

1. Application

The terms and conditions set out herein (the “**Conditions**”) shall, in addition to the terms and conditions set out in the Letter, apply to all facilities granted by the Bank on terms which expressly incorporate the Conditions or any of them and shall together form the Agreement between the Parties.

2. Definitions and Interpretation

2.1. In these Conditions and the Letter, unless the context otherwise requires, the following expressions shall have the meanings set against them herein below and cognate expressions shall bear corresponding meanings:-

“**Bank**” means KINGDOM BANK LIMITED, a banking company incorporated in the Republic of Kenya, whose address is set out in the Letter;

2.1.1. “**Borrower**” means the borrower named in the Letter;

2.1.2. “**Business Day**” means a day on which the Bank is open for business (other than Saturday, Sunday or public holidays) in the Republic of Kenya;

2.1.3. “**Change of Control**” means an event, transaction or circumstance whereby any single person, or group of persons acting in concert, gains control of the Borrower, and for this purpose “control” means the direct or indirect ownership of more than 50% of the voting membership rights of the Borrower or the right or ability to direct management and policies of the Borrower (with which the Borrower is obliged to comply) or to determine the composition of the majority of the board of directors (or like board) of the Borrower, in each case whether by virtue of ownership of the voting membership rights, contract or otherwise;

2.1.4. “**Conditions Precedent**” means the conditions the Borrower is required to fulfill unless expressly waived by the Bank in writing prior to the disbursement of the Facility/Facilities as set out in the Letter and in these Conditions;

2.1.5. “**Currency of Account**” means the currency in which the Facility/Facilities or any part thereof is granted;

2.1.6. “**Late Payment Commision.** ” means the Late repayment Commision as set out in the Letter payable by the Borrower to the Bank in the event that any sum due in respect of the Facility/Facilities is not paid on the due date;

2.1.7. “**Encumbrance**” means any mortgage or charge (whether legal or equitable), pledge, lien, hypothecation, assignment by way of security, option, security interest, restrictive covenant, title retention, leasing, sale-and-purchase, sale-and-leaseback arrangement, preferential right, counterclaim, trust arrangement or other restriction of any kind or other right securing or any right conferring a priority of payment in respect of any obligation of any person;

2.1.8. “**Euro**” or “**€**” means Euro, the basic unit of currency among participating European Union countries;

2.1.9. “**Events of Default**” means the events of default set out in Clause 13 herein;

2.1.10. “**Facilities**” and individually as “**Facility**” means the facilities or the facility made available to the Borrower as set out in the Letter;

2.1.11. “**Facility Review Date**” means the date each Facility is scheduled for review;

2.1.12. “**Force Majeure**” includes acts of God, decrees or restraints of government, strikes or other labour circumstances, blockades, riots, civil commotion, war, sabotage, terrorism, power failures and interruptions and any other cause or causes, whether similar or dissimilar to those already specified;

2.1.13. “**GBP**” or “**£**” means Great Britain Pound, the lawful currency of the United Kingdom;

2.1.14. “**Interest Rate**” means the interest rate or rates payable on the Facility from time to time as set out in the Letter;

2.1.15. “**KES**” or “**Kshs**” means Kenya Shillings, the lawful currency of the Republic of Kenya;

2.1.16. “**KESONIA**” means the Kenya Shilling Overnight Interbank Average rate, being the market-determined interest rate at which banks lend to each other on an overnight basis, as published by the Central Bank of Kenya. The KESONIA shall serve as the common reference rate for all variable-interest loans, in accordance with CBK guidelines as published in the Website <https://www.centralbank.go.ke/kesonia/>

2.1.17. “**Letter**” means the offer letter to the Customer to which these Conditions are applicable and attached;

2.1.18. **“Premium “K”** shall comprise of but not limited to:-

- a) The Bank’s operating costs related to lending;
- b) Return to Shareholders;
- c) The Borrower’s risk premium;
- d) Any other costs permitted by law

2.1.19. **“National Newspapers”** means the *Daily Nation*, the *Saturday Nation*, the *Sunday Nation*, the *Business Daily*, the *East African Standard*, the *Saturday Standard*, the *Sunday Standard* and/or such other newspapers circulating in the Republic of Kenya;

2.1.20. **“Parties”** means the Bank and the Borrower and **“Party”** refers to either of them as the context may require;

2.1.21. **“Purpose”** means the purpose of the Facilities;

2.1.22. **“Relevant Party”** means each of the Borrower, each person who provides the Security and each guarantor (if any) of the Borrower’s obligations to the Bank in respect of the Facilities;

2.1.23. **“Security”** means the security required by the Bank to secure the Facilities as set out in the Letter and any other security created by the Borrower or any Relevant Party in favour of the Bank in relation to the Facilities;

2.1.24. **“Term Loan”** means the term facility or facilities made available to the Borrower as set out in the Letter;

2.1.25. **“USD”** or **“US\$”** means United States Dollars, the lawful currency of the United States of America; and

2.1.26. **“Working Capital Facility”** means overdraft facility, guarantees, letters of credit, revolving facilities, such other facilities made available to the Borrower for purposes of working capital as set out in the Letter as well as all other ancillary facilities made available by the Bank on terms which expressly incorporate the Bank’s standard terms applicable to such facilities or any of them.

2.2. If the Borrower is a partnership or otherwise comprises more than one person, the obligations of each person shall be joint and several and references to the Borrower shall be construed as including a reference to each such person. In the event of death, bankruptcy, winding up or dissolution of any one or more such persons, the obligations of the other such persons shall continue in full force and effect.

2.3. References to persons shall include any firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing and any other legal entity.

2.4. References to statutory provisions are references to the provisions of the statutes of the Republic of Kenya and shall include references to any amended, extended or re-enacted version with effect from the date on which it comes into force.

2.5. References to the Letter or to any other document shall include any amendment, supplement (including, in the case of the Letter, any special conditions referred to or attached to it), variation or replacement from time to time in force.

2.6. References to indebtedness shall include any obligation for the payment or repayment of any money (whether present or future, actual or contingent).

2.7. References to a time of the day are references to the time in the Republic of Kenya.

2.8. References to the singular shall include the plural and vice versa and references to one gender shall include all genders.

2.9. Headings are for ease of reference only and shall be ignored in construing these Conditions and the Letter.

3. Facility and Purpose

3.1. The Bank grants the Facilities or part thereof to the Borrower subject to:-

3.1.1. the availability of funds;

3.1.2. there being no change in applicable law or regulation or existing requirements of, or new requirements being imposed by, the Central Bank of Kenya or any governmental, fiscal, monetary, regulatory or other authority the result of which in the sole opinion of the Bank is to increase the cost to the Bank of funding, maintaining or making available the Facilities (or any undrawn amount thereof);

3.1.3. the Conditions Precedent being met/complied with (unless expressly waived by the Bank);

3.1.4. no Event of Default having occurred and no event having occurred which, with the giving of notice and/or lapse of time and/or upon the Bank making the relevant determination, would constitute an Event of Default; and

3.1.5. the Borrower's compliance with the terms and conditions of the Letter, these Conditions and any Security.

3.2. The Facilities are granted to the Borrower for the Purpose set out in the Letter.

4. Drawdown, Repayment and Prepayment of Term Loan Facility

4.1. Drawdown

Where the Term Loan is being disbursed in instalments, each request by the Borrower for a drawing under the Term Loan Facility shall, where applicable, be made by the Borrower giving notice in writing to the Bank on the previous Business Day or as set out in the Letter, in the form approved by the Bank, specifying the drawdown date and the amount required (such amount to be in the minimum sum or multiples thereof specified in the Letter). No drawing may be made if, as at the proposed drawdown date, an Event of Default shall have occurred and shall not have been remedied to the satisfaction of the Bank, or would occur if such drawing were made.

4.2. Repayment

4.2.1. The Term Loan Facility is repayable strictly on demand notwithstanding any other term or condition set out herein or in the Letter. However, without prejudice to the Bank's right to demand payment at any time, the Borrower shall repay the Term Loan at the times and in the amounts specified in the Letter.

4.2.2. If the Bank agrees that interest on the Term Loan is to be capitalized and debited to the Borrower's relevant Term Loan account or if the basis on which interest on the Loan is calculated changes, the amounts and payment dates of the repayment instalments specified in the Letter will be reviewed by the Bank and the Bank will advise the Borrower of any variation.

4.3. This clause only applies to Term Loan Facilities. The repayment and review of other Facilities shall be governed by Clause 5 below.

5. Repayment and Review of Facilities other than Term Loan Facility

5.1. The Facilities are repayable strictly on demand notwithstanding any other term or condition set out herein or in the Letter. However, without prejudice to the Bank's right to demand payment at any time, it is hereby agreed that each Facility is scheduled for review on the respective Facility Review Date.

5.2. Unless otherwise provided in the Letter, in the event that the Working Capital Facility is not reviewed for any reason whatsoever by its Facility Review Date, then without prejudice to the Bank's right to demand payment at any time the said Facility shall be available at the Bank's discretion until the next letter of offer is duly issued and accepted by the Borrower. Where the Bank does not within its discretion extend the Working Capital Facility limits, the same shall stand cancelled on the Facility Review Date and, the Borrower shall settle amounts outstanding under the Working Capital Facility and operate all current accounts in credit thereafter.

5.3. It is understood that the Bank may at any time demand immediate repayment of the Facilities. Upon such demand being made by the Bank in writing:-

5.3.1. any undrawn portion of the Facilities shall be cancelled; and

5.3.2. the Borrower shall pay to the Bank all amounts outstanding on the date of payment together with interest thereon and all other costs, charges and expenses due and payable to the Bank hereunder or under the Security.

6. Interest

6.1. Interest

6.1.1. The Borrower shall pay interest on all the monies, liabilities and obligations advanced to or incurred by the Borrower in relation to the Facilities as well after as before any demand, judgement, insolvency or liquidation of the Borrower (as the case may be) at the Interest Rate and on the basis specified in the Letter.

6.1.2. As per Central Bank of Kenya Guidelines, the monthly benchmark rate on Kenya shilling denominated facilities shall be KESONIA as published by Central Bank of Kenya.

6.1.3. The changes in KESONIA shall apply automatically as published by CBK from month to month as indicated on their website or as may be published by the Bank on its applicable media platforms.

6.1.4. The Bank shall notify the Borrower of any change in the Premium "K" component.

6.1.5. Unless otherwise stated in the Letter, the interest payable shall:-

- a) be calculated on the basis of a 365-day year for facilities drawn in KES and 360-day year for facilities drawn in USD, GBP and Euros;

- b) accrue from day to day, compounded; and
- c) be debited to the Borrower's current account monthly in arrears.

6.1.6. The interest paid or agreed to be paid under this Agreement (including the Processing Fees) shall not exceed the Risk Based Pricing implemented by the Lender based on the Borrowers/Customer's risk profile.

6.1.7. The Risk-Based Pricing shall be as far as permitted by applicable Requirements of Law and/or monetary policies formulated by the Regulator from time to time.

6.2. Additional Interest/Fees

6.2.1. Without prejudice to the exercise by the Bank of any other right or remedy in favour of the Bank, should the amounts drawn by the Borrower during the continuance of the Facilities be in excess of the Facilities committed by the Bank under the Letter, the Borrower shall pay interest/fees on such excess at the Additional Interest Rate/Fees or such other rate or rates as may be determined by the Bank from time to time in its sole discretion until such excess is no longer outstanding. Advising this rate does not constitute an agreement by the Bank to allow drawings in excess of the agreed overdraft limit.

6.2.2. The Borrower acknowledges and agrees that cheques and other instruments may be returned unpaid if there are insufficient funds in the Borrower's current account.

6.3. Late repayment commission

6.4. If any sum payable by the Borrower with respect to the Facilities is not paid when due, the Borrower shall (without prejudice to the exercise by the Bank of any other right or remedy in favour of the Bank) pay to the Bank a **Late repayment commission** on all monies due with effect from the date of the same becoming due until actual repayment of such monies in full (together with accrued interest).

6.5. The Borrower acknowledges and agrees that **Late repayment commission** represents a reasonable pre-estimate of the loss to be suffered by the Bank in funding the default or additional requirements of the Borrower.

6.6. The Bank may from time to time at its sole discretion and within the limits permitted by law revise the applicable rate or rates of interest payable and the methods of calculating such interest with full power and authority to the Bank to charge different rates for different accounts and/or transactions provided however that the Bank shall give the Borrower and such other Relevant Party notice prior to any change in the rate or rates of interest payable in such manner as permitted by law..

6.7. The statement of the Bank as to the **Late repayment commission**, in the absence of manifest error, be conclusive.

7. Charges, Fees and Costs

7.1. The Borrower shall pay the Negotiation Fee and all other fees, commission and charges set out in the Letter and in accordance with the Bank's standard tariff guide from time to time. The Bank's standard tariff guide is available on request in all branches of the Bank.

7.2. The Borrower shall pay to the Bank on demand (whether or not the Facilities are drawn down or disbursed) all expenses (including legal, valuation, stamp duty, value added tax and other out-of-pocket expenses) on a full indemnity basis incurred by the Bank in connection with the negotiation, preparation and execution of the Letter, Conditions and the Security, the fulfillment of all conditions of the Facilities, any amendment or extension of and granting of any waiver or consent under and the discharge of the Letter, Conditions and/or any Security and/or in contemplation of or otherwise in connection with the enforcement of or preservation of any rights under the Letter, Conditions and/or any Security or in the payment of charges, fees, levies, etc. due and payable by the Borrower but which the Borrower fails or neglects to pay on the due date or otherwise in respect of any monies owing under or in respect of the Facilities and the word "expenses" shall be deemed to include any sums which would be allowed to the Bank in a taxation as between Advocate and own client.

7.3. The Bank may effect payment of all fees, expenses and other sums due and payable by the Borrower under Clauses 7.1 and 7.2 above out of and by deduction from the Facilities or by debit to the Borrower's account as set out in Clause 10.2 below or set-off in the manner set out in Clause 20.4 below.

8. Conditions Precedent

The Borrower acknowledges that no disbursement shall be made with respect to the Facilities by the Bank unless the following conditions have been fulfilled to the satisfaction of the Bank or expressly waived by the Bank in writing:-

8.1. the Borrower fulfils all Conditions Precedent required to be fulfilled under the Letter;

8.2. the Bank receives in form and substance satisfactory to it, the Security duly executed by the Relevant Party and where applicable duly registered in the relevant registry/registries together with all other documents relating to the Security that the Bank may require;

- 8.3. the Bank receives certified true and up to date copies of the Relevant Party's memorandum and articles of association and certificate of incorporation (for companies in which case the copies should be certified by the Relevant Party's company secretary), certificate of registration of business name (for partnerships and sole proprietors) and/or identity card or passport (for individual borrowers, directors, partners) as the case may be.
- 8.4. the Borrower's compliance with the terms and conditions of the Letter and Conditions and there being no breach of or default thereunder or under any Security;
- 8.5. the Borrower pays in cleared funds all fees, expenses and other sums due and payable by the Borrower in relation to the Facilities and perfection of the Security;
- 8.6. the Borrower has properly executed the Letter and Conditions and delivered counterparts thereof to the Bank;
- 8.7. all risk insurance cover over the Security for the full market value, with an insurance company approved by the Bank and with the Bank's interest noted as first loss payee; and
- 8.8. if the Borrower or any other Relevant Party is or includes a Company, a copy of a resolution of its Board of Directors, duly certified by the Chairman and/or the Secretary:-
 - a) accepting the terms and conditions of this letter as stated;
 - b) authorising the execution of the Letter and each Security to which it is a party;
 - c) authorising a specified person or persons to sign all notices and communications in respect of the Facilities; and
 - d) with regard to the Borrower, authorising the Bank to accept instructions and confirmations in connection with the Facilities signed in accordance with the mandate given by the Borrower to the Bank.

9. Security

- 9.1. The Borrower shall create (and shall procure that any persons required to create and/or issue any securities does so) and deliver to the Bank the Security.
- 9.2. The Security to be taken by the Bank shall be in a form agreed by the Bank and shall be prepared, executed and perfected at the Borrower's expense by advocates appointed by the Bank.
- 9.3. Unless otherwise stated in the Letter, the Security shall be a continuing security, notwithstanding any intermediate payments or settlements of accounts, or the winding up, liquidation or dissolution of the Borrower, as the case may be, or any change in the Borrower's status, constitution, control or ownership for the payment of all sums including interest, fees, commission, costs, future absolute or contingent for which the Borrower now is or may at any time hereafter be liable to the Bank and is to be in addition to and without prejudice to any other security which the Bank may now or subsequently hold in respect of such liabilities.
- 9.4. Unless otherwise explicitly stated in the Letter, it is hereby acknowledged and agreed by the Borrower that there shall be no restriction on the right of the Bank of consolidating all securities which the Bank may from time to time hold from the Borrower on any account whatsoever and it is hereby declared that no such security in favour of the Bank shall be redeemed and/or discharged except on payment not only of the monies secured by the Security but also of all monies secured by every such other security.
- 9.5. The Borrower agrees that, in the event of devaluation of the Security, the Bank may at its sole and absolute discretion, require that the Borrower provides additional securities to adequately secure the Facilities and/or require the Borrower to reduce the amount owing under the Facilities to match the appropriate loss in market value of the Security. If the Borrower fails to comply with such requirement within Five (5) Business Days, then the Bank may at its sole and absolute discretion exercise any or all of its rights under Clauses 13.18(a) to 13.18(c) (both inclusive) below.

10. Payments

10.1. No withholding

All payments made by the Borrower with respect to the Facilities, whether of principal, interest, fees, costs or otherwise, shall be made in full in immediately available funds, without set-off or counterclaim and free and clear of any deduction or withholding on account of tax or otherwise. If the Borrower is required by law to make any deduction or withholding from any payment under the Facilities, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives a net sum equal to the sum it would have received had no such deduction or withholding been required.

10.2. Debits

The Bank may, at its discretion, debit any sums (whether in respect of interest, fees, costs or otherwise) due from the Borrower to the Bank under the Facilities to any account of the Borrower with the Bank, notwithstanding that any such debit may result in a debit balance or an increased debit balance on the relevant account. Any debit balance shall be treated as an amount due and owing to the Bank on the Bank's standard terms applicable to the relevant account (including without limitation interest payable on debit balances).

10.3. Tax

All payments due and sums payable by the Borrower whether of principal, interest, fees, commissions, charges and/or otherwise are exclusive of excise, sales, use, value-added, transaction and similar taxes or duties that may be imposed by taxing authorities and shall be made without any set-off counterclaim or restriction and free and clear of and without deduction and/or withholding whether for or on account of any present and/or or future taxes or otherwise. The Borrower assumes all obligations with respect to the payment of any and all taxes due on principal, interest, fees, commissions, charges and/or similar charges. If at any time whether now or in the future any applicable law regulation or regulatory requirement or any competent taxing authority requires the Borrower to make any deduction or withholding in respect of taxes from any payment due under this Letter for the account of the Bank the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that after the making of such deduction or withholding the Bank receives a net sum equal to the sum which the Bank would have received had no such deduction or withholding been required to be made and the Borrower shall indemnify the Bank against any losses or costs incurred by the Bank by reason of such deduction or withholding.

11. Representations and Warranties

11.1. The Borrower represents and warrants to the Bank that:-

- 11.1.1. the Borrower is legally empowered to borrow the full amount of the Facilities on the terms set out in the Letter and the Conditions and there is no legal or other restriction on its ability to perform its obligations in respect of the Facilities;
- 11.1.2. any person named in the Letter as the provider of the Security or any part of the Security is legally empowered to give the Security;
- 11.1.3. every consent, authorisation or approval of governmental or public bodies or authorities required in connection with the execution, delivery, validity or enforceability of the Letter and these Conditions or the performance by the Borrower of its obligations hereunder or required to make the Letter and the Conditions admissible in evidence has, where applicable, been obtained and is in full force and effect;
- 11.1.4. the Borrower is not in violation of any statute or regulation of any competent authority in Kenya and no judgement or order has been issued which has or is likely to have any material adverse effect on the Borrower's business prospects or financial condition or make it improbable that the Borrower will be able to observe or perform its/his/her obligations under these Conditions;
- 11.1.5. the Borrower or any employee of the Borrower has not and will not influence the action of, solicit, receive from, collude with, offer or give any payments to any person holding a public office or a director, official or employee of a public authority, public enterprise or any other organisation in order to obtain, retain or secure any improper benefit or advantage and upon becoming aware of any fact or information suggestive of the commission of any such act, the Borrower shall inform the Bank;
- 11.1.6. the Borrower has established and shall maintain precautions to prevent its employees, agents or representatives from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration to employees, agents or representatives of the Bank for the purpose of influencing those persons to act contrary to the best interest of the Bank or otherwise. This obligation shall apply to the activities of the employees of the Borrower in their relations with the employees of the Bank and their families and/or third parties arising from this Agreement;
- 11.1.7. the registered proprietor of the property offered as security has disclosed his/her marital status to the Bank and whether or not the Property is a matrimonial home/property;
- 11.1.8. the property comprising the Security is not communal land nor is it held in trust under any customary law;
- 11.1.9. neither the acceptance of the Letter and Conditions by the Borrower nor the performance or observance of any of its obligations under the Letter and Conditions 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 Borrower is bound or cause, where applicable, any limitation on any of the powers whatsoever of the Borrower howsoever imposed or on the right or ability of the Borrower to exercise such powers to be exceeded;
- 11.1.10. all information submitted by the Borrower to the Bank, inter alia, on its financial position, net worth, details of indebtedness, presents accurately its state of affairs and the financial position of the Borrower as at such date;

- 11.1.11. there is no dispute or litigation whatsoever subsisting between the Borrower's directors or between the directors and the Borrower;
 - 11.1.12. all applicable taxes due and payable to the Kenya Revenue Authority or any other relevant authority have been paid;
 - 11.1.13. the audited accounts of the Borrower will be prepared by auditors acceptable to the Bank in accordance with generally accepted accounting principles and practices in Kenya consistently applied and present fairly and accurately the financial position of the Borrower as at such date and the results and operations of the Borrower for the financial year ended on such date and as at such date;
 - 11.1.14. to the best of the Borrower's knowledge and belief after due inquiry, the Borrower is not in violation of any of the Environmental and Social laws of Kenya or any of the environmental, health and safety guidelines as provided from time to time by the Bank;
 - 11.1.15. the Borrower has not received nor is aware of any existing or threatened complaint, order, directive, claim, citation or notice from any authority or any material communication from any person with respect to any aspect of its compliance with any matter covered by the Environmental and Social Law or the environmental, health and safety guidelines; and
 - 11.1.16. there has been no material adverse change in the financial position of the Borrower from that set forth in the application requesting the Bank for the Facilities and in the annexures thereto (if any).
- 11.2. The foregoing representations and warranties shall be deemed to be given and made on and as of the date of the Letter and Conditions, shall survive the acceptance of the Letter and Conditions and are continuing representations and warranties which are deemed to be repeated during the continuance of the Facilities.

12. Information

- 12.1. The Borrower shall provide the Bank:-
 - 12.1.1. unless otherwise stated in the Letter, within Three (3) months of the end of the Borrower's financial year, copies of audited accounts for the Borrower and of any parent, subsidiary or other associate of the Borrower;
 - 12.1.2. if the Letter so requires, Management Accounts for such periods as are specified in the Letter to include Balance Sheet, Profit and Loss Statement together with cash flow/budget actuals to date; and
 - 12.1.3. any other information which the Bank may request from time to time.
- 12.2. Such accounts and other information shall be prepared using accounting bases, policies, practices and procedures consistent in all material respects with those applied by the Borrower prior to the date hereof and in accordance with generally accepted accounting principles consistently applied in Kenya (unless the Borrower's auditors otherwise require, in which case the Borrower shall immediately notify the Bank in writing of such change).

13. Events of Default

In the event of:-

- 13.1. failure by the Borrower to make any repayment of principal, or payment of interest or other sum, in respect of the Facility on its due date; and/or
- 13.2. a breach by the Relevant Party in the performance of its obligations, covenants or undertaking under the Letter, the Conditions and the Security; and/or
- 13.3. any indebtedness of any Relevant Party becoming immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity by reason of the occurrence of any Event of Default (howsoever described), or of any Relevant Party failing to discharge any indebtedness on its due date; and/or
- 13.4. any representation or warranty made, or any information provided by any Relevant Party in connection with the Facility being incorrect in any material respect when made or repeated or provided; and/or
- 13.5. a petition being presented, an order being made or an effective resolution being passed for liquidation any Relevant Party (except for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the Bank) or where a Relevant Party becomes insolvent or unable to pay its debts or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency or stops or threatens to stop payments generally; and/or
- 13.6. the Borrower, without the prior consent in writing of the Bank, ceasing or threatening to cease to carry on the business carried on by the Borrower on the date hereof or effecting any material changes in the nature or mode of conduct of the Borrower's trading in any material respect or the directors of the Borrower engaging in board wars, the effect of which threatens the business carried on by the Borrower; and/or

- 13.7. (where the Relevant Party providing a charge over a property forming part of the Security is an individual) any Relevant Party making a material misrepresentation to the Bank regarding his/her marital status or failing to notify the Bank of any spousal overriding interest in such property existing at the time of execution of the charge or of the happening of an event which gives rise to a spousal overriding interest as set out in Section 28(a) of the Land Registration Act, No. 3 of 2012; and/or
- 13.8. an encumbrancer takes possession or a liquidator, provisional liquidator, administrator, receiver, trustee, sequestrator or similar officer being appointed in respect of all or any of the assets of any Relevant Party; or
- 13.9. a distress, execution, attachment or other legal process being levied, enforced against any of the assets of any Relevant Party and not being discharged or paid within Seven (7) days; and/or
- 13.10. any Relevant Party suspending payment of its debts or being unable to pay its debts as they fall due or being deemed, insolvent; and/or
- 13.11. any Relevant Party proposing or entering into a voluntary arrangement or taking or being subjected to any proceedings under any law, or commencing negotiations with one or more of its creditors, for the readjustment, rescheduling or deferment of all or a material part of its debts, or proposing or entering into any general assignment or composition with or for the benefit of its creditors; and/or
- 13.12. the cessation or revocation for any reason of any consent, authorisation, licence and/or exemption which is required to enable any Relevant Party carry on all or any material part of its business, or to ensure that the terms of the Letter, the Conditions or the Security are valid, binding and enforceable, or it becoming unlawful for any Relevant Party to perform all or any of its obligations hereunder or thereunder or any such document not being or ceasing to be legal, valid and binding on it; and/or
- 13.13. any Relevant Party failing to comply with the provisions of the Proceeds of Crime and Anti-Money Laundering Act of 2009; and/or
- 13.14. any guarantor giving or purporting to give notice to terminate its liabilities under any guarantee in respect of the Facility; and/or
- 13.15. there being an adverse change in the financial or trading position or prospects of any Relevant Party which in the Bank's reasonable opinion is material; and/or
- 13.16. if the Borrower is a company, beneficial ownership of the Borrower passing or having passed to any person or persons, acting either individually or in concert, who did not have beneficial ownership of the Borrower at the date of the Letter, without the prior written consent of the Bank; and/or
- 13.17. if the Borrower is a company, a Change of Control occurring, or any person or group of persons acting in concert becoming entitled to effect a Change of Control (whether effected or not), without the prior written consent of the Bank; and/or
- 13.18. it becoming unlawful for the Borrower to perform all or any of its obligations under the Letter, Conditions or the Security; and/or
- 13.19. it becoming unlawful or impossible for the Bank to make, maintain or fund the Facilities or any of them as contemplated by the Letter; and/or
- 13.20. the occurrence or continuation of any Event of Default by any parent, subsidiary or other affiliate of the Borrower; and/or
- 13.21. the Borrower participating or being deemed to be participating in illegal activities, money laundering, cheque kiting or corrupt activities or being charged or convicted of such activities by any court of competent jurisdiction;
- 13.22. any cheques or other negotiable instruments of the Borrower being dishonoured by the Bank or other institution for lack of funds whether the Borrower is charged in a court of law or not;
- 13.23. the title to any property forming part of the Security for any reason being encumbered or terminated or threatened with either or if any Encumbrance whatsoever or notification by virtue of any order, process, decree or notice including a charge or notification of charge is registered against such titles without the prior written consent of the Bank; and/or
- 13.24. there being an attempt by the Government, the head lessor or any other competent or interested person to challenge, terminate, impair, suspend or forfeit the title and/or interest to any property forming part of the Security or such title and/or interest being for any reason challenged, terminated, impaired, suspended or forfeited; and/or
- 13.25. if a Relevant Party is a partnership, upon the occurrence of a change in the partnership without the prior written consent of the Bank; and/or
- 13.26. if the Borrower comprises one or more trustees, any trustee ceasing to act as such or any new trustee being appointed without the prior written consent of the Bank; and/or

- 13.27. any event occurring in relation to any Relevant Party in any applicable jurisdiction which has an effect substantially similar to any events specified above or if any Relevant Party gives notice terminating his/its liability under the relevant guarantee, indemnity or Security,

then, in any such case:-

- a) the Bank's commitment to advance the Facilities or any balance thereof shall cease and the whole amount of the outstanding Facilities and all accrued interest or other amounts owing under the Facilities shall become repayable forthwith on demand in writing made by the Bank at any time; and/or
- b) the Borrower shall be required to provide cash cover on demand for all contingent liabilities of the Borrower to the Bank and for all notes or bills accepted, endorsed or discounted and all bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Borrower; and/or
- c) the Bank may by notice to the Borrower in writing, declare that the Security has become enforceable whereupon the Bank shall be entitled to exercise its rights under the Security.

Any monies not paid following a demand under this clause shall continue to attract interest at the contracted rate or rates as well after as before judgment or bankruptcy or liquidation of the Borrower (as the case may be).

14. Change of Circumstances

The Bank reserves the right to review the terms of the Facilities including but not limited to the right to demand immediate payment of any amounts outstanding in respect of the Facilities:-

- 14.1. in the event of any change in applicable law or regulation or existing requirements of, or any new requirements being imposed by, the Central Bank of Kenya or any governmental, fiscal, monetary, regulatory or other authority the result of which in the sole opinion of the Bank is to increase the cost to the Bank of funding, maintaining or making available the Facility (or any undrawn amount thereof) or to reduce the effective return to the Bank; and
- 14.2. if for any reason including, without limitation, the occurrence of Force Majeure events, it becomes unlawful or impossible for the Bank to give effect to its obligations in respect of the Facilities or to fund or maintain the Facilities or any of the obligations expressed as being assumed by the Borrower or any Relevant Party under the Letter, Conditions and the Security ceases to be valid, legal and binding and enforceable against the Borrower or the Relevant Party (as the case may be) in accordance with their respective terms.
- 14.3. Any variation in the KESONIA as published by the Central Bank of Kenya shall automatically be deemed a change in the applicable interest rate on this Facility, and such variation shall not constitute an amendment requiring further consent from the Borrower.

15. Indemnities

15.1. General

The Borrower shall indemnify the Bank on demand (without prejudice to the Bank's other rights) for any cost, expense, loss or liability sustained or incurred by the Bank in consequence of:-

- a) any amount of the Facilities not being drawn down for any reason;
- b) any default or delay by the Borrower in the payment of any amount when due in respect of the Facilities (including stamp duties and other taxes); and
- c) the occurrence or continuance of any Event of Default or any event which, with the giving of notice and/or lapse of time and/or upon the Bank making the relevant determination, would constitute an Event of Default.

15.2. Losses Covered

Without derogation from the generality of Clause 15.1 above, the indemnity contained in that clause shall extend to any loss (including loss of margin), expense or liability sustained or incurred by the Bank in liquidating or re-deploying funds acquired or committed to make, fund or maintain the Facilities or any part of it, or in liquidating or varying transactions entered into in order to match, hedge or fund the Facility or any part of it and shall also extend to interest, fees and expenses paid or payable by the Bank on account of any funds borrowed in order to fund any unpaid amount arising as a result of non-payment by the Borrower of any amount due from it hereunder.

15.3. Calculations

In calculating amounts payable under Clauses 15.1 and 15.2 above, the Bank may in its sole and absolute discretion:

- a) make or attempt to make arrangements from time to time such as hedging or swap arrangements to ensure the payment of all sums or part of the sums contemplated by the Letter and the Conditions or the financial equivalent; and/or
- b) refer from time to time to any agreement or agreements to which it is a party providing for transactions which are substantially the reverse of or hedge or fund in whole or in part the transactions contemplated in the Letter and the Conditions; and/or
- c) take reasonable steps to make arrangements to avoid, mitigate or reduce the losses or the risk of losses which would or which, in the opinion of the Bank, might otherwise arise from termination of any such arrangements,

and losses arising from any of them shall be treated as losses incurred as a result of the matters referred to in Clauses 15.1 and 15.2 after taking into account, as far as appropriate, the discharge or reduction of the obligations of the Bank and such other factors as the Bank shall reasonably determine to be relevant.

15.4. Currency Indemnity

If for any reason, any amount payable by the Borrower in respect of the Facility is paid or recovered in a currency other than the Currency of Account, then, to the extent that the payment to the Bank (when converted at the then applicable rate of exchange) falls short of the amount unpaid, the Borrower shall, as a separate and independent obligation, fully indemnify the Bank on demand against the amount of the shortfall. For the purposes of this clause the expression “rate of exchange” means the rate at which the Bank is able as soon as practicable after receipt to purchase the Currency of Account.

16. General Undertakings & Covenants

While the Facility remains available, the Borrower undertakes to procure that unless otherwise agreed by the Bank in writing in its absolute discretion:-

- 16.1. First right of Refusal** – As long as any sum remains owing under any of the Facilities, if the Borrower wishes to engage any person to provide (i) currency, commodity price or interest hedging, transaction banking products and services including cash management services, trade services, trade finance, custodial services, fund administration and escrow services, (ii) any refinancing or replacement of the Facilities or (iii) any other similar transactions in the financial markets (collectively the “Services”) the Borrower shall give the Bank the first right of refusal to provide such Services, such right to be subject to terms and conditions to be agreed.
- 16.2. Priority** – all monies due and payable to the Bank under the Letter and Conditions shall at all times rank in priority to all other present and future secured and unsecured and unsubordinated obligations (including contingent obligations) of the Borrower with the exception of such obligations as are mandatory preferred by law and not by contract;
- 16.3. Negative Pledge** – no Relevant Party shall create or permit to subsist (other than in favour of the Bank) any Encumbrance without obtaining the prior written consent of the Bank, except Encumbrances in existence at the date of the Letter and full details of which were disclosed in writing to the Bank prior to that date provided that the amount secured by any such Encumbrance is not at any time increased;
- 16.4. Disposals** – no Relevant Party shall sell, transfer or otherwise dispose of the whole or any part of its undertaking, property, assets or revenues, whether by a single transaction or a number of transactions (other than in the ordinary course of trading);
- 16.5. Change of Capital Structure** – if the Borrower is a company, the Borrower will not, without the written consent of the Bank, change its capital structure and will procure that its directors will not without such consent permit any transfer of the shares in the Borrower provided that the Bank’s consent shall not be required where the company is a public listed company;
- 16.6. Material Changes** – unless otherwise agreed, the Borrower shall advise the Bank immediately of any change of Directors or any material or major happenings that may affect the Borrower’s operations including, without limitation, in the directors, the shareholding pattern, industrial or labour disputes, industrial or economic downturn, diversification plans, capital expenditure, commitment changes, etc.;
- 16.7. No Additional Borrowing** – unless otherwise provided in the Letter, the Borrower shall not resort to any additional borrowings from any other source without the Bank’s prior consent in writing;
- 16.8. Change of Business** – no Relevant Party shall make any material change in the scope or nature of its business without the Bank’s prior consent in writing;

16.9. Insurance – each Relevant Party shall comprehensively insure all insurable assets forming part of the Security with an insurance company approved by the Bank with the interest of the Bank duly noted on the insurance document as “Loss Payees” and incorporating a “Non-cancellation clause” and shall deposit such original insurance policy and payment receipt with the Bank. The Relevant Party shall maintain adequate insurance in relation to its business and assets with reputable underwriters or insurance companies against risks usually insured by persons carrying on a business such as that carried on by such Relevant Party and such other risks as the Bank may from time-to-time reasonably require. In the event that this is not complied with, the Bank shall effect such insurance cover at the Borrower’s cost and shall debit the relevant charges to the Borrower’s account. Upon expiry of any insurance cover, the Borrower shall within Seven (7) days of such expiry deliver to the Bank the relevant renewal advice, payment receipt or endorsement (as the case may be) failing which the Bank shall be at liberty to effect such insurance at the Borrower’s cost without further reference to the Borrower and debit the Borrower’s account with any amount paid by the Bank.

All money payable under any policy of insurance effected by the Relevant Party shall be paid by the insurers directly to the Bank and shall be applied, at the Bank’s option, in replacing, restoring or reinstating the property or assets destroyed, damaged or lost or in reduction of the money, obligations and liabilities in respect of the Facilities. If the Relevant Party becomes aware of any claim, occurrence which may give rise to a claim under any policy of insurance effected by the Relevant Party or of any threatened or actual cancellation of such policy the Relevant Party shall promptly inform the Bank in writing, shall not agree to the settlement of any claim without the prior written consent of the Bank and shall take such remedial action as will ensure that the insurance remains in place.

16.10. Valuation - the Borrower undertakes to submit valuation reports for the properties charged to the Bank at least once every Three (3) years from one of the Bank’s approved valuers. The Bank shall also, if the circumstances so warrant, ask for periodic valuation of the properties or any of them. In the event that this is not complied with, the Bank shall arrange for the same and shall debit the relevant charges to the Borrower’s account.

16.11. Spousal Overriding Interests - (if the registered proprietor of the properties charged to the Bank is an individual) the Borrower will ensure that the chargor procures and provides to the Bank within Fourteen (14) days of the happening of an event which shall give rise to a spousal overriding interest as set out in Section 28(a) of the Land Registration Act, 2012 a consent to the charge from the chargor’s spouse/s in a format approved by the Bank.

16.12. Litigation – the Borrower shall immediately upon becoming aware of it, notify the Bank of any material litigation, arbitration or administrative proceeding pending or, to the best of its knowledge, information and belief, threatened against any Relevant Party;

16.13. Notification of Event of Default – the Borrower shall immediately upon becoming aware of it, notify the Bank of the occurrence of any Event of Default;

16.14. Compliance with Covenants, Agreements and Conditions – the Borrower shall comply with and observe at all times the covenants, agreements, stipulations and conditions contained in the Letter, the Conditions and the Security or in any other security created by the Borrower in favour of the Bank or in any letter or correspondence exchanged between the Borrower and the Bank and shall not without the consent of the Bank vary or waive any of the terms thereof nor exceed the approved limits without the Bank’s approval;

16.15. Compliance with Applicable Laws and Licensing Requirements – each Relevant Party shall comply with and observe all the provisions of the applicable legislation and shall obtain, comply with and promptly renew and maintain all consents, licences, approvals, rights, powers, privileges, concessions, franchises and authorizations (if any) required under any applicable law or regulation to enable such Relevant Party to carry on its business and to perform its obligations under the Letter, the Conditions or under the Security (as the case may be) or to ensure the legality, validity and enforceability of the Letter and the Security;

16.16. Environmental Matters – each Relevant Party shall, during the subsistence of a Security over property, comply with and shall not commit any offences under the provisions of the Environmental Management and Coordination Act, 1999 (“**EMCA**”) and the Relevant Party shall procure that all occupiers and owners (as defined in the EMCA) of such property shall comply with and shall not commit any offences under the provisions of the EMCA;

16.17. Outgoings – each Relevant Party shall, during the subsistence of a Security over property, punctually pay in full and indemnify the Bank and any receiver appointed by the Bank against all existing and future rents, municipal or local rates, taxes, duties, charges, assessments, impositions and other outgoings whatsoever (whether imposed by agreement, statute or otherwise and whether in the nature of capital or revenue and even if wholly novel) now or at any time payable in respect of such property or any part thereof or by the owner or occupier thereof;

16.18. Conduct of its Business – the Borrower shall conduct its business in a proper, efficient and business-like manner and in conformity with sound management and financial practices and to that end appoint or install competent managers and management systems;

16.19. Meetings – the Borrower shall permit any person or persons nominated by the Bank to attend such meeting of the Borrower but without thereby making the Bank or such person a shadow director of the Borrower or the Borrower claiming that the Bank participated in its management;

16.20. Change in Partnership – if the Borrower is a partnership, the Borrower shall immediately notify the Bank of any change in the membership of the partnership and whenever possible such notification shall be given in advance of such change;

- 16.21. Change of Trustee** – if the Borrower comprises one or more trustees, the Borrower shall give to the Bank not less than Twenty-eight (28) days prior notice of the proposed retirement of any trustee or the appointment of any new trustee (which shall not be effected without the prior written consent of the Bank) and shall immediately notify the Bank upon the death of any trustee or the dissolution of any firm or corporation acting as trustee;
- 16.22. Information** – the Borrower will provide the Bank with such information at such times and in such form as the Bank may require from time to time regarding the Borrower's finances and operations;
- 16.23. Buildings** – during the continuance of the Facility, the Relevant Party shall keep all buildings and structures and all roads, passageways, pipes, wires, cables, drains and sanitary and water apparatus and all fixtures and fittings and every part thereof in or upon the property/properties comprising the Security in good and substantial repair and in good working order and condition and except in the ordinary course of use, repair, maintenance or improvement the Relevant Party shall not make any structural or other material alteration thereto or pull down, remove, sell or otherwise dispose of any of the same without the prior consent in writing of the Bank it being agreed that, if the Relevant Party is at any time in default in complying with this covenant, the Bank shall be entitled, but not bound, to repair and maintain them with power for the Bank, its agents and employees to enter the property/properties comprising the Security for that purpose or for the purpose of inspection and the Relevant Party hereby authorizes the Bank at any time and from time to time during the continuance of this Facility to instruct a surveyor or valuer to inspect and report on such property and the Relevant Party shall meet the cost and expenses of such inspection and reports;
- 16.24. Banking** – during the continuance of the Facility, the Bank shall act as the sole banker of the Borrower (unless otherwise provided in the Letter). All sums received by the Borrower in the course of its business or in respect of subscriptions or calls upon its shares or otherwise howsoever shall be paid by the Borrower to the Bank for the credit of the Borrower in the account or accounts opened or to be opened in the name of the Borrower and shall make all payments by cheques drafts promissory notes or bills of exchange drawn on the Bank and all costs and expenses incurred by the Bank in acting as such banker of the Borrower as aforesaid together with such sums as shall be due and payable by the Borrower to the Bank pursuant to the terms of the Facility shall be debited to the Borrower's account or accounts; and
- 16.25. Right of Inspection** – each Relevant Party shall, if required, permit the Bank, its employees or agents to inspect and report on any property, stock and/or other assets forming part of the Security at such frequencies to be determined by the Bank provided that such inspection shall be carried out during working hours upon giving the Relevant Party at least Two (2) days notice (except in cases of emergency in which event no notice is required) and all monies paid by the Bank for this purpose shall be deemed to be expenses properly incurred by the Bank in relation to the Security repayable in full by the Borrower on demand with interest as set out in Clause 6 above.

17. Appointment of Attorney

The Borrower hereby irrevocably appoints the Bank to be the Attorney of the Borrower and in the name and on behalf of the Borrower to execute and do any assurances, acts and things which the Borrower ought to execute and do under the covenants and agreements contained in the Letter and the Conditions and generally to use the name of the Borrower in the exercise of all or any of the powers hereby or by law conferred on the Bank.

18. Currency Conversion

It is hereby agreed by the Borrower and the Bank that:

- 18.1. all amounts due and owing by the Borrower to the Bank and secured by the Security shall be paid to the Bank in the currency in which the principal amounts are outstanding and interest on such amounts shall also be paid in the currency in which the Facilities are outstanding in freely transferable and convertible funds;
- 18.2. all moneys received or held by the Bank or by a receiver under the Security may from time to time be converted into such other currency as the Bank considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Borrower in that other currency and such conversion shall be made in accordance with the Bank's usual practice of converting the existing currency into the other currency;
- 18.3. if and to the extent that the Borrower fails to pay any amount due under the Letter on demand the Bank may in its absolute discretion without notice to the Borrower purchase at any time thereafter so much of any currency as the Bank considers necessary or desirable to cover the obligations of the Borrower in such currency by the Security and such purchase will be in accordance with the Bank's usual practice of purchasing such other currency with the existing currency and the Borrower hereby agrees to indemnify the Bank against the full cost incurred by the Bank in respect of any such purchase;
- 18.4. no payment to the Bank (whether under any judgement or court order or otherwise) shall discharge the obligation or liability of the Borrower in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that if the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability actual or contingent expressed in that currency the Bank shall have a further separate cause of action against the Borrower and shall be entitled to enforce the Security to recover the amount of the shortfall;

- 18.5. the Security now offered to and/or held by the Bank and/or which the Bank may hold from time to time will secure all the Borrower's liabilities (both actual and contingent), denominated in any currency whether such liability is in the Borrower's single name or jointly with any other person;
- 18.6. the Bank shall in its sole and absolute discretion be entitled upon giving Seven (7) days' prior written notice to the Borrower any time to convert any performing facility made available in a currency other than Kenya Shillings (the "Other Currency") into a Kenya Shillings facility at the Bank's prevailing Kenya Shillings Interest rates . If the Bank shall exercise the aforesaid right to convert the facility the Other Currency shall be converted into Kenya Shillings at a rate of exchange determined by the Bank in accordance with the usual practice adopted by the Bank in converting the Other Currency into Kenya Shillings as at the date of conversion. Upon the conversion the provisions of Clause 6 above shall apply mutatis mutandis in relation to the charging and payment of interest by the Borrower in respect of Kenya Shilling outstandings from time to time and the Borrower shall be charged and shall pay interest accordingly; and
- 18.7. the Bank shall in its sole and absolute discretion convert any facility made available in a currency other than Kenya Shillings (the "Other Currency") into a Kenya Shillings facility immediately upon default at the Bank's prevailing Kenya Shillings Interest rates . If the Bank shall exercise the aforesaid right to convert the facility the Other Currency shall be converted into Kenya Shillings at a rate of exchange determined by the Bank in accordance with the usual practice adopted by the Bank in converting the Other Currency into Kenya Shillings as at the date of conversion. Upon the conversion the provisions of Clause 6 above shall apply mutatis mutandis in relation to the charging and payment of interest by the Borrower in respect of Kenya Shilling outstanding from time to time and the Borrower shall be charged and shall pay interest accordingly; and
- 18.8. the Bank shall not be liable to the Borrower for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.

19. Confidential Information and Credit Checks

- 19.1. The Bank may hold and process, by computer or otherwise, any information obtained about the Borrower as a consequence of the application for the Facilities.
- 19.2. The Borrower confirms that the Bank may at any time and from time to time at its sole discretion carry out credit checks with any of the licenced credit reference agencies on the Borrower and where the Borrower is a company, on any of the Borrower's directors.
- 19.3. The Borrower agrees that the Bank may:-
- a) include personal data of the Borrower in the Bank's customers' computer systems which may be accessed by other companies in the Bank's group for credit assessment, statistical analysis including behaviour and scoring and to identify products and services (including those supplied by third parties) which may be relevant to the Borrower; and
 - b) permit other companies within the Bank's group to use personal data and any other information it holds about the Borrower on the Bank's customers' computer systems to bring to its attention products and services which may be of interest to the Borrower.
- 19.4. The Borrower agrees that the Bank may disclose any information relevant to the Borrower and the Facilities in the Bank's possession relating to the Borrower and its subsidiaries on terms that such recipient is to treat in confidence any confidential information so disclosed to it and further agrees that the Bank may disclose personal data and/or information relating to the Borrower or any Relevant Party outside the Bank's group whether such personal data and/or information is obtained after Borrower ceases to be the Bank's customer or during the continuance of the bank-customer relationship or before such relationship was in contemplation:-
- a) for fraud prevention purposes;
 - b) to licensed credit reference agencies or any other creditor if the Borrower is in breach of its obligations to the Bank and the Borrower agrees that such information may be used by other banks or institutions in assessing credit applications and for debt tracing;
 - c) to licensed credit reference agencies or any other creditor for determining the Borrower's payment history and the Borrower agrees that his/her payment history may be used by other banks or institutions in assessing credit applications and for debt tracing;
 - d) to the Bank's external lawyers, auditors and sub-contractors;
 - e) to any person who may assume the Bank's rights under the Letter and Conditions;
 - f) to any regulatory, fiscal or supervisory authority;
 - g) if the Bank has a right or duty to disclose or is permitted or compelled to do so by law; and
 - h) for purposes of exercising any power, remedy, right, authority or discretion relevant to the Letter, the Conditions or the Security following the occurrence of an Event of Default, to any other person or third party as well.

- 19.5. The Borrower acknowledges and agrees that, notwithstanding the terms of any other agreement between the Borrower and the Bank, the disclosure by the Bank of information relevant to the Borrower and the Facilities in the circumstances contemplated in this clause does not violate any duty owed to the Borrower either in common law pursuant to any agreement between the Bank and the Borrower or in the ordinary course of banking business and the customs, usage and practice related thereto and further that the disclosure as aforesaid may be made without reference to or further authority from the Borrower and without inquiry by the Bank as the justification or validity of such disclosure.

20. Miscellaneous

- 20.1. All notifications or determinations (including without limitation, any determination of an amount payable pursuant to Clause 15) above given or made by the Bank shall in the absence of manifest error be conclusive and binding.

20.2. Assignment – The Borrower shall not assign or transfer any of its rights and/or obligations in respect of the Facilities. The Bank may assign or transfer all or any of its rights and/or obligations in respect of the Facilities, in whole or in part, to any person or persons and may disclose any information relevant to the Facilities in the Bank's possession relating to the Borrower and its subsidiaries to any actual or prospective assignee or transferee (or to any other person):-

- a) in connection with a securitisation of all or any part of the Bank's assets from time to time; or
- b) who may otherwise enter into contractual relations with the Bank in relation to the Facilities.

Any change in the constitution of the Bank or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person or any reconstruction or reorganisation of the Bank shall not in any way prejudice or affect the Bank's rights in respect of the Facilities and shall be treated as an assignment.

20.3. Sole and Principal Debtor - Notwithstanding that as between the Relevant Party (in this clause Relevant Party excludes the Borrower) and the Borrower, the relationship may be that of the guarantor and principal debtor and that the monies secured by the Security provided by the Relevant Party may be drawn only by the Borrower, each Relevant Party hereby agrees that all such monies shall be recoverable as though such monies had been borrowed by and advanced to such Relevant Party as the sole and principal debtor.

20.4. Set-Off – The Bank may, at any time without notice or demand to the Borrower and notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any then existing accounts with the Bank including accounts in the name of the Bank (whether current, deposit, loan or of any other nature whatsoever, whether subject to notice or not and in whatever currency denominated) of the Borrower alone or jointly with others wherever situate and set off or transfer any sums standing to the credit of any one or more such accounts in or towards satisfaction of any obligations and liabilities to the Bank of the Borrower whether such liabilities be present, future, actual, contingent, primary, collateral, joint or several and the Borrower expressly waives any rights of set-off that the Borrower 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 the Bank and the Bank may use any such money to purchase any currency or currencies required to effect such application.

20.5. Severability - Each of the provisions of these Conditions is severable and distinct from the others and if at any time one or more of such provisions is or become invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and the Borrower shall cooperate with the Bank in substitution of new provisions in compliance with the intention contained in the Conditions.

20.6. Remedies and Waivers – No delay or omission on the part of the Bank in exercising any right or power in respect of the Facility shall impair such right or power; and any single or partial exercise shall not preclude any other or further exercise of any such right or power or the exercise of any other right or power and the Borrower expressly agrees and covenants with the Bank that the Borrower shall not plead limitation under the Limitation of Actions Act (Chapter 22 of the Laws of Kenya) or any other similar enactment. The rights and remedies of the Bank in respect of the Facility are cumulative and not exclusive of any right or remedy provided by law.

20.7. Time of the Essence – Time shall be of the essence in respect of the Borrower's obligations under the Letter and Conditions.

21. Notices

- 21.1 Every notice, request or other communication shall:

- a) be in writing delivered personally or by registered post or electronic mail or facsimile transmissions;
- b) be deemed to have been received by the Borrower, if delivered by hand, at the time of delivery or if sent by registered post, Seven (7) days after the date of posting (notwithstanding that it be undelivered or returned undelivered) or in the case of a facsimile or electronic transmission at the time of transmission (provided that if the date of transmission is not a Business Day or if the time of transmission is after 5:00p.m. on a Business Day it shall be deemed to have been received at the opening of business on the next Business Day); and

c) be sent:-

(i) to the Borrower at the address set out in the Letter; and

(ii) to the Bank at the address shown in the Letter,

or to such other address in Kenya as may be notified in writing by the one Party to the other,

PROVIDED THAT communication may only be made by electronic mail to the extent that the Parties agree that, unless and until notified to the contrary, it shall be an accepted form of communication and that the Parties shall notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by electronic mail. The Borrower by providing the electronic mail address in the Letter, Security or any other document to the Bank hereby consents to the receipt of communication by electronic mail.

21.2 All communications to the Bank shall be effective only on actual receipt by the Bank.

21.3 Any Relevant Party shall advise the Bank in the event of change of address and acknowledges that the communication sent to the last known address as advised to meet the requirements of this Clause.

22. Law

22.1 Letter and the Conditions shall be governed by and construed in accordance with the laws of Kenya and the parties submit to the non-exclusive jurisdiction of the Kenyan courts. Nothing in this clause shall limit the right of the Bank to take proceedings against the Borrower or any Relevant Party in any other court of competent jurisdiction nor shall the taking of proceedings at one or more jurisdictions preclude the taking of proceedings in another jurisdiction whether concurrently or not.

22.2 The Borrower acknowledges having read and understood the contents of these Conditions and confirms that the Conditions form an integral part of and are not divisible from the Letter.



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