



## TERMS AND CONDITIONS FOR BUY NOW PAY LATER (BNPL) LOAN FACILITY

### TERMS AND CONDITIONS

The following terms & conditions as provided in this Agreement apply to the I&M Buy Now Pay Later (BNPL) Loan Facility provided by I&M Bank Limited. This Agreement is subject to any other agreement made in writing between the Bank and the Borrower and is subject to the Bank's General Terms & Conditions, Terms and Conditions Governing the Use of I&M Next Generation Banking Facility, Terms and Conditions governing use of I&M internet/mobile banking available as amended from time to time and available at <https://www.imbankgroup.com/ke/terms-and-conditions/> and any other Bank terms and conditions pertaining to account opening and other services and products offered by the Bank, and the Bank's Privacy Notice.

#### 1. DEFINITIONS:

In this Agreement, unless the context requires otherwise:

- (1) **Agreement** means the Borrower's application when duly approved by the Bank and these terms and conditions as may be revised, supplemented, enhanced and restated or otherwise notified.
- (2) **Alert(s)** shall mean the customized messages sent to the Borrower's Mobile Phone Device as Short Messaging Service (SMS) and/or customized messages sent to the Borrower by e-mail, or other modes of communication.
- (3) **Applicable Law** means, with respect to a given person on a given date, any constitution, statute, law, rule, regulation, ordinance, judgment, order, decree, consent of a governmental authority, or any published directive, guideline, requirement, international treaty obligation or other governmental or inter-governmental restriction that has the force of law, any determination by, or interpretation of any of the foregoing by, any judicial authority, that is binding on such person whether in effect as of the date hereof or as of any date thereafter.
- (4) **Approved** means the acceptance by the Bank of the Buy Now Pay Later Loan facility(ies) applied for or such lesser sum as it may in its sole discretion agree to advance to the Borrower including any terms of such approval as to the cost and the applicable interest rate or otherwise "Approval" shall have a corresponding meaning.
- (5) **Borrower** means the applicant(s) specified in the application and their personal representatives and assigns.
- (6) **Bank** means I&M Bank Limited
- (7) **The Buy Now Pay Later Loan facility, herein also referred to as "BNPL"** means/denotes a financial arrangement wherein a loan is extended to facilitate a borrower to make a purchase(s) from approved partners or merchants by the Bank.
- (8) **"Partner" or "Merchant"** refers to the supplier or provider of goods or products to be purchased by the borrower utilizing the Buy Now Pay Later Loan Facility or facilities.
- (9) **Corrupt Practices Law** means any other Applicable Law relating to bribery, kick-backs, or similar business practices.
- (10) **Disbursement** means the crediting of the approved loan into the Borrower's account or by any other mode making payment of the principal loan to the Borrower or his account.
- (11) **Events of Default** means any event or circumstance specified as such in Paragraph 15 (Events of Default).
- (12) **Financial Indebtedness** means, with respect to any given person at any date, total liabilities as defined by the IFRS and any obligation created, issued, incurred, or assumed by such person for borrowed money or arising out of any credit Facility(ies), financial accommodation or hedge Agreement, all guaranties by such entity of liabilities or indebtedness of any other person, liabilities or Indebtedness of any other entity or person secured by any assets or revenue of such entity.
- (13) **IFRS** means international Financial Reporting within the meaning of the International Accounting Standards (IAS) Regulation 1606/2002 or IFRS for SMEs to the extent applicable to the relevant financial statements.
- (14) **OTG App** means the I&M Bank mobile and web application; and
- (15) **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
- (16) Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- (17) Words importing the masculine gender only include the feminine and masculine genders and words denoting natural persons include corporations and firms and all such words shall be constructed interchangeably in that manner.
- (18) The clause and paragraph headings are for reference purposes only and shall not affect the construction of this Agreement.
- (19) If the Customer comprises more than one person, the obligations and liabilities of such persons hereunder are joint and several.
- (20) If any of the provisions hereof is found by any court or other competent authority to be void or unenforceable, it shall be deemed to have been deleted from these Terms and Conditions and the remaining provisions shall continue to apply and be binding on the parties.

#### 2. CHARGES AND INTEREST

The following charges shall apply and may from time to time be subject to change upon notice within the full extent permitted or demanded by law.

Charge Description	Charges
Interest rate on loan amount	Upon the Borrower's application for the Buy Now Pay Later Loan Facility through the OTG App, the Bank shall charge the Borrower a one-off charge, exclusive of excise duty (where applicable), for each application for a Buy Now Pay Later Loan facility. Once the Borrower opts-in, and opts to take up a BNPL loan, the Borrower shall receive, through the OTG App a confirmation of inter alia, the BNPL Facility limit which the Borrower has qualified for, the applicable processing fee, the applicable excise duty (or any other tax as provided under the Applicable Laws), the repayment amount, the repayment date, the applicable credit life insurance and all other applicable charges.  The Bank legally reserves the right to vary the one-off charge as it may determine in its absolute and sole discretion from time to time in line with Applicable Laws.
Application Process	The Borrower shall apply for the BUY NOW PAY LATER LOAN ("BNPL Loan Facility") through the OTG App.
The Process	By checking in the assigned box in the online application, the Borrower shall be deemed to have 'opted-in' meaning, read, understood, and accepted ALL the Terms and Conditions of the BNPL Loan Facility. If the Borrower, after opting in, does not wish to apply for the BNPL Loan Facility, they may choose to opt-out. In the event that the Borrower applies for a BNPL Loan Facility, the option to opt-out will only be available once the Borrower repays the BNPL Loan Facility in full. By opting-in, the Borrower shall be deemed to have read, understood, accepted and provided irrevocable consent for the Bank to exercise the provisions of Clause 14 of this Agreement. The Borrower will receive an Alert on opting in and also upon disbursement of the Facility.

Charge Description	Charges
Processing fee	3% of the loan amount recoverable upfront
Excise Duty	20% of the processing fee recoverable upfront
Interest rate	3.5% per month
Insurance	0.035% per month

## 2.1 INTEREST

In this Agreement, unless the context requires otherwise:

- (a) The Borrower shall pay interest on all the monies, liabilities and obligations advanced to or incurred by the Borrower in relation to the Facility(ies) at the rates specified in this Agreement.
- (b) Interest on the Buy Now Pay Later Loan Facility(ies) shall be computed on a reducing balance basis, and shall be debited and payable monthly by way of compound interest but without prejudice to the Bank's right to require payment of such interest when due. Interest on the BNPL Facility(ies) shall fall due on based on the selected repayment date selected by the Borrower including the calendar month in which the BNPL Facility(ies) has been availed. In case the selected repayment date is a holiday or a non-business day, the interest shall be due on the following working day.
- (c) The Central Bank of Kenya may from time to time and at its sole discretion and within the limit permitted by law revise the CBR (Central Bank Rate) and shall publish the revised CBR. The Bank may from time to time at its sole discretion and within the limits permitted by law revise the Margin and applicable rate or rates of interest payable, provided however that the Bank shall give the Borrower at least thirty (30) days' notice prior to any change in the rate or rates of interest payable and any such change will not prejudice in any way the Bank's right to recover interest charged subsequent to such change. Provided that any change in the Central Bank Rate shall apply with immediate effect with no requirement for prior notice.
- (d) "Margin" means the deviation percentile rate per annum added to or deducted from the Bank's Base Rate. The Margin comprises of: -
  - i. Administrative overheads
  - ii. Financial tax (Cash Reserve Ratio & Deposit Insurance Premium)
  - iii. Credit Risk premium
  - iv. Profit margin
  - v. Cost of funds in excess/ arrear of CBR
  - vi. Cost of capital in excess/ arrear of CBR
  - vii. Liquidity Risk Costs in excess/ arrear of CBR
  - viii. Any other costs permitted by law

## 3. EXPENSES

- (a) The Borrower shall pay to the Bank, and shall fully indemnify and reimburse 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 documents required under, and the enforcement of, or preservation of any rights under this Agreement or otherwise in connection with the Facility(ies). 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 Borrower's account.

## 4. PAYMENTS

- (a) All payments by the Borrower hereunder shall be made, without set off or counterclaim, by the Borrower, 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) All payments due to be made by the Borrower hereunder, whether of principal, interest or otherwise, shall be made without regard to any equities between the Borrower and the Bank and free and clear of, and without deduction or withholding for, or on account of, any taxes, except to the extent the Borrower is required by law to deduct or withhold any taxes on any amounts payable hereunder, in which case the Borrower shall promptly pay to the Bank such additional amount as is necessary to ensure that the net amount received by the Bank after the required deduction or withholding (including, without limitation, any required deduction or withholding on such additional amount) is equal to the amount that the Bank would have received had such deduction or withholding been made. The Borrower will furnish the Bank within one month after the relevant payment is made with an official receipt of the relevant taxation authorities evidencing payment of any taxes. In the event of failure to provide the receipts within one month as provided for herein, the Bank reserves the right to debit the amounts so deducted from the Borrower's account.

- (d) 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.
- (e) 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 Kenya shillings or in other foreign currency and set off 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 authorizes the Bank to purchase with the moneys standing to credit of such accounts such currencies as may be necessary to effect such set off or transfer at the exchange rate.
- (f) All interest and other payments of a periodic nature under this Agreement shall accrue from day to day and be calculated on the basis of actual days elapsed and 365 day year (or such other day count as the Bank decides has become market practice)

## 5. INSURANCE

- (a) Pursuant to an amendment to the Insurance Act Cap 487, the Borrower is hereby informed of their rights under S. 71A (I) of the said Act of their right to choose an Underwriter or Broker from the list of Underwriters of Brokers licensed by the Insurance Regulatory Authority (IRA) and the option to forfeit the right to choose an Underwriter or Broker(s) licensed by the IRA.
- (b) In consideration of Clause (a) above and in performance of this Agreement, the Borrower hereby waives and/or forfeits their right to select an insurance company and/or insurance underwriter, and agrees that the Bank may appoint an Insurance underwriter and/or Insurance Broker in its own discretion) licensed by the IRA.
- (c) The Bank may require the Borrower(s) to take insurance cover to cover death and or disability through the Bank's approved insurance plan (Credit Life Insurance). The Bank may enter into separate arrangements with insurers to cover the risk.
- (d) The Borrower shall give written notice to the Bank within 48 hours of any occurrence which gives rise, or might give rise, to a claim under the policy of insurance and except with the prior written consent of the Bank, the Borrower shall not agree to settlement of any such claim.
- (e) All proceeds received by the Bank in respect of any claim made under the insurance will be applied by the Bank in repayments of the facility. Any surplus after such application will be paid to the Borrower's account

## 6. CONDITIONS PRECEDENT

- (a) The Bank's obligation to make any disbursement of the Buy Now Pay Later Loan facility(ies) is conditional upon the Borrower opting in by accepting the terms and conditions of the BNPL facility.
- (b) Upon successful application, the BNPL loan facility will be disbursed to the Borrowers current account and auto swept to the Partner's collection account with the Bank.
- (c) Opting in by the Borrower shall be deemed conclusive evidence of the Borrower's Agreement to be bound by ALL the terms and conditions of the BNPL Facility and all applicable costs, fees and charges.

## 7. CURRENCIES

- (a) The Bank may at its sole discretion, if the Borrower so requests grant from time to time part or all the Facility(ies) in other currency and/or currencies within the available limits at the Bank's prevailing rate of exchange.
- (b) By availing the Facility(ies) 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 in its sole and absolute discretion. No payment to the Bank (whether under any judgement 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 Facility(ies).
- (c) 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.
- (d) All moneys received or held by the Bank or 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. (where applicable)
- (e) 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.
- (f) 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.
- (g) 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 short fall.

## 8. 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 Agreement or the performance by the Borrower of its obligations hereunder or required to make this Agreement 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 Agreement 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 Financial 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 annexures thereto, submitted to the Bank requesting the Bank for the Facility(ies).
- (e) They have sought independent advice on the terms of this Agreement in order to fully understand the implications and potential consequence of agreeing to these terms.
- (f) As at the date of this Agreement, the Borrower does not have any Financial Indebtedness outstanding [other than the Existing Liabilities].
- (g) 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 Agreement and are continuing representations and warranties which are deemed to be repeated during continuance of the Facility(ies).

## 9. OTHER TERMS AND CONDITIONS

- (a) 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, and remedy preclude its further exercise or the exercise of any other power right or remedy.
- (b) All monies payable by the Borrower under, the benefit of the covenants of the Borrower contained in, and all other rights of the Bank under, this Agreement shall be assignable 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 Agreement as a party instead of or in addition to the Bank.
- (c) 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 or the Borrower.
- (d) 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 reorganization of the Bank shall not in any way prejudice or affect its rights under this Agreement.
- (e) Any right or power which may be exercised or any determination that may be made under this Agreement by the Bank may be exercised or made in its absolute and unfettered discretion and it shall not be obliged to give any reasons thereof.
- (f) A certificate by any officer or other duly authorized official of the Bank as to the money and liabilities for the time being due or accrued from or by the Borrower pursuant to any of the Facility Documents or the amount of any interest, commission or other sums owing pursuant to any of this Agreement shall save for manifest error be conclusive evidence of any legal proceedings.
- (g) The facilities availed by the Bank are subject to the Bank's General Terms and Conditions unless varied or inconsistent with the terms of this Agreement. In the event of any inconsistency between the terms of this Agreement and any general terms and conditions of the Bank (whether in force currently or at any time after the date of this Agreement), the terms of this Agreement shall prevail.
- (h) All rights of the Bank contained in this Agreement are in addition to all rights vested or to be vested in the Bank pursuant to the common law or statute.
- (i) The current procedures operational at the partner or merchant point of sale will remain unchanged. Warranty, return, replacement, and cancellation policies will adhere to those established by the respective merchant. Should a customer choose to return an item for the purpose of downgrading or cancelling the sale, the terms specified in the merchant's policies will be enforced. Any funds eligible for refund will be reimbursed through the prescribed procedure set forth by the merchant or partner.
- (j) In cases of warranty disputes, the Borrower shall be liable for accrued interest, while the merchant or partner shall reimburse an amount equal to the retail purchase price of the disputed item with the bank reimbursing the loan amount portion. If the merchant determines any deductible amount owing to returns, the refund shall be processed after deducting said amount. The merchant or partner undertakes to ensure that disputes are resolved within a maximum period of 7 days.

## 10. ENVIRONMENTAL AND SOCIAL MANAGEMENT

- (a) The Borrower undertakes to ensure that it observes and perform all environmental laws (including without limitation the provisions of the Environmental Management and Coordination Act, 1999) the regulations, directions, and codes of practice and all covenants and stipulations from time to time and to diligently designs, constructs, operates, maintains and monitors all of its plants, sites and equipment in a safe, efficient and business-like manner.
- (b) The Borrower shall not perform any of the following activities:
  - (i) Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and Agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, polychlorinated biphenyls, a group of highly toxic chemicals, wildlife or products regulated under Convention on International Trade in Endangered Species or Wild Fauna and Flora.
  - (ii) Production or trade in weapons and munitions. This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (iii) Production or trade in alcoholic beverages (excluding beer and wine). This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (iv) Production or trade in tobacco. This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (v) Gambling, casinos and equivalent enterprises. This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (vi) Any business relating to pornography or prostitution.
  - (vii) Production or trade in radioactive materials.
  - (viii) Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.

- (i) Production or trade in any product or activity deemed illegal under host country laws or regulations or international conventions and Agreements, or subject to international bans, such as pharmaceuticals, pesticides/herbicides, ozone depleting substances, polychlorinated biphenyls, a group of highly toxic chemicals, wildlife or products regulated under Convention on International Trade in Endangered Species or Wild Fauna and Flora.
  - (ii) Production or trade in weapons and munitions. This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (iii) Production or trade in alcoholic beverages (excluding beer and wine). This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (iv) Production or trade in tobacco. This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (v) Gambling, casinos and equivalent enterprises. This does not apply to businesses which are not substantially involved in these activities i.e. the activity concerned is ancillary to the business's primary operations.
  - (vi) Any business relating to pornography or prostitution. Production or
  - (vii) trade in radioactive materials.
  - (viii) Production or trade in unbonded asbestos fibers. This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.
  - (ix) Drift net fishing in the marine environment using nets in excess of 2.5 kilometers in length. Production or
  - (x) activities involving harmful or exploitative forms of forced labor/harmful child labor. Commercial logging
  - (xi) operations for use in primary tropical moist forest.
  - (xii) Production or trade in wood or other forestry products other than from sustainably managed forests. Production or
  - (xiii) activities involving harmful or exploitative forms of forced labor/harmful child labor.
  - (xiv) Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous peoples, without full documented consent of such peoples. Cross-border trade in waste and waste products unless compliant to the Basel Convention and the underlying regulations. Any activity
  - (xv) involving significant altercation, damage or removal of way critical cultural heritage.
  - (xvi) Production and distribution of racist, anti-democratic and/or neo-nazi media or media with the intent to discriminate part of the population.
  - (xvii)
  - (xviii) Exploitation of diamond mines, and commercialization of diamonds, when the host country has not adhered to the Kimberley<sup>12</sup>, or other similar international Agreements (actual or to be formed), on similar extractive resources.
  - (xix) Any sector or service subject to United Nations, European Union embargo without limitation.
  - (xx) Coal-fired power plants when the production of energy is not in an Eligible Country as per CDC Coal-Fired Thermal Power Plants; and
  - (xxi) Coal-fired power plants (including captive coal-fired power plants not producing electricity for the public grid) when representing more than 10% of I&M Bank Limited Kenya portfolio volume financing.
- (c) The Borrower shall notify promptly the Bank of any event(s) concerning the environment or occupational health and safety or social issues.

## 11. EVENTS OF DEFAULT

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 Buy Now Pay Later Loan Facility(ies) on its due date; or
- (b) A breach in the performance of any other term and condition of the BNPL Facility(ies) or The Bank's General Terms & Conditions; or
- (c) A liquidator, 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) 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 any representation or warranty made by the Borrower hereunder or for the purpose of obtaining the Buy Now Pay Later Loan Facility(ies) 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 Buy Now Pay Later Loan Facility(ies) or any balance thereof shall cease and the whole amount of the outstanding Buy Now Pay Later Loan Facility(ies) 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.

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.

## 12. EXCHANGE OF INFORMATION

- (a) By opting in, 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.
- (b) The Bank may from time to time release (without notifying the Borrower) any information relating to any of the Borrower's account to any statutory authority which has legal power to demand for such information including the Central Bank of Kenya and Kenya Revenue Authority.
- (c) The Borrower acknowledges that any information released by the Bank under this clause may be used by the recipient to assess applications for credit by the Borrower or any related parties for bad debt tracing and for fraud prevention purposes. The Borrower also acknowledges that such information being released to the recipients may affect the Borrowers' ability to maintain the existing Facility(ies) with lenders or credit card companies. The Borrower shall no claim whatsoever against the Bank for any loss, damage, fees or expenses suffered or incurred by the Borrower in relation to the release of any information by the Bank under this clause.

## 13. DATA PROTECTION

The Borrower, by entering into this agreement, and, by opting in, has consented to the provision of his personal data to the Bank. All personal data contained in the agreement shall be processed in accordance with the Bank's Data Protection Policy and Privacy Notice on the protection of individuals with regard to the processing of personal data it and on the free movement of such data. Such data shall be processed solely in connection with the implementation and follow-up of the obligations in this agreement and without prejudice to the possibility of passing the data to the bodies responsible for inspection and audit in accordance with Data Protection Act, 2019 Laws of Kenya (Act No. 24 of 2019) and/or third parties who may be engaged by the Bank in the furtherance of its obligations. . The Borrower may, on written request, gain access to his personal data and correct any information that is inaccurate or incomplete.

#### **14. CONFIDENTIALITY**

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.

#### **15. SEVERABILITY**

Each of the provisions of this Agreement is severable and distinct from the others and, if at any time one or more of those provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

#### **16. ANTI-CORRUPTION LAW**

- (a) NOT directly or indirectly use the proceeds of the Facility(ies) for any purpose which would breach the Corrupt Practices Laws.
- (b) Not use any proceeds of crime to pay of the outstanding Facility(ies);
- (c) Conduct its businesses in compliance with applicable Corrupt Practices Laws; and
- (d) Maintain policies and procedures designed to promote and achieve compliance with such laws.

#### **17. CHANGE IN CIRCUMSTANCES**

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 Agreement, the Bank shall give notice in writing to the Borrower(s) of such event and the Bank's obligation to make the Facility(ies) available shall be cancelled and the Borrower(s) shall immediately upon receipt of such notice repay the Bank the Facilities and accrued interest thereon to the date of the repayment.

#### **18. GOVERNING LAW**

This Buy Now Pay Later Loan Facility(ies) Agreement shall be governed by and construed in all respects in accordance with the Laws of Kenya. Nothing in this Paragraph shall limit the right of the Bank to take proceedings against the Borrower in any other Court of competent jurisdiction, nor shall instituting of proceedings at one or more jurisdictions preclude the institution of proceedings in other jurisdiction, whether concurrently or not.