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Dated as of the 19<sup>th</sup> day of April, 2011



COUNTY COUNCIL OF NAROK

AND

EQUITY BANK LIMITED

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PRE-PAID SMART CARD SYSTEM  
 AGREEMENT

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SCHEDULES

- Schedule A: Technical Specifications
- Schedule B: Statement of Works
- Schedule C: Maintenance and Support Services
- Schedule D: Investment Costs
- Schedule E: Project Plan
- Schedule F: Merchant Services Agreement



This Agreement is made as of the 19<sup>th</sup> day of April 2011

**BETWEEN:**

1. THE COUNTY COUNCIL OF NAROK, a county council established under the Local Government Act (Cap 265 of the Laws of Kenya) as a body corporate with perpetual succession for the purposes hereof of Post Office Box Number 19, Narok, Kenya (hereinafter referred to as the "County Council" which term shall include where the context so allows the County Council's successors in title and assigns); of the one part

AND

2. EQUITY BANK LIMITED, a company incorporated with limited liability in the Republic of Kenya and licensed to carry on banking business for the purposes hereof of Post Office Box Number 75104-00200, Nairobi with its registered office in Nairobi, Kenya (hereinafter referred to as the "Bank" which term shall include where the context so allows the Bank's successors in title and assigns) of the other part.

WHEREAS

- A. The County Council is the duly authorised custodian and manager of the Maasai Mara National Reserve (the "Reserve") and desires to put in place a smart card revenue collection system to be used by the County Council to enhance revenue collection.
- B. Pursuant to the above, the County Council published an invitation for expressions of interest REF: NCC/EOI/SCS/2010 dated 9<sup>th</sup> February, 2010.
- C. The Bank submitted its expression of interest to the clerk of the County Council, dated 16<sup>th</sup> March, 2010 for the establishment and running of a smart card revenue collection system (the "Pre-paid Smart Card Service") to assist the County Council in revenue collection.
- D. After a successful tender process, the Bank was awarded the tender by the County Council through a letter of tender award dated 8<sup>th</sup> November, 2010.
- E. The County Council has agreed to engage the Bank to provide the Pre-paid Smart Card Service, and the Bank has accepted to provide the Pre-paid Smart Card Service in accordance with the terms and conditions of this Agreement.
- F. The parties have agreed to enter into this Agreement to record, *inter alia*, their rights and obligations relating to the provision of the Pre-paid Smart Card Service.

**NOW IT IS HEREBY AGREED as follows:**

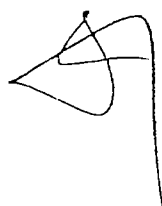
1. DEFINITIONS AND INTERPRETATION
  - 1.1 In this Agreement (including its recitals and Schedules) unless the context otherwise requires the following terms shall have the following meanings:
    - 1.1.1 "Business Day" means any day, excluding Saturdays, Sundays or gazetted public holidays on which banks in Kenya are generally open for business;




- 1.1.2 "Contract Period" means the period of ten (10) years from (and including) the Effective Date;
- 1.1.3 "Effective Date" means the date of this Agreement;
- 1.1.4 "Escrow Account" means the bank account to be maintained by the Bank for purposes of crediting all revenue collected through the Pre-paid Smart Card Service;
- 1.1.5 "Go-Live Date" means the date when the System will be activated and the Bank will commence the provision of the Pre-paid Smart Card Service in accordance with the terms of this Agreement being three (3) Business Days from the day when the UAT is signed by or on behalf of both parties in accordance with clause 2.3.4,
- 1.1.6 "Implementation Period" means the period of ninety (90) days from the Effective Date or such other period agreed to by the parties in writing being the period during which time the Statement of Works will be actioned;
- 1.1.7 "Intellectual Property" means patents, trade marks, service marks, registered designs copyrights (including copyright in computer programs) and rights of a similar or corresponding character (whether or not the same are registered or capable of registration) and all applications for, or for the protection of, any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;
- 1.1.8 "Intellectual Property Rights" means all Intellectual Property owned and/or used by a party to this Agreement;
- 1.1.9 "Infrastructure" means the equipment required by the County Council to enable it to benefit from the provision of the Pre-paid Smart Card Service details of which are set out in Schedule B;
- 1.1.10 "Investment Cost" means the initial total cost to be paid by the County Council of setting up the System during the Implementation Period as more particularly detailed in Schedule D and as may be amended in accordance with the terms of this Agreement;
- 1.1.11 "Operational Reports" means the financial and non financial information to be generated by the Bank periodically in accordance with agreed time lines;
- 1.1.12 "Project Plan" means the timetable set out in Schedule E setting out how the Statement of Works will be carried out and the timeframes for each action;
- 1.1.13 "Service Fee" means the commission payable to the Bank for the provision of the Pre-paid Smart Card Service being a percentage of the total revenue collected by the County Council through the Pre-paid Smart Card Service;
- 1.1.14 "Statement of Works" means the details of work to be undertaken in order to set up the System and to provide the Pre-paid Smart Card Service as set out in Schedule B and as may be amended by the parties in accordance with the terms of this Agreement;



- 1.1.15 "System" means the smart card revenue collection system developed by or on behalf of the Bank for the purposes of managing the collection of revenue from the Users and includes the hardware and the core platform and other software located at the Bank's premises, the Infrastructure and the equipment required at the points of sale;
- 1.1.16 "Technical Specifications" means the details of how the System and the Pre-paid Smart Card Service is intended to work as set out in Schedule A and as may be modified, upgraded and/or improved from time to time by the Bank;
- 1.1.17 "Users" means all persons who require to make payment to the County Council for use of the Reserve and includes payment for leases of land within the Reserve, licences, entry fees for persons, vehicles and aircrafts, filming rights, ballooning services, penalties and surcharges and such other revenue streams as are more particularly detailed in the Statement of Works and as may be agreed by the parties in writing from time to time, and
- 1.1.18 "UAT" means the User Acceptance Test which is a procedure to be carried out by both parties to ensure that the System is working well details of which are set out in the Statement of Works.
- 1.2 Unless the context otherwise requires, in this Agreement (including the recitals and the Schedules hereto):
- 1.2.1 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,
- 1.2.2 references to "this Agreement" means this Pre-paid Smart Card Service Agreement and shall include the Schedules which shall form part of this Agreement and such Schedules shall have the same force and effect as if expressly set out in the body of this Agreement and, in addition, shall include any amendments made in writing by the parties to this Agreement and any agreement made by the parties in writing which is supplemental to this Agreement;
- 1.2.3 the expression "competent taxing authority" means any governmental authority monetary agency or central bank having power to collect or levy tax;
- 1.2.4 the word "tax" shall be construed so as to include any tax levy impost assessment duty or other charge of a similar nature (including, without limitation, value added tax stamp duty excise duty and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) and "taxation" shall be construed accordingly;
- 1.2.5 words denoting the singular number shall include the plural and vice versa and reference to the masculine gender includes a reference to the feminine gender and neuter and vice versa;



- 1.2.6 any reference to a Section clause sub-clause and Schedule shall, unless otherwise provided, be construed as references to the sections clauses or sub-clause of and a schedule to this Agreement;
- 1.2.7 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;
- 1.2.8 the expression "person" includes a natural person body corporate state agency governmental authority or firm;
- 1.2.9 the words and phrases "other" "include" "including" or "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as the preceding words where a wider construction is possible,
- 1.2.10 references to "parties" shall mean the parties to this Agreement and "party" shall be construed accordingly;
- 1.2.11 references to "writing" or "written" includes faxes and electronic mail; and
- 1.2.12 references to "end of day" shall mean mid-night of the day in question.
- 1.3 Section headings are for convenience only and shall not affect the construction of this Agreement.
- 1.4 If a definition of a particular term or expression in this Agreement imposes substantive rights and obligations on a party such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.
- 1.5 Where any term is defined within the context of any particular clause, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes under this Agreement notwithstanding that that term has not been separately defined in this Section 1.
- 1.6 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.

## 2. APPOINTMENT AND IMPLEMENTATION

- 2.1 The County Council hereby appoints the Bank and the Bank hereby accepts, subject to the satisfactory implementation of the Statement of Works, the appointment to provide exclusively the Pre-paid Smart Card Service in accordance with the terms of this Agreement.




2.2 In order for the Bank to be able to provide the Pre-paid Smart Card Service both parties need to work together to set up the System. The provision of the Pre-paid Smart Card Service entails the following core functions:

- 2.2.1 providing the core platform on which the System will operate;
- 2.2.2 procuring the smart cards;
- 2.2.3 data preparation and personalisation of the smart cards;
- 2.2.4 providing a distribution network for the issuance and loading of smart cards with value using the Bank's branches and agents including at points of entry and installation of banking self service terminals at designated locations where smart cards can be dispensed and loaded;
- 2.2.5 equipping point of sale terminals at each entry point and head office to read the smart cards and record deduction of the relevant fees payable by the Users;
- 2.2.6 providing training to the relevant County Council staff on the use of the smart cards;
- 2.2.7 generating the Operational Reports for the consumption of the County Council; and
- 2.2.8 providing cash management services.

2.3 The process through which the System will be set up to enable the provision of the Pre-paid Smart Card Service is set out in detail in the Statement of Works and will follow the time schedule set out in the Project Plan. Unless otherwise agreed this process will be undertaken within the Implementation Period. In brief the process of setting up the System shall entail the following:

- 2.3.1 The County Council shall, within seven (7) Business Days from the Effective Date, provide to the Bank in immediately available funds seventy (70%) of the Investment Cost to facilitate the purchase and installation of the Infrastructure at the relevant sites and the setting up of the System as more particularly detailed in the Statement of Works;
- 2.3.2 The Bank and the County Council will on the Effective Date each appoint a senior and duly qualified member of their staff to be that party's project manager to head the implementation of the Statement of Works. The project managers will be supported by a core implementation group also to be appointed on the Effective Date made up of duly qualified staff members of each of the parties. The mandate of the core implementation group will be to action the Statement of Works within the Implementation Period;
- 2.3.3 The implementation includes: (i) integration of the software system required to support the provision of the Pre-paid Smart Card Service which will be undertaken by the Bank; (ii) the installation of the Infrastructure in the required sites which will be undertaken by both parties; (iii) the distribution of point of sales and the identification of selling locations which will be undertaken by the Bank; and (iv) testing of the System which will be undertaken jointly by both parties;
- 2.3.4 As part of the implementation process the parties will carry out the UAT and if successful the Bank will sign the user acceptance certificate the form of which is set out in the Statement of Works and send to the County Council for signing. If the County Council does not sign or respond to the Bank stating the reasons for not signing within ten (10) days then the County Council will be deemed to have accepted the successful implementation of the System;



- 2.3.5 If within the Implementation Period the County Council proposes to alter any aspect of the Statement of Works, the County Council shall give the Bank in writing details of the proposed alteration which the Bank shall assess and respond in writing to the County Council within seven (7) Business Days of receipt of the request with a confirmation on whether or not the alteration is possible and in case the alteration is possible the cost implications and time delay the alterations will cause to the Implementation Period. The County Council will respond in writing within seven (7) Business Days confirming their acceptance of the additional cost and the time delay that the alterations will occasion. If a response is not received within the period aforesaid then the Bank will not be required to alter the Statement of Works. If the County Council decides not to have the alterations implemented then the existing Statement of Works will continue to prevail. If the County Council confirms that the alterations should be implemented then the Statement of Works will be amended as proposed including extending the Implementation Period by the period set out in the Bank's assessment and increasing the Investment Cost as set out in the Bank's assessment. The Bank will only assess proposals by the County Council for alterations of any aspect of the Statement of Works provided the proposals are presented to the Bank in writing not less than thirty (30) days from the expiry of the Implementation Period. Should the Bank not approve the proposal from the County Council for alterations the Bank will notify the County Council within seven (7) days of the Bank's receipt of the proposal and the Bank will not be obligated to alter the Statement of Works;
- 2.3.6 If the Bank assesses within the Implementation Period that the Statement of Works needs to be altered due to reasons other than a default on the part of the Bank, the Bank shall write to the County Council setting out the proposed alteration and the cost implications of the proposed alterations. If the cost implications amount to less than ten percent (10%) of the Investment Cost then the Bank shall amend the Statement of Works accordingly, notify the County Council of the proposed alterations and the parties shall proceed with the implementation. If the cost implications amount to more than the aforesaid percentage then the County Council will be required to approve the same within seven (7) Business Days of receipt of the written proposal from the Bank. On receipt of the approval, or if no response is received from the County Council within the aforesaid period, then the Statement of Works will be amended as proposed including extending the Implementation Period by the period set out in the Bank's assessment and increasing the Investment Cost as set out in the Bank's assessment;
- 2.3.7 Notwithstanding the provisions of clauses 2.3.5 and 2.3.6 if an approved proposed alteration will have the effect of extending the Implementation Period but it is possible to commence the provision of the Pre-paid Smart Card Service prior to the completion of the approved proposed alterations then the Implementation Period and the Go-Live Date shall not be extended and shall be maintained but the parties will undertake the approved proposed alterations;
- 2.3.8 During the Implementation Period the parties shall agree and document the nature of the Operational Reports to be generated and the frequency with which the same should be generated. The Bank shall also provide the County Council during the Implementation Period with monthly reports on the expenditure of the Investment Cost for reporting purposes. The parties may after



the Implementation Period by written agreement change the nature or frequency of the Operational Reports from time to time, and

2.3.9 During the Implementation Period the parties shall agree and document the terms and conditions of usage of the Pre-paid Smart Card Service which will be made available to all persons using the smart cards.

2.4 Unless otherwise agreed by the parties in writing, the provision of the Pre-paid Smart Card Service shall commence on the Go-Live Date on which date the County Council will make payment of the balance of the Investment Cost in immediately available funds to the Bank within seven (7) Business Days of the Go-Live Date. The County Council undertakes to commence use of the System from this date and to cease all use of the paper system of ticketing currently in place.

2.5 In the event that the UAT is not successful then the parties shall assess the reason for the same and shall use best endeavours to rectify the default and shall undertake the UAT again

2.6 During the Implementation Period, the Bank shall, as agent for the County Council, distribute and sell paper tickets to Users. It is hereby agreed by the parties that the Bank shall designate its branches as selling agents for the paper tickets and shall communicate to the County Council the designated branches. All revenue collected from the sale of the paper tickets will be credited to the County Council's collection accounts and at the end of every day the Bank shall deduct from the collection accounts the relevant Service Fee and shall generate a daily report setting out the amounts collected and the Service Fee paid. The applicable percentage for the Service Fee during this period shall be seven percent (7%). The County Council will provide the Bank with sufficient number of paper tickets covering all the relevant categories of Users and all information that the Bank will require to sell the paper tickets on behalf of the County Council including the prevailing rates. The County Council shall on the Effective Date execute all documents and undertake all processes required to open at least two (2) collection accounts with the Bank one being a Kenya Shillings denominated account and the other a United States Dollars denominated account into which the revenue collected using the Pre-paid Smart Card Service shall be credited into. The paper tickets will be issued on a non-refundable basis. This arrangement shall cease on the Go-Live Date when the System becomes operational.

3 TERM

3.1 (Subject to Sections 2 and 14) this Agreement will continue in full force and effect from the Effective Date for the Contract Period.

3.2 Every two (2) years during the Term the parties shall hold a review meeting to discuss the performance of the Pre-paid Smart Card Service and to agree on ways in which to improve its efficiency.

4. THE BANK'S OBLIGATIONS

4.1 Subject to the terms of this Agreement, the Bank undertakes to the County Council:

- 4.1.1 to ensure that the part of the System belonging to the Bank including but not limited to the core platform, the point of sale equipment and other equipment is properly functioning and to provide or procure the provision of maintenance services required to ensure the proper functioning of the System;
- 4.1.2 to put best endeavours to ensure the Statement of Works is implemented in accordance with the terms of this Agreement within the Implementation Period,
- 4.1.3 to put in place a distribution network for the sale and loading of the smart cards through avenues such as its branches, agents and banking self service terminals;
- 4.1.4 to procure for the smart cards and related equipment to facilitate card personalisation. In this regard the Bank shall at least three (3) months before January and July of each year provide the County Council with a quotation for the smart cards which the Bank intends to obtain from third party suppliers. The County Council shall within fifteen (15) days of receipt of the quotation inform the Bank in writing of the number of smart cards that the Bank should obtain for the six (6) months period commencing in January or in July (as the case may be). The Bank shall then make the order for the smart cards and invoice the County Council for payment. If the County Council does not confirm the number of smart cards that the Bank should offer within the aforesaid period then the Bank shall be entitled to estimate and order for the number of smart cards that will be required taking into account the number of smart cards used in the corresponding period prior to the time of ordering provided no extra-ordinary circumstance in the opinion of the Bank was prevailing during that corresponding period;
- 4.1.5 to provide cash management services for the revenue collection by maintaining the Escrow Account where all the revenue collected using the smart cards will be credited in accordance with the terms of this Agreement. The Bank will provide the County Council with access to periodic reports on the balances in the Escrow Account on a daily, monthly, quarterly and annual basis;
- 4.1.6 to provide training to the County Council employees in accordance with the mutually agreed training programs;
- 4.1.7 to make available to the County Council the Operational Reports within the timeframes agreed on by the parties;
- 4.1.8 to provide or procure the provision of the maintenance and support services set out in Schedule C;
- 4.1.9 to invoice the County Council for the Service Fee in accordance with Section 6;
- 4.1.10 ensure that any system malfunctions of the System are rectified in the shortest time possible;
- 4.1.11 attend meetings with the County Council in connection with the Pre-paid Smart Card Service whenever requested to do so by the County Council;



- 4.1.12 identify at least one senior employee to act as the primary contact in relation to this Agreement and responsibilities related to the Pre-paid Smart Card Service, although additional employees may be identified as needed; and
- 4.1.13 to monitor the System it being acknowledged by the parties that the System is composed of hardware, software and equipment based on technology that changes from time to time.

## 5. THE COUNTY COUNCIL'S OBLIGATIONS

5.1 Subject to the terms of this Agreement, the County Council undertakes during the Term:-

- 5.1.1 ✓ to maintain at all times the Infrastructure and all other equipment in its possession through which the Pre-paid Smart Card Service is offered in good working condition;
- 5.1.2 to put best endeavours to ensure the Statement of Works is implemented in accordance with the terms of this Agreement within the Implementation Period;
- 5.1.3 to provide transport and accommodation to all persons required to undertake the implementation of the Statement of Works and all persons required to provide training, maintenance, upgrading, compliance spot checks, supervision and other related activities in the Reserve or in its premises during the Term;
- 5.1.4 to provide the persons referred to in clause 5.1.3 with access to the Reserve and its premises to enable them undertake the work required and to ensure that its employees, agents and representatives co-operate with these persons to enable them to undertake their work;
- 5.1.5 to undertake continuous education, promotion and marketing of the smart card to the general public aggressively to the best of its ability;
- 5.1.6 to provide all information and responses required from the County Council by the Bank within the required time frames, time being of the essence;
- 5.1.7 to advise the Bank promptly in writing of any new laws and regulations which come into force which affect or relate to the Pre-paid Smart Card Service or which would affect the transactions contemplated in this Agreement including any revised rates for Users which shall be provided immediately the same are approved by the County Council and in any case not later than thirty (30) days before the coming into force of the revised rates;
- 5.1.8 ✓ to provide sufficient space in the County Council's premises to place the Infrastructure and other relevant equipment which form part of the System and to ensure that the same are safe and maintained in an environment necessary for them to function optimally and that the placement and use of Infrastructure and other related equipment will be at all times in accordance with all applicable laws and regulations;




- 5.1.9 to provide adequate, qualified and well trained personnel at the entry points and in the Reserve to undertake the process of facilitating payment by the Users using the Pre-paid Smart Card Service and to ensure enforcement;
- 5.1.10 to provide the Bank with real time access and all required interfaces to connect to the points of sale located in the Reserve or at the County Council's premises to enable the Bank to provide the Pre-paid Smart Card Service;
- 5.1.11 to notify the Bank on a real time basis of any system malfunctions in the System which it becomes aware of and to ensure that any system malfunctions within its control are rectified in the shortest time possible;
- 5.1.12 to protect all Intellectual Property Rights of the Bank which the County Council has access to and not to do anything which would violate such Intellectual Property Rights,
- 5.1.13 not to undertake any procedures or activities which will affect the operation of the System or the Pre-paid Smart Card Service or the generation of the Operational Reports;
- 5.1.14 to ensure that all Users will during the Implementation Period obtain paper tickets through the distribution network put in place by the Bank and from the Go-Live Date obtain access to the Reserve and pay for any activities chargeable by the County Council in the Reserve only through the Pre-paid Smart Card Service;
- 5.1.15 to put in place revenue assurance checks and enforcement mechanisms that ensures that no visitors enter the Reserve or Users undertake any activity or utilise the facilities in the Reserve which are chargeable by the County Council without using the Pre-paid Smart Card Service and to enforce penalties against any person who violates the requirements to use the Pre-paid Smart Card Service including spot checks and equipping its personnel with points of sale that allow them to charge through the Pre-paid Smart Card Service any on spot charges, fines, surcharges and penalties within the Reserve and on exiting the Reserve;
- 5.1.16 to within twenty one (21) Business Days of the Effective Date execute a merchant services agreement with the Bank in the form set out in Schedule F to support the sale of smart cards to persons using debit or credit cards through the Bank's point of sale terminals;
- 5.1.17 to provide complimentary entry into the Reserve only through the use of the Pre-paid Smart Card Service as may be agreed by the parties from time to time;
- 5.1.18 make prompt payments to the Bank in accordance with the provisions of Section 6;
- 5.1.19 attend meetings with the Bank in connection with the Pre-paid Smart Card Service whenever requested to do so by the Bank;



- 5.1.20 identify at least one senior employee to act as the primary contact in relation to this Agreement and responsibilities related to the Pre-paid Smart Card Service, although additional employees may be identified as needed;
- 5.1.21 it will not enter into any arrangement or agreement with a third party for the provision of services and products similar to those offered under this Agreement or for the purposes of managing the collection of revenues from Users and hereby grants the Bank the sole and exclusive rights to provide the services agreed to herein during the Term;
- 5.1.22 to provide security for the point of sales at the entry points and the equipment located at the entry points and at the County Council's premises used for the purpose of this Agreement;
- 5.1.23 undertake and perform all other activities relating to the administration of the Pre-paid Smart Card Service as the Bank or any competent authority may reasonably require or as are set out in or contemplated by this Agreement, and
- 5.1.24 to maintain during the Term at least two designated collection accounts one denominated in Kenya Shillings and the other in United States Dollars to which the revenue collected through the Pre-paid Smart Card Service will be transferred to from the Escrow Account in accordance with the provisions of this Agreement and the County Council shall consider maintaining its other revenue and operational accounts with the Bank and obtaining other banking services from the Bank.
- 5.2 The County Council will not (either on its own behalf or for or with any other person, whether directly or indirectly) without the express written consent of the Bank employ or otherwise engage any person who is or was the Bank's employee, director, officer, agent, consultant or associate involved in the setting up of the System or the provision of the Pre-paid Smart Card Service at any time during the term of this Agreement or for twelve (12) months after the termination of this Agreement howsoever terminated.

## 6. PAYMENT OBLIGATIONS

- 6.1 The Bank shall charge the Service Fee for providing the Pre-paid Smart Card Service. The relevant percentage payable as Service Fee shall be as follows:
- 6.1.1 for the first four (4) years of the Term – seven percent (7%) of the total revenue collected through the System,
- 6.1.2 for the next three (3) years of the Term – six percent (6%) of the total revenue collected through the System, and
- 6.1.3 for the next three (3) years of the Term – five percent (5%) of the total revenue collected through the System,

provided that if the total revenue collected between 1<sup>st</sup> July and 30<sup>th</sup> June of any year is less than Kenya Shillings one billion five hundred million (K.Shs. 1,500,000,000.00) (the "Minimum Revenue") then the County Council will be required to pay to the Bank in addition to the Service Fee paid based on the total revenue collected in that year a Service Fee equal to the relevant percentage for that year (as set out in this clause 6.1) multiplied by fifty percent (50%) of the difference between the Minimum Revenue and the total revenue

collected in that year. The aforesaid difference will be paid during the period between 1<sup>st</sup> July and 30<sup>th</sup> September of the year immediately after the year in question.

- 6.2 On the loading of a smart card using the Pre-paid Smart Card Service the Bank will credit the Escrow Account until the earlier of such time as the smart card will be used for purposes of making payment or the expiry of fourteen (14) days from the date of loading at which point the amount deducted from the smart card or in the case of the expiry of the said fourteen (14) days, the loaded amount or any balance not utilised will be debited from the Escrow Account and the balance will be credited to the County Council's designated collection accounts held with the Bank. In this regard payment of the Service Fee will be deducted from the relevant County Council's designated collection account at the end of every day. However, in the case of the Service Fee payable if there is a total revenue collected in an year is less than the Minimum Amount as set out in clause 6.1 then the Bank shall be entitled to deduct such Service Fee from the the County Council's designated collection accounts in accordance with the provisions of clause 6.1. The parties recognise that where transactions are undertaken offline then the crediting and debiting as aforesaid will be undertaken as and when offline reconciliations are undertaken. The County Council may request the Bank in special circumstances where valid reasons have been given as to why the loaded amount has not been utilised to extend the validity period of the loaded amount in a particular smart card in which case the Bank shall re-validate the loaded amount. The County Council will be required to give adequate notice to enable the Bank to re-validate the loaded amount.
- 6.3 If any money is owed to the Bank by the County Council which is not paid through the direct debit mechanism set out in clause 6.2 then the Bank shall raise an invoice for any such amount which the County Council shall be required to pay within fourteen (14) days from the date of receipt of the invoice. If the amount raised is not paid within seven (7) days of the due date for payment the Bank shall send the County Council a reminder of the unpaid amount.
- 6.4 In consideration for the Bank providing the maintenance and support services set out in Schedule C and in part 2 of Schedule D and to accommodate any requirements for upgrading, modifying or altering the System which are necessary for purposes of ensuring the efficiency of the System, the amount due and payable to the Bank shall unless otherwise agreed in writing by the parties be as provided in part 2 of Schedule D.
- 6.5 Where there is a disagreement on the amount payable by the County Council to the Bank as set out in the invoice raised by the Bank under clause 6.3 the parties agree that the amount NOT in dispute shall be settled in accordance with the terms of this Agreement and the respective heads of financial matters of the parties shall hold a meeting within fourteen (14) Business Days upon request of the disputing party to compare statistics and other pertinent information necessary to reach an amicable conclusion. Such a meeting may be held by way of a telephone, video conference or other suitable means of communication provided that the representatives of both parties can communicate effectively.
- 6.6 Where any payment to be made by the County Council to the Bank in accordance with the terms of this Agreement falls due on a date which is not a Business Day then such payment shall be made on the next Business Day following such due date.
- 6.7 Should the County Council fail to make full or timeous payment of any invoice due in accordance with the terms of this Agreement on the due date thereof, the Bank shall be



entitled to charge and receive interest on the amount outstanding, calculated from the due date to the date on which the invoice is actually paid in full, at the rate of two percent (2) per month. The County Council agrees that this is a reasonable pre-estimate of the Bank's loss that will be suffered as a result of the County Council's late payment.

- 6.8 The Service Fee is inclusive of any VAT and withholding tax payable but exclusive of any other rates, taxes, duties, charges or imposts which may be or become payable thereon. Accordingly, the Bank shall be entitled to add any such rates taxes duties charges or imposts at the prescribed rate, to the Service Fee payable.
- 6.9 If, in any event the County Council is required to withhold any taxes from any payment due to the Bank the County Council shall issue the Bank with the withholding tax deduction certification in respect of each payment on the same date on which payment of the relevant invoice to which withholding tax deduction certificate relates to is made.
- 6.10 Unless otherwise agreed between the parties, the currency for invoicing and payment will be in the currency of the expenditure and in the case of the Service Fee shall be in the currency in which payment is made by the Users.
7. ACCOUNTS, OPERATIONAL REPORTS AND INTELLECTUAL PROPERTY RIGHTS
- 7.1 Without prejudice to the foregoing provisions of this Agreement, each party shall maintain full detailed and accurate and proper accounts and records in respect of the transactions carried out in relation to the Pre-paid Smart Card Service.
- 7.2 The Bank shall make available to the County Council the Operational Reports using such means as shall be agreed between the parties from time to time including electronic or written means.
- 7.3 The County Council shall permit the Bank or other persons appointed by the Bank with reasonable notice, to inspect the County Council's internal accounts relating to the collection of revenue from the Reserve, in order to verify any details pertaining to this Agreement.
- 7.4 The County Council acknowledges that the Bank owns (whether absolutely or through licence from third parties) and will continue to own all Intellectual Property Rights contained in the System and the Pre-paid Smart Card Service (including, but not limited to any new releases, modifications or translations made by or for the Bank by any party), and further acknowledges that the Intellectual Property Rights in the System and the Pre-paid Smart Card Service are, shall be and shall remain the property of the Bank as aforesaid and the Bank is at liberty to sell a similar system to the System or to offer a similar service to the Pre-paid Smart Card Service to other third parties and that this Agreement does not in any way grant the County Council exclusive rights to the use of the System or the Pre-paid Smart Card Service The Bank shall indemnify the County Council against all losses that it may incur in relation to use of the Bank's Intellectual Property Rights by third parties.
- 7.5 The Bank agrees, with the consent of the County Council, which consent is hereby given, to include the County Council's name or logo and the Reserve's name or logo or any other logos that shall change and be approved by the County Council on each pre



paid smart card sold and on each permanent exterior sign for each of the locations where it is offering the Pre-Paid Smart Card Service.

- 7.6 The County Council may, with the Bank's consent or approval, use the Bank's names, logos, trademarks, service marks, or other intellectual property in advertising, educational or promotional materials approved by both parties used in relation to the Pre-Paid Smart Card Service during the Term.

## 8. WARRANTIES AND REPRESENTATIONS

### 8.1 The County Council:

8.1.1 represents and warrants to the Bank in the terms set out in clause 8.2;

8.1.2 accepts that the Bank is entering into this Agreement in reliance upon each of the County Council's warranties, and

8.1.3 undertakes to disclose to the Bank immediately anything comes to the notice of the County Council which is or may be inconsistent with any of its warranties

### 8.2 The County Council warrants and represents as follows:

8.2.1 The County Council is duly established and validly existing under the laws of Kenya;

8.2.2 The County Council has the legal right and full power and authority to enter into and perform this Agreement and any other documents to be executed by the County Council pursuant to or in connection with this Agreement which when executed will constitute valid and binding obligations on the County Council in accordance with their respective terms and the signatories who have executed this Agreement on its behalf have the necessary power and authority to bind it;

8.2.3 The execution and delivery of, and the performance by the County Council of its obligations under this Agreement and any other documents to be executed by the County Council pursuant to or in connection with this Agreement will not result in a breach of any provision of its enabling legislation or result in a breach of or give any third party a right to terminate or modify, any agreement licence or other instrument that affect the ability of the County Council to fulfill its obligations under this Agreement or result in a breach of any order judgment or decree of any court governmental agency or regulatory body to which the County Council is a party or by which the County Council is bound;

8.2.4 It has complied with the Local Government Act (Cap 265, Laws of Kenya), Public Procurement and Disposal Act, 2005, Laws of Kenya and the Public Procurement and Disposal Regulations, 2006 with regard to awarding this contract to the Bank and entering into this Agreement,

8.2.5 It shall as soon as is possible but in any event not more than twenty one (21) days from the Effective Date obtain written confirmation from the government through the Ministry of Local Government or other relevant ministry that the terms of this Agreement will be binding upon all subsequent county councils, county governments or other successors in

title and permitted assigns of the County Council that will have the ownership, control and entitlement to the revenue of the Reserve;

- 8.2.6 There are no pending or threatened lawsuits, claims, disputes or actions that will adversely affect the County Council's ability to perform its obligations under this Agreement or which will hinder the implementation of the transactions contemplated in this Agreement in accordance with its terms; and
- 8.2.7 It has convened and held all the appropriate meetings and passed the resolutions necessary to authorise this Agreement
- 8.3 In the case of breach of any of the warranties above, the County Council shall, at its expense, indemnify, defend, save and hold harmless the Bank from and against any and all claims, losses, expenses or judgement incurred by the Bank in relation to the breach of any of the warranties given by the County Council.
- 8.4 The Bank warrants and represents as follows.
- 8.4.1 It is duly incorporated and validly existing under the laws of Kenya;
- 8.4.2 It has the legal right and full power and authority to enter into and perform this Agreement and any other documents to be executed by it pursuant to or in connection with this Agreement which when executed will constitute valid and binding obligations on it in accordance with their respective terms;
- 8.4.3 The execution and delivery of, and the performance by it of its obligations under this Agreement and any other documents to be executed by it pursuant to or in connection with this Agreement will not result in a breach of any provision of its constitutional documents or result in a breach of or give any third party a right to terminate or modify, any agreement licence or other instrument that affect its ability to fulfill its obligations under this Agreement or result in a breach of any order judgment or decree of any court governmental agency or regulatory body to which it is a party or by which it is bound; and
- 8.4.4 It will perform the Pre-paid Smart Card Service in a professional and workmanlike manner and in accordance with commercially reasonable industry standards.
- 8.5 In the case of breach of any of the warranties above, the Bank shall, at its expense, indemnify, defend, save and hold harmless the County Council from and against any and all claims, losses, expenses or judgement incurred by the County Council in relation to the breach of any of the warranties given by the Bank.
9. CONFIDENTIALITY
- 9.1 Parties, to the extent of their contractual and lawful right to do so, will exchange proprietary or confidential information as reasonably necessary for each to perform its obligations under this Agreement. All information relating to this Agreement provided by either party to the other, whether oral or written whether or not identified as confidential or proprietary in writing, is hereby deemed to be confidential and proprietary information ("Proprietary Information").




- 9.2 Except as provided in clause 9.3, a party receiving Proprietary Information pursuant hereto (the "Receiving Party"), shall not, without the prior written consent of the party disclosing such information (the "Disclosing Party"), (i) use any portion of the Proprietary Information for any purposes other than the purposes of this Agreement, or (ii) disclose any portion of the Proprietary Information to any persons or entities other than the employees of and consultants to the Receiving Party who reasonably need to have access to the Proprietary Information in connection with the purposes of this Agreement and who have agreed to protect Proprietary Information as though they were a party to this Agreement.
- 9.3 A Receiving Party will not be liable for disclosure of Proprietary Information, or part thereof, if the Receiving Party can demonstrate that such Proprietary Information (i) was in the public domain at the time it was received or subsequently entered the public domain through no fault of the Receiving Party; (ii) was known to or was in the possession of the Receiving Party at the time of receipt; (iii) became known to the Receiving Party from a source other than the Disclosing Party without breach of an obligation of confidentiality. In the event of any legal action or proceeding or asserted legal requirement for disclosure of Proprietary Information furnished hereunder, the Receiving Party will promptly notify the Disclosing Party and, upon the request and at the expense of the Disclosing Party, will co-operate, to the extent permitted by law with the Disclosing Party in lawfully contesting such disclosure. Except in connection with any failure to discharge its responsibilities under the preceding sentence, the Receiving Party will not be liable for any disclosure pursuant to any court order or other lawful and proper demand by any competent authority.
- 9.4 Proprietary Information will remain the property of the Disclosing Party and will, at the Disclosing Party's request and after it is no longer needed for the purposes of this Agreement, promptly be returned thereto or destroyed, together with all copies made by the Receiving Party and by anyone to whom such Proprietary Information has been made available by the Receiving Party in accordance with the provisions of this Section 9.
- 9.5 The obligations under this Section 9 shall survive termination of this Agreement.
10. FURTHER ASSURANCE
- 10.1 Each party shall at any time if and when reasonably required by the other party execute such documents as may be required in order to give full effect to this Agreement.
- 10.2 The Bank shall be entitled to place reliance upon and to act on any notice confirmation certificate information or correspondence received (whether in writing or electronic form) from the County Clerk or any other authorised representative of the County Council as notified from time to time to the Bank by the County Clerk in writing in connection with the Pre-paid Smart Card Service and the Bank shall not be under any obligation or duty to consider the genuineness authenticity or correctness of any such notice confirmation certificate information or correspondence.
- 10.3 Without prejudice to clause 10.2 above, the Bank shall be entitled to undertake such inquiries in connection with any statements, reports or information provided to them by the County Council in connection with the Pre-paid Smart Card Service and the County



Council agrees to co-operate with and furnish such information or explanations as are sought by the Bank in connection with such inquiries.

## 11. FORCE MAJEURE

11.1 Neither party will be liable in respect of any delay in performing, failure to perform or failure to adequately perform any of its obligations hereunder in consequence of any circumstances beyond the control of the affected party which could not have been prevented by the exercise of reasonable care by such party and where such circumstances render impossible the performance, adequate performance or punctual performance of that party's obligations under this Agreement. Such circumstances will include (but will not be limited to) the following events and circumstances:

11.1.1 any act of God;

11.1.2 any war or hostilities (whether war be declared or not);

11.1.3 any sabotage, riots or other act of civil disobedience, civil commotion, rebellion, act of a public enemy or invasions,

11.1.4 any judicial actions, strikes, lockouts, industrial disputes or actions of any such nature (save where such events are brought about by an act or omission on the part of the party affected or its licensees, servants or agents),

11.1.5 any storms, floods or other inclement weather, earthquakes, subsidence, epidemics or other natural physical disasters; or

11.1.6 fire, accident or explosion.

11.2 The party affected by any of the circumstances referred to in clause 11.1 shall promptly notify the other party (the "Force Majeure Notice") when such circumstances cause a delay in performance, failure in performance or failure in adequate performance and when they cease so to do. If such circumstances continue for more than three (3) months after the date of the Force Majeure Notice, the party not affected by the circumstances referred to in clause 11.1 may terminate this Agreement forthwith.

## 12. INSURANCE

12.1 Each party shall maintain insurance upto the full replacement value for all Infrastructure and other equipment in its possession used in the provision of the Pre-paid Smart Card Service.

12.2 The County Council shall not do anything which will result in the insurance taken up by the Bank for any equipment used for purposes of providing the Pre-paid Smart Card Service being voided (whether in part or in whole) or the premiums payable being increased by the insurance company and the County Council shall be liable to pay or contribute towards the cost of such increase in premiums or shall make good the loss or damage incurred in the event of the insurance money being wholly or partially irrecoverable by reason of an act or default of the County Council or its servants licensees or invitees.

### 13. LIMITATION OF LIABILITY AND INDEMNITY

13.1 The County Council acknowledge that the Bank's obligations and liabilities in respect of the subject matter of this Agreement are exhaustively defined herein (and in any document referred to herein). The County Council agrees that the express obligations undertaken by the Bank in this Agreement is in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, express or implied, statutory, pursuant to common law or otherwise (including without limitation, implied warranties or conditions of merchantability, of fitness for a particular purpose, of reliability or availability or accuracy) relating to the matters undertaken by the Bank pursuant to or in connection with this Agreement. Without prejudice to the generality of the foregoing the Bank shall not be responsible for any special, collateral, exemplary, punitive, indirect, incidental or consequential losses or damages (including without limitation, damages for loss of goodwill, loss of profits or revenues, loss of savings, loss of use or interruptions of business, loss of confidential or other information, personal injury, for failure to meet any duty including, without limitation, of good faith or of reasonable care, for negligence or for any other pecuniary or other loss whatsoever) (including any costs or expenses in respect thereof) whether arising under contract, tort (including negligence), misrepresentation (whether intentional, negligent, reckless, innocent or otherwise), strict liability, breach of contract or otherwise howsoever.

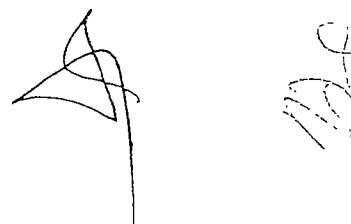
13.2 Each party must at all times, and does hereby, indemnify and keep indemnified the other party and its officers, employees, agents and sub-contractors (the "Indemnified Persons") from and against any loss, damage, cost, expense (including legal costs and expenses on a solicitor and own client basis) or liability whatsoever incurred or any claim, suit, demand, action or proceeding suffered by the Indemnified Persons as a result (whether in whole or in part and whether directly or indirectly) of any wilfully wrongful, unlawful or grossly negligent act or omission of that party or any of that party's personnel in connection with this Agreement

13.3 The parties agree and confirm that the Bank shall not have any contractual relationship with the Users in relation to the provision of the Pre-Paid Smart Card Service in accordance with the terms of this Agreement and that any services offered directly to the Users pursuant to the terms of this Agreement are as agent of the County Council. The County Council hereby indemnifies the Bank against all claims made by the Users against the Bank in relation to the Pre-paid Smart Card Service. In addition, the County Council shall handle all claims of refunds in relation to amounts loaded on the smart card but not utilised by the Users in accordance with its own internal procedures

### 14. TERMINATION AND CONSEQUENCES OF TERMINATION

14.1 Any party may terminate this Agreement if the other party commits a material breach of any of its obligations under this Agreement provided that, if such breach is capable of remedy, a notice in writing has first been served on the breaching party setting out the nature of the breach and the breaching party fails within fourteen (14) days to remedy such breach to the reasonable satisfaction of the other party.

14.2 Any party may terminate this Agreement by written notice, without prejudice to its rights:-

Handwritten signatures and initials at the bottom right of the page. There are two distinct signatures, one appearing to be a stylized 'A' and the other a more complex scribble. To the right of these signatures are the initials 'MJC'.

- 14.2.1 if any material part of the property, assets or revenues of the other party are sold or disposed of or threatened to be sold or disposed of (otherwise than in the normal course of trading) whether in a single transaction or a number of transactions or is nationalised, compulsorily acquired, seized or appropriated; or
- 14.2.2 if the other party is liquidated or wound up or passes a resolution for voluntary winding up (otherwise than for a bona fide reconstruction or amalgamation) or if similar or analogous proceedings are instituted against or taken by that party; or
- 14.2.3 if the other party shall have a receiver or an administrative receiver appointed in respect of all or any part of its assets or if similar or analogous proceedings are instituted against the assets of that party; or
- 14.2.4 if the other party enters into an arrangement for the benefit of its creditors; or
- 14.2.5 if the other party stops carrying on business or commits an act of insolvency, or
- 14.2.6 if the other party suspends its operations or conducts itself in such a manner as to create a reasonable expectation that it intends to suspend its operations.
- 14.3 A termination notice shall become effective as of the day it is issued by the non-breaching party save in the case of a termination notice issued pursuant to clause 14.1 when the termination notice shall become effective on the expiry of the grace period referred to in clause 14.1 if the breaching party shall not have remedied the breach to the satisfaction of the non-breaching party
- 14.4 The Bank may terminate this Agreement if the County Council does not approve a proposal to modify, alter or upgrade the System and in the Bank's assessment it is commercially unviable for the Bank to continue providing the Pre-paid Smart Card Service without the proposed modification, alteration or upgrade.
- 14.5 Upon a termination notice becoming effective (howsoever terminated), the Bank shall be entitled to immediately suspend the operation of the Pre-paid Smart Card Service and shall effect no further transactions in relation to the Pre-paid Smart Card Service but shall be entitled to deduct from the Escrow Account all monies owed to it prior to the termination of this Agreement or as a consequence of the termination. The Bank shall prepare a final statement of account and the party found to be owing the other after the final statement of account is prepared shall make payment of the amount owed within fourteen (14) days of the date when the statement of account is finalised.
- 14.6 Upon termination of the Agreement (howsoever terminated), all rights and obligations of the parties hereunder shall cease, except:
- 14.6.1 such rights and obligations as may have accrued on the date of termination; and
- 14.6.2 such rights and obligations as are expressed to survive beyond the termination of this Agreement.




- 14.7 The Bank shall be entitled immediately upon termination of this Agreement (howsoever terminated) to access the Reserve and the County Council's premises to retrieve any equipment installed or in use therein belonging to the Bank.
- 14.8 The County Council recognises that the Bank will be undertaking a huge capital expenditure to set up the System and provide the Pre-paid Smart Card Service which expenditure will only be realised over a considerable period of time. In consideration of this huge investment by the Bank, if this Agreement is terminated before the expiry of the eighth (8<sup>th</sup>) anniversary of the Go-Live Date (unless this Agreement is terminated due to the default of the Bank), the Bank shall be entitled to receive as liquidated damages from the County Council an amount equivalent to the Service Fee it would have received for the period remaining to the eighth (8<sup>th</sup>) anniversary of the Go-Live Date on the basis of the Minimum Revenue per year pro rated for any incomplete year. The County Council acknowledges that this is a reasonable pre-estimate of the loss that the Bank will suffer arising from a premature termination of the Agreement.

15. NOTICES

- 15.1 All notices or other communications to be given or made under this Agreement shall be made in writing, and be deemed to be duly given or made when delivered on a Business Day during normal business hours or fifteen (15) days after being put in the post by registered post at its address specified in clause 15.2, or at such other address as such party may hereafter specify for such purpose to the other party by, notice in accordance with this clause 15.1

- 15.2 The addresses referred to in clause 15.1 are.

- 15.2.1 in the case of a notice given to the County Council:

THE CLERK  
COUNTY COUNCIL OF NAROK  
NAROK TOWN  
P.O. BOX 19, NAROK  
KENYA

- 15.2.2 in the case of a notice given to the Bank:

MANAGING DIRECTOR  
EQUITY CENTRE, 9<sup>TH</sup> FLOOR  
HOSPITAL ROAD, UPPERHILL  
P.O. BOX 75104 00200  
NAIROBI.

- 15.3 If, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside normal working hours in the place of service of the notice or other communication it shall be deemed to be given or made at the start of normal working hours on the next usual working day.



## 16. GENERAL

- 16.1 Neither party shall 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 the other party (which consent shall not be unreasonably withheld or denied) unless required by any applicable law or regulation.
- 16.2 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. No waiver, alteration, variation or addition to this Agreement shall be effective unless made in writing on or after the date of this Agreement by the parties and accepted by an authorised signatory of each of the parties. 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.
- 16.3 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.
- 16.4 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.
- 16.5 Save as may be contemplated in this Agreement, nothing in this Agreement creates a relationship of employer and employee, joint venture or partnership between the parties. A party shall not represent to any person that it is authorised to act on behalf of another party, except in accordance with the provisions of this Agreement or where acceptable written proof is provided.
- 16.6 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.
- 16.7 This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts each of which when executed and delivered (whether by facsimile or otherwise) shall constitute an original but all such counterparts shall together constitute one and the same instrument.
- 16.8 For the purposes of preparing this Agreement the advocates of the County Council are Momanyi & Associates for the purposes hereof of M'pulla House, Arboretum Drive, Off State House Road, Post Office Box Number 10479-00100, Nairobi and the advocates for the Bank are Anjarwalla & Khanna Advocates for the purposes hereof of ALN House, Eldama Ravine Gardens, Post Office Box Number 200-0606, Nairobi, Kenya.

## 17. GOVERNING LAW AND DISPUTE RESOLUTION

- 17.1 This Agreement shall be governed by and construed in accordance with the laws of Kenya.





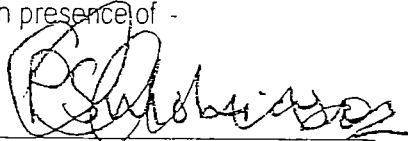

17.2 The parties shall use their best efforts to amicably settle any dispute, controversy or claim arising out of or in connection with this Agreement (including any question regarding its interpretation existence validity or termination). If such dispute controversy or claim cannot be settled within ten (10) days after receipt by one party of the other party's request for such amicable settlement, the parties shall refer the dispute to a mediator agreed upon between them and if within ten (10) days of one party requesting mediation the parties do not agree on a mediator or fail to settle the dispute through mediation, it may be referred by any party to and finally resolved by arbitration. The provisions of the Arbitration Act, 1995 shall apply to all such arbitration proceedings and the arbitration shall be held in Nairobi. The tribunal shall consist of one arbitrator to be appointed by agreement between the parties within ten (10) days of the first date when a party gives notice of the identity of the proposed arbitrator. Failing such agreement, the arbitrator shall be appointed (upon application by any party) by the chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom. The language of the arbitration shall be English.

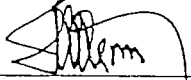
17.3 The award of the arbitrator shall be final and binding upon the parties and any party may apply to a court of competent jurisdiction for enforcement of such award. The award of the arbitrator may take the form of an order to pay an amount or to perform or to prohibit certain activities. Notwithstanding the foregoing, 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 arbitrator.

IN WITNESS WHEREOF this Agreement has been executed by the parties as of the day and the year hereinbefore written.

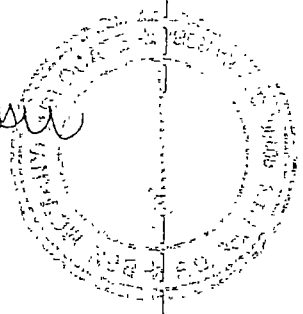
SEALED with the Common Seal of  
THE COUNTY COUNCIL OF NAROK

In presence of -

  
CHAIRMAN

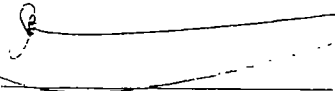
  
CLERK,





SEALED with the Common Seal of  
EQUITY BANK LIMITED

In presence of:

  
DIRECTOR

  
DIRECTOR/SECRETARY



SCHEDULE A: TECHNICAL SPECIFICATIONS

*Mc*

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## Acronyms

ACOS - Austria Card Operating System  
CCN -- County Council of Narok  
CCTV – Closed Circuit TeleVision  
DES - Data Encryption Standard  
EBL – Equity Bank Limited  
EEPROM - Electrically Erasable Programmable Read-Only Memory  
SAM - Security Authentication Module card  
ICC - Integrated Closed Circuit or International Criminal Court  
POS - Point Of Sale  
SIM - Subscriber Identity Module  
SOW – Statement of Work

## Schedule A: Technical Specifications

Equity Bank's technical prepaid solution to Narok County Council is outlined below together with its functional requirement.

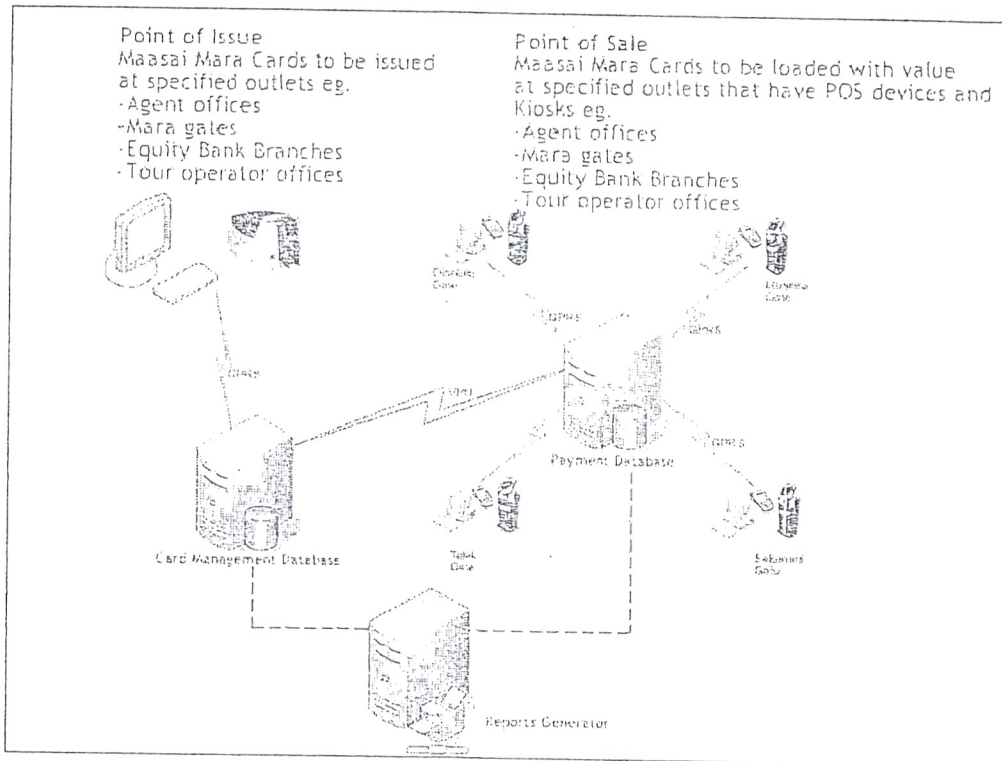


Figure 1: General System Architecture

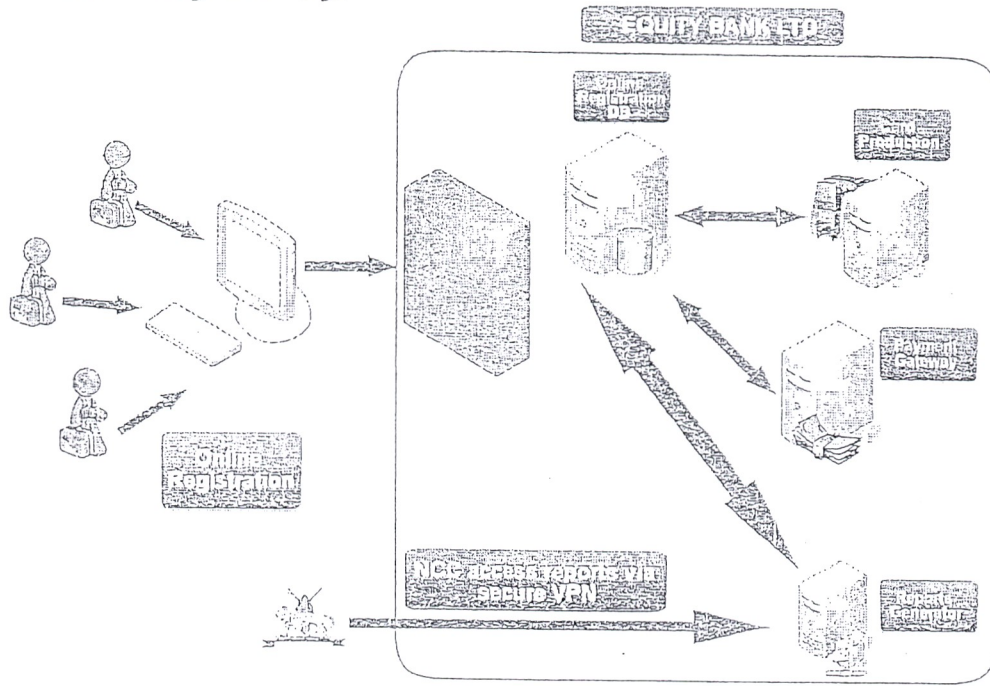
### 1. Online Registration System

#### 1.1. Overview

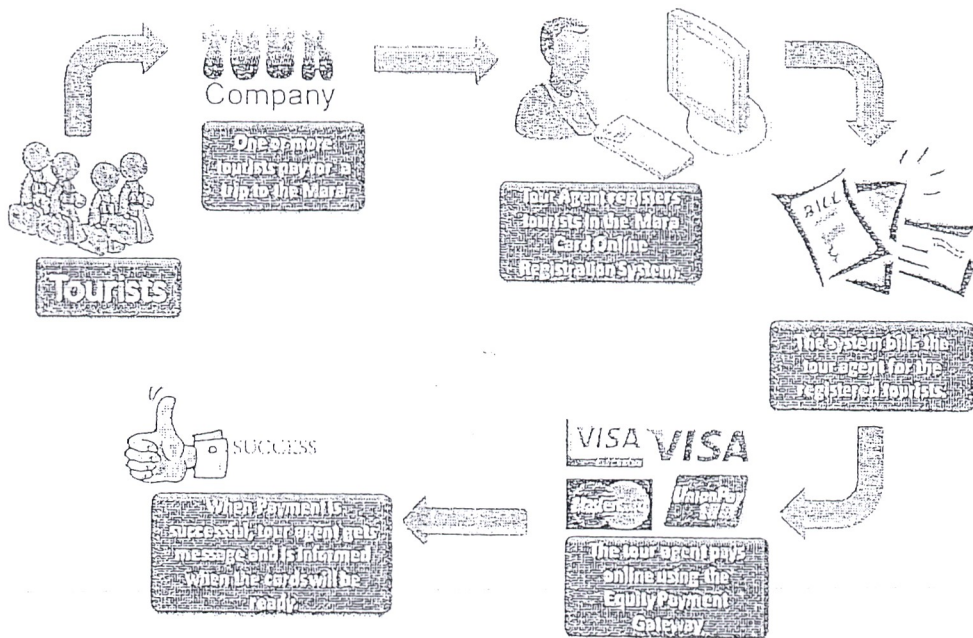
Online Registration will enable tourists and citizens alike to enter their personal details on a web interface so as to be issued with a Maasai Mara Card. Tourists/Citizen will access a web interface from a tour company site, Maasai Mara site or Equity Bank site. They will be required to fill in their personal details and select the activities they wish to participate in. The cost of the park entry and activities will be invoiced to them and the registrant can pay for the bill online via the payment gateway.

After registration, the information submitted from the interface will be processed and stored in a database. The information will be used to issue a personalized Maasai Mara Card to the registrant. Personalized means that the card will bear the registrant's name. The personalized Maasai Mara card issued will be pre-loaded with the invoice amount.

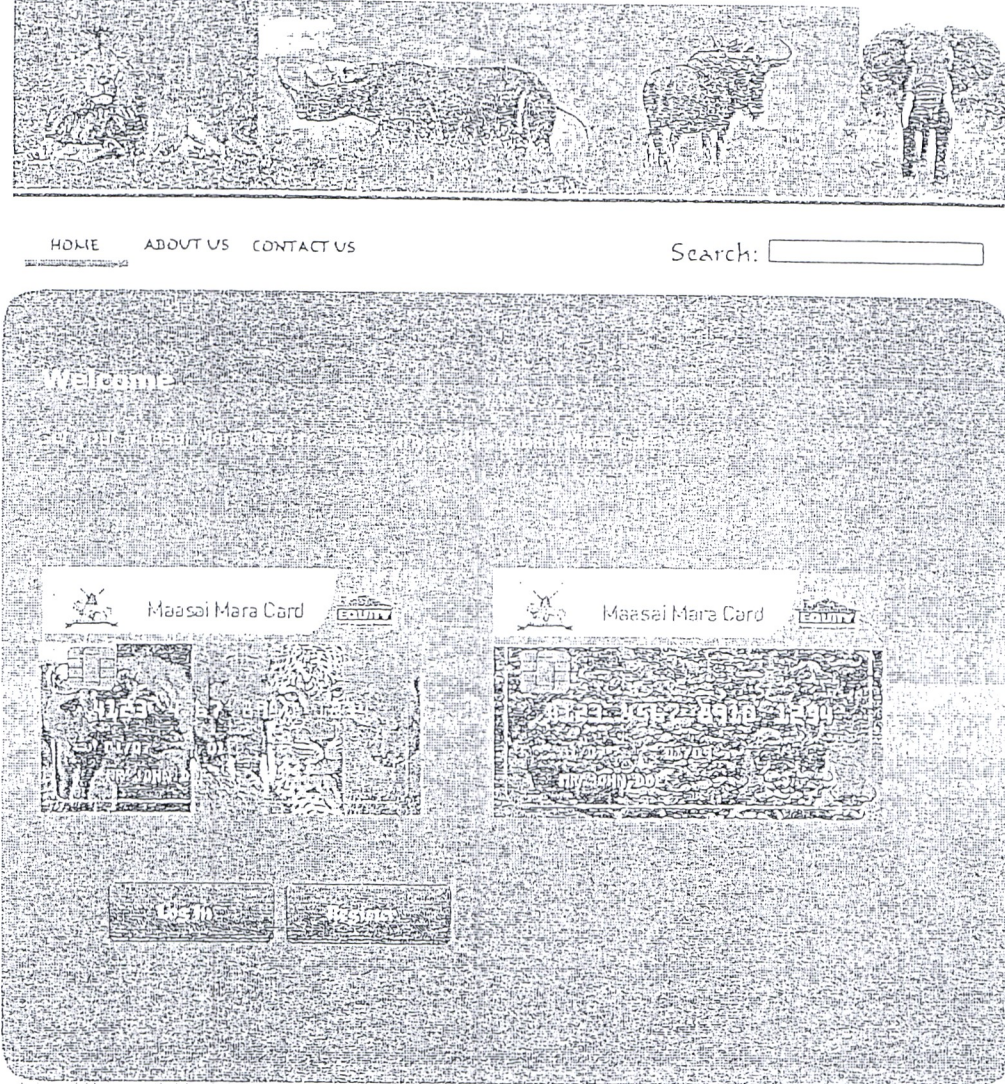
1.2. Logical Design



1.3. Data Flow Diagram



#### 1.4. User Interface Diagram



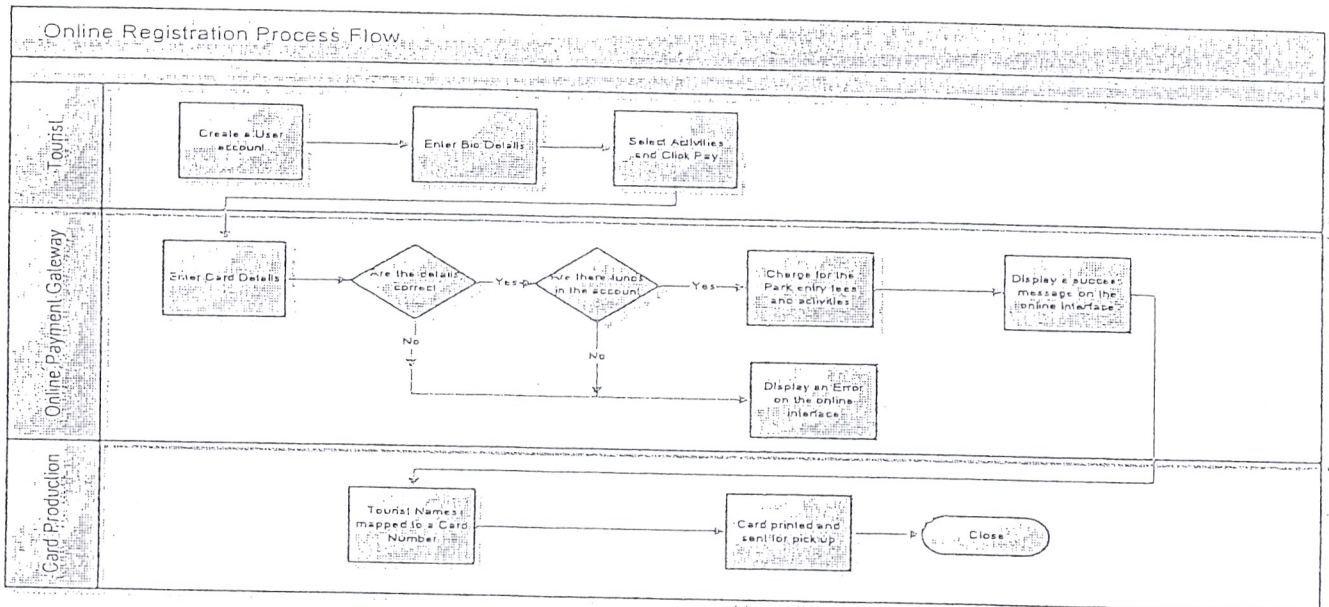
#### 1.5. User Interface Components

The User interface will be composed of:

- i.) General information on the Maasai Mara Card and how to use the card.
- ii.) Log in page
- iii.) Registration module for tourists and tour agents-to register first time.
- iv.) Registrant profile page- for tourist to manage their personal information
- v.) Maasai Mara Card transactions page- to view card transaction per time period or per trip the tourist made.
- vi.) Contact us or Feedback form Page
- vii.) Help section – “how to” solutions and capability to chat Contact Centre

1.6. Online Registration Requirements

- ☑ The System will be Internet Based. The Client will access the system on-line.
- ☑ All chargeable items will be included. The following provides a non-exhaustive list of items to be included:-
  - Landing Fee for Aircraft
  - Entry Fee for Vehicle
  - Names of Client (multiple people could be entered at a time)
  - Number of 12 hour blocks
  - As soon as 24 hour multiple have to specify accommodation
  - Full list of lodges, campsites etc. (This would enable reconciliation with Hotel / Lodges occupancy records)
  - Once all information entered the fee would be automatically calculated and amount would be payable on-line (Credit Card, PayPal, Direct Transfer etc. or cash at Equity Branch)
- ☑ Once Payment is made a reference number with all the information will be sent to the Card Management System for card personalisation and delivery.
- ☑ A bar-coded ticket may be printed to be presented during card collection for visitors purchasing online



## 2. Maasai Mara Card

### 2.1. Card Specification

Card body	Plastic cards according to ISO 7810, Type ID-1
Size	85,60 x 53,98 x 0,81 mm (+/- tolerance specified in ISO 7810)
Lamination	Both sides high polished (matt lamination available upon request)
Material	PVC (special high temperature resistant)
Overlay	Ready for indent print / embossable

### 2.2 Visitor Card Application Specification

This application will be based on an ISO 7816 file structure which is supported by chip operating system ACOS where read and update access to files are protected by the means of cryptographic authentication method (Mutual Authentication) based on 3DES(16 Byte symmetric) keys.

The size of the application is only limited by the EEPROM size which is also used for the additional EMV application. The applications file structure will be fully pre-personalized at Card Manufacturer including also personalization of sensitive application card specific derived keys according to requirements of international payment associations. Application data personalized to the pre-personalized file structure must be either static or derived from static master data or chip serial number (cardholder specific data from e.g.: input file/database is not applicable).

After a successful mutual authentication between cardholder card and SAM card read and update access into the pre-personalized file structure is granted to the POS Terminal software.

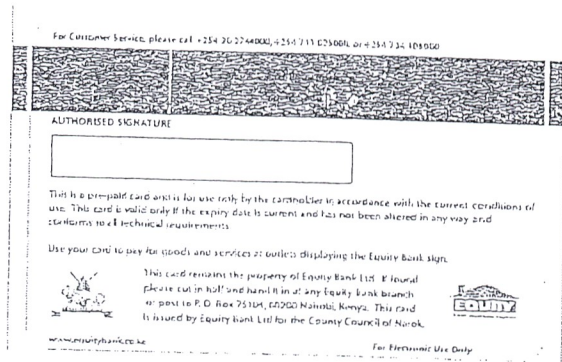
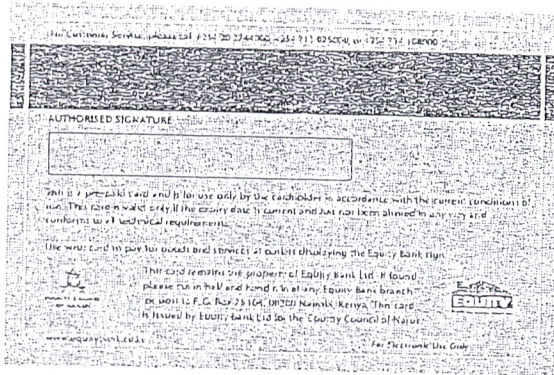
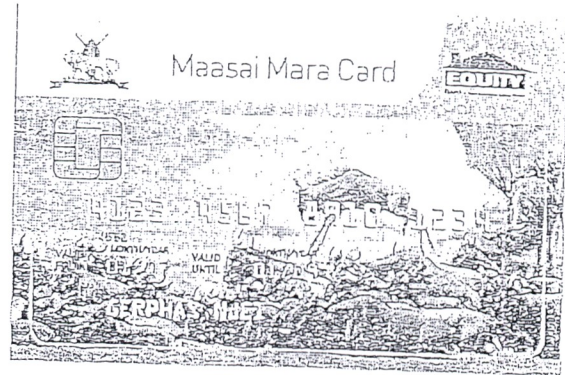
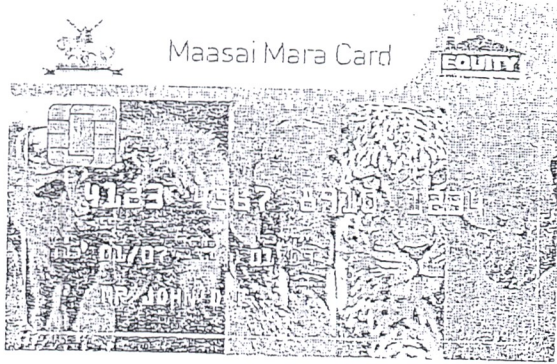
### 2.3. SAM Card Application Specification

The Mutual Authentication master keys are securely personalized in offered SAM cards. During a transaction in the field the card individual keys of the cardholder card are derived via the ICC chip serial number in the SAM card. The Mutual Authentication cryptograms for the cardholder card are generated by the SAM card which can also validate the cryptogram from the cardholder card.





2.4. Smart Card Designs  
The final card designs agreed by both parties.

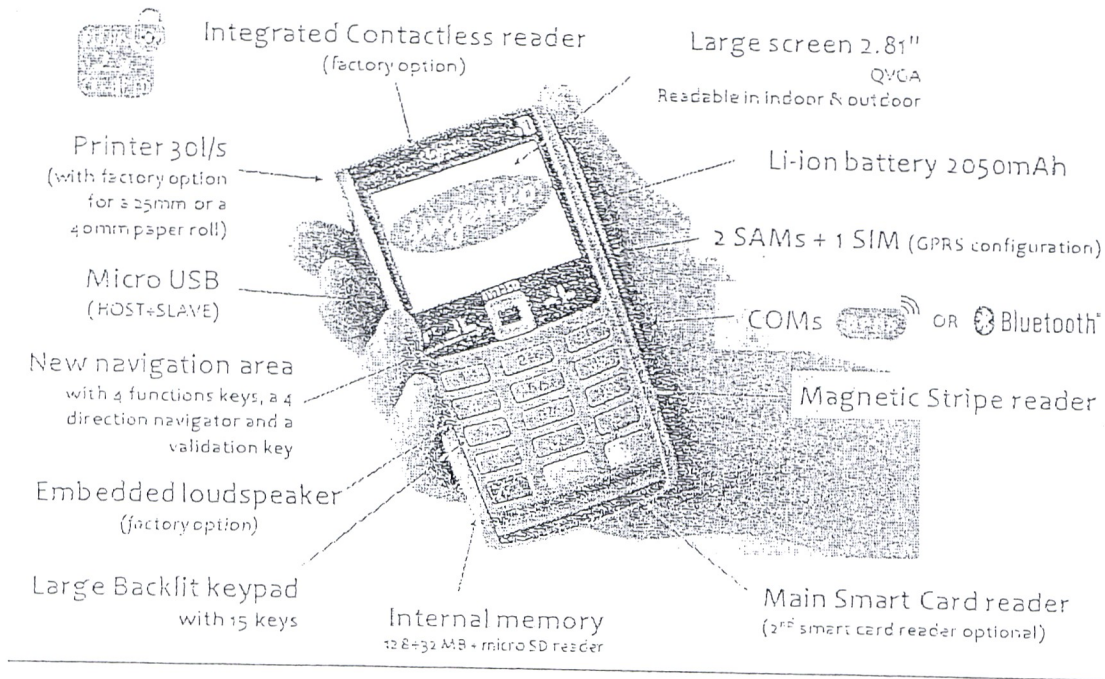


3. POS

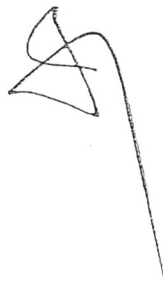
3.1. POS Specification

We will use the iWL250 terminals at the point of issue/point of sale, Revenue assurance checks and also at point of entry and exit.

# iWL250 at a Glance



## 3.2. POS Data Flow Process



Me

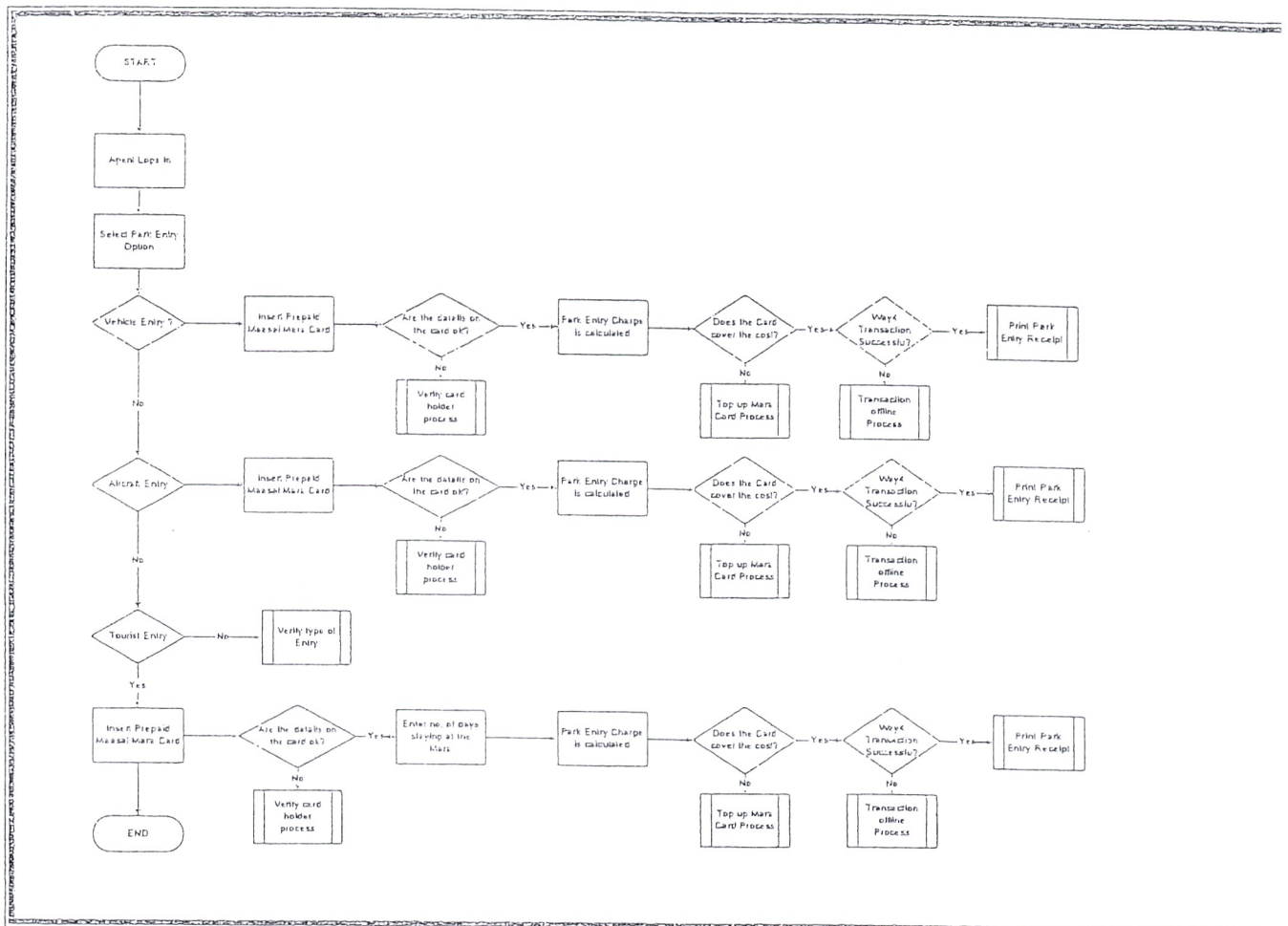


Figure 2: Park Entry Transaction Flow

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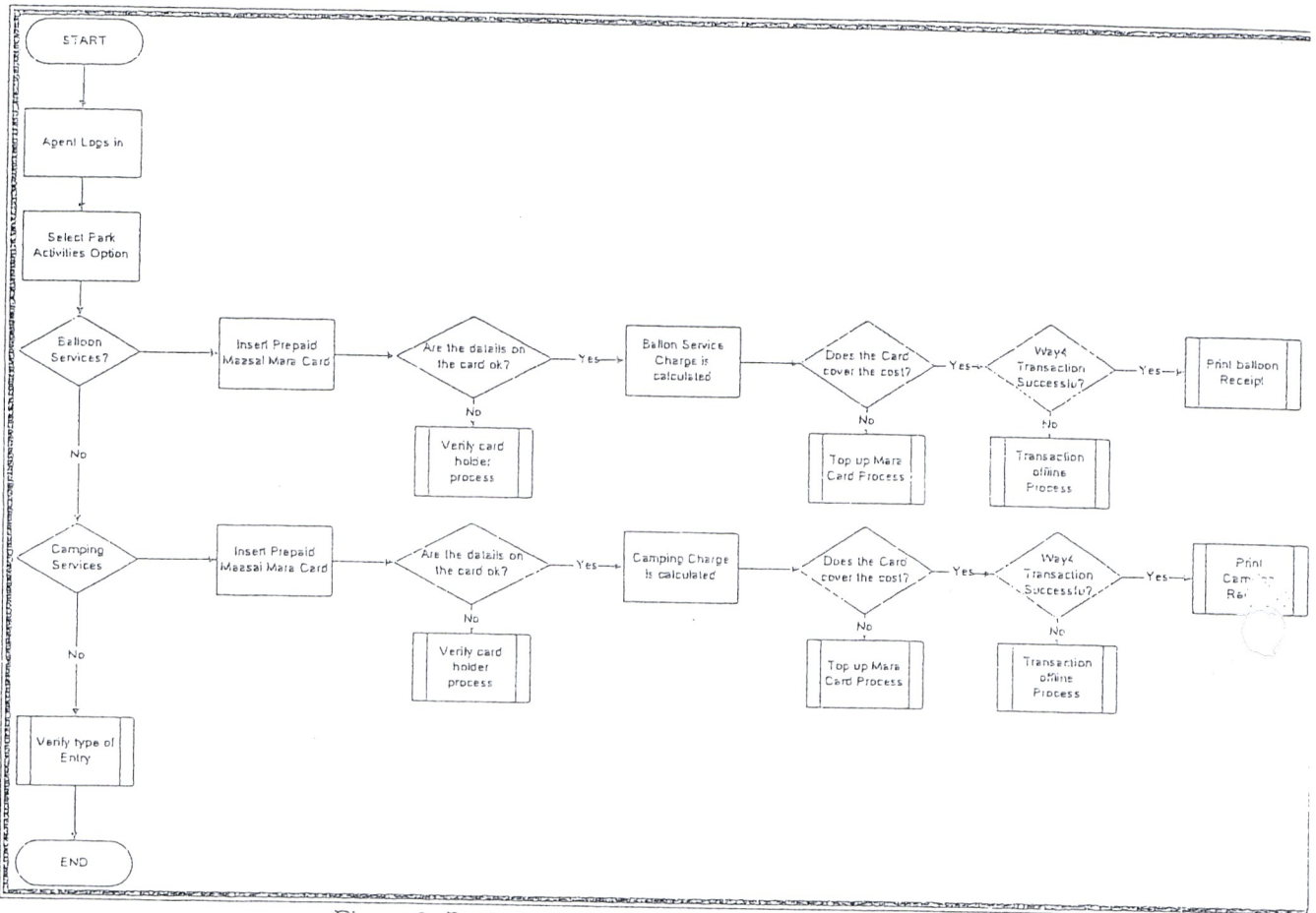


Figure 3: Park Activities Transaction Flow

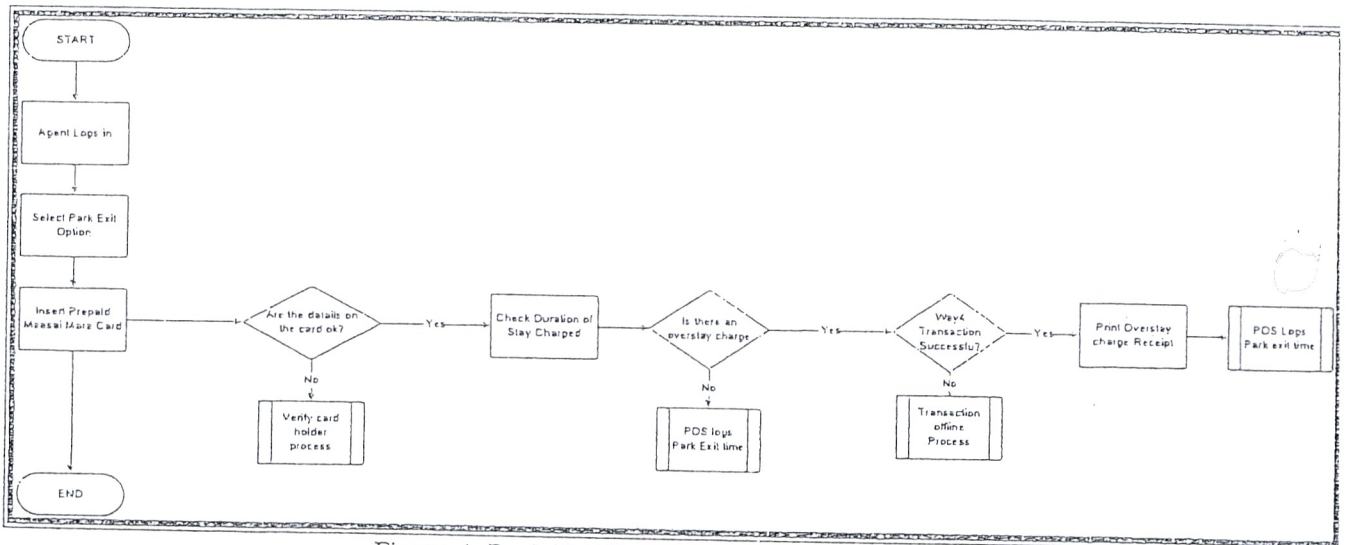


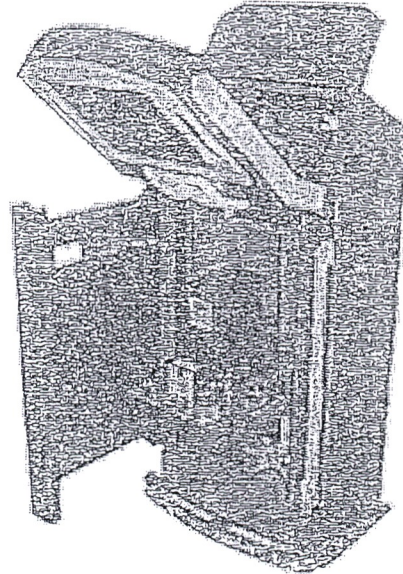
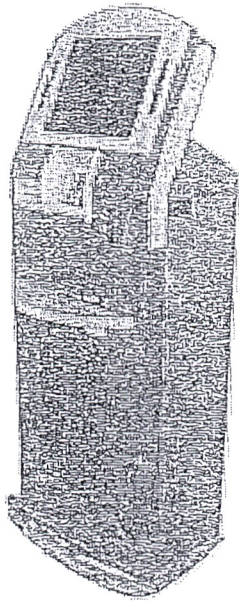
Figure 4: Park Exit Transaction Flow

*[Handwritten signature and scribbles]*

## 4. KIOSK

### 4.1. KIOSK Specification

Banking self-service terminals which will be in specific busy point of sale locations. The Kiosk can be used for reload and also card dispensing at the Point of issue.



### 4.2. KIOSK Functions

The kiosk will be used to:

- i.) Register for a non-personalized instant Mara Card
- ii.) Top-Up a general value
- iii.) Top up a value based on a particular activity

In addition, the KIOSK should be able to calculate costs for Park entry and various activities.

### 4.3. Data Flow Process



*Mbe*

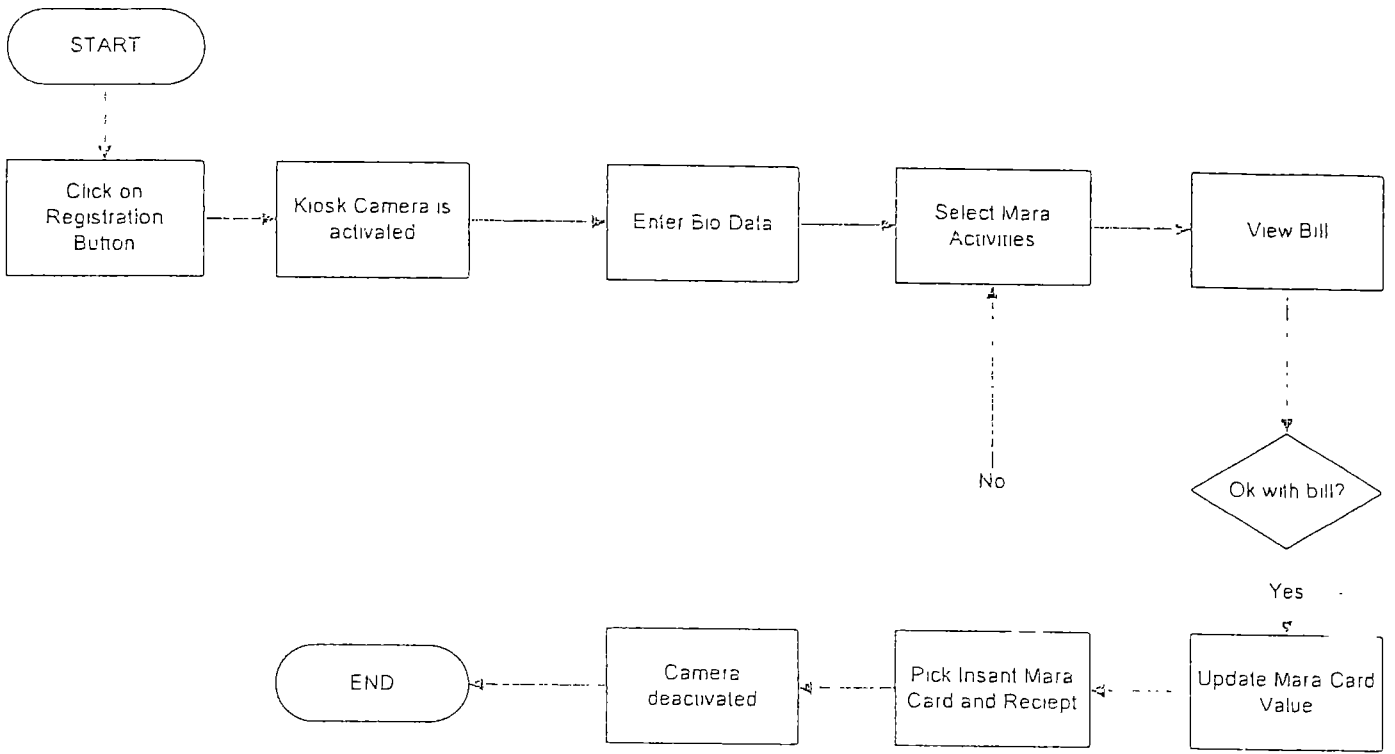


Figure 6: Kiosk Registration Flow

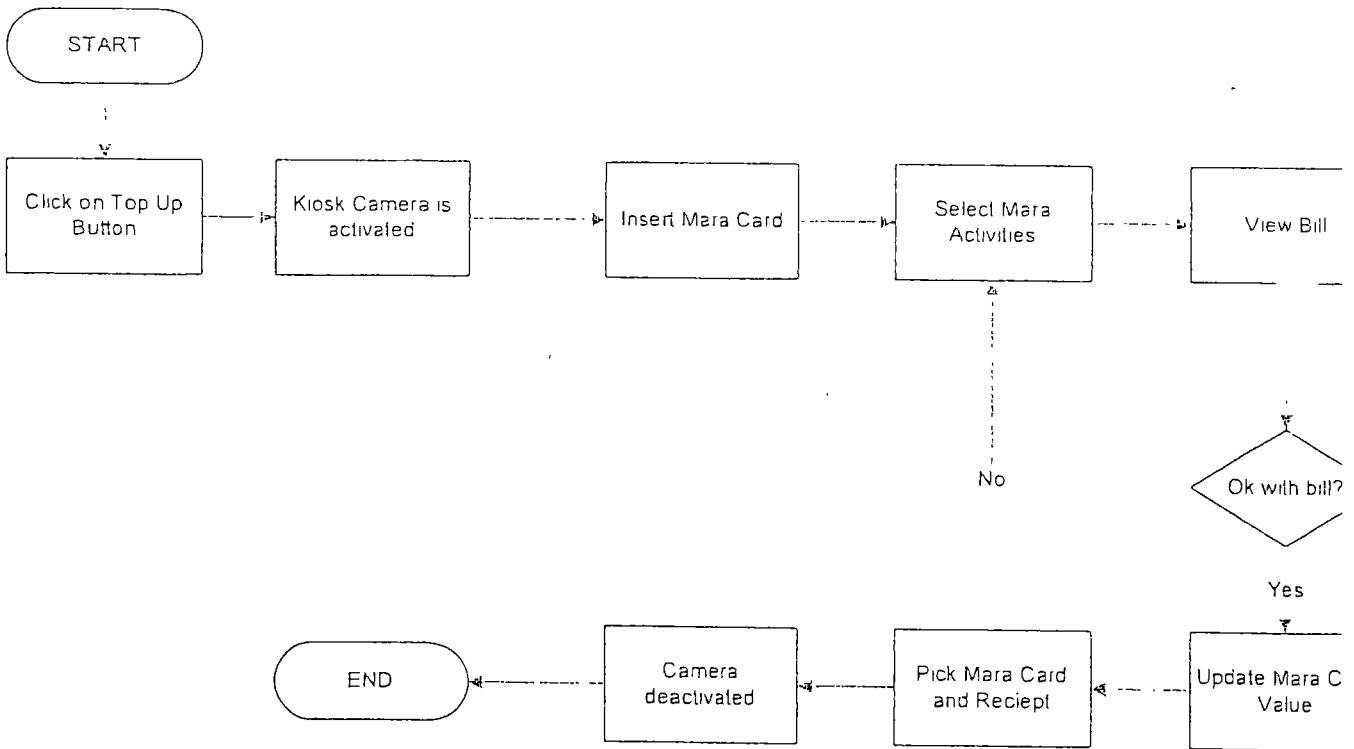


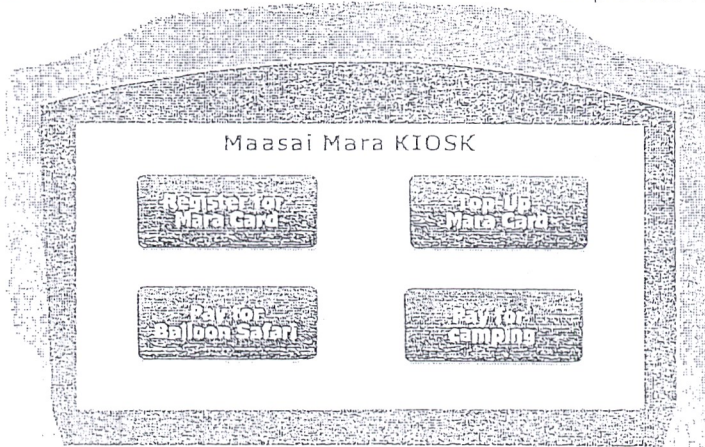
Figure 5: Kiosk Top Up Flow

*Handwritten signatures and scribbles at the bottom of the page.*

#### 4.4. User Interface Design

#### 4.5. Registration

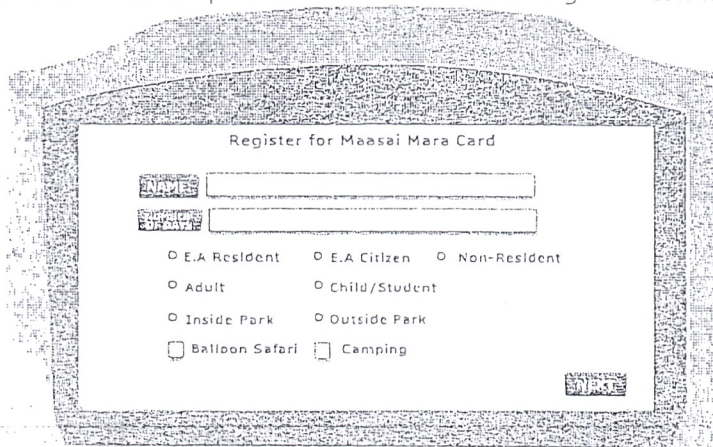
The Main Menu will change depending on the activities that will be chargeable at the KIOSK terminal. Generally the interface background will be white, the Text on the interface will be brown, the buttons will be brown and the text in the button white. A sample one would look like this:



After clicking on Register for Mara Card, the screen that follows should allow the tourist to enter their personal details. This screen page should have:

- i.) Page title
- ii.) Ability to enter text information using an on-screen keyboard
- iii.) Ability to select options by clicking on the radio button or checkbox
- iv.) A next button

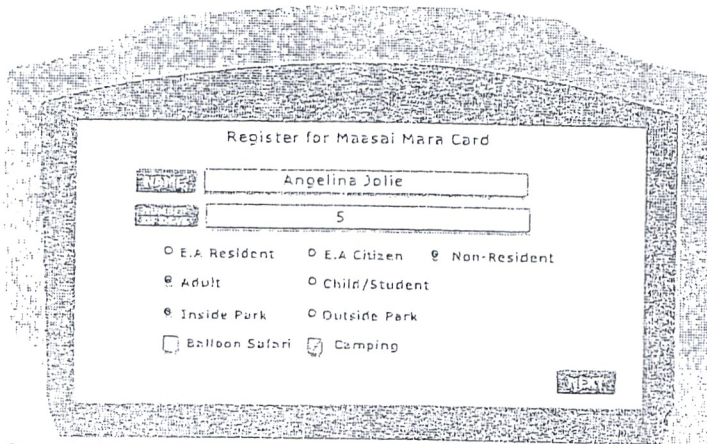
One radio button per line should be selected. E.g. You cannot select adult and child at the same time.



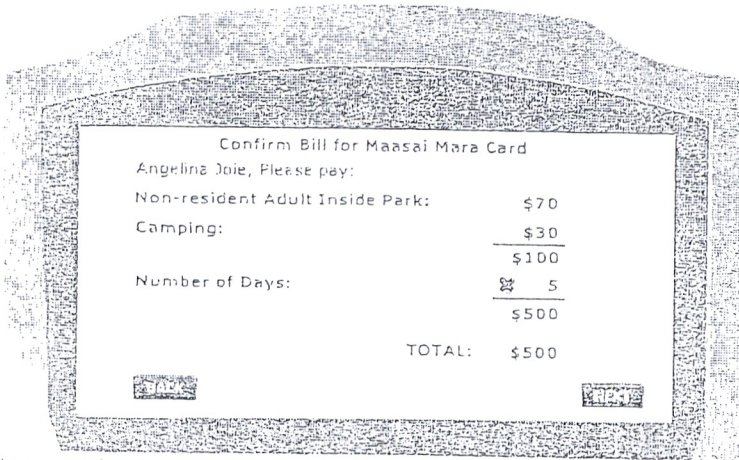
The screen may change depending on the details required to charge the tourist initially e.g the transport mode etc. See the park fee details.

A large, stylized handwritten mark or signature in black ink, located at the bottom center of the page.

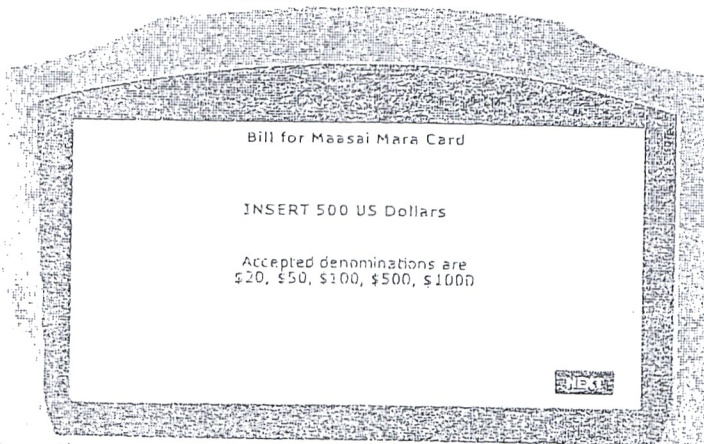
A smaller, more fluid handwritten mark or signature in black ink, located at the bottom right of the page.



After clicking next, the next screen should bill the tourist appropriately. A back button should be present to allow the tourist to edit their details.

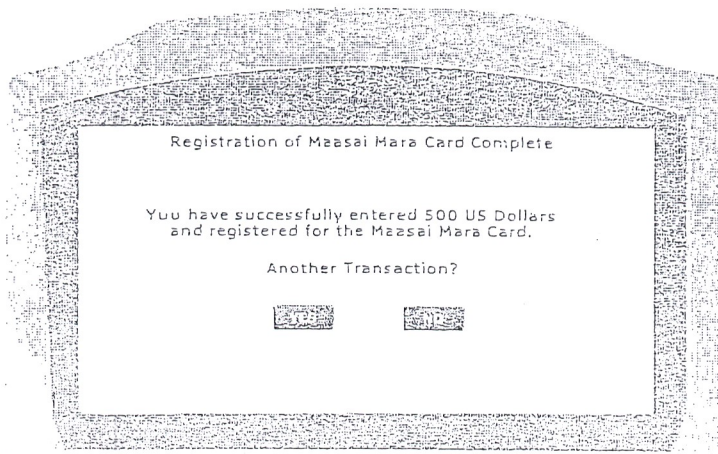


Non-residents are charged in USD (US Dollars) and EA residents and citizens are charged in KES (Kenya Shillings). After clicking next again, the tourist is asked to insert their bills into the cash-in slot in the required denominations. The screen can possibly display the bills entered as it calculates the amount and cross-checks it with the tourist bill.



Once the amount of money is inserted and validated, the registration is successful. And the instant Mara card is issued.





The registration flow may change depending on Data Flow Process change.

The screens for Top Up and paying for activities are similar and will be in sync with the data process flows.

#### 4.6. Reports from the Kiosk:

At the end of the day, the kiosk should give the following reports:

- i.) Cards at the start of the day
- ii.) Number of cards issued
- iii.) Cards at the end of the day
- iv.) Amount of USD inserted
- v.) Amount of KES inserted

## 5. Card Printer

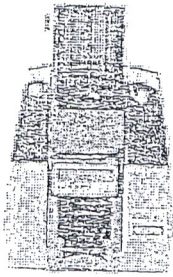
### 5.1. Card Printer Specification

Economical instant issuance

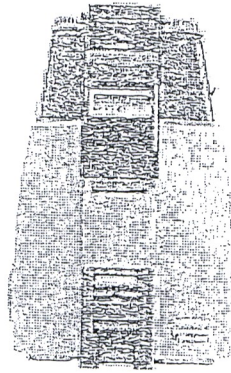
The Data card® FP65i™ financial card printer will enable instantly issue unembossed personalized Maasai Mara cards. Engineered for smaller environments, this easy-to-use card printer offers full-color printing, magnetic stripe encoding and smart card personalization. It also provides rear indent printing for improved card security, as well as other security features that protect cardholder data and the printer itself. Plus, its compact design fits comfortably on the desktop.

Give customers cards immediately

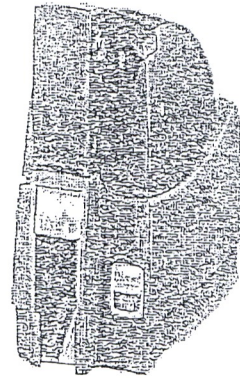
- Meet consumer demand for instantly issued, highly personalized cards.
- Deter fraud and strengthen card security with rear indent printing.
- Protect magnetic stripe and indent data from unauthorized interception during network transmission with Triple DES or AES-128 encryption.
- Improve printer security with a hardware lock suite that secures the printer and supplies.
- Reduce the risk of fraud with user-selectable encoding and built-in card auditing features.



SP55 Plus Card Printer



SP75 Plus Card Printer



Datacard® FP65i™

## 6. Value Added Vehicle GPS Tracking Solution

- Every Vehicle in the Park would have to have a tracking system – easy for rangers to check and monitor real-time
  - All vehicles in Mara (no matter point of entry)
  - Speeding (impose necessary fines and would have digital proof)
  - Off Road Driving (all roads would be marked on system and so as vehicle was off-road Warden would be informed (even via SMS))
  - Park Management would be able to monitor real-time
    - Number of vehicles at particular site (Lion Kill etc.)
    - Night driving
    - Number of Vehicles lodge has in system
  - Detailed History of all activity in Park
    - Loyalty Program for Tour Operators or Regular Visitors
- An Annual Pass for vehicle and driver could be made available which would include a tracking device. The device could be permanent attached to the vehicle.
- The Vehicle owner for an additional fee payable to G4S could get other benefits e.g. emergency assist etc.
  - **Monitoring services**
  - Automatic vehicle locator
  - Vehicle monitoring systems
  - Audio facility
  - **Monitoring and Response**
  - Monitoring solution
  - In-car panic button for SOS assistance
  - Vehicle immobilizer
  - **Safety and Emergency Support**
  - Ambulance rapid response in Nairobi.
  - Security updates
  - Periodic security updates
  - **Recovery Services**
  - Police liaison
  - Tracking Services –East Africa

## 7. Training & Knowledge Transfer

Training emphasizes knowledge transfer to enable Narok County Council take full ownership of the system. We combine Technical and User training on an on-going basis.

## 8. Implementation - Training

- Train The Trainer Approach
  - Core team members of all teams undergo detailed training on all aspects of the solution.
  - Key areas include master setup, transaction entry, report generation
  - Basic Query building for generating adhocdata requests is also covered as a part of trainers' training
- End User Training
  - Carried out by Trainers
  - Train each user only on specific areas that he/she will be handling on a daily basis.
  - Training on data Input (entry sequence, navigation, etc...)
  - Training on required outputs in the form of a document or a report
  - Training on applicable queries that may be required on an ongoing basis
  - Training of trainers (scope jointly designed)
  - On-going, even after implementation
  - Assist Narok County Council in training new customers
  - Development of Process Manuals
  - Development of Multimedia Aids

**Deliverable:**  
**Training Completion Certificate**

## 9. Legal Functions

### 9.1. Leg1. Functional Steps to be performed- Point of Issuing

- Tourist's pre book for trip to the Mara while still overseas.
- Tourists can also book themselves directly on the Masaai Mara Website and details captured in the process
- The following information is captured during hotel & the entire trip booking.
  - Guests apply for the card, providing personal details
  - Name
  - Passport Number
  - country of residence
  - Date of Birth
  - Locations to visit in the Mara & other activities in the reserve.
- The information is uploaded into a web based portal which is accessible by tour operators and automatically the cards are generated after payment confirmation.
- The value of the card is automatically updated in the chip card during printing.





Card nominal and  
expiration date  
printing

- The card has a chip which stores information of the client and tracks the following for individual or group packages.
  - Hotels/Lodges visited
  - Number of Nights.
  - Checkin/Checkout time stamps.
  - Amount spent.
  - Loyalty
  - Aircraft services.
  - Name of the tour company
  - Number of passengers in the aircraft.
  - Departure/Arrival date time stamps
  - Balloon Safari
  - Tented camping

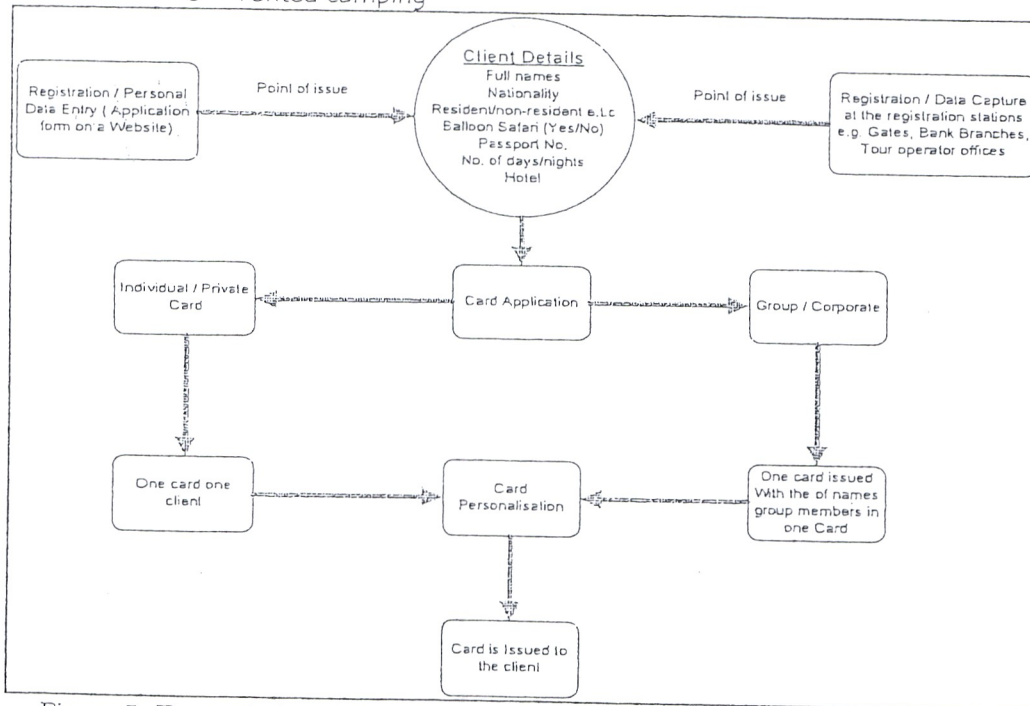
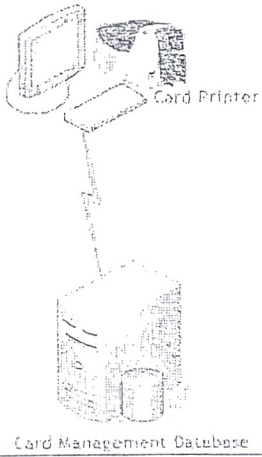


Figure 7: Transmission of Data from the Payment to Card Management Database.



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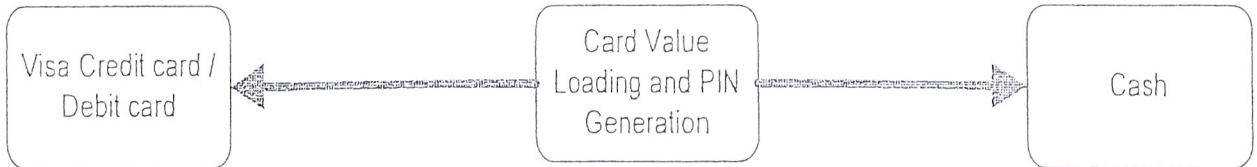
Point of Issue



1. Capture Customer information using an application form
  - Name
  - Passport No. /Id no.
  - Citizenship
  - Country of residence
  - etc
2. Enter this information in the system.
3. Print card with name on it.

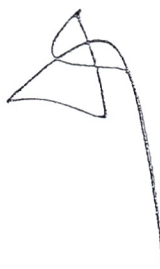
9.2. Leg2. Functional Steps to be performed- Point of Sale

- Card payment at the Point of Sale Locations.
  - Using International payment cards.
    - Visa
    - MasterCard
    - China Union Pay
    - Equity Bank
  - POS at respective access gates used to process card payments using Visa cards (Local or International visa debit/credit cards.
  - Major currencies supported at the POS and settlement.



Channels

- Point Of Sale Terminals – Model 7910
- Self Service Kiosks



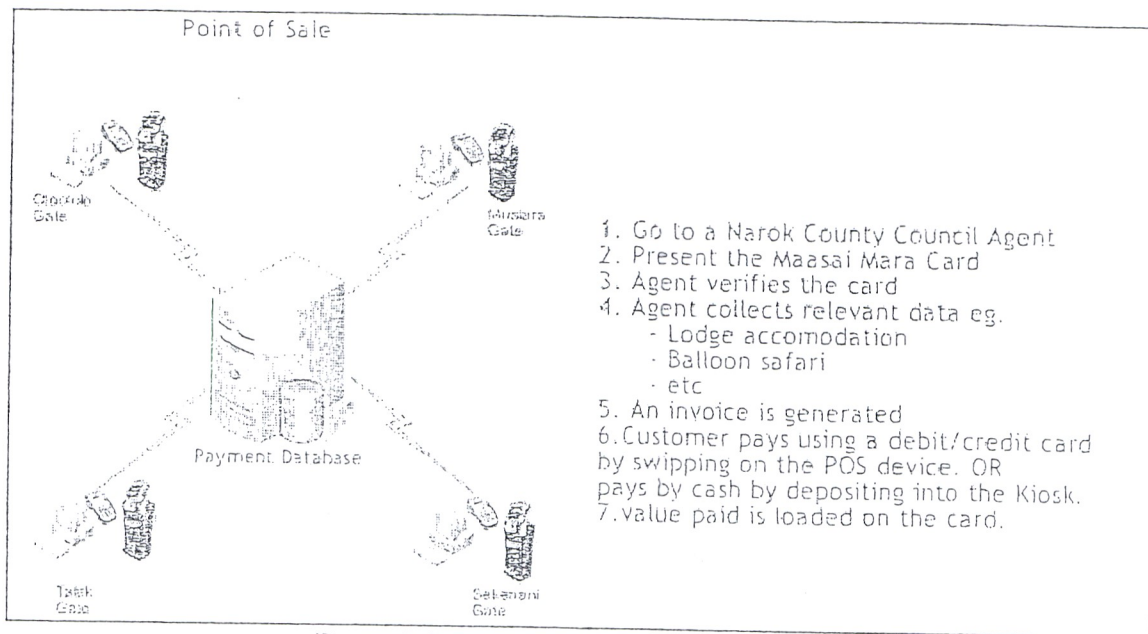


Figure 8: Flow of Value loading and Entry Management

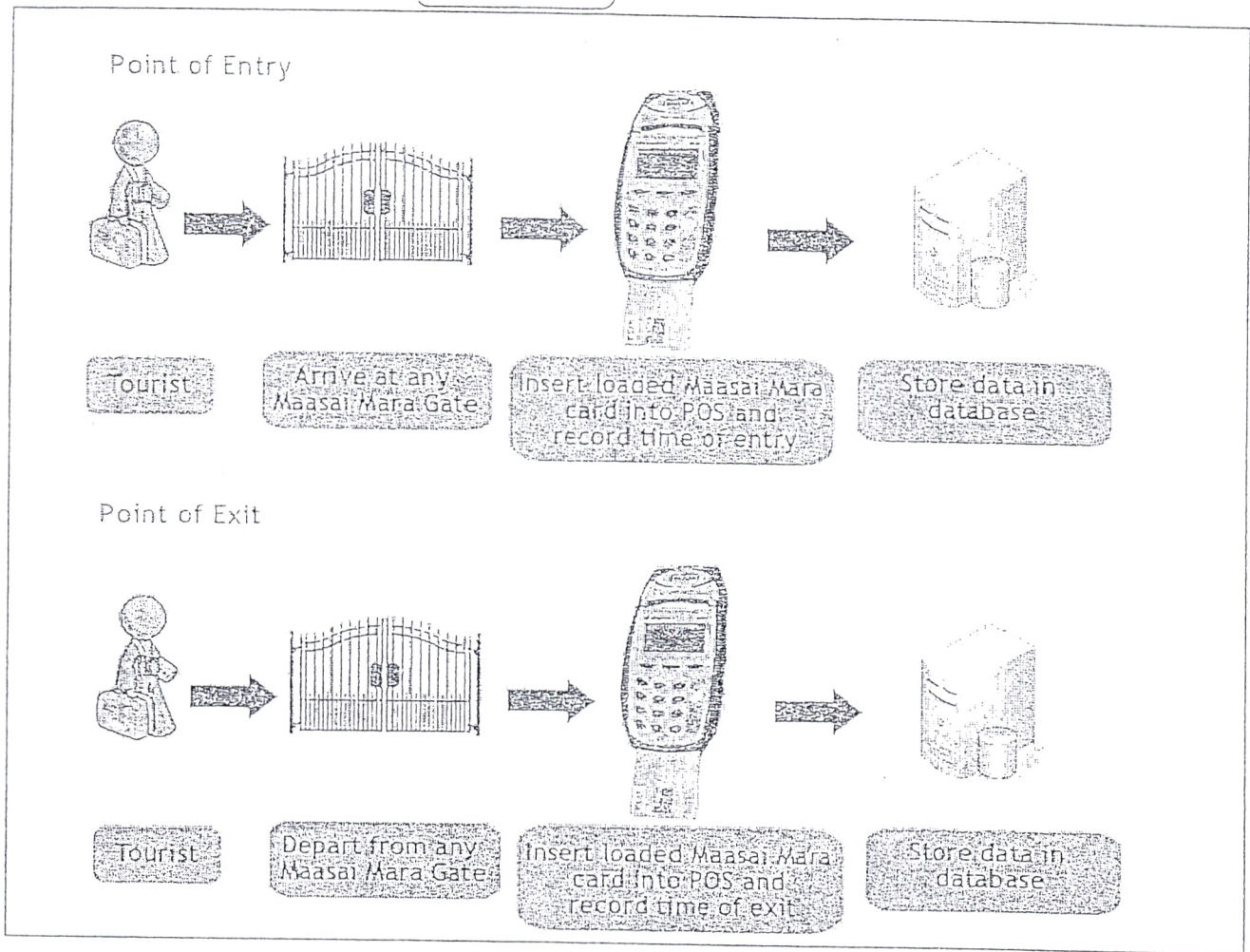
9.3. Leg3. Functional Steps to be performed- Point of Entry

- Tour van with tourists arrives by plane or van to Maasai Mara.
- At the moment of entry, timestamp is put on the card (Xxddmmyyyyhhmmss, where XX – name of the Gate Name, hotel, Balloon and the days in the reserve.)



*Handwritten signature*

Time control activation  
at the gate - Checkin  
time



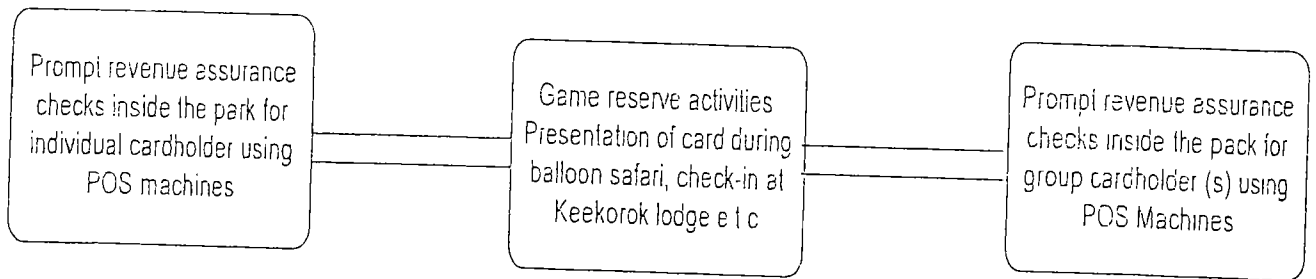
The POS has time and picks all details from chip automatically & prints a receipt. Operator select menu 'Enter Park' or "Exit Park".

#### 9.4. Leg4. Functional Steps to be performed- Park Utilities

- During game drives, revenue assurance and spot check officers have got an admin POS for checking validity of the smartcard.
- A print out is obtained showing time in and the number of days in the reserve.



Mo



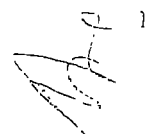
9.5. Leg5. Functional Steps to be performed- Point of Exit

- After Tour van or aircraft decides to leave a park, exit readers (POS terminals) checking the entrance time stamp, and automatically calculating fee for the time spend over-the-limit (for example, till 6 p m. each day). Small receipt is printed as confirmation with
  - Masai Mara
  - Gate of Entry
  - Gate of Exit
  - POS ID
  - Date
  - Masked Card Number
  - Exit Reference number
  - Time Spent in park
  - Amount Spent
  - Balance on Card
  - Authorization Code:
- Standard working hours are defined in TMS, POS terminal forms transaction for overspend hours automatically using fixed rate defined in TMS system.
- At this stage the tour operator can use a credit card to offset the overstay amount at Equity VISA/Mastercard POS.

Value knock-out at the point of exit and Automated Settlement



SCHEDULE B: STATEMENT OF WORK

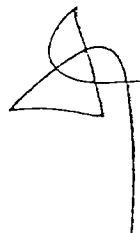
A handwritten signature consisting of a stylized, looped initial followed by a vertical line extending downwards.A handwritten signature in cursive script, appearing to be the name 'A. J. ...'.

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## Acronyms

- ACOS - Austria Card Operating System
- CCN – County Council of Narok
- CCTV – Closed Circuit TeleVision
- DES - Data Encryption Standard
- EBL – Equity Bank Limited
- EEPROM - Electrically Erasable Programmable Read-Only Memory
- SAM - Security Authentication Module card
- ICC - Integrated Closed Circuit
- POS - Point Of Sale
- SIM - Subscriber Identity Module
- SOW – Statement of Work



## 1. Introduction

This statement of work document outlines the mutually agreed deliverables and responsibilities between County Council of Narok ("CCN") and Equity Bank Limited ("EBL") and it serves as a reference document throughout for the SUPPLY, INSTALLATION AND COMMISSIONING OF A PREPAID SMART CARD SYSTEM at the Maasai Mara National Reserve.

## 2. Project Scope

### 2.1. Overview

This Scope of Work ("SOW") defines the services that EBL will offer to CCN to enable the provision of a Smart Card based system for collection of revenues for use of the Reserve & access control at entry points. The Services are described in the Project Services Scope below.

The terms of this SOW are limited to the scope of this SOW, and shall not be applicable to any other SOWs which may be executed between CCN and EBL. The name of the project of this SOW is "CCN SUPPLY, INSTALLATION AND COMMISSIONING OF A PREPAID SMART CARD SYSTEM" ("Project").

### 2.2. Project schedule

Final Project timelines are contingent upon execution of this SOW and EBL's receipt of payment of 70% of the investment cost. EBL acknowledges that the completion of Services by the estimated end date is dependent upon CCN meeting its obligations in this SOW. All changes affecting the baseline schedule are subject to agreement by EBL and CCN.

EBL will issue regular project status reports to the CCN team to be agreed during the implementation period. Any change order requests shall be governed as provided in Clause 2.3.5 of the Agreement.

### 2.3. Project Services Scope

Below are the Services to be performed by EBL under this SOW:

#### 2.3.1. Project Management

Equity Bank Project Management Responsibilities



A dedicated EBL Program Manager will be assigned during this Project for the coordination of the mutually agreed deliverables, the scheduled project meetings and the activities as described in the present scope of work.

The EBL program manager will manage the activities of the EBL project team and will work closely with CCN designated project manager to complete this Project as mutually agreed upon.

During the execution of the Services, CCN is responsible to provide free access to the EBL's staff working on the Project to all sites as shall be necessary to complete implementation. Any delays caused by access problems and the related costs incurred by EBL will be invoiced separately to CCN after mutual agreement by the parties.

Key deliverables/obligations for the EBL Project Manager will be:

- Project plan development.
- Drafting the statement of works (SOW) document that will be part of the contract between CCN and EBL.
- Project calls with CCN as requested or needed.
- Provide an action plan that identifies critical issues that need to be resolved.
- Provide regular status updates of the EBL Project schedule using Microsoft Project tool.
- Provide regular project summary reports to CCN

EBL does not have any site preparation deliverables as regards to this project apart from site visits prior to the technical design workshops.

#### CCN Project Management Responsibilities

- Providing a single point of contact, the CCN Project Manager, to whom all communication shall be addressed and who has the authority to act on all aspects of the services.
- Designating a back up when the primary CCN Project Manager is not available.
- Attend the project meetings.
- Follow-up of the actions within the CCN project team.
- Immediate feedback to the EBL Project Manager on any important and/or new information or changes with respect to this Project.
- Timely review and, if applicable and as set forth in this SOW, approval of EBL's deliverables provided to CCN.

#### 2.3.2. Access of visitors & vehicles to the reserve (In & Out)

The bank shall facilitate the following through the system:-

- Access control to the Reserve by use of Maasai Mara Smartcards
- Control access in/out of reserve through various modes such as Vehicle and Airplanes.
- Payment by Users for use of the Reserve

The System will enable the capturing of the following details

- Visitor's Bio Data
- Stay Details e.g. duration
- Preferred package at Mara
- Revenue collections during entry



- On the spot collection of revenue at entry - Visitors, Vehicles, aircraft etc.
- On exit, collection of accrued revenues - penalties, top ups and any other surcharges.
- Control of complimentary & any other non-fee entry
- Capture organized groups – Schools
- Capture duration of stay in the Park – 24hour basis.
- If Entry before or at 12pm (24hrs) exit next day by 12pm
- If Entry after 12PM exit next day by 6PM.
- Full charges apply to next day on overstay

The System will provide Re-validation of Smart Cards at Equity Bank Head Office after the expiry of 14 days (re-validation only upon receiving instructions from CCN).

### 2.3.3. Issuing of Smartcard

The System will support printing and Issuing of smartcards on behalf of CCN.

Types of Cards to be issued shall be in Alignment to Maasai Mara Game Reserve Approved Park Fees that are gazetted from time to time. The following are examples of Smart Cards to be issued -

- Annual Vehicle Smartcard for in-reserve vehicles
- Visitor card
- Aircraft cards
- a card to be used by Organized groups
- Vehicle daily including driver charge
- Complimentary/employee cards

### 2.3.4. In Reserve activities

#### The system will support the following

- Financial transactions by use of the Smart Card
- Balloon Safaris – Financial Transaction with Smartcard.(Fees payable to County Council of Narok i.e. Ballon tariff) this will requires a POS & Operator (Warden)
- On spot Charging of Takeoff & Landing fee per person
- Accommodations - MIS
- Camping fee & Campsite booking (Requires a POS & Operator (Warden)
- On spot charging of camping fee for all categories
- Advance arrangement on campsite booking
- Aircraft Landing Fees
- On spot charging of Aircraft landing fees for all categories
- Filming and Cinematography
- On spot charging per category & duration
- Resident vehicles in the Game reserve
- Annual vehicle card Advance arrangement – Vehicles residing in Lodges & camps outside the game reserve
- Penalties
- Illegal Entry and Evasion of Reserve fees
- On spot Off-road Driving fines
- Littering fines – On spot
- Royalties – Quarterly – MIS
- Nights spent
- Transit fees
- On spot charge per category
- Random spot revenue checks – Can cause a penalty




- Donations
- On spot or during registration per category
- Tour Guiding
- On spot charging of the visitor per duration

### 2.3.5. Management Information System Reporting(MIS)

This comprises systems which will be used by CCN for administrative, reporting and Cash Management. These will be:-

- Financial reporting & Cash management
- General reports – Mara Online
- Systems in use by the CCN
- Internet Banking
- Mara Online admin & Reporting Portal
- Online Registration portal

### 2.3.6. Infrastructure

This will be the physical supporting infrastructure of technology. This shall include the following. -

- Solar infrastructure.
- Network - GPRS - Secure VPN connection to CCN
- POS, Kiosk, MIS portal
- Back office Infrastructure at County Council of Narok
- Provision of an MIS admin portal & Financial
- Gates, Airstrips, Balloon desks, Compliance officers, Camps & Lodges  
Gates: Enoompnai Gate, Fig Tree Gate, Mara Bridge Gate, Musiara Gate, Ololaimutia Gate, Sand River Gate, Sekenani Gate, Simba Gate and Talek Gate  
Airstrips: Keekorok Airstrip, Musiara Airstrip, Olkiombo Airstrip
- Smart cards
- Equity Branches
- Tourist Agents & Equity Agents
- CCN Office
- Equity Head Office
- Self service portal- Online
- Solar Panel setups – Charging the devices
- Datacenter services & Hosting
- Backups
- Disaster recovery sites
- Website hosting – Registration Portal
- Online Payment gateway
- Systems security




### 2.3.7. Payment & Collection of fees & charges

The system will allow

- Multi - Currency
- Mode
- Cash
- Card
- Account
- Online Payment Channels

All revenues collected by the County Council from the Reserve will be collected using the System which includes the following:

- Park entry fees for persons (that are gazetted from time to time)
- License fees
- Fees paid for Leases
- Fees paid for vehicles, aircrafts and other means of transport
- Filming fees
- Ballooning fees
- Penalties and surcharges
- Any other fees that may be introduced

The fee payable shall be as gazetted by the County Council from time to time and notified to the Bank in advance.

### 2.3.8. Training

- User training will be conducted on all aspects of the solution during the project life cycle.

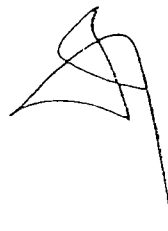
### 2.3.9. Documentation

In the context of this SOW, EBL will deliver the following documentation to CCN

- Detailed Project Plan
- Technical Design Document
- Acceptance Test Documentation and Applicable Equipment Manuals
- User Manuals
- Change Request templates
- System Manuals

### 2.3.10. Joint CCN & EBL Change Management

- The parties agreed to cooperate in a structured approach to the transition from the current revenue collection process to the proposed future revenue collection systems to be provided by EBL. This will include:
- Current process documentation
- Future state process documentation
- Smartcard impact documentation to the current processes



### 3. Out of scope Items

The following items have been agreed by the parties as out of scope:

- Annual Permit
- Stickers for Contractor vehicles and vehicles residing in the game reserve
- Illegal Grazing fines
- Motorized gates
- Wide Area Network
- CCTV
- Community services

### 4. Responsibilities of the parties

The following section describes in more detail the respective responsibilities of each party. In General, CCN shall be responsible for the following:

- i) Providing the relevant resources required to fulfill its obligations under this SOW.
- ii) These resources includes (but not limited to) the following:
  - a. Transport to the various reserve sites during implementation of the project and provision of maintenance and support services by the Bank.
  - b. Accommodation during the reserve sites implementation.
  - c. Provision of two (2) vehicles to the Bank's team during the project
- iii) Timely review and approval of EBL deliverables.
- iv.) Organizing reasonable access to facilities including, where applicable, facilities and workspace relevant to execute this SOW.
- v.) Providing proper security clearances and/or escorts as required accessing all site(s) for equipment configuration.
- vi) Payment of fees to enable execution of this SOW

### 5. Project Closure

#### 5.1. Maintenance Hand over

The EBL PM will hand over the maintenance hand-over documents prepared and explain to CCN the post implementation support procedure

#### 5.2. Warranty and Post Warranty Maintenance

The application software is warranted for a period of 30 days from the date of Go-live. The warranty applies to the implemented application/system and updates provided as part of technical support excludes customization which may be provided for the customer

#### 5.3. System Acceptance/Project Sign off

A final review of the implementation deliverables and completions will be carried out by the core implementation group, and duly sign off the project. the parties agree to sign the milestone/UAT sign off in the form attached herein. The bank shall monitor the implementation and change management after sign off.

### 6. Service Level Agreement/ Maintenance and Support Services

Maintenance and support services shall be in place 30 Days after go live and end of Warranty period as governed by Schedule C.





7 Technical Scope Signoff Document

This SOW serves as a confirmation that the Mara Project Technical & Scoping team have met and discussed and agreed, while complying with all Mara Project Technical requirements and all scenarios reviewed and are complete and having been accepted by Equity Bank & County Council of Narok as meeting full Mara project requirements.

It also confirms readiness for project Implementation on the Effective Date of this Agreement.

County Council of Narok Project Management Office have reviewed and confirmed the requirements submitted and are assured that the system as envisioned in the scope & design document will perform with expected functionalities and controls when applied to the Business environment.

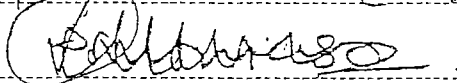
IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this SOW to be duly executed

COUNTY COUNCIL OF NAROK

Name:

Patrick Ole Monieko

Signature:



Designation:

Chairman

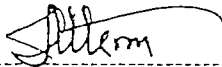
Date:

19/4/2011

Name:

Rus Kibem

Signature:




Designation:

County Clerk

Date:

19th April 2011



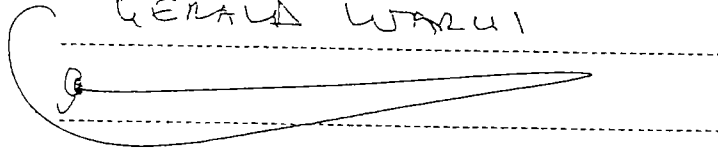


EQUITY BANK LIMITED

Name:

GERALD WANJUI

Signature:



Designation:

DIRECTOR

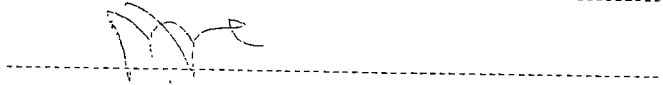
Date:

19/04/2011

Name:

MARY WANZAR WANAE

Signature:



Designation:

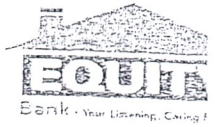
COMPANY SECRETARY

Date:

19th April 2011



PRE-PAID SMART CARD SERVICES  
MILESTONE SIGN-OFF



Project Code: NCC/EBL/SCS/2010  
 Customer Name: County Council of Narok  
 Address:  
 Narok Town  
 P.O. BOX 19, Narok  
 KENYA

Project Name: Pre – Paid Smart Card Services

Released to:  
 Project Manager – County Council Of Narok

Released Date:

This is to certify that the following milestones have been completed successfully.

Deliverable	Requirements and Design specifications	Completion of Configurations	Completion of Training	Completion of UAT

Signature:		
Name:		
Title:	Project Director- Equity Bank Ltd.	Project Director- County Council Of Narok
Date:		

SCHEDULE C: MAINTENANCE AND SUPPORT SERVICES

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## Contents

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## Acronyms

ACOS - Austria Card Operating System  
DES - Data Encryption Standard  
EEPROM - Electrically Erasable Programmable Read-Only Memory  
SAM - Security Authentication Module card  
ICC - Integrated Closed Circuit or International Criminal Court  
POS - Point Of Sale  
SIM - Subscriber Identity Module



**SCHEDULE C: MAINTENANCE AND SUPPORT SERVICES**

**1. INTRODUCTION**

The Bank will provide the services described herein upon payment of applicable Maintenance and Support Services fees. The services described consist of Resolution of Defects and Operational/User Support Services. Capitalized terms, if not defined in this Schedule C, will have the meaning defined in the Agreement.

**2. SUPPORT CONTACT INFORMATION**

Contact information for Bank's customer service center ("CSC") is as follows:

Support Center Office Hours (for Non-Emergency Calls) means	Telephone	E-mail
8 a.m. – 5 p.m. East Africa Time/Monday through Friday excluding the following holidays: Kenya national holidays, Christmas Day (25 December), and New Years Day (1 January) and any other day that is gazetted as a public holiday.	020-2744000, 0711-025000, 0734-108000	contactcenter@equitybank.co.ke

**3. CUSTOMER REPORTING OF DEFECTS**

If County Council believes the Licensed Software within the production environment is not operating in accordance with the applicable Specifications ("*Defect*"), COUNTY COUNCIL will notify the CSC (an "*Incident Report*" or "*IR*"). The CSC will log the incident and provide County Council with an incident tracking number. County Council should refer to this incident tracking number when making follow-up inquiries.

Defects may be reported *via* phone or email as follows:

- Severity 1 and 2 Defects may be reported 24 hours, 7 days a week. Severity 1 and 2 Defects must be reported *via* telephone.
- Severity 3 and 4 Defects may be reported *via* phone or email during Office Hours. Reports of Severity 3 and 4 Defects made outside of Office Hours must be made *via* email. (*See Section 3 for definitions of Severity Levels and response times*)

In order to allow the Bank to respond as effectively as possible to County Council reported inquiries and provide the best customer service, certain information must be provided by County Council when reporting Defects, as follows:

- (a) The name of the Licensed Software, the version (for Documentation) or release number (for Licensed Software);
- (b) Contact name, company, project, e-mail address if available, phone number and fax number; and
- (c) The nature of the claimed Defect, a description of the Defect and County Council's assessment of the Severity Level.

County Council's personnel will remain available to receive a reply from Bank's support personnel. County Council will supply Bank with adequate information and access to its systems to enable Bank to investigate and attempt to identify and verify the reported support issue. County Council will also work with CSC personnel during the problem isolation process, as needed.

#### 4. 3. RESOLUTION OF DEFECTS

##### 4.1. DEFECT SEVERITY LEVELS

The Bank will use commercially reasonable efforts to respond to reported Defects in accordance with the response times set forth in Section (c) below. The Bank's response to a reported Defect will be dependent upon the severity of the Defect and upon County Council providing sufficient information for Bank to understand and recreate the Defect. Defects are categorized by the Bank as follows:

Severity Levels	Definition
Severity 1	The Licensed Software in the production environment is totally inoperative; fails catastrophically; or the Defect is causing a critical impact to County Council's business operations and productivity.
Severity 2	A detrimental production situation where performance of the Licensed Software in a production environment is significantly reduced or severely limited. The situation is causing a significant impact to certain portions of the County Council's business and productivity.
Severity 3	The reported problem disables a specific non-critical function; the error or Defect condition is not critical to continuing operation.
Severity 4	An error or Defect which has no significant effect on functionality of the Licensed Software and causes only minor inconvenience to its users, including, but not limited to cosmetic problems.

#### 4.2. RESPONSE PROCEDURES

Based upon the information provided by County Council, Bank will assign a Severity Level to the reported Defect and recommend a course of action for correcting the Defect in accordance with the following procedures:

**Initial Response:** the Bank's CSC acknowledges the County Council report and provides a tracking number.

**Defect Analysis:** details on what the Bank has learned about the Defect to date, that appropriate technical personnel have been assigned to work on the Defect and the Bank's initial analysis of and action plan for resolving the reported Defect.

**Interim Resolution:** the Bank (i) restarts the Licensed Software, if the reported Defect caused the Licensed Software to be inoperative; (ii) enables the County Council to access the Licensed Software, if the reported Defect caused the County Council to be unable to access the Licensed Software; or (iii) provides County Council with a workaround that solves or mitigates a reported Defect, with minimal County Council inconvenience.

**Final Resolution:** Bank provides a correction or modification that corrects the Defect.

#### 4.3. TARGET RESPONSE TIMES

The Bank will use commercially reasonable efforts to respond to Incident Reports as follows:

Severity Level	Initial Response	Defect Analysis	Interim Resolution	Final Resolution
Severity 1	Within thirty (30) minutes of receipt of an IR	Within four (4) hours of receipt of an IR	Within eight (8) hours of receipt of an IR	Within ten (10) calendar days after receipt of an IR
Severity 2	Within thirty (30) minutes of receipt of an IR	Within six (6) hours after receipt of an IR	Within twenty-four (24) hours after receipt of an IR	Within forty-five (45) calendar days after receipt of an IR
Severity 3	Within four (4) Support Center Office Hours after receipt of an IR	Within twenty-four (24) Support Center Office Hours after receipt of an IR	Within fifteen (15) Support Center Business Days after receipt of an IR	Within sixty (60) Support Center Business Days after notice of an IR
Severity 4	Within forty-eight (48) Support Center Office Hours after receipt of an IR	N/A	N/A	Next minor release of the Licensed Software, which is at least 30 support Center Business Days after receipt of IR



For Severity 1, 2 and 3 Defects, if Bank reasonably determines that a workaround that resolves or mitigates a Defect can be provided with minimal County Council inconvenience, the Defect may be downgraded and addressed at a new Severity Level.

#### 4.4. EXCLUSIONS

The following matters are not covered by Maintenance and Support Services:

- (a) Any problem or nonconformity, not caused by Bank and resulting from misuse, improper use, improper installation, alteration, or damage to the Licensed Software, configuration or data;
- (b) Any problem or nonconformity due to modifications to the Licensed Software made by anyone other than the Bank or without Bank's written approval by means of Bank's agreed verification process;
- (c) Any problem or nonconformity resulting from hardware or other equipment;
- (d) Any problem or nonconformity resulting from third party software other than Third Party Products embedded in the Licensed Software and delivered by the Bank;
- (e) Any problem or nonconformity resulting from the combination or merging of the Licensed Software with any hardware or software not supplied or identified as compatible or authorized by the Bank;
- (f) Any problem or nonconformity in any non-supported release of the Licensed Software; or
- (g) Any problem or nonconformity resulting from the separate use of, or direct connection of external systems or net work elements to, any Third Party Products embedded in the Licensed Software.

The Bank shall not be obligated to cure any defects unless the County Council promptly notifies the Bank of the existence and nature of such defects upon discovery.

Time spent by the Bank to investigate, diagnose or attempt to correct any problems enumerated in this Section ("Exclusions"), or to perform any modifications or enhancements excluded in this Section, will be billed to County Council on a time and materials basis at Bank's then current daily rates or such other rate as has been agreed to by the parties in writing.

#### 4.5. OPERATIONAL/USER SUPPORT SERVICES

During Office Hours, Bank will respond to questions from County Council's properly trained personnel (personnel who have attended the training program(s) offered by Bank for the Licensed Software, as applicable to their role) regarding normal operational procedures, tasks relating to the Licensed Software or other inquiries concerning the Licensed Software that do not require corrective action. Inquiries for Operational/User Support may be made by phone or email during Office Hours; inquiries made outside of Office Hours must be made *via* email and Bank will respond during Office Hours.



#### 4.6. ACCOUNT SUPPORT REVIEW

Bank will perform account reviews of County Council's service activity, efforts to improve uptime and progress made against the response times. Frequency of reviews will be determined by County Council and Bank, and will not exceed one review per quarter.

#### 4.7. COUNTY COUNCIL RESPONSIBILITIES

- *Contacts.* County Council may register up to four (4) technical contacts with the Bank for each installation. All service requests must be submitted to Bank by the technical contacts and responses will be returned to these contacts only.
- *Service Requests.* County Council must provide sufficient information on the issues encountered as described in Section 2 above. County Council must use all reasonable efforts, prior to submissions, to ensure that the problems reported lie in the Licensed Software and not third party or County Council code, or as a result of hardware malfunction.
- *COUNTY COUNCIL Availability.* If requested and required, County Council must make available to Bank a technical representative during the applicable service hours for all service requests. Bank reserves the right to suspend all work relating to any service request during periods for which the County Council does not provide access to a technical representative.
- *Notification of Configuration Changes.* In order to facilitate diagnosis of reporting problems, County Council must notify Bank of configuration changes (such as network installation/expansion, system upgrades, and relocations) as soon as reasonably practicable.

#### 4.8. PROVISIONS RELATING TO LEVELS OF SUPPORT & ADDITIONAL SUPPORT SERVICES

County Council will provide 1<sup>st</sup> Level Support Responsibilities described below, providing County Council's personnel are properly trained on use and operation of the Licensed Software, Bank will be responsible for providing 2<sup>nd</sup> and 3<sup>rd</sup> Level Support for the Licensed Software. The definitions of 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Level Support responsibilities are as follows:

##### a) 1<sup>st</sup> Level Support Responsibilities:

- i) Operating and maintaining a system and help desk to take calls for support and maintenance from internal County Council users ("End-Users),
- ii) Taking all calls for support and maintenance from End-Users within specified time-frames and tracking until closure;
- iii) Identifying End User support needs, entering initial call report information and logging reported End User problems;
- iv) Answering End-User questions about the operation and administration of the Licensed Software;
- v) Determining whether the problem experienced by an End-User results from a Defect in Bank's Licensed Software or third party software or hardware; and

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- vi) In the event that the problem results from Bank's Licensed Software, escalating the reported Defect to the 2<sup>nd</sup> Level Support.

b) 2<sup>nd</sup> Level Support Responsibilities:

- i) Take-over of technical fault reports from 1<sup>st</sup> Level Support;
- ii) Analyzing, troubleshooting, diagnosing, problem determination and resolution of reported problems in an appropriate mirror environment to aid resolution of problems;
- iii) Problem analysis and using reasonable efforts to provide appropriate workarounds, if possible, to clear reported problems;
- iv)
- v) Referring reported End-Users' support problems that are due to Bank's Licensed Software and that cannot be resolved by 2<sup>nd</sup> Level Support personnel to 3<sup>rd</sup> Level Support for resolution;
- vi) Receiving work-around and patches from the Bank, testing and verifying received resolutions; providing technical support to End- Users in applying the resolutions provided by the Bank; and
- vii) Communicating responses as appropriate to 1<sup>st</sup> Level Support and End-Users

c) 3<sup>rd</sup> Level Support Responsibilities:

- i. Take-over of an IR from 2<sup>nd</sup> Level Support;
- ii. Operational support for IRs that have been escalated from 2<sup>nd</sup> Level Support
  - a. Provide corrections to Defects in the Licensed Software;
  - b. Access *via* email and phone;
  - c. Support to named contacts for IRs;
  - d. Monthly Report of all open issues;
  - e. Monthly call or meeting as agreed between County Council and Bank's support account manager;
  - f. Formal response, update frequency and escalation path;
  - g. Remote access to County Council's Computer System for diagnostic review; and
  - h. Electronic downloads for emergency fixes.



4.9. OTHER

- *Duration.* This Maintenance and Support Services described herein shall for an initial period of one (1) year commencing at the expiry of the thirty (30) day warranty period and shall be renewable automatically at the end of the each term for successive one (1) year terms unless either party gives written notice of its intention not to renew three (3) months before expiration of the current term. Maintenance and Support Services are not provided for any Licensed Software version that has reached End-of-Life status, unless specifically agreed to in writing by the Bank.
- *Fees and Payment.* All fees are due in advance upon commencement date of the Maintenance and Support Services and each anniversary thereof upon automatic renewal, unless otherwise agreed between the Parties in writing.

The Annual Maintenance cost shall be Kshs. 6,768,000 which cost shall exclude the cost of card issuance, which cost shall be based on number of cards issued to be borne by the County council.

All fees are non-refundable, except as otherwise agreed to in writing by Bank. Bank may increase the fees in the following instances:

- No more than once annually, commencing on the first anniversary of the date on which Maintenance and Support Services fees for the applicable Licensed Software began.
- At any time where additional software license fees are due, additional functionality is provided or a different level or type of support is required, subject to Bank giving no less than thirty (30) days' written notice.

- **Lapse in Support**

Failure to pay all fees when due will result in the immediate lapse of the Maintenance and Support Services, provided, however, that the Bank will give the County Council fifteen (15) Business Days' advance written notice that the Bank intends to terminate such services during which fifteen (15) day period, the County Council may cure such failure and the Maintenance and Support Services will continue uninterrupted. If such failure is not cured within such fifteen (15) day period, the Bank will have no obligation to provide additional Maintenance and Support Services to the County Council for the Licensed Software for which the fees were not paid.

If County Council allows its Maintenance and Support Services to lapse and later desires reinstatement, then services will be reinstated when the County Council pays the following fees the Maintenance and Support Services fee then in effect; the Maintenance and Support Services fee from the date of lapse to the date of reinstatement; and any fees associated with reinstating support that may be applicable.

- **Termination of Maintenance and Support Services**

The Bank shall be entitled to terminate the support services due to the default of the County Council. If the Bank terminates the Agreement because of County Council's default, all of the following shall apply:

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- (i) County Council shall immediately cease use of the Software and all hardware equipment owned by the Bank;
- (ii) County Council shall within fourteen (14) days of such termination deliver to the Bank all copies and portions of the Software and related materials and documentation and all hardware equipment in its possession furnished by the Bank under this Agreement;
- (iii) All amounts payable or accrued to Bank under this Agreement shall become immediately due and payable;
- (iv) All rights and licenses granted to the County Council under this Agreement shall immediately terminate.



SCHEDULE D: INVESTMENT COSTS

12

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SCHEDULE D  
INVESTMENT COSTS



A. Costs for the development, supply, installation, integration, licensing and customization of the Software

Payment terms will be as per the following major project milestones:

1. Payment milestone 1 – 70%:
2. Payment milestone 2 – 30%:



Description	Amount (KSHS)
License & Implementation Fee together with connectivity and maintenance	28,408,000 (inclusive of VAT)
Initial 30,000 base cards	
Payment Terms	Payment Fraction (% of total Contract price)
Within Seven Business Days of the Effective Date	70%
Within Seven Business Days of the Go-Live Date	30%

The tasks that fall under each of the mentioned phases are detailed in the project plan in Schedule E

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0

B. Annual operational costs of the project.

Description	Amount (KSHS)
Cards issuance (to be based on actual number of cards issued per annum)	26,400,000*
Connectivity: Communication costs	600,000
Field Infrastructure Maintenance	500,000
Annual Maintenance Cost (for software maintenance and support services as more particularly described in Schedule C)	6,768,000
Hardware Maintenance	25,593,113
<b>TOTAL ANNUAL COSTS</b>	<b>59,861,113**</b>

\*This cost is based on the actual number of cards required and the quotation obtained for the same in accordance with the provisions of clause 4.1.4 of the Agreement.

\*\*These annual costs shall be subject to an inflationary rate of 6% every year and shall be adjusted to accommodate the costs of any upgrade, modification or alterations required to ensure the efficiency of the System.



SCHEDULE E: PROJECT PLAN

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ID	% Complete	Task Name	Duration
1	0%	Masaai Mara Project-Version 1.3	114 days
2			
3	0%	Commercials	55 days
4	0%	Tender Awarded	1 day
5	0%	Contract & SoW Signed ( NCC and Equity)	1 day
6	0%	Purchase Order Placed - Project Components	1 day
7			
8	0%	Major Project Milestones	65 days
9	0%	MS1-Contract Received from NCC	1 day
10	0%	MS2 - Technical Design Document (TDD) Baseline & Signed Off	1 day
11	0%	MS3 - BOQ Baseline & Signed Off	2 days
12	0%	MS4 - Staging Completed & Signed Off	30 days
13	0%	MS5- Implementation & Testing Completed	30 days
14	0%	MS6- Knowledge Transfer & Training Completed	52 days
15	0%	MS7 - Go live	1 day
16	0%	MS8 - Project Closure	1 day
17			
18	0%	Key Project Dependencies	81 days
19	0%	NCC Mara TDD Baseline & Signed Off	1 day
20	0%	Bill of Materials (BOM)/ BOQ Baseline	3 days
21	0%	Contract Received from NCC	1 day
22	0%	Technical Information Provided by NCC for TDD	1 day
23	0%	Premises Made Ready/Available for Site Surveys	20 days
24	0%	NCC Mara Hardware Delivered to NCC Premises	7 days
25	0%	POS Software development	30 days
26	0%	Solar Infrastructure for All gates	20 days
27	0%	POS terminals - 40 Units	60 days
28	0%	Datacard Printers -- 10 Units	40 days
29	0%	Self Service Kiosk -- 3 Units	40 days
30	0%	Instant Issuing module /Personalization Software	15 days
31	0%	Pre-paid issuing module	10 days
32	0%	Integrated Online Booking system and reports -- Front & Back office	25 days
33	0%	Initial 30,000 Base cards (for tour Vans, Individual cards for Kenyans & Resident SAM Cards - 200 Units	42 days
34	0%	Computers with all Accessories - 10 Units	42 days
35	0%	Installation Area Provided & All Site Prerequisites Met by NCC	30 days
36	0%	Hardware Physically Installed (Racking+Stacking+Cabling) by Equity IT	10 days
37	0%		10 days
38			
39	0%	Project Management	86 days
40	0%	High Level Project Initiation	3 days
41	0%	High Level Project Kick-Off Preparation	7 days

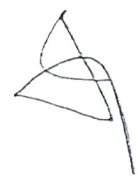
ID	% Complete	Task Name	Duration
42	0%	High Level Kick-Off Meeting	1 day
43	0%	Identify & Validate Key Stakeholders	1 day
44	0%	General Project Management & Reviews	65 days
45	0%	Project Steering Committees	43 days
46	0%	Completion - MS1	1 day
47	0%	Completion - MS2	1 day
48	0%	Completion - MS3	1 day
49	0%	Completion - MS4	1 day
50	0%	Completion - MS5	1 day
51	0%	Completion - MS6	1 day
52	0%	Completion - MS7	1 day
53	0%	Completion - MS8	1 day
54	0%	Completion - MS8	1 day
55	0%	Project Schedule	3 days
56	0%	Produce Initial High Level Project Schedule-DRAFT	3 days
57	0%	Submit DRAFT to NCC for Review	3 days
58	0%	Produce Baselined Version 1.0	3 days
59	0%	Maintain Project Schedule throughout the Project	3 days
60	0%	Project Governance Set-up	4 days
61	0%	Plan for Project Governance Set-up Meeting	4 days
62	0%	Official Project Kick-Off Meeting	4 days
63	0%	Define Project Executive Board	4 days
64	0%	Define Project Communications Mechanisms	4 days
65	0%	Define Escalation Management	3 days
66	0%	Define Issues Management (Project Controls Register)	3 days
67	0%	Discuss Project Initial Risk Management Plan	3 days
68	0%	Discuss Project Quality Management	3 days
69	0%	Establish & Agree WBS & RACI Matrix	3 days
70	0%	Identify on Project Project Deliverables	3 days
71	0%	Establish and agree on vendor Management and SLA's	3 days
72	0%	Establish & Agree on Project Configuration Management	3 days
73	0%	Establish & Agree on Project Change Management	3 days
74	0%	Staging Phase (Planned at NCC Premises)	30 days
75	0%	Network Staging Plan (NSP) - Hardware Components	30 days
76	0%	Produce Network Staging Plan (NSP) Document	30 days
77	0%	Perform Inventory & BOM Verification	30 days
78	0%	Rack & Stack the Staging Area (Area TBD)	30 days
79	0%	Perform Hardware Failure Checks	30 days
80	0%	Obtain MS-4 (Staging Completed) Approval from NCC	30 days
81	0%		
82	0%		

ID	% Complete	Task Name	Duration
83	0%	Training Phase	52 days
84	0%	Arrange for Hands-On Dedicated Training	52 days
85	0%	Technical Knowledge Transfer	52 days
86	0%	Obtain MS-6 (Staging Completed) Approval from NCC	52 days
87	0%		
88	0%	Development Phase	49 days
89	0%	POS Development	49 days
90	0%	Maasai Mara Project feasibility study (involving all components project overview)	8 days
91	0%	Project overview high level design documentation	3 days
92	0%	Project overview low level design documentation	3 days
93	0%	Pos Design documentation	2 days
94	0%	Arcom Resources Flying in	1 day
95	0%	POS Project planning and pre-study	1 day
96	0%	Site Visit Maasai Mara	1 day
97	0%	Examine project deliverables	1 day
98	0%	Agree Logistic Flow	1 day
99	0%	Commission project	1 day
100	0%	System Development	24 days
101	0%	Developing the POS interface Menus	8 days
102	0%	Developing the TMS interface Menus	14 days
103	0%	Alpha testing using the Pre-paid card	2 days
104	0%	System Documentation	3 days
105	0%	System documentation on the POS interface	2 days
106	0%	System documentation on TMS	1 day
107	0%	Project preparation	20 days
108	0%	Acquire Pre-paid Card for testing	16 days
109	0%	Acquire POS Terminals	20 days
110	0%	Acquire the TMS server	15 days
111	0%	System training	3 days
112	0%	POS User training	1 day
113	0%	Operational training	1 day
114	0%	TMS Users training	1 day
115	0%	System testing	5 days
116	0%	User and system testing	1 day
117	0%	Functional Acceptance testing	1 day
118	0%	User Acceptance testing	1 day
119	0%	Operations acceptance testing	1 day
120	0%	Security Acceptance testing	1 day
121	0%	UAT sign off	1 day
122	0%	System installation and configuration	10 days
123	0%	installation of TMS	1 day
124	0%	installation of application to the POS	1 day

ID	% Complete	Task Name	Duration
125	0% <input type="checkbox"/>	creating the POS users	1 day
126	0% <input type="checkbox"/>	Production trial run end-to-end	1 day
127	0% <input type="checkbox"/>	Installing POS terminal at the Gates and Creating POS Users	1 day
128	0% <input type="checkbox"/>		4 days
129	0% <input type="checkbox"/>	Implementation Phase	4 days
130	0% <input type="checkbox"/>	NCC Mara Implementation Phase	4 days
131	0% <input type="checkbox"/>	Physical Installation and Implementation (To be Done by Equity IT)	4 days
132	0% <input type="checkbox"/>	Site-1 Installation - Sekenani Gate (Very Busy)	4 days
133	0% <input type="checkbox"/>	Rack Equipments	4 days
134	0% <input type="checkbox"/>	Physical Installation of POS devices	4 days
135	0% <input type="checkbox"/>	Power, Cabling & Termination	4 days
136	0% <input type="checkbox"/>	Hardware Acceptance of POS Nodes	4 days
137	0% <input type="checkbox"/>	Site-2 Installation - Ololaimutia Gate (Very Busy)	4 days
138	0% <input type="checkbox"/>	Rack Equipments	4 days
139	0% <input type="checkbox"/>	Physical Installation of POS devices	4 days
140	0% <input type="checkbox"/>	Power, Cabling & Termination	4 days
141	0% <input type="checkbox"/>	Hardware Acceptance of POS Nodes	4 days
142	0% <input type="checkbox"/>	Site-3 Installation - Talek Gate	4 days
143	0% <input type="checkbox"/>	Rack Equipments	4 days
144	0% <input type="checkbox"/>	Physical Installation of POS devices	4 days
145	0% <input type="checkbox"/>	Power, Cabling & Termination	4 days
146	0% <input type="checkbox"/>	Hardware Acceptance of POS Nodes	4 days
147	0% <input type="checkbox"/>	Site-4 Installation - Musiara Gate	4 days
148	0% <input type="checkbox"/>	Rack Equipments	4 days
149	0% <input type="checkbox"/>	Physical Installation of POS devices	4 days
150	0% <input type="checkbox"/>	Power, Cabling & Termination	4 days
151	0% <input type="checkbox"/>	Hardware Acceptance of POS Nodes	4 days
152	0% <input type="checkbox"/>	Site-5 Installation - Fig Tree Gate	4 days
153	0% <input type="checkbox"/>	Rack Equipments	4 days
154	0% <input type="checkbox"/>	Physical Installation of POS devices	4 days
155	0% <input type="checkbox"/>	Power, Cabling & Termination	4 days
156	0% <input type="checkbox"/>	Hardware Acceptance of POS Nodes	4 days
157	0% <input type="checkbox"/>	Site-6 Installation - Simba Gate	4 days
158	0% <input type="checkbox"/>	Rack Equipments	4 days
159	0% <input type="checkbox"/>	Physical Installation of POS devices	4 days
160	0% <input type="checkbox"/>	Power, Cabling & Termination	4 days
161	0% <input type="checkbox"/>	Hardware Acceptance of POS Nodes	4 days
162	0% <input type="checkbox"/>	Site-7 Installation - Sand River	4 days
163	0% <input type="checkbox"/>	Rack Equipments	4 days
164	0% <input type="checkbox"/>	Physical Installation of POS devices	4 days
165	0% <input type="checkbox"/>	Power, Cabling & Termination	4 days

ID	% Complete	Task Name	Duration
166	0%	Hardware Acceptance of POS Nodes	4 days
167	0%	Site-8 Installation - Enoompnai Gate	4 days
168	0%	Rack Equipments	4 days
169	0%	Physical Installation of POS devices	4 days
170	0%	Power, Cabling & Termination	4 days
171	0%	Hardware Acceptance of POS Nodes	4 days
172	0%	Site-9 Installation - Mara Bridge Gate	4 days
173	0%	Rack Equipments	4 days
174	0%	Physical Installation of POS devices	4 days
175	0%	Power, Cabling & Termination	4 days
176	0%	Hardware Acceptance of POS Nodes	4 days
177	0%	Site-10 Installation - Keekorok Air-strip	4 days
178	0%	Rack Equipments	4 days
179	0%	Physical Installation of POS devices	4 days
180	0%	Power, Cabling & Termination	4 days
181	0%	Hardware Acceptance of POS Nodes	4 days
182	0%	Site-11 Installation - Olkiombo Air-strip	4 days
183	0%	Rack Equipments	4 days
184	0%	Physical Installation of POS devices	4 days
185	0%	Power, Cabling & Termination	4 days
186	0%	Hardware Acceptance of POS Nodes	4 days
187	0%	Site-12 Installation - Musiara Air-strip	4 days
188	0%	Rack Equipments	4 days
189	0%	Physical Installation of POS devices	4 days
190	0%	Power, Cabling & Termination	4 days
191	0%	Hardware Acceptance of POS Nodes	4 days
192	0%	Site-13 Installation - NCC Head Office	4 days
193	0%	Rack Equipments	4 days
194	0%	Physical Installation of POS devices	4 days
195	0%	Power, Cabling & Termination	4 days
196	0%	Hardware Acceptance of POS Nodes	4 days
197	0%	Site-14 Installation - Narok Equity Branch	4 days
198	0%	Rack Equipments	4 days
199	0%	Physical Installation of POS devices	4 days
200	0%	Power, Cabling & Termination	4 days
201	0%	Hardware Acceptance of POS Nodes	4 days
202	0%	Obtain MS-5 (Implementation & Testing Completed) Approval from NCC	4 days
203	0%	Test Connectivity	4 days
204	0%	Project go-live	2 days
205	0%	inspection of product requirements	1 day
206	0%		

ID	% Complete	Task Name	Duration
207	0%	review the implementation process	1 day
208	0%	Trial run end to end solution	1 day
209	0%	further tests and observation	1 day
210	0%	Project cut-over (go live)	2 days
211			
212	0%	Project Closure Phase	1 day
213	0%	Hand-Over All Related Documentation to NCC	1 day
214	0%	Produce & Submit End Project Report to NCC	1 day
215	0%	Produce Lessons Learnt Report	1 day
216	0%	Project Officially Closed	1 day



SCHEDULE F: MERCHANT AGREEMENT

A handwritten signature consisting of a stylized, cursive letter 'S' followed by a vertical line.A handwritten signature consisting of a stylized, cursive letter 'M' followed by a vertical line.



## MERCHANT SERVICES AGREEMENT

THIS MERCHANT SERVICES AGREEMENT (this "Agreement") is made this . . . day  
of . . . 2011

BETWEEN:

EQUITY BANK LIMITED of Post Office Box 75104-00200, Nairobi aforesaid (hereinafter referred to as 'the Bank' which expression shall include its successors and assigns) AND

. . . . .  
(hereinafter referred to as "the Merchant" and as described in the attached Merchant Agreement Disclosure Form which form shall be part of this agreement )

WHEREAS

- (1) The Bank operates a Card Centre unit, under which it issues cards as the "Issuer" to its customers to enable them access goods, cash and services on terms set out in the cards
- (2) The Merchant and the Bank (each a "Party" or "party" or collectively the "Parties" or "parties") have agreed to enter into an arrangement ("Equity Bank MERCHANT Program") under which Equity Bank customers and/or other financial service card holders will be allowed to use their cards to shop for goods and services, and obtain cash at Outlets of the Merchant country wide on terms set out in this Agreement

NOW IT IS AGREED as follows

### DEFINITIONS

"Applicable Law" means applicable Kenyan law including statutes, regulations, regulatory guidelines and judicial or administrative interpretations as well as any rules or requirements established by Equity Bank Card Programmes

"Autobranch" means the Equity ATM Card and the Equity Visa Electron Card

"Authorization" means a process through which card centre or any branch of the Bank approves a Card Transaction

"Authorization Code" means a code provided to the Merchant to indicate approval by Card Centre of a Card Transaction, either through the Point of Sale or by telephone

"Bank" means Equity Bank

"Bank's Card Management System" means the system operated by the Bank to run the Card Center Unit

"Bank Customer Information" means information provided by a Bank customer to the Bank for storage and subsequent use by a Bank customer or by the Bank including a Bank customer's identity, address, credit card number, personal information, purchasing preferences or history, or similar information

"Business Day" means Monday through Friday, excluding Banking holidays in Kenya

"Card" means any valid payment card which the Bank approves

"Card Centre" means a separate unit of the Bank that is responsible for the management, control and processing of facilities and transactions generated by the use of the card

"Card Issuer" means Equity Bank Limited, or any other member of Visa, Master Card, American Express, JCB (or any other card scheme which the Bank may approve) who has issued the card to the cardholder



"Card not present payment" means a telephone order, mail order or any other payment where the card is not present at the point of sale

"Card Schemes" such as AutoBranch, and or any other card schemes that shall be advised from time to time such as Visa MasterCard or American Express, who promote, develop and regulate the usage of various card types that carry their logos

"Card Holder" means the person entitled to use the card defined hereinabove

"Confidential Information" means the terms of this Agreement, the Customer Data and all information, materials or reports provided to or in connection with either Party's performance under this Agreement, including without limitation, Registered Buyer information or other MERCHANT Customer Information, all names, address, demographic behavioral, and credit information relating to the Equity Cardholders or potential Cardholder Account cardholders cardholder communication materials and issuance strategies or methods business objectives, assets and properties, marketing programs and methods, and programming techniques and technical, developmental, cost and processing information

"Copyrights" means the parties marks ("Marks") as identified on the Cards or otherwise howsoever

"Countrywide" means the Republic of Kenya

"Customer Data" means all information, whether personally identifiable or in aggregate, that is submitted and/or obtained as a result of a Cardholder Account relationship or an application (whether or not completed) for a Cardholder Account relationship, including without limitation, the Bank Customer Information, credit information, financial standing and demographic data, and primary transactional data generated by the Equity Cardholder's use of the Equity Card 1.12

"Effective Date" means the date of this Agreement

"Equity Card" means the Bank card issued to the Bank's customers under the Equity Bank AutoBranch card and Equity Visa Electron Card programs that bears the Copyrights and Marks of Equity Bank and that accesses a Cardholder Account. This also includes all future card programs that may be launched by the Bank

"Equity Card Program" refers to the acceptance and use of the Equity Cards and Cards from other financial service institutions at Merchants' outlets and the framework for the operation of the same in the manner provided for by this agreement

"Equity Cardholder" means the holder of an Equity Card issued pursuant to the Equity Bank AutoBranch card and Equity Visa Electron Card programs and subject to the Cardholder Agreements, and other card programmes that shall be introduced by the Bank in future

"Fees" means the commissions payable to either party as set out in Schedule A hereto

"Floor Limit" the total values of sales which you are allowed to make at any one time without getting authorization. If the card payment is in a foreign currency an equal amount in a foreign currency applies

"Marketing Materials" means badges, links, sponsored e-mails, micro-sites, splash pages, other placements on the web sites, and trade, broadcast or banner advertisements, press communications, and any printed physical elements designed to promote the Equity Card or a Party hereto. It shall also include information on value-added products and services provided directly or indirectly by a marketing partner of the Bank, and delivered by the Bank to the Equity Cardholders,

"Material adverse effect" includes, among other things, any change in Applicable Law that has a significant impact on the financial or operational burdens or rewards of either Party under this agreement

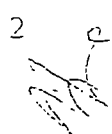
"Merchants" means any individual or business recruited for purposes of facilitating the payments of goods and services through the Equity Point of Sales equipment

"Merchants Sales System" means all the point of sale terminals including the PIN and Card readers provided by Equity Bank, installed at all Merchant outlets that are used for sale of merchandise by the Merchant

"Point of sale terminal" means an electronic card processing device or any other electronic payment charging system approved by Equity Bank Limited

"Refund" means a refund given to the customer by the Merchant on a card payment for credit to the customer's card account for return of goods or services rendered



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"Shared Customer Data" means and is specifically limited to [names and email and physical mailing address] "Shared Customer Data" specifically excludes (i) information provided on application materials such as identification numbers, income, debt or other personal financial information, (ii) credit bureau scores (if any) and other credit report information, and (iii) credit reference information obtained directly from other creditors or businesses. Notwithstanding the foregoing, "Shared Customer Data" may include application-level information (other than the information specifically described in clause (i), above) that the parties mutually agree to request from applicants, and shall exclude any Customer Data that the Bank reasonably determines would result in the Bank becoming a consumer reporting agency or, if provided by the Bank to the Merchant, would constitute a violation under Applicable Law

"Transaction Data" means the regulations, transaction amount, merchant description and transaction date, individually identifiable for each Cardholder purchase transaction at the Outlets

## SECTION TWO

### EQUITY CARD MERCHANT PROGRAM

- 2.1 Use of Card at MERCHANT Outlets.  
Subject to the terms of this Agreement MERCHANT undertakes to the Bank to allow Cardholders
- 2.1.1 To use the Equity Card to buy goods at MERCHANT Outlets Countrywide,
  - 2.1.2 To use the Equity Card to dispense cash at MERCHANT Outlets Countrywide
  - 2.1.3 To use the Equity Card to make utility payments and make mobile top-ups as may be advised from time to time, at Merchant Outlets countrywide
- 2.2 Terms of Eligibility to Participate in the Equity Bank MERCHANT Program  
The use and acceptance of the Equity Card to purchase goods, dispense cash, and make various utility bills payments at the tills in MERCHANT Outlets countrywide will be subject to -
- 2.2.1 The transaction being approved and or authorized by the Bank's System,
  - 2.2.3 Any other terms and conditions as may be advised in writing by either party to the other from time to time
- 2.3 Credit Decisions and Approvals
- 2.3.1 The point of sale terminal device will route the details to the Bank's Card Management System for authorization
  - 2.3.2 The Bank shall have complete discretion to approve transactions for Cardholders. Nothing in this Agreement shall require the Bank to give a reason or reasons for rejecting a transaction
  - 2.3.3 In the case of credit cards, voice authorization shall be requested for any card transaction which exceeds the Floor Limit. This shall apply where online authorization has failed

## SECTION THREE

### MERCHANT AND BANK OBLIGATIONS

#### OBLIGATIONS AND DUTIES OF THE MERCHANT

- 3.1 OBLIGATION TO CARDHOLDERS  
The Merchant shall,
- 3.1.1 Allow cardholders to use the Equity Point of sale device to pay for goods and services at the Merchants Outlets Countrywide,
  - 3.1.2 Allow Cardholders to use the Equity POS to dispense cash at The Merchants Outlets Countrywide,
  - 3.1.3 Allow customers to use the Equity Card to pay for their various utility Bills at The Merchants Outlets Countrywide
  - 3.1.3 Not set any minimum limit on card payment amounts
  - 3.1.4 Treat purchases by card in exactly the same way as cash purchases
  - 3.1.5 Not use the list of cardholders or card numbers in any other way other than to send payments to the Bank
  - 3.1.6 Take all reasonable steps to assist the Bank in handling claims by cardholders against the Bank
  - 3.1.7 Seek the direction of the Bank where the identity of the Cardholder is doubted
  - 3.1.8 The Merchant shall record the Transaction Data and make it available to the Bank at the times agreed from time to time or if not agreed as soon as possible. The merchant shall retain transaction data for a period of 150 days from the transaction date or such period as shall be advised to the merchant from time to time
  - 3.1.9 The Merchant shall not split a Card transaction
  - 3.1.10 The Merchant undertakes not to surcharge cardholders the merchant service commission it pays to the Bank
- 3.2 MERCHANT OPERATIONAL CONDITIONS AND GUIDELINES  
Validation of Cardholder's Identity  
Subject to the terms of this agreement the Merchant undertakes to validate a Cardholder's identify as described hereunder,

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- 3 2 1 Verify that the signature on the card matches the signature on the sales voucher or receipt
- 3 2 2 If applicable verify that the Cardholder resembles the person depicted in any photograph intended for identification on the card or any other identification, such as national ID, passport etc
- 3 2 3 If the identification of the Cardholder or the Card's validity is uncertain the Merchant must contact Card Centre or the nearest branch of the Bank immediately for instructions and if the Bank instructs the Merchant to retain the card, the Merchant shall do so promptly, noting to take care of their own safety or if the circumstances so permit

3 3 Card Recovery

The Merchant shall attempt to recover a Card by reasonable and peaceful means and shall not complete a card transaction in any of the following circumstances,

- 4 3 1 If the card number appears on the bulletin
- 4 3 2 If the Bank requests the retention of the card
- 4 3 3 If the first 4 digits of the embossed/indented card number do not match the 4 digits printed above or below the card number
- 4 3 4 The Merchant must immediately upon recovery of a card notify the Bank of the recovery and ask for further instructions. The Merchant shall be held to be acting on behalf of the Bank only with respect to the retention of the Card

3 4 Floor Limit

The Floor Limit shall be notified to the Merchant by the Bank from time to time in writing and at the date hereof is agreed to be

3 5 Authorisation

The Merchant must get authorization from the Bank, from the relevant card issuer for all card payments above the Merchant's floor limit. The Bank shall contact the card issuer to approve the card payment

Authorization is a guarantee of payment which notwithstanding the guarantee does not preclude the Bank from charge back for any reasons specified herein under

The acceptance of card not present payments shall be done at your own risk

The Merchant must send refund details to the Bank as per the terms and conditions of this agreement. The Bank shall determine whether the value of refunds is more than the value of card payments. The Bank shall retain the difference before making the merchant settlements for the day of the refunds into the Merchant Account

3 6 Charge Backs

The Bank shall reserve the right to pay the Merchant the card payments. Where the Bank determines that a payment made should not have been made the Merchant shall remit back the money to the Bank. The Bank reserves the right to charge a card payment back to the merchant or refuse to pay it even if the payment had been authorized. The Bank reserves the right to charge back payments on the following grounds

- 3 6 1 The Merchant has made payments that are in breach of the terms and conditions of the agreement.
- 3 6 2 A claim received with respect to a payment from a card holder or any other person
- 3 6 3 A payment made without evidence or authority from the card holder
- 3 6 4 A cardholder denies authorizing a card not present payment
- 3 6 5 The Merchant does not abide by the operating instructions and procedures

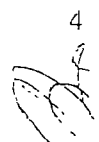
3 7 Set-off

The Bank reserves the right to deduct any moneys owing to the Merchant with respect to any of the conditions set out under clause 3 6 (charge back)

3 8 OBLIGATIONS TO THE BANK

- 3 8 1 The Merchant is not currently aware of any claims, and is not currently involved in any litigation, challenging The Merchant's ownership of The Merchant Marks;
- 3 8 2 All intellectual property used by The Merchant in connection with its obligations under this Agreement is either owned or properly licensed by the merchant for the uses contemplated hereby and that such intellectual property does not infringe the rights of any third parties (except that as to patents, this representation is given only as to current knowledge);
- 3 8 3 The services to be provided by The Merchant shall be performed in a diligent and professional manner in accordance with the merchant's obligations under this Agreement and to the Bank's reasonable satisfaction



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- 3 8 4 The merchant shall indemnify, defend and hold the Bank blameless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to:
- (i) Any actual or alleged violation or inaccuracy of any representation or warranty of the merchant contained herein
  - (ii) any actual or alleged infringement of any trademark, copyright, trade name or other proprietary ownership interest resulting from the use by the Bank of the merchant Copyrights and Marks as contemplated by this Agreement
  - (iii) any negligent act or omission or willful misconduct of the merchant or its directors, officers, employees, agents or assigns in connection with the entry into or performance of this Agreement, and
  - (iv) any use or disclosure by the merchant of the Shared Customer Data in a manner not in accordance with Applicable Law
- 3 8 5 The Merchant shall not supply equipment and other materials used for Card transactions to any other person which would allow that person to carry out card payments.
- 3 8 6 The Merchant shall take all reasonable steps to detect, prevent and investigate fraud allegations and occurrences. The Bank shall not be liable for any loss incurred due to fraudulent transactions instituted by or with collaboration of the Merchants staff or due to their negligence.
- 3 8 7 If a Card is lost, stolen or misplaced while in the custody or possession of the Merchant, the Merchant shall immediately report the loss, theft or misplacement to the nearest branch of the Bank. If it is subsequently retrieved or found, the Merchant shall immediately forward it to the Bank.

### 3.9 OBLIGATIONS OF THE BANK

- 3 9 1 The Bank shall collect, maintain, and be the sole owner of all Customer Data.
- 3 9 2 Supply to the Merchant such equipment and materials including but not limited to Point of Sale Terminals, stationery, decals and other promotional materials as the Bank shall from time to time find necessary without unreasonable delay. Such equipment shall remain at all times the property of the Bank, returnable on request or upon the termination of this Agreement.
- 3 9 3 (i) It is not currently aware of any claims, and is not currently involved in any litigation challenging the Bank's ownership of the Bank Marks,
- (ii) all intellectual property used by the Bank in connection with its obligations under this Agreement is either owned or properly licensed by the Bank for the uses contemplated hereby and that such intellectual property does not infringe the rights of any third parties (except that, as to patents, this representation is given only as to current knowledge)
- (iii) The Bank shall indemnify, defend and hold the merchant blameless from and against all claims, actions, suits or other proceedings, and any and all losses, judgments, damages, expenses or other costs (including reasonable counsel fees and disbursements), arising from or in any way relating to:
- any actual or alleged violation or inaccuracy of any representation, warranty, or obligation of the Bank contained in this Agreement,
  - any act or omission of the Bank in connection with the issuance of The Equity Card(s) and/or the administration of Cardholder Accounts which constitutes a violation of the Applicable Law or rules and regulations,
  - any actual or alleged infringement of any trademark, copyright, trade name or other proprietary ownership interest resulting from the use by the merchant of the Bank Copyrights and the Bank Marks as contemplated by this Agreement,
  - (iv) any negligent act or omission or willful misconduct of the Bank or its directors, officers, employees, agents or assigns in connection with the entry into or performance of this Agreement

### COMPENSATION

- 4 0 Merchants Collection Account  
The Merchant undertakes to open a collection account at the Bank to facilitate payment of the Merchant Sales and the Cash Back. The Collection Account number \_\_\_\_\_ shall be the only account upon which such payments shall be made. Any change of the Collection Account shall be in writing and shall be subject to the approval of the Bank.
- 4 1 Commissions Payable to the Merchant.
- 4 1 1 The Bank shall promptly, but in no event later than one business day, pay The Merchant, through The Merchant's collection account, the sum total of all amounts of all purchases made by the

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Bank's customers at The Merchant using all Cards under the Equity Bank Programme, deducting the Merchant Service commission at the rate and in the manner described in Schedule A to this agreement

- 4.1.2 The Bank shall pay The Merchant through The Merchant's collection account immediately upon receipt of the transaction report, the Cash Back Service Commission at the rates and in the manner described in Schedule A to this Agreement, in no event later than within one business day provided that where the day subsequent to the day of the transaction is not a business day, the Cash Back Service Commission and the Cash Back Amount shall be paid on the next business day
- 4.1.3 All accounting statements shall be sent by the Bank to THE MERCHANT at the address provided in the appended Membership Application form
- 4.1.4 An appropriate reconciliation statement shall accompany each payment by THE MERCHANT and by the Bank. The receipt or acceptance by either party of any statements furnished pursuant to this Agreement, or the receipt or acceptance of any payments made, or the fact that one party has previously audited the periods covered by such statements, shall not preclude that party from questioning their accuracy at any time. If any inconsistencies or mistakes are discovered in such statements or payments, the parties shall make appropriate adjustments within thirty (30) days. During the Term of the agreement (as provided under clause 7.1) and for two (2) years thereafter (or such other period of time as may be required by Applicable Law) the Bank shall keep full and accurate books of account and copies of all documents and other material relating to this Agreement at the parties respective principal offices. Each party shall be obliged upon being requested to do so by the other party having given reasonable notice, to provide an authorized employee to assist in the examination of the statements and records. Any amount found due to the other party shall be promptly paid with interest from the date when it first accrued.

#### OWNERSHIP, COPYRIGHTS AND LICENCE

- 5.1 POS TERMINALS  
The Bank retains the ownership and rights to the POS terminals
- 5.2 The Parties' Copyrights and Marks.  
Each Party's trademarks and Copyrights shall be the Property of the respective Party, and each Party hereby grants the other a nonexclusive, nontransferable, restricted and royalty-free license to use its Copyrights and Marks only in a manner and at such times as are expressly authorized by this Agreement, as follows
- 5.1.2 All materials produced by one Party, including advertising materials, which utilize the Copyrights or Marks of the other Party, will be submitted to that other Party not less than seven (7) business days prior to its first intended use for its prior written approval. If that other Party does not object within the seven-day period, it shall be deemed to have consented to the first Party's use of such materials.
- 5.3 Except as specified in this Agreement, all uses of the Marks will accrue to the benefit of the Parties, provided that nothing in this Section shall be read to imply that the merchant shall have any right, title or interest in or to any Cardholder Account receivable generated by any Cardholder
- 5.4.1 Upon termination or expiration of this Agreement, each Party shall, except where authorized in writing by the other Party or under this Agreement, cease the use or reference to the other Party's name, Marks, Images, Copyrights and hyperlinks in any manner whatsoever, and destroy at its own expense, all Marketing Materials or other publications and promotional materials bearing the other Party's name, Marks, Images and Copyrights in its possession and in the possession of its agents, employees, and independent contractors

#### MARKETING AND PROMOTION

- 6.1 Marketing and Promotion.
- 6.1.1 Each Party undertakes at its own cost and expense to market and promote the Equity Card Program to its customers.
- 6.1.2 The Parties may however set up a marketing fund to promote awareness among their respective customers of the existence of the Equity Card Program.
- 6.1.3 The Merchant shall display prominently the Equity Card insignia, promotional signs and other advertising materials provided to it by Equity to indicate that the Merchant accepts the all Cards under the Equity Card Programme



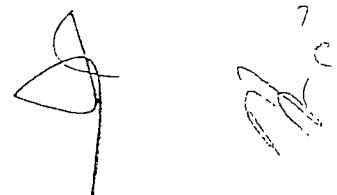
- 6.1.4 The Merchant shall not use any promotional material whatsoever to advertise the Equity Card unless such material is supplied by or approved in writing by the Bank.
- 6.2 Loyalty Program Option  
Either party may, at their respective sole option and expense, develop a loyalty program or programs to be offered to the Equity Cardholders (the "customer Retention Program") offering incentives to the Cardholders wishing to shop at the Outlets.

#### CONFIDENTIALITY,

- 7.1 Confidential Information.
- 7.1.1 Each party undertakes not to divulge at any time during the course of or following termination of the Agreement any Confidential Information relating to the Services business or affairs of the other party to any third party without the consent of the other party save as is necessary for the proper performance of its duties hereunder or as is required by law.
- 7.1.2 Each party may disclose the Confidential Information to its employees as may be reasonably necessary or desirable provided that before any such disclosure shall be made such employees are aware of the obligations of confidentiality under the Agreement and shall at all times procure compliance by such employees therewith.

#### DURATION AND TERMINATION

- 8.1 This agreement shall remain in force and shall apply to both parties for a Period of one (1) year from the date of this agreement. Thereafter and upon expiry of the period hereof, the agreement shall automatically renew for successive periods of one (1) year unless earlier termination according to the agreement provisions.
- 8.2 This Agreement may be terminated at any time by either Party giving a three (3) months written notice to the other Party of its intention, provided that such termination shall not affect any activities that would have been transacted during the period of the notice or absolve either Party from any liabilities accrued at the date of termination.
- 8.3 Either party shall be entitled to terminate this agreement by giving 60 days written notice to the other if
- 8.3.1 This agreement is or becomes (or is alleged to be) unlawful or unenforceable in any respect, or
  - 8.3.2 That other party commits a breach of this agreement (not being a repudiatory breach of this agreement),
  - 8.3.3 An encumbrance takes possession or a receiver is appointed over any of the property or assets of that other party,
  - 8.3.4 That other party makes any voluntary arrangement with its creditors or becomes subject to an administration order,
  - 8.3.5 That other party goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on that other party under this agreement),
  - 8.3.6 If either Party enters into any merger, acquisition, transfer of control, or sale of substantially all of its assets or any similar transaction resulting in a change of control (the "Acquired Party"), then the other Party (the "Non-Acquired Party") shall have the right to terminate this Agreement without breach or penalty upon Fourteen (14) days' notice; provided that, the foregoing provision shall not affect the sale, assignment, pledge or other hypothecation by the Issuer of any receivable(s), including any finance charge, fee or other obligation owed to the Issuer by any Cardholder/Account holder.
  - 8.3.7 Anything which under the law of any jurisdiction is analogous to any of the acts or events specified in clauses 8.3.3, 8.3.4, 8.3.5 and 8.3.6.
  - 8.3.8 That other party ceases or expresses interest to cease, to carry on business.
- 8.4 The rights to terminate this agreement given by this clause shall be without prejudice to any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.



- 8.5 Process upon Termination  
Upon termination, expiration or breach of this Agreement, the provisions of this sub-section shall apply and consistent therewith
- 8.5.1 The Merchant and the Bank shall work together to ensure an orderly termination of the Equity Card Program, and
- 8.5.2 Each Party shall promptly return to the other Party any materials that have been supplied by such Party to the other if any
- 8.5.3 Each Party shall promptly reconcile its accounts and pay any monies owed to the other Party
- 8.5.4 The Merchant joining and activation fee is not refundable and as such no payment shall be refunded to the Merchant upon termination
- 8.5.4 This Agreement shall survive termination for purposes of enforcement of any accrued rights of the other party or enforcing any breaches thereof

#### REPORTING

- 9.1 The merchant shall from time to time provide to the Bank such information as the Bank may reasonably require concerning the activities under this Agreement
- 9.2 The Merchant shall bring to the notice of the Bank any information received by the Merchant which is likely to be of significant use or benefit to the Bank in relation to the marketing and/or promotion of the service including (but not limited to) information regarding business practices which might affect sales of the products and shall supply details of any suggested or required improvements
- 9.3 The bank (acquirer) may at any time and from time to time inspect with notice during the Merchant's normal working hours any of the Merchant's premises for the purposes of ascertaining if the Merchant is complying with its obligations under this agreement and/or for the purposes of detection or prevention of fraud. Such inspection shall be carried out by the Bank with a minimum interference and with due regard to the Merchant carrying on its normal business. If as a result of such inspection the Merchant is found in the Bank's opinion to be conducting or to have conducted its business in any way that falls below the standard reasonable to be expected of a Merchant and/or representative acting in good faith in the best interests of the Bank and its customers the Bank may immediately suspend or terminate this agreement by written notice to the Merchant without prejudice to any other right which the Bank may be entitled to
- 9.4.1 The Merchant shall not directly or indirectly be involved or knowingly recklessly or negligently permit any other person to be involved in any fraud and shall notify the Bank immediately upon becoming aware of any fraud and the Merchant will implement without delay and comply with such procedures and rules as shall be advised by the Bank from time to time concerned with fraud
- 9.4.2 The merchant will be liable for any disputed transaction if the chargeback is as a result of the transaction not being performed in accordance with the merchant agreement or if proper card acceptance procedure was not followed by the merchant in processing the transaction
- 9.4.3 The bank affirms its right to withhold merchant payments pending investigation where fraudulent activity is suspected or confirmed. Such funds will be used to offset fraud-related chargebacks that the bank receives from other issuers

#### NOTICES

All notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax when sent by confirmed e-mail, or one business day after being sent by reputable overnight courier to the address of the party to be notified as set forth in this section, or such other address as such party last provided to the other by written notice

For the Bank- two copies  
The Company Secretary & Director of Corporate Strategy  
Equity bank Limited  
NHIF Building  
P O Box 75104-00200 Nairobi  
Fax 020 - 2736617/20  
Email info@equitybank.co.ke

With a copy to

For the merchant,



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Merchant  
P.O. Box  
Nairobi

For other notices with regard to Merchant issues, the same shall be addressed to  
The Acquiring Manager,  
Alternative Business Channels  
Equity bank Limited  
Equity Centre  
P.O. Box 75104-00200 Nairobi  
Telephone 020-2262000 / 0711 026 000  
Fax 020 - 2445031  
Email: info@equitybank.co.ke

#### EXCLUSIVITY

During the first three (3) years of the Term of this Agreement, neither the merchant nor any entity controlled by the merchant or in common control with the merchant will on its own or in conjunction with others, directly or indirectly for any reason whatsoever enter into a similar arrangement in Kenya with anyone offering a similar program to the subject matter of this Agreement. The restrictions set forth in this section shall apply to the Cash Back concept.

#### SURVIVAL

If any provision of the contract including any part of any sub-clause, be held as void, contrary to the law or unenforceable, the validity and enforceability of the remainder of the Contract shall not be affected.

#### INDEPENDENCE OF PARTIES

For all purposes of this Agreement, each party shall be and act as an independent contractor and not as partner, joint venturer, or agent of the other and shall not bind nor attempt to bind the other to any contract.

#### WAIVER & AMENDMENT

No waiver, alteration, variation or addition to this Agreement shall be effective unless made expressly in writing on or after the date of execution of this Agreement by both parties and accepted by an authorized signatory of both parties.

#### COUNTERPARTS

This Agreement may be executed in counterparts, all of which shall constitute one agreement between the parties.

#### NON ASSIGNMENT

This agreement is personal to the merchant and no assignment of any kind whatsoever shall be permitted but in the event of individuals, the obligations set out in this Agreement shall bind the personal representatives of the Merchant and in case of corporate bodies it shall bind its successors and assigns.

#### FORCE MAJEURE

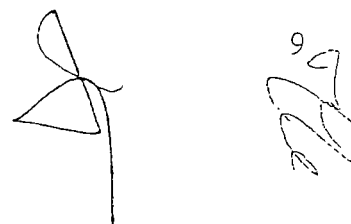
Neither party will be liable for non-performance hereunder to the extent such performance is prevented by fire, earthquake, tornado, flood, explosion, embargo, war, riot, governmental regulation or act, act of God, act of public enemy, or by reason of any other cause beyond such party's reasonable control. A party's obligations to perform timely will be excused to the extent, but only to the extent, that such performance is prevented by a force majeure event.

#### LIMITATION ON DAMAGES

In no event will either party be entitled to recover special, punitive, incidental or consequential damages, including damages based on lost profits or lost business opportunities, arising out of a breach of the other party's obligations hereunder, even if the party in breach has been advised of the possibility of such damages.

#### ARBITRATION

This Agreement shall be governed in all respects by Kenyan law and card scheme rules and regulations under which the bank and merchant operate. The parties agree that any dispute arising from this Agreement shall be referred, for final determination, to one arbitrator appointed by agreement of the Parties in accordance to the provision of the Arbitration Act (No 5 of 1995) or such other statutory modification or enactment in place thereof. If the Parties cannot agree on an arbitrator within seven (7) days of either Party indicating in writing to the other the need to have an arbitrator appointed, the arbitrator shall be appointed at the request of either Party by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators. The place of arbitration shall be Nairobi and the language of the arbitration proceedings shall be English.



SCHEDULE A

COMMISSIONS

Payment of goods services:

Branded cards (Visa/Mastercard/Amex etc) - % of Purchase value - Merchant Service Commission is payable to Equity Bank Limited by the merchant. Private label cards (Equity Autobranch Cards etc) - % of Purchase Value - Merchant Service Commission is payable to Equity Bank Limited by The Merchant.

Cash Back Service:

Revenue share on (Equity: The Merchant) basis of the service fee charged to the cardholder by Equity Bank Limited.

Utility Bills service:

IN WITNESS WHEREOF, the Bank and The Merchant have caused this Agreement to be executed as a deed on the date and year first written hereinabove.

SIGNED ON BEHALF OF EQUITY BANK LIMITED

Authorised signature:

Name:

in the presence of:

SIGNED ON BEHALF OF MERCHANT

Authorised signature:

Name:

Name:

in the presence of:



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