



### ACCOUNT OPENING GENERAL TERMS & CONDITIONS

These General Terms and Conditions (the "Terms and Conditions") apply to the services offered by DBK (the "Bank") to its customers, subject to any other agreement made in writing between the Bank and the Customer. In consideration of the Bank offering those services, the Customer agrees to be bound by these Terms and Conditions. The Customer must carefully read, understand and accept these Terms and Conditions as they govern the content and services offered by the Bank to the Customer.

The relationship between the Bank and the Customer is governed by these General Terms and Conditions and subject to any further agreement in writing except where the said terms and conditions are in conflict with the Laws of Kenya in which case the Laws of Kenya will take precedence.

A copy of these Terms and Conditions and other specific terms and conditions in respect to certain of the Bank's accounts, products and services are available to the Customer for collection at any of the Bank's branches or for download on the Website. In addition to these Terms and Conditions, specific terms may also apply to specific accounts, products and services. In the event of conflict, the specific terms and conditions relating to a particular account, product and service will prevail over these Terms and Conditions.

### 1. DEFINITIONS AND INTERPRETATION

In these Terms and Conditions, unless the context otherwise requires:

- a) "Account" means any type of account held by a Customer with the Bank (including without limitation) any account in relation to any advance, deposit, contract, product, dealing or service established and operated between the Bank and the Customer;
- b) "Amenities" means any public telecommunications systems and any communications network necessary for the purpose of accessing the system and the service;
- c) "Application Form" means the Bank's form completed by the Customer in respect to the establishment and operation of an Account;
- d) "Authorised Signatory" means the Customer and/or in relation to the Customer any person(s) authorised as specified in writing by the Customer to the Bank to operate the Account on the Customer's;
- e) "Authorities" means all national and local governments, government departments, supranational bodies, local or public authorities, statutory undertakings, states or agencies;
- f) "Authorized User" a person nominated to whom the Bank shall have issued a Card.
- g) "Banking Day" means a day on which the counters of the Branch and/or the Bank Subsidiary (as applicable) are open for the transaction of ordinary business;
- h) "Base Rate" means the Bank's pricing reference rate for the currency or currencies in which the facilities are advanced or outstanding and which the Bank shall at its sole discretion from time to time determine and advise.
- i) "Branch" means a branch or branches of the Bank which may from time to time be specified from the Bank to the Customer;
- j) "Business Day" means a day on which Banks are open for business;
- k) "CBK" means Central Bank of Kenya;
- l) "Cheque" means the cheque forms issued by the Bank to the Customer and forming part of the Chequebook;
- m) "Chequebook Terms and Conditions" means the Specific Terms and

Conditions relating to the use of the Cheques and the Chequebook by the Customer;

n) "Chequebook" means the serially numbered Cheques bound together and issued by the Bank to the Customer;

o) "Contact Centre" means the point of contact for the Bank whose details shall be communicated by the Bank from time to time through any of its communication channels;

p) "Debt" means all moneys, obligations and liabilities whatsoever whether principal, interest or otherwise in Kenya Shillings or in Foreign Currency which may be due, owing or incurred by the Customer to the Bank whether present or future, actual or contingent;

q) "Deposit" has the meaning assigned to it under the Banking Act, Chapter 488 Laws of Kenya;

r) "Exchange Rate" means the prevailing spot rate of exchange of the Bank as conclusively determined by the Bank on the date on which any conversion of currency is to be effected pursuant to these Terms and Conditions;

s) "Instruction" means using the Development Bank of Kenya Limited Account, Mobile Banking or Internet Banking Service to:

- Instruct Us to transfer money to and from the Account;
- Obtain information relating to the balance and transactions on the Account;
- Use the other facilities which we may from time to time incorporate into the Development Bank of Kenya Limited Account, Mobile Banking or Internet Banking Service;

t) "Kenya Shillings", "Kshs" and "KES" means the lawful currency for the time being of the Republic of Kenya and in respect of all payments to be made under these Terms and Conditions in Kenya Shillings means immediately available, freely transferable cleared funds;

u) "Mandate" means the mode of operation of the Account as specified by the Customer in the Application Form;

v) "Nominated User(s)" means 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;

w) "Password" means the secret word consisting of letters or numerals or a combination of letters and numerals known only to the Customer or the Customer's Nominated User for the access to the System;

x) "PIN" means any Personal Identification Number issued to the Customer by the Bank;

y) "Service" means the Development Bank of Kenya Limited Internet Banking Service we provide which enables you to give Instructions to us relating to Your Account by logging on at <https://www.devbank.com/>

z) "Subsidiary" means any company or other entity that is wholly or partially controlled by the Bank or any company that is wholly or partially owned or controlled by DBK LTD.

aa) "System" means the electronic banking and communications software provided by the Bank to enable the Customer to communicate with the Bank for the purpose of the Service. The System and Service will for the purpose of this agreement be accessed through the internet via the Bank's Website, [www.DBKgroup.com](http://www.DBKgroup.com); or via the customer's mobile phone.

bb) "Taxes" means all present and future taxes, levies, duties, charges, assessments, deductions or withholdings whatsoever, including any interest thereon, and any penalties and fines with respect thereof, wherever imposed, levied, collected or withheld pursuant to any regulation having the

force of law;

cc) "the Customer", "You", "Your" means any or all persons named on the application form for the Development Bank of Kenya Limited Account, Mobile Banking or Internet Banking Service;

dd) "Transactional Account" means a current account;

ee) "Website" means the Bank's website, <https://www.devbank.com/>

ff) Bank's Tariffs" means (including but not limited to) the schedule of the charges and fees levied by the Bank in relation to the Account;

1.1. Statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and to any orders, regulations, instruments or other subordinate legislation made under the relevant statute.

1.2. A "regulation" shall include any present or future regulation, rule, directive, requirement, request or guideline (whether or not having the force of law) of any Authority.

1.3. References to these Terms and Conditions or any other document shall be construed as references to these Terms and Conditions or that document as in force for the time being and as from time to time amended, supplemented or replaced with these Terms and Conditions of the relevant parties and (where such consent is, by the terms hereof or the relevant document, required to be obtained as a condition to such amendment, supplement or replacement being permitted) the prior written consent of the Bank.

1.4. Words in the singular shall include the plural and vice versa and words importing any gender shall include all other genders.

1.5. No waiver by the Bank of any breach by the Customer of any of these Terms and Conditions shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Customer.

1.6. All warranties, representations, indemnities, covenants and obligations made or entered into by more than one person are so made or entered into jointly and severally.

## 2. AGREEMENT

By completing and signing the prescribed Application form the Customer shall be deemed to have accepted to be bound by these Terms and Conditions in addition to other terms and conditions which govern the opening, closing and general operations of specific accounts.

## 3. CUSTOMER'S INSTRUCTIONS

The Customer requests the Bank to honor and to debit to his account all cheques, drafts, bills, promissory notes, acceptances, negotiable instruments and orders to pay drawn or accepted or made out to him, and to carry out any instructions he may give in connection with his account notwithstanding whether any relevant account is in credit or in debit or that any such debiting or carrying out may cause his account to be overdrawn or an overdraft to be increased. Where no overdraft has been agreed or the limit of overdraft agreed has been reached, the Bank may nevertheless refuse to carry out any instructions which would result in there being an overdraft or any overdraft greater than that agreed, as the case may be.

## 4. AUTHORIZED SIGNATORIES

The Customer shall at the time of opening an Account give the Bank in a form acceptable to the Bank the full name, address and specimen signature of every person authorized by the Customer to operate the account. The Bank is under no duty to enquire or ascertain into the purpose for which an authorized signatory exercises his powers on behalf of or otherwise for the Customer. The Bank accepts no obligation to any person (including any authorized signatory) other than the Customer who is authorized to operate the account or whose concurrence or signature is necessary for the operation of the account.

Notwithstanding any authority given to an agent by the Customer, the Customer shall remain liable to the Bank for all loans, overdrafts and monies borrowed or incurred by and all costs charges expenses commissions and other liability whatsoever incurred or suffered by the agent pursuant to or in breach of the Customers agents authority together with all interest thereon and the Customer shall indemnify the Bank liabilities incurred (on

a full unqualified indemnity basis) in respect of all liability (which liability shall include without limitation to all losses, actions, costs, claims, damages, charges, taxes, legal and other professional fees and expensed (Including value added tax in such expenses)) which the bank may incur suffer as a result of anything done or omitted to be done by the agent pursuant to the authority given to the agent or in breach of that authority. The Bank may require the Customer to provide a mandate expressing in precise terms the powers given to the aforementioned agent and the terms and conditions under which the powers are given. The Customer agrees to be bound by the terms of such mandate.

## 5. SET-OFF

a. The Bank may at any time without notice notwithstanding any settlement of account or other matter whatsoever combine consolidate all or any of the Customers then existing accounts and the accounts of the Customer or of the Customer jointly with others (whether current deposit, savings deposit, fixed or call deposit, foreign currency deposit, loan or of any other nature whatsoever whether subject to notice or not and whether in Kenya shillings or any other currency) whosoever situate and notwithstanding that some other person may also be liable in respect thereof set-off or transfer any sum standing to the credit of anyone or more of such accounts in towards satisfaction of any liabilities and liabilities of the Customer to the bank whether such liabilities be present future actual contingent primary collateral several or joint. Where such combination set-off or transfer requires the conversion of one currency into another such conversion shall be calculated at the then prevailing buying rate of exchange of the bank in Kenya nominated by the Bank (as conclusively determined by the Bank) for purchasing the currency for which the Customer is liable with the existing.

b. The Bank is hereby irrevocably authorized by the customer in the Customer's name and at the Customers expense to perform such acts and sign such documents as may be required to give effect to any set-off or transfer herein. The foregoing terms and conditions shall be in addition to and without prejudice to such rights of set-off combination consolidation lien and other rights whatsoever conferred on the bank by law.

## 6. SIMULTANEOUS ORDER IN EXCESS OF FUNDS

Where the Bank receives several orders at approximately the same time the total amount of which exceeds the available assets of or the credit granted to the Customer, the Bank may honor the orders in whatever manner it thinks fit within the limits of the funds available.

## 7. BANK CHARGES AND EXPENSE INTEREST

The Bank is entitled to be paid by the Customer and may debit the Customer (without reference to the Customer) with bank fees, commissions, costs and other charges in respect of the Bank's products and services provided to the Customer, including but not restricted to the following:

### a. Interest

Unless otherwise agreed in writing, interest on overdrawn accounts, loan accounts or any other facility granted, at any rate or rates to be calculated at the rate or rates set out in any facility letter, letter of commitment, loan agreement, letter of variation or other agreement exchanged with the Bank or at such other rate or rates (not exceeding any maximum permitted by law) from time to time agreed with the Bank and in the absence of such agreement at such rate or rates as the Bank may, in its sole and absolute discretion, from time to time determine, which rate or rates may be different for different accounts. Such interest will be calculated on daily balances and debited monthly. The Bank will notify the Customer within reasonable time prior to effecting any change(s) as regards interest rates. Such interest is payable notwithstanding the determination of the Customers relationship with the Bank and until the repayment of the full amount owed the Bank in full.

### b. Legal charges

Advocate and client costs incurred by the Bank in obtaining legal advice in connection with the Customer's accounts and dealings with the Bank or incurred by the Bank in any legal arbitration or other proceedings arising out of any dealings in respect of the Customer.

### c. Commission

Commission at such rates and at such time or times as the Bank decides, with discretion to charge different rates for different accounts.

### d. Other Charges and Expenses

In addition to the debits authorised by sub-clauses (a), (b) and (c) of this Clause, all other fees, expenses and charges including but not limited to ledger fees, money transfer services, standing fees disbursements for cheque



books, postages, cables, telephone calls, communication costs, taxes, duties, impositions and expenses incurred in complying for the Customers' requests or incurred in the ordinary course of the Customers dealings with the Bank.

e. The Bank may debit and/or overdraw the Customer's account where it has become aware that it had credited the Customer's account with any amount (whether erroneously or not) or where the Bank had made any payment on behalf of the Customer without first debiting the Customer's Account.

f. The notification of the charges, costs and applicable interest payable by the customer in relation to any account including those set out in this clause shall be indicated in the Important Information Document (IID) which shall be available to the customer at all times through the Bank's branches or other communication channels;

## **8. STATEMENTS OF ACCOUNT**

a. Statements of account will be issued at the sole discretion of the Bank or on such other times as mutually agreed between the parties provided that the Bank shall be entitled to charge for statements requested for more regularly than the normal practice of the Bank.

b. The contents of any statements of account or statement of any other nature which has been sent by the Bank to the Customer, and to which the Customer has not objected within twenty- eight (28) days of receipt thereof, shall be deemed approved by the Customer, and shall not thereafter be challenged by the Customer on any grounds whatsoever, whether on the basis of loss of mandate, forged or inadequate signature of endorsement of cheques, forged alteration thereof or otherwise.

## **9. DELAY BY CUSTOMER IN LODGING COMPLAINTS**

The Bank is not responsible for any matter unless the Customer has made a written complaint to the Bank as soon as reasonably possible.

## **10. ERRORS OF TRANSMISSIONS AND INADEQUATE EXECUTION OF ORDERS**

All payments orders, exchange operations and sales or purchases of stocks bonds or shares in Kenya or elsewhere undertaken by the bank for the account of the Customers shall be at the Customers own expense. Neither the Bank or any of its agents' correspondents nor any employees shall be liable for any mutilation interruption error or transmission omission or delay occurring in any transaction medium (including without limitation to cables air-lines courier services telex email and facsimile systems) however occurring.

## **11. PAYMENTS BY THIRD PARTIES**

The Bank may credit the Customer's Account with any amounts paid by third parties. All instruments such as Cheques, Drafts, Bills of Exchange and other negotiable instruments or commercial documents, tendered for collection and credit to the Customer's account are accepted by the Bank subject to the following express terms and conditions:

(a) Instruments not payable at the Bank are accepted by the Bank only for transmission on behalf of the Customer at the Customer's entire risk and responsibility;

(b) Where the instruments are forwarded by the Bank by post or through courier services to other banks or to any Correspondent or Agent or Sub-Agent of the Bank, the Post Office and the courier, as also the Bank or the Correspondent, Agent or Sub-Agent of the Bank will be deemed to be the Customer's own "agent for collection", even though couriers, Banks, correspondents, agents or subagents are of the Bank's choice.

## **12. DEPOSIT OF CHEQUES**

a. The Bank may accept cheques and other orders for payment from the Customer at the Customer's risk for deposit or collection. Where any Cheque or order is unpaid for any reason whatsoever (including but not limited to physical loss), the Bank may debit the Customer's Account with the amount previously credited in respect of that Cheque or order, together with interest since the date of crediting if the Account thereby is overdrawn.

b. Where cheques, other negotiable instruments or commercial documents are deposited for the credit of the Customer's Account, the amount of such deposits shall be availed for withdrawal only when actually collected by the Bank.

c. Notwithstanding the provisions herein, the bank shall be entitled to recover from the Customer by debiting the Customer's account any money credited to the Customer in error and the Customer shall be liable to refund any shortfall forthwith to the Bank together with applicable interest upon demand.

## **13. NO DUTY ON BANK TO PROTEST**

The Bank may note and/or protest any dishonoured bills on receipt of instructions to do so in reasonable time from the Customer.

The Bank will not be liable for any loss or damage suffered by any party if any dishonoured bill is not noted and/or protested.

## **14. REPAYMENT OF OVERDRAWN ACCOUNTS**

The Bank is entitled to demand the immediate repayment (together with interest) of any account that is overdrawn in any of the Customer's Accounts.

## **15. EXPRESS AUTHORITY**

The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Customer's account(s) to other Banks, financial institutions, credit card companies, or credit reference bureaus, including authorized agents, representatives, lawyers or debt collection agents for the purposes of any bona fide enquiry or collection of any data or towards recovery of any sums due and outstanding to the Bank. The Bank may from time-to-time release (without notifying the Customer) any information relating to any of the Customer's accounts to any statutory authority, including the Kenya Revenue Authority, which has the legal power to demand for such information. The Customer acknowledges that any information released by the Bank under this clause may be used by the recipient to assess applications for credit by the Customer or by related parties, for debt tracing and for fraud prevention purposes. The Customer also acknowledges that such information being released to the recipients may affect the Customer's ability to maintain existing facilities with lenders or credit card companies. The Customer shall have no claim whatsoever against the Bank for any loss, damage, fees or expenses suffered or incurred by the Customer in relation to the release of any information by the Bank under this clause.

## **16. LIEN**

a. When the Customer is indebted to the Bank, the Bank has a general lien over all property of the Customer in the Banks possession, including, but not limited to, cash, goods, securities or valuables deposited for safe custody or as security, cheques presented for repayment, bills and any other property movable or immovable charged to secure payment of any money whether or not that money has been repaid, and also over all property over which by the general law the Bank has a lien.

b. Where the Customer is indebted in circumstances giving the Bank a right of set off, all securities as set out in paragraph hereof are held as security for the debt.

c. Whereas the repayments for any debt may be accepted from the Customer at any branch, the same shall for purposes of these Terms and Conditions be deemed payable at the head office of the Bank in Nairobi. The Bank may at any time give the Customer notice in writing that if an accrued debt is not paid within a stated period being not less than fourteen (14) days after the receipt of the Customer of the notice then the Bank may without further notice realize sufficient relief of the Customer's assets to discharge the debt.

d. If the debt is not discharged within the time allowed, the Bank may realize sufficient relief of the Customer's assets to discharge the debt, and the Customer constitutes the Bank their attorney for the purpose of conducting the sale, giving title to the assets sold and all other necessary matters. Any sum remaining after such a transaction will be held for the Customer subject to these Terms and Conditions.

e. The Bank is under no obligation in respect of any sale under sub clause 16(d) other than malafides.

f. Funds in foreign currencies which are subject to the Banks lien may be set off against debts or realized at the rate of exchange current at the date of set-off or realization. The Bank accepts no liability for any loss caused by exchange fluctuations.

g. Deposits including those held in foreign currencies and for a given period of time may be set off against debts notwithstanding that the time period of the deposit has not expired.

## **17. JOINT ACCOUNTS**

In the event of two or more Customers holding joint account the following additional terms shall apply:

17.1. where a Joint Account is operated by a Mandate designated as 'Either',

each Customer to the Joint Account is authorised to operate the Joint Account individually and it shall be deemed that the instructions given by one Customer to the Joint Account regarding the Joint Account are authorised by the other Customer(s) to the Joint Account;

17.2. where a Joint Account is operated on a Mandate designated as 'Jointly', each Customer to the Joint Account is only authorised to operate the Joint Account together with all other Customers to the Joint Account (or as specified in the Mandate). The Bank shall not be held liable for refusing to act or for any delay in accepting the instructions which are not issued by all Customers to the Joint Account;

17.3. if any Customer to the Joint Account gives instructions that conflict or appear to conflict with instructions given by another Customer(s) to the Joint Account the Bank may refuse to act on any such instructions until the conflict is resolved to the Bank's satisfaction; and each Customer to the Joint Account shall be jointly and severally liable to repay any Debt in respect of the Joint Account.

17.4. The Holders of a joint account authorize the Bank to pay and deliver to or to the order of the survivors or survivor or the executors or administrators of such survivor any moneys standing in credit of their joint account.

## 18. MOBILE AND ELECTRONIC BANKING SERVICES

Where the Customer wishes to use the Bank's mobile and electronic banking services, the Customer acknowledges that they are bound by the provisions of the Agreement for the Provision of Mobile &/or internet Banking Service which is available to the Customer upon request and on the Banks website <https://www.devbank.com/>

18.1 As part of these Terms and Conditions the Bank may provide certain Banking services electronically via the internet, mobile or other electronic device to the Customer subject to the terms and conditions set out in this clause.

### 18.2. Subscriptions by Customer

a. In consideration of the Customer paying to the Bank the fees and charges as set out in paragraph 7 above, the Bank shall provide to the Customer certain electronic Banking services subject to and in accordance with these Terms and Conditions.

b. The Customer will subscribe for the Bank's electronic Banking services by completing a subscription form provided by the Bank specifying in such subscription form the electronic Banking services that the Customer intends to use. The Subscription shall be subject to the Bank's approval.

c. Once the Bank has approved the Subscription and the Customer has been maintained as an authorized user of the Service, the Customer will provide to the System a unique identification (ID) and a Password known only to the Customer, and then only shall the Customer be afforded use of the Service. The ID and Password will form a unique link to each specific Customer's access profile(s).

d. Further additional electronic Banking services may be provided to the Customer by the Bank, provided the Customer completes a subscription form in respect of such additional services and the Bank reserves the right to modify, replace or withdraw any Service at any time, for any reason whatsoever, without prior notice to the Customer.

e. The Customer's subscription for and use of the Service shall be subject to these Terms and Conditions and any current, savings, term, call and overdraft accounts agreements between the Bank and the Customer.

### 18.3. The services related to the customer's profile(s)

a. The Bank will maintain the website, <https://www.devbank.com/> (hereinafter referred to as the "site"), to provide the Customer with information about the Bank services and products, including the electronic banking service, and to facilitate communication with the Bank. The use of the site for purposes of the service by the Customer constitutes agreement to all such terms and conditions herein.

b. Upon subscribing for the electronic banking services the Customer shall be required to provide to the system a unique identification (or ID) and a secret password known only to the Customer, and only then shall the Customer be afforded use of the service. The ID and password will form a unique link to each specific customer's access profile(s).

c. 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.

### 18.4 Customer's Facilities and Customer's Responsibilities

a. 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 ("Amenities") necessary for the purpose of accessing the system and the service.

b. The Customer shall be responsible for ensuring proper performance of the Amenities including any losses or delays that may be caused by the Amenities. The Bank shall neither be responsible for any errors or failures caused by any malfunction of the Customer Amenities, and nor shall the Bank be responsible for any computer virus or related problems that may be associated with the use of the system, the service and the Amenities.

c. The Customer shall be responsible for charges due to the internet and the Bank shall not be responsible for losses or delays caused by any such service provider.

d. The Customer shall obtain all licenses and consents 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 the Terms and conditions contained herein or in any document provided by the Bank concerning the use of the System and the Service.

e. The Customer shall take all necessary steps to prevent any unauthorized access to or use of the system and service by way of keeping its ID and Password a secret at all times. The Customer shall ensure that the ID and Password do not become known or come into possession of any unauthorized person.

f. The Customer shall take all reasonable precautions to detect any unauthorized use of the system and service. To that end, the Customer shall ensure that all communications from the Bank are examined and checked by and 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 system will be detected.

g. The Customer shall immediately inform the Bank by telephone and with a written confirmation sent the same day in the event that:

i. The Customer has reason to believe that any password 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 ii. 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.

h. The Customer shall not send or attempt to send any request to the Bank through the 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.

i. 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 and specifically those that may be contained in the Bank's website. 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 with the Bank. In particular, the Customer shall ensure that the service is not used, or requests are not performed by anyone rather than a person authorized to do so.

j. The Customer shall not at any time operate or use the service in any manner that may be prejudicial to the Bank. k. The Customer understands and accepts that it may link a business account or an account requiring multiple signatures to the customer's profile on this service only if the Customer has submitted to the Bank an original written standing mandate to the effect that the Bank is authorized to process transactions not exceeding a certain specified amount, and it will be the responsibility of the Customer to ensure that no unauthorized persons have access to these accounts.



l. The Bank shall be entitled and authorized to debit the customers' 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.

#### 18.5 Irrevocable authority of the Bank

a. 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.

b. 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.

c. The Bank shall not be obliged to accept or to act upon 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 not accept or act upon any such request, the Customer shall remain liable thereof.

d. In the event of any conflict between any terms of any request from the Customer and these Terms and Conditions, these Terms and Conditions shall prevail.

#### 18.6. Limits of Electronic Banking Transactions

a. Subject to such limits as may be set on the service, the Customer may transfer or effect a payment for any amount subject to these Terms and Conditions, as long as the transaction does not cause the balance in the deposit account to be less than zero unless the Customer has either an overdraft facility for the affected deposit account or a term deposit account pledged with the Bank to cover excesses that may arise in the affected deposit account from time to time in which case the two accounts are linked in the system for that purpose.

b. If the Customer has an overdraft facility or a term deposit account linked to the payment deposit account, the transfers and/or electronic bill payments using the service should not exceed the approved overdraft facility or the pledged term deposit amount.

#### 18.7. Exclusion of Liability

The Bank shall not be responsible or liable 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 the Customer's Facilities, or (c) any other circumstances whatsoever not reasonably within the Bank's control including, without limitation, force majeure or error, interruption, delay or non-availability of the System, terrorist or any enemy action equipment failure, loss of power, adverse weather or atmospheric conditions, and failure of any public or private telecommunications systems.

#### 18.8. Electronic Payments and Transfer of Funds

The Bank will not be liable for any losses or damage suffered by the Customer as a result of delay, failure and/or refusal by the Bank to act on a request in time or at all in any one or more of the following circumstances (as the case may be): -

- a. If the Customer does not have enough funds in the Deposit Account;
- b. If the payment or transfer would result in the Customer's approved overdraft facility limit being exceeded;
- c. If the Customer does not authorize a bill payment in good enough time for the payment to be made and properly credited by the payee (the Customer's counterparty) by the time it is due;
- d. If the System or the Customer's Facilities were not working properly;
- e. If circumstances beyond the Bank's control prevent the Bank from making a payment or transfer;
- f. If the money in the Customer's account is subject to legal process, court order or other encumbrance restricting the payment or transfer;

g. If the Customer does not give proper or complete instructions for the payment or transfer or the Customer does not follow the procedures in this or other applicable agreement with the Bank for requesting a payment or a transfer;

h. If the Bank has reason to believe that the Customer or someone else is using the Service for fraudulent or illegal purposes;

i. If a payment or a transfer request would consist of money deposited in a form or by a method that has not yet made the money available for withdrawal; j. If the payment or transfer request is in contradiction or conflict with other existing account agreements with the Customer; and

k. If the Bank makes a timely payment or transfer but the payee nevertheless fails to credit the Customer's payment promptly after receipt, the Bank shall not be liable for any loss or damage suffered by the Customer as a result of such failure on the part of the payee.

## 19. GENERAL PROVISIONS

19.1. The Customer shall not assign any benefit or any rights arising hereunder without the prior written consent on confirmation from the Bank.

19.2. No waiver by the Bank of any breach by the Customer of any of the terms and conditions hereof shall be effective unless it is an express waiver in writing of such breach. No waiver of any such breach shall waive any subsequent breach by the Customer.

19.3. The Customer acknowledges:

a. That it has not relied any representation, warranty, promises, statement or opinion or other inducement made or given by or on behalf of or purportedly by or on behalf of the Bank in deciding to; and that.

b. No person has or has authority on behalf of the Bank whether before, on or after the subscription to make or give any such representation, warranty, promise, statement or opinion or other inducement to the Customer or to enter into any collateral or side agreement of any kind with the Customer in connection with the Service.

19.4. The terms and conditions hereof supersede all prior agreements, arrangements and understandings between the parties and constitutes the entire agreement between the parties relating to the subject matter hereof. For the avoidance of doubt, nothing herein shall vary, discharge or in any other way affect or prejudice any security granted by the Customer or any third party in favour of the Bank in relation to any obligations of the Customer which may arise if any Request from the Customer hereunder is acted upon by the Bank.

19.5. If any provision of these Terms and Conditions is or becomes illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remaining provisions of these terms and conditions.

19.6. Any notice required to be given in writing under these Terms and Conditions shall be sufficiently served if sent by registered post, stamped and properly addressed;

a. To the Manager of the Branch or of the Bank at the address of the Branch or the Bank set out in this Agreement, if to be served on the Bank.

b. To the Customer at the address given for the Customer in these Terms and Conditions or the Application Form, if to be served on the Customer and shall be deemed to have been served five (5) Banking days after posting.

## 20. PROCESSING OF PERSONAL INFORMATION, CONFIDENTIALITY AND DISCLOSURE

20.1 By opening an account with the bank and providing your details and information, you voluntary, specifically and unconditionally consent to:

- a. the bank, its agents and any third parties associated to it, to the extent applicable, processing the personal information, to offer you any banking services or such related services under its mandate and any matters incidental thereto.
- b. the bank sending you marketing materials, advertising material and any other informative material relating to activities and services or any other industry development.
- c. the bank storing your personal information for an indefinite period, or any period permitted by law.
- d. the bank verifying your financial and other personal information and con-

ducting any such investigation permissible by law to determine your source of funds, ownership and control structure, risk profile and identity.

20.2. Where personal information or special personal information relates to any person other than you, including any of your directors, officers, employees or principles, you warrant to have obtained the consent of that person to whom personal information or special personal information relates, authorizing you to disclose such personal information to the bank for the processing of such information as stipulated in a.(i) above.

20.3. The Customer undertakes to maintain strict confidentiality of its ID, Password and PIN and any other information and materials of any nature supplied to it by the Bank in relation to the Service. The Customer agrees to notify its agents, employees and/ or sub-contractors of the provisions of this paragraph and to impose this confidentiality requirement on its agents, employees and/ or sub-contractors entering into separate agreements, if necessary, the Customer shall be fully liable to the Bank for any breach of the provisions of this paragraph by itself, its employees, agents and/or sub-contractors.

20.4. The Customer hereby expressly authorizes the Bank to disclose Customers personal particulars, accounts, transactions, or dealings with the Bank at any time under the following grounds:

- a. Where such disclosure is necessary in order for the Bank to act on a Request.
- b. In order to comply with any law regulation or court order. If the Bank has to obey an order for information from an authorized government body, the Bank shall, to the extent required by law, notify the Customer before giving out the information.
- c. Disclosure to the Bank's agents, sub-contractors, auditors, attorneys and other professional service providers to the extent required in the normal course of their duties.
- d. Disclosure to a licensed credit reference agency the services of whom the Bank may be subscribed to.
- e. If it involves a claim by or against the Bank in respect of an item deposited or drawn against the Customer's account.
- f. If the Customer authorizes the disclosure.

20.5. The Customer hereby expressly authorises the Bank to disclose at any time and for any purpose, any information whatsoever relating to the Customers personal particulars, accounts, transactions, or dealings with the Bank, to the head office or any other branches, subsidiaries, or affiliated corporations or entities of the Bank wherever located, any government or regulatory agencies or authorities in Kenya or elsewhere, any agent or contractors which have entered into an agreement to perform any service(s) for the Bank's benefit, and any other person(s) whatsoever where the disclosure is required by law or otherwise to whom the Bank deems fit to make such disclosure.

20.6. The Customer agrees to provide to the Bank information that the Bank would require from the Customer under law or regulation, or any other appropriate information the Bank reasonably request from time to time.

20.7. The Bank may disclose information about the Customer and the Account if the Bank thinks it will help avoid or recover any loss to the Customer or the Bank resulting from the loss, theft, misuse or unauthorized use of the Debit Card or other service.

20.8 The Bank employs a range of technologies and internal policy framework to protect the information and data maintained on our systems from loss, unauthorized access, disclosure, alteration, or destruction and has at all times taken and takes all steps reasonably necessary to ensure the confidentiality and integrity of such personal data and information and the way it is processed. These policies and standards are periodically updated to keep them up to date with regulations and market developments.

20.9 The Customer undertake to notify the bank of any changes or errors to the personal information which you provide to the bank for update or deletion where applicable.

## 21. FOREIGN ACCOUNT TAX COMPLIANCE ACT

21.1. The Customer hereby expressly acknowledges and agrees that pursuant to the Foreign Account Tax Compliance Act (FATCA) enacted under the Laws of the United States of America (US), the Bank is or may be required for US citizens or residents to disclose and report certain information concerning his/her/ their account to the relevant authorities including but not limited to

the US Internal Revenue Service ("US Authorities"). Additionally, FATCA may require the Bank to deduct, withhold and remit such taxes or monies to the US Authorities as may be directed by them from time to time.

21.2. The Customer hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Customer's account(s) to the US Authorities and to deduct, withhold and remit such monies or taxes as may be directed by the US Authorities to enable the Bank to fulfill its obligations under FATCA and other enabling US statutes.

21.3. The Customer hereby irrevocably releases and fully discharges DBK, its directors, officers, employees, servants and agents and related parties from any and all claims, liabilities, damages, loss or expense arising from DBK disclosing and reporting any such information concerning the Customer's account(s) to the US Authorities and/or deducting, withholding and remitting any monies to the US Authorities.

## 22. INTELLECTUAL PROPERTY RIGHTS

The Customer acknowledges that the intellectual property rights in the System (and any amendments 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. 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.

## 23. INDEMNITY

In consideration of the Bank complying with the customer's instructions in relation to any of his accounts with the Bank or the service, the Customer undertakes to indemnify the Bank and hold it harmless against any loss, charge, damage, expense, fee or claim which the Bank suffers or incurs or sustains thereby and the Customer absolves the Bank from all liability for loss or damage which the Customer may sustain from the Bank acting on the customer's instructions or request or in accordance with these Terms and Conditions. The indemnity shall also cover the following:

- a. All demands, claims, actions, losses and damages of whatever nature that may be brought against the Bank, or which it may suffer or incur 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 loss or damage that the Bank may suffer as a consequence of acting on instructions issued by the Customer or purporting to be from the Customer received by the Bank via telephone, facsimile, email, untested telexes, telegraph, cable or any other electronic means or through any other electronic channels whether currently existing or to be implemented in the future, provided the Bank has acted in good faith;
- d. Any loss or damage that the Bank may suffer, where in the Bank's sole and absolute discretion and without notice to the Customer, refuses to act or delays in acting on any instructions or communications where the Bank may reasonably deem appropriate, including without limitation, where there is suspected fraud or other illegality.
- e. Any authorized access to the Customer's accounts or any breach of security or any destruction or theft of or damage to any of the customer's equipment.
- f. 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 or any loss which may be incurred by the Bank as a consequence of any breach by the Customer of the terms of this agreement.
- g. 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 above where the particular circumstance is within the customer's control.

## 24. VARIATION AND TERMINATION OF RELATIONSHIP

24.1 The Bank may at any time, upon notice to the Customer, terminate



or vary its business relationship with the Customer and in particular but without prejudice to the generality of the foregoing, the Bank may cancel credits which it has granted and require the repayment of outstanding debts resulting therefrom within such time as the Bank may determine. The Bank may at any time, terminate or freeze any account of the Customer without prior notice to the Customer in compliance with statutory requirements or in exceptional circumstances; or after receiving instructions to do so from any appropriate authority; or if and so long as there is any dispute or the Bank has doubt for any reason (whether or not well founded) as to the person or persons entitled to operate the same, without any obligation to institute interpleader proceedings or to take any step of its own initiative for the determination of such dispute or doubt.

24.2. The Bank shall at its own discretion declare an account to be dormant. An account will be deemed dormant if not operational for a period of 6 months. The Bank shall have the sole discretion to reactivate the account at the request of the Customer.

24.3. In case the Customer intends to close an account, the customer shall be required to give the bank sufficient notice to close the account.

## 25. CHEQUE BOOKS

25.1. Cheque books are issued subject to the following conditions: -

- a. The Customer agrees to look after and use any cheque book and any cheque form with the utmost care.
- b. The Customer further agrees to ensure: -
  - i. That all uncompleted cheque forms are kept in safe custody at all times;
  - ii. That the Bank is informed immediately upon discovery by the Customer that any cheque book or any cheque form has been stolen, lost or mislaid;
  - iii. That any person preparing the cheque is authorized to do so; iv. That any cheque is prepared and signed in ink or other inedible writing materials;
  - v. That the amount of any cheque is written as near as possible to the left side of the form to prevent any addition of unauthorized letters or figures;
  - vi. That any cheque and any alteration is signed by an authorized signatory;
  - vii. That no uncompleted cheque is given to any stranger or other person when the Customer does not have reasonable grounds believing him to be trustworthy.
- c. The Customer is advised that;
  - i. Where possible any uncompleted cheque should be crossed with two distinct lines in order to make the cheque negotiable only through a Bank; and
  - ii. If it is known with which Bank the beneficiary of a cheque keeps his account then the name of the Bank should be added to the crossing in order to make the cheque negotiable only through that particular Bank. Cheques not drawn in Bank's forms in the manner specified by the Bank.
- d. On the receipt of a written notice by the Customer to stop payment of a cheque, the Bank will record the notice.
- e. Upon closure of any account the Customer will return to the Bank any remaining uncompleted cheque forms relating to the account.

25.2. The Bank shall not be liable in any way to the Customer for having honored, even negligently, any cheque the signature or the content of which has been forged or any payment instruction from the Customer or his authorized signatory, which instruction was given fraudulently if:

- a. The Customer has facilitated such forgery either by failure to comply with any of the conditions contained in clause 25 hereof or by negligence in any other way;
- b. There has been a previous forgery of any cheque of the Customer without the Customer having objected to the first statement of accounts which debited such cheque as provided by clause 7 hereof;
- c. The forgery has been perpetrated by an employee, servant, agent; contractor authorized signatory or persons known to the Customer.

25.3. The collection of cheques shall be done by the account holder and the customer shall execute an acknowledgement of the cheque. The Bank shall herein not release the cheque book to any other person(s) other than the holder of the account and/ or representative authorized to operate the account under the mandate already signed by the customer(s).

25.4. On receipt of written notice from the Customer to the Bank to stop payment of a cheque the Bank will immediately stop payment of the cheque and require that the Customer or authorized representative thereof to

sign a disclaimer in the form approved by the Bank and settles any charges levied for stopping the cheque. The Bank will register instructions from the Customer to stop payment but will not undertake any responsibility in case these instructions are overlooked. The Customer shall take all reasonable steps to search for the lost cheque and shall immediately notify the bank when the lost Cheque is found.

25.5. Upon closure of any account the Customer shall return to the Bank any unused cheque forms relating to the account.

25.6. The bank has the absolute discretion to refuse payment of any cheque not drawn on the Bank's cheque form in the manner specified by the Bank.

## 26. HOLDINGS AND CREDIT IN FOREIGN CURRENCY

Subject to all laws and Government regulations applicable: -

- a. The Bank will credit the counter-value of the customer's holdings in foreign currencies to accounts with its correspondents in various countries of origin.
- b. Such accounts are in the Bank's name but are at the customer's risk, and the Customer accepts responsibility for any ensuing consequences including but not limited to consequences of legal, fiscal or other measures affecting the account.
- c. Except in the case of an assignment by the Customer to the Bank, the Customer may dispose of such funds only by means of requests for cheques or transfers in the original currencies at the Bank's option.
- d. All credits granted in foreign currencies are also subject to this clause.

## 27. ACCOUNTS IN FOREIGN CURRENCY

Subject to all laws and government Regulations, where an account is in foreign currency any demand on the Bank for payment from such an account is properly met by the Bank issuing draft or effecting a transfer or making payment in any manner in foreign currency at the discretion of the Bank.

## 28. DRAWING OF CASH

28.1. The Bank may refuse payment of any cheque or other instrument not drawn on the Bank's in the form and manner specified by the Bank in these Terms and Conditions.

- a. The Bank will pay cash to the Customer where the cheque is signed in the presence of the teller, by an authorized signatory(s).
  - b. Where a cash cheque is presented not by the Customer but by a third party, the Bank may require confirmation from the Customer or from a representative of the Customer before it makes payment. Where cash cheques are presented by employees or other known agents of the Customer the following steps will be taken
    - i. the employee or agent will be identified beforehand in a manner acceptable to the Bank.
    - ii. a limit on such drawings will be agreed in writing with the Bank, and until such limit is agreed no drawings will be allowed under this paragraph.

- c. Where the Customer requests that payments be made under paragraph (c) the Customer indemnifies the Bank in respect of all payments made to the presenter of the cheque whether or not the money was received by the Customer and whether or not the order for payment was in fact the order of the Customer.

28.2. The Bank shall not be liable in any way to the Customer for having honored, even negligently, any cheque the signature or the content of which has been forged or any payment instruction from the Customer or his authorized signatory, which instruction was given fraudulently if;

- a. The Customer has facilitated such forgery either by failure to comply with any of the conditions contained in clause 25 hereof or by negligence in any other way.
- b. There has been a previous forgery of any cheque of the Customer without the Customer having objected to the first statement of accounts which debited such cheque as provided in these Terms and Conditions.
- c. The forgery has been perpetrated by an employee, servant, agent, authorized signatory or persons known to the Customer.

28.3. The Bank may re-debit unpaid bills of exchange, cheques and similar instruments which it has discounted or credited. Until settlement of any debit balance created by any such re-debit, the Bank may also claim against any party to the negotiable instrument under the applicable law. In no case is the Bank committed to protest within the prescribed time for nonpayment or to exercise possible rights of recourse. If, by virtue of bills of exchange,

cheques or other instruments drawn on foreign countries, recourse has been exercised against the Bank within the prescribed time in these countries, the loss or damage eventually resulting therefrom will be borne by the holder of the account who remitted the instruments to the Bank.

## 29. VALIDITY OF DOCUMENTS

The Bank is not responsible for the authenticity, validity, regularity or value of documents including but not limited to the bills of lading, delivery order, consignment documents, receipts, warrants and insurance policies.

## 30. BORROWING FROM THE BANK

a. The account holder may borrow money from the Bank by way of overdraft or otherwise upon such terms as may be agreed by the Bank. The bank will be entitled to debit all such accounts interest, commission and other banking charges (including legal charges) incurred in connection with any borrowings. Nothing herein constitutes approval of overdraft facility. Any such facilities must be applied separately in each case. It is accepted that the provision of any overdraft facility or other accommodation may be granted or refused at the sole discretion of the Bank. Their continuance or withdrawal at any time is also at the bank's sole discretion.

b. The Bank may make credit reference agency searches or other inquiries when the customer asks for any borrowing products. The Customer hereby authorizes the Bank to share information with the credit reference bureaus provided that such information will be used for a credit facility only.

## 31. APPLICATION TO ALL ACCOUNTS

These Terms and Conditions shall apply to each, and every account now or subsequently opened in the name of the Customer.

## 32. COMPLAINTS

The Bank is not responsible for any matter unless the Customer has made written complaint to the Bank as soon as reasonably practical and in any event within one month after receipt of the statement setting the transaction complained of.

The Bank is committed to resolving Customer complaints as quickly as possible and has procedures in place to help resolve any problems or complaints efficiently. If a customer has a concern or complaint about any of the Bank's products or services, the Customer may lodge a complaint by contacting the Bank at:

Development Bank of Kenya  
16th Flor, Finance House, Loita St.  
P.O Box 30483-00100  
Email: dbk@devbank.com  
Tel: +(254) 724 253 980/1

For more information refer to the Customer complaint handling procedure

## 33. COMMUNICATION

a. All notices, statements, letters and other communications from the Bank may be sent to the last address given by the Customer, and the date on the Bank's copy of any such communication is taken to be the date of such dispatch in the absence of proof to the contrary.

b. Any written communication from the Bank to the Customer including but not limited to any notices given pursuant to these Terms and Conditions shall be deemed to have been received by the Customer, if delivered then at the date and time of delivery, and if sent by post it shall be sufficient to prove that the letter containing the communication was properly stamped and addressed.

c. The Bank or any of its officials shall not be responsible or accept liability if any communication is received in error, for any losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication whether to or from the Customer, the Bank or any third party, by delivery, post, e-mail, fax, telegraph, telephone, telex or any other means of communication. If the information is received in error, the Customer is not authorized to view, disseminate, distribute or copy any part of the communication except with written consent from the Bank and the Customer shall return the erroneous communication to the Bank immediately upon receipt.

d. The Customer shall be responsible to communicate any change in its address to the Bank immediately.

## 34. DEATH/MENTAL INCAPACITY OF ACCOUNT HOLDER

The Bank shall not be liable to act on any instructions given until duly confirmed letters of administration are provided. In the case of mental incapacity, court order appointing guardian ad litem must be provided for authority to operate the account.

## 35. MARGINAL NOTES

Marginal notes and headings contained on these General Terms and Conditions are for information purposes only and are not conclusive as to the contents of the clauses they relate to.

## 36. AMENDMENTS

Any addition or alteration to these General Terms and Conditions may be made from time to time by the Bank and of which notice has been given to the Customer shall be binding upon the Customer as fully as if the same were contained in these Terms and Conditions.

## 37. GOVERNING LAW

These Terms and conditions shall be governed by and shall be construed according to the Laws of Kenya. In addition to the Laws of Kenya, this Agreement, other Laws and regulations (as amended from time to time) affecting the Customer's Accounts and/or Cards shall apply. The Bank and Customer hereby submit to the nonexclusive jurisdiction of the Courts of Kenya and the Bank shall be at liberty to enforce a judgment anywhere in any jurisdiction where the Customer carries on business or has property situate.

## 38. INTENTION TO BE BOUND & INDEPENDENT LEGAL ADVICE

a. the customer, the signatories and any Agent (and every other person connected to the Account) has executed these Terms and Conditions with bound by the contents herein:

b. The customer hereby agrees and confirm that they have read and understood these Terms and Conditions and have sought and obtained independent legal and financial advice regarding the legal, Tax, Financial or other implication arising under these Terms and Conditions

Name	Signature	Date
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____