

KINGDOM BANK: TERMS AND CONDITIONS

1.1 In this letter, the expressions following shall, except where the context otherwise requires, have the meanings attributed to them respectively

- a) **‘Applicant’** means the person or persons details whereof appear in the Schedule and shall include the Applicant’s personal representative(s) and or successor(s) and permitted assigns:
- b) **“Base Rate”** means the Kingdom Bank Base Lending Rate for the currency or currencies in which the facilities are advanced or outstanding. In the event that Kingdom Bank ceases to have a Base Rate, Base Rate means the rate of interest that Kingdom Bank shall at its sole discretion from time-to-time charge within the Limits it’s permitted by Law:
- c) **“Kingdom Bank”** means Kingdom Bank of Kenya Limited, a commercial Bank incorporated in the Republic of Kenya whose address is Post Box Number P.O. Box 22741-00400, Nairobi Kenya and includes its successors and assigns:
- d) **“Business Day”** means a day (other than a Saturday, a Sunday or a day gazetted as a public holiday in Kenya) on which banks are open for business in Kenya:
- e) **“Encumbrance”** includes any mortgage, Charge, pledge, Lien, hypothecation assignment by way of security, security interest, title retention, preferential rights of set-off counterclaim, banker’s lien or other encumbrance whatsoever securing any obligation of any person:
- f) **“Event of Default”** means any of the events specified in Condition number 12 of this letter:
- g) **“Facility”** means the Facility details of which are set out in the Schedule:
- h) **“Letter”** means this Facility Letter and includes the Schedule and the Annexure hereto (if any);
- i) **“Loan”** means the aggregate sum advanced by Kingdom Bank to the Applicant Pursuant to this Offer or where applicable the principal amount outstanding from time to time:
- j) **“Offer”** means the offer to advance by Kingdom Bank to the Applicant as contained in this letter:
- k) **“Property”** means the property described in the Schedule hereto which is to be charged to Kingdom Bank:
- l) **“Receiver”** means any receiver or receiver and manager appointed by Kingdom Bank pursuant to the provisions of the Security or under, any statutory power:
- m) **“Schedule”** means the Schedule to this Letter, Words and expressions used in the Schedule have the same meaning in this Letter:
- n) **“Security”** means the security referred to in the Schedule and or any security created or to be created by the Applicant or at the request of the Applicant by any third party in favor of Kingdom Bank in respect of the Facility,
- p) **‘Month’** means calendar in month

1.2 In these Conditions unless otherwise stated: **“Charge”** includes mortgage:

2. Purpose of the Facility

The Facility will be used strictly for the Purpose set out in the Schedule.

3. Repayment and Prepayment

- 3.1. The Loan shall be repaid by the Applicant with interest by equated monthly installments over the repayment period specified in the Schedule commencing at the end of the month following the first advance under the Offer.
- 3.2. The amount of the monthly installments shall be notified by Kingdom Bank to the applicant from time to time and may be recalculated by the Bank in the event of any change in the interest rate as provided in Condition 6.
- 3.3. The Applicant may at any time prepay the Loan or any part thereof as may be outstanding. The bank shall have right to apportion/ allocate such early prepayment as it deems fit and any such prepayment shall not be available for further drawing. No prepayment can be made under this Paragraph unless all interest due and outstanding to the Bank has been paid.

4. Commissions and Facility Fees.

- 4.1. The Applicant will pay to Kingdom Bank commitment fees as specified in the Schedule.
- 4.2. The Applicant will pay other fees and charges according to the Bank’s tariffs.

5. Interest

- 5.1. The Applicant shall pay interest on the Loan at the rate specified in the Schedule or such other rate as may be determined by Kingdom Bank from time to time.
- 5.2. Interest shall accrue from day to day and shall be calculated on cleared balances inclusive of the first and last days of the period during which it accrues and on the actual number of days elapsed on a 365-day year. Interest shall be payable monthly in arrears on the dates when the monthly repayments fall due.
- 5.3. Notwithstanding the above, Kingdom Bank may from time to time revise the applicable rate of interest and will advise the Applicant in writing of any changes in applicable rate. Failure by Kingdom Bank to advise the Applicant shall not prejudice the right of Kingdom Bank to recover interest charged subsequent to any such change.
- 5.4. The statement of Kingdom Bank as to the rate or amount of interest payable pursuant to this Paragraph and under Paragraph 7 below shall in the absence of manifest error be conclusive.
- 6.5. Interest will be charged from the day the advance or part thereof is released to the borrower or the Advocates for Kingdom Bank.

6. Default Interest

- 6.1. If the Applicant fails to pay any sum payable to Kingdom Bank on the due date, the Applicant shall pay default interest on such sum (or, as the case may be, the amount thereof for the time being due and unpaid) to Kingdom Bank from the due date to the date of actual payment in full at the rate of 6% per annum above the Bank's applicable rate. The Kingdom Bank's base rate is subject to review and depending on the financial market forces.
- 6.2. Default interest payable under Condition shall lie due and payable upon demand and shall be affected on the last day of each month.

7. Default Interest

- 7.1 If the Applicant fails to pay any sum payable to Kingdom Bank on the due date, the Applicant shall pay default interest on such sum (or, as the case may be, the amount thereof for the time being due and unpaid) to Kingdom Bank from the due date to the date of actual payment in full at the rate of 6% per annum above the Bank's applicable rate. The Kingdom Bank's base rate is subject to review and depending on the financial market forces.
- 7.2 Default interest payable under condition shall lie due and payable upon demand and shall be effected on the last day of each month.

8. Common Precedent

Unless Kingdom Bank otherwise agrees the granting of the Facility is subject to the following conditions precedent:

- 8.1. That Kingdom Bank shall have received all the documents listed in Annexure I and shall have confirmed that each is in form and substance satisfactorily;
- 8.2. That the Representations and warranties set out in Paragraph 10 below are true and correct on and as of each such time as if each was made with respect to the facts and circumstances at such time;
- 8.3. That Kingdom Bank shall have received from the Applicant payment of all the amounts agreed to be paid by the Applicant upon acceptance of this Letter as set out in the Schedule;
- 8.4. That the Applicant opens an instant access or a current account with Kingdom Bank.
- 8.5. That the Applicant and/or Kingdom Bank will have an insurance quotation in respect of the Property and the Life of the Applicant from insurers and through insurance brokers acceptable to Kingdom Bank. The premium amount set out in the Schedule remains provisional until the applicant complies with all conditions precedent set by the insurance company including but not limited to undergoing a medical examination as may be directed by the insurer for purposes of determining the actual premium payable.

9. Payments

All payments to be made by the applicant shall be made to Kingdom Bank at the address shown above (or at such other office as Kingdom Bank may notify to the applicant from time to time) within banking hours on the due date in cleared funds, free and clear of any present or future taxes, duties, charges, fees or withholdings and without any set of counterclaims or any condition or deduction whatsoever. If the Applicant is compelled by law to make any deduction or withholding, the Applicant shall promptly pay to Kingdom Bank such additional amount as shall make the net amount received by Kingdom Bank the full payable amount by the applicant and there been no deduction or withholding.

9.1. The Applicant irrevocably authorizes Kingdom Bank to debit from time to time any amount the Applicant may have with Kingdom Bank with all or any amounts due in connection with the Loan.

9.2. The statement of Kingdom Bank as to any amount payable by the Applicant to Kingdom Bank shall be conclusive and binding in the absence of manifest error.

10. Representation and Warranties

10.1 The Applicant represents and warrants to Kingdom Bank as follows: the obligations expressed as being assumed by the Applicant under this Letter constitute valid, legal and binding obligations of the Applicant enforceable against the Applicant in accordance with their terms:

10.2. Neither the execution and delivery with the form of acceptance vendor in this letter by the applicant no. i.e. performance or observance of any of its obligations under this letter will conflict with, or result in any breach of any law statute, regulation, indenture, mortgage, trust deed agreement or other instrument arrangement, obligation or duty by which the applicant is bound:

10.3. There exists no overriding interest or encumbrance or other security interest whatsoever over the whole or any part of the property;

10.4. No litigation or administrative or arbitration proceeding before any court, government authority or arbitrator is presently taking place, pending or (to the best of the knowledge, information and belief of the Applicant) threatened against the Property:

10.5. That the statement made by the applicant on the application form and any questionnaire is accurate and truthful.

11. Covenants

Save for the prior written consent of Kingdom Bank from and after the date hereof until all the Applicants obligations under this Letter have been discharged, the applicant shall:

(a) Ensure that the Loan will at all-time constitute the direct, unconditional and general obligation on the Applicant and will rank in priority to or pari passu with as the case may be over all present and future indebtedness issued, created, assumed or guaranteed by the applicant due notification whereof has been given to Kingdom Bank and. alter the execution and delivery of the Security, the Security will constitute an effective encumbrance having such priority over the assets charged.

(b) Pay the rents reserved and perform and observe the covenants agreements and conditions contained in or an implied by the grant conveyance transfer assignment lease or other title under which the property is held or is to be held by the Applicant and also to pay all rates taxes and other outgoing which are bow or may hereafter be imposed on the property or any part thereof by the government municipal or local or other authority and will produce and will produce to Kingdom Bank on demand and in any event during the 1st quarter of every year paid receipts for such rates taxes and other outgoings: (c) Obtain copies with and promptly renew and maintain all consents, licenses, approvals, rights, powers, privileges. Concessions, franchises and authorizations (if any) required under any applicable law or regulation to enable the Applicant to carry out its business and to perform its obligation this Letter and the Security or to ensure the legality. Validity and enforceable of its Letter and the Security:

(d) Comply with and observe at all times all the covenants, agreements, and stipulations contained in this Letter, in the Security or in any security created by the Applicant in favor of Kingdom Bank or in any letter or correspondence exchanged between the Applicant and Kingdom Bank and not without the prior consent of Kingdom Bank in writing vary or waive the terms thereof;

(e) Notify Kingdom Bank in any event which is or may with the giving of notice or the lapse of time or both, constitute

an event of default;

(f) advise the bank on the occurrence of any event by virtue of which an indebtedness of the Applicant (other than the Applicant's indebtedness under this Letter) is capable of being declared due and payable prior to its stated maturity or which might prevent the Applicant from fulfilling the Applicant's obligations hereunder or under the Security.

12. Events of Default

12.1 An Event of Default occurs where:

- a) The Applicant fails to perform and observe any of its obligations under this Letter or under the security;
- b) Any representation or warranty made by the Applicant pursuant to this letter or in any statement delivered or made pursuant to it is incorrect,
- c) Any other indebtedness (for borrowed money) of the Applicant is not paid when due or becomes due or capable of being declared due prior to its stated date of payment;
- d) The Applicant commits an act of bankruptcy;
- e) (e) It becomes unlawful or impossible for Kingdom Bank to make, maintain or fund the Facility or the Loan as contemplated by this Letter or any of the obligations expressed as being assumed by the Applicant under this Letter ceases to be valid, legal and binding and enforceable against the Applicant in accordance with its terms;
- f) The Applicant breaches any of the events specified as an event of default under the Security.

12.2. If an Event of Default occurs and at any time thereafter if an Event of Default shall then be continuing, Kingdom Bank may by notice to the Applicant:

- a) Declare that the obligations of Kingdom Bank under this letter or the Security shall be cancelled forthwith whereupon the same shall be so cancelled: and/or
- b) Declare the Loan due and payable together with interest accrued thereon and all other amounts payable in connection therewith.

13. Security

13.1. In the event that there is a conflict between the provisions of this letter and the security the provisions contained in the Security will prevail.

13.2. the Applicant shall pay the ground rent (if any) rates taxes and will at all times during continuance of the facility within the 1st quarter of the year provide the Bank with evidence of payment by way of receipt.

14. Set-Off

Kingdom Bank may at any time without notice or demand to the applicant and notwithstanding any settlement of account or whatsoever, combine or consolidate all or any existing accounts with Kingdom Bank (whether current, deposit, loan or any other nature whatsoever, whether subject to notice or not and in whatever currency denominated) of the Applicant alone or jointly with others wherever situate and set-off or transfer any standing instructions to the credit of any one or more such accounts in or towards satisfaction of any obligation and liabilities to Kingdom Bank of the Applicant whether such liabilities be present, future, actual, contingent, primary, collateral, joint or several and the Applicant expressly waives any rights of set-off that the applicant may have so far as is permitted by law In respect of any claim which it may now or at any time hereafter have against Kingdom Bank.

15. Miscellaneous

16. Costs and Expenses

16.1. The Applicant shall on demand pay to Kingdom Bank on a full indemnity basis irrespective of whether any advance is made under this offer any and all costs, Charges and expenses including legal costs (as between advocate and client), Stamp duties and valuation fees if any arising at any time in connection with this offer the Security or with any security prepared in respect of all or any of the obligations arising or contemplated by this Letter.

17. Joint and Several Liabilities

Where more than one party is named as the Applicant in the Offer, each of the persons named shall be jointly and severally liable for the performance of all the obligations of the Applicant under this Offer.

17.1. No failure to exercise, nor any delay in exercising, on the part of Kingdom Bank, any right or remedy hereunder shall Operate as a waiver thereof nor shall any single or partial exercise of any right or remedy prevent any further or other exercise of any other right or remedy. The rights and remedies herein provided are cumulative and not exclusive of any right provided by law.

17.2 No amendment or variation of these conditions of the offer shall be valid or effective unless it be in writing and signed by Kingdom Bank and the Applicant.

17.3. If at any time, any provision hereby is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of any jurisdiction shall in way be affected or impaired thereby.

18. Successors and Assignment

18.1. The offer and these Conditions shall be binding upon the Applicant, Kingdom Bank and their respective successors and assigns or as the case may be the personal representatives and assigns. The applicant may not assign or transfer all or any part of the Applicants rights and obligations without the prior written Consent of Kingdom Bank.

18.2. The Applicant shall indemnify Kingdom Bank from and against all losses, costs, Expenses. Claims, proceedings and damages suffered or incurred by Kingdom Bank in consequence of any Event of Default. The certificate of Kingdom Bank as to the amount of such losses, costs and expenses shall, in the absence of manifest error, be conclusive.

19. Insurance

19.1 The Security document will provide for the Property to be insured from the time the advance is made by Kingdom Bank through its agency for house owners comprehensive insurance company approved by Kingdom Bank. Details of the amount insured. The annual premium and the additional Monthly repayment in respect of the annual premium is as shown in the schedule. The Applicant may advise Kingdom Bank by letter if the Applicant requires the sum insured to be increased.

20. The sum assured will be used to liquidate the outstanding loan should the Applicant die. However, the sum assured does not cover any outstanding mortgage payments.

21. Legal Cost and Advocates

All payments due to the Kingdom Bank advocate shall be settled by the applicant. Payments of these fees do not constitute and should not be construed as constituting a client advocate relationship. A first mortgage/ charge must be in the form prescribed by Kingdom Bank and be prepared by the Kingdom Banks Advocates at the applicant expense including preparation, stamping and registration.

22. Changes in circumstances.

If any change in applicable law or regulation or in the application or interpretation thereof by any government authority charged with the administration thereof shall make it impracticable or unlawful for the Bank to maintain or give effect to its obligations under this Agreement, the Bank shall give notice in writing to the Borrower of such event and the Bank's obligation to make the Facility available shall be canceled and the Borrower shall immediately upon receipt of such notice repay to the Bank the Facilities and accrued interest thereon to the date of repayment.

23. Demand or Notice

23.1. Any demand or notice on the Applicant shall be made in writing signed by an officer Kingdom Bank and served either by personal delivery on the Applicant at any place or by post or by hand delivery addressed to the Applicants address last known to Kingdom Bank.

23.2. Service post on the Applicant shall be deemed effective 2 business days after the date of posting and notwithstanding that it be returned undelivered. Service by facsimile on the Applicant shall be deemed effective on

dispatch. Any communication under any security document shall be deemed to be served on every Applicant if served, on any Applicant.

23.3. Any notice to Kingdom Bank shall be made to Kingdom Bank at the address P.O. Box 22741-00400, Nairobi, or by Telephone Number 0709 881 000, or such other address as may be notified by Kingdom Bank.

24. Communication

Any written communication from the Bank to the Customer including but not limited to any notice given pursuant to these Terms and Conditions shall be deemed to have been received by the Customer:

- i. If published in the local daily newspapers or displayed at the Bank's branches, on the date of the publication or communication,
- ii. If delivered by hand, at the time of delivery,
- iii. If sent by electronic mail, at the time of transmission (provided that if the date of transmission is not a business day it shall be deemed to have been received at the opening of business on the next business day), and
- iv. If sent by post then four days after posting if sent to an address in Kenya and seven days after posting if sent to an address outside Kenya; and in providing such dispatch by post it shall be sufficient to prove that the communication was properly stamped and addressed.

25. Modification of Terms and Conditions

The Bank reserves the right to modify these Terms and Conditions at any time. The Customer will be notified of any such changes by circular letter and other appropriate means including notices displayed at Bank's place of business.