

1. APPLICATION

The terms and conditions set out herein (the “Terms and Conditions”) shall, in addition to the terms and conditions set out in any Letter, application or other document, apply to all Personal Loan facilities granted by HFCB on terms which expressly incorporate the Terms and Conditions or any of them.

2. DEFINITIONS AND INTERPRETATION

2.1. In this document and/or documents relating to the facility, unless the context otherwise requires, the following expressions shall have the meanings set against them herein below and cognate expressions shall bear corresponding meanings:

- 2.1.1. “HFCB” means HFCB Limited, a Mortgage Finance company incorporated in the Republic of Kenya, whose address is care of Post Office Box Number 30088-00100, Nairobi;
- 2.1.2. “Borrower” means the Borrower named in the Letter;
- 2.1.3. “Business Day” means a day on which HFCB is open for business (other than Saturday, Sunday or public holidays) in the Republic of Kenya;
- 2.1.4. “Conditions Precedent” mean the conditions the Borrower is required to fulfill unless expressly waived by HFCB in writing prior to the disbursement of the Facility as set out in the Letter and in clause 8 herein;
- 2.1.5. “Currency of Account” means the currency in which the Facility or any part thereof is granted;
- 2.1.6. “CBR” means the rate published by the Central Bank of Kenya from time to time;
- 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 11 herein;
- 2.1.10. “Exchange Rate” means the prevailing spot rate of exchange of HFCB as conclusively determined by HFCB on the date on which any conversion of currency is to be effected pursuant to any of the Facility Documents;
- 2.1.11. “Facility Fees” means the fees set out in the Letter payable by the Borrower for Facilities until repayment in full;
- 2.1.12. “Facilities” and individually as “Facility” means the facilities or the facility made available to the Borrower as set out in the Letter;
- 2.1.13. “Facility Documents” means these General terms and conditions, the facility letter and all other documents now or hereafter entered into for any of the obligations of the Borrower under the facility including documents by any party where it is agreed that any indebtedness owed to such party by the Borrower be subordinated to the Borrower’s indebtedness to HFCB or to the Borrower’s creditors generally
- 2.1.14. “Facility Review Date” means the date each Facility is scheduled for review;
- 2.1.15. “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;
- 2.1.16. “GBP” or “£” means Great Britain Pound, the lawful currency of the United Kingdom;
- 2.1.17. “Interest Rate” means the interest rate or rates payable on the Facility from time to time as set out in the Letter/Application or any other document relating to the facility;
- 2.1.18. “Kenya Shillings”, “KES” or “Kshs” means Kenya Shillings, the lawful currency 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;
- 2.1.19. “Letter” means the Application form or letter of offer and total cost of credit signed by the Borrower to which these terms and conditions apply;
- 2.1.20. “Parties” means HFCB 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. “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;
- 2.1.23. “Total Cost of credit” means the total cost of credit as defined in the Central Bank Prudential Guidelines 2013.
- 2.1.24. “USD” or “US\$” means United States Dollars, the lawful currency of the United States of America.

- 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 this document and the Letter.

3. FACILITY

- 3.1. HFCB grants the Facility 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 HFCB is to increase the cost to HFCB of funding, maintaining or making available the Facility (or any undrawn amount thereof);
 - 3.1.3. the Conditions Precedent being met/complied with (unless expressly waived by HFCB in writing);
 - 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 HFCB 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.

4. APPROVAL, EFFECTIVENESS, REPAYMENT AND PREPAYMENT OF THE FACILITY

- 4.1. Approval and Disbursement
 - 4.1.1. HFCB may approve the full facility applied for or lesser sum or decline the facility in its sole discretion without giving any reasons, such decision of HFCB may be by endorsement to that effect in the relevant part of the letter or by a separate letter and in either case it shall be effective to bind the parties without any further act by the Borrower.
 - 4.1.2. The Facility and these terms and conditions shall become effective and the Borrower's obligations to HFCB shall commence immediately upon HFCB disbursing the approved amount by crediting the Borrower's Account or otherwise by applying the Facility for the Borrower's account.
- 4.2. Repayment
 - 4.2.1. The repayment instalments specified in the Letter shall be debited to the Borrower's account held with HFCB on the due date for payment and shall remain in the account until the Borrower makes payment. The outstanding amount in respect of the Facility shall be the sum of the balance in the Loan account and the balance in the Arrears account and any unpaid interest. Any unpaid instalments shall accrue Additional Interest as specified in clause 6.2 below.
 - 4.2.2. HFCB will upon determination of the interest payable calculate the amount of each subsequent monthly repayment instalment so as to amortize the balance of the loan and the amount of interest payable.
 - 4.2.3. The Statement of HFCB of the amount of each monthly repayment instalment payable pursuant to these terms and Conditions shall in the absence of manifest error be conclusive.
 - 4.2.4. If the basis on which interest on the Facility is calculated changes, or the amounts and payment dates of the repayment instalments specified in the Letter will be reviewed by HFCB and HFCB will advise the Borrower of any variation.
 - 4.2.5. It is understood that HFCB may at any time demand immediate repayment of the loan Facilities. Upon such demand being made by HFCB in writing any undrawn portion of the Facility shall be cancelled and the Borrower shall pay to HFCB all amounts outstanding on the date of payment together with interest thereon and all other costs, charges and expenses due and payable to HFCB hereunder.
 - 4.2.6. All payments shall be made in cleared funds during the normal banking hours. If any sum falls due for payment on a day which is not a day on which HFCB is open for business in Kenya it shall be made on the immediately preceding day on which HFCB is open for business in Kenya.

4.2.7. The signature and delivery of the Facility Letter by the Borrower is deemed conclusive evidence of the Borrower's agreement to be bound by the terms of the Facility as to the amount of the loan and interest as approved and determined by HFCB.

4.3. Early repayment

The Borrower may at any time and, unless otherwise specified in the Letter, prepay the facility in full together with interest accrued to the date of prepayment together with other charges and fees payable under the Letter and these terms and conditions.

5. REVIEW OF FACILITIES

5.1. Without prejudice to the repayment terms in the Letter, if the facility consists of an overdraft facility, without prejudice to HFCB'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 facility consists of an Overdraft Facility and it is not reviewed for any reason whatsoever by its Facility Review Date, then the limit shall be cancelled immediately and, unless HFCB confirms otherwise in writing to the Borrower, the Borrower's current account should operate in credit thereafter.

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

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

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

6. INTEREST

6.1.1. The Borrower shall pay interest (and hereby authorises HFCB to debit their account) 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.

6.2.2. 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, GBP and Euros and 360 day year for facilities drawn in USD;

b) accrue from day to day;

c) be debited to the Borrower's current account monthly in arrears; and

d) in the event of it not being punctually paid, be compounded monthly.

6.3.3. HFCB shall in its sole discretion determine the rate or rates and methods of calculating the interest applicable from time to time with full power and authority to HFCB to charge different rates for different accounts and/or transactions in accordance with the law and regulations applicable from time to time.

6.2. HFCB 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 provided however that HFCB shall inform the Borrower or such other relevant party, by way of 30 days written notice prior to effecting any change.

6.3. The statement of HFCB as to the rate, mode or amount of interest payable shall, in the absence of manifest error, be conclusive.

7. CHARGES, FEES AND COSTS

7.2. The Borrower shall pay the Facility Fees and all other fees, commission costs and charges set out in the Letter and the Terms and Conditions in accordance with HFCB's standard tariff guide from time to time. HFCB's standard tariff guide is available on the website (hfc.co.ke) and in all branches of HFCB.

7.2. The Borrower shall pay to HFCB on demand (whether or not the Facilities are drawn down/disbursed) all expenses on a full indemnity basis incurred by HFCB in connection with the negotiation, preparation and execution of the Letter, these Terms and Conditions, the fulfilment 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.

7.2. Late Payment Charge

If at any time during the continuance of the facilities, any sums payable by the Borrower under the Facility are not paid on the date on which they are due in accordance with the provisions of the facility and these Terms and Conditions 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 late payment Charge on such sum

for the period beginning on such due date or as the case may be at the rate of one (1) per cent per month or at such other rate or rates as HFCB may at its sole and absolute discretion determine in accordance with the law and regulations applicable from time to time. The Borrower acknowledges and agrees that the late payment Charges represents a reasonable pre-estimate of the loss to be suffered by HFCB in funding the default requirements of the Borrower.

- 7.3. HFCB may effect payment of all fees, expenses and other sums due and payable by the Borrower under clauses 7.1, 7.2 and 7.3 above out of and by deduction from the Facilities.

8. CONDITIONS PRECEDENT

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

- 8.1. the Borrower fulfils all Conditions Precedent required to be fulfilled under the Letter;
- 8.2. the Borrower's compliance with the terms and conditions of the Letter as well as these terms and conditions and there being no breach of or default thereunder;
- 8.3. the Borrower pays in cleared funds all fees, expenses and other sums due and payable by the Borrower in relation to the Facilities;
- 8.4. the Borrower has properly executed the facility Letter and these Terms and Conditions and delivered counterparts thereof to HFCB;

9. PAYMENTS

- 9.1. 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, HFCB receives a net sum equal to the sum it would have received had no such deduction or withholding been required.

- 9.2. Debits

HFCB may, at its discretion, debit any sums (whether in respect of interest, fees, costs or otherwise) due from the Borrower to HFCB under the Facilities to any account of the Borrower with HFCB, notwithstanding that any such debit may result in a debit balance or an increased debit balance on the relevant account.

- 9.3. Taxes

All sums payable by the Borrower to HFCB in connection with the Facilities shall be paid together with any taxes that may be payable on such sums, at the rate then required by law.

10. REPRESENTATIONS AND WARRANTIES

- 10.1. The Borrower represents and warrants to HFCB that:

- 10.1.1. The borrower is legally empowered to borrow the full amount of the facilities on the terms set out in the facility letter and the terms and conditions and there is no legal or other restriction on its/his/her ability to perform its obligations in respect of the facilities;
- 10.1.2. Every consent, authorisation or approval of governmental or public bodies or authorities required in connection with the execution, delivery, validity or enforceability of the facility letter and the terms and conditions or the performance by the borrower of its/his/her obligations hereunder or required to make the letter and the terms and conditions admissible in evidence has, where applicable, been obtained and is in full force and effect;
- 10.1.3. 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 terms and conditions;
- 10.1.4. Neither the acceptance of the facility letter and terms and conditions by the borrower nor the performance or observance of any of its obligations under the facility letter and the terms 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;
- 10.1.5. 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;
- 10.1.6. All applicable taxes due and payable to the Kenya revenue authority or any other relevant authority have been paid;
- 10.1.7. The borrower has sought independent legal advice regarding the nature and effect of the letter and these terms and conditions;

- 10.1.8. 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
- 10.1.9. There has been no material adverse change in the financial position of the borrower from that set forth in the application requesting HFCB for the facilities and in the annexures thereto (if any).
- 10.2. 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.

11. EVENTS OF DEFAULT/CALL IN EVENT

In the event of:

- 11.1. Failure to pay on the due date the principal, interest costs or any monies or to discharge any obligation or liability payable by the borrower from time to time to HFCB in respect of the facilities; and/or
- 11.2. Breach or failure by a relevant party to comply with any term, condition, covenant or provision of any of the facility documents or of any facility from HFCB or to perform any obligation or liability of the borrower to HFCB or if any representation, warranty or undertaking from time to time made or deemed made to HFCB by or on behalf of the borrower or by any third party (whether authorised or not) is or becomes incorrect or misleading in a material respect; and/or
- 11.3. A breach by the relevant party in the performance of its obligations, covenants or undertaking under the letter, the terms and conditions; and/or
- 11.4. Any indebtedness of the borrower 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 the borrower failing to discharge any indebtedness on its due date; and/or
- 11.5. Any representation or warranty made, or any information provided by the borrower or any relevant party in connection with the facility being incorrect in any material respect when made or repeated or provided; and/or
- 11.6. A receiver, trustee, sequestrator or similar officer being appointed in respect of all or any of the assets of the borrower or any relevant party; or
- 11.7. A distress, execution, attachment or other legal process being levied, enforced against any of the assets of the borrower or any relevant party and not being discharged or paid within thirty (30) days; and/or
- 11.8. Failure by the borrower or any relevant party to provide any collateral or security when so requested by HFCB;
- 11.9. In the opinion of HFCB, there is a material adverse change in the borrower's financial condition; and/or
- 11.10. It becoming unlawful for the borrower to perform all or any of its obligations under the facility letter, terms and conditions; and/or
- 11.11. The borrower selling, transferring or otherwise undertaking or assets whether by a single transaction or a number of transactions without the prior written consent of HFCB; and/or
- 11.12. It becoming unlawful or impossible for HFCB to make, maintain or fund the facilities or any of them as contemplated by the letter; and/or
- a) HFCB'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 HFCB 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 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;
 - c) 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).

12. CHANGE OF CIRCUMSTANCES

HFCB 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:-

- 12.1. 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 HFCB is to increase the cost to HFCB of funding, maintaining or making available the facility (or any undrawn amount thereof) or to reduce the effective return to HFCB; and
- 12.2. If for any reason including, without limitation, the occurrence of force majeure events, it becomes unlawful or impossible for HFCB 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.

13. INDEMNITIES

13.1. General

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

- a) any amount of the facilities not being disbursed for any reason;
- b) any default or delay by the Borrower in the payment of any amount when due in respect of the Facilities; 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 HFCB making the relevant determination, would constitute an Event of Default.

13.2. Losses Covered

Without derogation from the generality of clause 13.1 above, the indemnity contained in that clause shall extend to any loss (including loss of margin), expense or liability sustained or incurred by HFCB 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 HFCB 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.

13.3. 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 HFCB from and against any loss suffered as a result of any difference between the rate of exchange used for such purpose to convert the sum in question from the first currency into the second currency and the rate of exchange at which HFCB 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 13.3 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 HFCB 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.

14. GENERAL UNDERTAKINGS

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

- 14.1. The Borrower shall advise HFCB immediately of any changes in his business or employment or any material or major happenings that may affect the Borrower's repayment obligations;
- 14.2. All monies due and payable to HFCB under the Letter and the Terms and Conditions shall at all times rank in priority to all other present and future secured and Personal Loan 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;
- 14.3. the Borrower shall not resort to any additional borrowings from any other source without HFCB's prior consent in writing.
- 14.4. Insurance
 - 14.4.1. HFCB may require the Borrower to take an insurance cover against such risks without limitation to death, disability and/or retrenchment through an Insurance Company licensed by the Insurance Regulatory Authority.
 - 14.4.2. Where the Borrower is covered under life or disability cover, the sum assured will be used to liquidate the outstanding amounts under the Facility should the Borrower die or become permanently disabled. However, the sum assured shall not cover any outstanding amounts in arrears.
 - 14.4.3. 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 or 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;
 - 14.4.4. Avail to HFCB the original policies, renewal certificates and all payments receipts for the current premiums with respect to all its insurances; and
 - 14.4.5. 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.

- 14.4.6. 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.
- 14.4.7. The Borrower shall immediately upon becoming aware of event of default or call in event, notify HFCB of the occurrence of that Event of Default or call in event;
- 14.4.8. The Borrower shall comply with and observe at all times the covenants, agreements, stipulations and conditions contained in the facility Letter, the Terms and Conditions, after any security created by the Borrower in favour of HFCB or in any letter or correspondence exchanged between the Borrower and HFCB and shall not without the consent of HFCB vary or waive any of the terms thereof nor exceed the approved limits without HFCB's approval;
- 14.4.9. The Borrower 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 the Borrower to carry on its business or profession and to perform its obligations under the Facility Letter, the Terms and Conditions or under any Security (as the case may be) and ensure the legality, validity and enforceability of the facility Letter and/or the Security (where applicable);
- 14.4.10. The Borrower shall provide HFCB with such information at such times and in such form as HFCB may require from time to time regarding the Borrower's finances and operations;

15. APPOINTMENT OF ATTORNEY

The Borrower hereby irrevocably appoints HFCB 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 Facility Letter and the Terms and 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 HFCB.

16. CURRENCY CONVERSION

It is hereby agreed by the Borrower and HFCB that:

- 16.1. all amounts due and owing by the Borrower to HFCB shall be paid to HFCB 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;
- 16.2. all moneys received or held by HFCB or by a receiver under any Security may from time to time 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 and such conversion shall be made in accordance with HFCB's usual practice of converting the existing currency into the other currency;
- 16.3. if and to the extent that the Borrower fails to pay any amount due under the Letter 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 of the Borrower in such currency and such purchase will be in accordance with HFCB's usual practice of purchasing such other currency with the existing currency and the Borrower hereby agrees to indemnify HFCB against the full cost incurred by HFCB in respect of any such purchase;
- 16.4. no payment to HFCB (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 HFCB 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. HFCB 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;
- 16.5. HFCB shall in its sole and absolute discretion be entitled upon giving prior written notice to the Borrower any time to convert any facility made available in a currency other than Kenya Shillings (the "Other Currency") into a Kenya Shillings facility. If HFCB 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 HFCB in accordance with the usual practice adopted by HFCB 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;
- 16.6. 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.

17. TAX GROSS UP

- 17.1. The Borrower shall make all payments without any tax deduction, unless a tax deduction is required by law.
- 17.2. 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 HFCB.
- 17.3. 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.
- 17.4. 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.
- 17.5. Within thirty days 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 made to the relevant taxing authority.
- 17.6. 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 incurred in compliance with this Clause 17.

18. CONFIDENTIAL INFORMATION AND CREDIT CHECKS

- 18.1. HFCB may hold and process, by computer or otherwise, any information obtained about the Borrower as a consequence of the application for the Facilities.
- 18.2. The Borrower confirms that HFCB 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.
- 18.3. The Borrower agrees that HFCB may:
 - a) include personal data of the Borrower in HFCB's computer systems which may be accessed by other companies in HFCB Group's 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 HFCB Group's to use personal data and any other information it holds about the Borrower on HFCB's customers' computer systems to bring to its attention products and services which may be of interest to the Borrower.
- 18.4. The Borrower agrees that HFCB may disclose any information relevant to the Borrower and the Facilities in HFCB's possession relating to the Borrower to its subsidiaries on terms that such recipient is to treat in confidence any confidential information so disclosed to it. The Borrower further agrees that HFCB may disclose personal data and/or information relating to the Borrower outside 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 subcontractors or other persons acting as agents of HFCB;
 - e) to any person who may assume HFCB's rights under the Letter and the Terms and Conditions;
 - f) to any regulatory, fiscal or supervisory authority;
 - g) if HFCB has a right or duty to disclose or is permitted or compelled to do so by law;
 - h) any potential assignee of HFCB or other participant in any of its rights and/or obligations in relation to the Borrower's facility including any guarantors, third party pledge or security providers and
 - i) for purposes of exercising any power, remedy, right, authority or discretion relevant to the Letter, or the Terms and the Conditions following the occurrence of an Event of Default, to any other person or third party as well.
- 18.5. The Borrower hereby agrees and confirms (i) that HFCB may in its discretion record any telephone conversations between the Borrower and HFCB made in connection with the facility and (ii) that the Borrower will not object to such recordings being produced in evidence in a court of law.
- 18.6. 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.

19. OTHER TERMS

- 19.1. All notifications or determinations (including without limitation, any determination of an amount payable pursuant to clause (13) above given or made by HFCB shall in the absence of manifest error be conclusive and binding.
- 19.2. Assignment - the Borrower shall not assign or transfer any of its rights and/or obligations in respect of the Facilities. HFCB 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 HFCB's possession relating to the Borrower and its subsidiaries to any actual or prospective assignee or transferee (or to any other person) in connection with a securitisation of all or any part of HFCB's assets from time to time; or who may otherwise enter into contractual relations with HFCB in relation to the Facilities.
- 19.3. Set-off - HFCB, 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, of the Accounts then existing with HFCB including accounts in the name of HFCB (whether current, deposit, loan or of any other nature whatsoever, whether subject to notice or not and in whatever currency denominated) belonging 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 HFCB 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 HFCB and HFCB may use any such money to purchase any currency or currencies required to effect such application.
- 19.4. Severability - Each of the provisions of the Terms and Conditions 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 hereof shall not in any way be affected or impaired thereby and the Borrower shall cooperate with HFCB in substitution of new provisions in compliance with the intention contained in the Terms and Conditions.
- 19.5. Remedies and Waivers - No delay or omission on the part of HFCB 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 HFCB 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 HFCB in respect of the Facility are cumulative and not exclusive of any right or remedy provided by law. All rights of HFCB contained under the terms and conditions are in addition to all rights vested or to be vested in HFCB pursuant to the common law or statute.

20. NOTICES

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) Business Days after the date of posting (notwithstanding that it be undelivered or returned undelivered) or in the case of a facsimile or electronic mail 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 5:00 p.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 HFCB 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. All communications to HFCB shall be effective only on actual receipt by HFCB.

21. LAW

The Letter and the Terms and 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 HFCB 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.

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

Signature: _____

ID/Passport No.: _____

Date: ____ / ____ / ____

In the presence of: _____
(HFCB Official)