

AGREEMENT

THIS AGREEMENT dated the day of Two Thousand and One is made **BETWEEN** **..... PACKAGING LIMITED** a Limited Liability Company incorporated in the Republic of Kenya and of Post Office Box Number Nairobi in the said Republic (hereinafter referred to as “the Borrower” which expression shall where the context so admits include its successors and assigns) of the first part **AND** **.....** a Banking Company incorporated in the United States of America and carrying on business in the said Republic of Kenya and elsewhere and whose address for the purpose of this Agreement is Post Office Box Number Nairobi aforesaid (hereinafter referred to as “the Bank” which expression shall where the context so admits include its successors and assigns) of the other part.

IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

‘**ADVANCE**’ means an advance or advances made or to be made by the Bank to the Borrower pursuant to The Facility or, as the context may require the principal amount thereof from time to time outstanding.

‘**BUSINESS DAY**’ means a day (not being Saturday or Sunday) on which banks are open for business of the kind contemplated by this Agreement

‘**COMMITMENT**’ means the commitment of the Bank to make Advances on the terms and conditions of this Agreement as reduced from time to time by the amount of any outstanding Advances and otherwise as provided in this Agreement

‘**COMMITMENT PERIOD**’ means the period commencing on the date of this Agreement and ending on the Day of, 200...

‘DRAWDOWN DATE’ means, in relation to any Advance, the date on which the Advance is made

‘DRAWDOWN NOTICE’ means a notice in the form set out in Schedule 1

‘ENCUMBRANCE’ means any mortgage charge (whether fixed or floating) pledge lien hypothecation assignment security interest title retention or other encumbrance or security agreement or security or preferential arrangement of any kind

‘EVENT OF DEFAULT’ means any of the events or circumstances described in Clause 12.1

‘THE FACILITY’ means the whole facility the terms and conditions of which are set out in this Agreement and which incorporate the following:-

- a) **‘TERM FACILITY’** means the medium term loan the terms and conditions of which are more specifically set out in this Agreement;
- b) **‘TERM FACILITY AMOUNT’** means Kenya Shillings Thirty Five Million (K.Shs.35,000,000.00)

‘FINANCIAL INDEBTEDNESS’ means Indebtedness incurred in respect of:

- a) money borrowed, raised or deposited;
- b) any bond bill of exchange note loan stock debenture commercial paper or similar security or instrument;
- c) acceptance, documentary credit or guarantee facilities;
- d) deferred payments for assets or services acquired;
- e) rental payments under leases, whether in respect of land buildings machinery equipment or otherwise, entered into primarily as a method of raising finance or financing the acquisition of the relevant asset;
- f) payments under hire purchase contracts;
- g) factored debts, to the extent that there is recourse;
- h) guarantees bonds standby letters of credit or other instruments issued in connection with the performance of contracts or obligations;
- i) any interest rate or currency swaps and similar financial transactions;

- j) guarantees indemnities or other assurances against financial loss in respect of Indebtedness of any person falling within any of paragraphs (a) to (i) inclusive above; and
- k) amounts raised or obligations incurred under any other transaction having the commercial effect of any of the above

‘GROUP’ means the Borrower and its Subsidiaries (if any) for the time being

‘INDEBTEDNESS’ means any obligation for the payment or repayment of money, whether present or future, actual or contingent, sole or joint

‘INTEREST PAYMENT DATE’ means the last day of each Interest Period

‘INTEREST PERIOD’ means each period for the calculation of interest determined in accordance with Clause 7.3

‘LOAN’ means the aggregate principal amount of Advance(s) for the time being outstanding under this Agreement

‘MARGIN’ means 1.75 per cent per annum above base rate

‘MATERIAL CONSENT’ means in relation to the Borrower any approval authorisation consent exemption licence permission or registration by or from any governmental or regulatory or other authority or person necessary or appropriate for (i) the carrying on by it of its business and (ii) the execution delivery and performance of this Agreement and any Related Document and the use of the Facilities

‘PERMITTED ENCUMBRANCE’ means any encumbrance referred to in Clause 11.2(2)

‘POTENTIAL DEFAULT’ means any event which, with the giving of notice or any certificate or the lapse of time or the making of any determi..... or the satisfaction of any other condition (or any combi..... thereof), might/would constitute an Event of Default

‘RELATED DOCUMENT’ means any document or instrument required by this Agreement to be executed delivered or produced by the Borrower or Subsidiary and designated in writing as such by both the Bank and the Borrower

‘REPAYMENT DATE’ means on demand but if there is no demand it means the Termi..... Date

‘RESERVE COSTS RATE’ means, in relation to any Advance or other sum for any Interest Period or other period, the cost to the Bank of compliance with Central Bank of Kenya or other requirements, determined in accordance with Schedule 2

‘KENYA SHILLINGS’ and **‘K.Shs.’** means the lawful currency of the Republic of Kenya.

‘SUBSIDIARY’ has the meaning given to such expression by Section 154 of the Companies Act chapter 486 Laws of Kenya

‘SUBSTANTIAL SUBSIDIARY’ means a body corporate which is a Subsidiary of the Borrower whose gross assets or revenues, at any time, represent 5 per cent or more of the consolidated gross assets or revenues of the Group at that time, and for this purpose:

- a) the gross assets or revenues of any such Subsidiary shall be ascertained by reference to:
 - i) the financial statements of such Subsidiary (consolidated if in the normal course it prepares consolidated accounts) at the date to which the latest audited consolidated financial statements of the Group have been prepared; or
 - ii) if such body corporate becomes a Subsidiary of the Borrower after that date, the latest financial statements of such Subsidiary (consolidated if in the normal course it prepares consolidated accounts) adjusted to take into account subsequent acquisitions and disposals or other changes in circumstances;

- b) the consolidated gross assets or revenues of the Group shall be ascertained by reference to the latest audited consolidated financial statements of the Group; and
- c) once a body corporate has become a Substantial Subsidiary, it shall remain one until it has been demonstrated to the Bank that it has ceased to be a Substantial Subsidiary, a written report from its auditors to this effect being sufficient for this purpose

‘**TAXES**’ includes all present and future taxes levies imposts duties fees charges or withholdings of whatever nature and wherever levied charged or assessed, together with any interest thereon and any penalties in respect thereof

‘**TERMI..... DATE**’ means three (3) years from the..... day of 200....

1.2 Interpretation

- 1) In this Agreement, unless otherwise expressly provided, any reference to:
 - a) the Borrower and the Bank shall be construed so as to include their respective successors and assigns from time to time;
 - b) a time of day is a reference to Nairobi time unless otherwise stated;
 - c) a ‘person’ shall be construed as a reference to any individual firm company body corporate government state or state entity or any association or partnership (whether or not having separate legal personality) or any two or more of the foregoing;
 - d) this Agreement or any other document or instrument is a reference to this Agreement or that other document or instrument as the same may have been, or may from time to time be, amended or supplemented;
 - e) the liquidation winding-up or dissolution of a company or body corporate or the appointment of a receiver manager or administrator of or in relation to a company or body corporate or any of its assets shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, person under the law of the jurisdiction in which it is incorporated or any jurisdiction in which it carries on business or has assets or liabilities;

- f) a Clause or a Schedule is a reference to a clause of or a Schedule to this Agreement;
 - g) any statutory provision shall include a reference to such provision as from time to time re-enacted amended extended or replaced.
- 2) Fees costs and expenses payable under or pursuant to this Agreement shall be exclusive of any value added tax or similar taxes chargeable on them, which shall accordingly be payable in addition.
 - 3) In this Agreement, words importing the singular shall include the plural and vice versa.
 - 4) Headings in and the list of contents of this Agreement are for ease of reference only and shall not affect its interpretation.

2 THE FACILITIES

Subject to the terms and conditions of this Agreement the Bank agrees to make available to the Borrower a medium term loan facility in the maximum aggregate principal amount equal to the Term Facility Amount.

3 PURPOSE

- 1) Advances on The Facility shall be used by the Borrower for the purposes that are specified and set out in a letter dated the 15th day of December, 2000 from the Bank to the Borrower.
- 2) The Borrower shall not use any Advance for any purpose except that permitted in this Clause. However, failure by the Borrower to comply with this Clause shall not prejudice any rights of the Bank, which shall not be responsible for monitoring or ensuring the use or application by the Borrower of any Advance.

4 CONDITIONS

4.1 Conditions for first Advance

The first Drawdown Notice in respect of the Term Facility may not be issued, and the Bank shall not be obliged to make any Advance, in respect of the Term Facility until

it shall have received, in each case in form and substance satisfactory to it, the documents items and evidence specified in Schedule 3

4.2 Conditions for all Advances

The obligation of the Bank to make each and every Advance in respect of the Term Facility is subject to the further conditions precedent that:

- 1) at the time of the giving of the relevant Drawdown Notice and at the time of such Advance, the representations and warranties set out in Clause 10.1 are true and correct on and as of each such time as if each were made with reference to the facts and circumstances existing at such time; and
- 2) at the time of the giving of the relevant Drawdown Notice and at the time of such Advance, no Event of Default or Potential Default shall have occurred and be continuing or would result from the making of such Advance.

5 DRAWDOWN

5.1 Drawdown of the Term Facility

Subject to the terms and conditions of this Agreement the Borrower shall be entitled to draw down on the Term Facility fourteen (14) days after the signing of this Agreement.

5.2 Payment of Advances

Subject as otherwise provided in this Agreement, each Advance shall be made available on the Drawdown Date therefor by the Bank crediting the amount of such Advance to such bank account of the Borrower as it shall specify to the Bank for this purpose in the relevant Drawdown Notice.

5.3 Cancellation of undrawn Facility

Any part of the Term Facility which shall not have been drawn down or cancelled by the close of business on the last Business Day of the Commitment Period shall at that time be automatically cancelled and the Commitment shall at that time be reduced to zero.

6 REPAYMENT PREPAYMENT AND CANCELLATION

6.1 Repayment

The Borrower shall repay to the Bank the Term Facility in thirty-six (36) equal monthly instalments commencing from the day of, 200....

6.2 Prepayment

- 1) The prepayment of any Drawdown or the Term Facility shall be permitted after the signing of this Agreement.
- 2) Thereafter the Borrower may, provided that it shall have given to the Bank not less than thirty (30) days prior notice specifying the date and intended amount of the prepayment, prepay to the Bank on the last day of any Interest Period relating to an Advance the whole or any part of such Advance/the Loan.
- 3) Prepayments under this Agreement shall be made together with accrued interest thereon and all other amounts payable under and in relation to this Agreement and any Related Document.
- 4) Should prepayment be made within the first three hundred and sixty five (365) days of the first Drawdown, then the Margin shall be increased to one per cent (1%) for this purpose and shall be applicable to the then outstanding amount of the Term Facility.

7 INTEREST

7.1 Interest

- 1) The Borrower shall pay to the Bank interest on the Term Facility which is in Kenya Shillings at the rate determined by the Bank to be pegged at the Margin over and above the ninety-one (91) day treasury bill rate prevailing at the last auction for the last month of each quarter.
- 2) This rate shall be reviewed at the end of each quarter and shall be applied to the next quarter.
- 3) For the avoidance of doubt, the rate of interest applicable at any time as determined by this clause shall be debited to the Borrower's account on a monthly basis.

7.2 Payment

The Borrower shall pay interest on each Advance on each Interest Payment Date relating to such Advance.

7.3 Interest Period

- 1) Subject to paragraph (2) below, the Borrower and the Bank agree that the duration of the Interest Period for any Advance shall be monthly.
- 2) For the purpose of determining the duration of any Interest Period:
 - a) each Interest Period relative to an Advance shall commence on the Drawdown Date relating to such Advance;
 - b) the first Interest Period relating to any Advance shall, if any other Advance is outstanding on the Drawdown Date therefor, end upon the expiry of the Interest Period then current for such other Advance so that all Interest Periods shall be coterminous;
 - c) if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next Business Day unless that would extend that Interest Period into the next following calendar month, in which event that Interest Period shall be shortened so as to end on the immediately preceding Business Day;
 - d) if any Interest Period commences on the last Business Day in a calendar month or if there is no corresponding date in the calendar month in which an Interest Period is due to end, then such Interest Period shall end on the last Business Day in the relevant later month;
 - e) if any Repayment Date falls within an Interest Period, the Loan shall be divided into two parts, one part being the repayment instalment due on such Repayment Date and having an Interest Period ending on that date and the other part being the balance of the Loan and having an Interest Period ascertained in accordance with the other provisions of this Clause; and
 - f) the last Interest Period relating to each Advance shall end on the Repayment Date for such Advance.

7.4 Default interest

The Borrower shall, on demand by the Bank, pay to the Bank interest on sums (including but without limitation default interest) not paid on their respective due dates under this Agreement from the due date up to the date of actual payment (as well after as before judgment) at a rate determined by the Bank to be two per cent (2%) per annum above the rate provided in Clause 7.1 above.

7.5 Basis of calculation

All interest and other payments of an annual nature under this Agreement shall accrue from day to day and be calculated on the basis of the actual number of days elapsed and a 365-day year. Any certificate or determination by the Bank as to any rate of interest payable under this Agreement shall, in the absence of manifest error, be conclusive and binding on the Borrower.

7.6 Notification

The Bank shall promptly notify the Borrower of each rate of interest determined by it under this Clause.

8 FEES AND EXPENSES

8.1 Prepayment fee

In the event of Prepayment the Margin shall be increased from 0.85% to 1.0% on the amount pre-paid.

8.2 Expenses

- 1) The Bank has accepted to pay all reasonable costs and expenses incurred in connection with the preparation negotiation execution and delivery of this Agreement.
- 2) The Borrower shall pay, on demand and on a full indemnity basis, to the Bank all costs and expenses (including but not limited to legal and out-of-pocket expenses) incurred by it in connection with any actual or proposed amendment or extension of or any waiver or consent under this Agreement and in contemplation of or otherwise in connection with the enforcement (or attempted enforcement) of, or preservation (or attempted preservation) of any rights under, this Agreement

and/or any Related Document or otherwise in respect of any monies from time to time owing under this Agreement.

8.3 Duties

The Borrower shall pay all stamp, documentary, registration or other similar duties or Taxes (including any payable by the Bank) imposed in or by the Republic of Kenya on or in connection with this Agreement and/or any other document referred to herein and shall indemnify the Bank against any liability arising by reason of any delay or omission by the Borrower to pay such duties or Taxes.

8.4 Payment by deduction

The Bank shall be entitled to effect payment (to the extent not already discharged) of all fees expenses and other sums due and payable by the Borrower under this Clause 8 out of and by deduction from any Advance and the Borrower hereby irrevocably authorises the Bank to do so.

9 PAYMENTS

9.1 Payments

- 1) All payments to be made by the Borrower under this Agreement shall be made in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings, in immediately available, freely transferable, cleared funds in Kenya Shillings not later than 11.00 am on the due date at the counters of Nairobi or such other account of the Bank as it may from time to time notify to the Borrower.
- 2) In the case of a partial payment by the Borrower, the Bank may appropriate such payment towards such of the obligations of the Borrower under this Agreement as the Bank may decide. The Borrower waives any right to make an appropriation in respect of a partial payment. Any appropriation by the Bank shall apply to the exclusion of any actual or purported appropriation by the Borrower.

9.2 Business Days

Save as otherwise provided in this Agreement, if any payment would otherwise be due on a day which is not a Business Day, the next following Business Day shall be substituted for such day unless such Business Day shall be in a new calendar month in which case such payment shall instead be made on the immediately preceding Business Day. Interest and fees shall be adjusted accordingly.

9.3 Accounts

Account(s) maintained by the Bank in connection with the Facilities shall (save for manifest error) be conclusive/prima-facie evidence of the amounts from time to time owing by the Borrower to the Bank under this Agreement.

10 REPRESENTATIONS AND WARRANTIES

10.1 Representations and warranties

The Borrower represents and warrants to the Bank that:

- 1) it is a limited liability company duly incorporated and validly existing under the laws of Kenya and has power to carry on its business and to own its property and other assets,
- 2) it has power and authority to execute deliver and perform its obligations under this Agreement and any Related Document and to use the Facilities and all necessary action has been taken (and not revoked) to authorise the execution delivery and performance of this Agreement and any Related Document; and subject to all applicable insolvency laws this Agreement constitutes, and any Related Document is or when executed and delivered will be, its valid and legally binding obligation enforceable in accordance with the terms thereof,
- 3) the execution delivery and performance of this Agreement and any Related Document and the use of the Facilities do not and will not:
 - a) contravene any law, regulation, directive, judgment or order to which it is subject; or
 - b) result in any actual or potential breach of or default under any obligation agreement instrument or Consent to which it is a party or by which it is bound or which it requires to carry on its business; or

- c) contravene any provision of its memorandum and articles of association and/or statutes and/or constitutional documents; or
 - d) result in any limitation on its powers to borrow or incur Financial Indebtedness being exceeded; or
 - e) result in the creation or imposition of or oblige it to create any Encumbrance on its undertaking or any of its assets rights or revenues;
- 4) its obligations under this Agreement and any Related Document are its direct, general and unconditional obligations and rank at least *pari passu* with all other of its present and future secured unsecured and unsubordinated Indebtedness (with the exception of any obligations which are mandatorily preferred by law and not by contract),
- 5) no litigation arbitration or administrative proceeding and without limitation no dispute with any statutory or governmental authority is current or pending or to its knowledge threatened against it or any other member of the Group/ Substantial Subsidiary or any of its respective assets which might/would be likely to have a material adverse effect on its respective business, assets or financial condition or its ability to observe or perform its respective obligations under this Agreement or any Related Document having regard to all its other obligations,
- 6) no Event of Default or Potential Default has occurred and is continuing,
- 7) it is not/neither it, and as far as the Borrower is aware, nor any other member of the Group/Substantial Subsidiary is in default in the payment of any due and payable Taxes or in the filing registration or recording of any document or under any legal or statutory obligation or requirement which default might/would be likely to have a material adverse effect on its respective business, assets or financial condition or its ability to observe or perform its respective obligations under this Agreement or any Related Document,
- 8) it is not/neither it, and as far as the Borrower is aware, nor any other member of the Group/Substantial Subsidiary is in breach of or in default under any agreement relating to Financial Indebtedness to which it or such company is a party or by which it or such company is bound which might/would be likely to have a material adverse effect on its respective business, assets or financial condition or its ability to observe or perform its respective obligations under this Agreement or any Related Document having regard to all its other obligations,

- 9) there exists no Encumbrance other than any Permitted Encumbrance over the whole or any part of the present or future undertaking assets rights or revenues (including uncalled capital) of itself or any of its Subsidiaries and no obligation to create any such Encumbrance,
- 10) the latest consolidated report and financial statements of the Borrower have been prepared in accordance with accounting principles and practices generally accepted in Kenya consistently applied and give a true and fair view of the financial condition, assets and liabilities of the Borrower at the date to which such financial statements have been prepared; and since that date there has been no material adverse change in the financial condition or the business, assets or operations of the Borrower which might/would be likely to have a material adverse effect on its respective business, assets or financial condition or its ability to observe or perform its respective obligations under this Agreement or any Related Document having regard to all its other obligations,
- 11) it has obtained and complied with all Material Consents (and the same are in full force and effect),
- 12) as far as the Borrower is aware, all factual information supplied to the Bank in contemplation or for the purpose of this Agreement or the Facilities was true and accurate in all material respects as at its date and did not omit anything material, no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any material respect, and all projections and statements of belief and opinion given by the Borrower to the Bank were made honestly and in good faith after due and careful enquiry and remain valid.

10.2 Repetition

The representations and warranties in Clause 10.1 will be deemed to be repeated by the Borrower on and as of each Drawdown Date and each Interest Payment Date as if made with reference to the facts and circumstances existing at such respective date.

10.3 Effect of investigation

The rights and remedies of the Bank in respect of any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced or affected by any investigation of the Borrower or any other person by or on behalf of the Bank or

without limitation any other act or matter which, but for this provision, would or might prejudice or affect any such rights or remedies.

11 UNDERTAKINGS

11.1 General undertakings

The Borrower undertakes with the Bank that, so long as any Commitment is in force or any monies or obligations are outstanding under this Agreement:

- 1) it will ensure that its obligations under this Agreement shall at all times rank at least *pari passu* with all its other present and future secured unsecured and unsubordinated Indebtedness (with the exception of any obligations which are mandatorily preferred by law and not by contract),
- 2) it will prepare financial statements in respect of each financial period in accordance with Clause 11.4 and cause the same to be audited by its auditors and deliver two (2) copies of the same to the Bank promptly and in any event not later than one hundred and fifty (150) days after the end of the relevant financial period,
- 3) it will deliver to the Bank two (2) copies promptly and in any event not later than sixty (60) days after the relevant period, of management accounts relating to it containing financial information (in no less detail than such as having been prepared prior to the date of this Agreement) in respect of successive half-yearly periods during each of its financial years,
- 4) it will provide the Bank with copies of all notices and other communications despatched to its shareholders or its creditors when despatched,
- 5) it will provide the Bank with such financial and other information concerning its business, assets and affairs as the Bank may from time to time reasonably require except that it will not be obliged to provide any such information which is secret or confidential to it except on the basis of a confidentiality undertaking by the Bank reasonably acceptable to it or if disclosure requires the consent of any third party which it will on request use best endeavours to obtain,
- 6) it will obtain, maintain in full force and effect and comply with all Material Consents and any conditions thereof,

- 7) it will not make or permit any material change in the nature of its business or commence any new type of business materially different from its business at the date of this Agreement,
- 8) it will promptly inform the Bank, forthwith upon becoming aware of the same, of any occurrence or circumstance of which it becomes aware which might/would be likely to adversely affect its ability to perform its obligations under this Agreement or any Related Document and of any Event of Default or Potential Default,
- 9) it will from time to time, forthwith on request by the Bank, deliver to it a certificate signed by two of its directors (acting without personal liability except in the case of wilful default or misconduct) confirming that, save as may be notified in detail in such certificate, no Event of Default or Potential Default has occurred and is then subsisting.

11.2 Negative Pledge

- 1) The Borrower undertakes with the Bank that, so long as any Commitment is in force or any monies or obligations are outstanding under this Agreement, it will not create or permit to subsist any Encumbrance other than any Permitted Encumbrance over all or any part of its present or future undertaking assets rights or revenues;
- 2) Paragraph (1) above shall not apply to any Encumbrance:
 - a) created or outstanding with the prior written consent of the Bank including those listed in Schedule 4 of this Agreement provided that, unless permitted by any other exception below, the aggregate principal amount secured by such Encumbrance will not be increased without further consent of the Bank;
 - b) arising by operation of law and not as a result of any default or omission on the part of the Borrower or any other member of the Group having regard to the custom in the relevant trade for settlement of accounts;
 - c) arising under any retention of title arrangements entered into in the ordinary course of trading and not entered into primarily for the purpose of securing any Financial Indebtedness;
 - d) over goods or documents of title to goods arising in the ordinary course of documentary credit transactions;

- e) provided that simultaneously with the creation of such Encumbrance the obligations of the Borrower under this Agreement are equally and rateably secured by a comparable Encumbrance on other assets acceptable to the Bank in form and substance satisfactory to it;
- f) on assets acquired after the date of this Agreement, or on assets of a body corporate which becomes a Subsidiary by acquisition after the date of this Agreement, provided that:
 - i) any such Encumbrance is in existence prior to such acquisition and is not created in contemplation of such acquisition; and
 - ii) the amount secured by such Encumbrance does not exceed, at any time, the maximum amount secured or agreed to be secured by it (in accordance with the original terms on which such Encumbrance was created) as at the date of acquisition; and
 - iii) such Encumbrance is discharged within a period of 6 months after the acquisition or (only in the case of an acquisition of a body corporate) where the terms of such Encumbrance do not permit repayment of the amount secured by such Encumbrance within such period, on the earliest date or dates permitted by the terms of such Encumbrance for such repayment; and
 - iv) no guarantee is given by the Borrower or any other member of the Group in respect of such Encumbrance or the amount secured by it;
- g) over any assets to secure Indebtedness of any member of the Group where the lender has no right of recovery of such Indebtedness against the general assets and undertaking of such member of the Group but has a limited right of recourse only against the asset acquired with the proceeds of such Indebtedness;
- h) created in favour of a plaintiff or defendant in any action, or the court or tribunal before which such action is brought, as security for costs or expenses where any member of the Group is prosecuting or defending such action in the *bona fide* interests of that member and/or any other member of the Group;
- i) pursuant to any order of attachment distraint garnishee order or injunction restraining disposal of assets or similar legal process arising in connection with legal proceedings;

- j) securing Indebtedness incurred to refinance other indebtedness permitted to be secured under paragraphs (a) to (i) above inclusive and/or this paragraph (j), provided that the aggregate principal amount of the Indebtedness secured by such Encumbrance is not increased and such Encumbrance does not extend to any assets other than those which were subject to the Encumbrance securing the refinanced Indebtedness.

11.3 Disposals

- 1) The Borrower undertakes with the Bank that, so long as any Commitment is in force or any monies or obligations are outstanding under this Agreement, it will not either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily, sell, transfer, lease or otherwise dispose of all or any substantial part of its respective assets.
- 2) Paragraph (1) above shall not apply to:
 - a) disposals made with the prior consent of the Bank;
 - b) disposals made in the ordinary course of business/trading of the disposing entity for not less than market value on an arm's length basis;
 - c) disposals from any member of the Group (other than the Borrower) to the Borrower or a Substantial Subsidiary/any other member of the Group provided that, in the case of a disposal to a Subsidiary, the percentage ownership (direct or indirect) of the Borrower in the receiving Subsidiary is not significantly less than the Borrower's percentage ownership (direct or indirect) in the disposing entity;
 - d) disposals of property or assets in exchange for other property or assets of a comparable type and value;
 - e) disposals of cash in acquiring any asset at not more than market value;
 - f) disposals of property or assets otherwise than to any member of the Group during any financial year of the Borrower so long as the aggregate book value of all such property or assets does not exceed ten (10) per cent of the total consolidated gross assets of the Group, as shown in the latest audited consolidated financial statements of the Group OR: so long as such disposals will not in the opinion of the Bank have a material adverse effect on the ability of the Borrower to perform its obligations under this Agreement and/or any Related Document.

11.4 Financial Statements

The Borrower will ensure that all audited financial statements prepared by it and each of its Subsidiaries and delivered pursuant to this Agreement shall be prepared in accordance with accounting principles and practices generally accepted in Kenya, consistently applied in respect of each financial period or giving details of any inconsistency, on an individual and if applicable consolidated basis and that such financial statements shall contain a balance sheet giving a true and fair view of the state of affairs of the Borrower and its Subsidiaries as at the end of the period to which they relate and a profit and loss account giving a true and fair view of its/their profit or loss for such period.

11.5 Financial undertakings

- 1) The Borrower undertakes with the Bank that at all times its financial position shall be such that:
 - a) Total Liabilities shall not exceed sixty per cent (60%) of Tangible Net Worth;
 - b) Current Liabilities shall not exceed one hundred twenty per cent (120%) of Current Assets, however this shall be adjusted not to exceed one hundred per cent (100 %) by June, 2000;
 - c) Interest cover defined as $\text{EBIT} / \text{Interest Expenses}$ where $\text{EBIT} = \text{Net Sales} - \text{Cost of sales} - \text{Administration and Commercial Expenses} - \text{Research and Development}$ and with interest expenses = Interest paid to Lenders on long medium and short term debt. The ratio shall be a minimum of 3:1 during the life of The Facility.
- 2) The date for compliance with paragraph (1) above shall be the date as at which its management accounts are prepared;
- 3) All calculations made at any time for the purposes of this Clause shall be made by reference to the following:
 - a) where such calculations relate to the date as at or to which audited financial statements of the Borrower/Group are prepared, the most recent such financial statements;

- b) where such calculations relate to a date on which interim accounts or annual accounts of the Borrower are prepared, the most recent such accounts;

adjusted in each case, as the Bank may in its discretion consider appropriate, to take account of any changes in the financial condition or circumstances of the Borrower which occur after the date as at or to which such financial statements or accounts were or certificate was prepared.

- 4) The expressions used in this Clause shall be construed in accordance with the accounting principles applied in connection with the preparation of the audited financial statements of the Group and subject thereto shall otherwise be construed in accordance with generally accepted accounting principles in the Republic of Kenya provided that:

- a) 'CURRENT ASSETS' at any time means the aggregate at such time of:
 - i) the cash, stocks, marketable securities, prepaid expenses and debtors and deposits of the Group which are payable on demand or within one year after the date of computation; and
 - ii) any other consolidated assets of the Borrower which would, in accordance with general accounting principles applicable in the Republic of Kenya, be classified as current assets;
- b) 'CURRENT LIABILITIES' at any time means the aggregate at such time of the obligations of the Borrower to pay money on demand or within one year after the date of computation (including, without limitation, dividends and contingent obligations) and any other obligations of the Borrower which would, in accordance with the general accounting principles applicable in the Republic of Kenya, be classified as current liabilities;
- c) 'NET WORTH' at any time means the aggregate at such time of:
 - i) the amounts paid up, or credited as paid up, on the issued share capital of the Borrower;
 - ii) any credit balance on the profit and loss account of the Borrower/Group; and
 - iii) any amount standing to the credit of any other capital and revenue reserves of the Borrower including any share premium account and capital redemption reserve;less the aggregate at such time of:

- i) any debit balance on the profit and loss account of the Borrower; and
 - ii) any reserves attributable to interests of minority shareholders in any Subsidiary;
 - d) 'TANGIBLE NET WORTH' at any time means the aggregate at such time of:
 - i) the amounts paid up, or credited as paid up, on the issued share capital of the Borrower;
 - ii) any credit balance on the consolidated profit and loss account of the Borrower/Group; and
 - iii) any amount standing to the credit of any other capital and revenue reserves of the Borrower including any share premium account and capital redemption reserve;
 less the aggregate at such time of:
 - i) any debit balance on the profit and loss account of the Borrower;
 - ii) all amounts attributable to goodwill capitalised interest, capitalised research and development costs, intellectual property (including but not limited to patents trade marks and brand names) and other intangible assets;
 - iii) any surplus on any revaluation of property or assets after the date of this Agreement (or, in the case of any property or assets of any body corporate which becomes a Subsidiary after such date, taking effect after but not including the date on which it becomes a Subsidiary) except to the extent that such revaluation shall have been approved in writing for the purpose of this Clause by the Bank;
 - iv) any reserves attributable to interests of minority shareholders in any Subsidiary; and
 - v) deferred tax
 (and so that no amount shall be included or excluded more than once);
 - d) 'TOTAL LIABILITIES' at any time means the total liabilities (including contingent liabilities but excluding deferred tax) of the Borrower at such time;
 - e) 'WORKING CAPITAL' means Current Assets less Current Liabilities.
- 5) If there is any dispute as to any computation under this Clause or as to the interpretation of any of the terms defined in this Clause, the decision of the Bank

shall, in the absence of manifest error, be conclusive and binding on the parties to this Agreement.

12 DEFAULT

12.1 Events of Default

There shall be an Event of Default if:

- 1) the Borrower fails to pay within seven (7) days after the due date, in the currency and manner provided in this Agreement, any sum payable by it under this Agreement or any Related Document when due. Provided that such failure shall not be an Event of Default if it occurs solely for administrative or technical reasons affecting the transfer of funds despite timely payment instructions by the Borrower and that payment is received by the Bank within 2 Business Days after the due date, or
- 2) the Borrower commits any breach of any provision of Clauses 11.1(1), 11.1(2), 11.2, 11.3 or 11.5; or
- 3) the Borrower commits any material breach of any other provision of this Agreement or any Related Document and either such breach is in the reasonable opinion of the Bank not capable of remedy or such breach is in the reasonable opinion of the Bank capable of remedy and is not remedied within twenty-one (21) days after the earlier of the date of notice by the Bank requiring such remedy or the date on which the Borrower first becomes aware of the breach; or
- 4) any representation or warranty made or deemed to be made or repeated by the Borrower in or pursuant to this Agreement or any Related Document is or proves to have been untrue or incorrect in any material respect when made or when deemed to be repeated with reference to the facts and circumstances existing at such time; or
- 5) any Encumbrance to secure any Financial Indebtedness of the Borrower or any Subsidiary of the Borrower/Substantial Subsidiary exceeding in aggregate Kenya Shillings Twelve Million (K.Shs.12,000,000.00) or its equivalent in any other currency becomes enforceable; or
- 6) an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any substantial part of the undertaking assets rights or revenues of the Borrower or any Subsidiary of the

Borrower/Substantial Subsidiary or a distress or other process is levied or enforced upon any of the assets rights or revenues of the Borrower or any Subsidiary of the Borrower/Substantial Subsidiary and any such action is not lifted or discharged within fourteen (14) days; or

- 7) a petition is presented to, or any order is made by, any competent court for the appointment of an administrator in relation to the Borrower or any Subsidiary of the Borrower/ Substantial Subsidiary; or
- 8) the Borrower or any Subsidiary of the Borrower/ Substantial Subsidiary is, or is adjudicated or found to be, insolvent or stops or suspends payment of its respective debts or is (or is deemed to be) unable to or admits inability to pay its respective debts as they fall due or proposes or enters into any voluntary arrangement or any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Borrower or any Subsidiary of the Borrower/Substantial Subsidiary under any law regulation or procedure relating to reconstruction or adjustment of debts; or
- 9) any petition is presented by any person (other than a petition which, in the opinion of the Bank, is frivolous or vexatious and which is withdrawn or stayed within fourteen (14) days) or any order is made by any competent court or any resolution is passed by the Borrower or any Subsidiary of the Borrower/Substantial Subsidiary for its winding-up or dissolution or for the appointment of a liquidator of the Borrower or any Subsidiary of the Borrower/Substantial Subsidiary (except for the purpose of a solvent amalgamation or reconstruction on terms and conditions which shall have first been approved by the Bank); or
- 10) the Borrower ceases or threatens to cease to carry on the whole or a substantial part/or substantially the whole of its business; or
- 11) the Borrower's licence to operate a television station, broadcast over a radio frequency, or to publish a newspaper in the Republic of Kenya is revoked, withdrawn, not renewed or lost for any reason whatsoever; or
- 12) this Agreement or any Related Document is or becomes (or is alleged to be) unlawful or unenforceable in any respect; or
- 13) any Material consent is withdrawn or revoked or expires or is modified or made subject to any condition which in the opinion of the Bank may adversely affect the Borrower or its ability to perform or comply with any of its obligations under this Agreement or any Related Document; or

- 14) the Borrower becomes a subsidiary of any other person or one person or more than one person acting in concert not having such control at the date of this agreement, obtain control of the Borrower; or
- 15) any other event or series of events or any circumstances whether related or not (including but without limitation any adverse change in the business, assets or financial condition of the Borrower or any Subsidiary of the Borrower occur(s) or arise(s) which, in the opinion of the Bank; may be likely to have a material adverse effect on the Borrower or its ability or willingness to perform or comply with any of its obligations under this Agreement and/or any Related Document.

12.2 Rights on Default

The Bank may (without prejudice to any of its rights) upon and at any time after the happening of an Event of Default, so long as the same is continuing, by notice to the Borrower declare that:

- 1) the Commitment of the Bank and any obligation of the Bank to make any Advance shall be terminated, whereupon such commitment shall be reduced to zero and such obligation shall be terminated forthwith; and/or
- 2) the Loan has become immediately due and payable, whereupon the Borrower shall forthwith repay the same together with all interest accrued and all other sums payable under this Agreement; and/or
- 3) the Loan has become due and payable on demand, whereupon the Loan and all interest and other sums payable under this Agreement shall at all times after such declaration be due and payable forthwith on demand.

13 INDEMNITIES

13.1 Indemnities

The Borrower shall on demand indemnify the Bank against any liability loss or expense which the Bank shall certify as incurred by it as a consequence of:

- 1) any default in payment by the Borrower of any sum under this Agreement when due;
- 2) the occurrence of any Event of Default;
- 3) any repayment or prepayment of any Advance or part thereof being received otherwise than on the last day of an Interest Period; or

4) any Advance not being made for any reason (excluding any default by the Bank) after a Drawdown Notice therefor has been given including in any such case, but not limited to, any loss of profit and any loss or expense incurred in maintaining or funding the Loan or any Advance or other sum or in liquidating or re-employing deposits from third parties acquired or contracted for in order to effect or maintain the same.

13.2 Currency

The only currency applicable to all advances and payments made under this Agreement shall be in Kenya Shillings.

14 TAXES

14.1 Grossing up payments

All payments to be made by the Borrower under this Agreement shall be made free and clear of and without deduction for or on account of Taxes unless the Borrower is required to make such a payment subject to the deduction or withholding of Taxes, in which case the amount payable by the Borrower in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Bank receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

14.2 Notification

If at any time the Borrower is required by law to make any deduction or withholding from any sum payable by it under this Agreement (or if subsequently there is any change in the rates at which or the manner in which such deductions or withholdings are calculated), it shall promptly notify the Bank upon becoming aware of the same.

14.3 Tax receipts

If the Borrower is required to make any deduction or withholding from any payment hereunder, it shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under

applicable law and shall deliver to the Bank within thirty (30) days after it has made such payment to the applicable authority an original official receipt issued by such authority and any other appropriate evidence of the payment to such authority of all amounts so required to be deducted or withheld.

14.4 Indemnity

The Borrower shall indemnify and hold harmless the Bank against, and reimburse it on demand, the amount of any Taxes legally so deducted withheld or accounted for and paid by the Bank.

14.5 Tax credits

If the Borrower pays any increased amount under Clause 14.1 and the Bank effectively obtains a refund of tax or credit against tax by reason of that payment, and if the Bank is able to identify that refund or credit as being attributable to that payment having regard to its other activities, then the Bank shall reimburse to the Borrower such amount as will leave the Bank after that reimbursement in no better or worse position than it would have been in if that payment had not been required.

15 CHANGES IN CIRCUMSTANCES

15.1 Increased costs

- 1) If by reason of any change in or introduction of any law regulation treaty or official directive or any change in its interpretation, application or administration and/or compliance with any request from or agreement with or requirement of any central bank or other fiscal monetary or other authority:
 - a) the Bank or any holding company of the Bank incurs a cost as respective obligations under this Agreement; or
 - b) there is any increase in the cost to the Bank or any holding company of the Bank of funding or maintaining all or any of the advances comprised in a class of advances formed by or including any Advance; or
 - c) any Bank or a holding company of the Bank is unable to obtain the rate of return on its capital which it would have been able to obtain but for the Bank having entered into or assuming or maintaining its commitment or performing its obligations under this Agreement; or

- d) the Bank or any holding company of the bank becomes liable to make any payment on or calculated by reference to any Advance and/or to any sum received or receivable by it hereunder

the Borrower shall from time to time on demand by the Bank promptly pay to the Bank amounts sufficient to indemnify the Bank or any such holding company against, as the case may be, such cost, increased cost, reduction in the rate of return or liability.

- 2) Notwithstanding sub-clause (1) of this Clause, the Borrower shall not be obliged to make any payment pursuant thereto to the extent that the relevant costs increased cost reduction or liability:
 - a) is compensated for by any payment calculated in accordance with the Reserve Costs Rate;
 - b) represents Taxes on, or a change in the rate of Taxes on, the overall net income or profits of the Bank;
 - c) results from the Bank having exceeded some limit or failed to comply with some obligation, if on the date on which the matters referred to in sub-clause (1) took effect the Bank did not (and was not committed to) exceed such limit or breach such obligation.
- 3) The Bank shall promptly notify the Borrower of the circumstances giving rise to the Borrower's obligation to make any such payment, giving reasonable details of how such cost increased cost reduction or liability has been calculated and attributed to the Facility such calculation and attribution by the Bank being conclusive in the absence of manifest error.

15.2 Illegality

If at any time it is or becomes unlawful, or contrary to any request from or requirement of any central bank or other fiscal monetary or other authority (whether or not having the force of law), for the Bank to make fund or allow to remain outstanding any Advance or part of the Loan, then the Bank shall promptly after becoming aware of the same deliver to the Borrower a certificate to that effect and:

- 1) the Bank shall not thereafter be obliged to make any Advance and its Commitment shall be reduced to zero; and
- 2) if the Bank so requires, the Borrower shall not later than such date as the Bank shall have specified (such date not being earlier than 3 Business Days prior to the

latest permitted date) repay each Advance together with accrued interest thereon and any other amounts then due to the Bank hereunder.

15.3 Market Disruption

If in respect of any proposed Advance or forthcoming Interest Period the Bank determines after consulting the Borrower that:

- 1) adequate and fair means do not exist for ascertaining the interest rate for any Interest Period; or
- 2) by reason of circumstances affecting the Kenya Money (Treasury Bill) Market generally it is impracticable for the Bank to fund or continue to fund the Loan or any Advance during any Interest Period,

the Bank shall notify the Borrower accordingly. If such notification is given before the Drawdown of the first Advance, no Advance shall be made available and, if such notification is given after the Drawdown of the first Advance, the rate of interest applicable shall be two (2) per cent below the average of the prevailing base rates of Barclays Bank of Kenya Limited, Standard Chartered Bank of Kenya Limited, ABN Amro Bank and The prepayment fee payable under Clause 8 shall not accrue in respect of any day on which any right of the Borrower to draw Advances is suspended pursuant to this Clause.

15.4 Prepayment and Mitigation

- 1) If the Borrower is or becomes bound to pay any increased amount under Clause 14.1 or to make any payment under Clause 15.1 for the account of the Bank then, so long as such obligation continues, it shall be entitled at any time on giving to the Bank not less than seven (7) days' notice (which shall be irrevocable) to prepay the whole (but not part only) of the Bank's participation in all outstanding Advances together with accrued interest and any other amount payable under this Agreement but subject always to Clause 13.
- 2) If the Borrower is or becomes obliged to pay any increased amount under Clause 14.1 or Clause 15.3 or any amount under Clause 15.1 or to repay any amount under Clause 15.2 then, without affecting any obligation or liability of the Borrower under any such Clause, the Bank shall endeavour (but without a legal obligation) to take such reasonable steps to mitigate the effect on the Borrower, whether by the novation of its rights and obligations under this Agreement to

another bank or financial institution acceptable to the Borrower or by acting in relation to this Agreement through a different facility office or otherwise, provided that such steps will not, in the opinion of the Bank, be prejudicial to it.

16 GENERAL

16.1 Set-off

- 1) The Bank may, without prior notice to the Borrower, apply any credit balance (whether or not then due and in whatever currency) which is at any time held by any office or branch of the Bank for the account of the Borrower in or towards satisfaction of any sum then due and payable from the Borrower under this Agreement and in respect of which a default in payment has occurred. The Bank will promptly notify the Borrower of such application.
- 2) For the purposes of exercising any rights under this Clause, or any rights under the general law, the Bank may convert or translate all or any part of such a credit balance into another currency applying a rate which in its opinion fairly reflects prevailing rates of exchange.
- 3) The Bank is not obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any rights under the general law.
- 4) In this Clause 'rights under the general law' means any right of set off, combi..... or consolidation of accounts, lien or similar right which the Bank has under any applicable law.

16.2 Assignment and Facility Offices

- 1) This Agreement shall be binding upon, and enure for the benefit of, each of the parties hereto and their respective successors and permitted assigns (and any person to whom the Bank shall transfer or novate any rights and/or obligations under this Agreement).
- 2) The Borrower may not assign or transfer any of its rights, benefits or obligations under this Agreement without the prior written consent of the Bank, which shall not be unreasonably withheld.
- 3) The Bank may assign all or any part of its rights or benefits or transfer all or any part of its obligations under this Agreement or any Related Document with the prior written consent of the Borrower, which shall not be unreasonably withheld.

The Borrower shall enter into all documents specified by the Bank to be necessary to give effect to any such assignment or transfer. However, if at the time of any such assignment or transfer circumstances exist under which there arises or will arise any obligation on the part of the Borrower under Clause 14 or Clause 15 to pay to the assignee or transferee any sum in excess of the sum (if any) which, but for such assignment or transfer, it would have been obliged to pay to the Bank, the Borrower shall not be obliged to pay the excess.

- 4) The Bank may, with the prior written consent of the Borrower which shall not be unreasonably withheld, disclose on a confidential basis to any actual or potential assignee or transferee of any rights, benefits or obligations under this Agreement (or any Related Document) such information about the Borrower and any Subsidiary of the Borrower (and so that the Borrower shall procure any further requisite consent from each Subsidiary) and their respective business and financial condition as the Bank shall reasonably consider appropriate.
- 5) The Bank may at any time and from time to time change its facility office (being the office out of which it will make available and maintain its Commitment and/or any Advance or any part thereof) in which event it will promptly give the Borrower notice thereof.
- 6) Notwithstanding paragraph (5) above, if at the time of any change by the Bank of its facility office pursuant to that paragraph, circumstances exist under which there arises or will arise any obligation on the part of the Borrower under Clause 14 or 15 to pay to the Bank any sum in excess of the sum (if any) which, but for such change, it would have been obliged to pay to the Bank, the Borrower shall not be obliged to pay the excess.

16.3 Notices

1) Every notice or other communication under this Agreement shall be in writing and may be delivered personally or by registered mail despatched as follows:

a) if to the Bank, at its physical address specified below or at its principal office:

.....
..... House
Upper Hill Road
P O Box
Nairobi, Kenya

b) if to the Borrower, at its physical address specified below or its principal office:

..... Media Group Limited
..... Centre
Kimathi Street
P O Box
Nairobi, Kenya

or (in any case) to such other address and/or telex number and/or facsimile number as may be notified in accordance with this Clause by the relevant party to the other party for such purpose.

2) Every notice or other communication shall, subject as otherwise provided in this Agreement, be deemed to have been received (if sent by post) four (4) days after despatch and (if delivered personally or despatched by telex subject to receiving the correct telex answerback or by facsimile transmission) at the time of delivery or despatch if during normal business hours in the place of intended receipt on a working day in that place and otherwise at the opening of business in that place on the next succeeding such working day, provided that any notice or communication to be made or delivered to either party shall be effective only on actual receipt by that party.

16.4 Waivers

No delay or omission on the part of the Bank in exercising any right or remedy under this Agreement shall impair that right or remedy or operate as or be taken to be a waiver of it, nor shall any single partial or defective exercise by the Bank or any such

right or remedy preclude any other or further exercise under this Agreement of that or any other right or remedy. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

16.5 Severance

If at any time any of the provisions of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law or regulation currently in force in the Republic of Kenya, neither the legality, validity and enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the laws of the Republic of Kenya shall be in any way affected or impaired as a result.

16.6 Counterparts

This Agreement may be executed in any number of counterparts in which case this Agreement will be as effective as if all signatures on the counterparts were on a single copy of this Agreement.

16.7 Language

All notices or communications under or in connection with this Agreement (including without limitation documents to be delivered pursuant to Clause 4.1) shall be in the English language.

16.8 Law and jurisdiction

- 1) This Agreement shall be governed by and construed in accordance with the laws of the Republic of Kenya.
- 2) The parties agree that the courts of the Republic of Kenya shall have jurisdiction to hear and determine any suit action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and for such purposes hereby irrevocably submit to the jurisdiction of such courts.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties the day and year first herein before written.

SCHEDULE 1

Drawdown Notice

To:
..... House
Upper Hill Road
P. O Box.
NAIROBI

For the Attention of :

Date:

Dear Sirs,

Facility Agreement dated

We wish to draw an Advance under the Overdraft Facility as follows:

- a) Drawdown Date:
- b) Amount: Kenya Shillings
- c) Interest Period relating to the Advance:
- d) Bank account to which proceeds are to be paid:

We confirm that:

- a) the matters represented by us and set out in Clause 10 of the Facility Agreement are true and accurate on the date of this notice as if made on such date; and
- b) no Event of Default or Potential Default, each as defined in the Facility Agreement, has occurred and is continuing or would result from the drawing of the proposed Advance.

Yours faithfully,

for and on behalf of

Authorised Signatory

SCHEDULE 2

Reserve Costs Rate

The Reserve Costs Rate means the rate per annum determined by the Bank to be the percentage rate per annum calculated by it at or about 11.00 am on the first day of the relevant Interest Period, by reference to circumstances existing at the time of calculation, in accordance with the requirements pertaining at the time as laid down by the Central Bank of Kenya

SCHEDULE 3

Conditions Precedent

In this Schedule, 'certified' means certified by a director or another duly authorised officer of the Borrower as being a true complete and up-to-date copy as at a date no earlier than the date of this Agreement.

- 1) A certified copy of the Memorandum and Articles of Association of the Borrower.
- 2) A certified copy of a resolution of the board of directors of the Borrower approving this Agreement and any Related Document required to be delivered under this Agreement to which it is expressed to be a party, authorising the person(s) executing the same to do so and authorising a person or persons to sign Drawdown Notices and all notices or other communications to be given or made by or on behalf of the Borrower under this Agreement or any such Related Document.
- 3) A specimen signature, authenticated to the satisfaction of the Bank, of each person authorised to sign by the resolutions referred to in paragraphs (2) and (4) above.
- 4) Confirmation from any existing security holder that all security and/or guarantees held by it will rank *pari passu* with the securities of the Bank.
- 5) A copy, certified to the satisfaction of the Bank, of any other consent licence document opinion or assurance which the Bank considers necessary or desirable in connection with the execution delivery and performance of this Agreement any Related Document and the transactions contemplated thereby.

SCHEDULE 4

NIL

DRAWN BY:-