

 Business Banking Lending  
Terms & Conditions

[www.cbagroup.com](http://www.cbagroup.com)



CBA is regulated by the Central Bank of Kenya.



## **BANK'S LENDING TERMS AND CONDITIONS (LTC)**

1. The facilities will be governed as set forth herein as well as by the provisions contained in the Bank's LTC including any subsequent amendments and/or modifications thereto and by executing this Letter, you will be deemed to have read, sought legal advice and understood the contents thereof.
2. The execution and delivery of this Letter and/or the performance or observance of any of your obligations herein or in the Bank's LTC contained will not conflict with, or result in, any breach of any law, statute, regulation, indenture, mortgage, trust deed, agreement, or other instrument, arrangement, obligation or duty by which you are bound.
3. Disbursement will only be allowed upon receipt by the Bank of all related security documents duly completed and registered and full compliance by you with the Bank's LTC particulars of which have been availed to you and which shall for all intents and purposes be deemed to be incorporated herein by extension.
4. In the event you fail to effect draw-down of the facility (ies) for any reason whatsoever, whether within your control or not, within ninety (90) days of the date of acceptance of this Letter, the same shall automatically lapse. However, this period may be extended with our mutual consent.
5. If any part, term or provision of this Letter of Offer shall be held to be illegal, void, invalid or unenforceable under the Laws of Kenya the legality, validity or enforceability of the other provisions of this Letter of Offer shall not be affected.

### **6. EARLY REPAYMENT**

The Borrower may prepay the Loan in full or in minimum amounts. Any amount prepaid under this clause shall satisfy to the extent of such prepayment, the Borrower's obligation and such amounts of such prepayment shall be applied so as to reduce those obligations in reverse order.

### **7. ADDITIONAL INTEREST**

Without prejudice to the provisions of Events of Default as defined in the offer letter, and the rights of the Bank hereunder, if at any time during the continuance of the Facilities, the amount drawn by the Borrower from the Bank is in excess of the Facilities committed by the Bank under the Letter and whether demand

has been made or not on the Borrower and whether notice has been given or not to the Borrower to repay the same, the Borrower shall pay to the Bank interest on such excess for the period during which the account is in excess at the normal facility rate of interest plus ten per cent (10%) per annum on the additional/excess Facilities. The Bank reserves the right to change additional interest rate at its sole and absolute discretion and shall advise the Borrower, prior to any change of the additional rate of interest so payable.

The Borrower acknowledges and agrees that the aforesaid additional rate of interest represents a reasonable pre-estimate of the loss to be suffered by the Bank in funding the excess on the Borrower's part.

### **8. DEFAULT INTEREST**

If any sum payable by the Borrower hereunder is not paid on the date on which it is due in accordance with the provisions of the Letter, and whether demand has been made or not on the Borrower and whether notice has been given or not to the Borrower to repay the same, or if any sum due and payable by the Borrower under any judgment of any Court in this connection, is not paid on the date of such judgment, the Borrower shall pay interest on such sum for the period beginning on such due date or, as the case may be, the date of such judgment until payment is received by the Bank in full at normal facility rate of the interest plus ten per cent (10%) per annum on the arrears Facilities. The Bank reserves the right to change default interest rate at its sole and absolute discretion and shall advise the Borrower, prior to any change of the default rate of interest so payable.

The Borrower acknowledges and agrees that the aforesaid default rate of interest represents a reasonable pre-estimate of the loss to be suffered by the Bank in funding the default on the Borrower's part.

### **9. EXPENSES**

The Borrower shall pay to the Bank upon demand all costs, charges and expenses (including legal and other professional expenses, stamp, registration or other duties and any VAT) incurred by the Bank in connection with the preparation and execution of, the obtaining of any documentation required under, the enforcement of, or the preservation of any rights under, the Facilities or otherwise

in connection with the Facilities. Failure to pay these amounts on their due dates or on demand date as applicable, the bank reserves the right to debit the same together with any interest accrued on the amounts from the borrowers account.

## **10. PAYMENTS**

- (a) All payments by the Borrower hereunder shall be made, without setoff or counterclaim, to such account as the Bank may from time to time notify to the Borrower.
- (b) Without prejudice to the Bank's rights to require payment or otherwise recover amounts due hereunder from the Borrower, the Bank may debit any amount due hereunder to any current or other account of the Borrower maintained with the Bank, notwithstanding that the maximum amount permitted to be outstanding in respect of such account may be exceeded. Thereafter the amount so debited shall be treated as owing on the terms of such current or other account for all purposes.
- (c) If any payment under this Agreement would otherwise be due to be made on a day which is not a Business Day, it shall be made on the next succeeding Business Day, unless such Business Day falls in the following calendar month, in which event it shall be made on the immediately preceding Business Day.
- (d) The Borrower hereby agrees that the Bank may at any time without notice or further demand, notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any of the Borrower's then existing accounts wherever situate including any accounts in the name of the Bank or of the Borrower 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) and setoff or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any obligations or liabilities of the Borrower to the Bank whether such liabilities be present, future, actual, contingent, primary, collateral, several or joint. For this purpose the Borrower hereby irrevocably authorises the Bank to purchase with the moneys standing to the credit of such accounts such other currencies as

may be necessary to effect such set off or transfer at the Exchange Rate.

- (e) The Bank will within seven (7) days' notice ,debit any legal or recovery charges demand from or incurred by the Bank in relation to the borrower's account(s) in this agreement. The charges shall be as provided for in the Advocates Act, Auctioneers Act or any other prevailing law in the Republic of Kenya from time to time.

## **11. TAX GROSS UP**

- (a) The Borrower shall make all payments to be made by it without any tax deduction, unless a tax deduction is required by law.
- (b) The Borrower shall promptly upon becoming aware that it must make a tax deduction (or that there is any change in the rate or the basis of a tax deduction) notify the Bank accordingly. Similarly, the Bank shall notify the Borrower on becoming so aware in respect of a payment payable to the Lender.
- (c) If a tax deduction is required by law to be made by the Borrower, the amount of the payment due from the Borrower shall be increased to an amount which (after making any tax deduction) leaves an amount equal to the payment which would have been due if no tax deduction had been required. Any tax deduction shall be borne by the Borrower.
- (d) If the Borrower is required to make a tax deduction, the Borrower shall make that tax deduction and pay the tax required in connection with that tax deduction within the time allowed and in the amount required by law.
- (e) Within thirty days of making either a tax deduction or any payment required in connection with that tax deduction, the Borrower shall deliver to the Bank payment evidence reasonably satisfactory to the Bank that the tax deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- (f) The Borrower shall hold the Bank harmless and indemnify the Bank from and against any costs, claims, damages and any other liability relating to the regulatory costs described in (c) above.

## **12. INSURANCE**

- (a) Insure and keep insured all of its undertaking with reputable and responsible insurers,

in such manner and to such extent as is reasonable and customary for such an enterprise engaged in the same or a similar business and in the same or similar localities such risks and contingencies as the Bank shall from time to time request;

- (b) Insure and keep insured the assets offered as security with reputable and responsible insurers, approved by the Bank in such manner and to such extent as is reasonable and customary for such an property as the Bank shall from time to time request;
- (c) Procure that the interest of the Bank is noted on all policies of insurance over its assets (which are charged or given as security to the Bank) in such manner as the Bank may in its absolute discretion require;
- (d) Duly and punctually pay all premiums and any other moneys necessary for maintaining the all its insurances in full force and effect and if the borrower fails to do so or in good time, the borrower authorises the bank to debit his accounts and pay premium so due to keep all insurances in full force and effect;
- (e) Avail to the Bank the original policies, renewal certificates and all payments receipts for the current premiums with respect to all its insurances; and
- (f) Immediately give notice to the Bank of any occurrence which gives rise, or might give rise, to a claim under any policy of insurance relating to any of its insurances over assets which may be charged to the Bank and, except with the prior written consent of the Bank, the Borrower shall not agree to settlement of any such claim.
- (g) All proceeds received by the Bank in respect of any claim made under the insurance will be applied by the bank in repayment of the loan. Any surplus after such application will be paid to the borrower's account with the Bank.

### **13. OTHER COVENANTS**

- (a) The Borrower shall appoint new auditors to replace Otieno Oboye & Company.
- (b) The Borrower shall not dispose off or create security interest over any of the assets given as security without the Bank's prior consent in writing.
- (c) The Borrower will provide the Bank regularly with such information and in such form as

may be required from time to time relating to the Borrower's finances and operations.

- (d) The Borrower shall advise the Bank immediately of any change of Directors or any material or major happening that may affect the Borrower's operations. This could include but not be restricted to changes in the share holding pattern, industrial or labour disputes, industrial or economic downturn, diversification plans, capital expenditure commitments, change in objectives and the like.
- (e) The Borrower shall undertake to submit valuation reports for any and all immovable properties securing the Facilities at least once every (5) years from one of the Bank's approved Valuers. The Bank shall also, if the circumstances so warrant, ask for valuation of the said properties. In the event that this is not complied with the Bank shall arrange for the same and shall debit the relevant charges to the Borrower's account.

### **14. INFORMATION SHARING CONSENT**

The Borrower hereby agrees to be bound by the following requirements relating to the submission of information to the Credit Reference Bureau (whether or not the Loan is drawn down) and irrevocably:

- (a) Consents to the Bank collecting, receiving, compiling and retaining any Customer Credit Information about the Borrower for purposes of:
  - (aa) assisting the Bank to perform the Bank's statutory assessment of the Borrower's creditworthiness;
  - (ab) deciding whether or not to grant the Borrower credit; and
  - (ac) monitoring the Borrower's credit profile should the Bank grant the Borrower credit; and
  - (ad) filing the Bank's Customer Credit Information with the Credit Reference Bureau.
- (b) Consent to the receipt, sharing, provision and exchange of data with Credit Reference Bureau and with other licensed financial institutions and micro finance deposit taking institutions through the Credit Reference Bureau provided that the Borrower reserve the right to lodge a complaint with the Credit Reference Bureau or to challenge any Customer Credit Information

held by the Credit Reference Bureau in respect to the Borrower.

- c) Acknowledge that the Customer Credit Information obtained may include positive or negative information regarding the Borrower's payment record;
- d) Acknowledge that the Credit Reference Bureau is required by law to collect negative information on the background and credit history relating to the Borrower's non-performing obligations;
- e) Consent to the collection, recording, retention and submission of all data relating to the Borrower's economic, financial and commercial obligations in order to determine your overall debt exposure and ability to pay.
- f) The Borrower agrees that the Bank may disclose any information relevant to the Borrower and the Facilities in the Bank's possession relating to the Borrower and its subsidiaries on terms that such recipient is to treat in confidence any confidential information so disclosed to it and further agrees that the Bank may disclose personal data and/or information relating to the Borrower or any Relevant Party outside the Bank's group whether such personal data and/or information is obtained after Borrower ceases to be the Bank's customer or during the continuance of the Bank-customer relationship or before such relationship was in contemplation:-
  - a) for fraud prevention purposes;
  - b) to licensed credit reference agencies or any other creditor if the Borrower is in breach of its obligations to the Bank and the Borrower agrees that such information may be used by other Banks or institutions in assessing credit applications and for debt tracing;
  - c) to licensed credit reference agencies or any other creditor for determining the Borrower's payment history and the Borrower agrees that his/her payment history may be used by other Banks or institutions in assessing credit applications and for debt tracing;
  - d) to the Bank's external lawyers, auditors and sub-contractors or other persons acting as agents of the Bank;
  - e) to any person who may assume the Bank's rights under the Letter and Conditions;
  - f) to any regulatory, fiscal or supervisory

authority;

- g) if the Bank has a right or duty to disclose or is permitted or compelled to do so by law;
  - i) that the Bank may in its discretion record any telephone conversations between the Borrower and the Bank made in connection with the facility and
  - ii) that the Borrower will not object to such recordings being produced in evidence in a court of law.
- h) The Borrower acknowledges and agrees that, notwithstanding the terms of any other agreement between the Borrower and the Bank, the disclosure by the Bank of information relevant to the Borrower and the Facilities in the circumstances contemplated in this clause does not violate any duty owed to the Borrower either in common law pursuant to any agreement between the Bank and the Borrower or in the ordinary course of Banking business and the customs, usage and practice related thereto and further that the disclosure as aforesaid may be made without reference to or further authority from the Borrower and without inquiry by the Bank as the justification or validity of such disclosure.

## **15. CURRENCIES**

- (a) The Bank may at its sole discretion, if the Borrower so requests grant from time to time part or all the Facilities in other currency and/or currencies within the available limits at the Bank's prevailing rate of exchange.
- (b) By availing the Facilities in any foreign currency the Borrower automatically grants to the Bank the right to convert the foreign currency denominated debt or part thereof into Kenya Shillings whenever the Bank may choose to do so. No payment to the Bank (whether under any judgment or court order or otherwise) shall discharge the obligation of the liability of the Borrower in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payments shall on actual conversion into such currency fall short of such obligation or liability (actual or contingent) expressed in that currency the Bank shall have a further separate cause of action against the Borrower and shall

be entitled to recover the amount of the shortfall from the Borrower as a debt due in respect of the Facilities.

- (c) The Security Documents now offered to and/or held by the Bank and/or which the Bank may hold from time to time will secure all the Borrower's liabilities (both actual and contingent), denominated in any currency whether such liability is in the Borrower's single name or jointly with any other person.
- (d) All amounts due and owing by the Borrower to the Bank shall be paid to the Bank in the currency in which they are outstanding and interest on such amounts shall also be paid in the currency in which the principal amounts are outstanding in freely transferable and convertible funds.
- (e) All moneys received or held by the Bank or by any Receiver under any Legal Charge may from time to time after demand has been made by the Bank be converted into such other currency as the Bank considers necessary or desirable to cover the obligations and liabilities actual or contingent of the Borrower in that other currency at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing that other currency with the existing currency.
- (f) If and to the extent that the Borrower fails to pay the amount due on demand the Bank may in its absolute discretion without notice to the Borrower purchase at any time thereafter so much of any currency as the Bank considers necessary or desirable to cover the obligations and liabilities of the Borrower in such currency at the then prevailing spot rate of exchange of the Bank (as conclusively determined by the Bank) for purchasing such currency with Kenya Shillings and the Borrower hereby agrees to indemnify the Bank against the full Kenya Shilling cost incurred by the Bank for such purchase.
- (g) Neither the Bank nor any Receiver shall be liable to the Borrower for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing powers.
- (h) No payment to the Bank (whether under any judgment or court order or otherwise) shall discharge the obligation or liability of the

Borrower in respect of which it was made unless and until the Bank shall have received payment in full in the currency in which such obligation or liability was incurred and to the extent that the amount of any such payment shall on actual conversion into such currency fall short of such obligation or liability actual or contingent expressed in that currency the Bank shall have a further separate cause of action against the Borrower and shall be entitled to enforce the charges by the existing security and hereby created to recover the amount of the shortfall.

## **16. REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to the Bank as follows:-

- (a) Every consent, authorization or approval of governmental or public bodies or authorities required in connection with the execution, delivery, validity or enforceability of this Letter or the performance by the Borrower of its obligations hereunder or required to make this Letter admissible in evidence has, where applicable, been obtained and is in full force and effect.
- (b) Neither the execution and delivery of the form of acceptance indorsed hereon by the Borrower nor the performance or observance of any of its obligations under this Letter will conflict with, or result in, any breach of any law, statute, regulation, indenture, mortgage, trust deed, agreement or other instrument, arrangement, obligation or duty by which the Borrower is bound or cause, where applicable, any limitation on any of the powers whatsoever of the Borrower howsoever imposed or on the right or ability of the Borrower to exercise such powers to be exceeded.
- (c) All information submitted by the Borrower to the Bank, inter alia, on its financial position, net worth, details of indebtedness, presents accurately its state of affairs and the financial position of the Borrower as at such date.
- (d) There has been no material adverse change in the financial position of the Borrower from that set forth in the application form and in the annexure thereto, submitted to the Bank requesting the Bank for the Facilities.
- (e) The representations and warranties set forth in this Paragraph are given and made on and as of the date hereof, shall survive the acceptance of this Letter and are continuing representations

and warranties which are deemed to be repeated during continuance of the Facilities.

#### **17. EVENTS OF DEFAULT AND CALL IN**

In the event of: -

- (a) Failure by the Borrower to make any repayment of principal or payment of interest or other moneys in respect of the Facility on its due date, or
- (b) A breach in the performance of any other term and condition of the Facility or any covenant by the Borrower or any term and condition of any of the Security Documents or any other security held by the Bank for the Facility, or
- (c) A trustee, sequestrator or similar officer being appointed of all or any of the assets of the Borrower, or
- (d) A distress, execution or other legal process being levied against any of the assets of the Borrower and not being discharged or paid within 7 days, or
- (e) Issuance of a Garnishee or Attachment Order against any deposit or asset maintained by the or creation of a lien over the Borrower' assets without the Bank's prior consent in writing
- (f) The Borrower selling, transferring or otherwise disposing of the whole or any substantial part of its undertaking or assets whether by a single transaction or a number of transactions without the prior written consent of the Bank, or
- (g) Failure to provide additional collateral or security when so requested by the Bank.
- (h) Any indebtedness of the Borrower becoming immediately due or payable or capable of being in default on the part of any person, or the Borrower failing to discharge any indebtedness on its due date, or
- (i) If, in the opinion of the Bank, there is a material adverse change in the Borrower' financial condition or
- (j) if any material part of the assets or revenues of the Borrower are nationalized, compulsorily acquired ,seized or appropriated, or
- (k) If the Borrower without the prior consent in writing of the Bank ceases or threatens to cease to carry on the Borrower' business or any material part thereof, or
- (l) If any of the security& facility documents fails or ceases in any respect to have full force and effect or to be continuing or is terminated or disputed or becomes in jeopardy, invalid or

unenforceable, or

- (m) Failure by the Borrower to provide to the Bank, two (2) months prior to the review date, information relating to the Borrower's finances and operations or any other information which in the Bank's opinion is necessary for evaluating and/or appraising the Borrower. (such information includes but is not limited to; management accounts, annual audited accounts, borrowing certificate, aged list of debtors and creditors).
- (n) Failure by the Borrower to notify the Bank of any court case(s), relating to any borrowings being sought or security pledged to the Bank as and when they occur during the subsistence of the facility.
- (o) In accordance with normal banking practice, poor account conduct, bouncing of cheques, cheque kiting and other banking malpractices.
- (p) Any representation or warranty made by the Borrower hereunder or for the purpose of obtaining the Facility being incorrect in any material respect as of the date of which it is made or deemed to be made, or there being any material adverse change of the position as set out in such representation of warranty.

then the Bank's commitment to advance the Facility or any balance thereof shall cease and the whole amount of the outstanding Facility and all accrued interest or other amounts owing hereunder will become repayable forthwith on demand in writing made by the Bank at any time. The Borrower shall also provide cash cover on demand for all contingent liabilities of the Borrower to the Bank and for all notes or bills accepted, endorsed or discounted and all bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Borrower. In addition any and all Security Documents and any and all other securities held by the Bank in respect of the Facility shall become immediately enforceable.

Any moneys not paid following a demand under this Paragraph shall continue to attract interest at the contracted rate as well after as before judgment or any Bankruptcy or liquidation of the Borrower.

#### **18. ASSIGNMENT & TRANSFER OF THE BANK'S RIGHTS**

- (a) All moneys payable by the Borrower under, the benefit of the covenants of the Borrower



contained in, and all other rights of the Bank under, this Letter shall be assignable by the Bank and remain valid and effective in all respects in favour of any assignee, transferee or other successor in title of the Bank in the same manner as if such assignee transferee or other successor in title has been named in this letter as a party instead of or in addition to the Bank.

- (b) The Bank may disclose to any proposed assignee or transferee or to its Holding Company, Subsidiary, or any Subsidiary of its Holding Company (whether or not they are proposed assignees or transferees) such information as is in its possession at any time relating to the Facilities, the Borrower or the Holding Company or any Subsidiary of the Borrower or any Subsidiary of the Borrower's Holding Company.
- (c) Any change in the constitution of the Bank or its absorption in or amalgamation with any other person or the acquisition of all or part of its undertaking by any other person or any reconstruction or reorganisation of the Bank shall not in any way prejudice or affect its rights under this letter.

#### **19. CONFIDENTIALITY**

- (a) The Borrower agrees not to disclose to any third parties any information provided by the Bank in connection with this offer, except to those legally required
- (b) The Borrower hereby expressly consents and authorizes the Bank to disclose, respond, advise, exchange and communicate the details or information pertaining to the Borrower's account(s) to other Banks, financial institutions, credit card companies, or credit reference bureaus, including authorized agents, representatives, lawyers or debt collection agents for the purposes of any bona fide enquiry or collection of any data or towards recovery of any sums due and outstanding to the Bank.

#### **20. NOTICES**

Each party may give any notice, request, demand or other communication under or in connection with this Agreement by letter, facsimile or other comparable means of communication addressed to the registered office of the other party. Any such communication will be deemed to be given as follows:

- (a) if personally delivered, at the time of delivery;
- (b) if by letter, at noon on the fifth Business Day following the day such letter was posted (or

in the case of airmail, seven days after the envelope containing the same was delivered into the custody of the postal authorities); and

- (c) if by facsimile transmission or comparable means of communication during the business hours of the other party then on the day of transmission, otherwise on the next following business Day.

In proving such service it shall be sufficient to prove that personal delivery was made or that such letter was properly stamped, addressed and delivered to the postal authorities or in the case of facsimile transmission or other comparable means of communication, that a confirming hard copy was provided promptly after transmission.

#### **21. LAW**

- (a) This Agreement shall be governed by and shall be construed in accordance with Kenyan law provisions as may be amended, consolidated, extended or reenacted from time to time and to any orders, regulations, instruments or other subordinate legislation made under the relevant statutes.
- (b) All rights of the Bank contained in this Letter are in addition to all rights vested or to be vested in the Bank pursuant to the other Security Documents and all Kenyan law provisions in force at the date of this letter.
- (c) If any change in applicable law or regulation or in the application or interpretation thereof by any government authority charged with the administration thereof shall make it impracticable or unlawful for the Bank to maintain or give effect to its obligations under this Letter,, the Bank shall advise the Borrower in writing of such event and the Bank's obligation to make the Facilities available shall be cancelled and the Borrower shall on repay to the Bank the Facilities and accrued interest thereon to the date of repayment.

#### **22. DEBT COLLECTION**

In the event of default by the Borrower, the Bank may outsource collection of the debt to an independent collection agency or law firm who shall be authorized to collect the said debt on behalf of the Bank and such costs shall be solely borne by the Borrower

#### **23. OTHER TERMS & CONDITIONS**

- (a) Any right or power which may be exercised or any determination which may be made under this Letter by the Bank may be exercised or made

in its absolute and unfettered discretion and it shall not be obliged to give reasons thereof.

- (b) No failure, delay or other relaxation or indulgence on the part of the Bank to exercise any power right or remedy shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any power right or remedy preclude its further exercise or the exercise of any other power right or remedy.
- (c) Each of the provisions of this letter 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 of this Agreement shall not in any way be affected or impaired thereby.
- (d) The Bank shall not be liable for the acts or omissions of its advocates, valuers or other professional advisers.



