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TENTH PARLIAMENT – FIFTH SESSION

DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES

REPORT OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES ON
 THE PRE PAID SMARTCARD SYSTEM AGREEMENT BETWEEN EQUITY BANK
 LIMITED AND THE COUNTY COUNCIL OF NAROK

CLERK'S CHAMBERS
NATIONAL ASSEMBLY
NAIROBI

JUNE, 2012

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PREFACE

Mr. Speaker Sir,

1. The Departmental Committee on Local Authorities (herein after referred to as 'the Committee') was established pursuant to provisions of Standing Order No. 198 and mandated to among other things, investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments.

The Committee executes its mandate in accordance with the provisions of Standing Order 198 (3), and is mandated to among others:

- i. investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments;
 - ii. study the programme and policy objectives of the Ministries and Departments and the effectiveness of the implementation;
 - iii. investigate and inquire into all matters relating to the assigned Ministries and Departments as they may deem necessary, and as may be referred to them by the House or a Minister; and
 - iv. make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.
2. Pursuant to the above mandate, the Speaker of the National Assembly on Tuesday, 22nd November, 2011 during Question time directed the Committee to investigate the Revenue collection contract between Equity Bank Limited and the County Council of Narok. This arose out of a Question by the Member for Narok South, Hon. Nkoidila Ole Lankas to the Deputy Prime Minister and Minister for Local Government seeking to know whether the contract entered into by the two bodies was in accord with the advertisement for Expression of Interest put out by the County Council of Narok on 9th February, 2010. According to the Member for Narok South, the Invitation for Expression of Interest published requested for Supply, Installation and Commissioning of a pre-paid Smart Card Service while the contract entered between Equity Bank Limited and the County Council of Narok included the

running of the pre-paid Smart Card system and collection of revenue and had therefore gone beyond what the County Council had advertised for.

3. The Departmental Committee on Local Authorities comprises of the following Members:-

- i. Hon. David Ngugi, M.P. - **Chairman**
- ii. Hon. Mahamud Sirat, M.P – **Vice Chairman**
- iii. Hon. Shakeel Shabir, M.P.
- iv. Hon. Fahim Twaha, M.P
- v. Hon. Joshua Kutuny, M.P.
- vi. Hon. Gideon Mung'aro, M.P.
- vii. Hon. Mwalimu Mwahima, M.P.
- viii. Hon. Gideon Konchella, M.P.
- ix. Hon. Zakayo Cheruiyot, MP
- x. Hon. Oyugi Magwanga, MP

Mr. Speaker Sir,

4. The Committee in execution of its mandate as directed by the Speaker, convened and held meetings with the Member of Parliament for Narok South, the management of Equity Bank Limited, officials of Narok County Council and Hon. William Ole Ntimama the Member of Parliament for Narok North. The Committee further toured the Maasai Mara Game Reserve to inspect the entry points and establish whether or not the smart card systems had been installed and held public hearings outside the Maasai Mara Sekenani Gate and in Narok Town to get the views of the members of the public on the smart card system. The Committee further met with the management of Equity Bank and officials of the Narok County Council for a second meeting to clarify some of the issues that the Committee had noted while on the tour of the Maasai Mara and Narok County.

5. The Committee established the following among others, from its interaction with the above groups of people:

- a) That the procurement procedure used by Narok County Council in sourcing for the service was Request for Proposals provided for in section 76 of the Public Procurement and Disposals Act (herein after referred to as the Act) and whose procedure is set out in sections 78 to 86 of the Act.

- b) That the procurement law as laid down in the Act was followed by the County Council of Narok in award of the tender to Equity bank.
- c) That majority of the stakeholders in the Maasai Mara reserve support implementation of the smart card system due to its benefits to the Council and the people of Narok but are concerned about the terms of the contract.
- d) There are some clauses in the contract entered into between the Council of Narok and Equity bank to operationalize the smart card system that are not favourable to the Council and need to be reviewed.
- e) The County Council of Narok did not take all necessary measures to sensitize or involve the residents of Narok and the staff of the Council who are key stakeholders in the Maasai Mara about the decision to switch from the paper tickets to the smart card system of revenue collection.

6. Acknowledgements

Mr. Speaker Sir,

I wish on behalf of the Committee to thank the Office of the Honourable Speaker of the National Assembly for the necessary support extended to the Committee in the execution of its mandate as well as the Office of the Clerk for providing the necessary logistical and technical support.

The Committee further wishes to thank the Members of Parliament for Narok South and Narok North, the Equity Bank Management and officials of the Narok County Council for their cooperation and support during this investigation.

Finally, I wish to thank Members of the Committee for working extremely hard, to ensure the Committee successfully completed this task.

The Committee is convinced that this report has taken on board views of all important stakeholders in the Maasai Mara Game Reserve.

It is my pleasure therefore, to present this report to the House and recommend it for adoption.

A large, stylized handwritten signature in black ink, slanted upwards from left to right. The signature is cursive and appears to read 'D. Ngugi'.

HON. DAVID NGUGI, MP,

CHAIRMAN, DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES

7. BACKGROUND

Mr. Speaker Sir,

7.1.1. The Committee was seized of this matter on Tuesday, 22nd November, 2011 following Question Number 2 by Private Notice by the Member of Parliament for Narok South constituency directed to the Deputy Prime Minister and Minister for Local Government as follows:

- a) Is the Minister aware that Narok County Council has entered into an agreement on revenue collection from Maasai Mara Game Reserve with Equity Bank Limited?
- b) What are the terms of the contract?
- c) Could the Minister table the contract documents?

7.1.2. The Member for Narok South also sought the following clarification from the Minister for Local Government:

- a) What the County Council of Narok asked for in the Expression of Interest (EOI) and what it got from Equity Bank Limited.
- b) If the Minister could cancel the Revenue contract as Equity bank was collecting Revenue on behalf of the Council yet Revenue Collection was not tendered for and therefore was outside the scope of works.

8. The Deputy Prime Minister (DPM) and Minister for Local Government in his response tabled the contract document and explained that Narok County Council requested through advertisement for an EOI for the supply, installation and commissioning of a prepaid smart card system. The scope of what was required was indicated in the advertisement as follows:

- a) to supply, install, and commission a centralized online prepaid billing system;
- b) to supply and install relevant ICT infrastructure at all entry points and head office for the period of the billing system;
- c) supply, install and commission vendor-based prepaid equipment, complete software system for the County Council of Narok Headquarters, vendors and supervisors;
- d) train staff on the use of the new system on the first line maintenance of the proposed equipment;
- e) provide ongoing callout for repairs and maintenance not covered by first line maintenance and

f) Provision of a watertight system against revenue loss.

8.1.1. The Minister further explained that what was contained in the contract was no different from the scope of works that the Council had tendered for and further that the contract contained a review clause which allowed the parties to review the contract after every two years and a termination clause that allowed any dissatisfied party to terminate the contract after following the due process. He further stated that he did not have power to terminate a contract which had been validly executed and only the parties to it had that right.

9. The Member for Narok South with the support of other Members of Parliament disagreed with the Minister on the scope of the contract and requested that the matter be referred to the relevant committee for thorough investigation which request, the Speaker acceded to.

10. The Speaker in his communication to the House directed that the Committee investigate the pre-paid smart card system contract and report to the House whether a request to design, install and commission was the same as saying design, Install, commission and man.

Mr. Speaker Sir,

11. The Committee identified the following as questions whose answers were necessary in order to enable it discharge its mandate:

1. Was the procurement law followed in awarding the contract for provision of a pre-paid smart card system to Equity Bank?
2. How many companies submitted bids to be considered for provision of the smart card service and what criteria was followed in awarding the contract to Equity Bank limited?
3. Did the Narok County Council hold a full council meeting to authorize the tender?
4. Did the Ministry of Local Government approve the transaction as required by the Local Government Act?

5. After award of the contract, did any of the firms that submitted bids raise complaints with the Procurement Appeals Tribunal or Procurement Authority about the tender?
6. Is the contract entered into between Narok County Council and Equity Bank a true reflection of the terms as advertised by Narok County Council in the Expression of Interest?
7. If the terms of the contract went beyond what the Council had advertised for in the Expression of Interest, what is the remedy? Can the council be compelled to terminate the contract and what does the Public Procurement and Disposals Act provide on this? Who has a right to go to court if the procurement law has been violated?
8. Who between Equity bank and the County Council has control over the bank accounts operated by the Council?

12. EVIDENCE

The Committee in implementing the directions of the House as directed by the Speaker interviewed the following witnesses and obtained the following information from them:

13. Hon. Nkoidila Ole Lankas, MP – Member of Parliament for Narok South

13.1. The Chairman informed Hon. Ole Lankas, MP that as the complainant, the Committee called him as the first witness in order to understand from him the issues of contention in the pre-paid smart card system Agreement between Narok County Council and Equity Bank. The Member of Parliament for Narok South informed the Committee as follows:

- i) That he served as the Clerk of Narok County council from 1997 to 1999 and therefore understood its operations succinctly.
- ii) That Narok County council is among the richest Councils in the country as it attracts a large number of tourists.
- iii) That the Maasai Mara Game Reserve generates about 95% of the revenue collected by the County Council of Narok.
- iv) That sometime in the year 2010, the Council put out an advertisement for Expression of Interest (EOI) for Supply, Installation and Commissioning of an E-Ticketing System to assist in collection of revenue at the entry points/gates of the Maasai Mara Game reserve and therefore curb pilferage and increase revenue for the County Council.
- v) That subsequently many companies tendered their bids and Equity Bank Limited was chosen to have won the tender.
- vi) That he is not opposed to the system *per se* as the system deserves merit but his contention is in the procedure followed and the contents of the contract.
- vii) That there is a problem with the awarded tender in that what is contained in the Expression of Interest advertised is different from what is contained in the contract entered into by the two parties since the EOI advertised on Tuesday, 16th February, 2010 (which he tabled) requested for “Supply, Installation and Commissioning of a pre-paid smart card System” while the signed Contract (dated 19th April, 2011) provided also for collection of revenue.

- viii) That in his view therefore, the procurement process was irregular and illegal as Equity bank limited was collecting revenue on behalf of the Council which was not tendered for and that it was still using paper tickets and not the E-ticket as provided in the contract documents.
- ix) That from the signed Contract document, Equity bank was to collect revenue, be the Banker and only issue periodic statements of account to the Council
- x) That the Contract further contained a clause requiring the County council to pay Equity Bank Limited the difference of amounts if the Council collected in any year less money than the minimum of Ksh. 1.5 billion it had projected to be collecting.
- xi) That the KACC had written a letter on 25th February, 2011 confirming having looked at the procurement process of the pre-paid smart card system and cleared it yet by that date the smart card system had not been installed.
- xii) That after he raised the matter in Parliament, the County Council began intimidating staff of the Council who were opposed to the system by transferring them from their stations to other places by a letter signed by Councilors and not by the Clerk of the Council.

14. Meeting with officials of the County Council of Narok led by Mr. Mutemi, the Clerk

14.1. The Committee held a meeting with the officials of the County Council of Narok led by the Clerk on 6th December, 2011 in Parliament buildings and sought to establish the following from them:

- i) Whether the tender to obtain the pre-paid smart card system was properly obtained and whether it was sanctioned by the County Council of Narok and the Ministry of Local Government
- ii) Whether the tender process that led to award of the tender to Equity Bank was in accordance with the law
- iii) Whether the Contract signed between the Council and Equity Bank was in accordance with the terms of the advertisement made by the Council requesting for bids
- iv) Whether there is an exit clause in the contract and what the terms of the exit clause are.

- v) Whether the Council officials are satisfied that the pre-paid smart card system is good for the council

The Narok County Council officials responded as follows:

15. Presentation by the Narok County Council Officials

- i) In April 2005, the then Minister for Local Authorities, Hon. Musikari Kombo directed all local authorities to automate their systems of revenue collection and requested that all local authorities begin moving towards that direction.
- ii) The County Council of Narok in compliance with the directive from the Minister decided to automate revenue collection at the Maasai Mara Game Reserve and therefore advertised an Expression of Interest requesting bids for provision of a pre-paid smart card system at the Game Reserve.
- iii) That the procurement process that led to advertisement for the system was approved by a full council meeting and by the Ministry of Local Government.
- iv) That before introduction of the pre-paid smart card system, the Council could have been collecting only about 40% of the revenue from the Maasai Mara as the rest was pilfered by the revenue collection clerks.
- v) That the Council collects revenue from the Hotels within the Maasai Mara based on bed occupancy which the hotels are supposed to declare but the hotels collude with the revenue clerks and tour operators and declare less occupancy rate.
- vi) The Council officials visited the Kenya Wildlife Services (KWS) and the Tanzania National Parks Authority (TANAPA) which ran similar systems to learn from them how the systems functioned and its merits.
- vii) The Council received bids from 17 firms, evaluated the bids and awarded the tender on 8th November 2010 to Equity Bank Limited. That the signing of the contract was however done on 19th April, 2011 after concluding the on-going negotiations between the parties.

- viii) That when Equity Bank went to install the system, there was resistance from the Council revenue collection clerks at the gates of the Maasai Mara which led to demonstrations and destruction of the equipment already installed.
- ix) That after award of the tender and contract to Equity Bank limited, two cases were taken to court, one filed in Nakuru High Court Civil Case number 131 of 2011 and another in Nairobi, High Court petition No. 35 of 2011.
- x) That the Council officials are satisfied that the system is good value for money for the Council as it would increase the Council revenues significantly and reduce corruption that was rampant before.
- xi) That the Contract had a termination clause contained in Clause 14 on pages 20 - 22 of the Contract and which they were comfortable with.

After the presentation, the Committee members requested for the following clarifications:

16. Intervention by Committee Members

- i) Whether paper tickets were still in use at the entrances to the Maasai Mara and if not, on what dates the paper tickets were withdrawn to allow use of the smart cards
- ii) Who were the parties that complained about the pre-paid smart card system and who took the County Council to court seeking to stop the use of the smart cards
- iii) What is the role of Equity Bank Limited in the pre-paid smart card agreement and did it involve collection of money on behalf of the Council?
- iv) How sure was the Council that during the interim period when Equity Bank was using paper tickets, the Bank's employees would not also engage in the malpractice (pilfering of revenue) that the Revenue Clerks of the Council were committing before?
- v) Whether there was any significant change in revenue collection between when the Revenue Clerks of the Council were undertaking the collection and when Equity Bank implemented the pre-paid smart card system and if the Council could avail the figures to the Committee

- vi) What is the amount charged for entrance to the park and the approximate number of visitors expected in a year?
- vii) What is the total cost of the pre-paid smart card system contract to the Council?
- viii) Whether the Council varied what it requested for in the EOI advert and if so when this variation was done.
- ix) Who drafted the contract document-Is it Equity bank lawyers or Narok Council lawyers?
- x) Whether there has been intimidation of staff of the Council since the matter was brought up in parliament by the Member of Parliament for Narok South.
- xi) Whether Equity Bank had commissioned the pre-paid smart card System as required in the contract.

The Narok County Council officials responded as follows:

17. Response by the County Council Officials

- i) That the Council began a pilot of the smartcard in November 2011 and the system went live on 12th December 2011. That between 19th April 2011 when the contract was signed and November 2011 when the smart card system was launched, Equity Bank continued using paper tickets as they implemented the pre-paid smart card system.
- ii) That there was agreement that commencement of the use of the smart cards would only occur after complete implementation of the pre-paid smart card system and when Equity Bank was awarded the contract, the parties agreed to three months implementation period to enable completion of Statement of Works and implementation of the pre-paid smart card system.
- iii) When Equity Bank moved to the site to install the system, there followed demonstrations by youth in Narok town against the system and one group filed a case in Nakuru court to stop the implementation of the system.
- iv) That before Equity Bank was awarded the contract, SOMAK was the revenue collecting agent for the Council in the country but visitors who came straight to the gates of the game reserve paid entrance fees to the Council Revenue Clerks stationed at the gates.

- v) That since Equity Bank implemented the pre-paid smart card system, revenue collection had increased significantly and was almost double what the Council Revenue Collection Clerks were collecting and that the Council would submit to the Committee figures of the revenue collected per month from April, 2011.
- vi) That the fees charged for entry to the Game Reserve is USD 70 and the average number of visitors in a year is 300,000.
- vii) That the investment Equity Bank was putting in the contract was Ksh. 280 million which would have been paid by Narok County Council but due to the partnership, it would only cost the Council Ksh. 28.4 million.
- viii) That the advert was an EOI and the Council did not vary what it had requested for in the advert but that they picked on Equity Bank because the proposal Equity presented during the bid evaluation presented two options; One where the Council would fully own the infrastructure and equipment to cost about Ksh. 280 million and the second, a co-investment model in which the Council would invest only Ksh. 28.4 million and the Council opted for the Co-investment hosted model.
- ix) That Equity Bank was involved in issuing paper tickets as a transitory measure before they installed the pre-paid smart card system and that the Council was only banking with Equity Bank for convenience as they had the option of maintaining a bank account with any other bank.
- x) That the Contract document was drafted by joint lawyers of Equity Bank and those of the Council.
- xi) That the Maasai Mara Game Reserve has 10 collection points and six structured gates at which revenue is collected by the Council officers themselves and not Equity Bank staff.
- xii) That there was no intimidation of staff of the Council as alleged but that disciplinary action was taken against the staff/Revenue Clerks who allowed demonstrations to go on in the game reserve which led to destruction of the Equipment that had been installed by Equity Bank.

- xiii) That Equity Bank was not collecting revenue for the Council as alleged but that it had trained staff of the Council who were to manage the system and Equity Bank would only be retained to service the system as per the contract.
- xiv) That the pre-paid smart card System had not yet been commissioned as it was under pilot testing with an intention of go-live date of 12th December 2011. The Council intended to invite the Kenya National Audit Office and the Efficiency Monitoring Unit before officially commissioning the system.

18. Meeting with Dr. James Mwangi – Managing Director, Equity Bank Limited

The Committee met with the Equity Bank management led by the Managing Director on 6th December, 2011. The Members sought to know the following from the management of Equity Bank Limited:

- i) Why it took the Bank so long after entering the agreement with the Council to install the pre-paid smart card system.
- ii) Which advocates drafted the pre-paid smart card system agreement; were they advocates for the Bank or of the Council?
- iii) What is the role of Equity Bank in the whole agreement and does it extend to revenue collection?
- iv) Whether Equity Bank had completed installation of the system and was it now operational or were they still using paper tickets at the entrances to the game reserve?
- v) Whether Equity Bank had posted its staff to the entry points of the Maasai Mara to manage and run the pre-paid smart card system.
- vi) Any challenges the system installed could face and whether the Council had obtained value for money while getting the system
- vii) Any guarantees that the system was not easy to manipulate and therefore lead to lose of revenue like the paper ticket system they were trying to get rid of.
- viii) How do tourists in foreign countries pay the fees required to access the Game Reserve?
- ix) Considering that the fees to foreigners is charged in US dollars, who benefits in case of currency fluctuations

The Managing Director of Equity bank gave the following information to the committee:

19. Response by Equity Bank CEO

- i) That based on the advertisement for EOI put out by the Council, Equity Bank entered agreement only to supply, install and commission the pre-paid smart card system which they were doing and that the planned go-live date was 12th December, 2011, which the Bank will successfully achieve.
- ii) That Equity Bank does not collect and is not collecting money on behalf of the Council but that it is travel agents who collect the money and bank it straight into the Council Collection Account maintained at Equity Bank. That the Bank only offers a platform for revenue collection but does not engage in the collection.
- iii) The Council itself manages the pre-paid smart card system as the Bank had trained the Council personnel onsite for two weeks on how to manage the system as required in the contract and that there were no Equity Bank staff at the entry points to the Maasai Mara.
- iv) That the Council preferred to hold the Council Collection Account at Equity Bank Limited rather than with another Bank so as to benefit from the large number of branches of Equity bank and the Bank's branchless banking system in order to reach their clients and tour operators more effectively.
- v) That it took long to install the system because of various challenges one being that the Mara has no electricity and it took Equity Bank two months to map out the processes needed to install the system before moving onsite. The delay was also necessitated by the fact that the Council needed to buy the smart cards before the process could commence which is the cost contained in the Ksh. 28.4 million that was to be incurred by the Council.
- vi) That the Bank has now pilot-tested the system and installed the equipment at all points of entry and at the airstrip and that the system was now operational.
- vii) That the Contract document was drafted by the joint lawyers of Equity Bank Limited and those of Narok County Council.
- viii) That the system is novel and water tight and is not therefore subject to manipulation and will thus avoid leakage of revenue. This is because the system/the card is chip based and cannot be tampered with.

- ix) That the biggest challenge posed by the system is the stability of the system and therefore the greatest worry is the system going down and yet tourism is a 24 hour affair. This has however been taken care of as the data center at Equity Bank is supplied by dedicated power feeds from two sub-stations. The Bank has also put in place Disaster Recovery and Business Continuity plans to take care of any eventuality and the Bank's systems are operational 24 hours a day.
- x) That another challenge to the system is that the speed at which technology changes is fast but that this has however been sorted out as the whole system is hosted by Equity Bank and Narok County Council therefore leverages on updates by Equity Bank to the Bank's system.
- xi) That from June to November, 2011, the revenue collected from the Maasai Mara by the Narok County Council had more than doubled compared to the previous year.
- xii) The Bank does not come into contact with the money collected or deal with any money collection but that money is collected by travel agents and goes directly to the Narok County Council accounts.
- xiii) That tourists in international destinations who wish to visit the Mara can pay for the tickets online as details on how to go about it are on the website and obtain the smart card which is then swiped at the gates of entry to the park.
- xiv) That Equity Bank does not benefit from any Exchange rate gains in case of fluctuations in the dollar rates as the money paid by people in foreign countries in dollars goes straight to the Council Account which is operated by the Council.
- xv) That the Contract has an exit clause (Clause 20-page 14) that provides for ways in which the parties can end the contract or review it if any one is dissatisfied with its terms and it was therefore not going to affect operations of the County Government after the next General Elections.
- xvi) That Equity Bank is developing a credit facility that will boost the number of visitors to the Maasai Mara as it will enable domestic tourists who want to tour the Mara to obtain loans from the 175 branches of Equity Bank countrywide and visit the Maasai Mara thus increasing the Council's revenues.
- xvii) That the Council will benefit from the partnership with Equity Bank as the Bank has a website which receives approximately 1 million hits every month and which could translate to enormous revenue for Narok County Council.

- xviii) That the Council also leveraged on the Bank's systems and infrastructure e.g. Youtube, radio and TV and the Free International Money Transfer Gateway using the Visa card.
- xix) The pre-paid smart card System has various other benefits and capabilities which will be beneficial to the Council namely:-
 - a) It is used for entry & exit;
 - b) Used in identifying those visitors that overstay in the reserve;
 - c) Provides details of properties visited inside and outside the park and the length of stay – this enables the Council to bill royalties;
 - d) The smart card can be fed with activities tourists intend to do in the park e.g. balloon safaris, camping thus makes billing easy;
 - e) Smart cards can also be fed with penalties for off-road driving and littering so that the tour agent pays before exit;
 - f) The system is integrated with other payment systems enabling payment through VISA, MasterCard and China Union Pay;
 - g) The System contains Financial and statistical reporting capabilities thus can be used to identify the number of visitors who visited the Reserve, their country of origin, gender of visitors and repeat visitors. With this information the Council can plan for targeted tourism promotion
 - h) There are reusable smart cards which can be issued e.g. to tour agents

20. Meeting with Hon. William Ole Ntimama, MP – Minister for National Heritage and Member of Parliament for Narok North

The Committee also held a meeting with the Member for Narok North who is also a stakeholder in the Maasai Mara considering that his constituency is in Narok County on 14th December, 2011 and sought to hear his views on the contract between Narok Council and Equity Bank. The Committee sought information on the following from the Member for Narok North:

- i) If he was aware that the contract between Equity Bank Limited and Narok County Council provided that Equity Bank would be charging the Council a fee based on the percentage of revenue collected.

- ii) If he was aware that the contract terms provide for review of the contract so that if after the next general elections, the County Government is unhappy with the performance of the pre-paid smart card system, it can ask for the contract to be reviewed.
- iii) Whether he has any information that the people opposed to the project have vested interest in the matter.

21. Response by the Minister; Hon. Ole Ntimama

The Member of Parliament for Narok North gave the following information to the Committee:

- i) That there has been a lot of graft in the Maasai Mara especially with regard to collection of park entry fees at the entry points to the Mara and from the hotels within the Mara. That after the Kenya Wildlife Services introduced the pre-paid smart card system in some of its parks that had seen reduction of pilferage and increase in revenue collected; the County Council of Narok had sought to introduce the same system in Maasai Mara.
- ii) That the tender for supply of these services were advertised by the Council in 2010 and the contract later awarded to Equity Bank Limited after due process was followed.
- iii) That the contract for installation of the smart card system has support of the majority of the people of Narok and it was only a select few who may have been benefiting from the paper tickets that were complaining.
- iv) That he fully supports installation of the pre-paid smart card system in the Maasai Mara as the same would see rise in revenue collected by the Council and therefore result in benefits to a majority of the people of Narok County Council.
- v) The minister stated that he supported the pre-paid smart card system generally but would advocate for the parties to look at such clauses as the one that required the Council to pay the Bank, a certain amount of money in fees if the Council does not raise the threshold of Ksh. 1.5 billion annually.
- vi) The Minister said he was aware the contract had an exit clause

- vii) That the Council of Narok has suffered from looting of revenues generated from the Mara for many years and the Ministry of Local Government had supported the looting and that the people opposed to the system could have been benefiting from the looting.
- viii) That there is need for cooperation among the leaders of the County in order to ensure that revenue collected from the Mara benefits the people of Narok.

22. Meeting with the Chairman and Councilors from Narok County Council on 27th March

The Committee met a section of councilors from Narok County Council led by the Chairman of the County Council in the evening of 27th March at the Keekorok Lodge and the remaining councilors on the morning of 28th March in the office of the Chairman of the County Council.

The Chairman of the Parliamentary Committee explained that the Committee had come to investigate circumstances that had led to the pre-paid smart card system contract between Equity Bank and Narok County Council and that the Committee sought to establish the following from the Chairman and Councilors of Narok County Council:

1. Whether there have been any benefits to the County council and the residents of the County Council since the award of the contract to Equity bank.
2. Whether Equity Bank had completed installation and commissioning of the pre-paid smart card system and whether it was operational or whether the Council was still using paper tickets at the entries of the game reserve?
3. Whether there were any officers of the County Council who had been trained by Equity Bank to run the system as provided in the contract or if the entry points were being manned by Equity bank staff.
4. If it was true that the Council had been intimidating staff who were opposed to the pre-paid smart card system and who were seen to be allied to the Member of Parliament for Narok South who had raised the matter in Parliament.

5. How true allegations made in the press were that since the installation of the system, the County Council had been facing financial difficulties and was depending on overdrafts for its sustenance.
6. If the County Council officials could avail to the Committee bank statements of the collection accounts held by the County Council for the last three months for both the dollar and Kenya shilling account
7. Who between the County Council of Narok and Equity Bank owned the revenue collection system and the Equipment installed to implement the Smart Card system.
8. Whether it was true that the system had failed to cure the mischief it was intended to remedy of pilferage in revenues collected and that councilors had now been deployed to the entry points of the Maasai Mara to collect revenue.
9. Whether the tender was brought before the Finance Committee of the Council and approved including approval by the full council meeting and by the Ministry and if there are Minutes of the above approvals.
10. Was there objection by any councilor when the matter was brought to the full council meeting and was the objection if any recorded?
11. If such a full council meeting was held, was it open to the public and was a notice to hold the same issued for the awareness of the public?
12. If the County Council could avail to the Committee records of visitors who had visited the Maasai Mara for the last three months indicating what number is foreign and how many were local
13. Any challenges the Council had faced since installation of the pre-paid Smart Card system
14. If the Councilors had read and understood the contract and if they had any issue with any clause.

22.1. Response by the Chairman of Narok County Council (NCC) and the Councilors

- That a Cabinet decision in 2005 made a recommendation that all Game Reserves under the management of Local Authorities begin utilizing new technology and especially the E-ticketing system for revenue collection.
- That the Narok County Council included the automation of revenue collection in its 2010/2011 performance contract and went ahead and advertised an EOI for

provision of the system, visited TANAPA and KWS which had implemented a similar system to understand its operations and benefits and after evaluation of the bids received, awarded the contract to Equity Bank Limited in November 2010 and signed the contract in April 2011.

- That the matter of the tender was brought before the full council meeting and approved and no councilor opposed it at that stage and that the meeting was open to the public and a seven day notice had been given to the public before the meeting.
- That after beginning implementation of the system, the Narok County Council was taken to court in Nakuru by Narok Youth Congress seeking to stop the system on grounds that the local community was not involved and that locals were being fired from the Game Reserve.
- That after installation of the system, some youth in collaboration with some revenue officers of the Council had held demonstrations in the reserve and in the process destroyed some of the equipment installed to operationalize the pre-paid smart card system.
- That since the installation of the pre-paid Smart Card system, the revenues collected from the Maasai Mara had increased greatly compared to the same duration when the paper tickets were used. For example, in December 2011, the Council collected Ksh.77 million unlike in 2010 when only Kshs. 53 million was collected.
- That the system was beneficial in that the Council is now able to keep records of all people visiting the Maasai Mara which has led to improved security
- That councilors from Narok County Council were involved in the procurement process of the service provider and, that the matter was brought to the council and the contract approved during a council meeting.
- That Equity Bank Limited gave the Council a loan of Ksh.28.4 million which was used to finance its share of the investment in the pre-paid smart card system.
- That the local community was incited to revolt against the pre-paid smart card system
- That the Councilors had been deployed to the entry points of the National Reserve for two weeks, not to collect revenue but to observe revenue collection and monitor how the system was working.

- On the reasons why they did not consult members of the public, the Councilors said that they represent the people and thus they had a right to act on behalf of the people.
- That the system is good as it will lead to increased revenue which will result in increased salaries for staff and bursaries for the school going children (as increased revenue will mean that the 19% to residents will also increase).
- That before introduction of the pre-paid smart card system, pilferage of revenue was high as some revenue clerks had their own receipt books which they used to raise money while others had campsites in the Reserve and tour vans which they operated in the Game Reserve without paying.
- That before introduction of the pre-paid smart card system, corruption in the Mara was so high that the children after finishing high school education did not want to pursue higher education but just wanted to be employed as clerks in the Game Reserve to benefit from the graft.
- The Council Chairman confirmed that officers (Revenue clerks) manning the entry points in the National Reserve were transferred as alleged by the Member of Parliament for Narok South but that this transfer was done in the ordinary course of the officers' employment and not as intimidation because the employees had agreed to work anywhere in the council when they were employed.
- That entry to the National Reserve is now only by using the pre-paid smart card systems and one can even reload the smart cards at the entry points since all the entry points have point of sale terminals.
- That some of the Equipment installed to operationalize the smart card system is owned by the County Council while some is owned by Equity Bank Limited.
- That there are ten (10) entry points to the Maasai Mara and the pre-paid Smart card system in use at the entry points supports both online and offline capabilities.
- The Councilors confirmed that they had been taken through the contract by the Council lawyer.
- The Council Treasurer clarified that Equity Bank was not an agent of the Council but that the Council was just using Equity Bank's facilities to collect the revenue and

therefore paid the commission of 7% as fees per the contract in the first four years, which fees would reduce gradually.

- The Chairman explained that the Council does not currently have an overdraft facility with any bank and it was not in any financial difficulties as it was paying all its statutory commitments and salaries promptly.
- Some councilors raised concern that at the full council meeting, the Procurement process was agreed upon but that the Councilors had requested that the contract be taken back to the council for ratification which was not done
- That after installation of the system, bad politics and incitement was brought in which led to demonstrations and destruction of equipment of the council by the local youth.
- The Chairman explained that due to the pre-paid smart card system, in January, 2012 alone, the County Council of Narok spent Ksh.36 million on bursaries indicating that the system had a number of benefits to the local residents.
- Some councilors stated that though they supported the Pre-paid Smart card system, some clauses in the contract were not good for the council and required to be reviewed; for example the following:
 - a) One requiring the Council to pay Equity Bank if the Council does not collect the minimum Ksh. 1.5 billion annually.
 - b) The Exit/Termination Clause was very punitive and skewed in favour of Equity Bank limited (Pg 20-clause 14)
 - c) Clause providing that the duration of the contract is 10 years on grounds that it is rather long.
 - d) Clause on establishment of an Escrow Account

23. Public Hearing in the Narok County Council Hall on 28th March, 2012

The Committee met with Members of the public and residents of Narok county on 28th March to listen to the views of the public on the pre-paid smart card system installed by Equity Bank Limited in the Maasai Mara and the contract entered into between the two entities. This, the chairman explained was because the residents of Narok County were key

stakeholders in the Maasai Mara since the Council held and managed the Maasai Mara in trust on behalf of the community.

23.1. Over 30 people gave their views at the meeting and they had the following to say:

- i) That they supported implementation of the pre-paid smart card system but had issues with the contract drafted to operationalize the system as it was not favourable to the Council. Specifically, they identified the following clauses as not being favourable to the Council and therefore needed to be reviewed:
 - a) Clause requiring the council to pay Equity bank a certain amount of money if the revenue collected using the system does not reach Ksh. 1.5 billion.
 - b) The duration of the contract of 10 years which is too long as the current council would only be in office for two years before the next general elections.
 - c) The liability clause in the contract was crafted in such a way that the council takes responsibility for all liabilities
 - d) The service fee of 7% was rather high yet the normal commission charged to government agencies is usually 1.5%.
 - e) There is no clause in the contract obligating Equity Bank to ensure the County Council collects the minimum revenue of Ksh. 1.5 billion as expected.
 - f) The clause barring employees of Equity bank from working for Narok County Council
 - g) The clause exempting Equity Bank Limited from loss of funds in any manner and from being liable to the users of the smart card service.
 - h) The clause providing for review of smart card service is not clear and should be amended to reflect review and amendment of the contract.
 - i) The termination clause in the contract is skewed in favour of Equity Bank Limited and should be amended so that Equity Bank also has obligation to pay the Council in case termination is as a result of breach of contract by Equity Bank.
 - j) Clause providing that if contract is terminated by Council before the eighth year, then Equity Bank would be allowed to go with the equipment.
- ii) That the County Council which holds the Mara Reserve in trust and manages it on behalf of the people of Narok did not consult or in whatever manner involve the

local community before the pre-paid smart card system was introduced yet the Constitution was clear on public participation.

- iii) That there are a number of youth who were arrested by police and are still languishing in police cells for demonstrating against installation of the system yet the Constitution guaranteed Kenyans a right to picket and assemble..
- iv) That the advertisement for EOI put out by the Narok County Council requested for supply, installation and commissioning of the pre-paid smart card system and not collection of revenue.
- v) That there was no way the Ethics and Anti-corruption Commission would have cleared the system and the Council when the contract had not been executed by then.
- vi) That before the pre-paid smart card system was introduced, there may have been some theft and pilferage of revenue but that with the introduction of the system, the levels of theft and pilferage had gone higher and could be over 90%.
- vii) That there is some conspiracy between the Treasurer of the Council and Equity Bank management in that some smart cards are issued by the bank which are not loaded yet are used to gain entry into the reserve.
- viii) The pre-paid smart card system had failed and councilors had for two weeks now been deployed to the entry points of the Mara to collect revenue and yet they should just be policy makers and not implementers and that even after collecting the monies at the gate, the councilors never deposited it in the bank accounts of the council but pocketed the same.
- ix) The Escrow account managed by Equity Bank on behalf of the county council was not accessible to the council and that the Council only received reports from Equity Bank.
- x) The Council was intimidating people in the county who were opposed to the smart card system for example by refusing to provide services to such people.
- xi) That the contract with Equity Bank should be cancelled and collection of revenue to revert to the council employees themselves.
- xii) The Council was having financial difficulties as bursary cheques it was issuing from the 19% allocation were bouncing.

- xiii) The Contract to operationalize the pre-paid smart card system was drafted by Equity Bank lawyers as it was skewed in favour of Equity Bank Limited.
- xiv) The Council in 1992 proposed a smart card system for revenue collection similar to that used by British Airways and the system being offered by Equity Bank was questionable
- xv) That the procurement law had been breached as what was advertised did not include management of cash for the Council by the bidder but was to stop at commissioning. The contract therefore went beyond its mandate and the Ministry of Local Government which oversees local authorities failed to revoke it.
- xvi) That if you add the total amount of money that will be paid to Equity Bank by the Council at the end of every year, it totals about Ksh. 200 million which is almost one third of the revenue collected by the County Council.
- xvii) One person questioned why the Council was in so much of a hurry to enter the pre-paid smart card system contract with Equity Bank Limited when it was aware that the devolved governments were coming very soon?
- xviii) The County Council was corrupt and the current council knowing that they would not be re-elected because of among others the requirements of the Election law, had launched a scheme to unduly enrich themselves by the revenue collected from the Mara reserve. The council had for example sold over 4000 acres of land in the Maasai Mara to an individual.
- xix) That the County Council had sold off the Mau forest, parts of Maasai Mara and there is real fear that they intended to auction the whole of Maasai Mara National Reserve.
- xx) That the local community wrote letters to the former Chairman (Solomon Moriaso) and the current chairman (Ole Nkadado) seeking meetings to discuss the system but they never received any response. That further the Treasurer of the County Council was corrupt and that they had written letters requesting for his transfer but that he had conspired with the OCPD of the area to intimidate them. They had thus lost faith in the Treasurer and requested that he be removed from Narok County Council.
- xxi) The Council should borrow from KWS the system used by the KWS to collect revenue and discard the system used by Equity Bank Limited

- xxii) That the pre-paid smart card system was only being used at six (6) entry points thus posing the question, why were paper tickets still being used and who was collecting money from the other gates
- xxiii) That Equity Bank had not invested any funds in the Pre-paid smart card service
- xxiv) That there is need to review or terminate the contract with Equity bank and a Localized Trust Fund Board established to oversee management of the system.

24. Second meeting with Equity bank management on 16th May, 2012 at Parliament

Buildings

The Committee recalled the management of Equity Bank Limited for a meeting at parliament buildings with a view of seeking clarifications to the following questions which had arisen during the Committee's tour of the Maasai Mara National Reserve in March, 2012:

- i) If Equity Bank collects money on behalf of the County Council of Narok and therefore is an agent of the Council
- ii) Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by the bank
- iii) Any loans or credit facilities that Equity Bank has extended to Narok County Council in respect of the Revenue Collection contract and what interest rate is charged on these loans
- iv) When Equity Bank plans to install the self service terminals (kiosks) in the Maasai Mara

24.1. The management of the Bank responded as follows to the questions raised:

- i) **If Equity Bank collects money on behalf of the County Council of Narok and therefore is an agent of the Council**
 - a) That the Contract entered into between Narok County Council and Equity Bank Limited dated 19th April, 2011 is not an Agreement for Revenue Collection but an Agreement for a Pre-paid Smart Card System as is evidenced by the title on the contract document and the content of the Agreement.
 - b) That the Agreement entered into between the two parties is on two fronts where Narok County Council opened a collection account with Equity Bank thus creating a Bank-Customer relationship and that this account could have been opened in any other bank other than Equity Bank.

- c) That the Bank is not an agent of the Council as the following requirements of an agency relationship do not exist:
 - The Bank has no authority to bind the Council with a third party and is not authorized to act on behalf of the Council.
 - The Account maintained at the Bank is under the full control of the council and money does not rest with Equity Bank at any time.
 - d) The Bank does not collect any money on behalf of the council as all amounts payable by visitors to Maasai Mara are directly credited to the Bank account of the Council and the council can draw this money at any time.
 - e) That the Bank is only availing its technology and infrastructure to facilitate the Council to be able to provide the smart card services
 - f) On whether the account operated by the Council earns interest, the Bank management said that it didn't earn any interest as the account is not a savings account because funds from the account are on-call at any time.
 - g) The Bank management also clarified that the two accounts maintained at the bank are collection accounts and that the cheques drawn by the Council are not from Equity Bank but could be from the other Banks with which the Council maintained accounts.
- ii) **Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by the bank**
- That during the proposal stage, the Bank submitted two options to the Council on how to go about the pre-paid Smart card system; One model was for the Council to provide all the infrastructure for the system which would cost about Ksh. 280 million and the second model was a co-investment model where the Bank was to provide some infrastructure while the Council would pay for some which would cost the Council Ksh. 28.4 million.
 - That the Council resolved to go with the second model of co-investment and therefore there is equipment which is owned by the Bank and another which is owned by the Council which they utilized the Ksh. 28.4 million to acquire e.g. the initial 30,000 smart cards, computers and solar infrastructure. The Bank management submitted to the Committee a schedule indicating the equipment owned by the Council and that owned by the Bank.
 - That there would be a recurrent cost to the Council which would include costs of acquiring smart cards, depreciation costs of the computers, solar panels, solar

batteries and inverters, general maintenance of field infrastructure & infrastructure at Council Head office.

iii) Any loans or credit facilities that Equity Bank has extended to Narok County Council in respect of the Revenue Collection contract and what interest rate is charged on these loans

- That the Council by a letter of offer dated 1st July, 2011 borrowed Ksh. 28.4 million from the bank as it did not have funds to invest in the system and the initial interest charged on the loan was 16%, which later rose to 25% after market rates of interest went up.
- That the lending agreement was a different contract as the Agreement for provision of the pre-paid smart card system provided that the Council invests Ksh. 28.4 million in the project; and the Council could have sourced these funds from any bank.

iv) When Equity Bank plans to install the self service terminals (kiosks) in the Maasai Mara

- That the Bank had imported the self service terminals late last year (2011) and they intend to install them as soon as the user acceptance testing is completed in June 2012.
- The Bank had however completed installation of all other equipment required at the entry points and replaced those that had been destroyed by the local communities when they held demonstrations in the Reserve.
- That Paper tickets were only used as a transitional measure before implementation of the pre-paid smart card system by the Bank in the year 2011 and that the smart card system was now fully operational.

v) The Bank management explained that since the signing of the contract in April 2011, a total of Ksh. 942 million for the County Council had passed through its branches and from January, 2012 to May 2012, the amount was Ksh. 210 million.

vi) On why the costs to the Council had increased from the contractual Ksh. 28.4 million to the current 55.2 million, the Bank explained that the Ksh. 28.4 million was only an initial investment cost and that there were other recurrent costs like costs of acquisition of smart cards and that the Council had incurred additional costs in replacing its equipment that had been destroyed twice during demonstrations in the Game reserve.

- vii) The Bank management also explained that there are staff employed by the Bank in its branches who deal with issuance of smart cards to travel agents and customers and those who maintain the software and support the smart card system but that these costs are borne by the bank.
- viii) The Bank management also clarified that the Bank had trained about 48 staff of the Council, some stationed at the entry points and others at the Headquarters on operation of the pre-paid smart card system and that since technology was constantly changing, they would seek to have training as a continuous exercise.

25. Second meeting with officials of Narok County Council on 16th May, 2012 at Parliament Buildings

The Committee met with officials of the Narok County Council for a second time at parliament buildings to seek clarifications on the following issues which had arisen after the Committee's tour of the Maasai Mara Game Reserve in March:

- i) Council to avail statements of accounts of Narok County Council between November 2011 and April 2012 and for the same period in 2010/2011
- ii) Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by Equity Bank
- iii) Terms of the Ksh. 200 million loan and the Ksh. 28 million loan extended to Narok County Council by Equity Bank Limited
- iv) The amount of money allocated to the 19% in the 2011/2012 FY and how much of this has been disbursed considering that members of the County alleged that cheques issued by the Council were bouncing.

25.1. The Narok County Council officials in response to the above questions responded as follows:

- i) **The Council to avail statements of accounts of Narok County Council between November 2011 and April 2012 and for the comparable period in 2010/2011**
 - The County Clerk submitted to the Committee a document indicating the comparative revenues collected for the periods requested by the Committee and promised to bring the statements of account by 23rd May, 2012 as they had been

taken by the Kenya National Audit Office (KENAO) which was undertaking an audit of the Councils accounts.

- ii) **Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by Equity Bank**
- The Clerk explained that the model chosen by the Council for provision of the pre-paid smart card service was a co-investment model where Equity Bank would partner with the Council but that each entity had equipment which it owned and he tabled a list indicating what the Bank owned and what the Council owned including the cost of each.
- iii) **Terms of the Ksh. 200 million loan and the Ksh. 28 million loan extended to Narok County Council by Equity Bank Limited**
- The Clerk clarified that the Council had not taken any loan facility with Equity bank of Ksh. 200 million but only borrowed Ksh. 28.4 million to finance its part of the investment costs and that the loan was to be paid in 24 months at an interest rate of 16% which the Bank had revised to 25% after commercial lending rates went up.
- iv) **The amount of money allocated to the 19% in the 2011/2012 FY and how much of this has been disbursed considering that members of the County alleged that cheques issued by the Council were bouncing.**
- The Clerk explained that the Council allocation for the 19% for the Financial Year 2011/2012 was Ksh. 190,125,914 and that expenditure so far (at end of third quarter-9 months) was Ksh.188,346,968 with the allocations disbursed as follows:
 - a) 50% of the total allocation goes to the eight group ranches (wards around the park)
 - b) The remaining 50% is distributed to the other 31 wards
 - c) That disbursements are done on monthly basis after the 19% computations have been done from Park Entry points.
 - d) That each ward has employed some Nursery school teachers under the 19% vote who are paid a total of Ksh. 5.9 million in salaries per month.

- The Clerk of the Council admitted that there were incidences where some cheques had been returned but not because of lack of funds but because of the following reasons:
 - a) Some of the payees overstayed with old series cheques and banked them when the cheque truncation system had been effected by the bank but that the Council had replaced those cheques.
 - b) The amount in figures differed with those in words on the cheques
 - c) Some payees presented cheques with one signature as opposed to two signatures as mandated by the Council.
- The Clerk presented to the Committee some of the cheques that had been returned with the reasons for their return indicated.

25.2. Intervention by Committee Members and Response by the Council

The Members sought the following clarifications from the Council officials:

i. Whether the Council was still using paper tickets for entry to the Mara

- a. That the smart card system was now fully operational and the Council had stopped using paper tickets.
- b. That the Council only used paper tickets after the award of the contract to Equity bank on three occasions between December 2011 and January, 2012 when there were demonstrations in the Mara and equipment of the Council for facilitating the smart card service had been destroyed.

ii. Whether the Council had sometime in March deployed councilors to the Mara to collect revenue

That the Council had resolved to deploy councilors at the entry points in the Maasai Mara not to collect revenue but to monitor revenue collection and observe how the smart card system works.

iii. The sources of revenue that the Council has and the percentage contributed by collections from the Maasai Mara including the Banks where these funds are banked.

The County Treasurer explained that the Council raises about 95% of its revenue from the Maasai Mara Reserve and the rest from the following sources:

- a) Local Authorities Transfer Fund from Central Government maintained at the National Bank of Kenya
- b) Cess fund from farming activities which is used to do access roads maintained at the National Bank of Kenya
- c) Single Business Permit banked in the General Revenue Account maintained at the National Bank of Kenya
- d) That the Council maintains two accounts at Equity Bank Limited; the Kenya Shilling collection account and the United States Dollar collection account.

iv. Why the Council was operating an Escrow account with Equity bank

- The Clerk explained that the Escrow account was designed for customers who pay in advance and intend to tour the Mara later in which case the funds would be set aside in the account until when the customer comes to use the funds.
- The Clerk however clarified that the Narok County Council had not yet opened the Escrow account but intended to do so in future when demand for pre-payment by customers increases.

26. FINDINGS

Mr. Speaker Sir,

From the information gathered above, the Committee established the following:

26.1. **Was the procurement law followed in award of the contract by Narok County Council to Equity Bank?**

In establishing this, the Committee scrutinized the tender documents provided to it by the Council and the appropriate sections of the Public Procurement and Disposals Act, 2005 and specifically sections providing the following:

- a) Method of procurement employed in obtaining the tender.
- b) Criteria used in evaluation of the responsive tenders-Was Equity Bank the company that got the highest score after evaluation?
- c) Sec 68 which provides that the awarded contract shall be based on the tender documents
- d) Sec. 84 which allows for negotiations between the Procurement Entity and the successful bidder
- e) Section providing for a dissatisfied candidate to seek redress with the Procurement Authorities

26.1.1. The Committee after review of the tender documents submitted by Narok County Council on the process followed before award of the contract to Equity Bank limited established the following:

- a. 17 firms in response to the advertisement for EOI submitted bids to offer the services requested. The 17 included: Copy Cat, Earthview, Co-operative Bank, Zinga Tech, Expand Kenya, Magic, Tracom (K), Compulnx, Technology Associates, Equity Bank, Global, Lachuru Investments, Bovin, Pluton ICT Limited, Craft Silicon and Secure Tech Consultancy.
- b. Evaluation of the Expression of Interests was done in accordance with a criteria developed by the Council. The criteria followed for evaluation of the EOI is shown in the table below:

S/NO	PARTICULARS/ITEMS	SCORE	REMARKS
A	<u>Mandatory Requirements</u> <ul style="list-style-type: none"> • Certificate of incorporation • Single Business Permit • Manufacturer's authorization • Two years audited accounts financial statements • Tax Compliance • VAT certificate • PIN certificate 	0%	
B	Comprehensiveness & Viability of the solution <ul style="list-style-type: none"> • Presentation and clarity of proposal • Timeliness of installation and activation • Training and knowledge transfer • Creativity for revenue generation • Scalability and growth 	10%	
C	System Security <ul style="list-style-type: none"> • Conceptual solution design framework and vision • Sequential diagrams, models and architecture of the solution • Security Solutions • Demonstration of a similar solution • Card management 	40%	
D	Organizational Capacity <ul style="list-style-type: none"> • Company profile • Firms experience in provision of similar services locally, regionally or internationally with emphasis on Kenya and Africa • Two site visits of smart card site offering financial solution/transactions 	20%	
E	Technical Capacity of Key Staff <ul style="list-style-type: none"> • Experience of support staff with card related solutions (CV's) of atleast 3 staff • Experience of support manager with ICT experience of at least 5 years • Other support staff 	10%	
F	Installation and service support proposal System deployment proposal Proposal on service level agreement Proposal on incident/problem solution	20%	

26.1.2. The firms that submitted bids for EOI appeared before a panel of the evaluation committee members and made a presentation on how they would offer the service.

26.1.3. The following firms did not appear before the evaluation committee and were disqualified:

- I. Craft Silicon
- II. Lachuru Investments
- III. Pluton ICT Limited
- IV. Secure Tech Consultancy and
- V. Technology Associates

26.1.4. In accordance with the evaluation criteria above, and after the presentations the Council shortlisted the best 5 firms and recommended that the committee undertakes a site visit to these firms. They were ranked with the following marks and in the following order:

RANK	FIRM	MARKS
1	Equity Bank	59
2	Cooperative Bank	55
3	Tracom (K)	54
4	Compulnx	51
5	Zinga Tech	49

26.1.5. The Evaluation Committee visited the above shortlisted five firms to evaluate them and awarded them the following marks:

RANK	FIRM	DATE VISITED	MARKS
1	Equity Bank	19 th July 2010	80.2
2	Cooperative Bank	21 st July 2010	62
3	Zinga Tech	20 th July 2010	59
4	Tracom (K) Ltd	20 th July 2010	55.2
5	Compulnx	21 st July 2010	40.8

26.1.7. After the site visit evaluation, the evaluation committee invited the five firms to present their financial quotations and to visit the Mara to cost their proposals. The financial evaluation criteria considered the following:

- i. System software quotations
- ii. System hardware quotations and
- iii. Project implementation and support quotation

26.1.8. The Committee considering all the criteria agreed upon by the Council ranked Equity Bank as the best and recommended that it be awarded the contract as it had displayed capabilities and security to offer to the Council the desired revenue collection solution. Their proposal also demonstrated high levels of system security and an added advantage of a back office and monitoring centre installed in the Council.

26.1.9. The Council agreed with the tender committee and sent a letter of award dated 8th November, 2010 to Equity Bank, which award Equity Bank agreed to.

26.1.10. It is in accordance with this award that the contract dated 19th April, 2011 and which is the subject matter of the Committee's investigation was drawn.

26.1.11. From the foregoing, the Committee concluded that the County Council of Narok followed the procurement law from the advertisement of the EOI to the award of the tender before awarding the contract. The Committee further established that none of the other candidates who submitted their bids raised a complaint with the procurement authorities regarding the process followed.

27. Does Equity Bank collect money on behalf of the Council and therefore the contract went beyond what was tendered for?

On whether Equity Bank collects revenue on behalf of the Narok County Council, the Committee established the following:

27.1. The Bank does not collect money on behalf of the council as all amounts payable by visitors to Maasai Mara are directly credited to the Bank accounts of the Council and the council can draw this money at any time.

27.2. The Committee was of the view that the public misunderstood the fact that the Council maintained the collection account with Equity Bank to mean that Equity Bank was collecting

money on behalf of the Council. The County Council of Narok is in full control of the collection accounts it maintains with Equity Bank and the relationship existing is a Bank-Customer relationship.

- 27.3. That further the Contract entered into between Narok County Council and Equity Bank Limited dated 19th April, 2011 is not an Agreement for Revenue Collection but an Agreement for provision of a Pre-paid Smart Card System as is evidenced by the title on the contract document.
28. **If the contract went beyond the terms of the awarded tender, what is the recourse?**
- a) Right to seek redress from the Review Board**
- 28.1. The Public Procurement and Disposal Act in section 25 establishes the Public Procurement Administrative Review Board to decide disputes concerning public procurement. Section 93 of the Act gives any candidate who may have suffered loss or risk suffering loss or damage due to breach of duty by the procuring entity to seek administrative review and if the Review Board finds any merit in the claim, it shall suspend the procurement proceedings.
- 28.2. The Committee on scrutinizing the procurement proceedings submitted to it by the County Council of Narok established that none of the candidates who participated in the tender raised any concerns or grievances about the legality and or regularity or otherwise of the procurement process followed.
- b) Can the contract be terminated?**
- 28.3. The Committee established that after award of a contract to a party by a procuring entity after the procurement law has been followed, the law that governs the relationship that exists thereafter is the Law of Contract. The parties are allowed to enter into a contract which binds them. The Law of contract presumes that all parties to the contract are equal and enter the contract voluntarily failure to which such a contract would be voidable. The parties to the contract develop terms of the contract which they agree will bind them during the currency of such a contract and in some cases even some duration after the termination of the contract.
- 28.4. The Committee established that in the current case, the parties entered a valid contract executed on 19th April, 2011 and which had been drafted by the joint lawyers of Equity Bank

and Narok County Council. The contract had a termination clause which defined the process the parties were required to follow if they wanted to terminate the contract and the implications of such termination.

- 28.5. The law of contract also specifies that only the parties to a contract and not third parties have locus when it comes to any matters affecting the contract. A third party has no legal basis of interfering with the contractual relationship existing between two parties. In this case therefore, only Narok County Council or Equity Bank has locus to initiate termination of the contract following the due process as laid down in the contract.

29. **The benefits of the pre-paid smart card system to the Council**

The Committee established from information received that the merits of the system far outweigh the demerits. The Pre-paid smart card system has the following benefits:

- 29.1. Curbing pilferage of revenue – The Committee established that the paper ticket system that was in use before was prone to abuse and corruption as some revenue clerks had printed their own receipt books which they used to fleece the Council of revenues. Therefore, use of the smart cards will reduce such pilferage as the cards cannot be easily duplicated. If enforced strictly therefore, the system will increase the Council's revenue significantly hence improving service delivery.
- 29.2. Easily available statistics – The system can enable the Council determine on the click of a button how many visitors have toured the Mara and the activities they have undertaken in the Reserve and therefore useful for billing purposes. It can also be used for planning purposes e.g. the Council can know which market the tourists come from during each month of the year

30. **What clauses in the contract are stakeholders opposed to?**

- 30.1. The Committee established that a majority of the stakeholders of the Maasai Mara Game Reserve support the establishment of the pre-paid smart card system. However some stakeholders disagree with some clauses in the contract because of misunderstandings as to the import of those clauses. Some of the clauses which the stakeholders identified include the following:

- a) Duration of the contract of ten years as being very long
- b) The Termination clause as being very punitive to the Council
- c) The service fee of 7% charged by Equity Bank Limited as being very high
- d) The clause providing that the Council will pay the difference of the service fee if the revenue collected in each financial year does not reach Ksh. 1.5 billion.

30.2. Having read the contract and from interactions with the various stakeholders, the Committee holds that some of these clauses may need to be reviewed.

31. Was there public participation before introduction of the system?

- 31.1. The Committee noted that the pre-paid smart card system was a new idea and the stakeholders should have been involved from the planning stages, considering that public participation had now been entrenched as a requirement in the Constitution of Kenya, 2010.
- 31.2. The Committee established that the County Council of Narok failed by not informing the public about the plans to introduce the pre-paid smart card system considering they hold and manage the Maasai Mara in trust for the people of Narok County. The officers employed by the County Council should also have been informed about the system and sensitized on its benefits so that they could have owned the process.

32. RECOMMENDATIONS

Mr. Speaker Sir,

Having analyzed the evidence and reaching the above findings, the Committee recommends as follows:

- 32.1. Sensitization and constant communication on the objective of the pre-paid smart card system to the people of Narok County, Government agencies such as Brand Kenya & Kenya Tourism Board and industry stakeholders such as Kenya Association of Tour Operators, Kenya Association of Travel Agents, the travel agents, tour agents, hotels and lodges. The officers of the County Council should also be educated about the system including the reasons for its introduction and its merits. This will ensure that all stakeholders understand the benefits of the smart card system and promote ownership.
- 32.2. Considering that the review clause (clause 3.2) in the contract allows for the parties to review the performance of the system, the Committee recommends that the parties review the clauses deemed contentious during the first review in April, 2013. This should be done by the County Government that comes in office after the next elections. The clauses recommended for review include:
 - a) Clause 6.1 requiring Council to pay the Bank a certain amount of money if the total revenue collected in any financial year is less than Ksh. 1.5 billion.
 - b) Clause 1.12 providing that the contract period will be ten (10) years
 - c) Clause 14 providing for instances when contract can be terminated as it is very punitive to the Council
 - d) Clause 6.1 providing that the Bank shall charge a service fee of seven (7) percent of the total revenue collected in the first four years which is a very high fee
- 32.3. The Committee further recommends that the County Council of Narok involves the community during the first review of the contract in April 2013 so that their views are taken on board
- 32.4. Considering that the smart card system if fully implemented will result in increased revenue for the County Council of Narok, the Committee recommends that the Council should

enforce usage of the pre-paid smart card system for all stakeholders in order to realize its full benefits.

- 32.5. All in all, in the interest of all stakeholders considering that the smart card system if properly implemented shall result in increased revenues for the Council, the Committee recommends that all efforts should be made to ensure the system works.

A large, stylized handwritten signature in black ink, slanted upwards from left to right. The signature is fluid and cursive, with a prominent loop at the bottom left and a long, sweeping stroke extending towards the top right.

HON. DAVID NGUGI, MP,

CHAIRMAN, DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES

MINUTES OF THE 69TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON TUESDAY, 21ST AUGUST, 2012 IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS, AT 3.30 PM

PRESENT

1. Hon. David Ngugi, MP - Chairman
2. Hon. Mahamud Sirat, MP - Vice Chairman
3. Hon. Gideon Konchella, MP
4. Hon. Oyugi Magwanga, MP
5. Hon. Gideon Mung'aro, MP
6. Hon. Zakayo Cheruiyot, MP
7. Hon. Shakeel Shabbir, MP

ABSENT WITH APOLOGY

1. Hon. Masoud Mwahima, MP
2. Hon. Joshua Kutuny, MP
3. Hon. Fahim Twaha, MP

IN ATTENDANCE

1. Mr. Edward Libendi - Clerk Assistant III
2. Mr. Shadrack Makokha - Parliamentary Intern

KENYA NATIONAL ASSEMBLY

MIN. NO./SC2/288/2012:

- PRELIMINARIES

The Chairman called the meeting to order at 3.30 pm and opened the meeting with a word of prayer. He informed the Committee that Members had been given a copy of the report to read and that the purpose of the meeting was to adopt the report.

MIN. NO./SC2/289/2012:-

CONFIRMATION OF MINUTES OF PREVIOUS SITTING

Minutes of the 67th Sitting of the Committee held on 13th July, 2012 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by the Hon. Gideon Konchella, MP and seconded by Hon. Joshua Kutuny, MP.

MIN. NO. /SC2/300/2012:-

ADOPTION OF REPORT

The Chairman took the Members through the report and Members agreed that the report reflected the findings of the Committee from the investigation conducted.

Members then adopted the report subject to deletion of paragraph 32.6 of the recommendations.

MIN. NO./SC2/301/2012: - ADJOURNMENT

There being no other business, the meeting was adjourned at Half past Four O'clock.

SIGNATURE.....
(Chairperson)

DATE 21/05/2012

MINUTES OF THE 67TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES HELD ON FRIDAY, 13TH JULY, 2012 AT ENASHIPAI RESORT, NAIVASHA AT 10.00 AM

PRESENT

1. Hon. David Ngugi, MP - Chairman
2. Hon. Joshua Kutuny, MP
3. Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

1. Hon. Mahamud Sirat, MP - Vice Chairman
2. Hon. Masoud Mwachima, MP
3. Hon. Fahim Twaha, MP
4. Hon. Oyugi Magwanga, MP
5. Hon. Gideon Mung'aro, MP
6. Hon. Zakayo Cheruiyot, MP
7. Hon. Shakeel Shabbir, MP

IN ATTENDANCE

1. Mr. Edward Libendi - Clerk Assistant III
2. Mr. Shadrack Makokha - Parliamentary Intern

KENYA NATIONAL ASSEMBLY

MIN. NO./SC2/281/2012:

- PRELIMINARIES

The Chairman called the meeting to order at 10.00 am and opened the meeting with a word of prayer. He briefed the Members that the Committee had gone through the first draft and that what was left was to review the draft to ensure the amendments the Committee had proposed had been incorporated in the report.

MIN. NO./SC2/282/2012:-

CONFIRMATION OF MINUTES OF PREVIOUS SITTINGS

- i). Minutes of the 61st Sitting of the Committee held on 16th May, 2012 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by the Hon. Gideon Konchella, MP and seconded by Hon. Joshua Kutuny, MP.
- ii). Minutes of the 60th Sitting of the Committee held on 16th May, 2012 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by the Hon. Gideon Konchella, MP and seconded by Hon. Joshua Kutuny, MP.
- iii). Minutes of the 36th Sitting of the Committee held on 14th December, 2011 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by the Hon. Gideon Konchella, MP and seconded by Hon. Joshua Kutuny, MP.
- iv). Minutes of the 35th Sitting of the Committee held on 6th December, 2011 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by the Hon. Joshua Kutuny, MP and seconded by Hon. Gideon Konchella, MP.

v). Minutes of the 34th Sitting of the Committee held on 6th December, 2011 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by the Hon. Joshua Kutuny, MP and seconded by Hon. Gideon Konchella, MP

vi). Minutes of the 33rd Sitting of the Committee held on 6th December, 2011 were confirmed as a true record of the deliberations and signed by the Chairperson after being proposed by the Hon. Joshua Kutuny, MP and seconded by Hon. Gideon Konchella, MP

MIN. NO. /SC2/283/2012:-

REPORT WRITING

The Chairman took the Members through the draft report page by page and Members agreed that the report reflected the findings of the Committee from the investigation conducted. Members then agreed to meet at a later date when they have a majority membership to adopt the report for tabling in parliament.

MIN. NO. /SC2/284/2012:

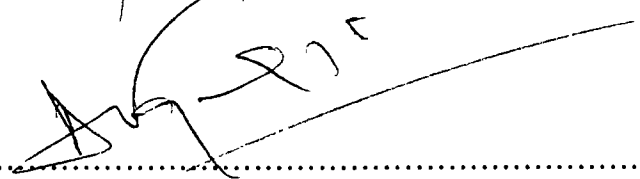
ADJOURNMENT

There being no other business, the meeting was adjourned at Half past Four O'clock..

SIGNATURE.....

26/08/2012
(Chairperson)

DATE



MINUTES OF THE 61ST SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES (2nd meeting with Narok County Council) HELD ON WEDNESDAY, 16TH MAY, 2012 IN THE MAIN CONFERENCE ROOM, 1ST FLOOR, COUNTY HALL AT 12.30 PM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Joshua Kutuny, MP
Hon. Oyugi Magwanga, MP
Hon. Zakayo Cheruiyot, MP
Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

Hon. Mahamud Sirat, MP - Vice-Chairman
Hon. Masoud Mwahima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP
Hon. Gideon Mung'aro, MP

IN ATTENDANCE

Mr. Edward Libendi - Clerk Assistant III
Mr. Shadrack Makokha - Parliamentary Intern

Narok County Council

Mr. Pius Mutemi - County Clerk
Mr. Wanyonyi - County Treasurer
Mr. Joseph Ole Songori - County Revenue Officer

MIN. NO./SC2/264/2012: - **Preliminaries**

The Chairman called the meeting to order at 12.30 pm and opened the meeting with a word of prayer. Members then adopted the agenda of the meeting which was:

- Meeting with Narok County Council officials over the Pre-paid Smart card system agreement between Equity Bank and Narok County Council. The Chairman then introduced the Members of the Committee present and invited the County Clerk to introduce his colleagues.

MIN. NO./SC2/265/2012: -Presentation by Narok County Council

The Chairman explained to the Council officials that the Committee had resolved to recall them to obtain clarifications on a number of issues which had arisen after the Committee's tour of the Maasai Mara Game Reserve in March. The Committee sought the following information from the County Council officials:

- i) The Council to avail statements of accounts of Narok County Council between November 2011 and April 2012 and for the same period in 2010/2011
- ii) Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by Equity Bank
- iii) Terms of the Ksh. 200 million loan and the Ksh. 28 million loan extended to Narok County Council by Equity Bank Limited
- iv) The amount of money allocated to the 19% in the 2011/2012 FY and how much of this has been disbursed considering that members of the County alleged that cheques issued by the Council were bouncing.

The County Clerk in response to the above questions responded as follows:

- i) **The Council to avail statements of accounts of Narok County Council between November 2011 and April 2012 and for the same period in 2010/2011**
 - The County Clerk submitted to the Committee a document indicating the comparative revenues for the periods requested by the Committee and promised to bring the statements of account by 23rd May, 2012 as they had been taken by the Kenya National Audit Office (KENAO) which was undertaking an audit of the Councils accounts.
- ii) **Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by Equity Bank**
 - The Clerk explained that the model chosen by the Council for provision of the pre-paid smart card service was a co-investment model where Equity Bank would partner with the Council but that each entity had equipment which it owned and he tabled a list indicating what the Bank owned and what the Council owned including the cost of each.
- iii) **Terms of the Ksh. 200 million loan and the Ksh. 28 million loan extended to Narok County Council by Equity Bank Limited**
 - The Clerk clarified that the Council had not taken any loan facility with Equity bank of Ksh. 200 million but only borrowed Ksh. 28.4 million to finance its part of the investment costs and that the loan was to be paid in 24 months at an

interest rate of 16% which the Bank had revised to 25% after commercial lending rates went up.

iv) The amount of money allocated to the 19% in the 2011/2012 FY and how much of this has been disbursed considering that members of the County alleged that cheques issued by the Council were bouncing.

- The Clerk explained that the Council allocation for the 19% for the Financial Year 2011/2012 was Ksh. 190,125,914 and that expenditure so far (at end of third quarter-9 months) was Ksh.188,346,968 with the allocations disbursed as follows:
 - a) 50% of the total allocation goes to the eight group ranches (wards around the park)
 - b) The remaining 50% is distributed to the other 31 wards
 - c) That disbursements are done on monthly basis after the 19% computations have been done from Park Entry points.
 - d) That each ward has employed some Nursery school teachers under the 19% vote who are paid a total of Ksh. 5.9 million in salaries per month.
- The Clerk admitted that there were incidences where some cheques had been returned but none was because of lack of funds but because of the following reasons:
 - a) Some of the payees overstayed with old series cheques and banking them when the cheque truncation system had been effected by the bank but that the Council had replaced them.
 - b) The amount in figures differing with those in words on the cheques
 - c) Some payees present cheques with one signature as opposed to two signatures as mandated by the Council.
- The Clerk presented to the Committee some of the cheques that had been returned with the reasons for their return indicated.

Intervention by Committee Members and Response by the Council

The Members sought the following clarifications from the Council officials:

- i. **Whether the Council was still using paper tickets for entry to the Mara**

- That the smart card system was now fully operational and the Council had stopped using paper tickets. That the Council only used paper tickets after the award of the contract to Equity bank on three occasions between December 2011 and January, 2012 when there were demonstrations in the Mara and equipment of the Council had been destroyed.

ii. Whether the Council had sometime in March deployed councilors to the Mara to collect revenue

That the Council had resolved to deploy councilors at the entry points in the Mara not to collect revenue but to monitor revenue collection and observe how the system works.

iii. The sources of revenue that the Council has and the percentage contributed by collections from the Maasai Mara including the Banks where these funds are banked.

- The County Treasurer explained that the Council raises about 95% of its revenue from the Maasai Mara Reserve and the rest from the following sources:
 - a) Local Authorities Transfer Fund from Central Government maintained at the National Bank of Kenya
 - b) Cess fund from farming activities which is used to do access roads maintained at the National Bank of Kenya
 - c) Single Business Permit banked in the General Revenue Account maintained at the National Bank of Kenya
- That the Council maintains two accounts at Equity Bank Limited; the Kenya Shilling collection account and the United States Dollar collection account.

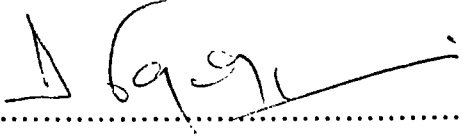
iv. Why the Council was operating an Escrow account with Equity bank

- The Clerk explained that the Escrow account was designed for customers who pay in advance and intend to tour the Mara later in which case the funds would be set aside in the account until when the customer comes to use the funds.
- The Clerk however clarified that the Narok County Council had not yet opened the Escrow account but intended to do so in future when demand for pre-payment by customers increases.

MIN. NO./SC2/266/2012: - Any Other Business and Adjournment

The Chairman thanked the officials of the Narok County Council for finding time to attend the meeting and requested the Clerk to ensure that he submits to the Committee the statements of account of the Council as requested.

There being no other business to transact, the Chairman adjourned the meeting at Two O'clock.

SIGNATURE.....
(Chairperson)

DATE13/07/2012.....

MINUTES OF THE 60TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES (2nd meeting with Equity Bank) HELD ON WEDNESDAY, 16TH MAY, 2012 IN THE MAIN CONFERENCE ROOM, 1ST FLOOR, COUNTY HALL AT 11.00 AM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Joshua Kutuny, MP
Hon. Oyugi Magwanga, MP
Hon. Zakayo Cheruiyot, MP
Hon. Gideon Konchella, MP

ABSENT WITH APOLOGY

Hon. Mahamud Sirat, MP - Vice-Chairman
Hon. Masoud Mwahima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP
Hon. Gideon Mung'aro, MP

IN ATTENDANCE

Mr. Edward Libendi - Clerk Assistant III
Mr. Shadrack Makokha - Parliamentary Intern

Equity Bank Management

Ms. Mary Wamae - Company Secretary
Mr. Allan Waititu - Director of ICT & Projects

MIN. NO./SC2/261/2012: - **Preliminaries**

The Chairman called the meeting to order at 11.25 am and opened the meeting with a word of prayer. Members then adopted the agenda of the meeting which was:

- Meeting with Equity Bank Management over the Pre-paid Smart card system between Equity Bank and Narok County Council. The Chairman then introduced the Members of the Committee present and invited the leader of the delegation from Equity Bank to introduce his colleagues.

MIN. NO./SC2/262/2011: -Presentation by Equity Bank Management

The Chairman explained to the Bank management that the Committee after touring the Maasai Mara Game Reserve and holding meetings with members of the public in Narok had felt it wise to recall the management of the Bank to seek clarifications to the following questions:

- i) If Equity Bank collects money on behalf of the County Council of Narok and therefore is an agent of the Council
- ii) Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by the bank
- iii) Any loans or credit facilities that Equity Bank has extended to Narok County Council in respect of the Revenue Collection contract and what interest rate is charged on these loans
- iv) When Equity Bank plans to install the self service terminals (kiosks) in the Maasai Mara

The Company Secretary before beginning the Bank's response, conveyed the apologies of the Managing Director who had travelled out of the country for an earlier scheduled meeting and went on to respond as follows to the questions raised:

- i) If Equity Bank collects money on behalf of the County Council of Narok and therefore is an agent of the Council**
 - a) That the Contract entered into between Narok County Council and Equity Bank Limited dated 19th April, 2011 is not an Agreement for Revenue Collection but an Agreement for a Pre-paid Smart Card System as is evidenced by the title on the contract document and the content of the Agreement.
 - b) That the Agreement entered into between the two parties is on two fronts where Narok County Council opened a collection account with Equity Bank thus creating a Bank-Customer relationship and that this account could be opened in any other bank other than Equity Bank.
 - c) That the Bank is not an agent of the Council as the following requirements of an agency relationship do not exist:

- The Bank has no authority to bind the Council with a third party and is not authorized to act on behalf of the Council
 - The Account maintained at the Bank is under the full control of the council and money does not rest with Equity Bank at any time.
- d) The Bank does not collect any money on behalf of the council as all amounts payable by visitors to Maasai Mara are directly credited to the Bank account of the Council and the council can draw this money at any time.
- e) That the Bank is only availing its technology and infrastructure to facilitate the Council to be able to provide the smart card services
- f) On whether the account operated by the Council earns interest, the Bank management said that it didn't earn any interest as the account is not a savings account because funds from the account are on-call at any time.
- g) The Bank management also clarified that the two accounts maintained at the bank are collection accounts and that the cheques drawn by the Council are not from Equity Bank but could be from the other Banks with which the Council maintained accounts.

ii) Of the equipment used in the provision of the smart card system, which one is owned by the County Council of Narok and which one is owned by the bank

- That during the proposal stage, the Bank submitted two options to the Council on how to go about the pre-paid Smart card system; One model was for the Council to provide all the infrastructure for the system which would cost about Ksh. 280 million and the second model was a co-investment model where the Bank was to provide some infrastructure while the Council would pay for some which would cost the Council Ksh. 28.4 million.
- That the Council resolved to go with the second model of co-investment and therefore there is equipment which is owned by the Bank and another which is owned by the Council which they utilized the Ksh. 28.4 million to acquire e.g. the initial 30,000 smart cards, computers and solar infrastructure. The Bank management submitted a schedule indicating the equipment owned by the Council and that owned by the Bank.

- That there would be a recurrent cost to the Council which would include costs of acquiring cards, depreciation costs of the computers, solar panels, solar batteries and inverters, general maintenance of field infrastructure & infrastructure at Council Head office.

iii) Any loans or credit facilities that Equity Bank has extended to Narok County Council in respect of the Revenue Collection contract and what interest rate is charged on these loans

- That the Council by a letter of offer dated 1st July, 2011 borrowed Ksh. 28.4 million from the bank as it did not have funds to invest in the system and the initial interest charged on the loan was 16%, which later rose to 25% after market rates of interest went up.
- That the lending agreement was a different contract as the Agreement for provision of the pre-paid smart card system provided that the Council invests Ksh. 28.4 million in the project; and the Council could have sourced these funds from any bank.

iv) When Equity Bank plans to install the self service terminals (kiosks) in the Maasai Mara

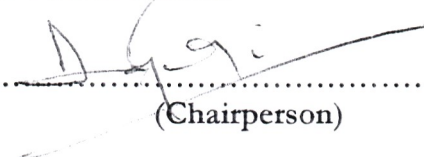
- That the Bank had imported the self service terminals late last year (2011) and they intend to install them as soon as the user acceptance testing is completed in June 2012.
- The Bank had however completed installation of all other equipment required at the entry points and replaced those that had been destroyed by the local communities when they held demonstrations in the Reserve.
- That Paper tickets were only used as a transitional measure before implementation of the pre-paid smart card system by the Bank in the year 2011 and that the smart card system was now fully operational.

- v) The Bank management explained that since the signing of the contract in April 2011, a total of Ksh. 942 million had passed through its branches for the Council and from January, 2012 to May 2012, the amount was Ksh. 210 million.

- vi) On why the costs to the Council had increased from the contractual Ksh. 28.4 million to the current 55.2 million, the Bank explained that the Ksh. 28.4 million was only an initial investment cost and that there were other recurrent costs like costs of acquisition of smart cards and that the Council had incurred additional costs in replacing its equipment that had been destroyed twice during demonstrations in the Game reserve.
- vii) The Bank management also explained that there are staff employed by the Bank in its branches who deal with issuance of smart cards to travel agents and customers and those who maintain the software and support the smart card system but that these costs are borne by the bank.
- viii) The Bank management also clarified that the Bank had trained about 48 staff of the Council, some stationed at the entry points and others at the Headquarters on operation of the pre-paid smart card system and that since technology was constantly changing, they would seek to have training as a continuous exercise.

MIN. NO./SC2/263/2012: - Any Other Business and Adjournment

The Chairman thanked the Equity Bank management for the information and clarifications they had given to the Committee. There being no other business to transact, the Chairman adjourned the meeting at Half past Twelve O'clock.

SIGNATURE.....
 (Chairperson)

DATE 13/07/2012

MINUTES OF THE 36TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES (With Hon. Ole Ntimama) HELD ON WEDNESDAY 14TH DECEMBER, 2011 IN THE MAIN DINING ROOM, MAIN PARLIAMENT BUILDINGS, AT 11.00 AM

PRESENT

Hon. David Ngugi, MP - Chairman
Hon. Oyugi Magwanga, MP
Hon. Gideon Konchella, MP
Hon. Zakayo Cheruiyot, MP
Hon. Joshua Kutuny, MP

ABSENT WITH APOLOGY

Hon. Mahamud Sirat, MP - Vice-Chairman
Hon. Masoud Mwachima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP
Hon. Ali Hassan Joho, MP
Hon. Gideon Mung'aro, MP

IN ATTENDANCE

Mr. George Gazemba - Clerk Assistant
Mr. Edward Libendi - Clerk Assistant

MIN. NO./SC2/197/2011: - **Preliminaries**

The Chairman called the meeting to order at 11.30 am and opened the meeting with a word of prayer. He thanked the Minister for Culture and National Heritage, Hon. Ntimama for finding time to appear before the Committee and informed him that the Committee invited him because he is one of the Members of Parliament from Narok County and therefore could help the Committee understand the intrigues around the Smart Card system that Equity Bank had been contracted to install in Maasai Mara.

MIN. NO./SC2/198/2011: - **Presentation by Hon. Ntimama**

The Chairman then invited the Hon. Minister Ole Ntimama, MP to brief the Committee what he knew about the Contract after which the Committee Members would seek for clarification if required. The Minister stated as follows:

- i) That over the years, there has been a lot of graft in the Maasai Mara especially with regard to collection of park entry fees at the entry points to the Mara and from the hotels within the Mara. That after the Kenya Wildlife Services introduced the E-ticketing system in

some of its parks that had seen reduction of pilferage and increase in revenue, the County Council of Narok had sought to introduce the same system in Maasai Mara.

- ii) That the tender for supply of these services were advertised by the Council in 2010 and the contract later awarded to Equity Bank Limited.
- iii) That the contract for installation of the system has support of the majority of the people of Narok and it was only a select few who may have been benefiting from the paper tickets that were complaining.
- iv) That he fully supports installation of the smart card system in the Maasai Mara as the same would see a rise in revenue collected by the Council and therefore result in benefits to a majority of the people of Narok County Council.

Interventions by Committee Members

The Members sought the following clarifications from the Minister:

- i) Whether as one of the area MPs and the most senior politician from Narok County, he had tried to call the local leadership of Narok opposed to the system to try and resolve the issue locally.
- ii) If he was aware that the contract between Equity Bank Limited and Narok County Council provided that Equity Bank would be charging the Council a fee of 7% of the total revenue collected.
- iii) If he was aware that the contract terms provide for review of the contract so that if after the next general elections, the County Government is unhappy with the performance of the pre-paid smart card system, it can ask for the contract to be reviewed.
- iv) Whether he has any information that the people opposed to the project have vested interest in the matter

Response by the Hon. Minister, Ntimama

- i) That he was in England when the skirmishes and demonstrations broke out in Narok town and in the Mara over the system and that no one had contacted him to try and find a solution to the grievances as local leaders.
- ii) The minister stated that he supported the smart card system generally but would advocate for the parties to look at such clauses as the one that required the Council to pay the Bank, as fees, a percentage of the revenue collected if it does not raise the threshold.
- iii) The Minister said he was aware the contract had an exit clause
- iv) That the Council of Narok has suffered from looting of revenues generated from the Mara for many years and the Ministry of Local Government supported the looting and that the people opposed to the system could have an interest in the matter.
- v) That there is need for cooperation among the leaders of the County in order to ensure that revenue collected from the Mara benefits the people of Narok.

Conclusion by the Chairman

The Chairman once again thanked the Minister for finding time to brief the Committee and requested him to convene a meeting of the local leadership of the Narok County to try and reach at an amicable solution to the challenge as the squabbles and demonstrations were hurting tourism activities and consequently the economy of the County.

MIN. NO./SC2/199/2011:

- Any Other Business and Adjournment

There being no other business, the Chairman adjourned the meeting at Fifteen Minutes past Twelve Noon.

SIGNATURE.....

(Chairperson)

DATE

MINUTES OF THE 35TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES (with Equity Bank Limited) HELD ON TUESDAY 6TH DECEMBER, 2011 IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS, AT 12.00 NOON

PRESENT

Hon. David Ngugi, MP	-	Chairman
Hon. Mahamud Sirat, MP	-	Vice-Chairman
Hon. Ali Hassan Joho, MP		
Hon. Oyugi Magwanga, MP		
Hon. Gideon Konchella, MP		
Hon. Zakayo Cheruiyot, MP		
Hon. Joshua Kutuny, MP		
Hon. Gideon Mung'aro, MP		

ABSENT WITH APOLOGY

Hon. Masoud Mwachima, MP	
Hon. Fahim Twaha, MP	
Hon. Shakeel Shabbir, MP	

IN ATTENDANCE

Dr. James Mwangi	-	MD, Equity Bank Limited
Mr. Allan Waititu	-	Director, Equity Bank
Mr. George Gazemba	-	Clerk Assistant
Mr. Edward Libendi	-	Clerk Assistant

MIN. NO./SC2/193/2011: - **Preliminaries**

The Chairman called the meeting to order at 12.10 pm and opened the meeting with a word of prayer. He thanked the Managing Director of Equity Bank for honouring the summons of the Committee despite the short notice. He then informed them that the reason the Committee had invited them was for the Committee to hear their side of the story regarding the concerns raised in the House on the pre-paid smart card system contract between Equity Bank Limited and the Narok County Council.

The Chairman then informed the CEO that the Committee had met with the Member of Parliament who had raised the matter on the floor of the House and also listened to the County Council officials. The Chairman then invited the Committee Members present to raise any issues and clarifications that they wanted the Equity Bank CEO to clarify regarding the matter.

MIN. NO./SC2/194/2011: - **Meeting with Equity Bank representatives**

The Members sought to know the following from the CEO of Equity Bank Limited:

- i) Why it took the Bank so long after entering the agreement with the Council to install the pre-paid smart card system.
- ii) Which advocates drafted the pre-paid smart card system agreement; were they advocates for the Bank or of the Council?
- iii) What is the role of Equity Bank in the whole agreement and does it extend to revenue collection?
- iv) Whether Equity Bank had completed installation of the system and was it now operational or were they still using paper tickets at the entrances to the game reserve?
- v) Whether Equity Bank had posted its staff to the entry points to the Maasai Mara to manage and run the pre-paid smart card system.
- vi) Any challenges the system installed could face and whether the Council had obtained value for money while getting the system
- vii) Any guarantees that the system was not easy to manipulate and therefore lead to lose of revenue like the paper ticket system they were trying to get rid of.
- viii) How do tourists in foreign countries pay the fees required to access the Game Reserve?
- ix) Considering that the fees to foreigners is charged in US dollars, who benefits in case of currency fluctuations

MIN. NO./SC2/195/2011: - **Response by Equity Bank CEO**

- i) That based on the advertisement for EOI put out by the Council, Equity Bank entered agreement only to supply, install and commission the pre-paid smart card system which they were doing and that the planned go-live date was 12th December, 2011, which the Bank will successfully achieve.

- ii) That Equity Bank does not collect and is not collecting money on behalf of the Council but that it is the travel agents who collect the money and bank it straight into the Council Collection Account maintained at Equity Bank. That the Bank only offers a platform for revenue collection but does not engage in the collection.
- iii) The Council itself manages the pre-paid smart card system as the Bank had trained the Council personnel onsite for two weeks on how to manage the system as required in the contract and that there were no Equity Bank staff at the entry points to the Maasai Mara.
- iv) That the Council preferred to hold the Council Collection Account at Equity Bank Limited rather than with another Bank so as to benefit from the large number of branches of Equity bank and the Bank's branchless banking system in order to reach their clients and tour operators more effectively.
- v) That it took long to install the system because of various challenges one being that the Mara has no electricity and it took Equity Bank two months to map out the processes needed to install the system before moving onsite. The delay was also necessitated by the fact that the Council needed to buy the smart cards before the process could commence which is the cost contained in the Ksh. 28.4 million that was to be incurred by the Council.
- vi) That the Bank has now pilot-tested the system and installed the equipment at all points of entry and at the airstrip and that the system was now operational.
- vii) That the Contract document was drafted by the joint lawyers of Equity Bank Limited and those of Narok County Council.
- viii) That the system is novel and water tight and is not therefore subject to manipulation and will thus avoid leakage of revenue. This is because the system/the card is chip based and cannot be tampered with.
- ix) That the biggest challenge posed by the system is the stability of the system and therefore the greatest worry is the system going down and yet tourism is a 24 hour affair. This has however been taken care of as the data center at Equity Bank is supplied by dedicated power feeds from two sub-stations. The Bank has also put in place Disaster Recovery and Business Continuity plans to take care of any eventuality and the Bank's systems are operational 24 hours a day.

- x) That the speed at which technology changes is fast and this could pose a challenge to the system which has however been sorted out as the whole system is hosted by Equity Bank and Narok County Council therefore leverages on updates by Equity Bank to the Bank's system.
- xi) That from June to November, 2011, the revenue collected from the Maasai Mara by the Narok County Council had more than doubled compared to the previous year.
- xii) The Bank does not come into contact with the money collected or deal with any money collection but that money is collected by travel agents and goes directly to the Narok County Council accounts.
- xiii) That tourists in international destinations who wish to visit the Mara can pay for the tickets online as details on how to go about it are on the website and obtain the smart card which is then swiped at the gates of entry to the park.
- xiv) That Equity Bank does not benefit from any Exchange rate gains in case of fluctuations in the dollar rates as the money paid by people in foreign countries in dollars goes straight to the Council Account which is operated by the Council.
- xv) That the Contract has an exit clause that provides for ways in which the parties can end the contract or review it if any one is dissatisfied with its terms and it was therefore not going to affect operations of the County Government after the next General Elections.
- xvi) That Equity Bank is developing a credit facility that will boost the number of visitors to the Maasai Mara as it will enable domestic tourists who want to tour the Mara to obtain loans from the 175 branches of Equity Bank countrywide and visit the Maasai Mara thus increasing the Council's revenues.
- xvii) That the Council will benefit from the partnership with Equity Bank as the Bank has a website which receives approximately 1 million hits every month and which could translate to enormous revenue for Narok County Council.
- xviii) That the Council also leveraged on the Bank's systems and infrastructure e.g. Youtube, radio and TV and the Free International Money Transfer Gateway using the Visa card.
- xix) The pre-paid smart card System has various other benefits and capabilities which will be beneficial to the Council namely:-
 - a) It is used for entry & exit;

- b) Used in identifying those visitors that overstay in the reserve;
- c) Provides details of properties visited inside and outside the park and the length of stay – this enables the Council to bill royalties;
- d) The smart card can be fed with activities tourists intend to do in the park e.g. balloon safaris, camping thus makes billing easy;
- e) Smart cards can also be fed with penalties for off-road driving and littering so that the tour agent pays before exit;
- f) The system is integrated with other payment systems enabling payment through VISA, MasterCard and China Union Pay;
- g) The System contains Financial and statistical reporting capabilities thus can be used to identify the number of visitors who visited the Reserve, their country of origin, gender of visitors and repeat visitors. With this information the Council can plan for targeted tourism promotion
- h) There are reusable smart cards which can be issued e.g. to tour agents

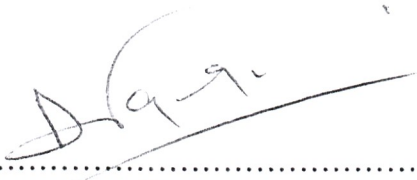
Conclusion by the Chairman

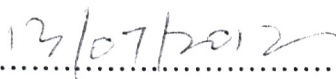
The Members advised the Bank officials that concerning merit, they were satisfied that the system as presented appeared profitable to the County Council and that there was therefore need for sensitization of the local people, the Council officials and the local leadership so as to obtain buy-in and support for the system.

MIN. NO./SC2/196/2011:

- Any Other Business and Adjournment

There being no other business, the Chairman adjourned the meeting at Half past One O'clock.

SIGNATURE.....

 (Chairperson)

DATE


MINUTES OF THE 34TH SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES (with Narok County Council) HELD ON TUESDAY 6TH DECEMBER, 2011 IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS, AT 11.00 AM

PRESENT

Hon. David Ngugi, MP	-	Chairman
Hon. Mahamud Sirat, MP	-	Vice-Chairman
Hon. Ali Hassan Joho, MP		
Hon. Oyugi Magwanga, MP		
Hon. Gideon Konchella, MP		
Hon. Zakayo Cheruiyot, MP		
Hon. Joshua Kutuny, MP		
Hon. Gideon Mung'aro, MP		

ABSENT WITH APOLOGY

Hon. Masoud Mwachima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP

IN ATTENDANCE

Mr. Pius Mutemi	-	County Council Clerk
Mr. Joseph Songori	-	County Revenue Officer
Mr. Wanyonyi	-	County Treasurer
Mr. George Gazemba	-	Clerk Assistant
Mr. Edward Libendi	-	Clerk Assistant

MIN. NO./SC2/189/2011: - **Preliminaries**

The Chairman called the meeting to order at 11.00 am and opened the meeting with a word of prayer. He welcomed the Clerk of the County Council of Narok and his delegation and thanked them for honouring the summons by the Committee despite the short notice. He then introduced the Committee Members present and invited the Clerk to introduce his group. The Chairman then informed the Clerk that the Committee had been mandated by Parliament to investigate the pre-paid smart card system Agreement between the Narok County Council and Equity Bank Limited.

MIN. NO./SC2/190/2011: - **Meeting with Narok County Council**

The Committee members sought to know the following information from the officials of the County Council of Narok:

- i) Whether the tender to obtain the pre-paid smart card system was properly obtained and whether it was sanctioned by the Council of Narok and the Ministry of Local Government
- ii) Whether the tender process that led to award of the tender to Equity Bank was in accordance with the law
- iii) Whether the Contract signed between the Council and Equity Bank was in accordance with the contents of the advertisement made by the Council requesting for bids
- iv) Whether there is an exit clause and what the terms of the exit clause are
- v) Whether the Council officials are satisfied that the E-Payment system is good for the council

MIN. NO./SC2/191/2011: - Presentation by the County Council Officials

The Narok County Council Officials made a presentation stating as follows:

- i) In April 2005, the then Minister for Local Authorities, Hon. Musikari Kombo directed all local authorities to automate their systems of revenue collection and requested that all local authorities begin moving towards that direction.
- ii) The County Council of Narok in compliance with the directive from the Minister decided to automate revenue collection at the Maasai Mara Game Reserve and therefore advertised an Expression of Interest requesting bids for provision of a pre-paid smart card system at the Game Reserve.
- iii) That the procurement process that led to advertisement for the system was approved by a full council meeting and by the Ministry of Local Government.
- iv) That before introduction of the pre-paid smart card system, the Council could have been collecting only about 40% of the revenue from the Maasai Mara as the rest is pilfered by the revenue collection clerks.
- v) That the Council collects revenue from the Hotels within the Maasai Mara based on bed occupancy which the hotels are supposed to declare but the hotels collude with the revenue clerks and tour operators and declare less occupancy rate.

- vi) The Council officials visited the Kenya Wildlife Services (KWS) and the Tanzania National Parks Authority (TANAPA) which ran similar systems to learn from them how the systems functioned and their merits.
- vii) The Council received bids from 17 firms, evaluated the bids and awarded the tender on 8th November 2010 to Equity Bank Limited. That the signing of the contract was however done on 19th April, 2011 after concluding the on-going negotiations between the parties.
- viii) That when Equity Bank went to install the system, there was resistance from the Council revenue collection clerks at the gates in the Maasai Mara
- ix) That after award of the tender and contract to Equity Bank limited, two cases were taken to court, one filed in Nakuru High Court Civil Case number 131 of 2011 and another in Nairobi, H.C petition No. 35 of 2011.
- x) That the Council officials are satisfied that the system is good value for money for the Council as it would increase the Council revenues significantly and reduce corruption that was rampant before.
- xi) That the Contract had a termination clause contained in Clause 14 on pages 20 - 22 of the Contract and which they were comfortable with.

Intervention by Committee Members

The Members raised the following interventions:

- i) Whether paper tickets were still in use at the entrances to the Maasai Mara and if not, on what dates the paper tickets were withdrawn to allow use of the smart cards
- ii) Who were the parties that complained about the pre-paid smart card system and who took the County Council to court seeking to stop the use of the smart cards
- iii) What is the role of Equity Bank Limited in the pre-paid smart card agreement and did it involve collection of money on behalf of the Council?
- iv) How sure was the Council that during the interim period when Equity Bank was using paper tickets, the Bank's employees would not also engage in the malpractice (pilfering of revenue) that the Revenue Clerks of the Council were committing before?

- v) Whether there was any significant change in revenue collection between when the Revenue Clerks of the Council were undertaking the collection and when Equity Bank implemented the pre-paid smart card system and if the Council could avail the figures to the Committee
- vi) What is the amount charged for entrance to the park and the approximate number of visitors expected in a year?
- vii) What is the total cost of the pre-paid smart card system contract to the Council.
- viii) Whether the Council varied what it requested for in the EOI advert and if so when this variation was done.
- ix) Who drafted the contract document-Is it Equity bank lawyers or Narok Council lawyers?
- x) Whether there has been intimidation of staff of the Council since the matter was brought up in parliament by the Member of Parliament for Narok South.
- xi) Whether Equity Bank had commissioned the pre-paid smart card System as required in the contract.

Response by the County Council Officials

- i) That the Council began pilot of smartcard in November 2011 and the system went live on 12th December 2011 . That between 19th April 2011 when the contract was signed and November 2011 when the smart card system was launched, Equity Bank continued using paper tickets as they implemented the pre-paid smart card system.
- ii) That the commencement of the use of the smart cards would only occur after complete implementation of the pre-paid smart card system and when Equity Bank was awarded the contract, the parties agreed to three months implementation period to enable completion of Statement of Works and implementation of the pre-paid smart card system.
- iii) When Equity Bank moved to the site to install the system, there followed demonstrations by youth in Narok town against the system and one group filed a case in Nakuru court to stop the implementation of the system.

- iv) That before Equity Bank was awarded the contract, SOMAK was the revenue collecting agent for the Council in the country but visitors who came straight to the gates of the game reserve paid entrance fees to the Council Revenue Clerks stationed at the gates.
- v) That since Equity Bank implemented the pre-paid smart card system, revenue collection had increased significantly and was almost double what the Council Revenue Collection Clerks were collecting and that the Council would submit to the Committee figures of the revenue collected per month from April, 2011.
- vi) That the fees charged for entry to the Game Reserve is USD 70 and the average number of visitors in a year is 300,000.
- vii) That the investment Equity Bank was putting in the contract was Ksh. 280 million which would have been paid by Narok County Council but due to the partnership, it would only cost the Council Ksh. 28.4 million.
- viii) That the advert was an EOI and the Council did not vary what it had requested for in the advert but that they picked on Equity Bank because the proposal Equity presented during the bid evaluation presented two options; One where the Council would fully own the infrastructure and equipment to cost about Ksh. 280 million and the second, a co-investment model in which the Council would invest only Ksh. 28.4 million and the Council opted for the Co-investment hosted model.
- ix) That Equity Bank was involved in issuing paper tickets as a transitory measure before they installed the pre-paid smart card system and that the Council was only banking with Equity Bank for convenience as they had the option of maintaining a bank account with any other bank.
- x) That the Contract document was drafted by joint lawyers of Equity Bank and those of the Council.
- xi) That the Maasai Mara Game Reserve has 10 collection points and six structured gates at which revenue is collected by the Council officers themselves.
- xii) That there was no intimidation of staff of the Council as alleged but that disciplinary action was taken against the staff/Revenue Clerks who allowed

demonstrations to go on in the game reserve which led to destruction of the Equipment that had been installed by Equity Bank.

- xiii) That Equity Bank was not collecting revenue for the Council as alleged but that it had trained staff of the Council who were to manage the system and Equity Bank would only be retained to service the system as per the contract.
- xiv) That the pre-paid smart card System had not yet been commissioned as it was under pilot testing with an intention of go-live date of 12th December 2011. The Council intended to invite the Kenya National Audit Office and the Efficiency Monitoring Unit before officially commissioning the system.
- xv) The County Council Clerk then tabled a number of documents among them a copy of the tender documents, a copy of the files of the cases filed in court against the system and the Contract signed between the Bank and the Council.

Conclusion by the Chairman

The Chairman then thanked the officials of the County Council of Narok and promised to call them back in case the Committee required any more details. The Chairman reminded them to submit to the Committee the details of the comparative revenue collected per month since Equity Bank came on board and for the period when Equity Bank had not come in.

MIN. NO./SC2/192/2011:

- **Any Other Business and Adjournment**

There being no other business, the Chairman adjourned the meeting at Five Minutes past Twelve noon and requested the Committee to reconvene at Ten Minutes past Twelve noon to hear representatives of Equity Bank Limited.

SIGNATURE.....

(Chairperson)

DATE 12/07/2012 ✓

MINUTES OF THE 33RD SITTING OF THE DEPARTMENTAL COMMITTEE ON LOCAL AUTHORITIES (with Hon. Ole Lankas) HELD ON TUESDAY 6TH DECEMBER, 2011 IN THE SMALL DINING ROOM, MAIN PARLIAMENT BUILDINGS, AT 9.00 AM

PRESENT

Hon. David Ngugi, MP	-	Chairman
Hon. Mahamud Sirat, MP	-	Vice-Chairman
Hon. Ali Hassan Joho, MP		
Hon. Oyugi Magwanga, MP		
Hon. Gideon Konchella, MP		
Hon. Zakayo Cheruiyot, MP		
Hon. Joshua Kutuny, MP		
Hon. Gideon Mung'aro, MP		

ABSENT WITH APOLOGY

Hon. Masoud Mwachima, MP
Hon. Fahim Twaha, MP
Hon. Shakeel Shabbir, MP

IN ATTENDANCE

Hon. Nkoidila Ole Lankas, MP	-	Narok South MP
Mr. George Gazemba	-	Clerk Assistant
Mr. Edward Libendi	-	Clerk Assistant

MIN. NO./SC2/185/2011: - **Preliminaries**

The Chairman called the meeting to order at 9.30 am and opened the meeting with a word of prayer. He welcomed Hon. Nkoidila Ole Lankas, MP to the meeting and briefed him on the status of the investigation by the Committee into the pre-paid smart card system Agreement between the Narok County Council and Equity bank Limited

MIN. NO./SC2/186/2011:

- Meeting with Hon. Nkoidila Ole Lankas, MP

The Chairman informed Hon. Lankas, MP that as the complainant, the Committee wished to understand from him the issues of contention in the pre-paid smart card system Agreement between Narok County Council and Equity Bank. The Member for Narok South gave the following information to the Committee:

- i) That he served as the Clerk of Narok County council from 1997 to 1999 and therefore understood its operations succinctly.
- ii) That Narok County council is among the richest Councils in the country as it attracts a large number of tourists.
- iii) That the Maasai Mara Game Reserve generates about 95% of the revenue collected by the County Council of Narok.
- iv) That sometime in the year 2010, the Council put out an advertisement for Expression of Interest (EOI) for Supply, Installation and Commissioning of a pre-paid smart card System to assist in collection of revenue at the entry points/gates of the Maasai Mara Game reserve and therefore curb pilferage and increase revenue for the County Council.
- v) That subsequently many companies tendered their bids and Equity Bank Limited was chosen to have won the tender.
- vi) That he is not opposed to the system per se as the system deserves merits but his contention is in the procedure followed and the contents of the contract.
- vii) That there is a problem with the awarded tender in that what is contained in the Expression of Interest advertised is different from what is contained in the contract entered into by the two parties in that the EOI advertised on Tuesday, 16th February, 2010 (which he tabled) requested for "Supply, Installation and Commissioning of a pre-paid smart card System" while the signed Contract (dated 19th April) also provided for collection of revenue.
- viii) That in his view therefore, the procurement process was irregular and illegal as Equity bank limited was collecting revenue on behalf of the Council which was not tendered for and that it was still using paper tickets and not the smart cards as provided in the contract documents.
- ix) That from the signed Contract document, Equity bank was to collect revenue, be the Banker and only issue periodic statements of account to the Council.

- x) That the Contract further contained a clause requiring the County council to pay Equity Bank Limited the difference of amounts if the Council collected in any year less money than the minimum of Ksh. 1.5 billion it had projected to be collecting.
- xi) That the KACC had written a letter on 25th February, 2011 alleging to have looked at the system and cleared it yet by that date, the pre-paid smart system had not been installed.
- xii) That after he raised the matter in Parliament, the County Council began intimidating staff of the Council who were opposed to the system by transferring them from their stations to other places by a letter signed by Councilors and not by the Clerk of the Council.

MIN. NO./SC2/187/2011: - **Intervention by Committee Members**

The Members sought to know whether Hon. Lankas was aware of existence of any Council Resolution authorizing the tender as is the requirement of the Local Government Act which he answered that that should be a matter the Committee should enquire from the County council.

Conclusion by the Chairman

The Chairman then requested the Member to furnish the Committee with any other information which he may find or remember that may be useful to the Committee

MIN. NO./SC2/188/2011: - **Any Other Business and Adjournment**

There being no other business, the Chairman adjourned the meeting at Twenty Minutes to Eleven O'clock and requested the Committee to reconvene at 11.00 am to hear the County Council of Narok.

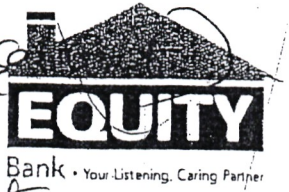
SIGNATURE.....

(Chairperson)

DATE 13/07/2012



Paper tabled by
Al Myster for ~~DPML~~
Affairs on 16/11/2011
Regarding ~~ON~~ by Private
Notice 3. ~~Issue~~ 16/11/11 - 2:30PM



Dated as of the 19th day of April, 2011

COUNTY COUNCIL OF NAROK

AND

EQUITY BANK LIMITED

PRE-PAID SMART CARD SYSTEM
AGREEMENT

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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:

1. Duration

2. Commission charged

3. Termination clause / exit clause

L

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

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:

Agree Cont

*1. Review
1.2.2*

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- 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.

WGC Ltd
Escrow Account

- 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 1st July and 30th 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 1st July and 30th 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 year.

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
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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 -

- 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.
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14.7 ✓ Which equipment that belongs to the Bank? 15 us

If system is owned by Council then what is the cost but Bank has invested?

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 (8th) 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 (8th) 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, 9TH 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.
- 

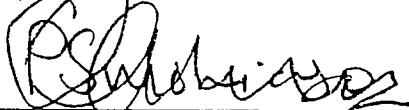
17.2 The parties shall use their best efforts to amicably settle any dispute, controversy or claim arising out of or in connection with this Agreement (including any question regarding its interpretation existence validity or termination). If such dispute controversy or claim cannot be settled within 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

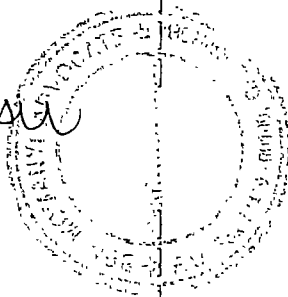
In presence of :-



CHAIRMAN

CLERK,






SEALED with the Common Seal of
EQUITY BANK LIMITED

In presence of:



DIRECTOR



DIRECTOR/SECRETARY

SCHEDULE A: TECHNICAL SPECIFICATIONS

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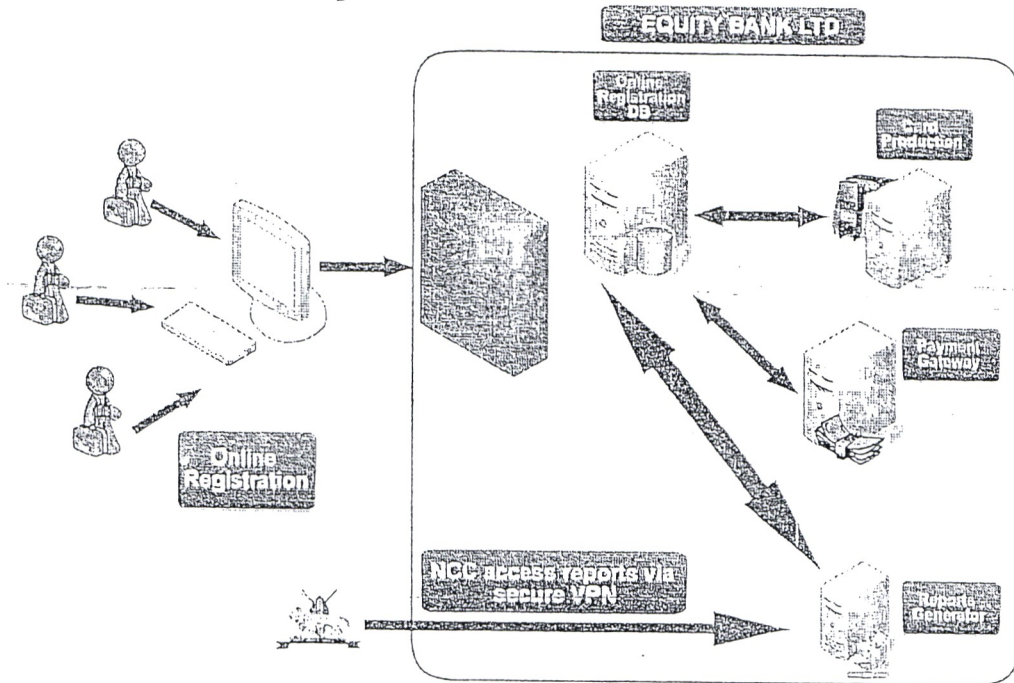
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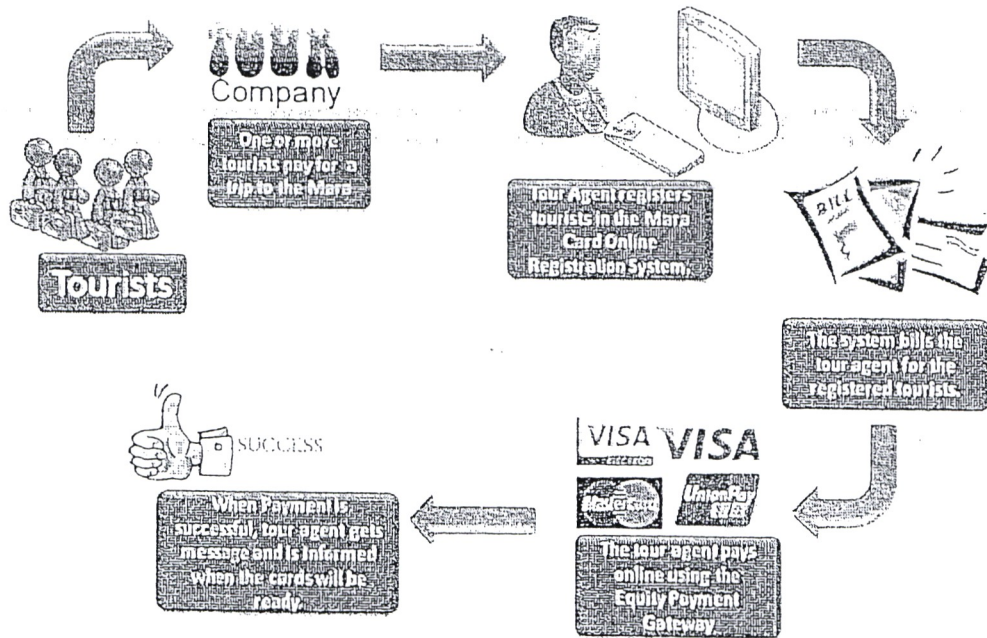
Acronyms

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

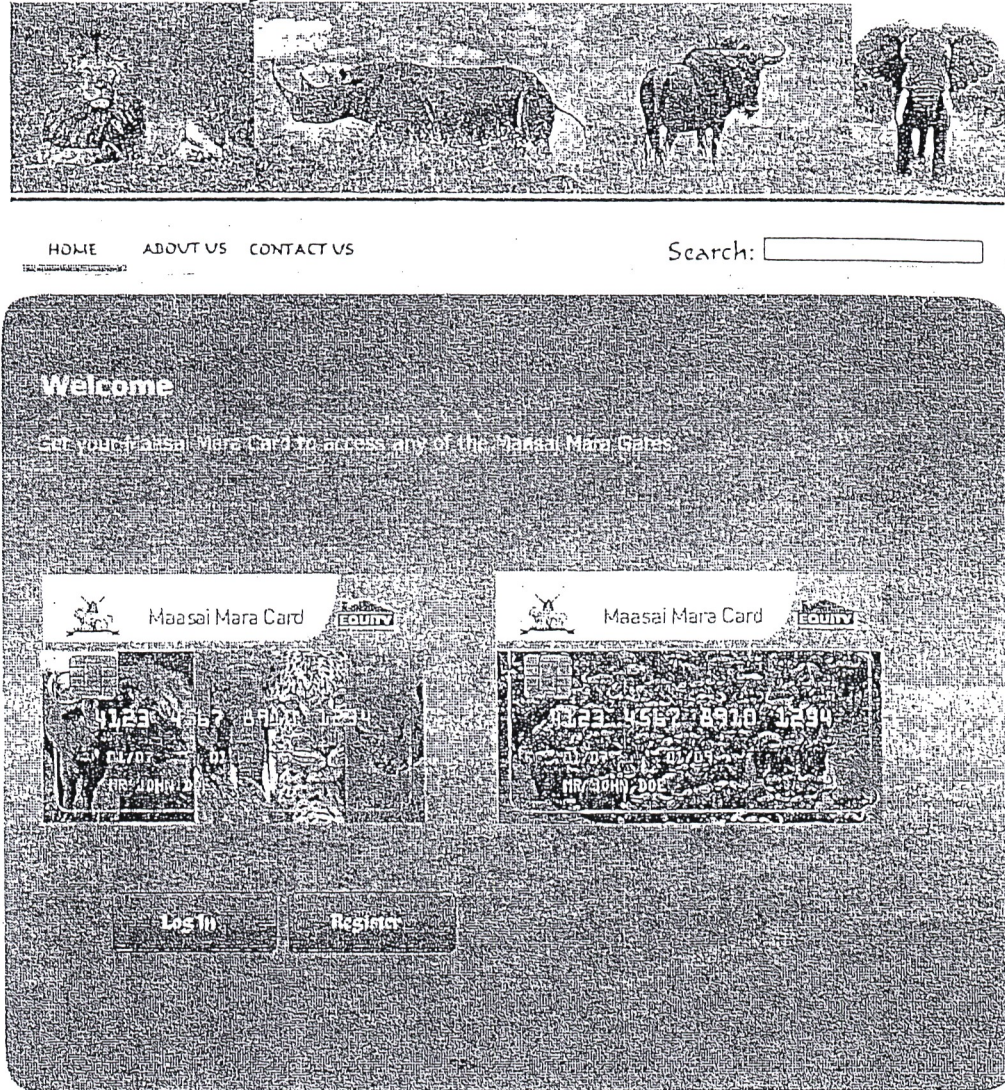
1.2. Logical Design



1.3. Data Flow Diagram



1.4. User Interface Diagram



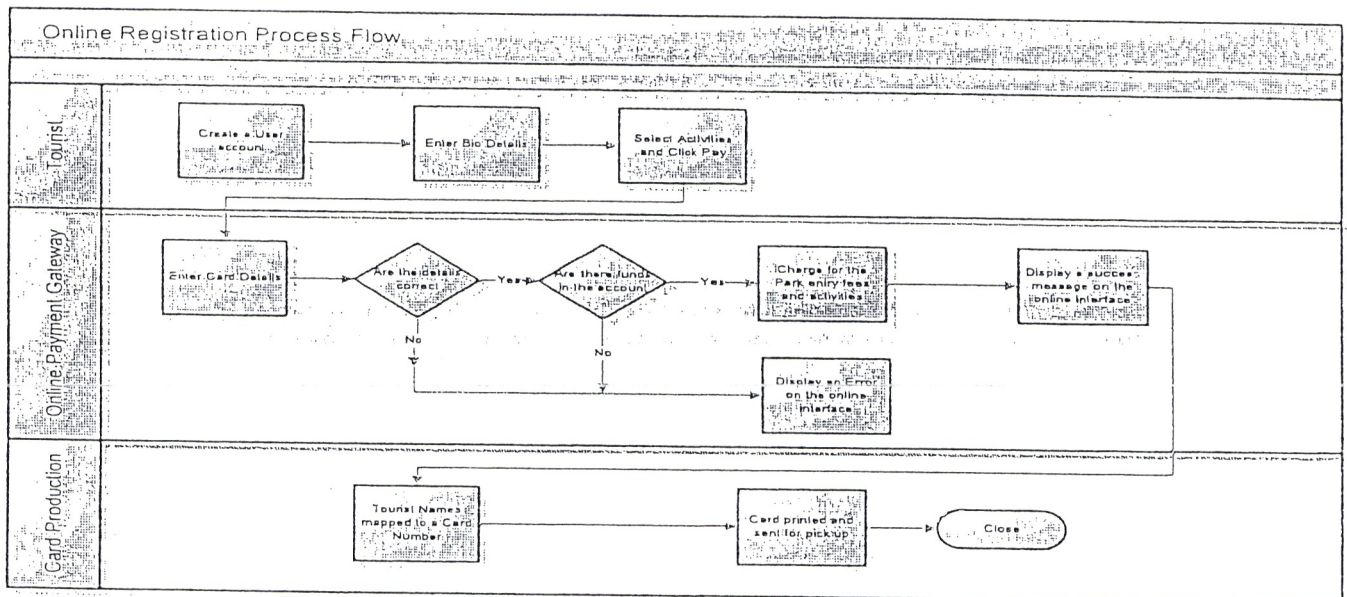
1.5. User Interface Components

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.

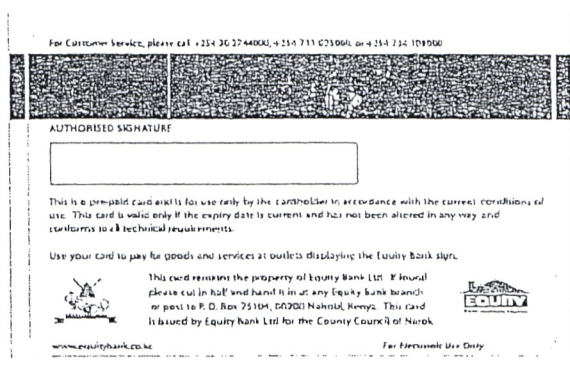
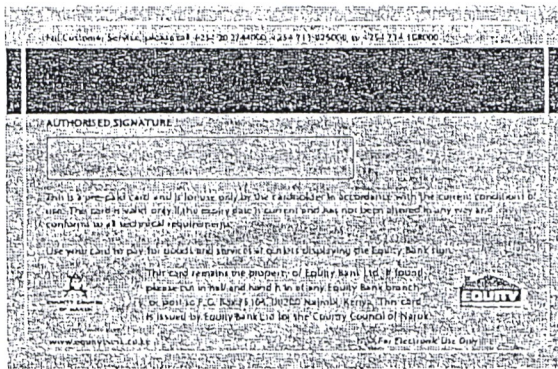
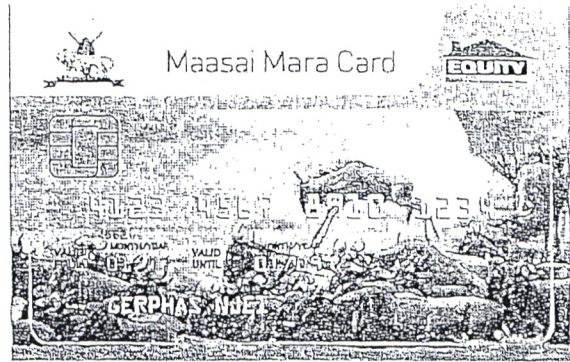
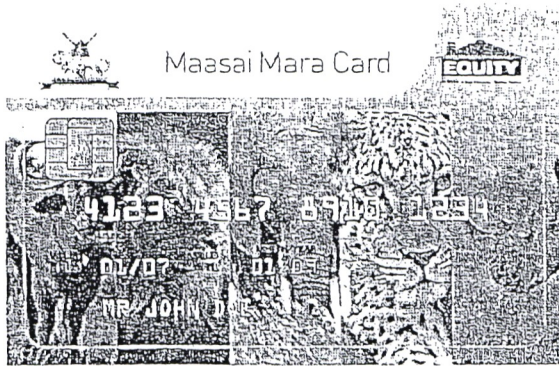
The size of the application is only limited by the EEPROM size which is also used for the additional EMV application. The applications file structure will be fully pre-personalized at Card Manufacturer including also personalization of sensitive application card specific derived keys according to requirements 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.

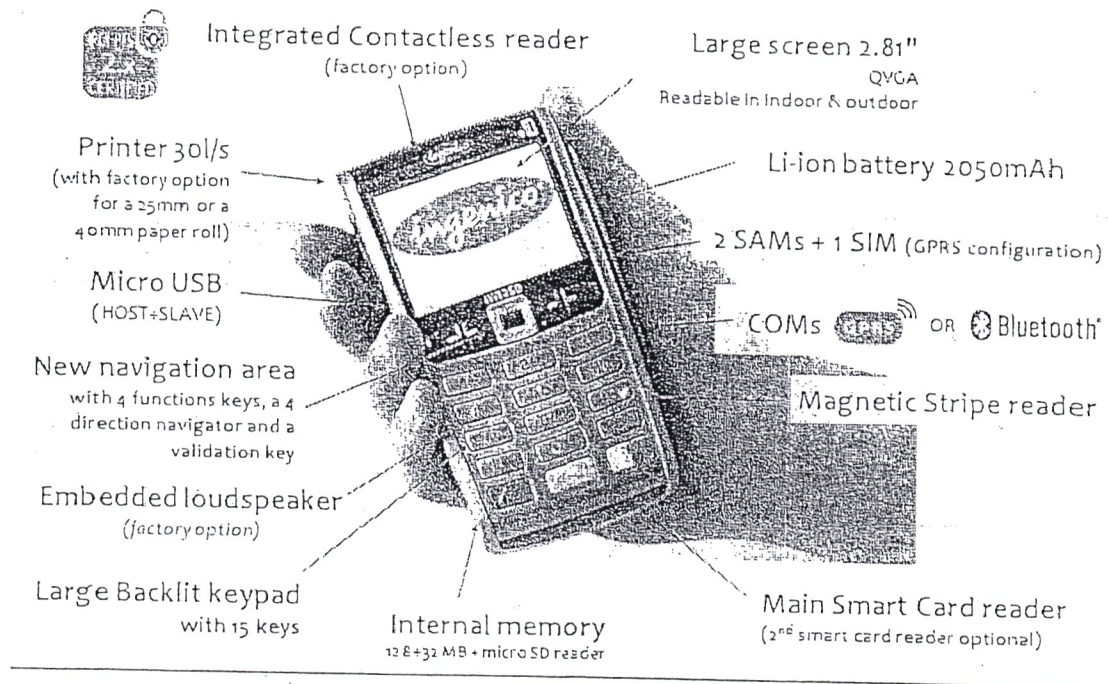


3. POS

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

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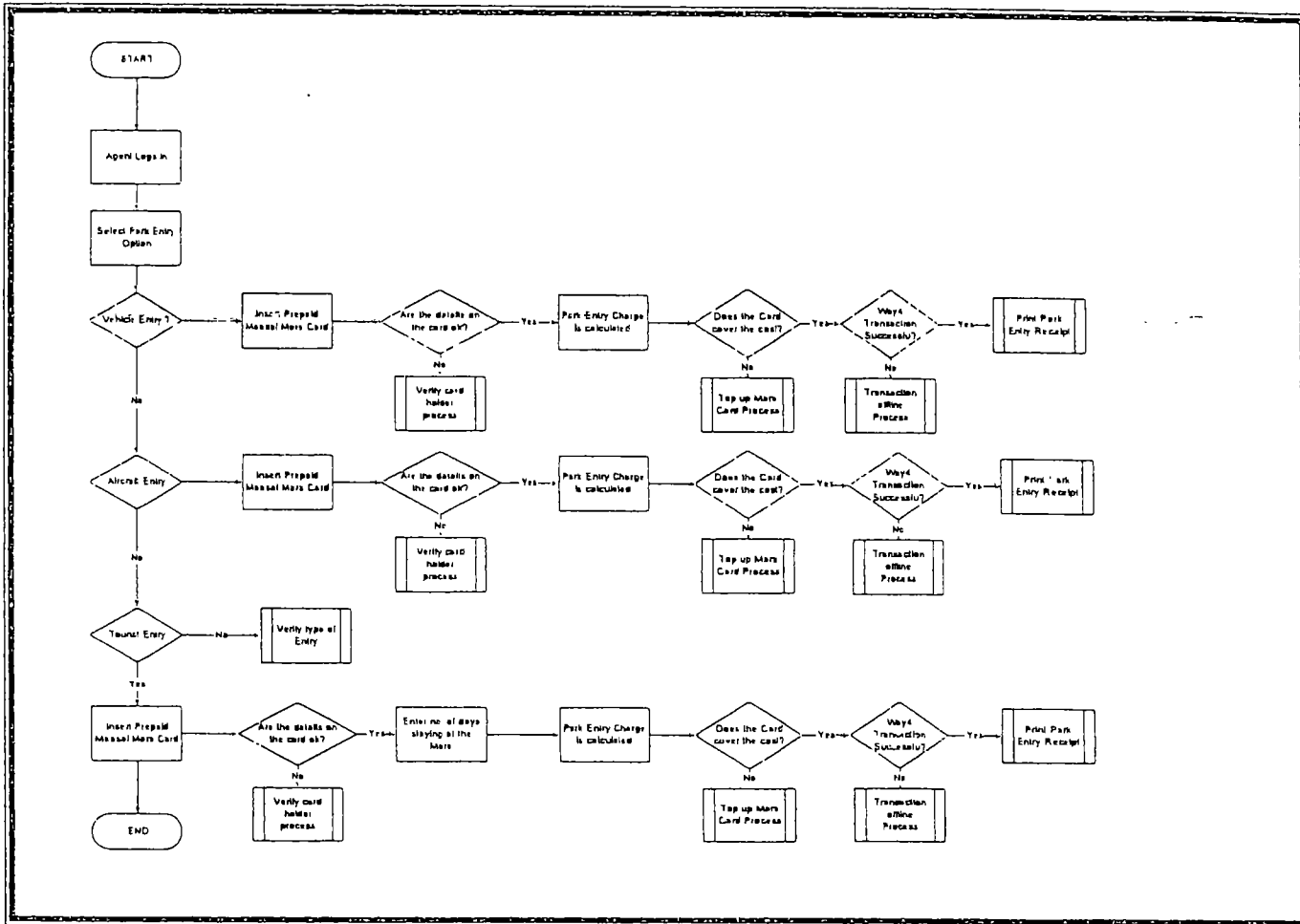


Figure 2: Park Entry Transaction Flow

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[Handwritten initials]

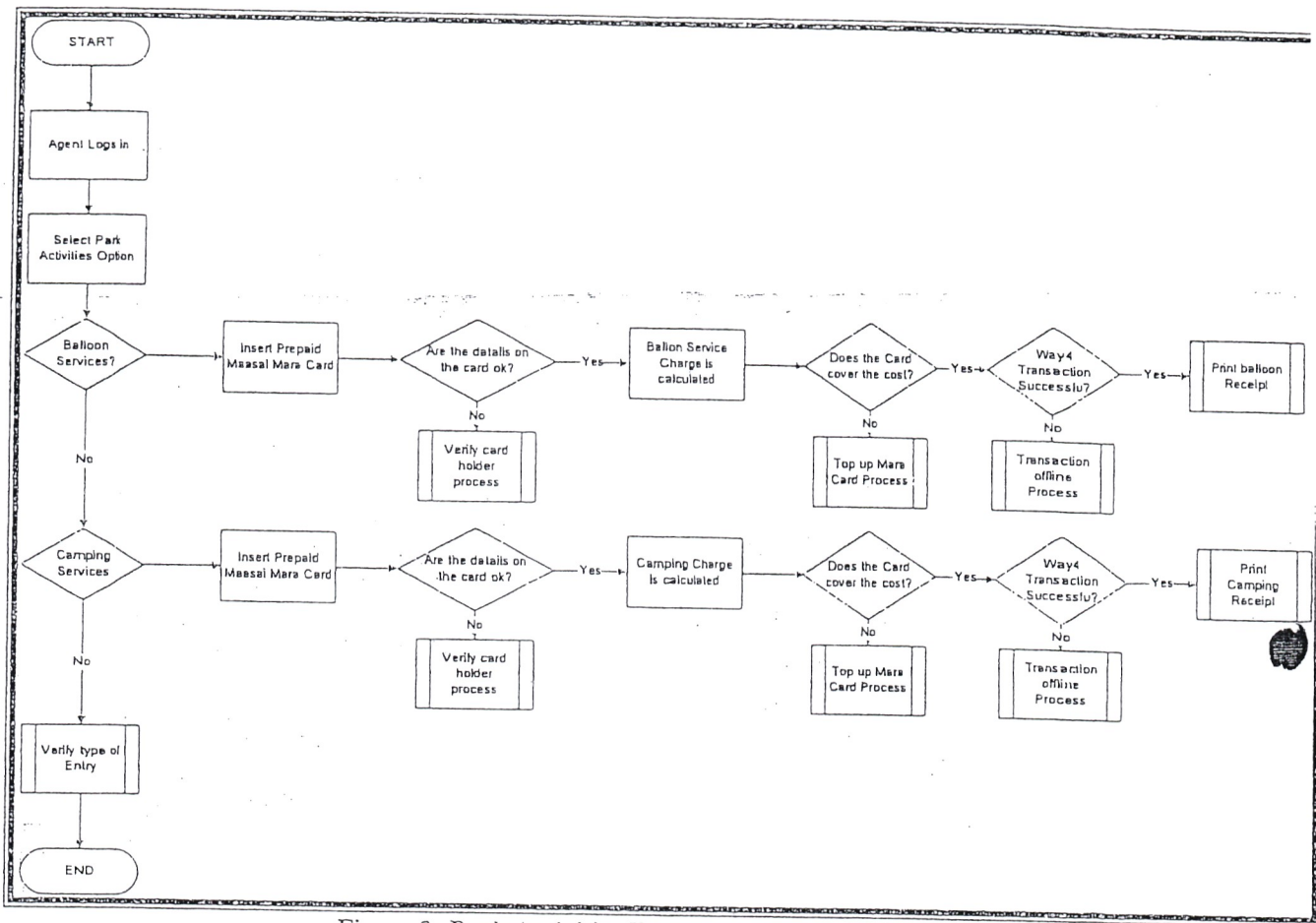


Figure 3: Park Activities Transaction Flow

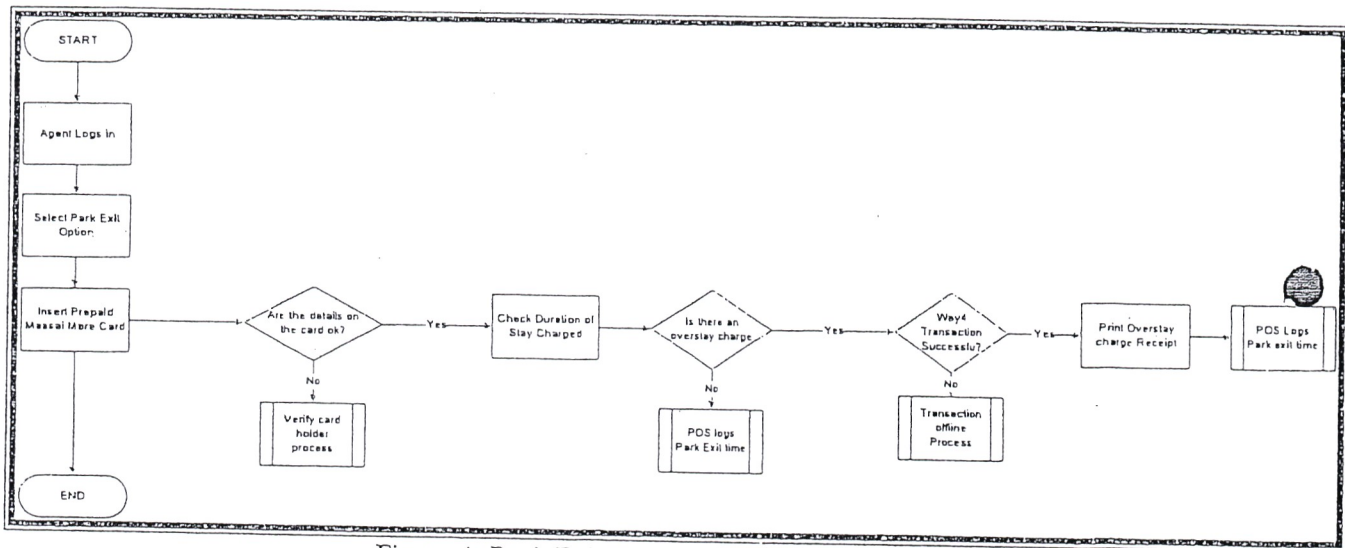
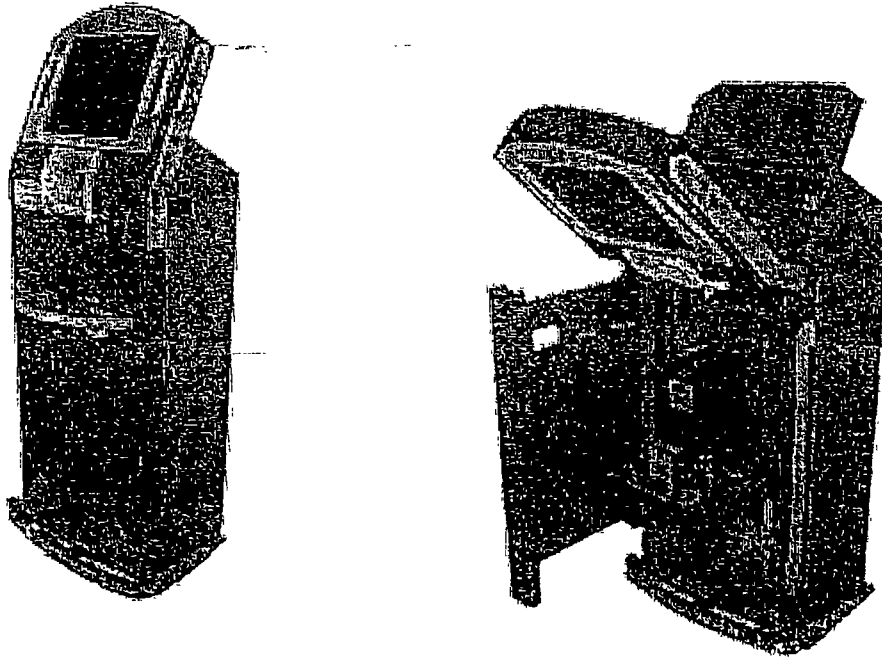


Figure 4: Park Exit Transaction Flow

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



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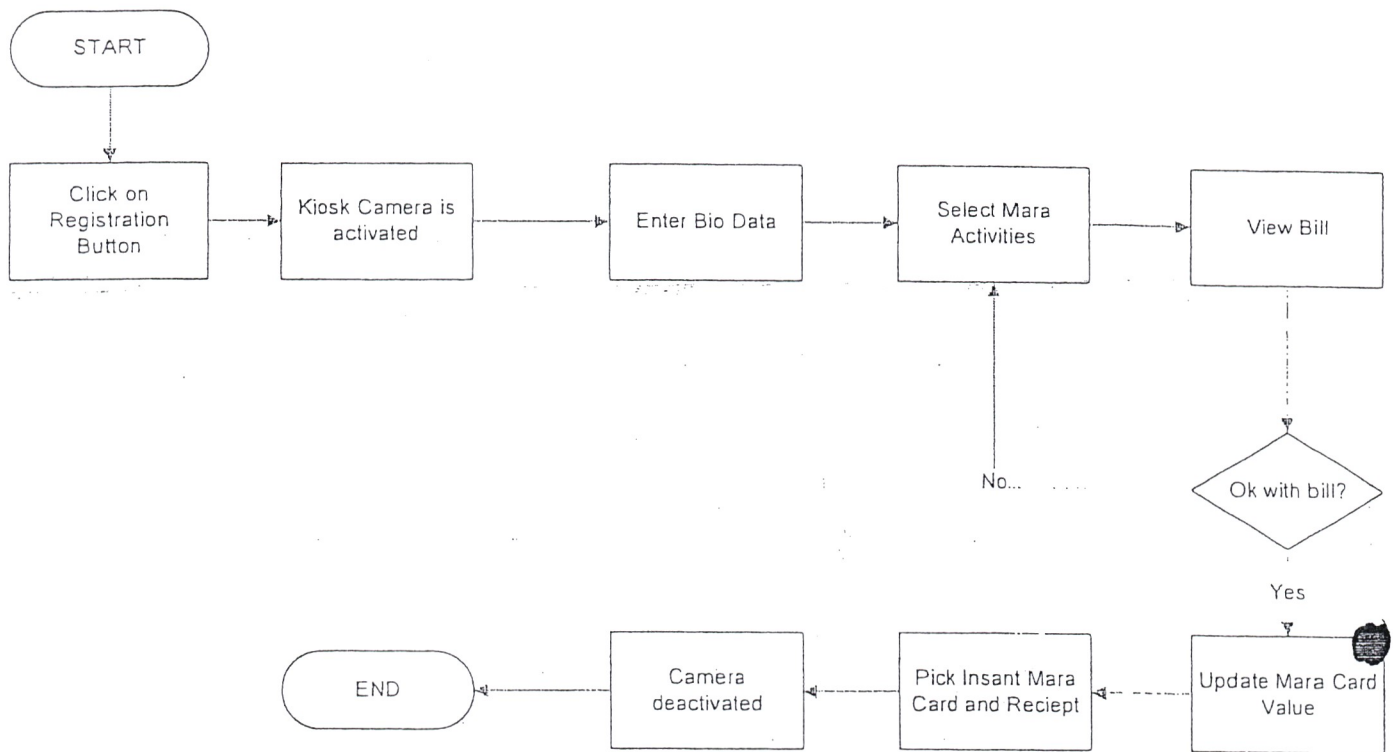


Figure 6: Kiosk Registration Flow

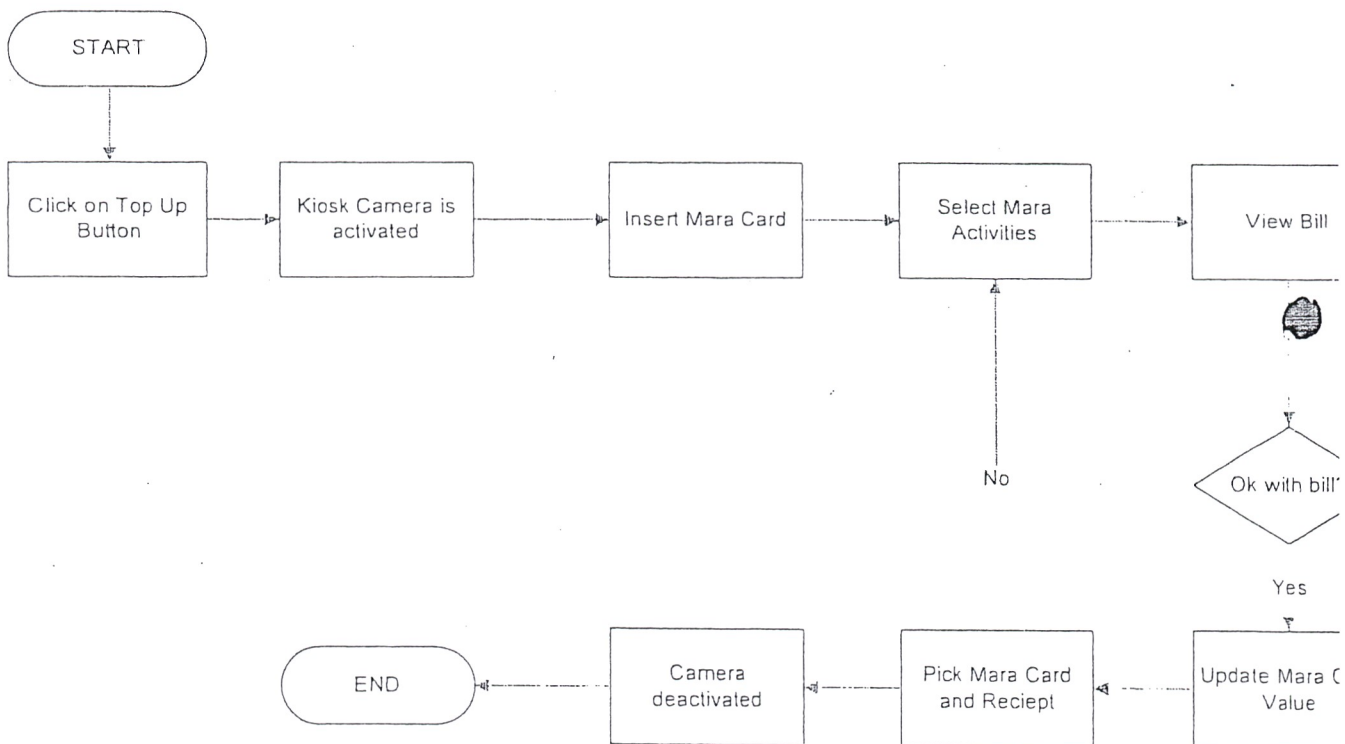
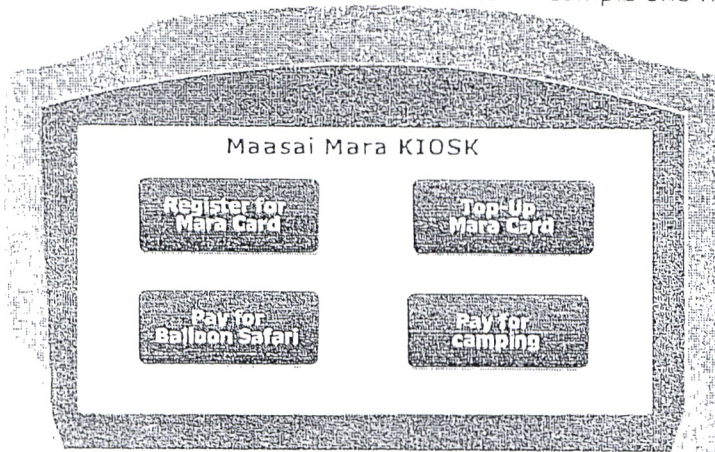


Figure 5: Kiosk Top Up Flow

4.4. User Interface Design

4.5. Registration

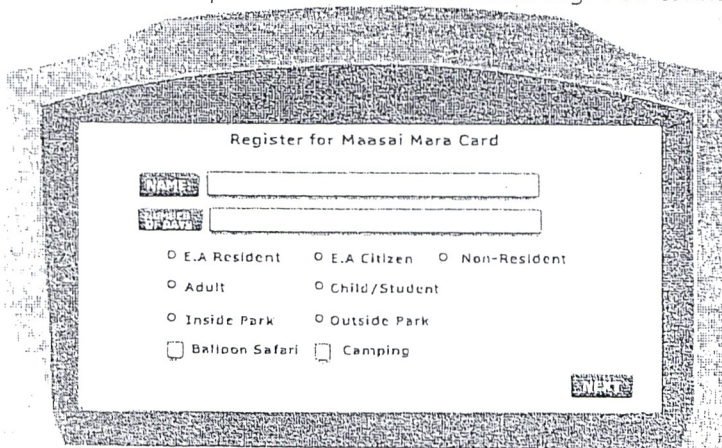
The Main Menu will change depending on the activities that will be chargeable at the KIOSK terminal. Generally the interface background will be white, the Text on the interface will be brown, the buttons will be brown and the text in the button white. A sample one would look like this:



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:

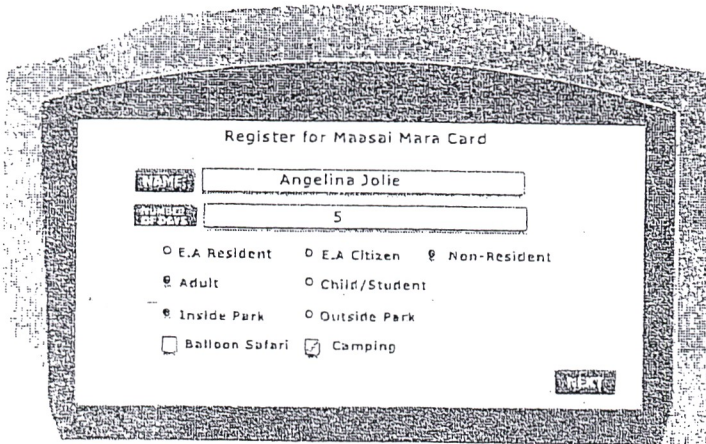
- i.) Page title
- ii.) Ability to enter text information using an on-screen keyboard
- iii.) Ability to select options by clicking on the radio button or checkbox
- iv.) A next button

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

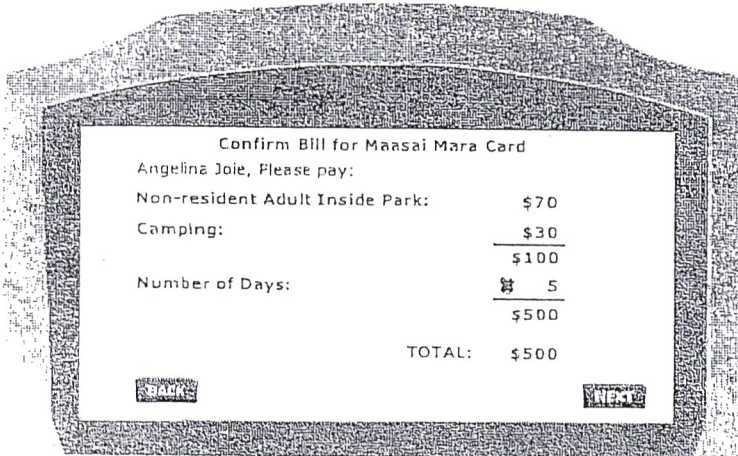


The screen may change depending on the details required to charge the tourist initially e.g the transport mode etc. See the park fee details.

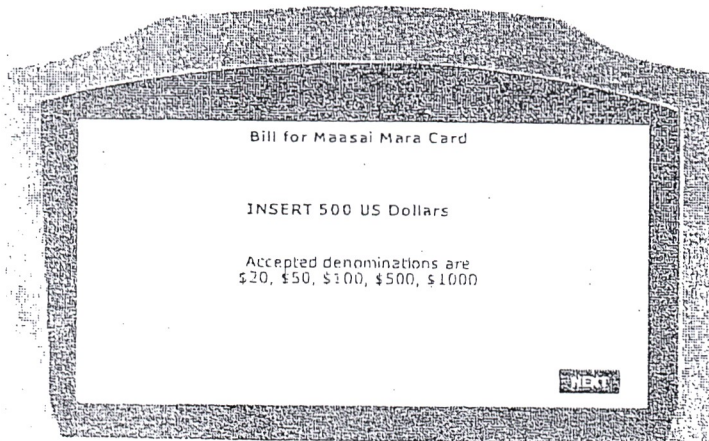




After clicking next, the next screen should bill the tourist appropriately. A back button should be present to allow the tourist to edit their details.



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

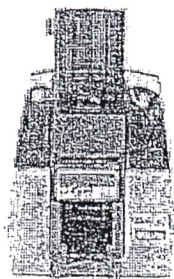
5.1. Card Printer Specification

Economical instant issuance

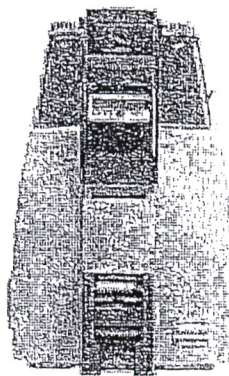
The Data card® FP65i™ financial card printer will enable instantly issue unembossed personalized Maasai Mara cards. Engineered for smaller environments, this easy-to-use card printer offers full-color printing, magnetic stripe encoding and smart card personalization. It also provides rear indent printing 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

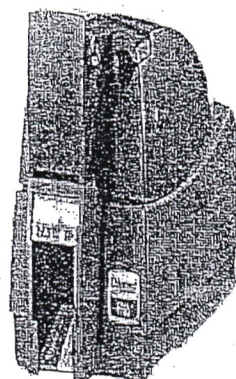
- Meet consumer demand for instantly issued, highly personalized cards.
- Deter fraud and strengthen card security with rear indent printing.
- Protect magnetic stripe and indent data from unauthorized interception during network transmission with Triple DES or AES-128 encryption.
- Improve printer security 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

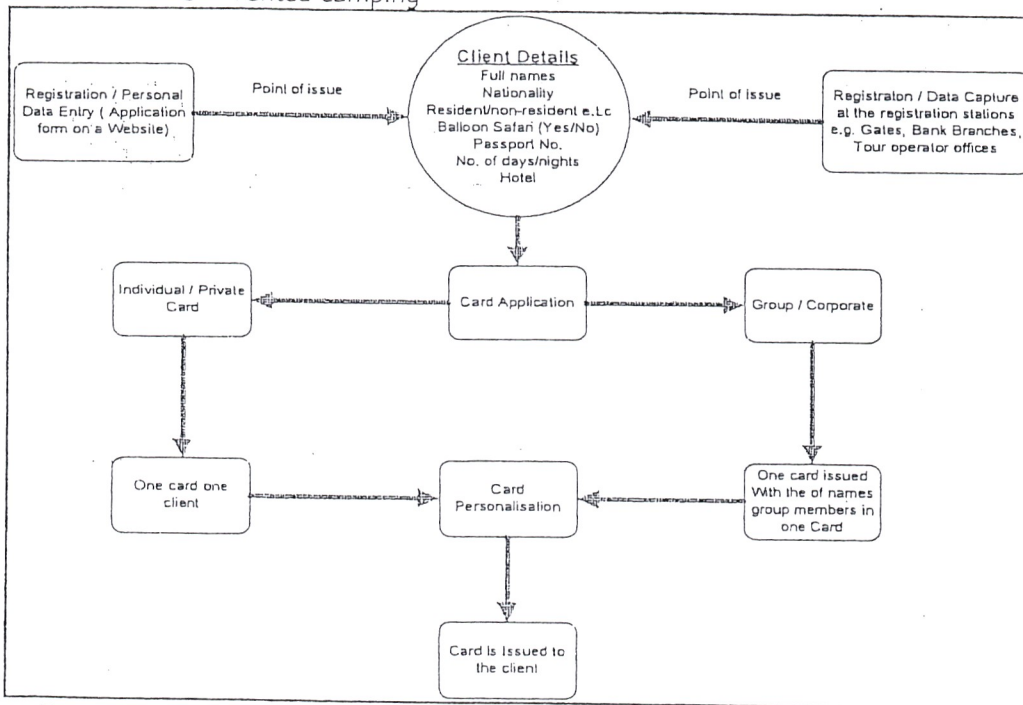
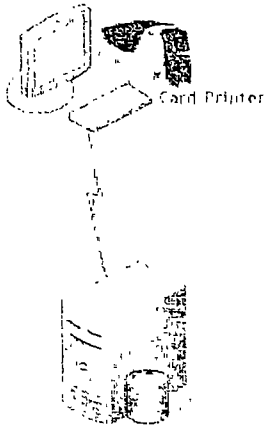


Figure 7: Transmission of Data from the Payment to Card Management Database.



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Point of Issue

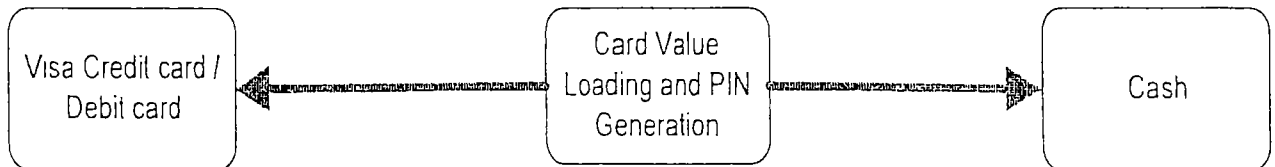


1. Capture Customer information using an application form
 - Name
 - Passport No. /Id no.
 - Citizenship
 - Country of residence
 - etc
2. Enter this information in the system.
3. Print card with name on it.

Card Management Database

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



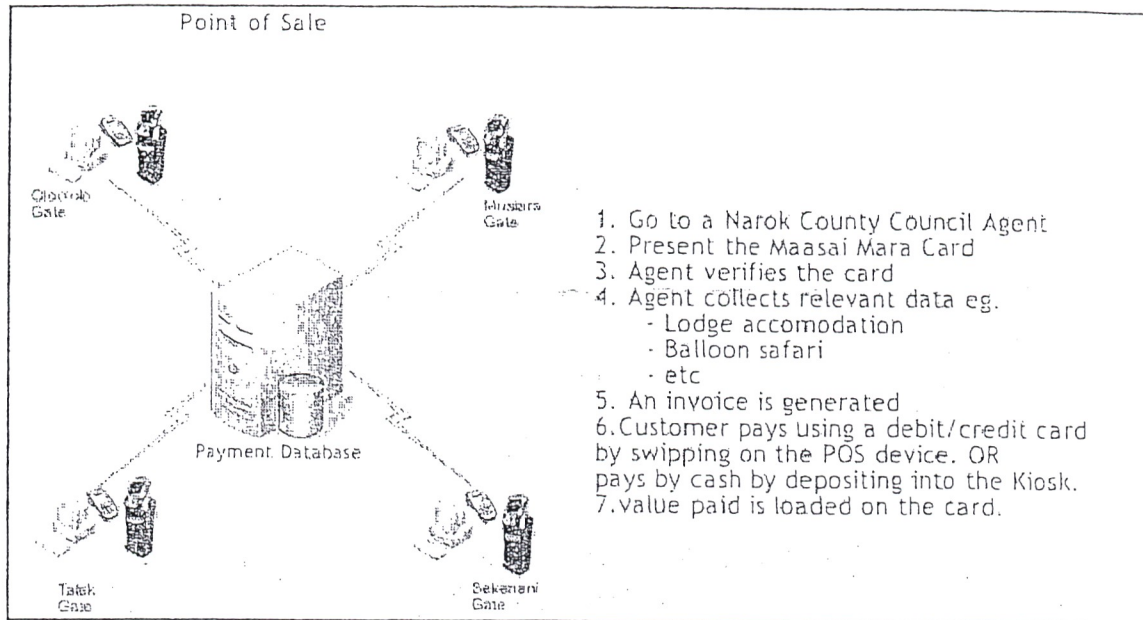


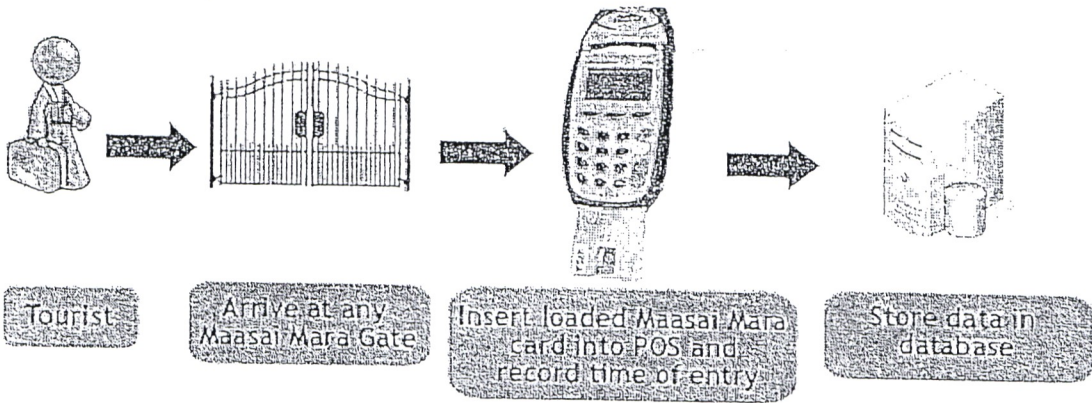
Figure 8: Flow of Value loading and Entry Management

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

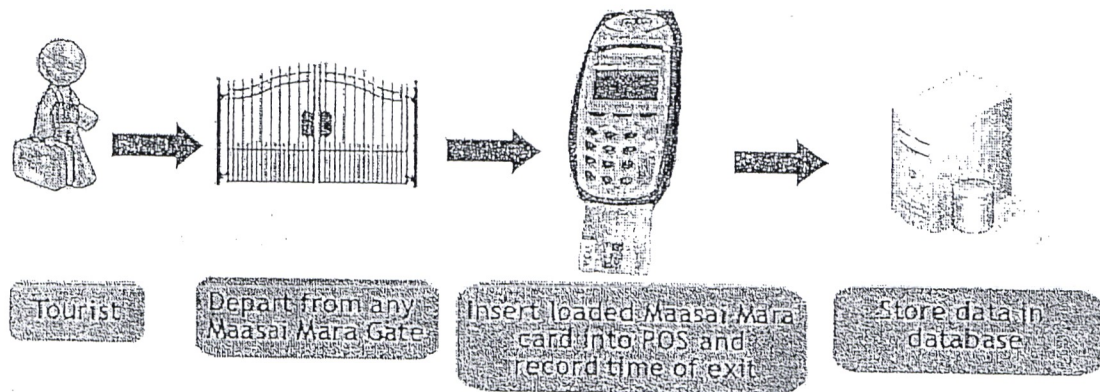
- Tour van with tourists arrives by plane or van to Maasai Mara.
- At the moment of entry, timestamp is put on the card (Xxddmmyyyyhhmmss, where XX – name of the Gate Name, hotel, Balloon and the days in the reserve.)

Time control activation
at the gate.- Checkin
time

Point of Entry



Point of Exit



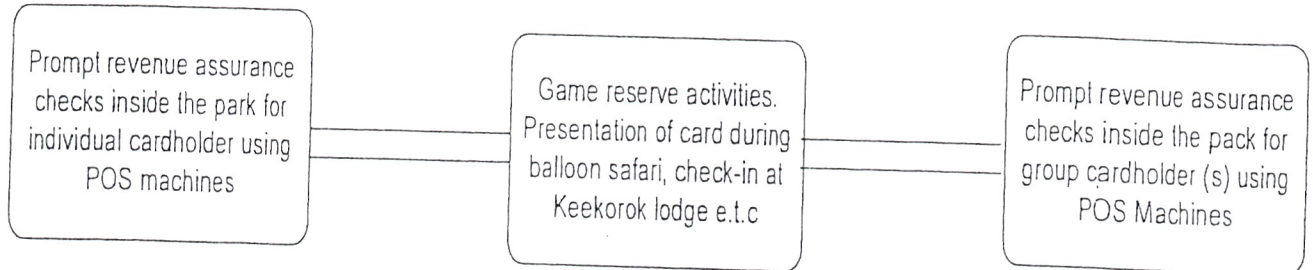
The POS has time and picks all details from chip automatically & prints a receipt. Operator select menu 'Enter Park' or "Exit Park".

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.



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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

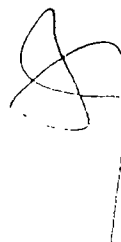
- Masai Mara
- Gate of Entry
- Gate of Exit
- POS ID
- Date
- Masked Card Number
- Exit Reference number
- Time Spent in park
- Amount Spent
- Balance on Card
- Authorization Code:

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

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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

Schedule B: 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.

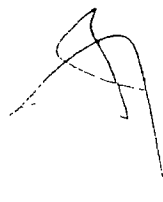
2.3.9. Documentation

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.

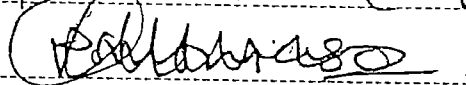
IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have caused this SOW to be duly executed.

COUNTY COUNCIL OF NAROK

Name:

Patrick Ole Moningo

Signature:



Designation:

Chairman

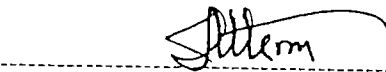
Date:

19/4/2011

Name:

Pius Muboni

Signature:



Designation:

County Clerk

Date:

19th April 2011

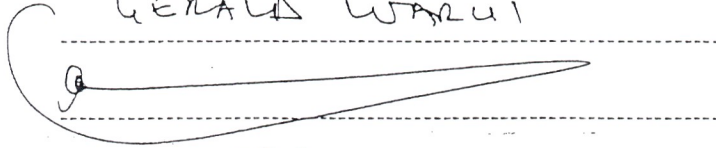


EQUITY BANK LIMITED

Name:

GERALD WAZU

Signature:



Designation:

DIRECTOR

Date:

19/04/2011

Name:

MARY WANZARI WAMAE

Signature:



Designation:

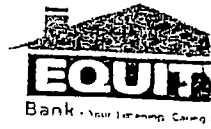
COMPANY SECRETARY

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

9

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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 1st 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 2nd and 3rd Level Support for the Licensed Software. The definitions of 1st, 2nd, and 3rd Level Support responsibilities are as follows:

a) 1st 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

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

b) 2nd Level Support Responsibilities:

- i) Take-over of technical fault reports from 1st 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 2nd Level Support personnel to 3rd 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 1st Level Support and End-Users

c) 3rd Level Support Responsibilities:

- i. Take-over of an IR from 2nd Level Support;
- ii. Operational support for IRs that have been escalated from 2nd 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:

- (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

[Handwritten signature]

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 Initial 30,000 base cards	28,408,000 (inclusive of VAT)
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

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
TOTAL ANNUAL COSTS	59,861,113**

*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



ID	% Complete	Task Name	Duration
1	0%	Masaai Mara Project-Version 1.3	114 days
2	0%	Commercials	55 days
3	0%	Tender Awarded	1 day
4	0%	Contract & SoW Signed (NCC and Equity)	1 day
5	0%	Purchase Order Placed - Project Components	1 day
6	0%		
7	0%	Major Project Milestones	65 days
8	0%	MS1-Contract Received from NCC	1 day
9	0%	MS2 - Technical Design Document (TDD) Baseline & Signed Off	1 day
10	0%	MS3 - BOQ Baseline & Signed Off	2 days
11	0%	MS4 - Staging Completed & Signed Off	30 days
12	0%	MS5- Implementation & Testing Completed	30 days
13	0%	MS6- Knowledge Transfer & Training Completed	52 days
14	0%	MS7 - Go live	1 day
15	0%	MS8 - Project Closure	1 day
16	0%		
17	0%		
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	42 days
34	0%	SAM Cards - 200 Units	42 days
35	0%	Computers with all Accessories - 10 Units	30 days
36	0%	Installation Area Provided & All Site Prerequisites Met by NCC	10 days
37	0%	Hardware Physically Installed (Racking+Stacking+Cabling) by Equity IT	10 days
38	0%		
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 Baseline 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%		30 days
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			
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%	creating the POS users	1 day
126	0%	Production trial run end-to-end	1 day
127	0%	Installing POS terminal at the Gates and Creating POS Users	1 day
128	0%	Implementation Phase	4 days
129	0%	NCC Mara Implementation Phase	4 days
130	0%	Physical Installation and Implementation (To be Done by Equity IT)	4 days
131	0%	Site-1 Installation - Sekenani Gate (Very Busy)	4 days
132	0%	Rack Equipments	4 days
133	0%	Physical Installation of POS devices	4 days
134	0%	Power, Cabling & Termination	4 days
135	0%	Hardware Acceptance of POS Nodes	4 days
136	0%	Site-2 Installation - Ololaimutia Gate (Very Busy)	4 days
137	0%	Rack Equipments	4 days
138	0%	Physical Installation of POS devices	4 days
139	0%	Power, Cabling & Termination	4 days
140	0%	Hardware Acceptance of POS Nodes	4 days
141	0%	Site-3 Installation - Talek Gate	4 days
142	0%	Rack Equipments	4 days
143	0%	Physical Installation of POS devices	4 days
144	0%	Power, Cabling & Termination	4 days
145	0%	Hardware Acceptance of POS Nodes	4 days
146	0%	Site-4 Installation - Musiara Gate	4 days
147	0%	Rack Equipments	4 days
148	0%	Physical Installation of POS devices	4 days
149	0%	Power, Cabling & Termination	4 days
150	0%	Hardware Acceptance of POS Nodes	4 days
151	0%	Site-5 Installation - Fig Tree Gate	4 days
152	0%	Rack Equipments	4 days
153	0%	Physical Installation of POS devices	4 days
154	0%	Power, Cabling & Termination	4 days
155	0%	Hardware Acceptance of POS Nodes	4 days
156	0%	Site-6 Installation - Simba Gate	4 days
157	0%	Rack Equipments	4 days
158	0%	Physical Installation of POS devices	4 days
159	0%	Power, Cabling & Termination	4 days
160	0%	Hardware Acceptance of POS Nodes	4 days
161	0%	Site-7 Installation - Sand River	4 days
162	0%	Rack Equipments	4 days
163	0%	Physical Installation of POS devices	4 days
164	0%	Power, Cabling & Termination	4 days
165	0%	Hardware Acceptance of POS Nodes	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 - Mustara 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% <input type="checkbox"/>	review the implementation process	1 day
208	0% <input type="checkbox"/>	Trial run end to end solution	1 day
209	0% <input type="checkbox"/>	further tests and observation	1 day
210	0% <input type="checkbox"/>	Project cul-over (go live)	2 days
211			
212	0% <input type="checkbox"/>	Project Closure Phase	1 day
213	0% <input type="checkbox"/>	Hand-Over All Related Documentation to NCC	1 day
214	0% <input type="checkbox"/>	Produce & Submit End Project Report to NCC	1 day
215	0% <input type="checkbox"/>	Produce Lessons Learnt Report	1 day
216	0% <input type="checkbox"/>	Project Officially Closed	1 day

SCHEDULE F: MERCHANT AGREEMENT

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, ICB (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 identity as described hereinafter.

- 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 of 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;

- 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 or 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

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 encumbrancer 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



Kenya National Audit Office

FORENSIC AUDIT REPORT OF THE AUDITOR GENERAL

COUNTY COUNCIL of NAROK

PROCUREMENT OF AUTOMATED
PRE – PAID SMART CARD
PARKING FEES REVENUE SYSTEM

May 2012

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1. INTRODUCTION

1.1 Brief Background

The request to carry out the investigation a special audit on the alleged irregularities in the award of a contract by the County Council of Narok to Equity Bank for the automation of park fees collection arose from a letter by the Clerk of the National Assembly; Ref /NA/LAFAC/CORR.2012/07 dated 29th February 2012 addressed to the Auditor General. The investigation was carried out between 20th and 26th March 2012 for a period of five days.

1.2 Objective and Scope of the Special Audit

The objective of the special audit was to establish whether the automation of park fees collection contract was properly awarded based on the Public Procurement and Disposal Act, 2005 and relevant rules and regulations.

The purpose and focus of the audit was to:

- Establish how the need for automation of park fees collection arose.
- Investigate how the procurement of automation of parking fees was carried out and establish whether it was in line with Public Procurement and Disposal Act 2005 and the relevant Rules and Regulations.
- Quantify the loss if any arising from the irregularities.
- Identify individuals who may be culpable in the procurement and award of the contract.
- Bring up any other issue relevant to this procurement process.

The audit covered period between February 2010 and April 2012, the inceptions and award of the contract dates.

1.3 Investigation Approach

In order to carry out the special audit, the following approach was adopted:

- Reviewed the procurement process followed
- Obtained and evaluated relevant documentation and correspondence.
- Examined accounting records and method of payments, Council minutes, procurement plan, tender committees' minutes, technical and financial evaluation committee reports, minutes of tender opening and the award of the contract.
- Perused relevant legislation, regulations and circulars.
- Held meetings with various County Council of Narok officials. Interviews were used to obtain information about, to understand the allegations, and to verify facts.

2. AUDIT FINDINGS

2.1 *Need for automation of park fees revenue collection.*

- 2.1.1 Local authorities in the country were faced with myriad administrative and managerial problems that hitherto, bedevilled the running of National Game Reserves. On 1st April 2005, the Minister for Local Government launched the report on the management of National/Game Reserves under the mandate of Local Authorities, which recommended the automation of Revenue collection systems in all National Reserves and the use of modern equipment to improve revenue collection and enhance security.
- 2.1.2 The Local Government Act Cap 265 Section 145 empowers the Council to collect revenues from local sources including national reserves. On 16th March 2005, the Minister for Local Government, Hon Musikari Kombo, constituted the Maasai Mara task force whose purpose was to come up with suggestions on how to improve the management of Game Reserves.
- 2.1.3 The Council itemised the Smart Card System in the Performance Contracting and Budgets for the years 2009/2010 and 2010/2011 with a budget provision of Kshs. 5,000,000.00 and 25,000,000.00 respectively. The Council proposed to change the revenue collection system from paper park entry ticket with an electronic card based system that would eliminate revenue leakages in the Game Reserve.
- 2.1.4 The envisaged system would entail the use of a personalised smart card and online registration that would capture client data including personal details, place of stay while in the Maasai Mara and entry and exit dates. It would also enable the Council to compute royalties on visitors residing in the parks five (5) game lodges.
- 2.1.5 Prior to placing the advert in the local dailies, a team of senior officers from County Council of Narok, including member Committee Members made study visits to Kenya Wildlife Service and Tanzania National Parks Authority (TANAPA) who had automated their park entry

systems. The Tanzania National Parks Authority (TANAPA) model of smart card was found to be superior and therefore recommended to the Council by the team that visited the Authority. This was done specifically to enable the tender committee members understand the system before evaluating the (EOI) bids

2.2 Procurement of Automated Park Fees revenue Collection

2.2.1 S.76 (1) of the Public Procurement and Disposal Act 2005 provides for situations when a request for proposal may be used to procure goods and services as an alternative to open tendering if the:-

- procurement is of services or a combination of goods and services; and
- Services to be procured are advisory or otherwise of a predominately-intellectual nature.

2.2.2 Consequently the Council placed an expression of interest (EOI) for the supply, installation and commissioning of a prepaid smart card system for entry into the Maasai Mara Game Reserve through an advertisement in the Dailies of 16 February 2010 and 23 February 2010. in the Daily Nation and in the Standard respectively.

The scope of the works included the following:-

- Supply, install and commission a centralised online billing system.
- Supply and install relevant ICT infrastructure at all entry points and Head Office.
- Supply, install and commission vendor based prepaid equipment, complete software system for the County Council of Narok headquarters vendors and supervisors.
- Train Staff in the use of the new systems and on first line maintenance of the proposed equipment.

- To provide ongoing call out for repairs and maintenance not covered by first line maintenance.
- Provision of watertight system against revenue loss.

3.2.3 Seventeen firms responded to the advert and submitted their bids before the closing date. The submitted bids were opened on 16th March 2010 in the presences of bidders who choose to attend. See (schedule 1)

2.3 Technical Evaluation

2.3.1 Out of seventeen (17) firms listed in the *schedule attached* that bided to provide the service, only twelve (12) firms made presentation of the proposed e-ticketing system to the tender and evaluation committee between 28 May 2010 and 4 June 2010. Further, the five (5) firms that did not present are Crafton Silcon, Lachuru Investments, Pluton ICT Ltd, Secure Tech Consultancy and Technology and were therefore, disqualified at that stage.

2.3.3 The evaluation committee members adjudicated the remaining twelve firms bids and ranked the firms based on their presentation.

2.4 Financial Evaluation.

2.4.1 After the technical evaluation, five firms; Equity Bank Ltd, Cooperative Bank Ltd, Tracom Kenya ltd, Compulynx ltd and Zinga Technologies Ltd., which were considered most responsive, were shortlisted for financial evaluation. The financial evaluation included a site visit to each firm to assess its capacity to handle the proposed smart card system where evaluation and rating was done as shown in the table below.

Name of the firm	Date of Visit	Score %
Compulynx	21 st July 2010	40.8
Cooperative Bank	21 st July 2010	62
Equity Bank	19 th July 2010	80.2

Tracom(K) Ltd	20 th July 2010	55.2
Zinga Technologies	20 th July 2010	59

2.4.1 The five firms were further requested to visit the project site at Maasai Mara for the purpose of costing the project and were subsequently invited to present their financial proposals for the project on 18th August 2010.

2.4.2 The Council financial evaluation analysis was classified into three components quotations; System Hardware, System software and Project implementation and support quotations and the following were their observations made by the evaluation committee:-

- Co-operative bank did not provide costs of the software and hardware system. The committee also observed that there were no adequate security system details. The bank had enlisted Tracom as a core partner yet Tracom (K) limited had made a separate proposal. Co-operative bank had no capacity to undertake the project alone.
- Tracom (K) Ltd had not adequately quoted for the cost of hardware and software as required. It had also enlisted Co-operative bank as the desired agency to provide the rollout platform. The project cost was not clear.
- The financial proposals and sample of smart cards presented by Cooperative bank and Tracom were similar in security features. It was likely that the two firms engaged in bid rigging whereby, the same proposals were presented by the two to enhance success of either of the company winning a contract
- Compulynx had previously installed a smart card system at Kenya Wildlife Services that led to loss of revenue. Their quoted price of Kshs.197,492,000.00 was considered high compared to other firms.
- Zinga Technologies proposal had weak security features and its financial base was weak.

- Equity bank system had high levels of security features that had back office monitoring at the Council. The bank presented two models, one a fully owned and the other a co-investment where both partners would contribute towards installation and commissioning of the system. The costs for the five firms were as follows.

No.	Firm	Quoted
1.	Equity Bank(co-owned model	28,408,000.00
	Equity Bank(Fully owned model	130,459,000.00
2.	Zinga Technologies	27,480,000.00
3.	Compulynx	197,492,760.00
4.	Cooperative Bank	Not indicated
5.	Tracom(K) Ltd	Not indicated

2.4.3 The five firms were adjudicated and ranked according to their technical financial and presentation performances and Equity bank emerged the best firm responsive and competent to offer the services at Kshs.28,408,000.00.

2.5 Award of the Contract

2.5.1 The Council awarded the tender to Equity Bank on 4 November 2010 through minute no. 3/6/2010-2011 of the tender committee to supply, install and commission an electronic revenue collection system at entry points into the Maasai Mara Game Reserve for a contract sum of Kshs. 28,408,000.00. The bank was informed of this decision vide letter dated 8th November 2010.

2.5.2 On the same date, the other four unsuccessful bidders were informed individually through e-mails and then followed by letters.

2.6 Contract Alterations

2.6.1 Equity Bank acknowledged the award of the tender through a letter dated 15th November 2010 and signed by the Chief executive Dr. James Mwangi.

2.6.2 However, after the award of the contract there were unresolved issues in respect to the duration of the contract and the commission payable to the bank, which led to re-negotiation between the Council and the bank.

2.6.3 The Council gave the following proposal to the bank on the commission payable:

<u>Percentage (%)</u>	<u>Period in years</u>
7	4
6	3
5	3

2.6.4 On the other hand, Equity Bank presented the following counter proposal on commission payable

<u>Percentage (%)</u>	<u>Period in years</u>
8	4
7	3
6	3

2.6.5 In a meeting held on 25^h March 2011 at the Council boardroom between the Council and Equity bank representatives, there were further negotiations to the effect that the Council preferred a five years term and a service fee of 5% for the revenue collected through the smart card system. The bank on the other hand gave an offer of ten years and a service fee based on revenue collected as follows:

<u>Percentage (%)</u>	<u>Period in years</u>
8	4
7	3
6	3

2.6.6 The Council gave a final offer of ten years and a service fee based on revenue collection as follows:

<u>Percentage (%)</u>	<u>Period in years</u>
7	4
6	3
5	3

However, after length deliberations, no agreement was reached on the rates of commission prompting the bank representatives to seek further consultations with their Head Office.

2.6.7 On 28th March 2011, the Council wrote a letter to Equity bank Ref: NCC/EOI/SCS/2010/2011 and gave its final offer, which was the same as the one presented at the negotiation with the bank on 25th March 2011. Upon receipt of the offer letter, Equity bank acknowledged on 29 March 2011 and accepted the period and commission rates as proposed by the Council but gave a rider to the effect that the commission will be based on an annual revenue base of Kshs.1.5 billion, below which the Council will meet the commission deficit that may arise.

2.7 Irregularities and weaknesses Observed

2.7.1 On- 13 April 2011, the full council meeting adopted the re-negotiated agreement between the Council senior managers and Equity bank on e-ticketing.

Under the Pre-paid Smart Card system agreement, article 6.1 on the payment obligations that took place on 19 April 2011 between the Narok County Council and Equity bank, a threshold of Kshs.1.5 billion total collections between 1 July and 30 June was introduced in the contract.

The council will then be required to pay to the Equity 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 multiplied by fifty per cent (50%) of the difference between the minimum reserve and the total revenue collected in that year. The previously mentioned difference will be paid during the period between 1st July and 30th September of the year immediately after the year in question.

2.7.2 The payment obligation was neither explicitly indicated in the financial proposal presented by the bank nor at the time of renegotiation of the period and commission to be charged.

2.7.3 The Council paid through Voucher number 1108 - 0909 on 11 August 2011 a part payment of Kshs.19,885,600 representing seventy percent (70%) of the contract sum.

Sec 84 and 85 of the Public Procurement and Disposal Act 2005 provides circumstances in which negotiations would be done with the successful proposal and may request and permit changes if the contract may not vary from the requirements of the terms of reference, the request for proposal or the terms of the successful proposal except in accordance with the following:-

- The contract may provide for a different price but only if there is a proportional increase or reduction in what is to be provided under the contract
- The variations must be such that if the proposal, with those variations were evaluated again the proposal would still be the successful bidder.

2.7.4 In light of the above, the Kshs1.5 billion threshold commission base suggested by the bank may affect the council negatively in the short run given the nature of the Tourism industry, which is affected by external factors

beyond the control of the Council. Moreover, the bank in its financial proposal had not provided this information on the commission to be charged and the period of the contract.

3. CONCLUSION

The Council management procured the Automated Parking Fees Revenue System in accordance with the process referred to under Sec 76 and 78 of the Public Procurement and Disposal Act 2005 that provides for, when request for proposals may be used. However, Equity bank introduced midstream a rider to the contract that stated the threshold on which commission will be based is Kshs.1.5 billion. The rider was not in the financial proposals, which led to further negotiations.

The period of the contract was not included in the financial proposal but was introduced midstream. This has far-reaching financial implication to the Council.

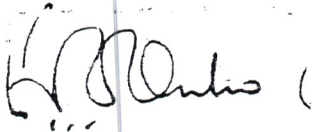
The Council may lose in the event revenue collected falling below Kshs. 71,500,000,000.00. The Council should have consulted widely from the Public Procurement Oversight Authority and Ministry of Local Government before assenting to the variation of the contract terms.

The second lowest bidder Cooperative Bank presented similar documents with Tracom and were in essence bid rigging so as that one of them could win the tender. Ideally, Co-operative bank and Tracon should have presented a joint venture agreement.

Overall, the Council has improved on its revenue collection for the short period e-ticketing system has been in place. The council collected extra Kshs.185,688,855.00 in nine months of the year 2011/2012, more that its total revenue collection in the year 2010/2011 and it is projected that the council would have collected more revenue than any other time in the Council's history.

4. RECOMMENDATIONS

The Council should consider re-negotiating the clauses of the contract document with the bank in respect of the payment obligation and in particular the threshold of Kshs. 1,500,000,000.00 minimum revenue base. Equity Bank should charge the Council the commission based on the revenue collected through the system without setting a minimum threshold on the revenue collected. This is a more equitable and a fair basis considering other factors that may affect the flow of tourist to the park such as marketing and geo-global politics, which have not been factored in the contract document



Edward R.O. Ouko

AUDITOR GENERAL

31 May 2012



INVITATION FOR EXPRESSION OF INTEREST (EOI) FOR THE SUPPLY, INSTALLATION AND COMMISSIONING OF A PREPAID SMART CARD SYSTEM.

The County Council of Narok established under the Local Government Act cap 265 of the Laws of Kenya is inviting expression of interest from experienced and qualified firms/manufacturer/suppliers for a smart card based prepaid system for entry points into the Maasai Mara Game Reserve.

The key objective of this project is to design and develop a smart card system that will enable the County Council of Narok to increase efficiency and effectiveness in revenue collection.

SCOPE

The County Council of Narok seeks to engage the services of a suitably qualified firm who shall be expected to:

- a) Supply, install and commission a centralized online prepaid billing system.
- b) Supply and install relevant ICT Infrastructure at all entry points and Head Office for the prepaid billing system.
- c) Supply, install and commission vendor based, prepaid equipment, complete software system for the County Council of Narok headquarters vendors and supervisors.
- d) Train staff in the use of the new systems and on first line maintenance of the proposed equipment.
- e) To Provide ongoing call out for repairs and maintenance not covered by first line maintenance.
- f) Provision of a water tight system against revenue loss.

The capabilities of the proposed solution to integrate with existing ICT system will be an added advantage. The County Council of Narok now invites interested and eligible firms to express their interest in the above project.

Qualification will be determined in accordance with the Public Procurement and Disposal Act 2005, Laws of Kenya and the Public Procurement and Disposal Regulations 2006 thereof.

Expression of interest in plain sealed envelopes clearly marked "(EXPRESSION OF INTEREST FOR SUPPLY, INSTALLATION AND COMMISSIONING OF SMART CARD SYSTEM FOR ENTRY POINTS TO MAASAI MARA NATIONAL GAME RESERVE)" REF NO: NCG/EOI/SCS/2010) DO NOT OPEN BEFORE 16th MARCH 2010 AT 12:00 Noon.

Should be addressed to the address below and deposited in the Tender Box situated out side the Clerks office on or before 16th March 2010 at 12:00 Noon.

To The Clerk
 County Council of Narok
 P.O Box 19 – 20500 NAROK
 Email: info@narokcountycouncil.org
 Website: www.narokcountycouncil.org

ONLINE EDITOR
 Job Ref: HR-OE-02-10

Nation Media Group, the leading multi media house in East and Central Africa wishes to recruit a suitably qualified candidate for the position of Online Editor in the *Nation Digital Division*, for the Coast region. We are looking for a talented, innovative and enthusiastic journalist with proven writing and editing abilities and sound knowledge of current affairs.

The successful candidates will be responsible for:

- Developing online content about the East African coast, that helps international readers understand the unique social life and economy of places like Mombasa;
- Checking and correcting editorial copy for facts, accuracy, taste, house-style; language use, clarity and balance to conform to NMG Editorial Policy;
- Ensuring NMG content is properly projected on digital platforms;
- Ensuring timely publishing to digital platforms;
- Developing and strengthening the NMG digital platforms as a 24/7 medium of breaking news; and
- Updating online content in keeping with changing news events.

Knowledge, skills & experience requirements:

- University Degree;
- Diploma in Journalism;
- 3 to 4 years working experience preferably as a sub-editor;
- Good level of knowledge of African current affairs, especially the East African coast, and issues;
- Multimedia editing skills; and
- Ability to work with minimum supervision and cope with the pressure and tight deadlines.

Interested candidates who meet the above criteria may send their applications enclosing a detailed CV, names of three referees, daytime telephone contacts and quoting the job reference on the envelope to:

The Group Human Resources Director,
 Nation Media Group,
 P. O. Box 49010 -00100,
 NAIROBI.

To reach us not later than 1st March, 2010

Note: We shall only contact the shortlisted applicants.



Nation Media Group
 Media of Africa for Africa

Handwritten signatures and stamps, including a circular stamp that reads "Commissioner".

INTERRUPTION OF THE BROADCAST

