

DIB BANK KENYA - MOBILE BANKING TERMS & CONDITIONS

1.1 Definition of Terms

In this Agreement, including the Schedule, the following definitions shall have the following meanings:

- 1.1.1 "Authorized User" means Customers who have been provided with access to the Channel and Channel Services by the bank. It should be noted that, users to the service must first register to enable them access.
- 1.1.2 "Channel" means all or any system, medium or channel (including telephone and facsimile), whether Internet based or not, which may be established by the bank from time to time to enable our customers access and utilize banking and other services provided by us from time to time;
- 1.1.3 "Channel Services" means the provision by us to you of access to one or more Channels pursuant to the terms of this Agreement enabling you to utilize one or more of the Product Services;
- 1.1.4 "Deposit Account" Any Bank Account with a credit balance.
- 1.1.5 "Pin" the 4 (four) digits provided to the Customer by the bank for authentication / verification by bank of his /her identity. The customer will be able to obtain a range of financial information as determined by the Bank related to his / her relevant Account(s) through the use of PIN and such other means of identification assigned to the Customer in connection with the Account(s) and Facility.
- 1.1.6 "Nominated User(s)" the representative or representatives of the Customer authorized by the Customer to hold and change the Password and hence to access the System and Service on behalf of the Customer.
- 1.1.7 "Service" means such Mobile Banking Service specified in these Terms and Conditions as the Customer may from time to time subscribe to and "Services" shall be construed accordingly and shall include channel services and such other internet related services in this agreement.
- 1.1.8 "System" the mobile banking and communications software enabling the Customer to communicate with the Bank for the purposes of the Service. The System Service will for the purpose of this agreement be accessed through the mobile phone.
- 1.1.9 "Request" a request or instruction received by the Bank from the Customer or purportedly from the Customer through the System and upon which the Bank is, by virtue or sub paragraph 28.4.1, authorized to act.

- 1.1.10 "Alert" the customized messages sent either by short messaging service / text ("SMS" over the Customer's mobile phone, email, or fax or any other modes of communication.
- 1.1.11 "MSP" any mobile service provider through whom the Customer or the Bank receives the mobile services as notified by the Bank.
- 1.1.12 "Mobile Banking" means Mobile Banking Service or the performance of transactions, payments etc. over the phone through the Bank's secure system.
- 1.1.13 "Security Procedures" means the security measures and procedures set out in the user guides and/ or Service Supplements (including without limitation, provisions relating to customer identification and user identification) and any other instructions we may give concerning security from time to time.
- 1.1.14 "Personal Data" means any information relating to an identified or identifiable person. Details in the Customer Information File (CIF) held with the bank such as ID / Passport Number, Account Number, CIF Number, Account Names, and customer contact details are considered Personal Data.

In this Agreement:

- 1.1.15 References to "the Bank" shall include the Bank, its successors and assigns;
- 1.1.16 references to "the Customer" shall include the Customer, its successors and permitted assigns and references to a "subsidiary" shall mean a subsidiary undertaking within the meaning of Section 3 (1) of the Companies Act, 2015 of the Laws of Kenya;
- 1.1.17 where "the Customer" is more than one person, references to "the Customer" shall include all and/ or any of such persons and the obligations of the Customer shall be joint and several;
- 1.1.18 words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders;
- 1.1.19 "person" shall include a body of persons, corporate or incorporate;
- 1.1.20 References to paragraphs, sub paragraphs and Schedules shall mean paragraphs, sub paragraphs and schedules of these Terms and Conditions;
- 1.1.21 The Customer's use of the Service is also governed by the applicable Bank's General Terms and Conditions which the Customer has already signed.

1.2 System Usage and Materials

- 1.2.1 The Bank will maintain the whole Banking system, (hereinafter referred to as "the System"), to provide the Customer with information about the

- Bank services and products, including the Mobile Banking service, and to facilitate communication with the Bank. If the Customer wishes to take on the Service, they will be required to read the terms and conditions of this agreement and their subsequent use of the service constitutes their agreement to all such terms and conditions.
- 1.2.2 However it should be noted that, users to the service must first register to enable them access any of the material under internet Banking service.
- 1.2.3 Once the Bank has formally approved the Customer and the Customer has been maintained as an authorized user of the Service, the Customer will provide to the System a unique PIN known only to the Customer, and then only shall the Customer be afforded use of the Service. The PIN will form a unique link to each specific Customer's profile(s).
- 1.2.4 Further services and profiles may be added from time to time by the Bank and the Bank reserves the right to modify, replace or withdraw any Service and/or profile at any time, for any reason whatsoever, without prior notice to the Customer.
- 1.3 Customer's Responsibilities**
- 1.3.1 The Customer shall at its own expense provide and maintain in safe and efficient operating order such hardware, software and other facilities (including access to any public telecommunications systems), and any communications network necessary for the purpose of accessing the System and the Service.
- 1.3.2 The Customer shall be responsible for ensuring proper performance of the phone including any losses or delays that may be caused by the MSP. The Bank shall neither be responsible for any errors or failures caused by any malfunction of the Customer phone, and nor shall the Bank be responsible for any virus or related problems that may be associated with the use of the System / Phone, the Service and the phone. The Customer shall be responsible for charges due to any service provider providing the Customer with connection to the internet and the Bank shall not be responsible for losses or delays caused by any such service provider.
- 1.3.3 The Customer shall abide with any applicable regulations necessary to have access to and use of the System and shall ensure that all persons it allows to have access to the System shall comply with all laws and regulations applicable to the use of the System and follow all instructions, procedures and terms contained in this Agreement and any document provided by the Bank concerning the use of the System and Service.
- 1.3.4 The Customer shall prevent any unauthorized access to or use of the phone / System and Service by way of keeping their PIN a secret at all times. The Customers shall ensure that the PIN does not become known or come into possession of any unauthorized person.
- 1.3.5 The Customer shall take all reasonable precautions to detect any unauthorized use of the phone / System and Service. To that end, the Customer shall ensure that all communications from the Bank are examined and checked by or on behalf of the Customer as soon as practicable after receipt by the Customer in such a way that any unauthorized use of and access to the phone/ System will be detected.
- 1.3.6 The Customer shall immediately inform the Bank through:
- Telephone: +25470991300 / +25420 5131300
 - Email: contactus@dibkenya.co.ke; or by
 - visiting the nearest branch in the event that:
- a) The Customer has reason to believe that their PIN used by the Customer to gain access to the Service and to communicate with the Bank is or may be known to any person not authorized to know the same and/or has been compromised; and/or
- b) The Customer has reason to believe that unauthorized use of the Service has or may have occurred or could occur and a transaction may have been fraudulently input or compromised.
- 1.3.7 The Customer shall not send or attempt to send any request to the Bank through their phone /System if the Customer has reason to believe that for any reason such request may not be received by the Bank or may not be received accurately and intelligibly.
- 1.3.8 The Customer shall at all times follow the security procedures notified to the Customer by the Bank from time to time or such other procedures as may be applicable to the Service from time to time; The Customer acknowledges that any failure on the part of the Customer to follow the recommended security procedures may result in a breach of the Customer's profile confidentiality and may lead to unauthorized transactions in accounts linked to the Customer's Service subscription with the Bank. In particular, the Customer shall ensure that the Service is not used or Requests are not issued or the relevant functions are not performed by anyone other than a person authorized to do so.
- 1.3.9 The Customer shall not at any time: Operate or use the Service in any manner that may be prejudicial to the Bank.

1.3.10 The Bank shall be entitled and authorized to debit the Customer's accounts with the amounts of the transactions effected via the Service as well as debit the Customer's account with the amount of any fees applicable to the Service from time to time.

1.3.11 The Customer shall be responsible for the Acts and Omissions for the use of the facility and the Bank shall not be responsible for any loss that arises there-from

1.4 Instructions By Customers

1.4.1 The Bank is irrevocably authorized by the Customer to act on all Requests received by the Bank from the Customer (or purportedly from the Customer) through the System and to hold the Customer liable thereof, notwithstanding that any such requests are not authorized by the Customer or are not in accordance with any existing mandates given by the Customer. If the Customer requests the Bank to cancel any transaction or instruction after a Request has been received by the Bank from the Customer, the Bank may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.

1.4.2 The Bank shall be entitled to accept and to act upon any Request, even if that Request is otherwise for any reason incomplete or ambiguous if, in its absolute discretion, the Bank believes that it can correct the incomplete or ambiguous information in the Request without reference to the Customer being necessary.

1.4.3 The Bank shall not be obliged to accept or to act upon any Request if to do so would require access to, action by, or information from the Branch, or any subsidiary or the Bank located in any jurisdiction where it is not a Banking Day at the relevant time when such access, action or information is required or would cause a breach of any existing mandate facility limit or agreement between the Bank, the Branch and/or any subsidiary of the Bank (as applicable) and the Customer. In the event that the Bank does accept or act upon any such Request, the Customer shall remain liable thereof.

1.4.4 For the purposes of carrying out any Instruction, you:

- a) Authorize us to transmit payment instructions on your behalf and to act for these purposes as instructing financial institution
- b) Acknowledge that we will be acting as your agent for transmitting or procuring the transmission of any such Instructions and that we being the recipient of any such Instructions shall be

authorized and entitled to act upon them as if they had been given directly by you to such recipient, and

- c) Agree to authorize any relevant third party to provide account and other information to us.

1.4.5 For the avoidance of doubt:

- a) you agree that we are authorized to record all telephone conversations made between us in writing or by tape or other means as we may determine for quality assurance purposes, however any such information so recorded will only be disclosed to third parties in line with Clause 1.11.3 below;
- b) where any Instruction is given by fax, email, or SMS followed by delivery of the original Instruction, the fact that the same had been given by fax, email or SMS and the date of the facsimile shall be annotated on the original copy (where possible). In the absence of such annotation, you agree that we shall not be liable for any consequences including (without limitation), in the case of payment Instructions, any losses arising from any duplication of payment or fund transfer, and
- c) As between us, and in the absence of manifest error, our records (whether in paper, electronic, data or other form) of each Instruction or other communication with you shall be conclusive evidence of the fact of receipt or non-receipt of such Instruction or communication and of the contents of an instruction or communication.
- d) In the event of any conflict between any terms of any Request from the Customer and the terms of this Agreement, the terms of this Agreement shall prevail.

1.5 Mobile Banking Service and Transactions

1.5.1 Services and Transactions Offered

Depending on the subscription applied for by the Customer and approved by the Bank, the transactions that a Customer is able to perform may vary. The services and transactions allowed may include but are not limited to the following:-

- Obtaining account information like current balances, mini statements and account activity.
- Electronic bill payment for utilities
- Requests for printed bank statements, cheque books and cheque status
- M-PESA transfers
- Stop cheque requests.
- Inquiries on foreign exchange rates
- Change of password- done by the Customer.
- Internal Transfer of funds - between different accounts of the Customer.

- Transfer of Funds to external bank accounts of the Customer or third parties.
- Notifications on credit or debit transactions as advised by Customer

1.5.2 Customer Subscription

The Customer will subscribe for specific services and/or transaction types and its profile shall be customized to allow performance of only those Services subscribed for.

1.5.3 Limits of Mobile Banking Transactions

- The Customer may transfer or effect a payment for any as long as the transaction does not cause the balance in the deposit account to be less than zero and is within the set limits (per transaction and daily channel limits)
- The M-PESA service shall be governed by the terms and conditions noted herein and includes all enabling and supporting agreements to the provision of the M-Pesa service with Safaricom that the customer will be privy to at all times.

1.6 Service Charges

- 1.6.1 The Customer shall pay or procure the payment of our service tariffs, fees and charges (including any cancellation fees or termination charges) for providing the services and any software and system materials provided or licensed by us to you in accordance with the schedule of charges agreement in addition to transaction service charges applicable to various transaction types as advised by the Bank from time to time.
- 1.6.2 The Customer, whenever applicable, shall pay any tax chargeable upon any sums payable by the Customer to the Bank and also any other charges or duties levied on the Customer or the Bank by any governmental or statutory body relating to the provision of the Service.
- 1.6.3 The Bank is hereby irrevocably authorized from time to time to debit any amounts payable by the Customer against any account in any currency maintained by the Bank, the Branch and/ or the Bank subsidiaries (as applicable) in the name of the Customer. In addition to the fees payable under this agreement, the charges and fees applicable to the Customer's Bank Accounts will apply.

1.7 Exclusion of Liability

The Bank will not be responsible or liable for:

- 1.7.1 any indirect or consequential losses or economic loss or loss of profit or business incurred by you in connection with the services notwithstanding our awareness of the possibility or likelihood of you incurring the same

1.7.2 any loss in connection with any unforeseeable acts or omissions or neglect acts on the part of our service providers, contractors, agents or employees;

1.7.3 any losses arising in connection with us acting upon Instructions sent by you or by reason of us failing or refusing to so act if, acting in good faith, in our opinion there is or are reasonable ground(s) for such failure or refusal (other than as caused by our gross negligence or willful default);

1.7.4 The Bank shall not be responsible for any loss suffered by the Customer should the Service be interfered with or be unavailable by reason of

- a) any industrial action,
- b) the failure of any of the Customer's facilities, or
- c) any other circumstances whatsoever not reasonably within the Bank's control including, without limitation, force majeure or error, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system.

1.7.5 any losses caused as a result of or in connection with any laws or regulations of countries where transactions are settled or cleared where any negotiable instrument or receivable is collected or any exchange control restrictions which are imposed from time to time unless caused by our breach of such laws and regulations;

1.7.6 if any losses suffered by you by reason of:

- a) any viruses, Trojan horses, worms, logic software, other bombs or other similar programs or routines (including hacking) affecting any Website, Service or System Materials; or incomplete messaging
- b) any damages or losses arising from unauthorized access to any Service by a third party using the PIN unless we have received prior notification from you in accordance with the User Guides and/or the relevant that no further access to the relevant Service shall be granted to any person using such Customer Identification or User Identification or Access code with effect either from receipt of such notification or such later date as may be specified In such notification; or
- c) The consequences of any misuse of any Channel by you, or any use of any Channel by you not related to any of the Services. For the avoidance of doubt, our maximum aggregate liability to you for any claim arising from or in connection with any Service is limited to the aggregate amount of service charges paid by you for the relevant Service in the three months preceding such claim.

1.7.7 Whilst we will use all reasonable endeavors to ensure that all financial information available through the Services is accurate when initially made available, we shall not be liable for any loss incurred or damage suffered by you by reason or in consequence of your using financial information which is not up to date

1.7.8 To be valid any claim that you have against us under the Agreement or otherwise in connection with any Service or any ancillary service must be notified to us within thirty (30) days after you have become aware or should have become aware of the facts on which it is based. This limitation of time for lodging a claim shall take precedent over any other limitation of actions laws unless such law expressly provides for its supremacy over freedom to contract.

1.8 Indemnity

1.8.1 The Customer shall indemnify and keep the Bank indemnified against

- a) any damages and costs payable to the Bank in respect of any claims against the Bank for recompense for loss caused by (a), (b) and/or (c) of sub paragraph 1.7.6 where the particular circumstance is within the Customer's control; and
- b) any loss which may be incurred by the Bank as a consequence of any breach by the Customer of the terms of this Agreement

1.8.2 The Customer shall indemnify and keep indemnified the Bank against any demand, claim or action relating to or in connection with the Service, whether directly or indirectly, unless such demand, claim or action arose as a direct consequence of the gross negligence or willful misconduct of the Bank or any of its employees.

1.8.3 The Customer shall indemnify and keep indemnified the Bank against the following:-

- a) All demands, claims, actions, losses and damages of whatever nature which may be brought against the Bank or which it may suffer or incur arising from its acting or not acting on any Request or arising from the malfunction or failure or unavailability of any hardware, software, or equipment, the loss or destruction of any data, power failures, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond the Bank's control, interruption or distortion of communication links or arising from reliance on any person or any incorrect, illegible, incomplete or inaccurate information or data contained in any Request received by the Bank.

b) Any loss or damage that may arise from the Customer's use, misuse, abuse or possession of any third party software, including without limitation, any operating system, browser software or any other software packages or programs.

c) Any unauthorized access to the Customer's accounts or any breach of security or any destruction or accessing of the Customer's data or any destruction or theft of or damage to any of the Customer's equipment.

d) Any loss or damage occasioned by the failure by the Customer to adhere to any terms and conditions applicable to the Service and/or by supplying of incorrect information or loss or damage occasioned by the failure or unavailability of third party facilities or systems or the inability of a third party to process a transaction.

1.8.4 If for any reason other than a reason mentioned in sub paragraph 1.7.4 the Service is interfered with or unavailable, the Bank's sole liability under this Agreement in respect thereof shall be to re-establish the Service as soon as reasonably practicable or, at the Bank's option, to provide to the Customer alternative banking facilities which need not be electronic facilities.

1.8.5 Save as provided in sub paragraph 1.7.4, the Bank shall not be liable to the Customer for any interference with or unavailability of the Service, howsoever caused.

1.8.6 Under no circumstances shall the Bank be liable to the Customer for any loss of profit or anticipated savings or for any indirect or consequential loss of whatever kind, howsoever caused, arising out of or in connection with the Service.

1.8.7 Except in respect of death or personal injury caused by the negligence of the Bank, the Bank shall be under no liability whatsoever in respect of any terms of this Agreement or their performance thereof or any transactions effected by the Bank in response to any Request:

- a) In the case of any claim relating to a transaction, within thirty (30) days from the date of the alleged transaction on which such claim is based; and
- b) In all other cases within one (1) year of the date of the alleged action or inaction by the Bank on which such claim is based.

1.8.8 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

1.9 Amendments

The Bank may amend or change the terms and conditions at any time. If the change adversely affects the Customer, the

Bank will give the Customer notice prior to the effective date of the amendment.

1.10 Termination

1.10.1 Notwithstanding anything contained in these Terms & Conditions, the Mobile Service may be terminated at any time by either party giving the other one notice, PROVIDED that in the event of any change in any law or the application thereof, or any other event which, in the judgment of the Bank, would have the effect of prejudicing the Bank should it continue with the rendering of the Service to the Customer, the Bank shall be entitled to terminate the Mobile Service at any time without notice to the Customer.

1.10.2 If the Customer terminates the Mobile Service, the Bank may continue to make transfer of funds and other transactions that the Customer would have previously authorized before the notice of termination is received by the Bank.

1.10.3 The termination of the Mobile Service shall not, in itself, terminate or affect the relationship of Banker and Customer between the Bank and the Customer

1.10.4 Paragraphs 1.7 and 1.11.3, shall survive termination of the mobile service.

1.11 Confidentiality and Disclosure

1.11.1 You undertake to maintain the confidentiality of the PIN and any other information and materials of any nature supplied to you by the Bank in relation to the Service. You shall be fully liable to the Bank for any breach of the provisions of this paragraph by yourself.

1.11.2 You authorize us to collect, retain and use personal information about you for certain purposes as detailed in such data protection and privacy policies as the Bank may issue from time to time.

1.11.3 You agree that we are authorized to disclose any necessary information (including any personal data) regarding you and the status of your accounts (including deposit accounts) obtained under this Agreement or any other agreement with us to any or all of:

- a) any office/branch/division of the Bank;
- b) any licensed credit reference bureau in accordance with the terms of the Credit Reference Bureau Regulations, 2013;

- c) any agent, contractor or third party provider or service provider or professional adviser who provides administrative, telecommunications, computer, payment, collections, security, clearing, credit reference or checking, or other services or facilities to us in connection with the operation of our business;
- d) any person to whom we are required to make disclosure to under the requirements of any law, regulation or practice;
- e) Any financial institution with which you propose to have any dealings, and to use such information in connection with the administration and operation of the Services.

1.12 Intellectual Property Rights

1.12.1 The Customer acknowledges that the intellectual property rights in the System (and any amendments or enhancements thereto from time to time) and all associated documentation that the Bank provides to the Customer through the System or otherwise are vested either in the Bank or in other persons from whom the Bank has a right to use and to sub-license the System and/or the said documentation. The Customer shall not infringe any such intellectual property rights.

1.12.2 The Customer shall not duplicate, reproduce or in any way tamper with the System and associated documentation without the prior written consent of the Bank.

1.13 Governing Law

1.13.1 This Agreement shall be construed in accordance with the Laws of Kenya and the Courts of Kenya shall have exclusive jurisdiction over any matter arising under this Agreement.

1.13.2 In the event of a dispute arising in connection with this Agreement, the Customer shall first raise the matter with the Bank's customer relationship manager and should the dispute not be resolved within seven (7) days, the Customer shall escalate the matter to the branch manager of the branch/division of the Bank for resolution. In the event that the branch manager does not resolve the matter within seven (7) days upon lodging of the dispute by the Customer, the Customer shall have the liberty to institute any legal proceedings against the Bank.



ACCEPTANCE:

I/ We confirm that I/ We have read and understood the Terms and Conditions related to mobile banking.

I /We confirm that the service will be used for legal purpose as outlined in the laws of Kenya.

Name_____Signature: _____Date_____

Name_____Signature: _____Date_____