



## TERMS AND CONDITIONS FOR THE DTB MERCHANT TERM LOAN PRODUCT

### 1. Scope

- 1.1. This Agreement sets out the complete terms and conditions between you, Diamond Trust Bank Kenya Limited ("**DTB**") and Safaricom Plc ("**Safaricom**") for the DTB Merchant Term Loan Product (the "**Service**") and shall be legally binding on you and your personal representatives and permitted assignees.
- 1.2. These terms and conditions and any amendments or variations thereto shall take effect on their date of publication.
- 1.3. These Terms are supplemental to the M-PESA Terms and Conditions, the Lipa na M-PESA Terms and Conditions and the Terms and Conditions applicable to the Service (together called the "**M-PESA Terms and Conditions**").
- 1.4. In the event of any inconsistency between these Terms and Conditions and the M-PESA Terms and Conditions or any other relevant Terms and Conditions with respect to the Service, these Terms and Conditions shall prevail.
- 1.5. Notwithstanding anything to the contrary implied in these Terms and Conditions, the Customer acknowledges that the loan product under the Service is proprietary to and shall be advanced and administered by DTB through the M-PESA Channels. Accordingly, Safaricom excludes all liability from all losses, claims and damages (including legal fees and associated expenses) that may arise in connection with the loan product.

### 2. Definitions

In this Agreement, the following words and expressions (save where the context requires otherwise) bear the following meanings:

- 2.1. "**Access Channels**" or "**M-PESA Access Channels**" means the gateway provided by Safaricom to the Customers to access their M-PESA Account through either, USSD, STK or APP.
- 2.2. "**Account**" means an account held by you with DTB and which is opened and operated in accordance with the terms and conditions herein contained.
- 2.3. "**Agreement**" means the agreement entered between us and you whose terms are the Terms and Conditions set out herein.
- 2.4. "**Applicable Interest Rate**" means the Rate of Interest chargeable on the loan being 5% on the Loan Amount for the 14 day term loan facility and 7% of the Loan Amount for the 30-day term loan facility.
- 2.5. "**Borrower**" or "**Customer**" means an eligible Customer, being an M-PESA Merchant who borrows a loan under these Terms and Conditions, it being acknowledged that we reserve the right to make changes to the eligibility requirements from time to time subject to mandatory approvals.
- 2.6. "**DTB Merchant Loan Product Account**" means a loan account held by a Customer which is opened, disbursed and operated in accordance with the additional terms and conditions herein contained.
- 2.7. "**Customer Care Centre**" means a customer care Centre designated for the Service in accordance with these terms and conditions.
- 2.8. "**Credit Reference Bureau**" means a Credit Reference Bureau duly licensed under the laws of the Republic of Kenya, as amended from time to time, to *inter alia*, collect and facilitate the sharing of customer credit information.
- 2.9. "**Equipment**" includes your mobile phone handset, device, M-PESA enabled SIM Card and/or other equipment which when used together enables you to access the Network and credit from DTB under these Terms.
- 2.10. "**IPRS**" means the Integrated Population Registration System set up and maintained by the Government of Kenya under the Ministry of State for Immigration and Registration of Persons.



- 2.11. "Loan Account"** means a loan account opened with DTB using the Access Channels under these Terms and Conditions.
- 2.12. "Merchant"** means a person duly registered and operating as a Lipa na M-PESA Merchant under the Lipa na M-PESA Terms and Conditions.
- 2.13. "M-PESA" or "M-PESA Service"** means the money transfer and payment service that is managed and operated exclusively by Safaricom in Kenya and licensed by the Central Bank of Kenya.
- 2.14. "M-PESA Account"** means a record maintained by Safaricom corresponding with the amount of electronic money from time to time held by or transacted by M-PESA Subscribers and represented by an equivalent amount of cash held by the Trustee in trust in accordance with the M-PESA Declaration of Trust and the M-PESA Customer Terms and Conditions.
- 2.15. "M-PESA System"** means the technical platform for the time being providing the M-PESA Service.
- 2.16. "Opt-in Function"** means the proprietary menu option developed by Safaricom that enables Customers to apply to Safaricom to register for the Service.
- 2.17. "Opt-out Function"** means the proprietary menu option developed by Safaricom that enables M-PESA Subscribers to opt out of the Service.
- 2.18. "PIN"** means your personal identification number being the secret code used to access and operate your Equipment on the M-PESA System including but not restricted to access and use of the Service.
- 2.19. "Request"** means a request or instruction received by us from you or purportedly from you through the Network and the System and upon which we are authorized to act.
- 2.20. "Safaricom"** means Safaricom PLC, a limited liability Company incorporated under the Laws of Kenya within the Republic of Kenya having its registered office at Safaricom House, off Waiyaki Way, P.O. Box 66827, 00800 Nairobi.
- 2.21. "Repayment"** means the paying back of an advanced loan, including the principal loan borrowed, applicable interest and any other fees.
- 2.22. "Services"** shall include any form of loan facilities or products that DTB may offer you, as a Borrower, pursuant to this Agreement and as you may from time to time subscribe to and "Service" shall be construed accordingly.
- 2.23. "System"** means the system used by us in enabling the delivery of the Services, including the disbursement of loans and acceptance of loan repayments.
- 2.24. "Trustee"** means M-PESA Holding Company Limited, being the person designated as the custodial trustee of customer funds represented on the M-PESA System or such other trustee(s) as may be appointed from time to time for purposes of holding and safeguarding trust funds represented on the M-PESA system.
- 2.25. "We," "our," and "us,"** means DTB and includes the successors and assigns of DTB provided that where the context requires, such term may be construed to mean DTB and/or Safaricom.
- 2.26. "You" or "your"** means the Customer who signs up for the Service.

### **3. Acceptance of the Terms and Conditions**

- 3.1.** Before opting-in or registering for the Service, you should carefully read and understand these terms and conditions. These Terms and Conditions are available on the respective websites of Safaricom and DTB at [www.safaricom.co.ke](http://www.safaricom.co.ke) and <https://dtbk.dtbafrika.com/>. Where you are unable to read and understand these terms and conditions from an electronic device you are requested to collect a printed version from a Safaricom shop.
- 3.2.** If you do not agree with these terms and conditions, please click "Decline" on the Opt-in Function. At any

point after registering for the Service, you may opt out of the Service using the Opt-Out Function, subject to having cleared all outstanding loans and any applicable interest, fees and other charges.

- 3.3.** You will be deemed to have read, understood and accepted these terms and conditions:
- 3.3.1.** upon clicking on the "Accept" option on the Opt-in page requesting you to confirm that you have read, understood and agreed to abide by these terms and conditions; and or
  - 3.3.2.** by using or continuing to use and requesting for the Service.
- 3.4.** The rights and remedies provided in these Terms and Conditions are without prejudice to any other rights and remedies that we may have in law or otherwise regarding your registration, access and use of the Service.
- 3.5.** We may from time to time vary or amend these terms and conditions and your continued access and use of the Service constitutes your acceptance to be bound by the terms of any such amendment or variation.
- 3.6.** Any addition or alteration to this Agreement may be made from time to time by DTB and of which notice of 15 days shall be given to you by way of publication. Upon such addition, variation or modification, the amended Agreement shall be binding upon you as fully as if the same were contained in this Agreement.
- 3.7.** It is your responsibility to review the terms of this Agreement regularly and to ensure that you understand any amendments made to them.
- 3.8.** You are solely responsible for seeking independent legal advice on the legal consequences of entering this Agreement. You understand and accept that the cost of obtaining legal advice is to be borne by you and not DTB.
- 3.9.** If you have any questions or inquiries in relation to this Agreement, please contact DTB's customer care desk at [contactcentre@dtbafrica.com](mailto:contactcentre@dtbafrica.com).

#### **4. Personal Information**

- 4.1.** You consent to the disclosure of personal information as enumerated hereunder by Safaricom to DTB for the purpose of building a loan profile on your behalf. Your obtained personal information will include:
- 4.1.1.** your full name;
  - 4.1.2.** passport/National ID number;
  - 4.1.3.** your mobile telephone number;
  - 4.1.4.** M-PESA usage data; and
  - 4.1.5.** any other personal information that DTB may require from time to time for purposes of the operationalization of the Service.
- 4.2.** You authorize DTB to verify the information you have provided on your identity through any source which DTB may in its sole discretion decide to use.
- 4.3.** You hereby authorize DTB to verify the information you have provided on your identity when opening your Account by obtaining and procuring your personal information contained in the IPRS and you further agree and consent to the disclosure and provision of such personal information by the Government of Kenya to DTB.
- 4.4.** You hereby irrevocably authorize DTB to obtain your credit information from a Credit Reference Bureau.
- 4.5.** You understand and agree that DTB reserves the right to make periodic checks during the tenor of this Agreement to establish your most current credit information.
- 4.6.** You hereby irrevocably authorize DTB to disclose, receive, record or utilize any or all your personal information or information or data relating to your Loan Account and any details of your use of the

Services:

- 4.6.1.** to and from any local or international law enforcement or competent regulatory or governmental agencies so as to assist in the prevention, detection, investigation or prosecution of criminal activities or fraud;
- 4.6.2.** to and from the DTB's service providers, dealers, agents or any other company that may be or become the DTB's subsidiary or holding company for reasonable commercial purposes relating to the Services;
- 4.6.3.** for reasonable commercial purposes connected to your use of the Services, such as marketing and research related activities;
- 4.6.4.** in business practices including but not limited to quality control, training and ensuring effective systems operation; and
- 4.6.5.** for any other lawful commercial purpose.

## 5. Loan Application

- 5.1.** For you to use the Service, you must be a registered and authorized M-PESA Merchant.
- 5.2.** You may request for a loan by selecting and validating the option on the M-PESA Service Menu made available for that purpose on the Access Channels.
- 5.3.** A Loan Account is opened with DTB once you sign up using the Opt-In Function on the Access Channels upon accepting these Terms and Conditions.
- 5.4.** You hereby grant DTB the authority to access your personal information and business transaction data that is held by Safaricom in order for DTB to undertake your KYC checks and credit scoring to determine how much credit you qualify for (the "**Credit Limit**").
- 5.5.** The Credit Limit and the Applicable Rate of Interest will be determined by DTB in its sole discretion.
- 5.6.** In making its determination, DTB may make a credit assessment after considering information from various sources, including but not limited to, your business transaction history with Safaricom, your mobile money account transaction history, your credit information from the Credit Reference Bureau, your history of use of the Services and prevailing market conditions.
- 5.7.** Upon making the determination, you will be assigned a Credit Limit and will be notified of the same together with the terms and conditions applicable to any borrowings within the Credit Limit.
- 5.8.** Notwithstanding anything that is contained in this clause, DTB retains the right to approve or reject your loan application without assigning any reason.

## 6. Loan Terms

- 6.1.** When you apply for a loan from DTB using the DTB Merchant Loan Product Menu on your Equipment, your application shall be appraised according to the applicable loan appraisal processes of DTB. DTB reserves the right at its sole discretion and without assigning any reason to approve or decline your application for a loan.
- 6.2.** Subject to approval of your application for a loan, DTB shall disburse to you a loan of an amount as chosen and such amounts shall be sent to you electronically and made accessible using your Equipment.
- 6.3.** DTB may grant loans of varying amounts subject to a minimum amount of KES. 1,000 and a maximum amount of KES. 250,000/= or such other minimum and maximum limits as we may in our sole discretion determine.
- 6.4.** The Loan together with any interest and applicable fees shall be repaid within 14 calendar days of receiving the same for the 14-day term loan and within thirty (30) days for the 30-day loan.
- 6.5.** The cost of this facility shall be 5 % of the Loan Amount for the 14-day loan and 7% of the Loan Amount for

the 30-day loan, which DTB will deduct from the amount repaid by you.

- 6.6. You understand and agree that DTB reserves the right to vary the terms of your loan including, but not limited to, the repayment period, collection method and interest payable based on, but not limited to, your most current credit information.
- 6.7. You acknowledge that DTB may institute recovery proceedings against you in case of a default, and irrevocably authorize DTB to commence debt collection proceedings against you in a court of law.
- 6.8. In case of default, you also irrevocably authorize DTB to also send your name to an external debt collection agency or institute court proceedings to make good the amount owing to them at your cost in relation to your loan with DTB. You further authorize DTB to send your name and details to a licensed Credit Reference Bureau where you are in default in line with the law.

## 7. Repayment

- 7.1. You will be solely responsible for ensuring that the Loan Amount is fully repaid in accordance with this clause.
- 7.2. With respect to the 14-days term loan, you will be required to repay the Loan Amount within fourteen days from the disbursement date of Your Loan Amount ("**Service Period**").
- 7.3. With respect to the 30-days loan facility, you will be required to repay the Loan Amount within thirty days from the disbursement date of Your Loan Amount ("**Service Period**").
- 7.4. To repay the Loan during the Service Period, you will be required to select whether you intend to settle the full Loan Amount or a partial repayment of the Loan Amount on the System Menu. You will then be prompted to confirm whether You will be repaying the partial or full Loan Amount from Your nominated M-PESA Account or from the Store. The System Menu will notify You on the balance of the Loan Amount and prompt You to enter Your M-PESA PIN.
- 7.5. You will not be allowed to change your nominated account number if the loan has not been sufficiently repaid. To repay the Loan during the Final Service Period Extension you must select the option for repayment of the full Loan Amount on the System Menu. You will then be prompted to confirm whether you will be paying the full Loan Amount from your M-PESA Account or from the Store. The System Menu will notify You of the balance of the Loan Amount and prompt you to enter Your MPESA PIN.
- 7.6. You shall repay the loans advanced together with any interest, fees and charges, through the Access Channels.
- 7.7. You understand and accept that the Applicable Interest on the Loan shall be applied once during the term of the loan.
- 7.8. You will make your repayments solely using the Access Channels provided that in the event that the Access Channels are for whatever reason unavailable, you will make your repayments into such account as we may notify you from time to time.
- 7.9. You will repay the loan without any set off or counterclaim and, free and clear of and without any deduction or withholding whatsoever.
- 7.10. On each date when the payment of any principal, interest or fees are due under any Agreement between yourself and DTB, you hereby authorize Safaricom to deduct automatically all principal, interest or fees when due hereunder from the funds held in the M-PESA wallet or such wallet as we may notify you from time to time.
- 7.11. If no payment is made for a period of ninety one (91) days, the loan will be classified as non- performing and your details will be forwarded to a Credit Reference Bureau.
- 7.12. You shall make all payments due from you to DTB using our M-Pesa Till Number or any other avenue availed by DTB for loan repayments as will be availed on the DTB Merchant Loan Product menus.
- 7.13. DTB reserves the right to vary the terms of the Loan including the transaction fee payable thereon from



time to time having regard to the prevailing rules and regulations of DTB.

- 7.14. You hereby expressly consent and authorize DTB to disclose, respond, advise exchange and communicate the details or information pertaining to your DTB Merchant Loan Product Account to Credit Reference Bureaus as required under the banking Act or any other regulatory body.

#### **8. Account Status**

- 8.1. You may request for a statement or loan account status from DTB using your Equipment.
- 8.2. Account Statement or Mini Statement shall provide details of your DTB Merchant Loan Product Account initiated from your Equipment.

#### **9. Irrevocable Authority of DTB**

- 9.1. It is your sole responsibility to familiarize yourself with the operating procedures for the service provided by DTB upon your registration to the Service. DTB will not be liable for any losses incurred as a result of your errors either of commission and/or omission.
- 9.2. You hereby irrevocably authorize DTB to act on all Requests received by DTB from you (or purportedly from you) through the System via your registered mobile number and to hold you liable in respect thereof, notwithstanding that any such requests are not authorized by you or are not in accordance with any existing mandates given by you.

#### **10. Customer's Equipment and Customer's Responsibilities**

- 10.1. You shall at your own expense provide and maintain, in safe and efficient operating order, all your Equipment that is necessary for the purpose of accessing the System and the Services.
- 10.2. You shall be responsible for ensuring the proper performance of your Equipment. DTB shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall DTB be responsible for any computer virus or related problems that may be associated with the use of the System, the Services and the Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Network and DTB shall not be responsible for losses or delays caused by any such service provider.
- 10.3. You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by DTB concerning the use of the System and Services.

#### **11. Termination and Suspension**

- 11.1. We may at any time, upon notice to you, suspend, terminate or vary our business relationship with you.
- 11.2. We may cancel credits or Loans which we have granted and require the repayment of outstanding debts or Loans immediately or otherwise upon notice.
- 11.3. We have a right to suspend the Services:
- 11.3.1. if You use the Service for any unauthorized purposes;
  - 11.3.2. if we detect any abuse/misuse, breach of content, fraud or attempted fraud relating to Your use of the Service;
  - 11.3.3. if we are required or requested to do so in order to comply with an order or instruction of or a recommendation from the government, court, regulator or other competent authority;
  - 11.3.4. if we reasonably suspect or believe that You are in breach of these Terms and Conditions;
  - 11.3.5. if You fail to repay the Loan Amount accrued for more than the calendar days applied for;
  - 11.3.6. If required to do so to address technical problems or for reasons of ensuring safety;
  - 11.3.7. to facilitate update or upgrade the contents or functionality of the Service from time to time;



and/or

**11.3.8.** if we decide to suspend or cease the provision of the Service for commercial reasons or for any other reason as we may reasonably determine.

**11.4.** You may opt out of the Service by utilizing the Opt-Out Function on the Access Channels.

**11.5.** Termination shall however not affect any rights and responsibilities of either party that arose prior to termination, including repayment of any outstanding Loan Amount.

## **12. Your Requests**

**12.1.** You hereby irrevocably authorize DTB to act on all Requests received by DTB from you through the M-PESA System and to hold you liable in respect thereof, notwithstanding that any such Requests are not authorized by you.

**12.2.** DTB 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, DTB determines that the incomplete or ambiguous information is immaterial to its action on the Request.

**12.3.** If you Request DTB to cancel any transaction or instruction after a Request has been received by DTB from you, DTB may at its absolute discretion cancel such transaction or instruction but shall have no obligation to do so.

**12.4.** DTB shall be deemed to have acted properly and to have fully performed all the obligations owed to you notwithstanding that the Request may have been initiated, sent or otherwise communicated in error or fraudulently, and you shall be bound by any Requests on which DTB may act if DTB has in good faith acted in the belief that such instructions have been sent by you.

**12.5.** You agree to and shall release from and indemnify DTB and Safaricom against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to DTB having acted in accordance with the whole or any part of any of your Requests (or failed to exercise) the discretion conferred upon it.

**12.6.** You acknowledge that to the full extent permitted by law, DTB shall not be liable for any unauthorized drawing, transfer, remittance, disclosure, any activity or any incident on your account by the fact of the knowledge and/or use or manipulation of your M-PESA Account login credentials or any means whether or not occasioned by your negligence.

**12.7.** You accept and understand that DTB is authorized to effect such orders in respect of your Account as may be required by any court order or competent authority or agency under the applicable laws.

**12.8.** In the event of any conflict between any terms in this agreement and any Request received by DTB from you and the terms of this Agreement shall prevail.

## **13. Your Responsibilities**

**13.1.** You shall follow all instructions, procedures and terms contained in this Agreement and any document provided by DTB or Safaricom concerning the use of the M-PESA System and the Services.

**13.2.** You shall take all reasonable efforts to ensure that the correct and agreed upon loan amount has been disbursed. Where there is disparity between the requested amount and the disbursed amount, you shall immediately and in any case not less than Twenty-Four (24) hours from the time of disbursement contact Safaricom and DTB for correction of the discrepancy failing which, the amounts shall be treated as correctly disbursed.

**13.3.** You shall take all reasonable efforts to ensure loan repayments are successfully paid. Where any doubt arises, you shall immediately contact Safaricom or DTB for clarification, and/or reversal of any adverse payments made to a wrong business account.

**13.4.** You undertake to make good your repayments within the stipulated time and within the contract terms.

#### **14. Indemnity and Liability**

- 14.1.** Access to the Service may be affected by factors outside our control such as system downtime or failure. Uninterrupted access may also arise as a result of scheduled or unscheduled periodic testing, repair, upgrade or maintenance and other factors. We will use all reasonable efforts to ensure that your Loan Requests are processed in a timely manner and in accordance with the requirements of the law. Notwithstanding the foregoing, we do not make any representations or warranties as to continuous, uninterrupted or secure access to the Service.
- 14.2.** In return for the provision of the Services by ourselves, You agree to protect us and absolve us against any law suits, losses, charge, damage, liability, expense (including legal fees), fee or claim that we may suffer, incur or otherwise as a result of our provision of the Services to You. The protection and absolution you provide also includes any claim made by a third party against us that may result from:
- 14.2.1.** you being in breach of these terms and conditions;
  - 14.2.2.** a failure, malfunction, interruption or unavailability of the Access Channels, your mobile phone apparatus, the Network or the M-PESA System or the unavailability or any delays in disbursement of the Loan Amount;
  - 14.2.3.** your failure use or to give proper or complete instructions using the USSD System;
  - 14.2.4.** any fraudulent or illegal use of the Service, the USSD System, the M-PESA System and/or your mobile phone apparatus;
  - 14.2.5.** any loss that may arise as a result of any negligence on your part including revealing your Service PIN to a third party;
  - 14.2.6.** your failure to comply with these Terms and Conditions; or
  - 14.2.7.** other circumstances whatsoever not within our control including, without limitation, force majeure, error, interruption, delay or non-availability of the M-PESA System, the USSD System, terrorist or any enemy action, equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications system, lack of available resources, strikes or labour disputes.
- 14.3.** We will not be responsible for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Service even where the possibility of such loss or damage is notified to us.
- 14.4.** We exclude any warranty and obligations that are implied by law and not set out in this Agreement to the extent that we are permitted by law.
- 14.5.** In the event of any liability arising under these terms and conditions as a result of which we are found legally responsible, you agree that our maximum aggregate liability to You or to any other person shall be limited to the Loan Amount outstanding at the time such liability arose.
- 14.6.** In consideration of DTB and Safaricom complying with your instructions or Requests in relation to your Account, you undertake to indemnify DTB and Safaricom and hold us harmless against any loss, charge, damage, expense, fee or claim which DTB or Safaricom suffers or incurs or sustains thereby and you absolve DTB and Safaricom from all liability for loss or damage which you may sustain from DTB and/or Safaricom acting on your instructions or requests or in accordance with this Agreement.
- 14.7.** The indemnity in clause 11.1 shall also cover the following:
- 14.7.1.** all demands, claims, actions, losses and damages of whatever nature which may be brought against or which we may suffer or incur arising from 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, act of God, pandemic, corruption of storage media, natural phenomena, riots, acts of vandalism, sabotage, terrorism, any other event beyond our 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 us;



- 14.7.2. any loss or damage that may arise from your 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;
- 14.7.3. any unauthorized access to your M-PESA Account or any breach of security or any destruction or accessing of your data or any destruction or theft of or damage to any of your Equipment;
- 14.7.4. any loss or damage occasioned by the failure by you to adhere to this Agreement 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 or any loss which may be incurred as a consequence of any breach of this Agreement; and/or
- 14.7.5. any damages and costs payable by us in respect of any claims against us for recompense for loss where the particular circumstance is within your control.

#### **15. Intellectual Property Rights.**

- 15.1. All copyright, trademarks, patents and other intellectual property rights in any material or content (including without limitation software, data, source code, applications, information, text, photographs, music, sound, videos, graphics, logos, symbols, artwork and other material or moving images) contained in or accessible via the M-PESA System ("Intellectual Property") is either owned by us or has been licensed to us by the rights owner(s) for use as part of the Services. You will not infringe any such intellectual property rights.
- 15.2. Having noted the foregoing, you shall not be entitled in respect of any Intellectual Property to change, edit, modify, reformat or adapt it in any way, sell, reproduce, display, distribute, or otherwise use the Intellectual Property in any way for any non-private, public or commercial purpose without our written consent.
- 15.3. If you violate any of the foregoing provisions, your permission to use the Intellectual Property automatically terminates and you must immediately destroy any copies you have of the Intellectual Property.

#### **16. Assignment, Novation and Other Dealings**

- 16.1. Either of DTB and Safaricom may assign or novate this Agreement or otherwise deal with the benefit of it or a right under it, or purport to do so, without your prior written consent.
- 16.2. You may not assign or novate this Agreement without our consent.

#### **17. Notices**

- 17.1. DTB may send information concerning your Account through a phone call, via SMS to the mobile phone number or email address associated with your Account.
- 17.2. You accept that you have no claim against the DTB for damages resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to mis-transmission of any communication pertaining to your Account.

#### **18. Dispute Resolution**

- 18.1. You may channel any complaints you may have through the Customer Care Centre or through the DTB help desk.
- 18.2. If any dispute arises between the Parties to this Agreement regarding any provision of this Agreement, or its application or termination, then we agree that we will attempt to resolve our dispute peaceably by means of joint co-operation or discussion between the parties directly involved in the dispute within five (5) days after notification of the dispute or such extended time period as we may agree to.
- 18.3. If the Parties are unable to resolve the dispute, that dispute shall be referred to mediation by an advocate of more than 5 years post admission appointed by the parties jointly. The cost of the mediation will be borne equally by the parties.



**18.4.** If the parties shall not be able to settle the dispute through mediation, parties shall be at liberty to institute court proceedings.

**19. Governing Law and Jurisdiction**

**19.1.** You agree that this Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.

**19.2.** You agree to the exclusive jurisdiction of the courts of the Republic of Kenya in respect of disputes which may arise out of your use of DTB's services and this Agreement.

**20. Miscellaneous**

**20.1.** Our failure to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.

**20.2.** If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality.