



National Bank of Malawi

## TERMS AND CONDITIONS OF NATIONAL BANK OF MALAWI LIMITED MALAWI

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In these terms and conditions, unless otherwise stated or the context clearly indicates otherwise, the words in the first column have the meanings stated opposite them in the second column, words in the singular shall include the plural and *vice versa*, words importing one gender include the other genders and references to a person include juristic persons and associations of persons and *vice versa*:

“Nominee”	National Bank of Malawi Nominees Limited, a company incorporated under the laws of Malawi with company number 970;
“Client”	the holder of the beneficial entitlement to the Client Shares who is, or becomes, a participant in the Nominee by depositing their Client Shares with the Nominee in accordance with these Terms;
“Client Representative”	the Client’s authorised representative as advised by the Client to the Nominee in writing from time to time;
“Client Shares”	the shares held by the Nominee on behalf of the Client;
“Issuer”	the issuer of the Client Shares; and
“Terms”	these terms and conditions, as amended in accordance with their terms.

### APPOINTMENT

Subject to these Terms, the Client appoints the Nominee as its agent, representative, custodian and administrator for the safe keeping and administration of the Client Shares, and for the settlement of transactions in those Client Shares and to attend to certain incidental matters. The Nominee will hold the Client Shares as the registered holder of the Client Shares on the Issuer’s share register maintained on behalf of Issuer on the Client’s behalf, as the holder of the beneficial entitlement to the Client Shares.

The Nominee is authorised to execute transactions in accordance with the Client’s instructions relating to the Client Shares.

The Client and the Nominee shall at all times be bound by the provisions of the applicable law and regulation and must comply with any other provisions that may be required by applicable law and regulation.

### SHARE ACCOUNT AND RECORDS

The Nominee shall in accordance with its standard operating procedures open and maintain a share account(s) in its records in the name of the Client to record the number or nominal value of Client Shares deposited by the Client with the Nominee and to record all transactions and entries made in respect of such Client Shares (“**Share Account**”).

Any entry made in a Share Account shall be made only in accordance with authenticated instructions given by the Client or the Client Representative and the provisions of applicable law and regulation. The Nominee shall not give effect to any instruction that will result in a debit balance in respect of any Client Shares held in a Share Account.

The Nominee shall provide the Client with an electronic statement of its Share Account twice per calendar year. Unless an objection is made in writing by the Client to any entry contained in any such statement within 60 calendar days after the statement date, the statement shall, in the absence of fraud or any manifest error, be treated as *prima facie* evidence of the entries indicated therein and the Client shall not thereafter be entitled to make any claim against the Nominee or to any other action in respect thereof.

The Client’s money will be handled in accordance with the applicable client money rules. All cash accruals received in respect of investments, including dividends will be paid in accordance with the Client’s instructions and applicable law and regulation.

The Nominee will keep the records of all documents as required by applicable law and regulation. The Client agrees that the Nominee, at its absolute discretion, may destroy the records and documentation after the expiry of the retention period. The Client acknowledges and agrees that records and relevant documents shall be considered to be retained by the Nominee if the copies are scanned and are available in electronic form. Subject to an electronic copy being available, the Nominee shall not be under any obligation to retain records and documents in paper form.

### CLIENT SHARES DEPOSITED FOR SAFE CUSTODY

The Client Shares are kept separate from the resources of the Nominee, including in any insolvency proceeding against the Nominee, and the Nominee shall take such steps to protect the Client Shares against theft, loss or destruction as provided for in applicable law and regulation.

Client Shares that the Nominee may accept on behalf of the Client shall be shares of a type and form determined from time to time by the Nominee and may include either certificated or uncertificated shares. The Nominee shall not be obliged to accept any security remitted. In the event that any security remitted for entry into a Share Account is not good for delivery or has a defect in relation to the Client's title thereto, the Nominee shall not accept such security for entry into a Share Account until such defect has been corrected to the satisfaction of the Nominee. The Nominee shall return to the Client any shares not accepted by the Nominee.

The Client warrants to the Nominee that the Shares deposited for safe custody from time to time will be and remain free from any encumbrance.

## **SETTLEMENT OF TRANSACTIONS**

The Client shall designate a current banking account at a registered Malawian bank as a settlement account. The designated bank account may be amended from time to time by completing the necessary instruction in writing to the Nominee. When requested by the Client, the Nominee shall credit the designated bank account with all proceeds received by the Nominee in respect of the Client Shares held in or transacted through the Share Account.

## **VERIFICATION OF IDENTITY OF CLIENT**

The Nominee may process personal information about the Client. Processing may include the transfer of information to the Nominee's offices, third parties who process information for the Nominee and law enforcement agencies. In processing personal information, the Nominee will comply with all applicable data protection laws and regulations. As far as the law allows, the Client agrees that the Nominee may monitor electronic communications to ensure compliance with its legal and regulatory obligations and internal policies.

Various laws and regulations on anti-money laundering and terrorism apply to the Nominee. The Client undertakes to promptly provide the Nominee with all relevant information to perform know-your-client (KYC) or customer due diligence (CDD) checks. The Nominee will use its reasonable endeavours to verify the identity of the Client in terms of the applicable law and regulation. The Nominee will not be liable by reason of having accepted as valid any documents of any kind which are forged, not authentic or are untrue, if despite taking reasonable steps to verify the identity of the Client, the document or identity of the Client is accepted and is subsequently shown to be invalid or incorrect.

The Nominee shall not be liable for the delays that may be caused as a result of the verification process. The Client accepts risk, including the risk of change in the share price or exchange rates during the verification process. The Nominee reserves the right to delay taking action on a particular instruction if any further information is required from the Client in order to comply with any legal or regulatory requirements (including due diligence processes), or to investigate any concerns as to the validity or any other matter relating to the instruction.

Notwithstanding anything to the contrary contained in these Terms, the Client indemnifies and agrees to hold the Nominee harmless against all liability, costs, expense or damage incurred by the Nominee or its agents arising (whether directly or indirectly) as a result of or in connection with (i) the Nominee acting on any forged, fabricated or other inaccurate, invalid or unauthorised documents (including identity document), (ii) instruction received by it in connection with the performance of the Nominee's obligations in terms of these Terms, or (iii) acting on e-mail/fax/telephonic instructions received from the Client Representative, except to the extent that such liability, cost, expense or damage arises as a result of the Nominee's failure to comply with the provisions of these Terms.

## **INSTRUCTIONS BY THE CLIENT**

All instructions given by the Client shall be sent to the Nominee at the physical address set below, or via e-mail, to: [legal@natbankmw.com](mailto:legal@natbankmw.com). All instructions shall be sent in writing, or by any other means as may be approved by the Nominee from time to time in writing. The Nominee shall not be obliged to carry out any instruction that does not comply with the terms and conditions, due diligence requirements, applicable law and regulation or the Nominee's standard operating procedures. Instructions from the Client or its agent may take the form of a standing instruction.

On each occasion on which an instruction is given, the Client will be deemed to confirm that he or she has the necessary authority to give the instruction and that such instruction is capable of being implemented. The Nominee may record telephonic or electronic conversations with the Client and its representatives and the Client agrees that such recordings or transcripts thereof may be used as evidence in any dispute with the Client.

In the event that the Client gives the Nominee an instruction to buy or sell shares on behalf of the Client, subject to the limited mandate to carry out such instruction without having to exercise any independent discretion and in terms of a particular service offered by the Nominee, then the Client gives the Nominee the right to appoint and pay brokers and other agents to carry out such instruction, to receive and give receipts in respect of such sales and to do all such things incidental thereto in order to give effect to such instruction.

The Nominee shall not make an entry in the Share Account unless instructed to do so by the Client or the Client Representative.

The Nominee shall incur no liability for acting on any instruction, direction or other communication on which the Nominee is authorised to rely pursuant to this or for any delay in delivery of non-delivery or error in transmission.

## VOTING ON BEHALF OF CLIENTS

The Nominee will only vote on behalf of the Client if a voting instruction form is received from the Client by the Nominee by the stipulated date and time.

## NOTIFICATION OF CORPORATE EVENTS AND DISTRIBUTIONS

The Nominee shall notify clients electronically of all corporate events as required in terms of applicable law and regulation, which includes non-elective events (i.e. announcements and related information). The Nominee is not obliged to send such notifications to the extent that all the salient details of such non-elective benefits are incorporated or set out in any documents directly sent, or to be sent, to the Client by the Issuer (including the Issuer's annual financial statements, interim financial statements or a shareholder circular). Clients may elect not to receive notices, reports and circulars from the Nominee, provided that they understand the implications and consequences of such an election. By choosing not to receive the documentation from the Nominee, the Client acknowledges that they may not receive pertinent information concerning non-elective events or the declaration and payment of distributions.

The Nominee will send a payment advice/statement once the payment or corporate action has been processed.

Where fraction payments and fraction entitlements to securities are relevant, the Nominee will round fractions in accordance with the terms of the relevant corporate action. If applicable, fractions will only be paid out to the Client after receipt of cleared funds in the Nominee's bank account(s).

## CHARGES

The Client shall pay the fees and charges published from time to time by the Nominee and notified to the Client and/or indicated on the Nominee's website. The Nominee may increase or vary the charges on 30 days' written notice to the Client and/or indicated on its website and may thereafter levy such fees or charges.

Notwithstanding anything to the contrary in these Terms, the Nominee shall not be obliged to act upon any instruction given by the Client or to deliver to the Client any shares or monies until all the amounts due and owing by the Client to the Nominee have been discharged in full.

## FORCE MAJEURE

The Nominee shall not be responsible for the loss of or damage to any Client Shares or for the failure to fulfill its duties hereunder if such loss, damage or failure shall be caused by or directly or indirectly due to war, enemy action, the act of any government or other competent authority, riot, civil disturbance, rebellion, explosion, storm, tempest fire, strike or lock-out or any other occurrence or event beyond the reasonable control of the Nominee ("**Force Majeure Event**"), provided that nothing in this clause shall relieve the Nominee from any liability arising directly or indirectly in connection with any break-down or fault in its electronic or telecommunications software or hardware systems.

The Nominee shall have no liability for, and the Client shall hold the Nominee harmless and shall indemnify it against, any loss it suffers in the event of claims asserted against it by reason of the occurrence of a Force Majeure Event.

## INDEMNITY

The Client hereby indemnifies and agrees to hold the Nominee harmless against all liability, costs or expenses incurred by the Nominee and its agents in connection with the due and proper performance by the Nominee of its obligations pursuant to the Terms. The Client accepts the risk of loss or damage arising, directly or indirectly, as a result of any failure in, misuse of, or any fraud or misrepresentation due to the Client's failure to give a valid instruction

The Nominee shall be liable only for direct damages incurred by the Client by reason of the Nominee's willful default or gross negligence and, except in the case of fraud, shall not in any event be liable for indirect, special or consequential loss or damages of any kind whatsoever.

## DIVIDENDS TAX

The Client is solely responsible to and agrees to submit a written declaration in relation to dividends tax, if applicable, and to forthwith inform the withholding agent in writing should the circumstances of the beneficial owner change.

## MISCELLANEOUS

These Terms are in English and all future communications with the Client will also be in English.

For the purposes of these Terms, including the giving of notices and the serving of legal process, the Client choose the physical and, if applicable, electronic addresses recorded in the Nominees records relating to the Share Account at the relevant time (i.e. the Client's *domicilium citandi et executandi*). Any notice by CN and its agents to the Client shall, if sent by facsimile or by e-mail, be deemed to have been received by the Client on the day of transmission of the facsimile or e-mail and if sent by post, on the seventh day after posting.

The Nominee chooses as the address for the receipt of all notices and legal process: Legal Department, NBM Towers, 7 Henderson Street, Blantyre, Malawi.

These Terms contains all the provisions agreed on by the Client and the Nominee with regard to the subject matter of these Terms and supersedes and novates in its entirety any previous understandings or agreements between the Client and the Nominee in respect thereof, and the Client waives the right to rely on any alleged provision not expressly contained in these Terms.

No provision of these Terms constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind the Nominee or the Issuer in favour of that person. For the avoidance of doubt, nothing in these Terms is intended to confer on the Client or the Nominee or any other person any rights whatsoever against the Issuer and the Issuer shall be held responsible or liable in any respect in connection with the rights, obligations, actions or omissions that may arise under or in connection with these Terms or the Nominee Service.

The Client may not cede any or all of its rights or delegate any or all of its obligations under these Terms without the Nominee's prior written consent. The Nominee may cede its rights or delegate any of its obligations under these Terms in whole or in part, without notice to the Nominee. For purposes of this clause, a cession or delegation shall include any form of transfer of any person's rights and/or obligations under these Terms, or the change in legal entity which has rights and/or obligations under these Terms, by operation of law by way of or following an amalgamation or merger under the applicable law and regulation. In addition, the Nominee may make use of the services of its staff to execute certain administrative functions in rendering intermediary services to the Client.

The Nominee may vary these Terms from time to time and will notify the Client in writing when it does so within a reasonable time period prior to such variation becoming effective.

In the event of any conflict between the provisions of these Terms and applicable law and regulation, the provisions of the applicable law and regulation shall prevail.

These Terms will be governed by Malawian law.