

DATED [DATE] [MONTH] 20[]

PREMIER BANK KENYA LIMITED

AND

[NAME]

**MASTER MUSHARAKAH AGREEMENT
DIMINISHING MUSHARAKAH (SALE AND LEASE BACK) FOR PURCHASE OF
MOVABLE ASSETS**

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THIS MASTER MUSHARAKAH AGREEMENT is made as of the day of, 20.....

BETWEEN

1. **PREMIER BANK KENYA LIMITED**, a sharia compliant banking institution incorporated under the laws of the Republic of Kenya of Post Office Box Number 26219-00100, Nairobi, within the Republic of Kenya (hereinafter referred to as the **“Bank”**, which expression shall, where the context so requires, include the Bank’s successors in title (whether immediate or derivative) and assigns); and

2.
.....of Post Office Box Number,, Republic of Kenya (hereinafter referred to as the **“Customer”**, which expression shall, where the context so requires, include the Customer’s heirs, personal representatives, successors in title and permitted assigns (as the case may be)).

WHEREAS

- a) The Customer as the managing co-owner of the Musharakah Assets wishes to enter into a Musharakah with the Bank from time to time in order to acquire undivided ownership, from time to time, to the extent of the Bank’s Musharakah Share in the Musharakah Assets from the Customer pursuant to the Purchase Agreement in respect of the Musharakah Assets.

- b) The Bank has agreed to enter into a Musharakah with the Customer from time to time on the terms and conditions of this Agreement and the other Transaction Documents.

IT IS HEREBY AGREED BY THE PARTIES as follows:

1 . Definitions and Interpretation

1.1 In this Agreement (including its recitals) unless the context otherwise requires:

“Accounting Standards” means the International Financial Reporting Standards (IFRS) promulgated by the International Accounting Standards Board from time to time;

“Act” means The Banking Act (Chapter 488, laws of Kenya);

“Agreement” means this Master Musharakah Agreement;

“Aggregate Outstanding Buy Out Price” means the aggregate of the Outstanding Buy Out Price ascertained pursuant to and payable under each Undertaking to Purchase as of the date the relevant calculation falls to be made;

“Auditor” means the auditor of the Customer on the date hereof and any other person who may from time to time be appointed as the Customer’s auditor;

“Auditor’s Letter” means the letter from the Customer to the Auditor authorising the Customer’s Auditor to release certain documents and information to the Bank and being in the form prescribed by the Bank;

“Authorisation” means any authorisation consent approval resolution licence exemption filing notarisation or registration and **“Authorisations”** shall be construed accordingly;

“Bank’s Musharakah Share” means the share of the Bank in Musharakah Assets (held by the Bank as beneficial owner as proprietor in common with the Customer) in the proportion specified in Schedule 2 to each Purchase Agreement as the same may be reduced from time to time pursuant to and as envisaged in the relevant Undertaking to Purchase, Payment Agreement and this Agreement;

“Bank’s Purchase Price” means the sum specified as such in the Musharakah Assets Detail Form;

“Business Day” means a day (other than a Saturday Sunday gazetted public holiday or national day in Kenya) on which banking institutions are generally open for the conduct of business in Kenya;

“Buy Out Price” has the meaning ascribed to it in each Undertaking to Purchase;

“Buy Out Payment Date” has the meaning ascribed to it in each Undertaking to Purchase;

“Certificate of Authority” means the certificate issued by the Customer to the Bank confirming the authorised signatory or signatories of the Customer for the purposes of and in connection with this Agreement and the other Transaction Documents and being in the form prescribed by the Bank;

“Customer’s Musharakah Share” means the share of the Customer in the Musharakah Assets (held by the Customer as beneficial owner as proprietor in common with the Bank) in the proportion specified in Schedule B of each Purchase Agreement as the same may be increased from time to time pursuant to and as envisaged in the relevant Undertaking to Purchase, the Payment Agreement and this Agreement;

“Default” means an Event of Default or any event or circumstance specified in clause 9 which would (with the expiry of a grace period the giving of notice the making of any determination under this Agreement or any combination of any of the foregoing) be an Event of Default;

“Notice to fulfil a promise” means a promissory note issued by the Customer to the Bank and being in the form prescribed by the Bank;

“Encumbrances” means any charge (whether formal or informal, legal or equitable) lien option security interest restrictive covenant pledge hypothecation assignment title retention leasing sale-and-purchase or sale-and-leaseback arrangement preferential right 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;

“Environmental and Social Laws” means any applicable law (including The Environmental Management and Co-ordination Act (No. 8 of 1999)) rule or regulation (including international treaty obligations) in Kenya which relates to environmental natural resource management occupational health and safety and Social Laws as applicable in Kenya;

“Event of Default” means any event or circumstance described as such in clause 9;

“Financial Indebtedness” means any obligation for the payment or repayment of money, whether present or future, actual or contingent;

“Group” means any person in respect of the Customer which from time to time is a subsidiary or a holding company of the Customer;

“Instalment Payment” means the amount owed by the Customer to the Bank for the right to use enjoy and exploit the Musharakah Assets on the dates and in the amounts specified in the relevant Instalment Payment Schedule and **“Instalment Payments”** shall be construed accordingly;

“Instalment Payment Date” means the date on which an Instalment Payment becomes due and payable by the Customer to the Bank as specified in the relevant Instalment Payment Schedule and **“Instalment Payment Dates”** shall be construed accordingly;

“Instalment Payment Schedule” means, in respect of each Musharakah, the schedule setting out the Instalment Payments and the Instalment Payment Dates being in the form prescribed by the Bank as the same may be revised from time to time as envisaged in this Agreement and each Payment Agreement;

“Kenya” means the Republic of Kenya including any administrative division thereof;

“KES” or **“Kenya Shillings”** means the lawful currency from time to time of Kenya;

“Law” includes relevant Shariah principles as may be recommended by Shariah scholars;

“Lease Agreement” means in respect of each Musharakah, the agreement being in the form prescribed by the Bank pursuant to which the Bank as lessor agrees with the Customer to lease to the Customer the Bank’s Musharakah Share granting the Customer certain rights to enjoy the use of the Bank’s Musharakah Share;

“Letter of Offer” means a letter issued by the Bank to the Customer setting out the principal terms and conditions of, *inter alia*, any proposed musharakah facility to be provided by the Bank to, *inter alia*, the Customer, or as the case may be, each letter issued by the Bank pursuant to which the Bank may agree to renew an existing musharakah facility as the same may be amended from time to time; each letter of offer to be duly executed by the Customer;

“Material Adverse Effect” means a material adverse effect on:

- a) the business operations property condition (financial or otherwise) or prospects of the Customer;
- b) the ability of the Customer to perform the Customer’s obligations under this Agreement; or
- c) the validity or enforceability of this Agreement or any Security Document or the rights and remedies of the Bank under this Agreement or any Security Document;

“Management Agreement” means the agreement being in the form prescribed by the Bank and entered into between the Customer as the managing co-owner of the Musharakah Assets and the Bank in terms of which the Customer undertakes to provide certain services in respect of the Musharakah Assets;

“Musharakah” means the arrangement between the Bank and the Customer pursuant to which the Bank will purchase from the Customer an undivided beneficial ownership interest in the Musharakah Asset (s) pursuant to a Purchase Agreement for the purpose of creating a “Shirkat ul Milk” (beneficial ownership as proprietors in common in specified shares) in the Musharakah Assets as provided for under and on the terms contained in this Agreement and each Purchase Agreement and with the Customer having the right to exclusively use enjoy and exploit the Musharakah Assets in accordance with the Lease Agreement;

“Musharakah Assets” means the assets which are the subject of a Musharakah as more particularly described in Schedule I hereto and “Musharakah Asset” shall be construed accordingly;

“Musharakah Commencement Date” in respect of each Musharakah, has the meaning ascribed to it in the relevant Purchase Agreement;

“Musharakah End Date” means, in respect of each Musharakah, the earlier of:

- a) the date specified as such in the relevant Purchase Agreement and the related Payment Agreement and being the date on or prior to which all the obligations of the Bank and the Customer (including, without limitation, the obligation of the Customer to pay the Instalment Payments and the Outstanding Buy Out Price and all other monies and liabilities (whether actual or contingent) due and payable under the relevant Payment Agreement and the other Transaction Documents) in respect of the Musharakah are to be satisfied in full; and
- b) the date as of which the Bank has issued a notice in exercise of the Bank’s rights under clause 9.1.15.
- c) the date of expiry of a notice by the Bank issued pursuant to this Agreement;

“Musharakah Units” means the division and classification of each of the Bank’s Musharakah Share and the Customer’s Musharakah Share into units of value denominated in KES and in the number appearing in Schedule B to each Purchase Agreement and **“Musharakah Unit”** shall be construed accordingly;

“Outstanding Buy Out Price” has the meaning ascribed to it in each Undertaking to Purchase;

“Parties” means the Bank and the Customer and “Party” shall be construed accordingly;

“Payment Agreement” means the agreement being in the form prescribed by the Bank to be made between the Bank and the Customer in relation to each Musharakah pursuant to which the Customer (inter alia) agrees to pay Instalment Payments to the Bank;

“Purchase Agreement” means the agreement being in or substantially in the form approved by the Bank to be made between the Bank and the Customer pursuant to which the Customer (*inter alia*) agrees to sell and the Bank agrees to purchase the Bank’s Musharakah Share (represented by Musharakah Units) and thereby create a Musharakah;

“Purchase Price” has the meaning ascribed to in the Purchase Agreement;

“Security Documents” means the agreements and instruments executed or to be executed in favour of the Bank creating security for the due performance and satisfaction of obligations and

liabilities of the Customer under this Agreement and/or pursuant to the other Transaction Documents as may be specified in each Letter of Offer;

“Shari’ah Supervisory Board” means the committee of Islamic scholars and academics who have been contracted by the Bank to advise on matters of Islamic jurisprudence and Shari’ah as the same impacts on the business of the Bank;

“Social Laws” means any law rule or regulation applicable in Kenya concerning labour social security regulation of industrial relations the protection of occupational as well as public health and safety child labour and all other laws rules or regulations providing for the protection of employees and citizens;

“Subsidiary” means in relation to anybody corporate, any person:

- a) which is controlled, directly or indirectly, by the first mentioned body corporate;
- b) more than half the issued share capital of which is beneficially owned (directly or indirectly) by the first mentioned body corporate; or
- c) which is a Subsidiary of another Subsidiary of the first mentioned body corporate,

and for this purpose, a body corporate shall be treated as being “controlled” by another if that other body corporate is able to direct its affairs and/or control the composition of its board of directors or equivalent executive body and “Subsidiaries” shall be construed accordingly;

“Taxes” means all present and future taxes levies cess imposts assessments customs or import duties or other duties or charges of a similar nature (including, without limitation, payroll taxes excise duties sales tax value added tax turnover tax or stamp duty) and any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same and **“Tax”** and **“Taxation”** shall be construed accordingly.

Competent taxing authority means any state or administrative division thereof or any governmental authority or monetary agency or central bank having power to collect or levy Taxes;

“Transaction Documents” means this Agreement, the Purchase Agreement, the Payment Agreement, the Undertaking to Purchase, , the Lease Agreement and the Security Documents and **“Transaction Document”** shall be construed accordingly; and

“Undertaking to Purchase” means, in respect of each Musharakah, the agreement being in the form prescribed by the Bank pursuant to which the Customer agrees with the Bank to (*inter alia*) purchase from the Bank the Musharakah Units of the Bank (thereby reducing the Bank’s Musharakah Share).

1.2 In this Agreement (including its recitals), unless the context otherwise requires:

1.2.1 words denoting the singular number shall include the plural number also and *vice versa* and words importing the masculine gender include the feminine gender and neuter and *vice versa*;

1.2.2 recitals sub-clauses clauses and Schedules shall be construed as references to the recitals sub-clauses and clauses of and the schedules to this Agreement;

- 1.2.3 the expression “**person**” shall include any legal or natural person partnership trust company joint venture government or any agency thereof local authority, county or other body (whether corporate or unincorporate);
- 1.2.4 references to any statute or statutory provision shall be deemed to include references to any statute regulation or statutory instrument which amends extends consolidates or replaces the same (or shall have done so) and any other regulation statutory instrument or other subordinate legislation made thereunder or pursuant thereto;
- 1.2.5 references to costs charges expenses or remuneration shall be deemed to include, in addition, references to any value added tax or similar tax charged or chargeable in respect thereof;
- 1.2.6 a reference to any agreement or document (including this Agreement) shall be construed as a reference to such agreement or document as the same may be amended varied supplemented or novated in writing by the parties thereto in accordance with the law to which that agreement or document is subject and the particular conditions (if any) of such agreement or document;
- 1.2.7 references to indemnifying any person against any circumstance include indemnifying and keeping that person harmless from all actions claims and proceedings from time to time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- 1.2.8 the expression “**month**” means a calendar month; and
- 1.2.9 reference to “**arms’ length**” means the relationship which exists between persons who are strangers to each other and who bear no special duty obligation or relation to each other.
- 1.3 The obligation of the Customer in this Agreement to pay any Taxes shall not extend to Taxes payable by the Bank on the income of the Bank.
- 1.4 Any covenant by a Party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person so far as this is within that Party’s power or control.
- 1.5 If a definition of a particular term or expression in this Agreement imposes substantive rights and obligations on a Party to this Agreement such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.
- 1.6 Where any term is defined within the context of any particular clause in this Agreement the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning ascribed to it for all purposes wherever used in this Agreement notwithstanding that that term has not been defined in this clause I.

1.7 Headings to clauses are for convenience only and shall not affect the construction or interpretation of this Agreement.

1.8 In the event that:

1.8.1 there exists any inconsistency between the provisions of this Agreement and a Letter of Offer the provisions of this Agreement shall prevail; and

1.8.2 any covenant or agreement (a “**New Provision**”) to be performed or observed on the part of the Customer is contained in a Letter of Offer which covenant or agreement is not expressly contained in this Agreement, then that New Provision shall be deemed incorporated herein *in extenso* and shall constitute a term of this Agreement as if originally set out in this Agreement.

2 .Musharakah

2.1 This Agreement together with the other Transaction Documents sets out the terms and conditions upon and subject to which the Bank and the Customer have agreed to enter into each Musharakah.

2.2 It is agreed that:

2.2.1 legal title to the Musharakah Assets will remain vested in the Customer during the term of a Musharakah; and

2.2.2 beneficial interest in the Musharakah Assets during the term of a Musharakah shall be held by the Customer and the Bank as proprietors in common in proportion equal to the Customer’s Musharakah Share (in the case of the Customer) and the Bank’s Musharakah Share (in the case of the Bank).

2.3 The Bank shall lease the Bank’s Musharaka Share to the Customer pursuant to the Lease Agreement.

3 .Purchase of Musharakah Assets

3.1 The Parties, subject to the terms and conditions of this Agreement and each Purchase Agreement, agree that each Musharakah will be established upon the coming in full force and effect of each Purchase Agreement on the relevant Musharakah Commencement Date.

3.2 The Customer makes the following representations and warranties set out in this clause 3.2 to the Bank on the date of each Purchase Agreement:

3.2.1 that the Customer holds the legal title of the Musharakah Assets free from Encumbrances (other than any Encumbrance in favour of the Bank) and the Customer has good valid and marketable title to the Musharakah Assets free from any defects in title;

- 3.2.2 that all Taxes (if any) in respect of the ownership and use of the Musharakah Assets have been paid in full by the Customer and that no claims or Notices have been made against the Customer by any competent taxing authority in respect of any unpaid Taxes;
- 3.2.3 that the Customer has not entered into an agreement or arrangement with any person (other than the Bank) to:
- (a) sell lease or otherwise dispose the Musharakah Assets;
 - (b) create any Encumbrances over the Musharakah Assets; and
 - (c) grant any option to purchase lease or otherwise part with possession or otherwise alienate the Musharakah Assets; and
- 3.2.4 that the Customer is in possession of the Musharakah Assets and, unless otherwise notified to the Bank by the Customer in writing and consented to by the Bank in writing, no person other than the Customer is in occupation or possession of the Musharakah Assets.
- 3.3 The representations and warranties in sub-clauses 3.2.1 to 3.2.4 (both inclusive) are deemed to be repeated by the Customer on the Musharakah Commencement Date and on each Instalment Payment Date.

4 . Customer's Representations and Warranties

- 4.1 The Customer makes the representations and warranties set out in this clause 4.1 to the Bank on the date of this Agreement:
- 4.1.1 (in the case where the Customer is a company) it is a company duly incorporated and validly existing under the laws of Kenya;
 - 4.1.2 the Customer has the power to own the Customer's assets and carry on the Customer's business as it is being conducted under the laws of Kenya and in the case where the Customer is a company that its Subsidiaries have the power to own their own assets;
 - 4.1.3 the obligations expressed to be assumed by the Customer in each Transaction Document are legal valid binding and enforceable obligations in accordance with their respective terms;
 - 4.1.4 the entry into and performance by the Customer of, and the transactions contemplated by, each Transaction Document do not and will not conflict with:
 - a) any law or regulation applicable to the Customer;
 - b) the Customer's or any of its Subsidiaries' constitutional documents (if applicable); or
 - c) any agreement or instrument binding upon the Customer or any of the Customer's assets.

- 4.1.5 the Customer has the power to enter into perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, each Transaction Document to which the Customer is a party and the transactions contemplated by each Transaction Document;
- 4.1.6 all Authorisations required or desirable:
- a) to enable the Customer to lawfully enter into exercise the Customer's rights and comply with the obligations in each Transaction Document; and
 - b) to make this Agreement admissible in evidence in Kenya, have been obtained or effected and are in full force and effect;
- 4.1.7 without prejudice to the Customer's obligations under clause 4.1.16, the Customer is not required to make any deduction or withholding on account of Taxes from any payment the Customer may make under this Agreement or any other Transaction Document;
- 4.1.8 no Event of Default is continuing or might reasonably be expected to result from the entering into of a Musharakah or any Transaction Document;
- 4.1.9 no other event or circumstance is outstanding which:
- a) constitutes a default under any other agreement or instrument which is binding on the Customer or any of its Subsidiaries (if applicable) or to which the assets of the Customer or any of its Subsidiaries (if applicable) are subject; or
 - b) which might have a Material Adverse Effect;
- 4.1.10 the Customer's financial statements were prepared in accordance with the Accounting Standards consistently applied.
- 4.1.11 there has been no material adverse change in the Customer's business or financial condition since the publication of the Customer's previously prepared financial statements in the case where the Customer is a company that is part of a Group, there has been no material adverse change in the Group's business or financial condition since the publication of the Group's previously prepared consolidated financial statements;
- 4.1.12 all written information supplied by the Customer or any member of the Group (if applicable) to the Bank was true complete and accurate in all material respects as at the date it was given and is not misleading in any respect;
- 4.1.13 the Customer's payment obligations under this Agreement and the other Transaction Documents rank at least *pari passu* with the claims of all the Customer's other unsecured and unsubordinated creditors except for obligations

mandatorily preferred by law applying to individuals or companies generally (as the case may be);

4.1.14 no litigation arbitration or administrative proceedings of or before any court arbitral body or agency or governmental regulatory authority or other investigations proceedings or disputes which, if adversely determined, might reasonably be expected to have a Material Adverse Effect and (to the best of the Customer's knowledge and belief) no such proceedings have been started or threatened against the Customer;

4.1.15 the Customer is in compliance with all Environmental and Social Laws;

4.1.16 the Customer and each member of the Group (if applicable) has duly and punctually paid and discharged all Taxes imposed upon the Customer or the Customer's assets (including the Musharakah Assets) within the time period allowed without incurring penalties save to the extent that:

- (a) payment is being contested in good faith;
- (b) the Customer and each member of the Group (if applicable) has maintained adequate reserves for those Taxes; and
- (c) payment can be lawfully withheld;

4.1.17 the Customer and each member of the Group (if applicable) has all appropriate Authorisations to use the assets (including the Musharakah Assets) necessary to carry on the Customer's business as presently conducted;

4.1.18 each Certificate of Authority (if applicable) has been duly issued by the Customer and is valid and binding on the Customer;

4.1.19 the Musharakah Assets are in a good state of repair and condition and all information details and confirmations contained in and/or referred to in any report on title of the Musharakah Assets and other documents supplied to the Bank in connection with the Musharakah Assets are true correct accurate in all respects;

4.1.20 no breach has to any of the terms conditions and covenants (if any) set out in or referred to in the document (s) of title of the Musharakah Assets; and

4.1.21 no insolvency proceedings have been commenced against the Customer or any member of the Group (if applicable) or to the best of the Customer's knowledge, threatened against the Customer or each member of the Group (if applicable);

4.2 The representations and warranties in sub-clauses 4.1.1 to 4.1.21 (both inclusive) are deemed to be made by the Customer (by reference to the facts and circumstances then existing and the representation and warranties relating to financial statements shall for this purpose refer to the then latest financial statements) on the date as of which each Purchase Agreement is made on each Musharakah Commencement Date and on each Instalment Payment Date.

5 . **Information Undertakings**

- 5.1 The undertakings in this clause 5 shall remain in force from the date of this Agreement for so long as any monies or liabilities are outstanding under this Agreement and any other Transaction Documents.
- 5.2 The Customer shall supply to the Bank in the English language:
- 5.2.1 (in the case where the Customer is a company) all documents dispatched by the Customer, the Customer's creditors generally at the same time as they are dispatched;
 - 5.2.2 (in the case where the Customer is a company), as soon as the same become available, but in any event within one hundred and eighty (180) days after the end of each of the Customer's financial years, its audited financial statements;
 - 5.2.3 (in the case where the Customer is a company), as soon as the same became available, but in any event within forty five (45) days after the end of each quarter of each of the Customer's financial years, its financial statements for that period;
 - 5.2.4 promptly upon becoming aware of them, the details of any litigation arbitration or administrative proceedings which are currently threatened or pending against the Customer, and which might, if adversely determined, have a Material Adverse Effect;
 - 5.2.5 promptly, such further information regarding the financial condition business and operations of the Customer as the Bank may reasonably request;
 - 5.2.6 a copy of any notice order or other similar Notice affecting or likely to affect the Musharakah Assets or any parts thereof or any interest therein immediately on receipt by the Customer of the same and shall on Notice by the Bank supply to the Bank (at the cost of the Customer) all information relating to the matters mentioned in such notice order or other similar Notice and shall take (at the expense of the Customer) such action in respect thereof as the Bank shall require; and
 - 5.2.7 without prejudice to the provisions of sub-clause 5.2.4 the Customer will forthwith provide to the Bank a copy of any notice claim Notice or order by whomsoever served or given which may materially affect the value of the Musharakah Assets or the rights of the Customer in respect of the Musharakah Assets or the rights of the Bank under this Agreement or the other Transaction Documents.
- 5.3 In the case where the Customer is a company, each set of the financial statements delivered by the Customer pursuant to clause 5.2 shall be certified by a director of the Customer as fairly representing the Customer's financial condition and, if applicable, the Group's financial condition as at the date at which those financial statements were drawn up.

- 5.4 In the case where the Customer is a company, the Customer shall procure that each set of its financial statements delivered pursuant to sub-clauses 5.2.2 and 5.2.3 is prepared using the Accounting Standards and accounting practices and financial reference periods consistent with those applied in the preparation of its yearly audited financial statements unless, in relation to any set of financial statements, it notifies the Bank that there has been a change in the Accounting Standards or the accounting practices or reference periods and its Auditor delivers to the Bank a description of any change necessary for those financial statements to reflect the Accounting Standards accounting practices and reference periods upon which its yearly audited financial statements were prepared. Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the yearly audited financial statements were prepared.
- 5.5 In the case of a Company, the Customer shall supply to the Bank all documents dispatched by the Customer to the Customer's shareholders (or any class of them) or the Customer's creditors generally at the same time as they are dispatched.
- 5.6 The Customer shall notify the Bank of any Event of Default (and the steps, if any, being taken to remedy any Event of Default) promptly upon becoming aware of its occurrence.
- 5.7 Promptly upon a request by the Bank, the Customer shall supply to the Bank a certificate certifying that no Event of Default is continuing or if an Event of Default is continuing, specifying the Event of Default and the steps, if any, being taken to remedy the Default. The aforesaid certificate shall be signed by:
- 5.7.1 two (2) of the Customer's directors or if the Bank agrees in writing, the Customer's other senior officers on the Customer's behalf (in the case of a company); or
- 5.7.2 the Customer (in the case of an individual).

6 . Positive Undertakings

- 6.1 The undertakings in this clause 6 shall remain in force from the date of this Agreement for so long as any monies or liabilities are outstanding under this Agreement and any other Transaction Document.
- 6.2 The Customer shall promptly:
- 6.2.1 obtain comply with and do all that is necessary to maintain in full force and effect; and
- 6.2.2 supply certified copies to the Bank of, any Authorisation required under any law or regulation of Kenya to enable the Customer to perform the Customer's obligations under the Transaction Documents to ensure the legality validity enforceability or admissibility in evidence in Kenya of the Transaction Documents to use and operate the Musharakah Assets and to undertake the Customer's business.

- 6.3 The Customer shall comply in all respects with all laws and observe all laws by laws or regulations (whether or not having the force of law including any by laws or regulations promulgated by a local authority) to which the Customer and the Musharakah Assets may be subject to.
- 6.4 The Customer shall, (and the Customer shall procure that each member of the Group (if applicable)) and all owners and occupiers of the Musharakah Assets shall comply in all material respects with all Environmental and Social Laws (in the case of owners and occupiers these obligations will extend to the occupation and use of the Musharakah Assets) and take all reasonable steps in anticipation of known or expected future changes to or obligations under the same.
- 6.5 The Customer shall permit the Bank and/or accountants or other professional advisers and contractors of the Bank free access at all reasonable times and on reasonable notice to:
- 6.5.1 (at the cost of the Customer) inspect and take copies of and extracts from the books accounts and records of the Customer and each member of the Group (if applicable); and
- 6.5.2 meet and discuss matters with senior management and employees of the Customer (if applicable).
- 6.6 The Customer shall permit the Bank and/or the Bank's representatives and agents to inspect the Musharakah Assets on the Bank giving to the Customer twenty-four (24) hours prior notice in writing in that regard.
- 6.7 The Customer shall at all times store use and operate the Musharakah Assets in a proper manner and shall at all times use and operate such Musharakah Assets according to the best industry practice and strictly in conformity with the instructions of the manufacturers and/or suppliers thereof.
- 6.8 The Customer shall procure, if required by the Bank, that any particular Musharakah Assets specified by the Bank shall be handled used and operated by authorised and suitable trained personnel.
- 6.9 The Customer shall not do or omit to do any act or thing by which the warranties given by the suppliers and/or manufacturers of the Musharakah Assets may become invalidated or unenforceable whether wholly or in part.
- 6.10 The Customer shall observe and perform all covenants and stipulations from time to time affecting the Musharakah Assets or the mode of user or enjoyment of the same and will not without the prior consent in writing of the Bank enter into any onerous or restrictive obligations affecting any part of the Musharakah Assets.
- 6.11 The Customer shall permit the Bank its employees and its agents during working hours or at any time in the event of an emergency (as determined by the Bank in its sole discretion) to inspect the Musharakah Assets to enable the Bank its employees or its agents (as the case may be) to examine the state and condition thereof.

6.12 The Customer shall punctually pay in full all existing and future taxes duties charges assessments impositions and 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 during the continuance of this Agreement payable in respect of the Musharakah Assets or any part thereof or by the owner thereof.

6.13 In the case where the Customer is a company, the Customer shall comply with and observe all the provisions of the Customer's memorandum and articles of association.

7 . Negative Undertakings

7.1 The undertakings in this clause 7 shall remain in force from the date of this Agreement for so long as any monies or liabilities are outstanding under this Agreement or any other Transaction Documents.

7.2 The Customer shall not, without the prior written consent of the Bank, create or permit to subsist any Encumbrances over any of the Customer's assets (including, without limitation, the Musharakah Assets), other than any Encumbrances granted in respect of Financial Indebtedness of the Customer incurred prior to the date hereof which is approved by the Bank and any Encumbrances created in favour of the Bank.

7.3 The Customer shall not without the prior written consent of the Bank:

7.3.1 sell transfer or otherwise dispose of any of the Customer's assets (including the Musharakah Assets) on terms whereby they are or may be leased to or re-acquired by any other member of the Group (if applicable);

7.3.2 sell transfer or otherwise dispose of any receivables on recourse terms;

7.3.3 enter into any arrangement under which money or the benefit of a bank or other account may be applied set-off or made subject to a combination of accounts; or

7.3.4 enter into any other preferential arrangement having a similar effect, in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

7.4 In the case of a company, the Customer shall not (and the Customer shall procure that its shareholders shall not) pay make or declare any dividend or other distribution in respect of any financial year of the Customer where:

7.4.1 the proposed payment or distribution is not to be made out of retained earnings or share premium account (excluding any amount resulting from the revaluation of the Customer's assets);

7.4.2 any Event of Default has occurred and is continuing; or

7.4.3 where the making of any such dividend or other distribution could reasonably be expected to result in any Event of Default under this Agreement.

- 7.5 In the case of a company, the Customer shall:
- 7.5.1 not (and the Customer shall procure that no other member of the Group shall), without the prior written consent of the Bank enter into any amalgamation demerger merger or corporate reconstruction; and
- 7.5.2 procure that its shareholders as at the date of this Agreement will not transfer assign or sell the legal and/or beneficial interest in any share in the capital of the Customer to any person without the prior written consent of the Bank.
- 7.6 The Customer shall procure that no substantial change is made to the general nature of the business of the Customer from that carried on at the date of this Agreement.
- 7.7 The Customer shall not, (and in the case where the Customer is a member of a Group the Customer shall procure that no member of the Group will) without the prior written consent of the Bank, enter into any transaction with any person or enter into or continue business relations with the Customer's employees (and if applicable the Customer's shareholders and Subsidiaries) except on proper commercial terms negotiated at arms' length.
- 7.8 The Customer shall not appoint any company firm or individual to replace the Auditor without the prior written consent of the Bank, and, in any event, without promptly providing to the Bank an Auditor's Letter to the replacement Auditor.
- 7.9 The Customer will not do or cause or permit to be done anything which may in any way depreciate or otherwise adversely affect the value of the Musharakah Assets nor permit any person (other than the Bank) to become entitled to any proprietary right or interest in or to the Musharakah Assets which might adversely affect the value of the Musharakah Assets or any part thereof.
- 7.10 The Customer will not without the prior consent in writing of the Bank part with possession of transfer sell assign lease or give a licence to use or otherwise dispose of any interest in the Musharakah Assets or any part thereof or attempt or agree so to do.
- 7.11 The Customer covenants with the Bank that no person (other than the Customer) shall without the prior consent in writing of the Bank be registered as the registered proprietor of the Musharakah Assets or any part thereof or any interest therein nor without such consent first having been obtained shall the Customer create or permit to arise or subsist any Encumbrances in relation to the Musharakah Assets.

8 . Conditions Precedent

8.1 No Musharakah shall be entered into under the Transaction Documents unless the Bank has received all the documents and other evidence listed below in this **clause 8.1** in form and substance satisfactory to the Bank:

8.1.1 In the case where the Customer is a company:

- a) a copy (certified by a director or company secretary of the Customer to be complete and up to date) of the Certificate of Incorporation and Memorandum and Articles of Association of the Customer;
 - b) a copy (certified by a director or company secretary of the Customer to be a true copy) of the resolution of the Board of Directors of the Customer (inter alia):
 - i) approving the terms of and the transactions contemplated by the Transaction Document including the entering into of Musharakah transactions hereunder on a revolving basis;
 - ii) authorising the entry execution delivery and performance by the Customer of this Agreement and each other Transaction Document for each Musharakah and such other documents as may be related or incidental to the terms of each Transaction Document by the Customer; and
 - iii) authorising the directors and company secretary of the Customer to witness the affixing of the company seal of the Customer to this Agreement and each other Transaction Documents and further authorizing the issuance of the Certificate of Authority or authorizing any other person (including persons identified in a Certificate of Authority) to execute the Transaction Documents for and on behalf of the Customer;
- 8.1.2 duly executed stamped and registered originals of the Security Documents having been received by the Bank;
- 8.1.3 any fees commissions and/or expenses required to be paid by the Customer to the Bank prior to entering into of a Musharakah having been received by the Bank in full;
- 8.1.4 all such documents as have been requested by the Bank in connection with this Agreement and the other Transaction Documents have been received by the Bank;
- 8.1.5 legal opinions in form and substance satisfactory to the Bank having been obtained from legal advisors acceptable to the Bank;
- 8.1.6 the Bank being satisfied with regard to all insurance obligations of the Customer pursuant to this Agreement;
- 8.1.7 the financial statements of the Customer (and, if applicable, the consolidated financial statements of the Customer) and, if applicable, subsidiaries, as the case may be, having been provided to the Bank;
- 8.1.8 all Authorisations required by the Customer in the opinion of the Bank having been obtained and being in full force and effect; and
- 8.1.9 such reports on title by advocates approved by the Bank valuations searches in respect of the Musharakah Assets, inspection agency reports expert reports and confirmations in relation to the Musharakah Assets as the Bank may require.

8.2 The entering into of each Musharakah shall be further subject to the fulfilment of the following conditions (as shall be determined by the Bank in the Bank's sole discretion):

8.2.1 the payment of any Instalment Payment or any other amount under any Transaction Document shall not result in any:

- a) breach of the Act or any prudential regulations promulgated under the Act; or
- b) violation by any Party of any applicable law including any statute rule regulation or circular of any relevant governmental or quasi-governmental authority or central bank;

8.2.2 the Bank's rights under the Security Documents have been validly created and perfected and are duly subsisting in terms of the Security Documents;

8.2.3 the Bank has received such other documents and information as it may reasonably request in respect of the Musharakah Assets;

8.2.4 the representations and warranties set out in this Agreement being true and correct on and as of each Musharakah Commencement Date as if each was made with respect to facts and circumstances existing at such time;

8.2.5 no Default shall have occurred and be continuing or is likely to accrue and that the payment of the Purchase Price shall not result in the occurrence of any Event of Default;

8.2.6 all fees commission expenses required to be paid by the Customer to the Bank pursuant to the Transaction Documents and the Letter of Offer having been received by the Bank in full;

8.2.7 delivery by the Customer to the Bank of a Notice to fulfil a promise for the face value referred to in the relevant Letter of Offer; and

8.2.8 delivery of such reports on title by advocates approved by the Bank valuations searches inspection agency reports expert reports and confirmations in relation to the Musharakah Assets as the Bank may require.

8.3 The Bank shall have the right to waive any conditions precedent in **clauses 8.1** and **8.2** in whole or in part.

9 . Events of Default

9.1 Each of the events or circumstances set out in this clause 9 is an Event of Default:

9.1.1 if the Customer does not pay on the due date any amount payable under or pursuant to a Transaction Document at the place and in the currency in which it is expressed to be payable.

9.1.2 if the Customer does not comply with any provision of this Agreement or any other Transaction Document (other than those referred to in clause 9.1). No Event of Default under this clause 9.1.2 will occur if the failure to comply is capable of

remedy (in the opinion of the Bank) and is remedied within fifteen (15) days of the Bank giving notice to the Customer or the Customer becoming aware of the failure to comply.

9.1.3 If any representation warranty or statement made or deemed to be made by the Customer in this Agreement or any other Transaction Document or any other document delivered by or on behalf of the Customer under or in connection with this Agreement or any other Transaction Document is or proves to have been incorrect or misleading in any respect when made or deemed to be made.

9.1.4 If any Financial Indebtedness of the Customer or any member of the Group (as the case may be) is not paid when due nor within any originally applicable grace period.

9.1.5 If any Financial Indebtedness of the Customer or any member of the Group (as the case may be) is declared to be or otherwise becomes or may become due and payable prior to its specified maturity as a result of an Event of Default (however described).

9.1.6 If the Customer or any member of the Group (as the case may be) is unable or admits inability to pay its debts as they fall due suspends making payments on any of debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of the Customer's creditors with a view to rescheduling any of the Customer's Financial Indebtedness.

9.1.7 In the case where the Customer is a company:

- a) If a moratorium is declared in respect of any Financial Indebtedness of the Customer or any member of the Group;
- b) the suspension of payments a moratorium of any indebtedness winding-up dissolution administration or reorganisation (by way of voluntary arrangement scheme of arrangement or otherwise) of the Customer or any member of the Group;
- c) a composition compromise assignment or arrangement with any creditor of the Customer or any member of the Group;
- d) the appointment of a liquidator, receiver, insolvency practitioner, administrator compulsory manager or other similar officer in respect of any member of the Group or any assets of any member of the Group; or
- e) the enforcement of any Encumbrances over any assets of the Customer or any member of the Group, or any analogous procedure or step is taken in any jurisdiction.

9.1.8 In the case of an individual:

- a) If a petition is presented or an order is made or analogous proceedings or steps are taken in any jurisdiction for making the Customer bankrupt or if the Customer dies or becomes of unsound mind; or
 - b) If the Customer stops payment or commits an act of bankruptcy or is unable to pay his debts as and when they fall due or if a notice is issued convening a meeting of the creditors of the Customer or if the Customer proposes or enters into any composition or arrangement with his creditors generally or any class of his creditors.
- 9.1.9** If any action legal proceedings analogous proceedings or steps or other procedures are taken in any jurisdiction in relation to the enforcement of any lien over any assets of the Customer.
- 9.1.10** If any expropriation attachment sequestration distress or execution affects any of the Customer's assets (including Musharakah Assets) or assets of a member of the Group (if applicable) and is not fully discharged within thirty (30) days.
- 9.1.11** If it is or becomes unlawful for the Customer to perform any of the Customer's obligations under this Agreement or any other Transaction Document.
- 9.1.12** The Customer repudiates this Agreement or any other Transaction Document or evidences an intention to repudiate this Agreement or any other Transaction Document.
- 9.1.13** Any event or circumstance occurs which the Bank reasonably believes might have a Material Adverse Effect.
- 9.1.14** On and at any time after the occurrence of an Event of Default the Bank may by notice to the Customer:
- a) cancel the ability of the Customer to request the Bank to enter into a Musharakah; and
 - b) trigger the provisions of clause 9.1.15.
- 9.1.15** On and at any time after an Event of Default the Bank may by notice to the Customer require the Customer to immediately purchase all the Musharakah Units of the Bank then outstanding in relation to each Musharakah (and thereby reduce the Bank's Musharakah Share to zero) and upon the Bank issuing a notice to the Customer on the terms of this clause 9.1.15 the Customer shall be bound to purchase all the Musharakah Units of the Bank then outstanding in relation to each Musharakah as aforesaid and immediately pay the Aggregate Outstanding Buy Out Price and all other monies and liabilities due and payable under this Agreement and the other Transaction Documents which shall be and constitute a debt lawfully due and payable by the Customer to the Bank.

10 . Further Assurance

The Customer shall forthwith on Notice by the Bank execute such documents and such further assignments or other assurances in favour of the Bank as the Bank shall from time to time require in order to perfect or protect the Bank's rights under this Agreement and the other Transaction

Documents or to facilitate the sale and purchase of Musharakah Assets in connection with a specific Musharakah such further documents assignments and assurances to be in such form required by the Bank and to be prepared by or on behalf of the Bank at the cost of the Customer.

11 . Indemnities

11.1 The Customer shall on first written Notice by the Bank indemnify the Bank from and against any Taxes payable by the Bank in connection with the purchase of Musharakah Assets and the subsequent sale of the Bank's Musharakah Share to the Customer pursuant to a Musharakah.

11.2 The Customer shall on first written Notice by the Bank indemnify the Bank from and against any cost expense liability Tax loss or damage suffered or incurred by the Bank (whether directly or indirectly) as a result or consequence of:

11.2.1 a failure by the Customer to pay any amount due this Agreement or any other Transaction Document on its due date;

11.2.2 the occurrence of any Event of Default or any other breach by the Customer of the Customer's obligations and duties hereunder or under any other Transaction Document; and

11.2.3 the purchase or ownership of Musharakah Assets by the Bank or the Customer not purchasing the Musharakah Units of the Bank agreed to be purchased by the Customer pursuant to this Agreement the Undertaking to Purchase and the Lease Agreement.

11.3 The Customer shall be liable for all loss costs expenses liabilities and damage resulting from or in connection with any accidents or injuries (whether fatal or otherwise) occurring to any person or property which may result from or be traceable to the custody possession exploitation enjoyment or use of the Musharakah Assets by the Customer, the Customer's contractors, employees or agents or the employees or agents of the Customer's contractor or any failure on the part of the Customer to observe and perform any of the Customer's obligations under the Transaction Documents or the negligence of the Customer, the Customer's, contractors, employees or agents or the employees or agents of the Customer's contractor. If the Bank shall have to pay any money in respect of any claim or Notice for which the Customer is liable hereunder or incurs any costs charges or expenses (including but not limited to legal fees) in connection with any such claim or Notice , the amount so paid and the costs charges and expenses incurred by the Bank shall be paid by the Customer to the Bank in full forthwith upon first written Notice by the Bank.

11.4 The Customer shall on first written Notice by the Bank indemnify and keep indemnified (on a full and unqualified indemnity basis) the Bank from and against any and all claims loss costs damage suits and expenses (including legal fees) which the Bank may sustain or incur as a result of any accident or injury (whether fatal or otherwise) suffered by or any damage or loss occurring to any person or property and resulting from or traceable or related to the custody possession exploitation enjoyment or use of the Musharakah Assets by the Customer the Customer's contractors employees or agents or the employees or agents of the Customer's

contractor or to any failure on the part of the Customer to observe and perform the Customer's obligations under this Agreement or the other Transaction Documents.

12 . Set-Off

- 12.1 The Customer hereby agrees that the Bank may at any time without notice notwithstanding any settlement of account or other matter whatsoever combine or consolidate all or any of the Customer's then existing accounts including accounts in the name of the Customer or of the Customer jointly with others (whether current deposit loan or of any other nature whatsoever whether subject to notice or not and whether in Kenya Shillings or in any other currency) wheresoever situate and set-off or transfer any sum standing to the credit of any one or more such accounts in or towards the satisfaction of any obligations and liabilities of the Customer to the Bank whether such liabilities be present future actual contingent primary collateral several or joint. Where such combination set-off or transfer requires the conversion of one currency into another such conversion shall be calculated at the then prevailing buying rate of exchange of the Bank or such other bank in Kenya nominated by the Bank (as conclusively determined by the Bank) for purchasing the currency for which the Customer is liable with the existing currency.
- 12.2 The Customer unconditionally and irrevocably confirms that the Bank may on receipt by the Bank of monies under the export contracts and letters of credit on behalf of the Customer apply such monies towards the payment of the monies and liabilities outstanding hereunder or under any other Transaction Documents without prior notification to the Customer.

13 . General

- 13.1 No failure or delay by the Bank in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 13.2 Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 13.3 Any notice or Notice for payment by the Bank under this Agreement or any other Transaction Document shall, without prejudice to any other effective mode of serving the same, be deemed to have been properly served on the Customer if served on the Customer (in the case of an individual) or if served on any one of the directors or on the company secretary of the Customer (in the case of a company) or sent by letter by registered post to the Customer at the Customer's postal address referred to above or delivered to the Customer at the Customer's principal place of business in Kenya. Any such notice or Notice shall be deemed to be served in the case of personal service at the time of delivery and if sent by registered post shall be deemed to have been served on the addressee five (5) Business Days following the day of posting notwithstanding that it be undelivered or returned

undelivered and in proving such service it shall be sufficient to prove that the notice or Notice was properly addressed and sent by registered post.

- 13.4 The rights powers and remedies provided by this Agreement are cumulative and are not nor are they to be construed as exclusive of any rights powers and remedies provided by law.
- 13.5 A certificate of any officer of the Bank as to the amount of any monies or liabilities owing or incurred to the Bank by the Customer shall, save in the case of manifest error, be binding on the Customer and conclusive for all purposes.
- 13.6 The Bank shall have a full and unfettered right to assign the whole or any part of the benefit of this Agreement free from any equities and the assignees and other successors whether immediate or derivative of the Bank shall be entitled to enforce and proceed upon this Agreement in the same manner as if named herein. This Agreement shall remain in effect and be binding on the Customer notwithstanding any change in the constitution of the Bank or the Bank's absorption in or amalgamation or merger with any other person and notwithstanding the sale or transfer of all or any part of the Bank's undertaking and assets to another person whether the person with which the Bank is absorbed into or amalgamates or merges with or the person to which the Bank transfers all or any part of its undertaking and assets either on a reconstruction or sale or transfer as aforesaid shall or shall not differ from the Bank in its objects character or constitution it being the intent of the Customer that the provisions herein contained shall remain valid and effectual in all respects in favour of the Bank and that the benefit thereof and all rights conferred upon the Bank thereby may be assigned to and enforced by any such person and proceeded on in the same manner to all intents and purposes as if such person had been named herein instead of or in addition to the Bank. The Bank shall be entitled to impart any information concerning the Customer to any such assignee or successor or any proposed assignee or other successor or to any credit reference agency to assist other persons made credit decisions with respect to the Customer. The Bank shall also be entitled to obtain information from credit reference agencies about the Customer and the Customer's directors (as the case may be from time to time. The Customer shall not be entitled to assign or transfer any of the Customer's rights and obligations under this Agreement.
- 13.7 Any liberty or power which may be exercised or any determination which may be made hereunder by the Bank may be exercised and made in the absolute and unfettered discretion of the Bank who shall not be under any obligation to give reasons therefor.
- 13.8 Where the consent of the Bank is required under any of the provisions of this Agreement the Bank may withhold consent in its sole discretion without giving reasons therefor or may grant consent upon and subject to such terms and conditions as the Bank shall think fit. Where it is necessary to determine whether any act circumstance event matter or thing is "material" for the purposes of any provision hereunder the Bank's opinion thereupon shall be final and binding on the Customer.
- 13.9 The Bank may from time to time and at any time waive or authorize on such terms and conditions (if any) as shall seem expedient to the Bank any breach or proposed breach by the

Customer of any of the covenants conditions provisions or obligations contained in this Agreement without prejudice to the rights of the Bank in respect of any subsequent breach thereof.

- 13.10 It is expressly agreed by the Parties that the relationship of the Parties under the Transaction Documents shall be that of a financing arrangement between Bank and Customer and not of partners and no joint venture or partnership shall or shall be deemed to exist or arise between the Parties.

14 Currency Clauses

- 14.1 All monies received or held by the Bank under this Agreement or any other Transaction Document may from time to time after Notice has been made by the Bank be converted into such other currency or currencies as the Bank considers necessary or desirable to cover all amounts and liabilities due and payable under this Agreement and the other Transaction Documents and such conversion shall be made in accordance with the Bank's usual practice of converting the existing currency into the other currency or currencies.
- 14.2 If and to the extent that the Customer fails to pay any amount due and payable under this Agreement or any other Transaction Documents on Notice , the Bank may in its absolute discretion without notice to the Customer purchase at any time thereafter so much of any currency or currencies as the Bank considers necessary or desirable to cover the amount due and payable and such purchase will be in accordance with the Bank's usual practice of purchasing such other currency or currencies with the existing currency and the Customer hereby agrees to indemnify the Bank against the full cost incurred by the Bank in respect of any such purchase.
- 14.3 No payment to the Bank (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the Customer 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 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 Customer and shall be entitled to enforce this Agreement to recover the amount of the shortfall.
- 14.4 If the Bank is required to convert a currency into another currency for the purpose of making any calculation or determination under this Agreement the Bank shall effect the conversion at the Bank's applicable spot rate of exchange as determined by the Bank.

15 . Increased Costs Illegality and Cancellation

- 15.1 If any law or regulation or any order of any court tribunal or authority binding upon the Bank renders it unlawful for the Bank to disburse the Purchase Price or delays the payment of the Instalment Payments the Customer Buy Out Price or the Buy Out Price, the Bank shall forthwith notify the Customer of such fact and may require the Customer to purchase all the

Musharakah Units of the Bank then outstanding under each Musharakah (and thereby reduce the Bank's Musharakah Share to zero) and repay the Aggregate Outstanding Buy Out Price at a future date specified by the Bank, and the Customer hereby undertakes to purchase all the Musharakah Units of the Bank as aforesaid and repay the Aggregate Outstanding Buy Out Price in accordance with such notice together with all other monies and liabilities payable by the Customer under this Agreement and the other Transaction Documents.

- 15.2 If any law or regulation or any order of any court tribunal or authority has the effect of subjecting the Bank to Taxes or changes the basis or rate of Taxation with respect to any payment under this Agreement and the other Transaction Documents (other than Taxes on the overall income of the Bank), the Customer shall be liable to pay such amount of Taxes in addition to the amount otherwise payable by it under this Agreement or the other Transaction Documents.
- 15.3 If due to any change in law or regulation or any order of any court tribunal or authority or any direction or requirement of any competent governmental authority, any liquidity or reserve requirement or other similar requirements are imposed on the Bank, or any other condition is imposed on the Bank in respect of the Transaction Documents or the Bank's obligations under any Transaction Document, and as a result of any of the foregoing the cost to the Bank of maintaining or funding the Outstanding Buy Out Price in respect of each Musharakah is increased or the effective return of the Bank in respect of each Musharakah is reduced, the Bank may by notice forthwith Notice repayment of the Aggregate Outstanding Buy Out Price and, in such event, the Customer hereby undertakes to purchase all the Musharakah Units of the Bank then outstanding under each Musharakah (and thereby reduce the Bank's Musharakah Share to zero) and repay the Aggregate Outstanding Buy Out Price together with all other monies and liabilities payable by the Customer under the Transaction Documents at a date to be specified by the Bank.
- 15.4 Each facility in respect of each Musharakah shall be subject to renewal by the Bank in the Bank's sole and absolute discretion from year to year (or such other period or periods as determined by the Bank in the Bank's sole discretion) commencing from the date of issue of the first Letter of Offer. The Bank shall be under no obligation to issue a further Letter of Offer and the Musharakah facility shall not be renewed if a Letter of Offer is not issued by the Bank. Non-renewal of the facility in respect of each Musharakah shall not prejudice or otherwise restrict or limit in any way whatsoever the Bank's rights and privileges under or pursuant to this Agreement and the other Transaction Documents and shall not vary limit alter or amend any of the Customer's obligations and duties under this Agreement or under the other Transaction Documents.
- 15.5 In the event that the provisions of clause 3.2 of a Payment Agreement apply and the Bank and the Customer are not able to agree to a revision in the Instalment Payments, the Bank's shall be entitled upon giving not less than thirty (30) days prior notice in writing to the Customer to require to Customer to repay the Outstanding Buy Out Price at a future date specified by the Bank and the Customer hereby undertakes on the date specified by the Bank to purchase the Musharakah Units of the Bank then outstanding in relation to the relevant

Musharakah and repay the Outstanding Buy Out Price in accordance with the Bank's notice under this clause 18.5 together with all other monies and liabilities due and payable by the Customer under the Transaction Documents in respect of the relevant Musharakah.

16 . Law and Dispute Resolution

16.1 This Agreement is governed by and shall be construed in accordance with the laws of the Republic of Kenya.

16.2 The Parties hereby agree to submit to the non-exclusive jurisdiction of the courts of Kenya in connection with any legal action suit or proceedings arising out of or relating to this Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the Parties as of the date and year first aforementioned.

THE BANK

Signed by]
the duly authorised representative of]
PREMIER BANK KENYA LIMITED]
under a Power of Attorney registered in the]
Registry of Documents in Volume]
Folio File]
in the presence of:]
]]
ADVOCATE]

I, CERTIFY THAT appeared before me on the
.....day of.....20..... and being known to me/being identified
by*.....acknowledged the above signature(s) or mark(s) to be his/hers
and that he/she had freely and voluntarily executed this Agreement and understood its contents.

Signature and Designation of

Person Certifying

THE CUSTOMER:

SIGNED by

]

[Full legal name of Customer]

]

in the presence of:

]

]

]

Passport/ID

No.....

]

PIN

No.....

ADVOCATE

I

CERTIFY appeared before me on theday of.....20..... and being known to me/being identified by*.....acknowledged the above signature(s) or mark(s) to be his/hers and that he/she had freely and voluntarily executed this Agreement and understood its contents.

**Signature and Designation of
Person Certifying**

OR

SEALED with the **COMMON SEAL** of

]

[*]

]

In the presence of:

]

]

Director

]

]

Director/Secretary

]

]

Before me

]

]

Advocate

]

I, CERTIFY THAT the above named and being the director(s) and/or company secretary of [*] appeared before me on theday of.....20.....and being known to me/being identified by ID/PP Numbers andacknowledged the above signatures or mark to be theirs and that they had freely and voluntarily executed this Agreement and understood its contents.

**Signature and Designation of
Person Certifying**

Schedule I – Description of Musharakah Assets

S. no.	Description	Machine Number	Manufacturer	Make/Model	Mfg. Year	QTY
1						
2						
3						