasi-governmental authority with jurisdiction over Finserve or its Affiliates;
- 14.2.6 any person to whom Finserve is required or authorized by law or a court order to make such disclosure; or
- 14.2.7 any person who is under a duty of confidentiality to Finserve or its Affiliates.

15. Records

- 15.1 The Customer hereby expressly grants authority to Finserve to record the transaction details of any call or text message made by the Customer through the Finserve system.
- 15.2 The Customer understands and agrees that Finserve may at its sole and absolute discretion record any and all the transaction, details, information or Instructions relayed from and or to the Mobile Phone Number and the Mobile Phone and collect and store the same in such form and manner as it deems necessary and appropriate.
- 15.3 The Customer further agrees that the transaction, details, information and Instructions so stored may be relied upon by Finserve or its Affiliates and may be made known to any person who may reasonably require the same and/or produced in evidence in any proceedings or otherwise.
- 15.4 All records of Finserve relating to and arising out of the use of the Finserve Services including the recorded time of the transaction and the Customer originating the transaction shall be conclusive proof of the authenticity and accuracy of the transactions in the Account (where applicable).

16. Accuracy of Information

- 16.1 The Customer undertakes (and further undertakes to require Authorized Users) to provide accurate information and disclosures wherever required and shall be responsible for the correctness of the information provided by him to Finserve at all times including for the purposes of availing of the Finserve Services.
- 16.2 Finserve shall not be liable for consequences arising out of erroneous information supplied by the Customer and the Customer shall indemnify and hold Finserve harmless against any loss, damage or costs suffered or incurred by Finserve as a result erroneous information supplied by the Customer. If the Customer suspect that there is an error in the information supplied by him to Finserve or Finserve to them, they shall advise Finserve as soon as possible.
- 16.3 Finserve, without any liability of any kind, shall endeavor to correct the error wherever possible on a best effort basis.
- 16.4 While Finserve and its Affiliates shall take all reasonable steps to ensure the accuracy of the information supplied to the Customer, Finserve and its Affiliates shall not be liable for any inadvertent error, which results in the providing of inaccurate information. The Customer shall not hold Finserve liable for any loss or damage. that may be incurred or suffered by the Customer, if the information supplied to the Customer turns out be inaccurate or incorrect.

17. Indemnity

- 17.1 In consideration of Finserve providing the Finserve Services, the Customer agrees

to indemnify and keep Finserve safe and harmless from and against all actions, claims, demands, proceedings, loss, damages, costs, charges and expenses whatsoever which Finserve may at any time incur, sustain, suffer or be put to as a consequence of or arising out in good faith for acting on or omitting or refusing to act on any instructions given by use of the Finserve Service.

- 17.2 The Customer holds Finserve and its Affiliates, harmless against any loss incurred by the Customer due to failure in the Network of the Mobile Service Provider. The Customer agrees to indemnify and hold Finserve harmless for any losses occurring as a result of:
- 17.2.1 the Customer permitting persons other than the Authorized Users to use the Finserve Services through any means; and
- 17.2.2 any Authorized User permitting any other person to have access, whether deliberately or inadvertently, to the Mobile Phone Number.

18. Limitation of liability

Finserve shall not be liable in contract tort or otherwise for any direct indirect or consequential loss or damage sustained by the Customer by any direct or indirect use of or reliance on the electronic communication orders or messages sent using the Service whether with or without the utilization of any security measures including but not limited to any loss or damage resulting as a consequence of any defects delays interruptions errors inaccuracies or failures in the various communications and Finserve hereby specifically excludes the same to the fullest extent permitted by law even if Finserve

shall have been advised in advance of the possibility of such damages.

19. Termination

- 19.1 The Customer may at any time discontinue or unsubscribe from the Finserve Services thereby terminating the provision of the Finserve Services to the Customer. The Customer may request for termination in part or in whole of the Finserve Services any time without the necessity of giving any reasons therefor by giving a written notice of at least forty eight (48) hours to Finserve (provided that if the notice is sent on a day that is not a Business Day it shall be deemed to have been received at the opening of business on the next Business Day).
- 19.2 Such request to discontinue or unsubscribe from the Finserve Services shall be effected within five (5) Business Days of receipt of such notice from the Customer by Finserve.
- 19.3 The Customer shall remain responsible for any transactions originating from the Mobile Phone Number through the Finserve Services prior to the conclusion of the aforementioned forty eight (48) hours and any outstanding Charges at the time of such termination remains payable and Finserve reserves the right to debit such fees from the Customer's Account.
- 19.4 Finserve may at its discretion withdraw temporarily or terminate the Finserve Services either wholly or in part at any time without giving prior notice to the Customer for any reason including but not limited to:-
- 19.4.1 the Customer's use or suspected use of

- the Finserve Services in furtherance of any unlawful or criminal activity including without limitation tax evasion money laundering or terrorism funding activities;
- 19.4.2 on the death of the Customer when brought to the notice of Finserve and/or the notice of the Bank or the Mobile Service Provider;
- 19.4.3 if the Customer fails to use the Finserve Services for a period of over three (3) months;
- 19.4.4 when prohibited by law or an order of a court or by a regulatory authority;
- 19.4.5 if the Customer has breached these Terms and Conditions; or
- 19.4.6 if Finserve learns of the existence of any circumstance which in its opinion would result in the Customer being unable to carry on its obligations herein to the fullest extent possible.
- 19.5 Finserve may at any time and without prior notice to the Customer suspend the Finserve Services whether generally or specifically in relation to a Customer:-
 - 19.5.1 for any upgrade, expansion, maintenance work or repair is required to be carried out;
 - 19.5.2 in case of any emergency or for security reasons;
 - 19.5.3 if the Customer notifies Finserve that his Mobile Phone has been stolen or is lost;
 - 19.5.4 Finserve has reason to believe that the operation of the Finserve Service or acting upon any Instructions of a Customer may lead to a direct or indirect loss to Finserve;
 - 19.5.5 may require an indemnity from the Customer

before continuing to operate the Finserve Service; or

- 19.5.6 the Customer fails to comply with any rules or regulations within the Territory regarding the provision of the Finserve Services; or
- 19.5.7 the Customer fails to observe any of the Terms and Conditions set out herein.
- 19.6 The termination of these Terms and Conditions shall be without prejudice to all accrued rights and obligations of Finserve and the Customer hereunder and to all obligations expressed to continue or take effect after expiration or termination.

20. Notices

- 20.1 Except as otherwise specified herein all notices, requests, approvals, consents and other communications required or permitted herein shall be in writing and shall be personally delivered or sent by SMS, email, mail, registered or certified return receipt requested postage pre-paid courier service.
- 20.2 Finserve may also publish notices of a general nature regarding the Finserve Services which are applicable to all Customers through such means as Finserve shall determine appropriate (including but not limited to notices placed in Finserve's branches, Finserve's website and/or publication of notices in any one of the Kenyan newspapers). Such notices shall be deemed to have been served individually to each Customer.
- 20.3 The Customer authorizes Finserve to send notices under this clause, to the address given on the Application Form or at the last known address as shall be advised in writing by the

Customer.

21. Remedies and Waivers

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

22. Assignment

22.1 The Customer may not assign, transfer or delegate, or purport to assign, transfer or delegate, any of his rights or obligations under these Terms and Conditions.

22.2 Finserve has the right to transfer, assign or delegate any or all of its rights to any of its Affiliates.

23. Severability

If any of the words or provisions in these Terms and Conditions shall be construed to be illegal, void or invalid, that shall not affect the legality and validity of the other words or provisions. If any restriction is held not to be valid but would be valid if part of the wording were deleted or its extent reduced or modified then such restriction shall apply with such deletion, reduction or modification as may be necessary to make it enforceable.

24. Waiver

Any failure to exercise or delay in exercising a right or remedy provided by these Terms

and Conditions or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these Terms and Conditions or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.

25. Amendment of Terms and Conditions

25.1 Finserve reserves the right to modify vary or amend these Terms and Conditions and or the tariffs and charges payable for the Service at any time.

25.2 The Customer agrees that any addition to or alteration of these Terms and Conditions or any variation to the tariffs and charges made from time to time by Finserve of which notice has been given to the Customer via Internet, Email or Media shall be binding upon the Customer as if the same were set out and contained in these Terms and Conditions.

26. Force Majeure

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

by CAK, Communications Authority of Kenya or any other competent authority.

27. Applicable Law and Jurisdiction

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

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

28. Dispute Resolution

28.1 The Parties agree that should a dispute arise with respect to these Terms and Conditions, the matter shall be submitted to a single arbitrator to be appointed by the Parties jointly in writing and failing agreement, by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Chapter. Such arbitration shall be conducted in Nairobi, Kenya and resolved in accordance with the provisions of the Arbitration Act 1995 as amended from time to time.

28.2 The decision of the arbitrator shall be final and binding upon the Parties to the Agreement.





My money. My phone. My life.

**Finserve Africa Limited,
P.O. Box 104443 - 00101
Nairobi**

**Call: 0763 - 000 100
Email: info@equitel.com
Visit : www.equitel.com**