

Terms and Conditions

Unsecured loan



1. Definitions

1.1 In this Agreement unless the context otherwise requires:

"This Agreement" means the Borrower's Application when duly approved by the Bank and these terms and conditions as may be amended, supplemented and restated or otherwise notified.

"Facility" means the aggregate of the approved overdraft or Loan Amount or so much thereof as may have been disbursed and from time to time owes by the Borrower, and includes all the Borrower's obligations to the Bank.

"Approved" means the acceptance by the Bank of the facility applied for or such lesser sum as it may in its sole discretion agree to advance to the Borrower including any terms of such approval as to the costs and the applicable interest rate or otherwise "Approval" shall have a corresponding meaning.

"Disbursement" means the crediting of the approved loan into the Borrower's account or by any other mode making payment of the principal loan to the Borrower or his account.

"Authorities" means all national and local governments, government departments, county governments, supranational bodies, local or public authorities, statutory undertakings, states or agencies.

"Base Rate" means the rate announced from time to time by the Bank as its base lending rate.

"The Bank" means National Bank of Kenya Limited and its successors and assigns.

"Borrower" means the applicant (s) specified in the Application and their personal representatives and assigns. Where there is more than one Borrower, their obligations are joint and several.

"Business Day" means a day on which banks are open for business.

"Exchange Rate" means the prevailing spot rate of exchange of the Bank as conclusively determined by the Bank on the date on which any conversion of currency is to be effected pursuant to this Agreement "Kenya Shillings", "KShs" and "KES" means the lawful currency for the time being of the Republic of Kenya and in respect of all payments to be made under this Agreement in Kenya Shillings means immediately available, freely transferable cleared funds.

"Related Account" means any account in the Borrower's name or in which the Borrower has an interest by virtue of his position as a Director, Shareholder or Partner.

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

1.2 In this Agreement:

1.2.1 Clause headings are included for convenience only and do not affect the construction of this Agreement;

1.2.2 Words denoting the singular include the plural and vice versa; and

1.2.3 Words denoting one gender include each gender and all genders.

1.3 In this Agreement, unless the context otherwise requires, references to:

1.3.1 Clauses are to the clauses of these terms and conditions;

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

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

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

2. Interest

2.1 The Borrower will pay (and authorises the Bank to debit his account with) interest (as well after as before any demand or judgement or the bankruptcy of the Borrower) on the facility at the annual rate which is specified in this Agreement or at such other rate as is determined by the Bank at its sole discretion. Interest shall be calculated on daily balances and debited monthly by way of compound interest according to the usual mode of the Bank but without prejudice to the right of the Bank to require payment of such interest when due.

2.2 The Bank reserves the right to change the Base Rate and the applicable rate of interest at its sole and absolute discretion and shall advise the Borrower by issuing a thirty (30) day notice prior to any change in the rate of interest so payable and change of rate so advised will not prejudice in any way the Bank's right to recover interest charged subsequent to such change.

2.3 If at any time during the continuance of the facilities, the amount drawn by the Borrower from the Bank is in excess of the facilities committed by the Bank under this Agreement or any sums payable by the Borrower under this agreement are not paid on the date on which they are due in accordance with the provisions of this agreement and whether demand has been made or not on the Borrower to repay the same and whether notice has been given or not to the Borrower to repay the same, the Borrower shall pay additional interest (after as well as before any demand made or judgment obtained or the liquidation or administration of the Borrower) at the rate of _____ per cent per annum for the Kenya Shillings denominated facilities and _____ per cent per annum for the foreign currency denominated facilities. Such interest shall be additional to the interest charged on the principal sum and shall be compounded in the event of it not being punctually paid with monthly rests in accordance with the usual practice of the Bank but without prejudice to the right of the Bank to require payment of such interest when due. The Borrower acknowledges and agrees that the aforesaid additional rate of interest represents a reasonable pre-estimate of the loss to be suffered by the Bank in funding the default on the Borrower's part.

3. Approval & Effectiveness.

3.1 The Bank may approve the full facility applied for or a lesser sum or decline the application in its sole discretion without giving any reasons, such decision of the Bank may

be by endorsement to that effect in the relevant part of this agreement, or by a separate letter and in either case it shall be effective to bind the parties without any further act by the Borrower.

3.2 The signature and delivery of this application by the Borrower is deemed conclusive evidence of the Borrower's agreement to be bound by the terms of the facility as to the amounts of the facility and interest as approved and determined by the Bank.

3.3 The facility and conditions contained in this agreement shall become effective and the Borrower's obligations to the Bank shall commence on the day that the Bank disburses the approved amount by crediting the Borrower's account or otherwise by applying the principal loan proceeds for the Borrower's account or marking the limit on the Borrower's account.

4. Expenses

4.1 The Borrower shall pay to the Bank and shall fully indemnify and reimburse upon demand all costs, charges and expenses (including legal and other professional expenses, stamp, registration or other duties and any VAT) incurred by the Bank in connection with the preparation and execution of, the obtaining of any documents required under, and the enforcement of, or the preservation of any rights under this agreement or otherwise in connection with the Facility. Failure to pay these amounts on their due dates or on demand date as applicable, the Bank reserves the right to debit the same together with any interest accrued on the amounts from the Borrower's account.

4.2 The Borrower shall be required to deposit on or before the approval date an appropriate amount in the account for the purpose of meeting preliminary costs and expenses. In the event that there are insufficient funds in the Borrower's account, the Bank reserves the right to deduct these costs and expenses from the loan amount and credit the Borrower's account with the net loan proceeds.

5. Payments

5.1 All payments by the Borrower hereunder shall be made, without set off or counterclaim, by the Borrower, to such account as the Bank may from time to time notify to the Borrower.

5.2 Without prejudice to the Bank's rights to require payment or otherwise recover amounts due hereunder from the Borrower, the Bank may debit any amount due hereunder to any current or other account of the Borrower maintained with the Bank, notwithstanding that the maximum amount permitted to be outstanding in respect of such account may be exceeded. Thereafter the amount so debited shall be treated as owing on the terms of such current or other account for all purposes.

5.3 All payments due to be made by the Borrower hereunder, whether of principal, interest or otherwise, shall be made without regard to any equities between the Borrower and the Bank and free and clear of, and without deduction or withholding for, or on account of, any Taxes, except to the extent the Borrower is required by law to deduct or withhold any Taxes on any amounts payable hereunder, in which case the Borrower shall promptly pay to the Bank such additional amount as is necessary to ensure that the net amount received by the Bank after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) is equal to the amount that the Bank would have received had no such deduction or withholding been made. The Borrower will furnish the Bank within one month after the relevant payment is made with an official receipt of the relevant taxation authorities evidencing payment of any Taxes. In the event of failure to provide the receipts within one month as provided for herein, the Bank reserves the right to debit the amounts so deducted from the Borrower's account.

5.4 If any payment under this Agreement would otherwise be due to be made on a day which is not a Business Day, it shall be made on the next succeeding Business Day, unless such Business Day falls in the following calendar month, in which event it shall be made on the immediately preceding Business Day.

5.5 The Borrower hereby agrees that the Bank may at any time without notice or further demand, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Borrower's then existing accounts wherever situate including any accounts in the name of the Bank or of the Borrower jointly with others (whether current, deposit, loan or of any other nature whatsoever whether subject to notice or not and whether in Kenya Shillings or in any other foreign currency) and set off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any obligations or liabilities of the Borrower to the Bank whether such liabilities be present, future, actual, contingent, primary, collateral, several or joint. For this purpose the Borrower hereby irrevocably authorises the Bank to purchase with the moneys standing to the credit of such accounts such other currencies as may be necessary to effect such set off or transfer at the Exchange Rate.

5.6 All interest and other payments of a periodic nature under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and a 365 day year (or such other day count as the Bank decides has become market practice).

6. Representations and Warranties.

6.1 The Borrower hereby represents and warrants to the Bank that:

6.2 On execution by the Borrower, each of the Documents forming the agreement to which the Borrower is expressed to be a party will constitute a valid and binding obligation of the Borrower legally enforceable in accordance with its terms;

6.3 All information submitted by the Borrower to the Bank, inter alia, on his financial position, net worth, details of indebtedness, presents accurately his state of affairs and the financial position of the Borrower as at such date.

6.4 No litigation, mediation, arbitration or other legal or dispute resolution proceedings are taking place, pending or, to the knowledge of the Borrower, threatened against the Borrower which could have a material adverse effect on the assets or financial condition of the Borrower; and

6.5 No Call in Event /event of default as defined in this agreement has occurred and/or is continuing.

6.6 The representations and warranties set forth in this paragraph are given and made on and as of the date hereof and shall survive the acceptance of this facility and are continuing representations and warranties which are deemed to be repeated during the continuance of the facilities.

6.7 Each notice by the Borrower requesting any drawing under any of the Facilities shall be deemed to constitute fresh representations and warranties by the Borrower in the terms of this Clause 5 as if made at such time.

7. Covenants

The Borrower covenants with the Bank that, from the date of this Agreement until all moneys owing to the Bank in respect of the Facility including all costs and interest due under

clauses (2), (4) and (8) of this Agreement have been paid in full:

7.1 The Borrower will inform the Bank of any Call in Event forthwith upon becoming aware of the same;

7.2 During the continuance of the Facility, the Borrower shall ensure that his salary is paid exclusively through his account with the Bank save for check-off loans.

8. Insurance

8.1 The Bank may require the Borrower to take insurance cover to cover death and or disability through the Bank's approved insurance plan. The Bank may enter into separate arrangements with insurers to cover the risk.

8.2 The Borrower undertakes to pay the insurance premiums stipulated by the Bank from time to time. The Borrower also understands and accepts that in the event of default on the facility or delay in payment of insurance premiums, the insurance may not be valid and the Borrower will continue to be liable for repayment of all monies due to the Bank.

8.3 The Borrower also understands and accepts that not all types of disability or death may be covered by insurance. The Borrower will continue to be liable for any shortfall in the amount received from the insurers.

8.4 The Borrower shall give written notice to the Bank within 48 hours of any occurrence which gives rise, or might give rise, to a claim under the policy of insurance and, except with the prior written consent of the Bank, the Borrower shall not agree to settlement of any such claim.

8.5 All proceeds received by the Bank in respect of any claim made under the insurance will be applied by the Bank in repayment of the facility. Any surplus after such application will be paid to the Borrower's account.

9. Events of Default and Call in Event.

"Call in Event" means the occurrence of any of the following events or circumstances" -

a) Failure by the Borrower to make any single repayment of principal or payment of interest, costs or other moneys in respect of the Facilities on its due date, or
b) A breach in the performance of any other term and condition of the Facilities or any covenant by the Borrower or any term and condition of any of the Security Documents or any other security held by the Bank for the Facilities, or

c) A trustee, sequester or similar officer being appointed of all or any of the assets of the Borrower, or

d) Death or permanent incapacity of the Borrower

e) A distress, execution or other legal process being levied against any of the assets of the Borrower and not being discharged or paid within 7 days, or

f) Issuance of a Garnishee or Attachment Order against any deposit or asset maintained by the Borrower

g) Failure to provide any collateral or security when so requested by the Bank.

h) Any indebtedness of the Borrower becoming immediately due or payable or capable of being in default on the part of any person, or the Borrower failing to discharge any indebtedness on its due date, or

i) If, in the sole opinion of the Bank, there is a material adverse change in the Borrower's financial condition or

j) if any material part of the assets or revenues of the Borrower is nationalized, compulsorily acquired, seized or appropriated, or

k) In accordance with normal banking practice, particularly as regards reporting and monitoring of related accounts to Central Bank of Kenya, notwithstanding the above provisions, default or call in event by any related accounts shall constitute a default or call in event for the Borrower.

l) Any representation or warranty made by the Borrower hereunder or for the purpose of obtaining the Facilities being incorrect in any material respect as of the date of which it is made or deemed to be made, or there being any material adverse change of the position as set out in such representation of warranty, then 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, costs or other amounts owing hereunder will become repayable forthwith on demand in writing made by the Bank at any time. Any moneys not paid following a demand under this Paragraph shall continue to attract interest at the contracted rate as well after as before judgment or any Bankruptcy or liquidation of the Borrower.

10. Currency Indemnity

If any sum due from the Borrower hereunder or under any order or judgment given or made in relation hereto has to be converted from the currency (the "first currency") in which the same is payable hereunder or under such order or judgment into another currency (the "second currency") for the purpose of (a) making or filing a claim or proof against the Borrower, (b) obtaining an order or judgment in any court or other tribunal or (c) enforcing any order or judgment given or made in relation hereto, the Borrower shall indemnify and hold harmless the Bank from and against any loss suffered as a result of any difference between (x) the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and (y) the rate of exchange at which the Bank may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction in whole or in part, of any such order, judgment, claim or proof. Any amount due from the Borrower under this Clause 9 shall be due as a separate debt and shall not be affected by judgment being obtained for any other sums due hereunder but it shall be secured, and the Bank shall have all rights in relation to it, as if it formed part of the Facilities. The term "rate of exchange" includes any premium or costs of exchange in connection with the purchase of the first currency with the second currency.

11. 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 cancelled 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.

12. Other Terms And Conditions

12.1 No failure, delay or other relaxation or indulgence on the part of the Bank to exercise any power right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power right or remedy preclude its further exercise or the exercise of any other power right or remedy.

12.2 All moneys payable by the Borrower under, the benefit of the covenants of the Borrower contained in, and all other rights of the Bank under, this Agreement shall be assignable and remain valid and effective in all respects in favour of any assignee transferee or other successor in title of the Bank in the same manner as if such assignee transferee or other successor in title has been named in this Agreement as a party instead of or in addition to the Bank.

12.3 The Bank may disclose to any proposed assignee or transferee or to its Holding Company, Subsidiary, or any Subsidiary of its Holding Company (whether or not they are proposed assignees or transferees) such information as is in its possession at any time

relating to the Facilities or the Borrower.

12.4 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 its rights under this Agreement.

12.5 Any right or power which may be exercised or any determination which may be made under this Agreement by the Bank may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons there for.

12.6 A certificate by any officer or other duly authorised official of the Bank as to the money and liabilities for the time being due or accrued from or by the Borrower pursuant to any of the Facility Documents or the amount of any interest, commission or other sums owing pursuant to any of this Agreement shall save for manifest error be conclusive evidence in any legal proceedings.

12.7 Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

12.8 The Facilities are availed by the Bank subject to the Bank's General Terms and Conditions unless varied or inconsistent with the terms of this Agreement. In the event of any inconsistency between the terms of this Agreement and any general terms and conditions of the Bank (whether in force currently or at any time after the date of this Agreement), the terms of this Agreement shall prevail.

12.9 All rights of the Bank contained in this Agreement are in addition to all rights vested or to be vested in the Bank pursuant to the common law or statute.

12.10 The Bank shall not be liable for the acts or omissions of its advocates, valuers or other professional advisers.

12.11 The Borrower hereby agrees (i) that the Bank may in its discretion record any telephone conversations between the Borrower and the Bank made in connection with this Agreement and (ii) that the Borrower will not object to such recordings being produced in evidence in a court of law.

12.12 The Borrower hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Borrower's account(s) to other Banks, financial institutions, credit card companies, or credit reference bureaus, including authorized agents, representatives, lawyers or debt collection agents for the purposes of any bona fide enquiry or collection of any data or towards recovery of any sums due and outstanding to the Bank.

12.13 The Borrower agrees not to disclose to any third parties any information provided by the Bank in connection with this offer, except to those legally required.

13. Notices

13.1 Each party may give any notice, request, demand or other communication under or in connection with this Agreement by letter, facsimile, email or other comparable means of communication. Any notice to the Borrower shall be addressed to last known address provided by the Borrower to the Bank. Notices to the Bank shall be addressed to the branch of the Bank where the application was made or the registered office of the Bank. Any such communication will be deemed to be given as follows:

13.1.1 If personally delivered, at the time of delivery;

13.1.2 If by letter, at noon on the third Business Day following the day such letter was posted (or in the case of airmail, seven days after the envelope containing the same was delivered into the custody of the postal authorities); and

13.1.3 If by facsimile transmission or comparable means of communication during the business hours of the other party then on the day of transmission, otherwise on the next following business Day.

13.1.4 If sent by email, on the date it is sent, whether or not actually received and the Bank's records shall be conclusive as to whether and when the email communication shall be considered to have been sent

13.2 In proving such service it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped, addressed and delivered to the postal authorities or in the case of facsimile transmission or other comparable means of communication, that a confirming hard copy was provided promptly after transmission.

13.3 The Customer acknowledges that email communication may be illegible, unreliable, abused, delayed, mislaid or lost; that it may be tampered with or altered prior to, during or after transmission; may make the verification of signatures impossible; may result in the loss or leakage of confidential information and may result due to the aforesaid in incorrect transfers or transactions.

13.4 The Bank shall not be liable for and the Customer hereby irrevocably and unconditionally indemnifies and holds the Bank harmless against any and all loss, damage and expense whatsoever, whether suffered or incurred directly or indirectly by the Bank, the Customer or Third Parties arising out of or in connection with the Bank's use of or reliance upon email communication, whether or not such instructions and/or communications are fraudulent, forged or in any way defective; provided that such loss was not due to the Bank's negligence or wilful action.

14. Law

This Agreement shall be governed by and shall be construed in accordance with Kenyan law.

I _____
of P. O. Box No _____ hereby confirm that I have read the above terms and conditions and hereby signify my acceptance of the terms and conditions.

Signature: _____

ID No: _____

Date: _____

Witness _____ Date _____

In the presence of: _____
(Bank Official)