

HFCB'S LENDING TERMS AND CONDITIONS (LTC)

1. The facilities will be governed as set forth herein as well as by the provisions contained in the HFCB's LTC including any subsequent amendments and/or modifications thereto and by executing this Letter, you will be deemed to have read, sought legal advice and understood the contents thereof.
2. The execution and delivery of this Letter and/or the performance or observance of any of your obligations herein or in HFCB's LTC contained will not 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 you are bound.
3. Disbursement will only be allowed upon receipt by HFCB of all related security documents duly completed and registered and full compliance by you with HFCB's LTC particulars of which have been availed to you and which shall for all intents and purposes be deemed to be incorporated herein by extension.
4. In the event you fail to effect draw-down of the facility/ies for any reason whatsoever, whether within your control or not, within ninety (90) days of the date of acceptance of this Letter, the same shall automatically lapse. However, this period may be extended with our mutual consent.
5. If any part, term or provision of this Letter of Offer shall be held to be illegal, void, invalid or unenforceable under the Laws of Kenya, the legality, validity or enforceability of the other provisions of this Letter of Offer shall not be affected.

6. EARLY REPAYMENT

The Borrower may prepay the Loan in full or in minimum amounts. Any amount prepaid under this clause shall satisfy to the extent of such prepayment, the Borrower's obligation and such amounts of such prepayment shall be applied so as to reduce those obligations in reverse order.

7. ADDITIONAL INTEREST

Without prejudice to the provisions of Events of Default as defined in the offer letter and the rights of HFCB hereunder, if at any time during the continuance of the Facilities, the amount drawn by the Borrower from HFCB is in excess of the Facilities committed by HFCB under the Letter and whether demand has been made or not on the Borrower and whether notice has been given or not to the Borrower to repay the same, the Borrower shall pay to HFCB interest on such excess for the period during which the account is in excess at the normal facility rate of interest plus ten per cent (10%) per annum on the additional/excess Facilities. HFCB reserves the right to charge additional interest rate at its sole and absolute discretion and shall advise the Borrower, prior to any change of the additional rate of interest so payable.

The Borrower acknowledges and agrees that the aforesaid additional rate of interest represents a reasonable pre-estimate of the loss to be suffered by HFCB in funding the excess on the Borrower's part.

8. DEFAULT INTEREST

If any sum payable by the Borrower hereunder is not paid on the date on which it is due in accordance with the provisions of the Letter and whether demand has been made or not on the Borrower and whether notice has been given or not to the Borrower to repay the same, or if any sum due and payable by the Borrower under any judgment of any Court in this connection, is not paid on the date of such judgment, the Borrower shall pay interest on such sum for the period beginning on such due date or, as the case may be, the date of such judgment until payment is received by HFCB in full at normal facility rate of the interest plus ten per cent (10%) per annum on the arrears Facilities. HFCB reserves the right to change default interest rate at its sole and absolute discretion and shall advise the Borrower, prior to any change of the default rate of interest so payable. The Borrower acknowledges and agrees that the aforesaid default rate of interest represents a reasonable pre-estimate of the loss to be suffered by HFCB in funding the default on the Borrower's part.

9. EXPENSES

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

10. PAYMENTS

- (a) All payments by the Borrower hereunder shall be made, without setoff or counterclaim, to such account as HFCB may from time to time notify to the Borrower.
- (b) Without prejudice to HFCB's rights to require payment or otherwise recover amounts due hereunder from the Borrower, HFCB may debit any amount due hereunder to any current or other account of the Borrower maintained with HFCB, 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.

- (c) 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.
- (d) The Borrower hereby agrees that HFCB 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 situated including any accounts in the name of HFCB 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 currency) and setoff 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 HFCB whether such liabilities be present, future, actual, contingent, primary, collateral, several or joint. For this purpose the Borrower hereby irrevocably authorises HFCB 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.
- (e) HFCB will within seven (7) days' notice, debit any legal or recovery charges demand from or incurred by HFCB in relation to the Borrower's account(s) in this agreement. The charges shall be as provided for in the Advocates Act, Auctioneers Act or any other prevailing law in the Republic of Kenya from time to time.

11. TAX GROSS UP

- (a) The Borrower shall make all payments to be made by it without any tax deduction, unless a tax deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a tax deduction (or that there is any change in the rate or the basis of a tax deduction) notify HFCB accordingly. Similarly, HFCB shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If a tax deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any tax deduction) leaves an amount equal to the payment which would have been due if no tax deduction had been required. Any tax deduction shall be borne by the Borrower.
- (d) If the Borrower is required to make a tax deduction, the Borrower shall make that tax deduction and pay the tax required in connection with that tax deduction within the time allowed and in the amount required by law.
- (e) Within thirty days (30) of making either a tax deduction or any payment required in connection with that tax deduction, the Borrower shall deliver to HFCB payment evidence reasonably satisfactory to HFCB that the tax deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (f) The Borrower shall hold HFCB harmless and indemnify HFCB from and against any costs, claims, damages and any other liability relating to the regulatory costs described in (c) above.

12. INSURANCE

- (a) Insure and keep insured all of its undertaking with reputable and responsible insurers, in such manner and to such extent as is reasonable and customary for such an enterprise engaged in the same or a similar business and in the same or similar localities such risks and contingencies as HFCB shall from time to time request.
- (b) Insure and keep insured the assets offered as security with reputable and responsible insurers, approved by HFCB in such manner and to such extent as is reasonable and customary for such a property as HFCB shall from time to time request.
- (c) Procure that the interest of HFCB is noted on all policies of insurance over its assets (which are charged or given as security to HFCB) in such manner as HFCB may in its absolute discretion require.
- (d) Duly and punctually pay all premiums and any other moneys necessary for maintaining all its insurances in full force and effect and if the Borrower fails to do so in good time, the Borrower authorises HFCB to debit his accounts and pay premium so due to keep all insurances in full force and effect.
- (e) Avail to HFCB the original policies, renewal certificates and all payments receipts for the current premiums with respect to all its insurances.
- (f) Immediately give notice to HFCB of any occurrence which gives rise, or might give rise, to a claim under any policy of insurance relating to any of its insurances over assets which may be charged to HFCB and except with the prior written consent of HFCB, the Borrower shall not agree to settlement of any such claim.
- (g) All proceeds received by HFCB in respect of any claim made under the insurance will be applied by HFCB in repayment of the loan. Any surplus after such application will be paid to the Borrower's account with HFCB.

13. OTHER COVENANTS

- (a) The Borrower shall not dispose off or create security interest over any of the assets given as security without HFCB's prior consent in writing.
- (b) The Borrower will provide HFCB regularly with such information and in such form as may be required from time to time relating to the Borrower's finances and operations.
- (c) The Borrower shall advise HFCB immediately of any change of Directors or any material or major happening that may affect the Borrower's operations. This could include but not be restricted to changes in the share holding pattern, industrial or labour disputes, industrial or economic downturn, diversification plans, capital expenditure commitments, change in objectives and the like.

- (d) The Borrower shall undertake to submit valuation reports for any and all immovable properties securing the Facilities at least once every (5) years from one of HFCB's approved Valuers. HFCB shall also, if the circumstances so warrant, ask for valuation of the said properties. In the event that this is not complied with, HFCB shall arrange for the same and shall debit the relevant charges to the Borrower's account.

14. INFORMATION SHARING CONSENT

The Borrower hereby agrees to be bound by the following requirements relating to the submission of information to the Credit Reference Bureau (whether or not the Loan is drawn down) and irrevocably:

- (a) Consents to HFCB collecting, receiving, compiling and retaining any Customer Credit Information about the Borrower for purposes of:
 - (aa) assisting HFCB to perform HFCB's statutory assessment of the Borrower's creditworthiness;
 - (ab) deciding whether or not to grant the Borrower credit;
 - (ac) monitoring the Borrower's credit profile should HFCB grant the Borrower credit; and
 - (ad) filing HFCB's Customer Credit Information with the Credit Reference Bureau.
- (b) Consent to the receipt, sharing, provision and exchange of data with the Credit Reference Bureau and with other licensed financial institutions and micro finance deposit taking institutions through the Credit Reference Bureau provided that the Borrower reserve the right to lodge a complaint with the Credit Reference Bureau or to challenge any Customer Credit Information held by the Credit Reference Bureau in respect to the Borrower.
- (c) Acknowledge that the Customer Credit Information obtained may include positive or negative information regarding the Borrower's payment record.
- (d) Acknowledge that the Credit Reference Bureau is required by law to collect negative information on the background and credit history relating to the Borrower's non-performing obligations.
- (e) Consent to the collection, recording, retention and submission of all data relating to the Borrower's economic, financial and commercial obligations in order to determine your overall debt exposure and ability to pay.
- (f) The Borrower agrees that HFCB may disclose any information relevant to the Borrower and the Facilities in HFCB'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 HFCB may disclose personal data and/or information relating to the Borrower or any Relevant Party outside the HFCB Group whether such personal data and/or information is obtained after Borrower ceases to be HFCB's customer or during the continuance of HFCB-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 HFCB 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 HFCB's external lawyers, auditors and sub-contractors or other persons acting as agents of HFCB;
 - e) to any person who may assume HFCB's rights under the Letter and Conditions;
 - f) to any regulatory, fiscal or supervisory authority;
- (g) HFCB has a right or duty to disclose or is permitted or compelled to do so by law and:
 - i) HFCB may in its discretion record any telephone conversations between the Borrower and HFCB made in connection with the facility, and
 - ii) the Borrower will not object to such recordings being produced in evidence in a court of law.
- (h) The Borrower acknowledges and agrees that, notwithstanding the terms of any other agreement between the Borrower and HFCB, the disclosure by HFCB 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 HFCB 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 HFCB as the justification or validity of such disclosure.

15. CURRENCIES

- (a) HFCB may at its sole discretion, if the Borrower so requests grant from time to time part or all the Facilities in other currency and/or currencies within the available limits at HFCB's prevailing rate of exchange.
- (b) By availing the Facilities in any foreign currency the Borrower automatically grants to HFCB the right to convert the foreign currency denominated debt or part thereof into Kenya Shillings whenever HFCB may choose to do so. No payment to HFCB (whether under any judgment or court order or otherwise) shall discharge the obligation of the liability of the Borrower in respect of which it was made unless and until HFCB shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payments shall on actual conversion into such currency fall short of such obligation or liability (actual or contingent) expressed in that currency HFCB shall have a further separate cause of action against the Borrower and shall be entitled to recover the amount of the shortfall from the Borrower as a debt due in respect of the Facilities.

- (c) The Security Documents now offered to and/or held by HFCB and/or which HFCB 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.
- (d) All amounts due and owing by the Borrower to HFCB shall be paid to HFCB in the currency in which they are outstanding and interest on such amounts shall also be paid in the currency in which the principal amounts are outstanding in freely transferable and convertible funds.
- (e) All moneys received or held by HFCB or by any Receiver under any Legal Charge may from time to time after demand has been made by HFCB be converted into such other currency as HFCB considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Borrower in that other currency at the then prevailing spot rate of exchange of HFCB (as conclusively determined by HFCB) for purchasing that other currency with the existing currency.
- (f) If and to the extent that the Borrower fails to pay the amount due on demand HFCB may in its absolute discretion without notice to the Borrower purchase at any time thereafter so much of any currency as HFCB considers necessary or desirable to cover the obligations and liabilities of the Borrower in such currency at the then prevailing spot rate of exchange of HFCB (as conclusively determined by HFCB) for purchasing such currency with Kenya Shillings and the Borrower hereby agrees to indemnify HFCB against the full Kenya Shilling cost incurred by HFCB for such purchase.
- (g) Neither HFCB nor any Receiver shall be liable to the Borrower for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.
- (h) No payment to HFCB (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Borrower in respect of which it was made unless and until HFCB shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that 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, HFCB shall have a further separate cause of action against the Borrower and shall be entitled to enforce the charges by the existing security and hereby created to recover the amount of the shortfall.

16. REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to HFCB as follows:

- (a) Every consent, authorisation or approval of governmental or public bodies or authorities required in connection with the execution, delivery, validity or enforceability of this Letter or the performance by the Borrower of its obligations hereunder or required to make this Letter admissible in evidence has, where applicable, been obtained and is in full force and effect.
- (b) Neither the execution and delivery of the form of acceptance indorsed hereon by the Borrower nor the performance or observance of any of its obligations under this Letter will conflict with, or result in, any breach of any law, statute, regulation, indenture, mortgage, trust deed, agreement or other instrument, arrangement, obligation or duty by which the 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.
- (c) All information submitted by the Borrower to HFCB, 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.
- (d) There has been no material adverse change in the financial position of the Borrower from that set forth in the application form and in the annexure thereto, submitted to HFCB requesting HFCB for the Facilities.
- (e) The representations and warranties set forth in this Paragraph are given and made on and as of the date hereof, shall survive the acceptance of this Letter and are continuing representations and warranties which are deemed to be repeated during continuance of the Facilities.

17. EVENTS OF DEFAULT AND CALL IN

In the event of:

- (a) Failure by the Borrower to make any repayment of principal or payment of interest or other moneys in respect of the Facility on its due date;
- (b) A breach in the performance of any other term and condition of the Facility or any covenant by the Borrower or any term and condition of any of the Security Documents or any other security held by HFCB for the Facility;
- (c) A trustee, sequestrator or similar officer being appointed of all or any of the assets of the Borrower;
- (d) 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;
- (e) Issuance of a Garnishee or Attachment Order against any deposit or asset maintained by the or creation of a lien over the Borrower's assets without HFCB's prior consent in writing;
- (f) The Borrower selling, transferring or otherwise disposing of the whole or any substantial part of its undertaking or assets whether by a single transaction or a number of transactions without the prior written consent of HFCB;
- (g) Failure to provide additional collateral or security when so requested by HFCB;
- (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;
- (i) If, in the opinion of HFCB, there is a material adverse change in the Borrower's financial condition;

- (j) if any material part of the assets or revenues of the Borrower are nationalized, compulsorily acquired, seized or appropriated;
- (k) If the Borrower without the prior consent in writing of HFCB cease or threatens to cease to carry on their business or any material part thereof;
- (l) If any of the security & facility documents fails or ceases in any respect to have full force and effect or to be continuing or is terminated or disputed or becomes in jeopardy, invalid or unenforceable;
- (m) Failure by the Borrower to provide to HFCB, two (2) months prior to the review date, information relating to the Borrower's finances and operations or any other information which in HFCB's opinion is necessary for evaluating and/or appraising the Borrower. (such information includes but is not limited to management accounts, annual audited accounts, borrowing certificate, aged list of debtors and creditors);
- (n) Failure by the Borrower to notify HFCB of any court case(s), relating to any borrowings being sought or security pledged to HFCB as and when they occur during the subsistence of the facility;
- (o) In accordance with normal banking practice, poor account conduct, bouncing of cheques, cheque kiting and other banking malpractices;
- (p) Any representation or warranty made by the Borrower hereunder or for the purpose of obtaining the Facility 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. Upon such occurrence, then HFCB's commitment to advance the Facility or any balance thereof shall cease and the whole amount of the outstanding Facility and all accrued interest or other amounts owing hereunder will become repayable forthwith on demand in writing made by HFCB at any time. The Borrower shall also provide cash cover on demand for all contingent liabilities of the Borrower to HFCB 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 HFCB for or at the request of the Borrower. In addition any and all Security Documents and any and all other securities held by HFCB in respect of the Facility shall become immediately enforceable. 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.

18. ASSIGNMENT & TRANSFER OF HFCB's RIGHTS

- (a) All moneys payable by the Borrower under, the benefit of the covenants of the Borrower contained in, and all other rights of HFCB under, this Letter shall be assignable by HFCB and remain valid and effective in all respects in favour of any assignee, transferee or other successor in title of HFCB in the same manner as if such assignee transferee or other successor in title has been named in this letter as a party instead of or in addition to HFCB.
- (b) HFCB 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, the Borrower or the Holding Company or any Subsidiary of the Borrower or any Subsidiary of the Borrower's Holding Company.
- (c) Any change in the constitution of HFCB 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 HFCB shall not in any way prejudice or affect its rights under this letter.

19. CONFIDENTIALITY

- (a) The Borrower agrees not to disclose to any third parties any information provided by HFCB in connection with this offer, except to those legally required.
- (b) The Borrower hereby expressly consents and authorises HFCB 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 authorised 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 HFCB.

20. NOTICES

Each party may give any notice, request, demand or other communication under or in connection with this Agreement by letter, facsimile or other comparable means of communication addressed to the registered office of the other party. Any such communication will be deemed to be given as follows:

- (a) if personally delivered, at the time of delivery;
- (b) if by letter, at noon on the fifth 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
- (c) 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. 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.

21. LAW

- (a) This Agreement shall be governed by and shall be construed in accordance with Kenyan law provisions as may be amended, consolidated, extended or reenacted from time to time and to any orders, regulations, instruments or other subordinate legislation made under the relevant statutes.

- (b) All rights of HFCB contained in this Letter are in addition to all rights vested or to be vested in HFCB pursuant to the other Security Documents and all Kenyan law provisions in force at the date of this letter.
- (c) 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 HFCB to maintain or give effect to its obligations under this Letter, HFCB shall advise the Borrower in writing of such event and HFCB's obligation to make the Facilities available shall be cancelled and the Borrower shall then repay to HFCB the Facilities and accrued interest thereon to the date of repayment.

22. DEBT COLLECTION

In the event of default by the Borrower, HFCB may outsource collection of the debt to an independent collection agency or law firm who shall be authorised to collect the said debt on behalf of HFCB and such costs shall be solely borne by the Borrower.

23. OTHER TERMS & CONDITIONS

- (a) Any right or power which may be exercised or any determination which may be made under this Letter by HFCB may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give reasons thereof.
- (b) No failure, delay or other relaxation or indulgence on the part of HFCB 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.
- (c) Each of the provisions of this letter 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.
- (d) HFCB shall not be liable for the acts or omissions of its advocates, valuers or other professional advisers.

I/We _____ of P.O. Box _____ hereby confirm that I/We have read the above terms and conditions and hereby signify my/our acceptance of the terms and conditions.

Signature: _____ Signature: _____

ID/Passport No.: _____ ID/Passport No.: _____

Date: ____ / ____ / ____ Date: ____ / ____ / ____

Signature: _____ Signature: _____

ID/Passport No.: _____ ID/Passport No.: _____

Date: ____ / ____ / ____ Date: ____ / ____ / ____

Signature: _____ Signature: _____

ID/Passport No.: _____ ID/Passport No.: _____

Date: ____ / ____ / ____ Date: ____ / ____ / ____

In the presence of: _____
(HFCB Official)

