

THIS AGREEMENT is made the

day of

2003

BETWEEN:

- (1) a limited liability company incorporated in Kenya whose postal address is Post Office Box Number, Nairobi, Kenya (hereinafter “.....”) of the first part;
- (2) of Post Office Box Number, Kenya (hereinafter “.....”) of the second part;
- (3) of Post Office Box Number1 Nairobi, Kenya (hereinafter “.....”) of the third part; and
- (4) a limited liability company incorporated in Kenya whose postal address is Post Office Box NumberNairobi, Kenya (hereinafter the “**Company**”) of the fourth part

WHEREAS:

A presently operate which carries on the Business using the Machines and the Assets.

B have managed and operated for some time and accordingly have the knowledge and experience required in the industry to operate and manage the Business competently and successfully.

C has obtained and holds in its name a Ground Licence for purposes of carrying on the day-to-day operations of the Business.

D The parties have agreed to jointly invest in the Company as herein provided so as they can manage and operate the Business through the Company for the benefit of all the parties.

E There are only two issued shares in the Company and for the avoidance of doubt it is hereby confirmed and agreed that are the sole beneficial owners of the Company.

F The Company has at the date hereof an authorised share capital of Kenya Shillings (divided into shares of Kenya Shillings

G The parties have agreed that on or before the execution hereof the said share capital of the Company shall be consolidated into shares of Kenya Shillings

H owes money and has agreed upon’s request to assign the Ground Licence and transfer the Assets to the Company in consideration of BM not demanding repayment of the money they have lent

I has agreed that as part of its investment in the Company it shall transfer the use of the Machines to the Company in accordance with the terms hereof.

J and have agreed that on the increase of the Company’s share capital as herein provided sixty per cent (60%) of the Shares shall be transferred and / or allotted (as the case may be) to and forty per cent (40%) of the Shares to subject to the terms hereinafter appearing.

K The parties have further agreed to enter into this Agreement to govern their relationship and

regulate the shareholdings, the conduct and affairs of the Company.

It is further noted that shall continue to operate other businesses which it presently is dealing in.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement and the Recitals, where the context so admits, the following words and expressions shall have the following meanings:

“Articles of Association” means the Articles of Association of the Company as amended from time to time;

“Assets” means the assets owned by the which are to be transferred to the Company details of which are provided in Schedule 2 hereof;

“.....” means jointly;

“Board” means the Company’s board of Directors or the Directors present (personally or by their alternates) at any meeting of the Directors duly convened and held;

“Business” means the ground and ramp handling business presently being carried on by, Kenya;

“Business Plan” means the business plan from time to time adopted by the Board for the development and operation of the Business;

“Completion” means completion of the matters referred to in Clause 2;

“Director” means any director of the Company (or his duly appointed alternate);

“Effective Date” means (or such later date as the parties may agree in writing for Completion to take place);

“Ground Licence” means the ramp and ground handling licence obtained and held by from the relevant authority to carry on the Business;

“Machines” means the machines purchased by and presently being used by the to carry on the Business details of which are provided in Schedule 3 hereof;

“Relevant Proportion” means in relation to a Shareholder, the proportion which the voting rights attaching to the Shares in issue at that time; excluding any that may be subject to an option notice at that time;

“Shares” means the ordinary voting shares of Kenya Shillings in the increased share capital of the Company;

“Shareholders” means and together;

“A Shareholder Loan” means the loan of United States Dollars to the Company in accordance with the terms hereof;

“**B Shareholders Loans**” means the individual loans of United States Dollars each made by and respectively to the Company in accordance with the terms hereof;

“.....” means Limited a limited liability company incorporated in Kenya;

In this Agreement, unless the context otherwise requires, any reference to:

the singular includes the plural and vice versa;

a person includes reference to a body corporate or other legal entity;

any written law includes that law as amended or re-enacted from time to time;

any agreement or other document includes that agreement or other document as varied or replaced from time to time;

a clause is to the relevant clause of this Agreement;

any party includes that party’s personal representatives and/ or successors and assigns.

The Schedules hereto shall form part of this Agreement.

Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

2. **COMPLETION**

On or before the Effective Date the respective parties shall take the following steps:

A meeting of the existing Directors shall be held to approve and pass the resolutions necessary to put into effect the agreements by the Company herein contained;

subject to the resolutions referred to in Clause 2.1 being proposed and duly passed:

The share capital of the Company shall be increased up to Kenya Shillings

..... shall transfer his one share in the Company for cash at par to and the transfer shall be duly stamped and registered in the members register;

Upon the increase of the Company’s share capital as provided in sub-clause 2.1.1.1:

..... shall be allotted Shares to make them sixty per cent (60%) shareholders in the Company and the form of allotment shall be filed at the Companies Registry and registered in the Members Register (the existing shareholders of the Company having waived their pre-emption rights);

..... shall be allotted Shares to make them forty per cent (40%) shareholders in the Company (in such proportions as shall be agreed between them) and the form of allotment shall be filed at the Companies Registry and registered in the Members Register (the existing shareholders of the Company having waived their pre-emption rights);

..... shall procure that assigns the Ground Licence to the Company as soon as practicable after

Completion;

..... shall procure and / or confirm that the Company is registered for VAT, holds valid trade and other licences from all the relevant authorities and has obtained a Person Identification Number;

..... shall procure that the Assets are transferred to the Company by for use in the Business in consideration of not demanding repayment of the moneys owed to them by as soon as practicable after Completion;

..... shall procure that the Machines loaned to are transferred to the Company for use in the Business as soon as practicable after Completion;

..... and shall be appointed or confirmed (as required) as Directors and shall resign as a Director of the Company;

..... Certified Public Accountants shall be appointed or confirmed (as required) as the new auditors of the Company;

..... shall be appointed or confirmed (as required) as the new secretary of the Company;

The Company shall open bank accounts with Bank Limited and, shall be joint signatories to the said accounts as shall be mutually agreed between them.

In consideration of the allotment of Shares in accordance with sub-clause 2.1.1.3.1 shall make two loans to the Company being the Shareholders Loan and the Shareholders Loan respectively;

In consideration of the allotment of Shares in accordance with sub-clause 2.1.1.3.2 shall make the Shareholders Loan to the Company;

The Shareholders Loan and the Shareholders Loans shall be made up via direct cash payment and property/ assets/ services which are to be provided by and respectively to the Company. The parties have agreed the respective figures for the asset/ service being provided. The list of the said property/ asset/ services are provided in Schedule 2 annexed to this Agreement;

3. MANAGEMENT OF THE COMPANY

With effect from Completion:

3.1 The Business shall be conducted in accordance with good and commercial business practice and subject thereto, in accordance with the Business Plan from time to time adopted by the Board;

3.2 The Board shall comprise a minimum of directors and shall initially consist of shall be the non-voting chairman for all meetings;

3.3 All notices, agendas, reports and proposed resolutions pertaining to Board meetings shall be sent to the non-director shareholders (if any) Forty Eight (48) hours prior to the relevant meetings so as to enable them to comment to the Directors if they so desire;

3.4 No meeting of the Board may proceed to business or transact any business unless a quorum is present at such a meeting. For these purposes a quorum of the Board shall be at least two (2)

Directors one being either and the other being either, any of them present in person or represented by an alternate;

- 3.5 All minutes of meetings of the Board shall be sent to each of the Shareholders within seven (7) days of being approved by the Directors and, in addition to the matters set out in Clause 6 below the Directors shall keep each of the Shareholders informed of developments at Board level and the Company shall to this end provided each six (6) months a report of its activities with the information and in the form agreed by the Shareholders from time to time.

4. MANAGEMENT OF THE BUSINESS

4.1 Throughout the term of this Agreement unless otherwise mutually agreed by the parties:

4.1.1 shall act as Managing Director of the Company working a minimum of hours distributed evenly through Monday to Saturday and his gross monthly remuneration will be United States Dollars) or such other rate as shall be agreed by the Board from time to time;

4.1.2 shall act as Commercial Director of the Company working a minimum of hours distributed evenly through Monday to Saturday and his gross monthly remuneration will be United States Dollars) or such other rate as shall be agreed by the Board from time to time;

4.1.3 shall act as Financial Director of the Company working a minimum of) hours distributed evenly through Monday to Saturday and his gross monthly remuneration will be United States Dollars or such other rate as shall be agreed by the Board from time to time;

The Directors above stated remuneration shall be subject to all statutory deductions. Such deductions shall be made by the Company before the directors are paid your salary and shall be remitted by the Company to the appropriate government authority;

The Directors said remunerations shall be in arrears and proportionately for any lesser periods;

4.1.7 Each monthly instalment of the Directors said remuneration shall be deemed to accrue from day to day;

4.1.8 For the avoidance of doubt it is hereby noted that in the course of their duties may be required to work additional hours outside those prescribed above and such overtime shall not be eligible for additional pay;

4.2 Each and everyone of the Directors in the course of their duties shall at all times use their best skill and knowledge to manage, administer and develop the Business as their duties require and to efficiently conduct the same to the best of their individual abilities in the interests of the Company and its Shareholders and in a proper and businesslike manner, always subject to the overall direction and control of the Board;

4.3 Without derogation from the provisions of sub-clause 4.1 above, but subject to the provisions of Clause 7, it shall be the duty of Mark to:

direct and supervise and be responsible for the day to day management and administration of the Business save that the accounts and finances shall be Hector Diniz's responsibility;

promote and market the Business for and on behalf of the Company in accordance with the strategies agreed from time to time with the Board;

hold weekly meetings with Hector Diniz to discuss all matters pertaining to the Business;

discuss all new and continuing contracts and proposed investments of the Company with Hector Diniz prior to committing the Company to the same;

submit to the Board a Business Plan before the commencement of each financial year which shall include, inter alia, estimates of capital and revenue expenditure and income for the next ensuing financial year;

arrange for monthly financial meetings to be held by the relevant parties and for quarterly financial audits for the Company to be performed;

on behalf of the Company engage staff at such remuneration as shall be agreed by the Board and dismiss such staff and to arrange suitable training course for such staff;

on behalf of the Company purchase or otherwise acquire on the most advantageous terms procurable all materials, vessels and equipment needed for the development and operation of the Business;

5. FINANCE

Following Completion:

- 5.1 The capital and cash requirements of the Company shall be satisfied by utilisation of the proceeds of the Shareholders Loan and the Shareholders Loans s referred to in Clause 2;
- 5.2 All future requirements of the Company exceeding its own resources from time to time shall in the first instance be procured so far as possible by borrowing, save that no third party shall thereby be or become entitled to acquire the right to participate in the share capital or profits of the Company without the consent of all Shareholders;
- 5.3 If the Board shall determine at any time or from time to time that the Company's resources are insufficient to satisfy its working capital requirements, then the Board shall notify each Shareholder accordingly and the Shareholders may provide the funds to the Company in the form of additional equity subscription or shareholder loans, on such terms and conditions as may be agreed at the time;
- 5.4 If any Shareholder is unwilling or unable to provide its share of additional equity subscription or shareholder loans in accordance with the foregoing provisions, then such Shareholder shall suffer a dilution of its shareholding in the Company by means of the issue of new shares to the other shareholders so that the respective shareholdings of all the members bear the same proportions to each other as their respective participations in share and loan capital combined;
- 5.5 If it becomes necessary to borrow money then the Shareholders agree that for the purposes of compliance with the thin capitalisation rules of Section 16(2) (j) of the Income Tax Act the board may require (and the shareholders shall consent thereto) the capitalisation of that part of their Shareholders Loan (if any) into ordinary share capital as shall be necessary to ensure that the ratio of debt -to-equity in the capital of the Company is sufficient allow interest charges on borrowings of the Company to be deducted for tax purposes when computing the taxable income of the Company.

6. REPAYMENT OF LOANS

The parties hereby agree as follows:

- 6.1 The Shareholders Loan shall be the first to be repaid by the Company and shall attract interest at the rate of
- The Shareholders Loans by both and respectively shall commence being repaid after the A Shareholders Loan together with interest thereon has been repaid provided always that the B Shareholders Loans shall not, unless agreed by all parties, attract interest;
- 6.3 In the event the Company starts to make a surplus by repayment of the Shareholders Loans together with interest thereon shall commence and such repayments shall consist of monthly installments of United States Dollars _____ (USD _____) and shall be completed within a period of months or sooner from such date;
- 6.4 Upon satisfaction of the Shareholders Loan any surplus moneys made by the Company shall be used towards the repayment of the Shareholders Loans and such repayment funds shall be shared equally between and until repayment in full of their respective Shareholders Loans;
- 6.5 The parties hereto that until the Shareholder Loan and the Shareholders Loans respectively have been repaid, no dividends shall be declared by the Company;
- 6.7 If required by shall procure that the Company gives a debenture charge or chattels mortgage to on such terms and conditions as may be required by to secure the repayment of the Shareholders Loan and of all other monies that may become due and payable to as a result of the Shareholders Loan;
- 6.8 In pursuance of sub-clause 6.7 hereof and the Company shall execute and perform or procure the execution and performance of such other acts deeds documents and things as may be necessary effectually to create any charges debentures and / or chattels mortgage that may be required by to secure the Shareholders Loan.

7. PROCEEDINGS OF SHAREHOLDERS

Following Completion:

No general meeting of the Shareholders may proceed to business unless a quorum is present at the meeting. A quorum at a general meeting shall be two or more Shareholders present representing a minimum of seventy per cent (70%) of the Share Capital either in person or by their respective proxies.

- 7.2 The chairman of the Board from time to time shall preside as chairman at every Shareholder's meeting as more particularly set out in the Articles of Association. Subject to Clause 8, questions arising at any Shareholder's meeting shall be decided by a simple majority of votes except where a greater majority is required by the Articles of Association, any agreement between the Shareholders or by the Companies Act. In the case of an equality of votes, the chairman shall not have a casting vote.

8. MATTERS REQUIRING APPROVAL

Following Completion:

- 8.1 The Shareholders shall exercise all voting rights and other powers of control available to them in relation to the Company to procure that the Company and/or the Board shall not, without prior written approval of all the Shareholders which shall not be withheld without good reason;

incur any borrowings either from the Shareholders or from a third party institution or bank whether or not the interest charge would be claimed as a deduction for tax purposes when computing the Company's taxable income except as provided for herein;

create or issue any fixed or floating charge, debenture, lien (other than a lien arising by operation of law) or other mortgage, encumbrance or security over the whole or any part of the undertaking, business, property or assets (tangible or intangible) of the Company;

sell, transfer, lease, assign, dispose of or part with control of any interest in all or any material part of the business, property or assets (tangible or intangible) of the Company (for this purpose a matter shall be material if the value thereof is greater than Kenya Shillings);

make or agree to make any change to the authorised or issued share capital from time to time of the Company or grant any option over or interest in shares save as provided in this Agreement;

expand, develop or evolve its business other than through the Company or a wholly-owned subsidiary of the company;

acquire the whole or part of the assets or undertaking of any other company or business;

subscribe for, or otherwise acquire, whether by formation or otherwise, any interest in the share capital of any other company or body corporate, nor permit the disposal or dilution of its interest directly or indirectly in any company or body corporate which competes with the Business;

enter into any partnership or profit sharing agreement or joint venture with any person which directly competes with the Business;

make or permit any material change to the nature of the Business;

make any composition or arrangement with its creditors, move for insolvency, or receivership or do or suffer to be done any act or thing whereby the Company may be wound up (whether voluntarily or compulsorily);
declare or make any dividend;

appoint more than persons as Directors, except as otherwise provided herein;

make any change to the Company's Memorandum or Articles of Association;

agree or make any change in the amount of fees or expense payable by the Company to any company associated with a Shareholder for services rendered or to be rendered to the Company;

agree to enter into any guarantee of security to secure the indebtedness of the Company;

approve a new Business Plan, or a budget and capital expenditure programme or make any substantial alterations to the Business Plan; and/or

make any decision as to the requirements for, and the raising of, further finance or working capital for the Company

in excess of the equivalent of Kenya Shillings per year;

enter into any material transaction, arrangement, or agreement with or for the benefit of any director of the company or of any subsidiary;

commence any material litigation or arbitration proceedings other than in the ordinary course of business or for the purpose of collecting book or trade debts owing to the Company or any subsidiary;

appoint new auditors as auditors of the Company;

As separate and independent undertaking, the Company agrees with each Shareholder that, so far as it is legally able to do so it shall observe and comply with the prohibitions and restrictions in Clause 8.1.

9. MUTUAL CO-OPERATION

Following Completion:

9.1 Each of the Shareholders agrees that it will use all reasonable endeavours to promote the profitability of the Business and the Company.

9.2 Each of the Shareholders shall do and execute or procure to be done and executed all such acts, deeds, documents and things as may be within its power including in relation to the Shareholders (without prejudice to the generality of the foregoing) the passing of resolutions (whether by the Board or in general meeting or any class meeting of the Company) to give full effect to this Agreement and to procure that all provisions of this Agreement are observed and performed.

9.3 Each of the Shareholders agrees with each of the others that this Agreement is entered into between them and will be performed by each of them in a spirit of mutual co-operation, trust and confidence and that it will use all means reasonably available to it (including its voting power whether direct or indirect, in relation to the Company) to give effect to the objectives of this Agreement and to ensure compliance by the Company with its obligations.

9.4 Each Shareholder undertakes with each of the other that whilst he remains a Shareholder, he will not (except as expressly provided for in this Agreement) agree to cast any of the voting rights exercisable in respect of any of the Shares held by him in accordance with directions or subject to the consent of any other person (including any other Shareholder).

10. UNDERTAKINGS REGARDING THE OPERATIONS OF THE COMPANY

10.1 With effect from the Effective Date the Company undertakes to each of the Shareholders that, and each of the Shareholders shall procure that, it shall;

10.1.1 maintain with a well established and reputable insurer, adequate insurance against all risks usually insured against by companies carrying on the same or similar business to the Business and (without prejudice to the generality of the foregoing) for the full replacement or reinstatement value of all its assets of an insurable nature;

keep books of account and therein make true and complete entries of all its dealings and transactions of an in relation to the Business; such books of account and all other records and documents relating to the business affairs of the Company shall be open to inspection during normal business hours and on reasonable prior notice by each of the Shareholders;

prepare such accounts in respect of each accounting reference period as are required by statute and procure that such accounts are audited as soon as practicable and in any event not later than Four (4) months after the end of the relevant accounting reference period;

keep each of the Shareholders fully informed as to all its financial and business affairs and in particular shall provide each of the Shareholders with full details or any actual or prospective material change in such affairs as soon as such details are available; and

not later than thirty (30) days before the beginning of each financial year, the parties all procure that the Board prepares and delivers to each Shareholder a detailed business plan, incorporating the proposed annual budget and cash flow forecast for the next financial year broken down on a monthly basis, together with a balance sheet showing the projected position of the Company as at the end of the next year. The Shareholder shall have fifteen (15) days within which to notify any proposed revisions or amendments to the Board in writing which shall then be discussed at a Board meeting to be held within such thirty (30) day period. The Board shall then recommend to the Shareholders adoption of the business plan and the Shareholder shall approve the draft business plan with Seven (7) days, subject to any amendments which they deem appropriate, whereupon it shall become the Business Plan for the financial year.

11. **ISSUE OF ADDITIONAL SHARES**

Subject to the provisions of this Agreement, any allotment of Shares shall be made so that at all times the percentage of the ordinary share capital of the Company held by each Shareholder shall remain the same as that immediately prior to such allotment and so that such new Shares shall be of the same class as that held by the allottee at the time of any allotment.

12. **TRANSFER OF SHARES**

12.1 The Directors in their absolute discretion and without assigning any reason therefore may decline to register any transfer of Shares on which the Company has a lien or which are not fully paid. The Directors shall not register a transfer to a person who is known to them to be an infant, bankrupt or person of unsound mind provided that the Directors shall not be bound to enquire into the age or soundness of mind of any transferee or whether or not he is bankrupt.

12.2 No transfer of any Share to a third party purchaser shall be registered unless:

12.2.1 the proposed transferee has entered into a legally binding agreement by which the transferee agrees to be bound by all the terms and conditions contained in this Agreement as if an original party hereto apart from Clause 2 hereof;

such transfer is made in compliance with Schedule 1;

12.2.3 the third party purchaser is not directly or indirectly a substantial competitor of the Company; and

12.2.4 any loans, loan capital, borrowings and indebtedness in the nature of borrowing (but excluding, for the avoidance of doubt, any debts incurred in the ordinary course of trade which are at the relevant time outstanding on intercompany account) owing at that time to the Company shall first have been assigned to, or equivalent finance made available by, the third party purchaser;

12.2.5 if and insofar as the Company requires the third party purchaser to assume the obligations of the Shareholder selling their Shares under any guarantees and/or counterindemnities to

other parties in relation to the Business of the Company, such assumption shall first have taken place (provided that any such assumption is without prejudice to the right of the Company to receive a contribution from the such Shareholder for its share of any claims attributable to any liabilities arising in respect of the period during which the Shareholder held Shares).

subject to any obligations of confidentiality owed to the third party purchaser, the Shareholder selling their Shares shall permit the remaining Shareholders full access to all documents and information in their possession or under the custody and control directly or indirectly relating to the intended transfer of the such Shareholder's Shares to the third party and which the remaining Shareholders may require in connection with such negotiations and discussions.

13. TERMINATION

13.1 This Agreement shall continue in force unless or until the Shareholders have sold all of their Shares or the Company has been wound up, by whatever means.

13.2 Other than in respect of the provisions of this and the following parts of this clause which shall remain in full force and effect, the remainder of this Agreement shall forthwith terminate (but without prejudice to the Shareholders rights and remedies for any prior breach of this agreement) with respect to a Shareholder (in this clause referred to as the "Defaulter") upon written notice ("Termination Notice") to it by Shareholders whose Relevant Proportions constitute one Hundred per cent (100%) of the voting rights attaching to all Shares other than those held by the Defaulter (the "Other Shareholders") after the Other Shareholders have become aware of the occurrence of any of the following events:

a petition being presented or a proceeding commenced (and such petition or proceeding not being discharged or dismissed with thirty (30) days of presentation thereof) or an order being made for the bankruptcy of the Defaulter (or equivalent proceedings in another jurisdiction);

if the Defaulter is in material breach of its obligations hereunder and such breach, if capable of remedy, has not been remedied to the satisfaction of the Other Shareholders at the expiry of 30 days following written notices to that effect having been served on the Defaulter by the Other Shareholders indicating the steps required to be taken to remedy the failure;

the Defaulter withholding its consent in relation to any matter set out in Clause 8 without reasonably justifiable reason and so as to jeopardise the Business or operations of the Company substantially.

If this Agreement is terminated pursuant to Clause 13.2 the Other Shareholders shall (without prejudice to their rights and remedies) have the right (jointly but not severally) to require the Defaulter to sell all of the Defaulter's shares and shareholder loans to the Shareholders not in default (together the "Beneficiaries") at any time during the period of three (3) months from the date of the Termination Notice. Upon expiry of such three (3) months period this "call" option (the "Call Option") shall lapse if not previously exercised and the Termination Notice shall be void and cease to have the effects referred to in 13.2. A further Termination Notice may not be submitted within twelve (12) months thereafter in respect of the continuance of or renewal of the same circumstances.

13.4 The Call Option in favour of the Beneficiaries shall be exercised by the Other Shareholders serving on the Defaulter written notice (an "Option Notice") in respect of all the Shares and Shareholder Loans then held by the Defaulter. The price at which the sale shall take place shall be determined in accordance with the provisions of Clause 2 of Schedule 1.

13.5 The Shares and Shareholder Loans subject to the Option Notice shall be allocated amongst the

Beneficiaries as they shall agree and in default of agreement within fourteen (14) days of the date of the Option Notice, in the Relevant Proportions as at the date of the Option Notice as shall be determined by the Company which shall give Notice of such allocation ("the Allocation Notice") within fourteen (14) days of the determination of the price specifying in the said Allocation Notice the matters referred to in paragraph 3 of Schedule 1.

- 13.6 Completion of the purchase pursuant to an Option Notice shall take place in accordance with the provisions of paragraph 3 of Schedule 1 as if the defaulting Shareholder was the Vendor referred to therein.

14. **CONFIDENTIALITY**

- 14.1 Each of the parties to this Agreement shall at all times use their best endeavours to keep confidential (and to procure that their respective employees and agents if any shall keep confidential) any confidential information which it or they may acquire in relation to the business of affairs of the other parties hereto and shall not use or disclose such information except with the consent of the affected party;

- 14.2 The obligation of the parties in sub-Clause 14.1 shall continue without limit in point of time but shall cease to apply to any information coming into public domain otherwise than by breach of any of the parties hereof of their obligations provided that nothing contained in this Clause shall prevent any party from disclosing any such information to the extent required in or in connection with legal proceedings arising out of this Agreement or any other matter relating to or in connection with the Company;

- 14.3 Upon termination of this Agreement, any of the parties may demand from the other the return of the demanding party's confidential information by notice in writing whereupon the other party shall (and shall ensure that it shall:

return all documents containing confidential information which have been provided by or on behalf of the party demanding the return of confidential information; and

destroy any copies of such documents and any document or other record reproducing, containing or made from or with reference to the confidential information;

Such return or destruction shall take place as soon as practicable after the receipt of any such notice.

15. **NON-COMPETITION**

The parties hereto respectively undertake that neither of them (nor their subsidiaries as the case may be) shall compete with the Company by carrying out a business similar to the Business (whether alone or jointly with others or whether as principal, agent, shareholder or otherwise and whether for its own benefit or that of others) or undertake or be interested in any business in competition with the Company.

16. **NO PARTNERSHIP**

Nothing contained or implied in the Agreement shall constitute a partnership between the parties (or any of them) and none of the parties shall have any authority to bind or commit any other party in any way.

17. **CONFLICT WITH ARTICLES OF ASSOCIATION**

In case of conflict between the Articles of Association and the provisions of this Agreement, this Agreement

shall prevail for so long as it is in force and the parties shall take all such further steps as may be necessary or requisite to ensure that the provisions of this Agreement shall prevail.

18. COUNTERPARTS

This Agreement may be entered into on separate engrossments, each of which when executed and delivered shall be an original, but each engrossment shall together constitute one and the same instrument and shall take effect from the time of execution of the last engrossment.

19. COMPLETION

All of the provisions of this Agreement shall remain in full force and effect notwithstanding Completion (except insofar as they set out obligations which have been fully performed at Completion).

20. NO WAIVER OF RIGHTS

The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy. The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

21. VARIATION

This Agreement shall not be varied or cancelled, unless such variation or cancellation as may be proposed in writing by any Shareholder in a Notice to the Company shall be expressly agreed in writing by each party which agreement shall not be withheld without good reason.

22. SUCCESSORS AND ASSIGNMENT

22.1 The rights and obligations of each of the parties hereto shall be binding upon and ensure for the benefit of their respective personal representatives, successors and permitted assigns;

22.2 The rights and obligations of each of the parties may not be assigned or transferred except as otherwise agreed by all the other parties or as may arise from a transfer of shares in the Company made in accordance with the terms of this Agreement.

23. SEVERABILITY

If any of the provisions of this Agreement is found by an arbitrator, court, or other competent authority to be void or unenforceable, such provision shall be deemed to be deleted from this agreement and the remaining provisions of this agreement mutatis mutandis shall continue in full force and effect. Notwithstanding the foregoing, the parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the provision so found to be void or unenforceable.

24. NOTICES

Any notice or communication under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by post or fax to the addresses given below or such other address as the recipient may have notified to the other parties in writing. In the absence of evidence of earlier receipt, any notice or communication shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post 96 hours after posting or, if sent by fax, 24 hours after transmission.

.....

25. **ARBITRATION**

All claims and disputes whatsoever arising under this Agreement shall be referred to arbitration in accordance with the provisions of the Arbitration Act 1995 or any amendments or superceding acts replacing the same by a single arbitrator being an Advocate of not less than ten (10) years standing assisted by other professionals as he or she deems necessary such arbitrator to be appointed by agreement between the parties or, failing agreement within fourteen (14) days of the notification by either party to the other of the existence of a dispute or claim, to be appointed by the Chairman for the time being of the Institute of Arbitrators, Kenya Branch, Nairobi on the application of either party. The arbitration shall be conducted in Nairobi and all parties agree to be bound by the decision of the said Arbitrator.

26. **GOVERNING LAW**

The construction, validity and performance of the Agreement shall be governed in all respects by the law of Kenya.

27. **SUBMISSION TO JURISDICTION**

The parties agree that any legal action or proceedings arising out of or in connection with this Agreement may be brought before any competent court in the Republic of Kenya and irrevocably submits to the jurisdiction of such court.

28. **COSTS**

Each of the parties shall pay its own legal costs, charges and expenses incurred in connection with the negotiation, preparation and implementation of this Agreement and the transactions contemplated by it.

29. **ENTIRE AGREEMENT**

This Agreement constitutes the entire Agreement between the parties about its subject matter and any previous agreements, undertakings, representation, warranties and negotiations ("prior representations") on that subject cease to have any effect. Each party confirms that it has not relied upon any prior representations and waives any rights which it may have in respect of such reliance if it in fact occurred.

SCHEDULE 1

PRE-EMPTION RIGHTS

1. 1.1 Every Member ("the Vendor") who wishes to transfer any Shares and/or the corresponding Shareholder's Loan shall give to the Company at the Office notice in writing ("the Transfer Notice").
- 1.2 The Transfer Notice shall constitute a binding irrevocable instruction appointing the Company the Vendor's agent on the terms herein set out for the sale of the Shares specified therein ("the Transfer Shares") and/ or for the corresponding Shareholder's Loan ("the Transfer Loans") specified therein to the members other than the Vendor at or above the price for the shares and the nominal value of the corresponding Shareholder's Loan (together the "Transfer Price") specified in the Notice, or as otherwise may be agreed as provided for herein.
- 1.3 The Transfer Notice may contain a provision that, unless all the Transfer Shares and Transfer Loans comprised therein are sold by the Company at or above the price specified therein pursuant to this Schedule, then none shall be sold and any such provision is binding on the Company unless released by the Vendor in writing as provided elsewhere herein.
2. The Board shall within seven (7) days of receipt of the Transfer Notice either approve the proposed Transfer Price and give notice to each Shareholder in accordance with clause 5 below or if the said Transfer Price is not so approved requires the auditor for the time being for the relevant Company to certify, in his opinion, the fair values of the Transfer Shares and Transfer Loans as between willing buyer and willing seller.
3. 3.1 If an auditor's certificate is required, the Company upon receipt of such certificate, shall serve a copy of the same on the Vendor and require the Vendor, within seven (7) days of such service to approve or reject the value as certified by the auditor as the price for the Transfer Shares and the Transfer Loans and to confirm or cancel the Company's authority to sell the same.
- 3.2 The costs of obtaining the certificate shall be borne by the Company unless the Vendor shall cancel the sale, in which case, he shall bear the cost.
4. 4.1 In the event the Vendor agrees to the auditor's valuation the Company shall give notice to each Shareholder in accordance with clause 5 below.
- 4.2 In the event the Vendor rejects the value as certified by the auditors the Company's authority shall be cancelled and the Vendor shall remain with the Shares and/or the corresponding Shareholder's Loan as if the process had not been commenced.
5. Within seven (7) days of approval of the price for the Shares and corresponding Shareholder's Loan by the Board or the Vendor (as the case may be) the Company shall give notice in writing to all Members with a copy to the Vendor, informing them of the number and price for the Shares and amounts of the corresponding Shareholder's Loans and inviting each of them to apply in writing to the Company within fourteen (14) days of the date of service of the notice (the "Application Period") for all or any of the Shares and the corresponding Shareholder's Loans.
6. 6.1 Within seven (7) days of the expiry of the Application Period, the Board shall allocate the Shares and/or the corresponding Shareholder's Loans (or, unless the Transfer Notice contains a condition to the

contrary, so many of them as may be applied for) to or amongst the applicants and, in case of competition, *pro rata* (as nearly as possible) to the number of shares in the Company of which they are registered or unconditionally entitled to be registered as holders; Provided that no applicant shall be allocated more than the maximum number of Shares specified in his application.

6.2 Within seven (7) days of the allocation, the Company shall give notice of the allocations (“Allocation Notice”) to the Vendor and the applicant Members specifying the place and time (being not earlier than fourteen (14) and not later than twenty-eight (28) days after the date of the notice) at which the sale of the Shares and/or Shareholder’s Loan so allocated shall be completed.

7. 7.1 The Vendor shall be bound to transfer the Shares and/or corresponding Shareholder’s Loan comprised

in an Allocation Notice as specified in the notice and, if he shall fail to do so, the Chairman of the Company or some other person appointed by the Board shall be deemed to have been appointed attorney of the Vendor with full power to execute, complete and deliver, in the name and on behalf of the Vendor, transfers of the Shares and/or the Shareholder’s Loan to the purchasers against payment of the price to the Company.

7.2 The Company shall forthwith pay the price into a separate bank account in the Company’s name and shall hold the price in trust for the Vendor.

8. 8.1 If any purchaser fails to complete the purchase of any Shares as specified in an Allocation Notice, he

shall be deemed to have forfeited his right to those Shares and/or corresponding Shareholder’s Loan which shall be re-allocated by the Board to the applicants (other than any defaulting purchaser) in accordance with clause 6.

8.2 If, in any such case, the Transfer Notice was subject to the condition that all the Shares be sold, completion of the sale of all the Shares shall be deferred until such time as may be specified in the notice of re-allocation.

9. Time shall be of the essence for all purposes of this Article.

SCHEDULE 2

[List of Assets being transferred to the Company in consideration of moneys owed to **qqq** by **ttt**

SCHEDULE 3

[List of Machines owned by **ttt** being transferred to the Company]

IN WITNESS WHEREOF this Agreement has been duly executed the day and year first hereinabove written.

SEALED with the Common Seal of)
..... **LIMITED**)
in the presence of:)
)
)
Director)
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)
)
Director/Secretary)

SIGNED by)
in the presence of:)
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Advocate)

SIGNED by)
in the presence of:)
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Advocate)

SEALED with the Common Seal of)
.....)
LIMITED in the presence of:)
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Director)
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Director/Secretary)

Drawn By: