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Terms of Use

These Terms of Use were last updated on **[19th January, 2023]**.

Please read these Terms of Use (“Terms” or “Agreement”) carefully before using Our Service. These Terms of Use (“Terms” or “Agreement”) are a legal agreement between Company and Niobi Kenya Limited and governs your use of the Services. In this Agreement, the terms, “Customer” “Company”, “You” or “Your” means the company that is applying for or has opened a Niobi Account to use the Services. Terms “Niobi”, “we”, “us” or “our” means Niobi Kenya Limited (“Niobi”) and its past, present, or future employees, directors, affiliates, successors, assigns and agents, unless stated otherwise. As used in this Agreement, Company and Niobi Kenya Limited may be individually referred to as a “Party” and collectively referred to as the “Parties.”

References to “Terms of Use”, “Terms” or “Agreement” mean this document that you’re reading. You may only apply for and maintain a Niobi Account and use the Services if you agree to this Agreement, so read it carefully.

This Terms shall be effective, valid, and binding from the time that you signify your agreement to this Terms, visit the website of Niobi or avail any of its product or service. This Terms will be in full force and effect up to the time that it is terminated by you or us, save for some provisions which shall remain effective after termination, as stated in this Terms, under any law, rule, or regulation.

1. Acknowledgement

1.1 The terms and conditions of this Agreement are binding as of the date you agree to its terms. In exchange for opening a Niobi Account and gaining access to the Services, you are consenting to receive all Notices and communications electronically. This Terms of Use governs your relationship with Niobi and your use of the Services, unless stated otherwise. Your access to particular Services may also be subject to Service-Specific Terms.

1.2 We may amend this Agreement at any time by posting a revised version on our website. The revised version will be effective at the time we post it. If the revised version includes a Substantial Change, we will provide you with a seven (7) Days' prior notice by sending an email to the address on your profile and/ or posting the change on the website.

1.3 This is an important document which you must consider carefully when choosing whether to use Niobi. Please note the following risks of using Niobi:

- We may close, suspend, or limit your access to your Niobi Account and/or limit access to your funds if you violate this Agreement or any other agreement you enter into with Niobi.
- You are solely responsible for understanding & complying with any & all laws, rules & regulations of your specific jurisdiction that may be applicable to you in connection with your use of Niobi, including but not limited to, those related to export or import activity, taxes or foreign currency transactions.

You represent that you are over the age of 18. The Company does not permit those under 18 to use the Service.

1.4 Your access to and use of the Service is also conditioned on Your acceptance of and compliance with the Privacy Policy of the Company. Our Privacy Policy describes our policies and procedures on the collection, use and disclosure of your personal information when you use the Application or the Website and tells you about your privacy rights and how the law protects you. Please read our Privacy Policy carefully before using our Service.

2. Definition of Terms

a. Affiliate means an entity that, directly or indirectly, controls, is under the control of, or is under common control with a party, where control means having more than fifty percent (50%) of the voting shares or other ownership interest, the majority of the voting rights of such entity, the ability to ensure that the activities and business of that entity are conducted in accordance with the controlling entity's wishes or the right to receive the majority of the income of that entity on any distribution by it of all of its income or the majority of its assets on a winding up of that entity;

b. Authorised User and/or Administrator means an individual(s) with the requisite power and authority to conduct business and manage Company's Niobi Account and act on behalf of Company, including consenting or binding the Company to this Agreement and any Service-Specific Terms, as designated by Company.;

c. Niobi Web Portal or App – mobile or web application that serves as the interface between the user of the products and services and Niobi;

d. Niobi Account means your Company's account(s) with Niobi that is/are used to access the Services through Niobi's mobile or and/or web app (including software, servers, and associated user interface) through which Niobi shall offer the Services;

e. Niobi Dashboard means a page on the Niobi website or Niobi App through which the Business can view its Niobi Account and through which certain Transactions can be completed;

f. Business Day means a day (other than a Saturday, Sunday or public holiday) on which banking and financial institutions are generally open for the conduct of business in Kenya;

g. Confidential Information means, without limitation, all information, software, data, manuals, concepts relating to marketing methods, products, developments, business and financial affairs and trade secrets, and other information of value to a party and not generally known, (whether or not designated as "confidential information" by any Party and whether written, oral or in electronic form) and any other information clearly designated by a Party as "confidential information" or that is evidently confidential by its nature or the nature of its disclosure, and includes the terms of this Agreement;

h. Corporate Account means the Business' account hosted on the Niobi App through which certain Transactions are completed and which is visible to the Business on the Niobi Dashboard;

i. Company Data means information or documentation provided by Company to Niobi, and which includes Financial Data and any Personal Data provided by Company, Administrators, or Users.

- j.** Dashboard Data means the Services information that the Customer has accepted and agreed to utilise including expense reports, balance statements, employee data, card data, account settings and such other information that may be availed from time to time at Niobi's discretion;
- k.** Financial Institutions means those financial services institutions that have arrangements with Niobi to facilitate provision of the Services, including, without limitation, banking institutions and payment network partners (such as VISA or Mastercard);
- l.** Force Majeure Event means any event happening which is beyond the reasonable control of the parties and which negatively affects a Party's performance of its obligations under this Agreement and includes civil commotion, pandemic, war, an act of God and network failure which has not been occasioned by the fault of either party to this Agreement;
- m.** Intellectual Property Rights means all Intellectual Property owned by Niobi;
- Intellectual Property means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, topography rights, rights to use and protect the confidentiality of Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- n.** KYC means know your customer;
- o.** Linked Account means any account that is held with a Financial Institution and is linked to or authorized for Transactions through your Corporate Account.
- p.** Marks means the trademarks, service marks, trade names, logos, slogans and other identifying symbols of Niobi;
- q.** Notice means any physical or electronic communication, or legal notices related to these Terms that are provided to Customer, Authorised Users, or Administrators through text or sms, email, your Corporate Account, or by other means.
- r.** PIN means the password, login ID, electronic identification signature or codes given to or chosen by an Authorised User to confirm their identity when using the Services or when accessing or using the Niobi Dashboard;
- s.** Personal Data means any information in connection with this Agreement that can reasonably be used to identify an individual, or that may otherwise be considered personal data;
- t.** Services means access to the Niobi Web Portal, App and Dashboard to help Customers manage their spend more efficiently and other services, as shall be determined by Niobi from time to time;
- u.** Sponsor Bank means any bank partner of Niobi who facilitates acceptance of funds into the Corporate Account;
- v.** Third-Party Services means services and data provided by third parties connected to or provided through the Services. Third-Party Services include accounting or expense management platforms, payment processors and e-commerce platforms, and applications used to monitor Linked Accounts;

w. Third Party Provider means shall mean third party service providers (including KYC verification service providers), publishers, resellers, contractors, agents, Sponsor Banks and Financial Institutions used by Niobi during the course of this Agreement;

x. Transactions include transfer of funds into the Corporate Account through a Linked Account;

y. Updates means any modification and or improvement made to the operation of the Niobi App, Niobi Dashboard, Niobi website or Corporate Account including but not limited to bug- fixes, modification on the user interface and security upgrades.

z. Customer shall be interpreted as referring (i) to the Customer itself or (ii) to the Customer acting through an Administrator or Authorised User. Any act, decision, instruction or request entered by an Administrator or Authorised User on the Niobi App will be considered as an act, decision, instruction or request by the Customer.

3. Interpretation

The following principles of interpretation shall apply to this Agreement:

3.1. any reference to a section, clause and sub-clause shall, unless otherwise provided, be construed as references to the sections, clauses or sub-clause of this Agreement;

3.2. any reference to any statute or statutory provision shall, save as otherwise expressed in this Agreement, be construed as a reference to that statute or provision as it is amended consolidated extended or re-enacted from time to time and any orders regulations instruments or other subordinate legislation made from time to time under any statute provided that any such amendment consolidation extension or re-enactment does not have retrospective effect;

3.3. any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

3.4. headings are only for ease of reference and shall not affect the interpretation of this agreement;

3.5. references to a person includes a natural person, corporate or unincorporated body where context allows;

3.6. references to indemnifying any person against any circumstance includes indemnifying and keeping him harmless from all actions claims and proceedings from time to time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;

3.7. references to this Agreement means this Agreement and shall include any amendments made to this Agreement and any agreement which is supplemental to this Agreement;

3.8. the expression person includes a natural person body corporate state agency governmental authority or firm;

3.9. where any obligation pursuant to this Agreement is expressed to be undertaken or assumed by any party, such obligation shall be construed as requiring the party concerned to exercise all rights and powers of control over the affairs of any other person which that party is able to exercise (whether directly or indirectly) in order to secure performance of that obligation; and

3.10. words importing the singular shall include the plural and vice versa.

4. Niobi Obligations and Responsibilities

Subject to the Customer abiding by these Terms, Niobi agrees to:

- provide the Services to the Customer;
- provide technical advice and assistance to the Customer as may be reasonably necessary for the use of the Services;
- train the relevant members of the Customer 's team on how to use the Niobi App and Niobi Dashboard; and
- take all reasonable steps to ensure that any system malfunctions to the Niobi App or Niobi Dashboard are rectified in the shortest time possible.

4.1. Niobi reserves the right to modify, suspend, stop, or terminate any of its services immediately upon notice, at any time and from time to time, within applicable laws and regulations of the Republic of Kenya.

4.2. You will not use any device, software, or routine to interfere or attempt to interfere with the proper working of the Niobi Web Portal or App.

4.3. Niobi reserves the right to verify any activity that is done through its facilities, especially if it involves compliance with laws, rules, or regulations set out in the Republic of Kenya.

You agree to hold Niobi free and harmless from any liability, pursuant to the duties imposed by all applicable laws including but not limited to the Proceeds of Crime and Anti-Money Laundering Act (No 9 of 2009), the Prevention of Terrorism Act (No 30 of 2012), the Prevention of Organised Crime Act (No 121 of 1998), the Anti-Corruption and Economic Crimes Act (No 3 of 2003), the Data Protection Act, (No 24 of 2019, Laws of Kenya) and the Employment Act (No 11 of 2007).

4.4. We will attempt to process transactions promptly, but any transaction may be delayed or cancelled for a number of reasons including but not limited to: our efforts to verify your identity; to validate your transaction instructions; to contact you; due to variations in business hours and currency availability; availability of the system which may be affected by service disruptions or system maintenance; or otherwise to comply with applicable laws, rules, or regulations.

4.5. We may, in our absolute discretion, refuse or cancel transactions or services if: (a) Niobi is unable to verify your identity; (b) Niobi is unable to verify the identity of the recipient; (c) you do not comply with information requests pursuant to the requirements of all applicable laws in Kenya; or (d) Niobi reasonably believes you are using its facilities, or allowing it to be used, in breach of this Agreement or any applicable laws, rules, or regulations.

4.6. If we have executed the transaction in accordance with the instructions you have provided to us, and that the instructions prove to have been incorrect, we are not liable for the incorrect execution of the transaction. We will however make reasonable efforts to recover the funds. We may charge you a reasonable fee, reflective of our efforts, to do so. Unless there are exceptional circumstances, no adjustment will be made for any currency fluctuations which may have occurred between the time you pay us the transaction amount and the time of credit.

4.7. Niobi shall have the right to automatically suspend or block the transaction or any of your account if Niobi has reason to believe that the transaction or the account may be illegal or used for fraudulent or suspicious businesses or by an unauthorized person. Niobi may, but shall not have the obligation to, inform you prior to suspending or blocking the transaction pursuant to this clause. You acknowledge the authority of Niobi to suspend or block the transaction and the closure of the account and accordingly, you shall hold Niobi free and harmless against any and all consequences of such suspension or blocking, or any loss or damage which you may suffer as a result thereof.

4.8. Fees and other charges shall be in accordance with the agreed fees and charges (as may be shown in the specific terms and conditions of the products or services) which may be subject to changes upon discretion of Niobi and in accordance with laws, rules, and regulations. However, in the situation where there are insufficient funds in your account to cover such fees and other charges, we reserve the right, without incurring any liability, to refuse to carry out the transaction.

4.9. In order to comply with our obligations under relevant laws, we reserve the right to require further information or evidence relating to your personal information and to the purpose of any transaction using our facilities.

4.10. You authorize Niobi and/or any of its agents to disclose to third parties any and all information you have provided and consent to the use and processing of such information by Niobi and/or any of its agents or third parties with the transaction or any investigation in relation thereto.

4.11. Niobi does not guarantee to the Customer that the Services will be completely free of errors or defects or be continuously available. In addition, the Services are standard and are therefore not offered solely for a given Customer, depending on its own personal constraints, or to specifically meet its needs and expectations.

4.12. Niobi undertakes to:

- do its best to ensure the security of the Niobi App, Web Portal and Dashboard;
- inform the Customer of any reasonably foreseeable difficulty, in particular with regard to the implementation of the Services or the proper functioning of the Niobi App, Web Portal and Dashboard;
- notify Customers in good time when carrying out Updates to the Niobi App, Web Portal and Dashboard;
and
- regularly carry out checks to verify the functioning and accessibility of the Niobi App, Web Portal and Dashboard.

4.13. Niobi reserves the right to at any time modify the technical means of access to the Services and/or to the Niobi App, Web Portal and Dashboard based, in particular, on the evolution of the technology or its service offer. It is the Customer's responsibility to ensure that the software or telecommunications tools or hardware at its disposal are adapted to these developments.

5. Customer Obligations and Responsibilities

5.1. You undertake, for yourself and for each of the Administrators and Authorised Users, to (a) comply with these the Terms, (b) comply with the laws and regulations in force and not to infringe the rights of third parties or public order and (c) only perform activities that comply with the applicable laws and regulations. You shall indemnify Niobi and shall pay any fine, financial penalty or damages incurred by Niobi resulting from an activity of the Customer that would be illegal, unlawful or unethical. You understand that failure to abide by these obligations is subject to Niobi applying reasonable penalties to you and your account, including but not limited to charges, suspension, and/or termination of your Niobi account, and proper reporting to the applicable authority of the laws, rules, and regulations that govern Niobi.

5.2. You agree to (a) appoint the Administrator and update Niobi with all information of the Administrator as necessary to ensure that the information is current, accurate and complete; (b) keep all administrative login credentials for the Niobi App or Niobi Dashboard confidential acknowledging that it shall be responsible for all the activity taking place in the Niobi App or Niobi Dashboard under such credentials; (c) only permit an Administrator and directors of the Customer to access the Niobi Dashboard; (d) keep and maintain an accurate list of current Authorised Users and Administrators authorised to use Cards; and (e) train Authorised Users on how to access and use the Niobi App.

5.3. You agree not to gain or attempt to gain unauthorized access to any part or feature of the Niobi Web Portal or App or to any other system or network connected to the Niobi Web Portal or App. You also agree not to gather, harvest, or otherwise collect information about others using the Niobi Web Portal or App without our explicit informed consent; nor restrict, prevent, or prohibit any other party from using our facilities, including but not limited to such actions which may tend to discourage others from using the services, such as stalking, flaming, or the lashing out at other parties, spamming or the sending of unsolicited information, advertisement or content, flooding or the sending of repetitive message, trolling or the use of insulting or deliberately divisive information, material or content, other forms of annoyances, and the like.

5.4. You agree not to circumvent, disable, or otherwise interfere with security-related features of the Niobi Web Portal or App, including those that prevent or restrict use or copying of any content, material, or information available on or through the Niobi Web Portal or App, as well as those that enforce limitations on the use of our facilities.

5.5. You agree not to probe, scan, or test the vulnerability of the Niobi Web Portal or App or any network connected to it, and not to breach the security or authentication measures on the same. You agree not to reverse look-up, trace, or seek to trace any information on any user of or visitor to the Niobi Web Portal or App, or any other client of Niobi including any account maintained with our facilities not owned by you, to its source, or exploit these or any information made available or offered by or through the Niobi Web Portal or App, in any way where the purpose is to reveal any information, including but not limited to personal identification, other than your own information.

5.6. You agree to use or access the Niobi Web Portal or App for your information and personal use solely as intended through the provided functionality of the Niobi Web Portal or App. You agree not to copy or download any material or content from Niobi Web Portal or App unless such copying or downloading is explicitly allowed by a visible manifestation thereof such as a “download” button or a similar link ostensibly displayed. You further agree not to engage or attempt to engage in the use, copying, transmission, broadcast, display, distribution, or sale of any of the contents, material, or information available on or through the Niobi Web Portal or App, including user comments and the like, other than as expressly permitted herein, or as explicitly indicated.

5.7. You agree that you will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Niobi Web Portal or App or its systems or networks, or any systems or networks connected to it.

5.8. You agree not to incorporate any word in your name, message identification, or custom user title that is defamatory, obscene or profane, or which violates any trademark, service mark, or other intellectual property rights of any third party, including that of Niobi. You likewise agree not to use any trademark, trade name, service mark, or logo in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names, or logo.

5.9. You agree not to use any device or routine to interfere or attempt to interfere with the proper working of the Niobi Web Portal or App or any transaction being conducted using our facilities, or with any other person’s use of these facilities. You agree that you will not engage in any activity that interferes with or disrupts our services or the servers and networks which are connected to our facilities.

5.10. You undertake to provide us with: (a) true, accurate, current and complete evidence of your identity, and promptly update your personal information if and when it changes; (b) provide us with any identity documentations as may be requested by us; and (d) any other information that must be provided for our services to be properly executed. You agree not to conceal your true name or use a fictitious name. You must comply with all applicable laws including but not limited to the Proceeds of Crime and Anti-Money Laundering Act (No 9 of 2009), the Prevention of Terrorism Act (No 30 of 2012), the Prevention of Organised Crime Act (No 121 of 1998), the Anti-Corruption and Economic Crimes Act (No 3 of 2003), the Data Protection Act, (No 24 of 2019, Laws of Kenya) and the Employment Act (No 11 of 2007, Laws of Kenya).

5.11. You agree to update your specimen signature, biometrics, or other similarly pertinent information annually or earlier when required by Niobi. Any changes in specimen signatures, authorized signatories, or other similarly pertinent information can be done provided that you file a written request with Niobi in the prescribed form.

5.12. Once you confirm the transaction or ask Niobi to proceed with the transaction, you agree that you may not cancel nor reverse such transaction. Niobi shall proceed with crediting the account of the recipient and

once the money or fund is in the account of the beneficiary or recipient, Niobi cannot reverse nor deduct such account without the proper court order or authorization.

5.13. You agree not to use the facilities of Niobi for any purpose that is illegal, unlawful, or prohibited by this Agreement, or to solicit the performance of any illegal activity or other activity which infringes on the rights of Niobi or others, which includes but is not limited to selling, leasing, or giving your account to a third party.

5.14. You agree that you are responsible to check for update/s and will download such update/s to the Niobi Web Portal or App before use. You also agree that the device used to access the Niobi Web Portal or App is compatible or meets the minimum system requirements of the Niobi Web Portal or App. You understand that certain Niobi Web Portal or App functions may not be available or disabled by Niobi if you do not perform the needed update or meet the compatibility / minimum system requirements.

You agree that it is your responsibility to take all reasonable precautions to ensure that the device used to access the Niobi Web Portal or App is free or is reasonably protected from any computer viruses or similar devices or software including, but not limited to, Trojan horses and worms.

5.15. You agree that it is your responsibility to securely keep your PIN and/or Password including one-time pin (OTP). The use of your User ID and your PIN and/or Password will serve as your irrevocable authorization for us to carry out transactions that you initiated. Any fraudulent activity by your agents, employees, officers, and authorized representatives using your User ID and your PIN and/or Password, such as but not limited to unauthorized withdrawals or transfers, that may bring about financial losses to you is your sole responsibility.

5.16. You agree that by supplying your personal information for the purpose of availing yourself of the Service, you expressly consent to the processing of your personal information for the purpose of creating and maintaining your account. Such consent includes authorization for Niobi to disclose, exchange, and release the said information to its associates, affiliates, subsidiaries, officers, employees, agents, lawyers, and other consultants, pre-paid/debit/credit bureaus or any such persons as Niobi deems necessary, or as required by laws, rules, or regulations. In the event that the disclosure or processing of your information does not fall among the above-mentioned situations, we will obtain the necessary consent, subject to existing laws, rules, and regulations on secrecy, data privacy, and other relevant laws, rules, and regulations.

5.17. You are solely responsible for understanding & complying with any & all laws, rules & regulations of your specific jurisdiction that may be applicable to you in connection with your use of Niobi, including but not limited to, those related to export or import activity, taxes or foreign currency transactions.

5.18. You will promptly notify us in writing if any of the following occur:

- the nature of your business changes significantly;
- there is any change of beneficial owners;
- there is any material change in the control or ownership of your business (whether direct or indirect) or you transfer or sell 25% or more of your total assets;

- there is any planned or anticipated liquidation, or voluntary bankruptcy or insolvency proceeding
- you are the subject of an inquiry, proceeding, investigation, or enforcement action promulgated by any regulatory authority;
- you are party to a litigation in which claims are asserted that would, if sustained in a legal proceeding or alternative dispute resolution forum, result in a material impact to Customer's financial condition; and
- you receive a judgment, writ or warrant of attachment or execution, lien, or levy against 25% or more of your total assets.

5.19. You undertake, for yourself and for each of the Administrators and Authorised Users, to:

- not breach or attempt to breach, scan or test the vulnerability of the security system and related systems of the Niobi App and Niobi Dashboard;
- not to access or attempt to access any data that is not intended for the Customer;
- refrain from interfering with the normal functioning of the Niobi App and Niobi Dashboard or performing any action that could cause the interruption or deterioration of one or more Services;
- not upload to the Services, display, send by email or otherwise transmit any material containing software viruses or other computer codes, files or programs designed to interrupt, destroy or limit the functionality of the Niobi App and Niobi Dashboard; and
- not attempt to interfere with the Services of any other customer or user, host or network, including, but not limited to, exposing the Services to a virus, creating a server overload, flooding the server, flooding the messaging services.

You acknowledge having read about the characteristics and constraints, in particular technical, of all the Services. You are informed and accept that the use of the Services requires an internet connection and that the quality of the Services depends directly on this connection as well as on computer hardware and/or third-party software, for which you, the Customer, is solely responsible.

6. User Representation and Warranties

6.1. You warrant that you are at least 18 years of age, or if less than 18 years of age, must possess legal parental or guardian consent, and that are fully able and competent to legally bind yourself to and abide by all of the terms, conditions, obligations, declarations, affirmations, representations, and warranties set forth in this Agreement, relative to the applicable laws, rules, and regulations of the Philippines.

6.2. You warrant that all information you provide to Niobi are true, current, correct, and accurate. You further warrant that in case of any change in the circumstances which affect the information you have provided to Niobi, you shall inform Niobi of such changes within fifteen (15) calendar days from the occurrence of the said change. Niobi, its officers, and/or employees shall be held free from any liability for any damages, claims, or demands from your failure to do so or to inform Niobi in a timely manner.

6.3. By visiting and/or using the Niobi Web Portal or App, you declare, undertake, and affirm that you take sole responsibility for whatever consequences that may arise out of your visit and/or use of our facilities or Services. You understand that Niobi shall not be liable for, and you hereby hold Niobi free from, any direct, Niobi_Policy

incidental, special, consequential, indirect, or punitive damages whatsoever resulting from your use of, or your inability to use, of the facilities or services. On the other hand, you declare, undertake, and affirm that you shall indemnify Niobi for any direct, incidental, special, consequential, indirect, or punitive damages whatsoever resulting from your use of the Niobi Web Portal or App contrary to this Agreement. You further agree, undertake, and commit to indemnify Niobi for any breach of its proprietary and other rights, including breach of this Agreement, which you may commit in the course of or arising out of your use of our facilities.

7. Reserved Rights

7.1. You understand and agree that Niobi reserves the right, at its sole discretion but without obligation, to deny access to and/or discontinue its services or any component thereof to anyone at any time, temporarily or permanently, without giving any reason and/or prior notice to you. You hereby irrevocably agree, affirm, and warrant to hold Niobi free from any liability, both under equity and the law, arising or that may arise out of any such denial of access to or the discontinuance of its services.

7.2. You understand and agree that Niobi reserves the right, at its sole discretion but without obligation, to collect, screen, review, flag, filter, modify, block, refuse, or remove any and/or all information provided by any user, explicitly or implicitly to and through its facilities, including but not limited to hardware information, IP address, browser-type related information, cookies, and the like. You hereby irrevocably agree, affirm, and warrant to hold Niobi free from any liability, both under equity and the law, arising or that may arise out of any such collection, screening, review, flagging, filtering, modification, blocking, refusal, or removal of any and/or all information provided by any user to and through its facilities.

7.3. You understand and agree that Niobi reserves the right, at its sole discretion but without obligation, to enhance, improve, develop, and introduce new features and functionalities to its facilities at any time and without prior notice. You hereby understand, agree, and affirm that any such enhancement, improvement, development, new feature, and/or new functionality to the Niobi Web Portal or App shall form part of its services as defined herein and thus shall likewise be covered by this Agreement and its subsequent revisions or amendments, as applicable.

7.4. You understand and agree that Niobi reserves the right, at its sole discretion, to verify, check, cross-refer, validate, and ascertain the veracity and truthfulness of all information supplied by you by acquiring, accessing, retrieving, or otherwise acquiring similar or additional information supplied by you to other third-party service providers, including, but not limited to telecommunications providers, etc. You hereby expressly, unequivocally, and voluntarily allow Niobi to request for and secure such information, and expressly, unequivocally, and voluntarily instruct such third-party providers to: (a) receive and process Niobi's request; (b) favorably act at all times on any such request by producing the information requested; and (c) when requested by Niobi provide the latter with certified digital or printed copies of the said information.

7.5. You understand and agree that Niobi reserves the right, at its sole discretion but without obligation, to send you or cause to send you service updates and/or messages, including SMS, notifications, email and/or any data message transmission, informing you of enhancements, improvements, developments, features, functionalities, products, promotions, offers, advertisement and/or any other information relative to its services and Niobi. Niobi makes no warranty of any kind, express or implied, for such service updates and/or messages, but you hereby agree to receive such service updates and/or messages and hold Niobi free from any liability and/or claims for indemnification or damages that may arise there from.

7.6. You understand and agree that Niobi reserves the right, at its sole discretion, to set limitations to and charge fees and applicable taxes for the use of its facilities, at any time and upon prior notice. You further understand and agree that Niobi reserves the right, at its sole discretion and under no obligation, upon notice, to change the applicable fees, taxes, and charges levied for the use of the services, at any time, subject to the conditions set out in the amendment clause of this Agreement.

7.7. You understand and agree that Niobi reserves the right, at its sole discretion but without obligation, to enforce the provisions of this Agreement, including but not limited to performing investigation and legal actions with law enforcement agencies. Non-enforcement of any of the rights of Niobi under this Agreement, under the law or under principles of equity shall not be construed as a waiver thereof. Likewise, no subsequent course of action by Niobi by you, and/or by any third party, individually or collectively, shall not operate and shall not be construed to operate as abandonment, amendment, or modification of this Agreement. You likewise hereby declare, affirm, and undertake the sole obligation to indemnify Niobi or any third party for any damage Niobi or said third party may sustain as a result of your use of our facilities.

7.8. You understand and agree that Niobi reserves the right, at its sole discretion but without obligation, to limit the provision, availability, quantity, and quality of any feature, product, or service to any person or to anyone within the same geographic area, demographic profile, or any other market, commercial, and/or trading segments. You likewise understand and agree that Niobi reserves the right, at its sole discretion but without obligation, to administer and operate any and/or all of its services from any or various locations outside the Republic of the Philippines. You further understand, agree, and hold Niobi free from any liability arising therefrom, that not all features, products, or services discussed, referenced, provided, or offered through or in the Niobi Web Portal or App are available to all persons or in all geographic locations, or are appropriate or available for use outside the Republic of the Philippines. Any part or the whole of this Agreement are void where prohibited. You hereby understand, agree, and undertake sole responsibility for your continued access to or use of our facilities, as well as the results or consequences of such access and use, including the responsibility for compliance with applicable local laws and the sole liability for non-compliance or breach thereof.

7.9. You understand that and agree that Niobi reserves the right, in case of any amount mistakenly credited to your account, to debit the erroneously credited amount from any of your accounts.

7.10. You understand and agree that Niobi reserves the right to comply with a notice or order from a court or other competent authority for the garnishment, attachment, freezing, or sequestration of any or all of your accounts. The amount subject of the notice or order shall automatically be on hold and no withdrawals will be allowed until the order has been lifted.

7.11. You understand and agree that in the event that:

- a claim or dispute arises in relation to your account, its ownership, or operation;
- conflicting instructions are given in relation to your account;
- it receives a request or instruction to freeze your account; or
- other similar or analogous circumstances occur,

Niobi reserves the right, in its sole discretion, to take any necessary actions, such as freezing of the account or filing interpleader suits. You understand that such actions are authorized, approved, and ratified by you and you hold Niobi free from any liability arising therefrom.

8. Data Privacy Statement

You authorize Niobi and its official partners to process the personal information that you have provided directly or indirectly in our data collection touchpoints relevant to the respective purposes furnished to you in our privacy notices. With your active use of our products and services, you agree to the Privacy Policy of Niobi found in <http://www.niobi.co/privacypolicy>.

9. Liabilities

9.1. You agree to indemnify, defend and hold harmless Niobi, its subsidiaries and affiliates, and their directors, officers, employees and agents, from and against any loss, damage, liability, costs and expenses, including reasonable attorney's fees (collectively, "Losses"), arising out of or based on:

- breach of, or failure to perform, any of your obligations contained in this Agreement;
- your gross negligence or willful misconduct; or
- errors incurred by or judgments/decisions made by you.

9.2. You may be penalized by Niobi equivalent to the amount of damage or cost incurred or penalty paid arising from your action as listed in the preceding section or from failure to comply with any provision of this Agreement as well as other agreements with Niobi.

9.3. Niobi makes no warranty, express or implied, regarding the performance or functionalities of the products and services offered. The services are offered on "as is," "as available" basis without warranties of any kind, other than warranties that are incapable of exclusion, waiver or limitation under applicable laws. Without limiting the generality of the foregoing, Niobi makes no warranty (1) as to the content, quality or accuracy of data or information received and transmitted using the services; (2) as to any service or product obtained

using Niobi's services; (3) that the services will be uninterrupted or error-free; or (4) that any particular result or information will be obtained from availing Niobi's services.

9.4. In the event of any action that you may file or claim against Niobi, Niobi's liability shall in no event exceed, in the aggregate for all claims, the amounts pertaining to the transaction in dispute that you actually suffered and awarded by a court/tribunal of competent jurisdiction.

9.5. In no event shall Niobi be liable for any indirect, special, incidental or consequential damages under this Agreement, including, without limitation, loss of profits, loss of revenue, loss of data or lost savings, even if Niobi have been advised of the possibility of such damages.

10. Governing Law and Dispute Resolution

10.1. This Agreement and any dispute or claim, including non-contractual disputes or claims arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of Republic of Kenya.

10.2. Each party shall settle amicably any dispute arising out of or in connection with this Agreement or in its validity, interpretation or termination.

10.3. Save as herein otherwise specifically provided, any dispute (including as to the interpretation validity enforceability or termination of this Agreement) between the parties as to matters arising under or pursuant to this Agreement as aforesaid which cannot be settled amicably thirty (30) days after receipt by one party of the other party's request for such amicable settlement may be submitted by either party to arbitration in accordance with the provisions of clauses 9.4 to 9.6 (both inclusive).

10.4. If the parties so agree, the dispute shall be referred to a single arbitrator or if they are unable to agree upon the person to be appointed as arbitrator within ten (10) days from the date of the notice requesting arbitration, the arbitrator shall, at the request of either party, be appointed by the Chairman of the Chartered Institute of Arbitrators of the United Kingdom, Nairobi Branch or failing him by the President of the Law Society of Kenya. The venue and seat of the arbitration shall be Nairobi.

10.5. Arbitration proceedings shall be conducted in accordance with the rules or procedures for arbitration of the Chartered Institute of Arbitrators of the United Kingdom, Kenya Branch. If for any reason an arbitrator is unable to perform his function, a substitute shall be appointed in the same manner as the original arbitrator. The decision of the arbitrator shall be final and binding on the parties. The fees and expenses of the arbitrator shall be borne by the parties in equal shares.

10.6. Notwithstanding the above provisions of this clause 10, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrators.

11. Non-Waiver of Rights by Niobi

Failure, omission, or delay on the part of Niobi to exercise its right or remedies under this Agreement shall not operate as a waiver. Any such waiver shall be valid only when reduced in writing and delivered to you.

12. Separability Clause

Should any term or condition in this Agreement be rendered void, illegal, or unenforceable in any respect under any law, the validity, legality, and enforceability of the remaining terms and conditions shall not be affected or impaired thereby.

13. Suspension

13.1. Niobi may, with reasonable notice where practicable, suspend the availability of the Service to the Customer wholly or partially for any valid reason, including without limitation, where (a) the Customer breaches these Terms, (b) the Service is used in a manner contrary to the representations made to Niobi by the Customer or in a manner inconsistent with the conditions of any approval granted to the Customer; (c) investigations are contemplated or ongoing and Niobi reasonably believes that suspension of the service is likely to facilitate the investigations; (d) any approval for the Service granted to the Customer is subsequently revoked or expires.

13.2. In the event of suspension, Niobi shall give the Customer reasonable notice (Suspension Notice) to remedy the cause of the suspension failure to which Niobi shall be at liberty to terminate this Agreement.

13.3. Upon the issuance of a Suspension notice, Niobi shall promptly facilitate the settlement of all accumulated payments in the Niobi Account.

13.4. Upon conclusion of investigations, Niobi may either reinstate the Services or terminate the Services in accordance with the provisions of Clause 14.

14. Termination

14.1. This Agreement is in effect from the date Customer clicks to accept until:

- i. either Party may for any reason provide sixty (60) calendar days written notice of termination,
- ii. automatically if Customer materially breaches this Agreement and fails to cure within thirty (30) days after notice of said breach;
- iii. without notice to Customer if Customer enters receivership, administration, insolvency or bankruptcy, or initiates insolvency or bankruptcy proceedings;
- iv. without notice to Customer if Niobi, in its sole discretion, determines that Customer's actions and practices relating to Niobi are commercially unreasonable towards Niobi, the Niobi App, other Niobi Customers or Customers; or
- v. on the occurrence of a Force Majeure Event.

14.2. For the purposes of Clause 13.1, Item (ii), material breach means a breach that is serious and has an effect, substantial or otherwise on the performance of this Agreement in the reasonable opinion of Niobi.

14.3. Niobi does not permit Customers to accept Cards for products or services that are deemed illegal under applicable law. If, in Niobi's sole discretion, the products or services offered by Customer are deemed illegal, Niobi may immediately suspend the Services and thereafter, at its sole discretion terminate this Agreement pursuant to Clause 18.1, Item (ii).

14.4. The expiration or termination of this Agreement shall be without prejudice to all accrued rights and obligations of the Parties under this Agreement and to all obligations under this Agreement expressed to continue or take effect after expiration or termination.

14.5. Notwithstanding any other provision of this Agreement, Niobi may immediately terminate this Agreement upon learning that you or any of your personnel have been sanctioned and continuing with the Agreement, may be deemed to be a breach of the Sanction.

15. Amendments

15.1. Niobi may at any time and for whatever reason it may deem proper, amend, revise, or modify this Agreement, which shall only be implemented seven (7) days after notice to you. You agree that for purposes of this Agreement, publication of the revised Agreement in Niobi's website shall be considered as sufficient notice. It is your responsibility to regularly check any changes to this Agreement. Your continued use of Niobi's services, availment of its products, and continued maintenance of your account after any such changes constitutes acceptance of the new Terms. Failure to notify Niobi of your intention to terminate your account shall be construed as acceptance of the amendments to this Agreement. All communications, transactions, and dealings with us shall be subject to the latest version of this Agreement in force at the time.

15.2. If a change is not acceptable to Customer, Customer can terminate this Agreement by providing notice of termination to Niobi within thirty (30) days from the date of the change. Notice of termination must be in writing.

15.3. Niobi may not under any circumstances be held liable for any damage, in any respect whatsoever, in connection with the modification of the Terms if the Customer refrains from terminating the Terms and continues to use the Services after the effective date of the modifications.

16. Force Majeure

16.1. Where a party to this Agreement is prevented, hindered or delayed in performing any of its obligations under this Agreement by a Force Majeure Event, the affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of its obligations.

16.2. As soon and reasonably practicable after the start of a Force Majeure Event the affected party shall:

- i. notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and
- ii. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

16.3. Upon notification of the Force Majeure Event, the corresponding party shall suspend the performance of this Agreement until the Force Majeure Event ceases.

16.4. Either party may terminate this Agreement in the event that the Force Majeure Event lasts for more than sixty (60) days from the date of notification.

17. Notices

17.1. All notice requirements shall be as stated in this Agreement. If Niobi is required to send notice to you, it shall do so through available channels including but not limited to, In-App notifications, SMS, email, or registered mail which shall be sent to your registered address. Publication in Niobi's website shall also be sufficient notice, as may be required by this Agreement.

17.2. Any notice or communication given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

- i. in the case of personal delivery, when delivered;
- ii. in the case of e-mail, when a delivery-receipt has been received by the sender in respect of the email address notified or an acknowledgement of the e-mail by the recipient sent to the sender; or
- iii. in the case of a post, five (5) Business Days after being deposited in the post, postage prepaid by the quickest mail available and by registered mail if available to such party at its address specified in Clause 17.3

17.3. Or at such other address as such party may hereafter specify for such purpose to the other by, notice in accordance with this Clause 14. The addresses referred to in Clause 14.2 are:

- In the case of a notice given to Niobi: NIOBI KENYA LIMITED,
Email: hello@niobi.co
Attention: Niobi
- In the case of a notice given to Customer, the address provided by the Customer when registering for these Services or as updated from time to time.

18. General

18.1. The Customer shall not be at liberty to assign, delegate, sub-contract or otherwise transfer any or all of its rights and obligations under this Agreement without the consent of Niobi. Niobi shall be entitled to Assign this Agreement to any party and shall provide Customer with written notice to this effect.

18.2. This Agreement (together with any documents referred to in this Agreement) constitutes the whole agreement between the parties relating to the matters contemplated herein and no party has relied on any representation made by any other party which is not a term of this Agreement.

18.3. No agent or representative of any party has authority to make, and the parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.

18.4. Failure by any of the parties to exercise any rights under this Agreement in any one or more instances will not constitute a waiver of such rights in any other instance. Waiver by any of the parties of any default under this Agreement will not be deemed a waiver of any other default.

18.5. If any provision of this Agreement shall be held to be illegal void invalid or unenforceable under the laws of any jurisdiction, the legality validity and enforceability of the other provisions of this Agreement shall not be affected and the legality, validity and enforceability of the whole of the Agreement in any other jurisdiction shall not be affected.

18.6. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by any party may be taken or executed by the authorised representatives of such party.

19. Customer Service

19.1 At Niobi, we consider our customer's financial questions, needs and feedback as very important. If you have any concerns about a procedure or have encountered a problem with our service, we will do our best to address it within ten (10) days. Should your concern require more time to be resolved, we will update you every step of the way. You may contact our Customer Service at:

<u>Channel</u>	<u>Details</u>
Niobi App Customers – Hotline	Niobi Customer Service No.: (+254) 0740 845185
Email	hello@niobi.co support@niobi.co
Chat	On the Niobi App or Niobi Dashboard/WebPortal
Niobi Support Web Page	www.niobi.co

You have our assurance that we will handle your concerns, feedback and information with utmost confidentiality and will strive to resolve them as soon as possible.

19.2 Telephone conversations with Niobi staff may be recorded by Niobi or any company appointed for this purpose, in order to improve the quality of the Services for the Customer.