**LOAN AGREEMENT**

**DATED 20……**

 **[\*]**

 **(the “Lender”)**

 **-and-**

 **[\*]**

 **(the “Borrower”)**

**Drawn By:**

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**LOAN AGREEMENT**

**THIS LOAN AGREEMENT** is made this day of Two Thousand and ……………………...

**BETWEEN**:

1. **[\*]** a limited liability company incorporated in Kenya under Company Number [\*] and whose address is P.O Box [\*] (the “**Lender**” which expression shall where the contextso admits include its representatives, successors and assigns);
2. **[\*]** a limited liability company incorporated in Kenya under Company Number [\*] and whose address is P.O Box [\*] (the “**Borrower**” which expression shall where the contextso admits include its representatives, successors and permitted assigns); and
3. [**\***] a Kenyan Citizen of National Identity Card Number/Passport Number [\*] and whose address is P.O Box [\*] (the “**Guarantor**” which expression shall where the context so admits include his/her/their personal representatives, successors and assigns).

**WHEREAS:**

1. At the request of the Borrower the Lender has agreed to advance to the Borrower the sum of [\*] (the “Loan”) as friendly loan subject to the terms and conditions of this Agreement.
2. The parties to this Agreement wish to deal with the Loan and other matters on the terms set out below.

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS:**

# Definition and Interpretation

* 1. **Definitions**
		1. In this Agreement:
			1. “**Business Day**” means a day (other than a Saturday, Sunday or duly gazetted public holiday in Kenya) on which banking institutions are generally open for the conduct of banking business in Kenya;
			2. “**Event of Default**” means the events set out in clause 9 of this Agreement.
			3. “**Loan**” means the sum of [INSERT THE LOAN AMOUNT] or any other amount outstanding from the Borrower to the Lender from time to time and as more particularly set out in Clause 2.1 of this Agreement;
			4. “**Loan Agreement**” means this Agreement herein dated and executed by the Parties;
			5. “**Maturity Date**” means on or before [INSERT THE DATE][[1]](#footnote-1) OR [each of the dates set out in Clause 4][[2]](#footnote-2);
			6. “**Parties**” means collectively the Borrower and the Lender and a reference to “Party” encompasses a reference to each individually;
			7. “**Prescribed Rate**” means [INSERT THE INTERSET RATE IF APPLICABLE] on any outstanding amounts from the time such amounts are due for payment under this Agreement; and
			8. [“**Repayment Instalment**” means each scheduled instalment for the repayment of the Loan under Clause 4][[3]](#footnote-3)
	2. Reference to any statute or statutory provision includes a reference to:
		+ 1. that statute or statutory provision as from time to time amended extended re-enacted or consolidated; and
			2. all statutory instruments or orders made pursuant to it;
	3. Words denoting the singu1ar shall include the plural and vice versa;
	4. Words denoting any gender include all the genders and words denoting persons shall include firms and corporations and vice versa;
	5. References to clauses or Schedules are to clauses of or schedules to this Agreement; and
	6. The clause headings are for convenience only and shall not be taken into account in the interpretation of this Agreement.

# Loan

* 1. The Lender agrees to make the Loan available to the Borrower upon and subject to the terms of this Agreement.
	2. The Lender shall advance the Loan to the Borrower on the execution of this Agreement receipt whereof the Borrower hereby acknowledges.
	3. The Loan shall be disbursed by the Lender to the Borrower through the Borrower’s bank account whose particulars are: -

**NAME:**

**BANK:**

**ACCOUNT:**

**BRANCH:**

**SWIFT CODE:**

**BANK CODE:**

**Branch code:**

# Purpose of the Loan[[4]](#footnote-4)

* + 1. The Borrower will use the Loan to [\*].

# Repayment

* 1. [Subject to the provisions of this agreement, the Borrower shall repay the Loan in full on or before the Maturity Date; or
	2. Within [\*] Business Days of such earlier date than the Maturity Date as the Lender may demand.][[5]](#footnote-5)
		1. OR
		2. [The Borrower will repay to the Lender the Loan in full by repaying the Repayment Instalment set out below opposite each Maturity Date, on that Maturity Date or, if earlier, following a demand by the Lender at any time after an Event of Default has occurred, together in each case with all accrued interest and other amounts outstanding under this Agreement.][[6]](#footnote-6)

|  |  |  |
| --- | --- | --- |
| No. | Repayment Instalment | Maturity Date/Demand Date |
|  |  |  |

#

# Payments

* 1. All payments made by the Borrower under this Agreement shall be in [INSERT THE CURRENCY] and in immediately available cleared funds to the Lender at its account number whose particulars are as follows or such other account as the Lender may notify the Borrower:

**NAME:**

**BANK:**

**ACCOUNT:**

**BRANCH:**

**SWIFT CODE:**

**BANK CODE:**

**Branch code:**

* 1. If any payment becomes due on a day that is not a Business Day, the due date of such payment will be extended to the next succeeding Business Day, or if that Business Day falls in the following calendar month, such due date shall be the immediately preceding Business Day.
	2. All payments made by the Borrower under this Agreement shall be made in full, without set-off, counterclaim or condition and free and clear of and without any deduction or withholding, provided that if the Borrower is required by law or regulation to make such deduction or withholding, it shall pay to the Lender such additional amount as is necessary to ensure that the net full amount received by the Lender after the required deduction or withholding is equal to the amount that the Lender would have received had no such deduction or withholding been made.
	3. The Borrower shall not have the right to defer, adjust or withhold any payment due to the Lender in terms of or arising out of this Agreement or to obtain deferment of judgement for such amounts or any execution of such judgement by reason of any set off or counter claim of whatsoever nature and however arising.

# Interest

* 1. The Loan shall bear interest at the Prescribed Rate.
	2. If the Borrower fails to make any payment due under this Agreement on the due date for payment, interest on the unpaid amount shall accrue daily, from the date of non-payment to the date of actual payment at the Prescribed Rate. Interest accrued under this Clause 6.2 shall be immediately payable by the Borrower on demand by the Lender.
	3. [Interest on the Loan shall be computed on the monthly simple interest rate basis at the Prescribed Rate and shall accrue from the date of the disbursement of the Loan until payment of the Loan in full.][[7]](#footnote-7)

# Representations and Warranties

* 1. Each party warrants and represents to the other with respect to itself that it has the full right, power and authority to execute, deliver and perform this Agreement.
	2. [The Borrower represents and warrants to the Lender on the date of this agreement that:
		+ 1. the Borrower is duly incorporated as a limited liability company and validly existing under the laws of Kenya and has the power to own its assets and carry on its business as it is being conducted;
			2. the Borrower has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of this Agreement and the transactions contemplated by it;
			3. no limit on its powers will be exceeded as a result of the borrowing;
			4. entry into and performance by it of, and the transactions contemplated by, this Agreement do not and will not contravene or conflict with:
				1. the Borrower's constitutional documents;
				2. any agreement or instrument binding on the Borrower or its assets; or
				3. any law or regulation or judicial or official order, applicable to the Borrower; and
				4. the Borrower's obligations under this Agreement are legal, valid, binding and enforceable in accordance with its terms;]
			5. no Event of Default or default has occurred or is continuing, or is reasonably likely to result from making the Loan or the entry into, the performance of, or any transaction contemplated by this Agreement;
			6. there has been no material adverse change in the business, assets, financial condition, trading position or prospects of the Borrower from the time of negotiations of advancement of a Loan to the Borrower up until the date of this Agreement; and
			7. no litigation, arbitration or administrative proceedings are taking place or pending, or, to the best of the Borrower's knowledge and belief (after due and careful enquiry), have been threatened against it, any of its directors or any of its assets, which, if adversely determined, might reasonably be expected to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Agreement.

# Covenants

* + 1. The Borrower covenants with the Lender that:
			1. as from the date of this Agreement until all its liabilities under this Agreement have been discharged it will deliver to the Lender within [180] days after the end of each of its financial years, its audited consolidated accounts;
			2. it will promptly, after becoming aware of them, notify the Lender of any litigation, arbitration or administrative proceedings or claim of the kind described in Clause 7.2.8;
			3. it will procure that any of its unsecured and unsubordinated obligations and liabilities under this Agreement rank, and will rank, at least pari passu in right and priority of payments with all its other unsecured and unsubordinated obligations and liabilities, present or future, actual or contingent, except for those obligations and liabilities mandatorily preferred by law of general application to companies;
			4. it will comply, in all respect, with all laws, if failure to do so has or is reasonably likely to have a material adverse effect on its business, assets or condition, or its ability to perform its obligations under this Agreement; and
			5. it will notify the Lender of any Potential Event of Default or Event of Default (and the steps, if any, being taken to remedy it) promptly on becoming aware of its occurrence.

# Events of Default

* + 1. Each of the events or circumstances set out in this Clause 9 is an Event of Default.
			1. The Borrower fails to pay any sum due OR [Repayment Instalment when due] under this Agreement.
			2. The Borrower fails (other than by failing to pay) to comply with any provision of this Agreement and the default is not remedied within [\*] Business Days of the Lender notifying the Borrower of the default and the remedy required.
			3. The Borrower is in breach of any of the Covenants under Clause 8 of this Agreement.
			4. The Borrower commences negotiations, or enters into any composition, compromise, assignment or arrangement, with one or more of its creditors with a view to rescheduling any of its indebtedness (because of actual or anticipated financial difficulties).
			5. Any action, proceedings, procedure or step is taken for the winding up, dissolution, administration or reorganisation of the Borrower.
			6. Any representation, warranty or statement made, repeated or deemed made by the Borrower in, or pursuant to, this Agreement is (or proves to have been) incomplete, untrue, incorrect or misleading in any material respect when made.
			7. The Borrower is unable to, or admits its inability to, pay its debts as they fall due.
			8. The Borrower repudiates or rescinds or shows an intention to repudiate or rescind this Agreement.
			9. The Borrower ceases, or threatens to cease, to carry on all or a substantial part of its business.
			10. Any event occurs (or circumstances exist) which, in the opinion of the Lender, has or is likely to materially and adversely affect the Borrower's ability to perform all or any of its obligations under, or otherwise comply with the terms of, this agreement.
			11. On and at any time after the occurrence of an Event of Default, the Lender may by notice to the Borrower declare that the Loan (and all accrued interest and all other amounts accrued or outstanding under this Agreement) are immediately due and payable, whereupon they shall become immediately due and payable.

# Termination of Agreement

* 1. This Agreement shall terminate when the Borrower receives notice from the Lender that:
		+ 1. all the monies due to the Lender have been paid or discharged in full to its satisfaction; or
			2. The Lender and the Borrower have agreed upon such termination.
	2. Upon termination or agreed termination of this Agreement, any remaining balance on the Loan shall constitute indebtedness of Borrower owing to the Lender and the Lender.

# Dispute Resolution

* 1. **Good Faith Negotiations**
		1. In case of any dispute arising out of this Agreement including any question regarding its interpretation, existence, validity or termination, each party will use its best efforts to resolve the dispute by good faith negotiation within a period of Thirty (30) Business Days following notification of the dispute.
	2. **Mediation**
		+ 1. If the dispute has not been settled pursuant to the Good Faith Negotiations under clause 11.1 above within (30) Business Days from when the settlement discussions were instituted, any party may elect to refer the dispute to mediation. The mediation shall take place in in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
			2. The mediator shall be appointed by mutual agreement between the Parties or in default of such agreement within five (5) days of the notification of a dispute, upon the application of either Party, by the Registrar of the Nairobi Centre for International Arbitration in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
			3. The mediation shall take place in Nairobi and shall be conducted in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
			4. Unless otherwise agreed, the mediation will start not later than Fourteen (14) Business Days from the date of notification of the dispute. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and the mediation has terminated.
			5. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.
	3. **Arbitration**
		+ 1. If the dispute has not been settled pursuant to Good Faith Negotiations under Clause 11.1 or under Mediation under clause 11.2 above within thirty (30) Business Days (or such longer period as may be agreed upon between the parties) from when the settlement discussions were instituted, any party may elect to commence arbitration.  Such arbitration shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom.
			2. Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
			3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
			4. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
			5. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

# Notices

* 1. Any demand or notice required to be made given to or served on the Borrower under this agreement shall be duly and validly made given or served if addressed to the Borrower and delivered personally or sent by pre-paid mail to the last known address or postal address or delivered by hand to the Borrower.
	2. Any notice required to be given to or served on the Lender shall be duly and validly given or served if sent by pre-paid mail or hand delivery addressed to the Lender at its postal address.
	3. Any notice or document given or served by post shall be deemed to be given or served at the place of receipt 96 hours after the letter containing the same was sent Saturdays, Sundays and Public Holidays excepted and in proving that any notice or document was so given or served it shall be necessary only to prove that the same was properly addressed and sent by post.
	4. Any notice or document given or served personally shall be deemed to have been received at the time of such service.

# Severability

* + 1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

# Entire agreement

* 1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
	2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

# Confidentiality

* + 1. The parties shall treat as confidential the provisions of this Agreement, the process of negotiations and all information about the other party obtained or received by them as a result of the negotiations, entering into or performing their obligations under this Agreement and shall not publish or otherwise disclose to any other person such information except where:-
			1. it is required during any court proceedings or by the provisions of any law, statute or by any regulatory or governmental body having jurisdiction over it;
			2. such disclosure is to its professional advisers in relation to the negotiation, entry into or performance of this Agreement or any matter arising out of the same; or
			3. the information has come into the public domain through no fault of that party.

# Waiver and Amendments

* + 1. None of the terms or provisions of this Agreement shall be waived, altered, modified or amended in any respect except in writing signed by the Parties.

# General

* 1. The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies and the Borrower expressly agree and covenant with the Lender 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. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy. The rights and remedies provided by this the Agreement are cumulative and not exclusive of any rights or remedies provided by law.
	2. The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
	3. The Borrower shall upon request by the Lender provide or execute or cause to be executed all the documents and papers and take all such actions as is necessary to give effect to the terms of this Agreement.
	4. This Agreement may be signed in any number of counterparts which shall have same effect as if the signatures on the counterpart were on a single copy of this Agreement.
	5. The Lender shall be entitled to assign the benefit of this Agreement. The Borrower may not assign or transfer any of its rights or obligations under this Agreement other than with the prior written consent of the Lender.
	6. This Agreement shall be sufficient evidence of the Borrower’s indebtedness and the Lender shall be entitled to summary judgement on the basis of this Agreement without the need to call for further or other evidence.

# Costs

* + 1. The Borrower shall bear and pay the costs of negotiating, drafting, preparing and implementing this Agreement. The Borrower shall bear the costs of stamping this Agreement.

# Governing Law

* + 1. This Agreement shall be governed by, construed and enforced in accordance with the Laws of the Republic of Kenya and the parties submit to the exclusive jurisdiction of the Kenyan Courts.

**IN WITNESS** whereof this Agreement has been duly executed by the Parties in the year and date first hereinabove written.

|  |  |
| --- | --- |
| Signed by the duly authorised representative of the Lender*Signature:* *Name:* *Designation:*  | Signed by the duly authorised representative of the Borrower*Signature:* *Name:* *Designation:*  |
| in the presence of:-*Witness’s signature* *Witness’s Name:* *Witness’s Designation* *Witness’s Address*  | in the presence of:-*Witness’s signature* *Witness’s Name:* *Witness’s Designation:* *Witness’s Address*  |

**Drawn by:**

1. Applicable if the Loan is to be repaid in full at once. [↑](#footnote-ref-1)
2. Applicable if the Loan is to be repaid in instalments. [↑](#footnote-ref-2)
3. Applicable if the Loan is to be paid in instalments [↑](#footnote-ref-3)
4. This is clause demonstrates the agreement of the parties on the purpose of the loan. If however, the Borrower is to use the loan as he/she pleases then this clause should be deleted [↑](#footnote-ref-4)
5. Applicable if the loan shall be repaid in full at once [↑](#footnote-ref-5)
6. Applicable if the loan shall be repaid in instalments [↑](#footnote-ref-6)
7. Applicable only if the parties have agreed that interest on the loan to be advanced shall be payable. [↑](#footnote-ref-7)