

TERMS AND CONDITIONS

Subject to any other Agreement made in writing between the Bank and the Borrower, and subject to the Bank's General Terms & Conditions and Internet Banking Terms & Conditions, the relationship between the Bank and the Borrower shall be governed by the following terms and conditions (hereinafter referred to as the "Digital Overdraft Terms and Conditions" or "this Agreement")

This Agreement shall be binding on You, your legal personal representatives and assigns. By opting in to the Facility on the Platform, You agree to comply with the terms and conditions of this Agreement.

1. DEFINITIONS

1.1 In this Agreement, unless the context requires otherwise:

- a) **Account** shall have the meaning assigned in the Bank's General Terms and Conditions;
- b) **Agreement** means the Borrower's application when duly approved by the Bank on the Platform and these terms and conditions as may be revised, supplemented, enhanced and restated or otherwise notified from time to time.
- c) **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.
- d) **Approved** means the acceptance by the Bank of the Digital Overdraft 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.
- e) **Borrower** means the applicant specified in the application and their personal representatives and assigns.
- f) **Bank** means I&M Bank Limited.
- g) **Commission/Charges:** Ledger fees and other charges and commissions shall be charged in accordance with the **Bank's Tariff** as published from time to time
- h) **Corrupt Practices Law** means any other Applicable Law relating to bribery, kick-backs, or similar business
- i) **Disbursement** means the crediting of the approved loan into the Borrower's current account.
- j) **Existing Liabilities** means the Existing Financial Indebtedness set out in Existing Liabilities
- k) **Equipment** means and includes Your mobile phone handset, SIM Card and/or any other equipment which when used together enables You to access the Platform.
- l) **Facility** means the digital overdraft amount accessed by the Borrower.
- m) **Fees** means, and includes, without limitation, where applicable:
 1. One-time/Processing Fees – the overdraft arrangement fees;
 2. Interest – amount charged on the overdraft as interest. This includes penalty interest where the Borrower is in default; or any other charges applicable under the Facility as communicated by us from time to time in accordance with this Agreement and includes charges and applicable taxes thereon under the Laws of Kenya.
- n) **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, financial accommodation or hedge agreement, all guaranties by such entity or person 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 or person.
- o) **Insolvency Practitioner** means a receiver, receiver and manager or administrative receiver, administrator or special manager of the whole or any part of the Borrower's property.
- p) **IFRS** means international accounting standards 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.
- q) **OTG App** means the I&M Bank mobile and web application, and includes accessing it through the application or the Bank's website;
- r) **Platform** means the OTG App.
- s) **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
- t) **You or Your** means any reference to the Borrower.
- u) **We, Our or Us** means any reference to the Bank.

1.2 In these Terms and Conditions: -

- a) where "the Borrower" is more than one person, references to "the Borrower" shall include all and/or persons and the obligations of the Borrower shall be joint and several; and
- b) words in the singular shall include the plural and vice versa.

2. CHARGES

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:

- (a) The Borrower shall pay all the monies, liabilities and obligations advanced to or incurred by the Borrower in relation to the Digital Overdraft as specified in this Agreement and as shall be confirmed to the Borrower through the OTG App.
- (b) All monies due on the Digital Overdraft Facility ("Total Outstanding Debt") shall fall due from the date of disbursement ("Due Date"). The Bank shall recover Processing Fees on the Facility on acceptance of this application by debit from the Borrower's Account, prior to the Bank granting the Facility limit. Processing Fees recovered as such shall be non-refundable under all circumstances even when the facility is cancelled and/or unutilised.
- (c) Debit Interest will accrue daily on the outstanding unpaid amount.
- (d) Overdraft repayments will be an Auto Debit on all inflows to the operative account. As an overdraft, any credit into customer account shall be used to pay any outstanding Overdraft & interest regardless of disbursement date.
- (e) The following charges shall apply to the Digital Overdraft Facilities: -

Fees	Description
One-time fee/Processing Fee	4% exclusive of excise duty. Recovered at the point of disbursement from customer account (over and above OD limit utilized).
Annual Interest Margin	Annual Interest Margin- 2% Annual Interest= Base Rate +Margin (Annual Interest/12)/Number of days in the month
Penalty Interest	15%
Credit Life Insurance	Digital Overdraft of KES 20,000 & below – none. Above KES 20,000 – 0.06% p.m., with a minimum of Kes.50
PHCF	0.25% of the credit life premium to be applied.

Limits

Overdraft utilization (disbursement) thresholds:

- Min Kes 1/=
- Max Kes 100,000/=

(f) The Central Bank of Kenya may from time to time and at its sole discretion and within the limit permitted by law revise the Central Bank Rate (CBR) and shall publish the revised The Bank may from time to time at its sole discretion and within the limits permitted by law revise the Margin and applicable charges on the Digital Overdraft Facility with no requirement for prior notice to the Borrower.

(g) "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 Profit margin
- iv. Cost of funds in excess/ arrears of CBR
- v. Cost of capital in excess/ arrears of CBR
- vi. Liquidity Risk Costs in excess/ arrears of CBR
- vii. Any other costs permitted by law

3. INTEREST ON EXCESS AND ARREARS

(a) Without prejudice to the provisions of Events of Default (as defined in Clause 4 below) and the rights of the Bank hereunder, if at any time during the continuance of the Facility, the amount drawn by the Borrower from the Bank is in excess of the Facility committed by the Bank under the Borrower's application and/or if any sum payable by the Borrower under the Borrower's application is not paid on the date on which it is due in accordance with the provisions of this Agreement, 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/arrears for the period during which the account is in excess/arrears at the rate of fifteen per cent (15%) per annum over the then subsisting rate of interest payable by the Borrower on the Facility. The Bank may by notice change this rate of interest so payable, and any such change will not prejudice in any way the Bank's right to require payment of such interest when due.

The Borrower acknowledges and agrees that any amounts in excess and arrears do not form part of Credit Facility (as defined under the Banking Act) and that the aforesaid 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.

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(b) 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 application, and demand having been made, the Bank demands repayment of 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 additional 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 the rate of fifteen per cent (15%) per annum over the then subsisting rate of interest payable by the Borrower on the Facility. The Bank may by notice change this rate of interest so payable, and any such change will not prejudice in any way the Bank's right to require payment of such interest when due.

The Borrower acknowledges and agrees that any amounts due under clause 2(b) above do not form part of Credit Facility (as defined under the Banking Act) and that the aforesaid 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.

(c) This Clause applies if the Borrower has requested the Bank to review the OD Facility in accordance with this Agreement. For the period commencing on the Expiry Date and ending 90 days thereafter, interest on the OD Facility shall be charged in accordance with Paragraph 1 of this Schedule. After the expiry of such period and until such time as either (a) new OTG application is accepted by the Borrower in accordance with its terms or (b) the Bank informs the Borrower that it is not willing to renew the OD Facility (upon which the Bank will make demand for immediate repayment in full), the Borrower shall (without prejudice to the right of the Bank to demand immediate repayment in full) pay additional interest on any outstanding amount under the OD Facility at the rate of fifteen per cent (15%) per annum over the then subsisting rate of interest payable by the Borrower on the OD Facility. The Bank may by notice change this rate of interest so payable, and any such change will not prejudice in any way the Bank's right to require payment of such interest when due.

(d) All amounts drawn and outstanding under the Facility and all interest and other sums payable in respect of the Facility shall be due and payable at any time forthwith on demand. However, without prejudice to the Bank's right to make demand at any time, it is agreed that:-

- i. The Facility is repayable immediately should an Event of Default occur. However, without prejudice to the Bank's right to make demand at any time, and provided that no Event of Default has occurred, the Facility shall be available for a maximum period of 1 month from the date of draw down (hereinafter referred to as the "OD Expiry Date") when the entire amount outstanding under the Facility shall be due for payment in full. Overdue date shall commence after the 1 month period, that is, overdue date day 1 = 30 days from 1st drawdown.
- ii. If at any time the Bank receives less than the full amount on the date when such amount is due and payable to it under the Borrower's application, the Bank may allocate and apply the amount received in any way or manner and for such purpose or purposes under this Agreement as the Bank in its sole discretion determines, notwithstanding any instruction that the Borrower may give to the contrary.

4. EVENTS AND CONSEQUENCES OF DEFAULT

4.1 Events of Default

In the event of:-

- i. Failure by the Borrower to make any repayment of the Outstanding Debt in respect of the Facility on its due date; or
- ii. A breach in the performance of any other terms and conditions of the Facility or the Bank's General Terms & Conditions; or
- iii. A liquidator, trustee, sequestrator or similar officer being appointed of all or any of the assets of the Borrower or the Borrower files a petition for bankruptcy; or
- iv. 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
- v. 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
- vi. 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 or warranty,

then the Bank's commitment to advance the Facility shall cease and the whole amount of the outstanding Facility or other amounts owing hereunder will become repayable forthwith on demand in writing made by the Bank at any time.

4.2 Consequences of Default

4.2.1 At any time after an Event of Default has occurred, which is continuing, the Bank may:

- i. Terminate the Facilities provided herein to the Borrower;
- ii. Declare any outstanding Facility (inclusive of all interest, fees and charges) and all other amounts outstanding under this Agreement as immediately due and payable, whereupon You shall be required to settle the Facility immediately;

iii. hold any of Your funds standing in credit with the Bank as collateral and security for any amounts outstanding and due from You in respect of the Facility. You hereby agree and confirm that we are entitled in our discretion to prevent or restrict you from withdrawing in whole or in part the funds in Your account(s) for as long as and to the extent of the amount outstanding in respect of Your Facility, without any notice to You and/or incurring any liability to You whatsoever in that connection;

iv. have a right of lien and set off over funds held by You in any of Your accounts with the Bank. We may, without notice, set off against any amount due from any other account whether current, loan, or loans or any other type of account as provided in the Bank's General Terms and Conditions.

4.2.2 The above notwithstanding, the Bank may, upon notice to the Borrower, set off their account against any other account or indebtedness in respect of which the Borrower is liable, notwithstanding that some other person may also be liable in respect thereof.

4.2.3 The Bank is entitled to defer any settlement or any other sum due to You to the extent that We consider it necessary to protect our ability to recover any sums or any other liability in connection with the Facility.

4.2.4 The Bank may submit information concerning the default to Credit Reference Bureaus as required under the Banking Act or any other regulatory body.

4.2.5 You shall meet and further reimburse us on demand (and on a full indemnity basis and from all liabilities arising from any delays or omissions occasioned by You) all costs, charges and expenses (including legal or recovery charges demanded from or incurred by Us after giving a seven (7) days' notice) incurred by Us in suing for or recovering any sum due to Us under this Agreement, or otherwise in protecting or enforcing our rights under this Agreement, save as may otherwise be directed by any competent court of law, and the "expenses" shall be deemed to include any sums which would be allowed to Us in a taxation as between advocate and client. 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 any of your accounts.

4.2.6 The exercise by us of any rights under this Clause shall be without prejudice to any other rights or remedies (including but not limited to set-off) to which we are otherwise entitled to (by operation of law, contract, or otherwise).

5. EXPENSES

The Borrower shall pay to the Bank and shall fully indemnify and reimburse upon demand all costs, charges and expenses (including legal, debt recovery costs, 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 Digital Overdraft. On failure to pay these amounts on their due dates or on demand date as applicable, the Bank reserves the right to debit the same from the Borrower's.

6. PAYMENTS

6.1 The total Outstanding Debt due from the Borrower shall be made by the Borrower on the Due Date, without set off or counterclaim, by the Borrower.

6.2 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 The total Outstanding Debt due from the Borrower shall be repaid in full by the Borrower on the Due Date 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.

6.3 The Borrower hereby agrees that the Bank may at any time without notice or further 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.

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7. INSURANCE

7.1 Pursuant to an amendment to the Insurance Act Cap 487, the Borrower is hereby informed of their rights under 71A (l) 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.

7.2 In consideration of clause (a) above, the Borrower hereby forfeits the right to choose an underwriter or Broker(s) licensed by the IRA.

7.3 The Bank may require the Borrower(s) to take insurance cover to cover death and or disability through the Bank's approved insurance plan. The Bank may enter into separate arrangements with insurers to cover the risk.

7.4 The Borrower undertakes to pay the insurance premiums stipulated by the Bank from time to time.

7.5 The Borrower also understands and accepts that in the Event of Default on the Digital Overdraft or delay in payment of the insurance premiums, the insurance may not be valid and the Borrower will continue to be liable for repayment of all monies due to the Bank.

7.6 The Borrower also understands and accepts that not all types of disability or death may be covered by insurance. The Borrower will continue to be liable for any shortfall in the amount received from the insurers

7.7 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.

7.8 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 Digital Overdraft Facility. Any surplus after such application will be paid to the Borrower's account.

8. CONDITIONS PRECEDENT

8.1 The Bank's obligation to make any disbursement of the Digital Overdraft is conditional upon the Borrower opting in by accepting the terms and conditions of the Digital Overdraft Facility.

8.2 Upon sanction of the Loan amount following successful application, the Digital Overdraft Facility will be disbursed immediately to the Borrowers current account.

8.3 The Bank may approve the sum applied for by the Borrower or decline the application in its sole discretion without giving any reasons.

8.4 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 Digital Overdraft Facility and all applicable costs, fees and charges.

8.5 The Borrower hereby irrevocably authorize the Bank to act on all applications received by the Bank from the Borrower (or purportedly from by the Borrower) through the OTG App and to hold the Borrower liable in respect thereof.

8.6 The Bank shall be deemed to have acted properly and to have fully performed all the obligations owed to the Borrower notwithstanding that the application may have been initiated or sent in error or fraudulently, and the Borrower shall be bound by any applications which the Bank shall approve in the belief that such instructions have been sent by the Borrower.

8.7 The Borrower agrees to release from and indemnify the Bank against all claims, losses, damages, costs and expenses howsoever arising in consequence of, or in any way related to the Bank having approved and disbursed the facility, or, declined to approve the Borrower's application in accordance with the discretion conferred upon the Bank under this Agreement.

8.8 You acknowledge that to the full extent permitted by law the Bank shall not be liable for any unauthorized application, disclosure, any activity or any incident on your OTG App in connection with your application for the Digital Overdraft Facility by the fact of the knowledge and/or use or manipulation of your PIN, password, User ID, One Time Password (OTP) or any means whether or not occasioned by the Borrower's negligence.

9. BORROWER'S EQUIPMENT AND BORROWER'S RESPONSIBILITIES

9.1 You shall at your own expense provide and maintain in safe and efficient operating order your Equipment necessary for the purpose of accessing the Account and the Facility.

9.2 You shall be responsible for ensuring the proper performance of your Equipment. The Bank shall neither be responsible for any errors or failures caused by any malfunction of your Equipment, and nor shall we be responsible for any computer virus or related problems that may be associated with the use of the Account and the Equipment. You shall be responsible for charges due to any service provider providing you with connection to the Platform and we shall not be responsible for losses or delays caused by any such service provider.

9.3 You shall follow all instructions, procedures and terms contained in these Terms and Conditions and any document provided by us concerning the use of the Account and Facility.

9.4 You agree and acknowledge that you shall be solely responsible for the safekeeping and proper use of your Equipment and for keeping your PIN secret and secure. You shall ensure that your PIN does not become known or come into possession of any unauthorized person. We shall not be liable for any disclosure of your PIN to any third party and you hereby agree to indemnify and hold us harmless from any losses resulting from any PIN disclosure.

9.5 You shall take all reasonable precautions to detect any unauthorized use of the Account and access to the Facility. You shall ensure that all communication from us are examined and checked by You as soon as practicable after receipt by You in such a way that any unauthorized use of and access to the Account will be detected.

9.6 You shall immediately inform us through the Service Centre in the event that: -

9.6.1 You have reason to believe that your PIN is or may be known to any person not authorized to know the same and/or has been compromised; and/or

9.6.2 You have reason to believe that unauthorized access of the Facility has, may have occurred, or could occur and a transaction may have been fraudulently input or compromised.

9.7 You shall at all times follow the security procedures notified to You by us from time to time or such other procedures as may be applicable to the Facility from time to time. You acknowledge that any failure on your part to follow the recommended security procedures may result in a breach of your Account's confidentiality. In particular, You shall ensure that the Facility is not accessed, or requests are not issued, or the relevant functions are not performed by anyone other than You or a person authorized by You to do so.

9.8 You shall not at any time operate or use the Account in any manner that may be prejudicial to us in accessing the Facility.

10. CURRENCIES

- The Bank may at its sole discretion, if the Borrower so requests grant from time to time part or all the Facility in other currency and/or currencies within the available limits at the Bank's prevailing rate of exchange.
- By availing the Digital Overdraft 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 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 Digital Overdraft.
- 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.
- 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)
- 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.

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- Neither the Bank nor any Insolvency Practitioner shall be liable to the Borrower for any loss resulting from any fluctuation in exchange rates before or after the exercise of the foregoing
- 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.

11. EXCLUSION OF LIABILITY

11.1 We shall not be responsible for any loss suffered by you should the access to the Facility be interfered with or be unavailable by reason of (a) the failure of any of your Equipment; or (b) any other circumstances whatsoever not within Our control including, without limitation, force majeure events or error; interruption, delay or non-availability of the Account, equipment failure, loss of power, and failure of any public or private telecommunications system.

11.2 We will not be liable for any losses or damage suffered by you as a result of or in connection with: -

- 11.2.1 unavailability of sufficient funds in Your Account;
- 11.2.2 failure, malfunction, interruption or unavailability of the Account, Your Equipment, the Platform, Account and/or access to the Facility;
- 11.2.3 the money in Your Account being subject to legal process or other encumbrance restricting payments or transfers thereof;
- 11.2.4 Your failure to give proper or complete instructions for payments or transfers relating to your Account;
- 11.2.5 contributory fraud/negligence/deficiency on Your part leading to any fraudulent or illegal use of or access to the Facility, the Account and/or your Equipment and whereupon you fail to immediately report suspected or known breaches to Us; or
- 11.2.6 Your failure to comply with this Agreement and any document or information provided by Us concerning the use of the Account and access to the Facility.

11.3 If for any reason other than a reason mentioned in subparagraphs 11.1 or 11.2, access to the Facility is interfered with or unavailable, Our sole liability under this Agreement in respect thereof shall be to re-establish the access as soon as reasonably practicable.

11.4 Save as provided for in subparagraph 11.3, We shall not be liable to you for any interference with or unavailability of access to the Facility, howsoever caused.

11.5 Under no circumstances shall We be liable to You for any loss of profit or anticipated savings or for any indirect or consequential loss or damage of whatever kind, howsoever caused, arising out of or in connection with the Facility even where the possibility of such loss or damage is notified to Us.

11.6 All warranties and obligations implied by law are hereby excluded to the fullest extent permitted by law.

12. REPRESENTATIONS AND WARRANTIES

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

12.1 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.

12.2 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.

12.3 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.

12.4 There has been no material adverse change in the financial position of the Borrower from that set forth by the Borrower at the time of opt in.

12.5 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.

11.6 As at the date of this Agreement, the Borrower does not have any Financial Indebtedness outstanding [other than the Existing Liabilities].

11.7 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 Digital Overdraft Facility.

13. 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 Digital Overdraft 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) You acknowledge that the intellectual property rights in the Account (and any amendments, upgrades or enhancements thereto from time to time) and all associated documentation that we provide to you through the Account or otherwise are vested either in us or in other persons from whom we have a right to use and to sub-license the Account and/or the said documentation. You shall not infringe any such intellectual property rights. You shall not duplicate, reproduce or in any way tamper with the Account and associated documentation without our prior written consent.
- i) 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.

14. ENVIRONMENTAL AND SOCIAL MANAGEMENT

13.1 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.

13.2 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. ii. 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.
- iii. 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
- iv. 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.
- v. Production or trade in 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.

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- 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
- vii. Any business relating to pornography or
 - viii. Production or trade in radioactive
 - ix. Production or trade in unbonded asbestos This does not apply to purchase and use of bonded asbestos cement sheeting where the asbestos content is less than 20%.
 - x. 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.
 - xi. 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.
 - xii. 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.
 - xiii. 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.
 - xiv. 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.
 - xv. Any business relating to pornography or prostitution. Production or trade in radioactive materials.
 - xvi. 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%.
 - xvii. Drift net fishing in the marine environment using nets in excess of 2.5 kilometers in length. Production or activities involving harmful or exploitative forms of forced labor/harmful child labor. Commercial logging operations for use in primary tropical moist forest.
 - xviii. Production or trade in wood or other forestry products other than from sustainably managed forests. Production or activities involving harmful or exploitative forms of forced labor/harmful child labor.
 - xix. Production or activities that impinge on the lands owned, or claimed under adjudication, by Indigenous peoples, without full documented consent of such peoples.
 - xx. Cross-border trade in waste and waste products unless compliant to the Basel Convention and the underlying regulations. Any activity involving significant altercation, damage or removal of way critical cultural heritage.
 - xxi. Production and distribution of racist, anti-democratic and/or neo-nazi media or media with the intent to discriminate part of the population.
 - xxii. Exploitation of diamond mines, and commercialization of diamonds, when the host country has not adhered to the Kimberley12, or other similar international Agreements (actual or to be formed), on similar extractive resources.
 - xxiii. Any sector or service subject to United Nations, European Union embargo without
 - xxiv. Coal-fired power plants when the production of energy is not in an Eligible Country as per CDC Coal-Fired Thermal Power Plants; and
 - xxv. 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

13.3 The Borrower shall notify promptly the Bank of any event(s) concerning the environment or occupational health and safety or social issues.

15. EXCHANGE OF INFORMATION

- a) By opting in on the Digital Overdraft, 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, 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 Digital Overdraft with lenders or credit card companies. The Borrower shall make no claim whatsoever against the Bank for the release of any information as provided under this clause, or 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 Terms and Conditions.

16. DATA PROTECTION

All personal data contained in the Agreement shall be processed in accordance with the Bank's Privacy Notice and Data Protection Laws on the protection of individuals with regard to the processing of personal data 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 their personal data and correct any information that is inaccurate or incomplete.

17. 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.

18. 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.

19. ANTI-CORRUPTION LAW

The Borrower agrees: -

- i. NOT directly or indirectly use the proceeds of the Digital Overdraft for any purpose which would breach the Corrupt Practices Laws;
- ii. Not use any proceeds of crime to pay of the outstanding Digital Overdraft Facility;
- iii. Conduct its businesses in compliance with applicable Corrupt Practices Laws; and
- iv. Maintain policies and procedures designed to promote and achieve compliance with such laws.

20. 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 therefor 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 Digital Overdraft available shall be cancelled and the Borrower(s) shall immediately upon receipt of such notice repay the Bank the Outstanding Debt under the Digital Overdraft Facility.

21. GOVERNING LAW

This Digital Overdraft Agreement shall be governed by and construed in all respects in accordance 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.