

## LENDING/KESONIA-K TERMS AND CONDITIONS

### 1. Application

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

### 2. Definitions and Interpretation

2.1. In this document and the Letter of Offer, 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. “**Appraisal Fee**” means the appraisal fee set out in the Letter of Offer payable by the Borrower upon acceptance of the Letter of Offer.

2.1.2. “**Annual Review Fee**” means the fee set out in the Letter of Offer payable by the Borrower on anniversary of disbursement and annually thereafter during the continuance of the Facilities until repayment in full;

2.1.3. “**Bank**” means The Co-operative Bank of Kenya Limited, a banking company incorporated in the Republic of Kenya, whose address is care of Post Office Box Number 48231-00100, Nairobi;

2.1.4. “**Bank Base Rate**” means the interest rate set and published by the Bank from time to time;

2.1.5. “**Borrower**” means the borrower named in the Letter of Offer;

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

2.1.7. “**Conditions Precedent**” mean the conditions the Borrower is required to fulfill unless expressly waived by the Bank in writing prior to the disbursement of the Facility as set out in the Letter of Offer and in clause 8 herein;

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

2.1.9. “**Default Interest**” means the additional applicable interest rate set out in the Letter of Offer payable by the Borrower to the Bank in the event that any sum

due in respect of the Facilities is not paid on the due date;

2.1.10. “**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;

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

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

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

2.1.14. “**Facility Review Date**” means the date each Facility is scheduled for review i.e. evaluation and appraisal of its performance;

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. “**Final Drawdown Date**” means the date by which the Term Loan must be disbursed as set out in the Letter of Offer;

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

2.1.18. “**GTCs**” means the general terms and conditions contained in this document and which are attached to the Letter of Offer;

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

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

2.1.21. “**Letter of Offer**” means the offer letter to which this document is attached;

2.1.22. “**KESONIA**” means the Kenya Shilling Overnight Interbank Average (KESONIA) as published by Central Bank of Kenya (CBK).

2.1.23. “**SOFR**” means the Secured Overnight Financing Rate applicable to the currency in which the Facility is denominated as published by Federal Reserve of Bank from time to time or any replacement rate;

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

2.1.25. “**Overdraft Facility**” means the overdraft facility made available to the Borrower as set out in the Letter;

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

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

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

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

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

2.1.31. “**Total Cost of Credit**” means the total cost of credit as defined in the Central Bank prudential guidelines 2013;

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

Customer’s Signature.....  
Xyz Ltd

Bank Officer’s Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

- 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 of Offer 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 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 of Offer.
3. **Facility and Purpose**
- 3.1. The Bank grants the Facilities or part thereof to the Borrower subject to:-
- 3.1.1.the availability of funds;
- 3.1.2.there being no change in applicable law or regulation or existing requirements of, or new requirements being imposed by, the Central Bank of Kenya or any governmental, fiscal, monetary, regulatory or other authority the result of which in the sole opinion of the Bank is to increase the cost to the Bank of funding, maintaining or making available the Facility (or any undrawn amount thereof);
- 3.1.3.the Conditions Precedent being met/complied with (unless expressly waived by the Bank 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 the Bank making the relevant determination, would constitute an Event of Default; and
- 3.1.5.the Borrower's compliance with the terms and conditions of the Letter of Offer, GTCs and the Security Documents;
- 3.1.6. the compliance by the Bank with any and all restrictions, rules and regulations from time to time in force by the Central Bank of Kenya or any other relevant regulatory authority.
- 3.2. The Facilities are granted to the Borrower for the Purpose set out in the Letter of Offer.
4. **Drawdown, Repayment and Prepayment of Term Loan Facility**
- 4.1. **Drawdown**
- Where the Term Loan is being disbursed in instalments, each request by the Borrower for a drawing under the Term Loan Facility shall be made by the Borrower giving notice in writing to the Bank in the form approved by the Bank, specifying the drawdown date and the amount required (such amount to be in the minimum sum or multiples thereof specified in the Letter of Offer). No drawing may be made if, as at the proposed drawdown date, an Event of Default shall have occurred and shall not have been remedied to the satisfaction of the Bank, or would occur if such drawing were made.
- 4.2. **Repayment**
- 4.2.1.The Term Loan Facility is repayable strictly on demand notwithstanding any other term or condition set out herein or in the Letter of Offer. However, without prejudice to the Bank's right to demand payment at any time, the Borrower shall repay the Term Loan at the times and in the amounts specified in the Letter of Offer.
- 4.2.2.If the whole of the Term Loan Facility shall not have been drawn down by the Final Drawdown Date and the Term Loan is to be repaid in instalments, the repayment instalments specified in the Letter of Offer shall, if not otherwise agreed with the Borrower before the Final Drawdown date, be reviewed by the Bank in its sole discretion.
- 4.2.3.If the Bank agrees that Interest on the Term Loan is to be capitalized and debited to the Borrower's relevant Term Loan account or if the basis on which interest on the Loan is calculated changes, the amounts and payment dates of the repayment instalments specified in the Letter of Offer will be reviewed by the Bank and the Bank will advise the Borrower of any variation.
- 4.2.4.The repayment instalments specified in the Letter of Offer shall be debited to the Borrower's Arrears account held with the Bank on the due date for payment and shall remain in the Arrears account until the Borrower makes payment. The outstanding amount in respect of the Term Loan Facility shall be the sum of the balance in the Term Loan account and the balance in the Arrears account and any unpaid interest. Any unpaid instalments shall accrue Default Interest as specified in clause 6.3 below.
- 4.3. **Prepayment**
- 4.3.1.The Borrower may at any time and, unless otherwise specified in the Letter, on giving not less than one (1) month's prior notice in writing to the Bank, prepay all the Term Loan together with:

Customer's Signature.....  
Xyz Ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

- 4.3.1.1. interest accrued to the date of prepayment together with other charges and fees payable under the Letter of Offer or these GTCs; and
- 4.3.1.2. the prepayment fee specified by the Bank in the Letter of Offer (as permitted by law) or if not specified a prepayment fee equivalent to one month's interest at the Interest Rate on the principal amount of the Term Loan Facility which fee shall only be payable in lieu of the aforesaid one (1) month's notice;
- 4.3.1.3. Unless otherwise provided by law or otherwise agreed with the Borrower, if the Borrower prepays part of the Facility, the Bank shall have right to apportion/allocate such early prepayment as it deems fit. No prepayment can be made under this sub-clause unless all interest due and outstanding to the Bank has been paid.
- 4.4. This clause 4 does not apply to the other Facilities which shall be governed by Clause 5 below.
- 5. Repayment and Review of Facilities excluding the Term Loan Facility**
- 5.1. The Facilities are repayable strictly on demand notwithstanding any other term or condition set out herein or in the Letter. However, without prejudice to the Bank's right to demand payment at any time, it is hereby agreed that each Facility is scheduled for review on the respective Facility Review Date.
- 5.2. Unless otherwise provided in the Letter of Offer, in the event that the Overdraft Facility is not reviewed for any reason whatsoever by its Facility Review Date, then the limit shall be cancelled immediately and, unless the Bank confirms otherwise in writing to the Borrower, the Borrower's current account should operate in credit thereafter.
- 5.3. It is understood that the Bank may at any time demand immediate repayment of the Facilities. Upon such demand being made by the Bank in writing:-
- 5.3.1. any undrawn portion of the Facilities shall be cancelled; and
- 5.3.2. the Borrower shall pay to the Bank all amounts outstanding on the date of payment together with interest thereon and all other costs, charges and expenses due and payable to the Bank hereunder or under the Security.
- 6. Interest**
- 6.1. Interest**
- 6.1.1. The Borrower shall pay interest on all the monies, liabilities and obligations advanced to or incurred by the Borrower in relation to the Facilities (as well after as before any demand, judgement, insolvency or liquidation of the Borrower (as the case may be) at the Interest Rate and on the basis specified in the Letter of Offer.
- 6.1.2. Unless otherwise stated in the Letter of Offer, the interest payable shall:-
- a) be calculated on the basis of a 365day 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.
- 6.1.3. The Bank 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 the Bank to charge different rates for different accounts and/or transactions in accordance with the law.
- 6.1.4. While the Bank pricing is all-inclusive, the Bank shall collect a component of the interest upfront as a commitment by the borrower to repay the facility where applicable as detailed in your TCC/APR document and in Section 7 of GTC.
- 6.1.5. As per Central Bank of Kenya Guidelines, the monthly benchmark rate on Kenya shilling denominated facilities shall be KESONIA as published by Central Bank of Kenya together with a lending rate Customer Premium "K" above the benchmark.
- 6.1.6. The changes in KESONIA shall apply automatically as published by CBK from month to month as indicated on their website or as may be published by the Bank on its applicable media platforms.
- 6.1.7. The lending rate premium applicable to the Facilities shall be determined by the Bank at its sole discretion.
- 6.1.8. The Bank shall notify the Borrower of any change in the Customer Premium "K" component.
- 6.2. Default Interest**
- If any sum payable by the Borrower with respect to the Facilities is not paid when due, the Borrower shall (without prejudice to the exercise by the Bank of any other right or remedy in favour of the Bank) pay to the Bank Default Interest at the rate provided for in the Letter of Offer on all monies due with effect from the date of the same becoming due until actual repayment of such monies in full (together with accrued interest).
- 6.3. The Borrower acknowledges and agrees that the Default Interest represents a reasonable pre-estimate of the loss to be suffered by the Bank in funding the default or additional requirements of the Borrower.
- 6.4. The Bank may from time to time at its sole discretion and within the limits permitted by law revise the applicable rate or rates of interest payable provided however that the Bank shall give the Borrower and such other Relevant Party notice prior to any change in the rate or rates of interest payable in such manner as permitted by law. Variations in the Bank's Base Rate shall be published in any of the National Newspapers.
- 6.5. The statement of the Bank as to the rate, mode or amount of interest

## LENDING/KESONIA-K TERMS AND CONDITIONS

- payable shall, in the absence of manifest error, be conclusive.
- 6.6. Interest will be charged from the day the Facility is disbursed.
- 7. Charges, Fees and Costs**
- 7.1. The Borrower shall pay the Appraisal Fee, Annual Review fees and all other fees, commission and charges set out in Letter of Offer and more specifically on the Total Cost of Credit schedule in accordance with the Bank's standard tariff guide published from time to time. The Bank's standard tariff guide is available on request in all branches of the Bank.
- 7.2. The Borrower shall, on a full indemnity basis, pay to the Bank on demand (whether or not the Facilities are drawn down/dispensed) all expenses (including legal, valuation, applicable taxes and other out-of-pocket expenses) as more particularly set out in the Total Cost of Credit schedule incurred by the Bank in connection with the negotiation, preparation and execution of the Letter of Offer, GTCs and the Security Documents, 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 of Offer, GTCs and/or any Security Documents and/or in contemplation of or otherwise in connection with the enforcement of or preservation of any rights under the Letter of Offer, GTCs and/or any Security Documents or in the payment of charges, fees, levies etc due and payable by the Borrower but which the Borrower fails or neglects to pay on the due date or otherwise in respect of any monies owing under or in respect of the Facilities and any of the securities pledged in the Security Documents.
- 7.3. The Borrower shall indemnify the Bank from and against all losses, costs, expenses, claims, proceedings and damages suffered or incurred by the Bank in consequence of any Event of Default. The certificate of the Bank as to the amount of such losses, costs and expenses shall, in the absence of manifest error, be conclusive.
- 7.4. The Bank may effect payment of all fees, expenses and other sums due and payable by the Borrower under clauses 7.1 and 7.2 above out of and by deduction from the Facilities and/or by debiting from any of the Borrower's accounts held with the Bank.
- 8. Conditions Precedent**
- The Borrower acknowledges that no disbursement shall be made with respect to the Facilities by the Bank unless the following conditions have been fulfilled to the satisfaction of the Bank or expressly waived by the Bank in writing:-
- 8.1. the Borrower fulfils all Conditions Precedent required to be fulfilled under the Letter of Offer;
- 8.2. the Bank receives in form and substance satisfactory to it, the Security Documents duly executed by the Relevant Party and where applicable duly registered in the relevant registry/ies or otherwise lawfully perfected, together with all other documents relating to the Security Documents that the Bank may require;
- 8.3. the Bank receives certified true copies of the Borrower's memorandum & articles of association & certificate of incorporation (for companies), trust deed & certificate of incorporation (incorporated trusts), certificate of registration (for limited liability partnerships, co-operative societies), constitution/by-laws (for co-operative societies, self-help groups, societies), certificate of registration of business name (for partnerships and sole proprietorships), partnership deed (for partnerships where a deed has been prepared) and/or identity card or passport (for individual borrowers, directors, partners) as the case may be;
- 8.4. the Borrower's compliance with the terms and conditions of the Letter of Offer and GTCs and there being no breach of or default thereunder or under any Security Documents;
- 8.5. the Borrower pays in cleared funds all fees, expenses and other sums due and payable by the Borrower in relation to the Facilities and perfection of the Security Documents;
- 8.6. the Borrower has properly executed the Letter of Offer and GTCs and delivered counterparts thereof to the Bank;
- 8.7. all risk insurance cover over the properties pledged to the Bank under the Security Documents for the full market value, with an insurance company approved by the Bank and with the Bank's interest noted as first loss payee; and
- 8.8. if the Borrower is or includes a Company, a copy of a resolution of its Board of Directors, duly certified by the Chairman and/or the Secretary:-
- a) accepting the terms and conditions of the Letter of Offer as stated;
- b) authorising the execution of the Letter of Offer and each Security Document to which it is a party;
- c) authorising a specified person or persons to sign all notices and communications in respect of the Facilities; and
- d) authorising the Bank to accept instructions and confirmations in connection with the Facilities signed in accordance with the mandate given by the Borrower to the Bank.
- 9. Security**
- 9.1. The Borrower shall create (and shall procure that any persons required to create and/or issue any securities does so) and deliver to the Bank the Security.
- 9.2. The Security to be taken by the Bank shall be in a form agreed by the Bank and shall be prepared, executed and perfected at the Borrower's expense by advocates of the Bank's choice.
- 9.3. Unless otherwise stated in the Letter, the Security shall be a continuing security, notwithstanding any intermediate payments or settlements of accounts, or the winding up, liquidation or dissolution of the Borrower, as the case may be, or

Customer's Signature.....  
Xyz Ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

any change in the Borrower's status, constitution, control or ownership for the payment of all sums including interest, fees, commission, costs, future absolute or contingent for which the Borrower now is or may at any time hereafter be liable to the Bank and is to be in addition to and without prejudice to any other security which the Bank may now or subsequently hold in respect of such liabilities.

9.4. Unless otherwise explicitly stated in the Letter of Offer, it is hereby acknowledged and agreed by the Borrower that there shall be no restriction on the right of the Bank of consolidating all securities which the Bank may from time to time hold from the Borrower on any account whatsoever and it is hereby declared that no such security in favour of the Bank shall be redeemed and/or discharged except on payment not only of the monies secured by the Security but also of all monies secured by every such other security.

9.5. The Borrower agrees that, in the event of devaluation of the Security/the Facilities exceeding the prescribed ratio to the value of the Security, the Bank may at its sole and absolute discretion, require that the Borrower provides additional securities to adequately secure the Facilities and/or require the Borrower to reduce the amount owing under the Facilities to match the appropriate loss in market value of the Security. If the Borrower fails to comply with such requirement within Five (5) Business Days, then the Bank may at its sole and absolute discretion exercise any or all of its rights under clauses 13.24(a) to 13.24(c) (both inclusive) below.

### 10. Payments

#### 10.1. No withholding

All payments made by the Borrower with respect to the Facilities, whether of principal, interest, fees, costs or otherwise, shall be made in full in immediately available funds, without set-off or counterclaim and free and clear of any deduction or withholding on

account of tax or otherwise. If the Borrower is required by law to make any deduction or withholding from any payment under the Facilities, the sum due from the Borrower in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives a net sum equal to the sum it would have received had no such deduction or withholding been required.

#### 10.2. Debits

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

#### 10.3. Value Added Tax

All sums payable by the Borrower to the Bank in connection with the Facilities shall be paid together with any Value Added Tax (VAT) and/or other taxes that may be payable on such sums, at the rate then required by law.

### 11. Representations and Warranties

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

11.1.1. the Borrower is legally empowered to borrow the full amount of the Facilities on the terms set out in the Letter of Offer and the GTCs and there is no legal or other restriction on its ability to perform its obligations in respect of the Facilities;

11.1.2. any person or Relevant Party named in the Letter of Offer as the provider of the Security or any part of the Security is legally empowered to give the Security;

11.1.3. every consent, authorisation or approval of governmental or public bodies or authorities required in connection with the execution, delivery, validity or enforceability of the Letter of Offer and the GTCs or the performance

by the Borrower of its obligations hereunder or required to make the Letter of Offer and the GTCs admissible in evidence has, where applicable, been obtained and is in full force and effect;

11.1.4. the Borrower is not in violation of any statute or regulation of any competent authority in Kenya and no judgement or order has been issued which has or is likely to have any material adverse effect on the Borrower's business prospects or financial condition or make it improbable that the Borrower will be able to observe or perform its/his/her obligations under these GTCs;

11.1.5. the Borrower or any employee of the Borrower has not and will not influence the action of, solicit, receive from, collude with, offer or give any payments to any person holding a public office or a director, official or employee of a public authority, public enterprise or any other organisation in order to obtain, retain or secure any improper benefit or advantage and upon becoming aware of any fact or information suggestive of the commission of any such act, the Borrower shall inform the Bank;

11.1.6. neither the acceptance of the Letter of Offer and GTCs by the Borrower nor the performance or observance of any of its obligations under the Letter of Offer and GTCs conflict with, or result in, any breach of any law, statute, regulation, indenture, mortgage, trust deed, agreement or other instrument, arrangement, obligation or duty by which the Borrower is bound or cause, where applicable, any limitation on any of the powers whatsoever of the Borrower howsoever imposed or on the right or ability of the Borrower to exercise such powers to be exceeded;

11.1.7. all information submitted by the Borrower to the Bank, *inter alia*, on its financial position, net worth, details of indebtedness, presents accurately its state of affairs and the financial position of the Borrower as at such date;

11.1.8. there is no dispute or litigation whatsoever subsisting between

## LENDING/KESONIA-K TERMS AND CONDITIONS

- the Borrower's directors or between the directors and the Borrower;
- 11.1.9. all applicable taxes due and payable to the Kenya Revenue Authority or any other relevant authority have been paid;
- 11.1.10. the audited accounts of the Borrower will be prepared by auditors acceptable to the Bank in accordance with generally accepted accounting principles and practices in Kenya consistently applied and present fairly and accurately the financial position of the Borrower as at such date and the results and operations of the Borrower for the financial year ended on such date and as at such date;
- 11.1.11. to the best of the Borrower's knowledge and belief after due inquiry, the Borrower is not in violation of any of the Environmental and Social laws of Kenya or any of the environmental, health and safety guidelines as provided from time to time by the Bank;
- 11.1.12. where a Relevant Party is an individual and has offered his/her property as security, such Relevant Party has disclosed his/her marital status to the Bank and whether or not the property is a matrimonial home/property;
- 11.1.13. the Property comprising the Security is not communal land nor is it held in trust under any customary law;
- 11.1.14. the Borrower has sought independent legal advice regarding the nature and effect of the Letter of Offer, the GTCs and the Security;
- 11.1.15. the Borrower has not received nor is aware of any existing or threatened complaint, order, directive, claim, citation or notice from any authority or any material communication from any person with respect to any aspect of its compliance with any matter covered by the Environmental and Social Law or the environmental, health and safety guidelines; and
- 11.1.16. there has been no material adverse change in the financial position of the Borrower from that set forth in the application requesting the Bank for the Facilities and in the annexures thereto (if any);
- 11.1.17. save as otherwise disclosed to the Bank in writing, there exists no overriding interest or encumbrance or other security interest whatsoever over the whole or any part of the Property;
- 11.1.18. the Property comprising the Security is not communal land nor is it held in trust under any customary law;
- 11.1.19. no litigation or administrative or arbitration proceeding before any court, government authority or arbitrator is presently taking place, pending or (to the best of the knowledge, information and belief of the Borrower) threatened against the Property.
- 11.2. The foregoing representations and warranties shall be deemed to be given and made on and as of the date of the Letter of Offer and GTCs, shall survive the acceptance of the Letter of Offer and the GTCs and are continuing representations and warranties which are deemed to be repeated during the continuance of the Facilities.
- 12. Information Covenants**
- 12.1. The Borrower shall provide the Bank:-
- 12.1.1. unless otherwise stated in the Letter of Offer, within four (4) months of the end of the Borrower's financial year, copies of audited accounts for the Borrower and of any parent, subsidiary or other associate of the Borrower;
- 12.1.2. if the Letter of Offer so requires, Management Accounts for such periods as are specified in the Letter of Offer to include Balance Sheet, Profit and Loss Statement together with cash flow/budget actuals to date; and
- 12.1.3. any other information which the Bank may request from time to time.
- 12.2. Such accounts and other information shall be prepared using accounting bases, policies, practices and procedures consistent in all material respects with those applied by the Borrower prior to the date hereof and in accordance with generally accepted accounting principles consistently applied in Kenya (unless the Borrower's auditors otherwise require, in which case the Borrower shall immediately notify the Bank in writing of such change).
- 13. Events of Default**
- In the event of:-
- 13.1. failure by the Borrower to make any repayment of principal, or payment of interest or other sum, in respect of the Facility on its due date; and/or
- 13.2. a breach by the Relevant Party in the performance of its obligations, covenants or undertaking under the Letter of Offer, the GTCs and the Security; and/or
- 13.3. any indebtedness of any Relevant Party becoming immediately due and payable, or capable of being declared so due and payable, prior to its stated maturity by reason of the occurrence of any event of default (howsoever described), or of any Relevant Party failing to discharge any indebtedness on its due date; and/or
- 13.4. and representation or warranty made, or any information provided by any Relevant Party in connection with the Facility being incorrect in any material respect when made or repeated or provided; and/or
- 13.5. a petition being presented, an order being made or an effective resolution being passed for winding up any Relevant Party (except for the purposes of a reconstruction or amalgamation on terms previously approved in writing by the Bank) or where a Relevant Party becomes insolvent or unable to pay its debts or enters into dealings with any of its creditors with a view to avoiding or in expectation of insolvency or stops or threatens to stop payments generally; and/or
- 13.6. an encumbrancer takes possession or a liquidator, provisional liquidator, administrator, receiver, trustee, sequestrator or similar officer being appointed in respect

Customer's Signature.....  
Xyz Ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

- of all or any of the assets of any Relevant Party; or
- 13.7. a distress, execution, attachment or other legal process being levied, enforced against any of the assets of any Relevant Party and not being discharged or paid within thirty (30) days; and/or
- 13.8. any Relevant Party suspending payment of its debts or being unable to pay its debts as they fall due or being unable to pay its debts; and/or
- 13.9. any Relevant Party proposing or entering into a voluntary arrangement or taking or being subjected to any proceedings under any law, or commencing negotiations with one or more of its creditors, for the readjustment, rescheduling or deferment of all or a material part of its debts, or proposing or entering into any general assignment or composition with or for the benefit of its creditors; and/or
- 13.10. the cessation or revocation for any reason of any consent, authorisation, licence and/or exemption which is required to enable any Relevant Party carry on all or any material part of its business, or to ensure that the terms of the Letter of Offer, the GTCs or the Security are valid, binding and enforceable, or it becoming unlawful for any Relevant Party to perform all or any of its obligations hereunder or thereunder or any such document not being or ceasing to be legal, valid and binding on it; and/or
- 13.11. any guarantor giving or purporting to give notice to terminate its liabilities under any guarantee in respect of the Facility; and/or
- 13.12. there being an adverse change in the financial or trading position or prospects of any Relevant Party which in the Bank's reasonable opinion is material; and/or
- 13.13. if the Borrower is a company, beneficial ownership of the Borrower passing or having passed to any person or persons, acting either individually or in concert, who did not have beneficial ownership of the Borrower at the date of the Letter, without the prior written consent of the Bank; and/or
- 13.14. it becoming unlawful for the Borrower to perform all or any of its obligations under the Letter, Conditions or the Security; and/or
- 13.15. the Borrower selling transferring or otherwise disposing of the whole or a substantial part of its undertaking or assets whether by a single transaction or a number of transactions without the prior written consent of the Bank; and/or
- 13.16. the Borrower without the consent of the Bank ceasing or threatening to cease to carry on its business; and/or
- 13.17. it becoming unlawful or impossible for the Bank to make, maintain or fund the Facilities or any of them as contemplated by the Letter of Offer or any of the obligations expressed as being assumed by the Borrower under the Letter of Offer and the GTCs ceases to be valid, legal or binding and enforceable against the Borrower in accordance with its terms; and/or
- 13.18. the title to any property forming part of the Security for any reason being encumbered or terminated or threatened with either or if any Encumbrance whatsoever or notification by virtue of any order, process, decree or notice including a charge or notification of charge is registered against such titles without the prior written consent of the Bank; and/or
- 13.19. if a Relevant Party is a partnership, upon the occurrence of a change in the partnership without the prior written consent of the Bank; and/or
- 13.20. if the Borrower comprises one or more trustees, any trustee ceasing to act as such or any new trustee being appointed without the prior written consent of the Bank; and/or
- 13.21. any event occurring in relation to any Relevant Party in any applicable jurisdiction which has an effect substantially similar to any events specified above or if any Relevant Party gives notice terminating his/its liability under the relevant guarantee, indemnity or Security;
- 13.22. any other indebtedness (for borrowed money) of the Borrower is not paid when due or becomes due or capable of being declared due prior to its stated date of payment;
- 13.23. the Borrower commits an act of bankruptcy;
- 13.24. the Borrower breaches any of the events specified as an event of default under the Security;
- Then, in any such case:-**
- a) the Bank's commitment to advance the Facilities or any balance thereof shall cease and the whole amount of the outstanding Facilities and all accrued interest or other amounts owing under the Facilities shall become repayable forthwith on demand in writing made by the Bank at any time; and/or
- b) the Borrower shall be required to provide cash cover on demand for all contingent liabilities of the Borrower to the Bank and for all notes or bills accepted, endorsed or discounted and all bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Borrower; and/or
- c) the Bank may by notice to the Borrower in writing, declare that the Security has become enforceable whereupon the Bank shall be entitled to exercise its rights under the Security.
- Any monies not paid following a demand under this clause shall continue to attract interest at the contracted rate or rates as well after as before judgment or bankruptcy or liquidation of the Borrower (as the case may be).
- 14. Change of Circumstances**
- 14.1 The Bank reserves the right to review the terms of the Facilities including but not limited to the right to demand immediate payment of any amounts outstanding in respect of the Facilities:-
- a) in the event of any change in applicable law or regulation or

Customer's Signature.....  
 Xyz Ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

existing requirements of, or any new requirements being imposed by, the Central Bank of Kenya or any governmental, fiscal, monetary, regulatory or other authority the result of which in the sole opinion of the Bank is to increase the cost to the Bank of funding, maintaining or making available the Facility (or any undrawn amount thereof) or to reduce the effective return to the Bank; or

- b) if for any reason including, without limitation, the occurrence of Force Majeure events, it becomes unlawful or impossible for the Bank to give effect to its obligations in respect of the Facilities or to fund or maintain the Facilities or any of the obligations expressed as being assumed by the Borrower or any Relevant Party under the Letter of Offer, GTCs and the Security ceases to be valid, legal and binding and enforceable against the Borrower or the Relevant Party (as the case may be) in accordance with their respective terms.

14.2 In addition to the Bank's rights in the Letter of Offer and these GTCs and notwithstanding any other provisions contained in the aforementioned documents or elsewhere, the Bank shall be entitled after giving fourteen (14) calendar days' prior notice and without affecting the security created pursuant to the Letter of Offer, these GTCs or any Security Document, grant further facilities, vary, interchange or substitute any of the Facility with other banking facilities to be granted to the Borrower (including the right to interchange or convert the Facility into a Term Loan) and thereafter the Letter of Offer, these GTCs or any Security Documents shall secure such further or interchanged or substituted facilities. The Bank retains the right to allocate a new account number or to transfer and/or consolidate the Borrower's existing accounts with the Bank to a new account upon such

variation, interchange or substitution without affecting the Bank's rights under the Letter of Offer, these GTCs or any Security Document.

### 15. Indemnities

#### 15.1. General

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

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

#### 15.2. Losses Covered

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

#### 15.3. Calculations

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

- a) make or attempt to make arrangements from time to time such as hedging or swap arrangements to ensure the payment of all sums or part of the sums contemplated by the

Letter of Offer and the GTCs or the financial equivalent; and/or

- b) refer from time to time to any agreement or agreements to which it is a party providing for transactions which are substantially the reverse of or hedge or fund in whole or in part the transactions contemplated in the Letter of Offer and the GTCs; and/or
- c) take reasonable steps to make arrangements to avoid, mitigate or reduce the losses or the risk of losses which would or which, in the opinion of the Bank, might otherwise arise from termination of any such arrangements, and losses arising from any of them shall be treated as losses incurred as a result of the matters referred to in Conditions 15.1 and 15.2 after taking into account, as far as appropriate, the discharge or reduction of the obligations of the Bank and such other factors as the Bank shall reasonably determine to be relevant.

#### 15.4. Currency Indemnity

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

#### 16. Covenants/General Undertakings

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

- 16.1. **Priority** – all monies due and payable to the Bank under the Letter of Conditions and GTCs



## LENDING/KESONIA-K TERMS AND CONDITIONS

- shall at all times rank in priority to all other present and future secured and unsecured and unsubordinated obligations (including contingent obligations) of the Borrower with the exception of such obligations as are mandatorily preferred by law and not by contract;
- 16.2. **Negative Pledge** – no Relevant Party shall create or permit to subsist (other than in favour of the Bank) any Encumbrance or give any guarantee without obtaining the prior written consent of the Bank, except Encumbrances in existence at the date of the Letter and full details of which were disclosed in writing to the Bank prior to that date provided that the amount secured by any such Encumbrance is not at any time increased;
- 16.3. **Disposals** – no Relevant Party shall sell, transfer or otherwise dispose of the whole or any part of its undertaking, property, assets or revenues, whether by a single transaction or a number of transactions (other than in the ordinary course of trading);
- 16.4. **Change of Capital Structure** – if the Borrower is a Company, the Borrower will not, without the written consent of the Bank, change its capital structure and procure that its directors will not without such consent permit any transfer of the shares in the Borrower;
- 16.5. **Change of Constitutive Documents** – no Relevant Party shall alter its Memorandum and Articles of Association, or by-laws, or constitution, or trust deed or any other constitutive document without the prior written consent of the Bank;
- 16.6. **No Additional Borrowing** – the Borrower shall not resort to any additional borrowings from any other source without the Bank's prior consent in writing;
- 16.7. **Change of Business** – no Relevant Party shall make any material change in the scope or nature of its business;
- 16.8. **Insurance**
- 16.8.1 Unless otherwise specified in the Letter of Offer, each Relevant Party shall comprehensively insure all insurable assets forming part of the Security with an insurance company approved by the Bank with the interest of the Bank duly noted on the insurance document as "Loss Payees" and incorporating a "Non-cancellation clause" and shall maintain adequate insurance in relation to its business and assets with reputable underwriters or insurance companies against risks usually insured by persons carrying on a business such as that carried on by such Relevant Party and such other risks as the Bank may from time-to-time reasonably require. In the event that this is not complied with, the Bank shall effect such insurance cover at the Borrower's cost and shall debit the relevant charges to the Borrower's account;
- 16.8.2 If required, the Borrower shall take a life insurance cover through an Insurance Company approved by the Bank. Details of the amount insured, the annual premium and the monthly repayment in respect of the annual premium is as shown in the Letter of Offer;
- 16.8.3 Where the Borrower is covered under life cover, the sum assured will be used to liquidate the outstanding amounts under the Facility in case of the unfortunate event of the Borrower's demise. However, the sum assured shall not cover any outstanding amounts in arrears;
- 16.9 **Valuation** – the Borrower undertakes to submit valuation reports for the properties charged to the Bank at least once every seven (7) years from one of the Bank's approved valuers. The Bank shall also, if the circumstances so warrant, ask for periodic valuation of the properties or any of them. In the event that this is not complied with, the Bank shall commission the same and shall debit the relevant charges to the Borrower's account;
- 16.10 **Litigation** – the Borrower shall immediately upon becoming aware of it, notify the Bank of any material litigation, arbitration or administrative proceeding pending or, to the best of its knowledge, information and belief, threatened against any Relevant Party;
- 16.11 **Notification of Event of Default** – the Borrower shall immediately upon becoming aware of it, notify the Bank of the occurrence of any event which is or may with the giving of notice or the lapse of time or both, constitute an Event of Default;
- 16.12 **Comply** – the Borrower shall comply with and observe at all times the covenants, agreements, stipulations and conditions contained in the Letter of Offer, the GTCs and the Security or in any other security created by the Borrower in favour of the Bank or in any letter or correspondence exchanged between the Borrower and the Bank and shall not without the consent of the Bank vary or waive any of the terms thereof nor exceed the approved limits without the Bank's approval;
- 16.13 **Compliance with Applicable Laws and licensing requirements** – each Relevant Party shall comply with and observe all the provisions of the applicable legislation and shall obtain, comply with and promptly renew and maintain all consents, licences, approvals, rights, powers, privileges, concessions, franchises and authorizations (if any) required under any applicable law or regulation to enable such Relevant Party to carry on its business and to perform its obligations under the Letter of Offer, the GTCs or under the Security (as the case may be) or to ensure the legality, validity and enforceability of the Letter of Offer, GTCs and the Security;

Customer's Signature.....  
Xyz Ltd

Bank Officer's Signature.....

- 16.14 Environmental Matters** – each Relevant Party shall, during the subsistence of a Security over property, comply with and shall not commit any offences under the provisions of the Environmental Management and Coordination Act, 1999 (“EMCA”) and the Relevant Party shall procure that all occupiers and owners (as defined in the EMCA) of such property shall comply with and shall not commit any offences under the provisions of the EMCA;
- 16.15 Outgoings** – each Relevant Party shall, during the subsistence of a Security over property, punctually pay in full and indemnify the Bank and any receiver appointed by the Bank against all existing and future rents, municipal or local rates, taxes, duties, charges, assessments, impositions and other outgoings whatsoever (whether imposed by agreement, statute or otherwise and whether in the nature of capital or revenue and even if wholly novel) now or at any time payable in respect of such property or any part thereof or by the owner or occupier thereof;
- 16.16 Conduct of its Business** – the Borrower shall conduct its business in a proper, efficient and business-like manner and in conformity with sound management and financial practices and to that end appoint or install competent managers and management systems;
- 16.17 Material Changes** - the Borrower shall advise the Bank immediately of any change of Directors or any material or major happenings that may affect the Borrower’s operations including, without limitation, in the directors, the shareholding pattern, industrial or labour disputes, industrial or economic downturn, diversification plans, capital expenditure, commitment changes etc.;
- 16.18 Change in Partnership** – if the Borrower is a partnership, the Borrower shall immediately notify the Bank of any change in the membership of the partnership and whenever possible such notification shall be given in advance of such change;
- 16.19 Change of Trustee** – if the Borrower comprises one or more trustees, the Borrower shall give to the Bank not less than twenty eight (28) days prior notice of the proposed retirement of any trustee or the appointment of any new trustee (which shall not be effected without the prior written consent of the Bank) and shall immediately notify the Bank upon the death of any trustee or the dissolution of any firm or corporation acting as trustee;
- 16.20 Information** – the Borrower will provide the Bank with such information at such times and in such form as the Bank may require from time to time regarding the Borrower’s finances and operations;
- 16.21 Sole Banker** – during the continuance of the Facility, the Bank shall act as the sole banker of the Borrower (unless otherwise agreed by the Bank). All sums received by the Borrower in the course of its business or in respect of subscriptions or calls upon its shares or otherwise howsoever shall be paid by the Borrower to the Bank for the credit of the Borrower in the account or accounts opened or to be opened in the name of the Borrower and shall make all payments by cheques, drafts, promissory notes or bills of exchange drawn on the Bank and all costs and expenses incurred by the Bank in acting as such banker of the Borrower as aforesaid together with such sums as shall be due and payable by the Borrower to the Bank pursuant to the terms of the Facility shall be debited to the Borrower’s account or accounts held with the Bank; and
- 16.22 Right of Inspection** – each Relevant Party shall, if required, permit the Bank, its employees or agents to inspect and report on any property, stock and/or other assets forming part of the Security at such frequencies as determined by the Bank provided that such inspection shall be carried out during working hours upon giving the Relevant Party at least Two (2) days notice (except in cases of emergency in which event no notice is required) and all monies paid by the Bank for this purpose shall be deemed to be expenses properly incurred by the Bank in relation to the Security repayable in full by the Borrower on demand with interest as set out in clause 6 above.
- 17 Appointment of Attorney**  
The Borrower hereby irrevocably appoints the Bank to be the Attorney of the Borrower and in the name and on behalf of the Borrower to execute and do any assurances, acts and things which the Borrower ought to execute and do under the covenants and agreements contained in the Letter of Offer and the GTCs and generally to use the name of the Borrower in the exercise of all or any of the powers hereby or by law conferred on the Bank.
- 18 Currency Conversion**  
It is hereby agreed by the Borrower and the Bank that:
- 18.1** all amounts due and owing by the Borrower to the Bank and secured by the Security shall be paid to the Bank in the currency in which the principal amounts are outstanding and interest on such amounts shall also be paid in the currency in which the Facilities are outstanding in freely transferable and convertible funds;
- 18.2** all moneys received or held by the Bank or by a receiver under the Security may from time to time be converted into such other currency as the Bank considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Borrower in that

## LENDING/KESONIA-K TERMS AND CONDITIONS

other currency and such conversion shall be made in accordance with the Bank's usual practice of converting the existing currency into the other currency;

18.3 if and to the extent that the Borrower fails to pay any amount due under the Letter of Offer on demand, the Bank may in its absolute discretion without notice to the Borrower purchase at any time thereafter so much of any currency as the Bank considers necessary or desirable to cover the obligations of the Borrower in such currency and such purchase will be in accordance with the Bank's usual practice of purchasing such other currency with the existing currency and the Borrower hereby agrees to indemnify the Bank against the full cost incurred by the Bank in respect of any such purchase;

18.4 no payment to the Bank (whether under any judgement or court order or otherwise) shall discharge the obligation or liability of the Borrower in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that if the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability actual or contingent expressed in that currency the Bank shall have a further separate cause of action against the Borrower and shall be entitled to enforce the Security to recover the amount of the shortfall;

18.5 the Bank 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 the Bank shall exercise the aforesaid right to convert the facility, the Other Currency shall be converted into Kenya Shillings at a rate of exchange determined by the Bank in accordance with the

usual practice adopted by the Bank in converting the Other Currency into Kenya Shillings as at the date of conversion. Upon the conversion the provisions of Clause 6 above shall apply mutatis mutandis in relation to the charging and payment of interest by the Borrower in respect of Kenya Shilling outstandings from time to time and the Borrower shall be charged and shall pay interest accordingly; and

18.6 neither the Bank 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.

### 19 Confidential Information and Credit Checks

19.1 The Bank may hold and process, by computer or otherwise, any information obtained about the Borrower as a consequence of the application for the Facilities.

19.2 The Borrower confirms that the Bank may at any time and from time to time at its sole discretion carry out credit checks with any of the licenced credit reference agencies on the Borrower and where the Borrower is a company, on any of the Borrower's directors.

19.3 The Borrower agrees that the Bank may:-

- a) include personal data of the Borrower in the Bank's customers' computer systems which may be accessed by other companies in the Bank's group for credit assessment, statistical analysis including behaviour and scoring and to identify products and services (including those supplied by third parties) which may be relevant to the Borrower; and
- b) permit other companies within the Bank's group to use personal data and any other information it holds about the Borrower on the Bank's computer systems to bring to its attention products and services which may be of interest to the Borrower.

19.4 The Borrower agrees that the Bank may disclose any

information relevant to the Borrower and the Facilities in the Bank's possession relating to the Borrower and its subsidiaries on terms that such recipient is to treat in confidence any confidential information so disclosed to it and further agrees that the Bank may disclose personal data and/or information relating to the Borrower or any Relevant Party outside the Bank's group whether such personal data and/or information is obtained after the Borrower ceases to be the Bank's customer or during the continuance of the banker-customer relationship or before such relationship was in contemplation:-

- a) for fraud prevention purposes;
- b) to licensed credit reference agencies or any other creditor if the Borrower is in breach of its obligations to the Bank and the Borrower agrees that such information may be used by other banks or institutions in assessing credit applications and for debt tracing;
- c) to licensed credit reference agencies or any other creditor for determining the Borrower's payment history and the Borrower agrees that his/her payment history may be used by other banks or institutions in assessing credit applications and for debt tracing;
- d) to the Bank's external lawyers, auditors and sub-contractors or other persons acting as agents of the Bank;
- e) to any person who may assume the Bank's rights under the Letter of Offer and the GTCs;
- f) to any regulatory, fiscal or supervisory authority;
- g) if the Bank has a right or duty to disclose or is permitted or compelled to do so by law;
- h) any potential assignee of the Bank 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 the Bank's agents;

Customer's Signature.....  
Xyz Ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

- i) for purposes of exercising any power, remedy, right, authority or discretion relevant to the Letter of Offer, the GTCs or the Security following the occurrence of an Event of Default, to any other person or third party as well.
- 19.5 The Borrower acknowledges and agrees that, notwithstanding the terms of any other agreement between the Borrower and the Bank, the disclosure by the Bank of information relevant to the Borrower and the Facilities in the circumstances contemplated in this clause does not violate any duty owed to the Borrower either in common law pursuant to any agreement between the Bank and the Borrower or in the ordinary course of banking business and the customs, usage and practice related thereto and further that the disclosure as aforesaid may be made without reference to or further authority from the Borrower and without inquiry by the Bank as the justification or validity of such disclosure.
- 20 **Miscellaneous**
- 20.1 All notifications or determinations (including without limitation, any determination of an amount payable pursuant to clause 15) above given or made by the Bank shall in the absence of manifest error be conclusive and binding.
- 20.2 **Assignment** - The Borrower shall not assign or transfer any of its rights and/or obligations in respect of the Facilities. The Bank may assign or transfer all or any of its rights and/or obligations in respect of the Facilities, in whole or in part, to any person or persons and may disclose any information relevant to the Facilities in the Bank's possession relating to the Borrower and its subsidiaries to any actual or prospective assignee or transferee (or to any other person):
- a) in connection with a securitisation of all or any part of the Bank's assets from time to time; or
- b) who may otherwise enter into contractual relations with the Bank in relation to the Facilities.
- 20.3 **Set-Off** - The Bank, may at any time without notice or demand to the Borrower and notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any then existing accounts with the Bank including accounts in the name of the Bank (whether current, deposit, loan or of any other nature whatsoever, whether subject to notice or not and in whatever currency denominated) of the Borrower alone or jointly with others wherever situate and set off or transfer any sums standing to the credit of any one or more such accounts in or towards satisfaction of any obligations and liabilities to the Bank of the Borrower whether such liabilities be present, future, actual, contingent, primary, collateral, joint or several and the Borrower expressly waives any rights of set-off that the Borrower may have, so far as is permitted by law, in respect of any claim which it may now or at any time hereafter have against the Bank and the Bank may use any such money to purchase any currency or currencies required to effect such application.
- 20.4 **Severability** - Each of the provisions of the GTCs 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 in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby and the Borrower shall co-operate with the Bank in substitution of new provisions in compliance with the intention contained in the GTCs.
- 20.5 **Remedies and Waivers** - No delay or omission on the part of the Bank in exercising any right, remedy or power herein in respect of the Facility shall impair or operate as a waiver of such right, remedy or power, and any single or partial exercise shall not preclude any other or further exercise of any such right, remedy or power or the exercise of any other right, remedy or power and the Borrower expressly agrees and covenants with the Bank that the Borrower shall not plead limitation under the Limitation of Actions Act (Chapter 22 of the Laws of Kenya) or any other similar enactment. The rights and remedies of the Bank in respect of the Facility are cumulative and not exclusive of any right or remedy provided by law.
- 20.6 **Independent Obligations** - The Borrower Guarantors and Relevant Parties hereby expressly agree and declare that each of their obligations to pay or to repay under any of the provisions of the Letter of Offer and these GTCs, or where appropriate, any of the Security Documents constitute separate and independent obligations, shall give rise to separate and independent causes of action, shall apply irrespective of any waiver or indulgence granted by the Bank in respect of any other obligation, shall remain in full force and effect despite any judgment, order, claim or proof for a liquidated amount in respect of some other obligation and may be relied upon and enforced by the Bank independently of or simultaneously with or without having to commence any other action under such obligations or under any of the Security Documents or having first exhausted any remedy or having first set off, sold or disposed of any assets or Securities, properties or undertaking which may be provided as security to the Bank from time to time.
- 21 **Notices**
- Every notice, request or other communication issued to the Borrower and/or the Guarantor(s) under the Letter of Offer, GTCs and the Security 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

Customer's Signature.....  
Xyz Ltd

Bank Officer's Signature.....

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 5:00p.m. on a Business Day it shall be deemed to have been received at the opening of business on the next Business Day); and

- c) be sent:-
  - (i) to the Borrower, Relevant Party and/or Guarantor at the address (postal, electronic or telephone) set out in the Letter of Offer or in the Security Documents; and
  - (ii) to the Bank at the address shown in the Letter of Offer, or to such other address in Kenya as may be notified by the Bank in writing from time to time 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 the Bank shall be effective only on actual receipt by the Bank.

## 22 Law

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

Customer's Signature.....  
 Xyz ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

The Borrower/Guarantor(s) acknowledge having read and understood the contents of these General Terms and Conditions and confirm that the GTCs form an integral part of and are not divisible from the Letter of Offer.

**ACCEPTANCE**

**[INDIVIDUAL/JOINT BORROWERS]**

I \_\_\_\_\_ hereby acknowledge that I have read, understood and accepted the terms and conditions of the GTCs and confirm my intention to be bound by the said terms and conditions.

Date of Acceptance .....

Signed by the Borrower )  
 )  
 Name: ..... )  
 ID No: ..... )

---

Borrower's Signature

In the presence of:

## Advocate

I .....an Advocate of the High Court of Kenya who witnessed the execution of the GTCs CERTIFY that the above-named Borrower appeared before me on the ..... day of ..... 20... and being known to me/ being identified to me by ..... ) acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this instrument and understood its contents.

.....  
Advocate's Signature

[COMPANY BORROWER]

We the Directors of ..... having been duly authorized to witness the affixation of the Company Seal of the Borrower to the Letter of Offer and GTCs pursuant to a Resolution of the Board of Directors dated ..... hereby acknowledge that we have read, understood and accept the terms and conditions of the above Letter of Offer and GTCs and confirm our intention to be bound by the said terms and conditions this.....day of .....20\_\_.

Date of Acceptance .....

Sealed with the common seal of the Borrower )  
 XYZ LIMITED )  
 in the presence of: ) (Affix Company seal here)

DIRECTOR

Name: .....

ID/Passport No. ....

Signature .....

Customer's Signature.....  
 Xyz ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

### DIRECTOR/SECRETARY

Name: ..... )  
ID/Passport No. .... )  
Signature ..... )

I .....an Advocate of the High Court of Kenya who witnessed the execution of the GTCs **CERTIFY** that the above-named Director and another Director/Company Secretary appeared before me on the ..... day of ..... 20\_\_ and being known to me/being identified to me by ..... ) acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this instrument and understood its contents.

.....  
*Advocate's signature*

### [CO-OPERATIVE SOCIETY BORROWER]

We the Officials/**Directors of XYZ Co-operative Society Limited** having been duly authorized to witness the affixation of the common Seal of the Borrower to the GTCs pursuant to a Resolution of the Board of Directors dated ..... and of the General Meeting dated ..... hereby acknowledge that we have read, understood and accept the terms and conditions of the GTCs and confirm our intention to be bound by the said terms and conditions.

Date of Acceptance .....

Sealed with the common seal of the Borrower  
**XYZ Co-operative Society Limited**  
in the presence of:

### CHAIRMAN

Name: ..... )  
ID/Passport No. .... )

Signature ..... )

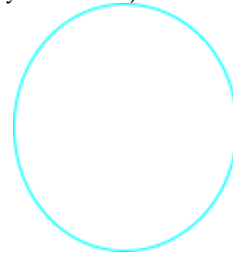
### SECRETARY

Name: ..... )  
ID/Passport No. .... )

Signature ..... )

### TREASURER

)  
)  
) (Affix Company seal here)



Customer's Signature.....  
Xyz ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

Name: ..... )  
ID/Passport No. .... )  
..... )  
Signature ..... )

I .....an Advocate of the High Court of Kenya who witnessed the execution of this Letter of Offer and GTCs **CERTIFY** that the above-named officials of \_\_\_\_\_ **Society Limited** appeared before me on the ..... day of ..... 20... and being known to me/being identified to me by ..... ) acknowledged the above signatures or marks to be theirs and that they had freely and voluntarily executed this instrument and understood its contents.

.....  
*Advocate's signature*

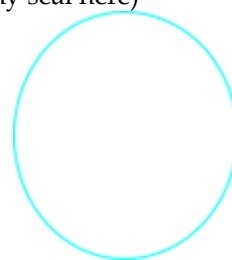
### Guarantor

#### [COMPANY GUARANTOR]

Sealed with the common seal of the Guarantor ..... )  
**ABC LIMITED** ..... )  
in the presence of: ..... ) (Affix Company seal here)

#### DIRECTOR

Name: ..... )  
ID/Passport No. .... )  
..... )  
Signature ..... )



#### DIRECTOR/SECRETARY

Name: ..... )  
ID/Passport No. .... )  
..... )  
Signature ..... )

Customer's Signature.....  
Xyz ltd

Bank Officer's Signature.....



## LENDING/KESONIA-K TERMS AND CONDITIONS

I .....an Advocate of the High Court of Kenya who witnessed the execution of the GTCs  
**CERTIFY** that the above-named Director and another Director/Company Secretary appeared before me on the .....  
 day of ..... 20... and being known to me/being identified to me by .....)  
 acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this  
 instrument and understood its contents.

.....

*Advocate's signature*

[CO-OPERATIVE SOCIETY GUARANTOR]

Sealed with the common seal of the Guarantor  
XYZ Co-operative Society Limited  
in the presence of:

CHAIRMAN

Name: .....

ID/Passport No. ....

Signature .....

**SECRETARY**

Name: .....

ID/Passport No. ....

Signature .....

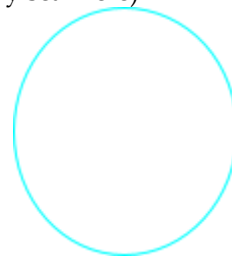
**TREASURER**

Name: .....

ID/Passport No. ....

Signature .....

)  
)  
) (Affix Company seal here)



I .....an Advocate of the High Court of Kenya who witnessed the execution of the GTCs  
**CERTIFY** that the above-named officials of the Guarantor appeared before me on the ..... day of .....  
 20... and being known to me/being identified to me by .....) acknowledged the above  
 signatures or marks to be theirs and that they had freely and voluntarily executed this instrument and understood its  
 contents.

.....

*Advocate's signature*

Customer's Signature.....  
 Xyz ltd

Bank Officer's Signature.....

## LENDING/KESONIA-K TERMS AND CONDITIONS

### [Individual/Joint Guarantors]

Signed by the Guarantor )  
)  
Name: ..... )  
ID No: ..... ) Guarantor's Signature  
)  
)  
In the presence of: )  
)  
)  
)  
)  
Advocate )

I ..... an Advocate of the High Court of Kenya who witnessed the execution of the GTCs CERTIFY that the above-named Guarantor appeared before me on the ..... day of ..... 20... and being known to me/ being identified to me by ..... ) acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this instrument and understood its contents.

.....  
Advocate's Signature

I .....an Advocate of the High Court of Kenya who witnessed the execution of this Letter CERTIFY that the above-named Guarantor appeared before me on the ..... day of ..... 20\_\_ and being known to me/ being identified to me by ..... ) acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this instrument and understood its contents.

.....  
Advocate's Signature

### **SPOUSAL CONSENT** (Where applicable)

I/We..... of P. O. Box Number ..... being the holder(s) of National Identity Card Number(s) ..... and being the spouse(s) of the guarantor the registered proprietor of the Property offered as security hereby consent to the creation of the Charge over the Property.

Signed by.....  
in the presence of

.....  
Advocate's signature

.....  
Spouse's signature

Customer's Signature.....  
Xyz ltd

Bank Officer's Signature.....

LENDING/KESONIA-K TERMS AND CONDITIONS

I .....an Advocate of the High Court of Kenya who witnessed the execution of this Letter and Conditions CERTIFY that the above-named appeared before me on the ..... day of ..... 20... and being known to me/being identified to me by .....) acknowledged the above signature or mark to be his/hers and that he/she had freely and voluntarily executed this instrument and understood its contents.

.....  
Advocate’s signature