

DATED \_\_\_\_\_ 2003

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**SALE OF SHARES AGREEMENT**

- between -

**xxx**

and

**ccccc**

and

**vvvvvv**

and

**hhhhhhh**

and

**jjjjjjj**

and

**kkkkkkkk**

and

**lllllll**

and

**zzzzzzzz**

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ **qqqq**

**BETWEEN:**

- (1) **xxxxxxx** of Post Office Box Number **t** - Nairobi, Kenya ("**x**") of the first part;
- (2) **ccccc** of Post Office Box Number **t** – Nairobi, Kenya ("**c**") of the second part;
- (3) **vvvvvvv** of Post Office Box Number **t**, Kenya ("**v**" of the third part;
- (4) **hhhhh** a limited liability company incorporated in Kenya whose postal address is Post Office Box Number **t** - Nairobi, Kenya ("**h**") of the fourth part;
- (5) **jjjjjjj** a limited liability company incorporated in Kenya whose postal address is Post Office Box Number **t** - Nairobi, Kenya (the "**jjj**") of the fifth part; and
- (6) **kkkkkkkk** a limited liability company incorporated in Kenya whose postal address is Post Office Box Number **kkk** - Nairobi, Kenya (the "**Company**") of the sixth part; and
- (7) **lllllll and zzz** both of Post Office Box Number **t** - Nairobi, Kenya (jointly the "**Sureties**") of the seventh part.

**WHEREAS:**

A The Company has at the date hereof an authorised share capital of Kenya Shillings One Hundred Thousand (KShs. 100,000) divided into One Thousand (1,000) shares of Kenya Shillings One Hundred (100) each.

B The Shareholders are the beneficial owners free of any charge lien encumbrance option or adverse interest of all the issued shares in the Company as per Schedule 1 hereof;

C The Company operates and carries on both the Business and the Remaining Business at the Premises.

D The Purchasers acknowledge that there are Shareholders Loans and the parties hereby agree that part of the Shareholders Loans being **ccccc**'s Loan shall be discharged prior to Completion but that **vvvvv**'s Loan and **xxxx**'s Loan shall remain outstanding at Completion to be paid off in accordance with the terms and conditions hereof.

E The Purchasers wish to purchase and the Shareholders have agreed to sell and transfer the Shares to the Purchasers (in such proportions as shall be agreed between them) for the Consideration

and in accordance with the terms and conditions of this Agreement.

F The parties have agreed that in consideration of the Purchasers purchasing the Shares, the Company shall at the Completion Date transfer the Remaining Business to [uuuuuu] and shall thereafter continue to carry on and operate the Business.

G In further consideration of the Shareholders agreeing to sell and transfer the Shares to the Purchasers in accordance with the terms hereof the Purchasers agree that they shall procure that the Vehicles and Miscellaneous Furniture are transferred to [vvvv] and [xxxx] and [cccc](or as they shall so instruct) on or as soon as practicable after the Completion Date for the agreed all inclusive total sum of Kenya Shillings [.....].

H Derek and the Purchasers have further agreed that [vvvvv] shall remain a twenty five per cent (25%) shareholder of the Company and that [vvvvv] and the Purchasers shall enter into a shareholders agreement with like terms and provisions to that in Schedule 2 hereof.

I [vvvvvv] and the Purchasers further agree that [vvvvv] shall be employed as the managing director of the Company with effect from the Completion Date and that the Company shall enter into a service agreement with him with like terms and conditions to that in Schedule 3 hereof.

**Operative provisions:**

**1. Interpretation**

1.1 In this Agreement:

“Business” means the business of design marketing, advertising and prepress service as presently carried on by the Company;

“[cccccc]’s Loan” means the amount due to [cccccc] from the Company of Kenya Shillings [.....]

“Completion Date” means [1st June .....] or such later date as shall be agreed between the parties hereto in writing;

“Consideration” means the amount of Kenya Shillings [.....] being paid for the purchase of the Shares;

“[vvvvv]’s Loan” means the amount due to [vvvvv] from the Company of Kenya Shillings [.....]

“[xxxxxx]’s Loan” means the amount due to [xxxxxx] from the Company of Kenya Shillings [.....]

“pppppppp”	means ppppppp Limited a limited liability company incorporated in Kenya;
“Miscellaneous Furniture”	means miscellaneous furniture full details of which have been provided to the Purchasers;
“Premises”	means the Company’s leased premises situate in the ....., ..... Nairobi, full details of which have been given to the Purchasers;
“Purchasers”	Means hhhhhh and jjjjjj together;
“Remaining Business”	means the telephone advertising and tea business presently carried on by the Company;
“Shares”	means seventy five per cent (75%) of the total issued and paid up share capital of the Company;
“Shareholders”	means xxxxx, cccccc and vvvvvv;
“Shareholders Loans”	means collectively xxxxxx’s Loan, cccccc’s Loan and Jvvvvvv’s Loan;
“Vehicles”	means the ..... registration number ..... and ..... registration number ..... and the motorcycle trailer registration number .....
“Warranties”	means the agreements obligations warranties representations and undertakings of the Company and / or the Shareholders respectively as provided in this Agreement.

1.2 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;

A clause is to the relevant clause of this agreement;

Any party includes that party’s personal representatives successors and assigns.

1.3 The Schedules hereto shall form part of this Agreement.

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

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Agreement.

## 2. Sale and purchase of the Shares

- 2.1 Upon the Completion Date the Shareholders shall sell as beneficial owners and the Purchasers shall purchase the Shares for the Consideration free from all liens, pledges, charges and encumbrances and with all rights attaching to them including dividends and distribution of any nature whatsoever;
- 2.2 Each of the Shareholders hereby waives any pre-emption rights, rights of first refusal, tag along or drag along rights they may have in relation to any of the Shares under the Articles of Association of the Company or otherwise;
- 2.3 The Consideration shall be paid to the Shareholders in accordance with the figures provided in Schedule 1 hereof.

## 3. Shareholders Loan and vvvvvv's Loan

Prior to the Completion Date the Company shall transfer the Vehicles and Miscellaneous Furniture to the Shareholders for the total sum of Kenya Shillings ..... which amount shall be paid by John and Derek respectively to the Company;

The Company's taxed net profit for the year ending 30<sup>th</sup> June ..... shall be credited to the respective Shareholders Loan accounts, and any tax due on the same shall be deducted from the same, and the balance paid out as provided herein;

The Company has made an insurance claim in respect of a replacement part for one of its machines and upon payment of the claim such net amount shall be added to the Shareholders Loan accounts and paid out accordingly;

Thereafter the Company shall repay prior to Completion any amounts outstanding due on the Christina's Loan;

- 3.5 In respect of vvvvvv's Loan and xxxx's Loan the Purchasers and Sureties hereby jointly and severally undertake and warrant that they shall ensure that the Company shall pay and discharge both vvvvvv's Loan and xxxxxx Loan in full within a period of twelve (12) months from the Completion Date and in the event the Company is unable to meet its obligations then the Purchasers and the Sureties hereby agree they will personally pay and discharge both vvvvvv's Loan and xxxx's Loan if not so paid within the aforesaid time. Provided further that any amount of vvvvvv's Loan and xxxx's Loan so outstanding at the end of the aforesaid time shall attract interest at three percent (3%) above the prevailing Barclays Bank of Kenya Limited's base lending rate at that time until payment in full.

## 4. Completion of the Sale of the Shares

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4.1 Completion shall be at the offices of Shareholders Advocates being ..... Kenya and upon the Completion Date the Purchasers and the Shareholders shall attend at the Shareholders said Advocates offices and shall pay the Consideration by way of a banker's cheque to the said Advocates against which the Shareholders shall deliver to the Purchasers the following:

xxxxxx and ccccccc's original share certificates for their Shares;

vvvvv's written confirmation that he has returned his original share certificate to the Company for cancellation and in order to be issued with a new share certificate for his twenty five per cent (25%) shareholding in the Company;

Share Transfer forms from xxxxxx, ccccc and vvvvv transferring the Shares to the Purchasers in such proportions as shall be notified by the Purchasers to make the Purchasers seventy five per cent (75%) shareholders and vvvvvvv a twenty five per cent (25%) shareholder in the Company respectively;

4.1.3 Duly completed Forms D by the Company's auditors in respect of said Share Transfers;

Duly signed Form 203A as filed at the Companies Registry appointing ..... and .....s nominee's being ..... as a new director of the Company and noting ccccccc's resignation as a Director of the Company;

Written confirmation that Christina has been removed as a signatory to operating the Company's bank account with ..... Bank of Kenya Limited's ..... Branch and ....., and ..... added on as a signatory to the Company's said bank account;

The Shareholders 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 vest the beneficial ownership of the Shares in the Purchaser free from all charges, liens, encumbrances, options or other adverse interests.

Upon the Completion Date it is hereby agreed that vvvvvvv and the Purchasers shall:

procure that xxxxxx and ccccccc are as soon as practicable thereafter released as guarantors from the Company's lease of the Premises with the landlord;

procure that ..... and ..... are released as guarantors from the Company's Bank account with ..... Bank of Kenya, ..... Branch and if required by the said Bank the Purchasers shall substitute ..... and ..... as such guarantors and shall complete and execute the requisite documentation to effect the same;

enter into a shareholders agreement with like terms to that in Schedule 2 hereof to govern their future relationship and the management and operation of the Company;

procure that the Company enters into a service agreement with ..... as managing director of the Company with like terms to that in Schedule 3 hereof.

The said Shareholders Advocates shall undertake to hold the Consideration in escrow pending the stamping of the Share Transfers transferring the Shares to the Purchasers. Upon the successful stamping of the said Share Transfers and registration of the Purchasers as members in the Company's members register the said Advocates shall be entitled to release the full Consideration to the Shareholders.

- 4.5 Pursuant to this Agreement cccccc and xxxxxx hereby expressly agree for a period of three (3) years from the date hereof that neither of them will either alone or jointly with others as a manager agent advisor consultant or executive of any person firm or company directly or indirectly carry on or be engaged in any activity or business which shall be in competition with the business of the Company.

## 5. Shareholders' Warranties

The Shareholders jointly and severally warrant to the Purchasers that the Warranties set out in this clause and all accompanying documents are true and accurate in all respects and fully, clearly and accurately disclose every matter to which they state save for any matters disclosed in a disclosure letter prior to Completion:

- 5.1 All information provided by the Shareholders to the Purchasers relating to the Company are true and complete in all respects and it is validly formed and existing under the laws of Kenya and has all requisite powers to conduct the Business;
- 5.2 The Shares constitute seventy five per cent (75%) of the total and whole of the issued and allotted and fully paid up share capital of the Company as owned by the Shareholders and there are no other agreements in force which grant any person the right to call for the issue, allotment or transfer of any share or loan capital of the Company;
- 5.3 The register of Shareholders and other statutory books of the Company have been properly kept and contain an accurate and complete record of the matters which they should deal and all returns, particulars, resolutions and documents required by any legislation to be filed in respect of the Company have been duly filed and were correct and are up to date;
- 5.4 All the accounts, books, ledgers, financial and other records, of whatsoever kind, of the Company are in its possession;
- 5.5 The Company has no undisclosed capital commitments outstanding at today's date and has not agreed to incur any capital expenditure or commitments;
- 5.6 There are no liabilities (including contingent liabilities), which are outstanding on the part of the Company as at the date of this Agreement save as stated in the Company's audited accounts dated 30<sup>th</sup> June .....
- 5.7 There are no undisclosed loan agreements, borrowing, credit facilities or any form of credit or

borrowing entered into by the Company;

- 5.8 The Company is not, or has not agreed to become, a member of any joint venture, consortium, partnership or other unincorporated association;
- 5.9 The Company is not engaged in any litigation or arbitration proceedings, as plaintiff or defendant; there are no such proceedings pending or threatened, either by or against the Company; and there are no circumstances which are likely to give rise to any litigation or arbitration;
- 5.10 There are no claims pending or threatened or capable of arising, against the Company, by an employee or workman or third party, in respect of any accident or injury;
- 5.11 That all the Warranties contained in this Agreement are accurate and correct.

## 6. **Agreement concerning the Business**

The Shareholders warrant to the Purchasers that:

- 6.1 There have been no arrangements and understandings (whether legally enforceable or not) between the Company and any person who is directly or indirectly a Shareholder or the beneficial owner of any interest in the Company or any Company in which the Company is interested relating to the management of the Business or the ownership or transfer of ownership or the letting of any of the assets of the Company used in connection with the Business or the provision of services or other facilities to or by the Company or otherwise in any way relating to the Business;
- 6.2 The Company has not been a party to any agreement or arrangement or any restrictive trading or other agreement or arrangement pursuant to which any part of the Business has been carried on or which in any way has restricted its freedom to carry on the whole or any part of the Business in any part of the world in such manner as it thought fit;
- 6.3 Compliance with the terms of this Agreement does not and will not conflict with result in the breach of or constitute a default under any of the terms conditions or provisions of any agreement or instrument to which the Company is now a party relating to the Business;

## 7. **Agreement concerning Remaining Business**

In consideration of the sale of the Shares to the Purchasers the parties agree that with effect from the Completion Date:

Derek and the Purchasers undertake and warrant that the Company will cease operating and transacting in the Remaining Business and will from the Completion Date only carry on the Business;



The Remaining Business together with the assets and equipment including the telephone advertising and recording equipment used in carrying on the Remaining Business shall be sold to ..... at its written down book value of Kenya Shillings .....

The entire stock of tin tea and packaging for the same in the possession of the Company shall be sold to ..... at its written down book value of Kenya Shillings .....

The trademarks logos and other marks used to carry on the Remaining Business shall be transferred to .....

The pre-invoiced telephone advertising sales by the Company for the period 1<sup>st</sup> July ..... onwards amounts to Kenya Shillings ..... as per the Company's audited accounts which total sum shall be invoiced to the Company by ..... and paid as collected by the Company and not before;

Any moneys due to and any payments made to the Company with respect to any sales made by the Remaining Business prior to the Completion Date and any Remaining Business sales completed in July 2003 and paid to the Company before on or after the Completion Date shall be payable by the Company to ..... without any deductions whatsoever;

- 7.7 Derek, the Purchasers and the Company shall execute and perform or procure the execution and performance of such acts deeds documents and things as may be necessary effectually to transfer the Remaining Business to ..... and the performance of the provisions of this clause 7.

## 8. Indemnities

- 8.1 The Shareholders hereby jointly and severally undertake to indemnify and keep indemnified the Purchasers and do so indemnify the Purchasers against all actions proceedings claims damages charges and costs existing against or incurred by or which may be incurred by the Company in its ordinary course of business and any unfulfilled statutory obligations of the Company prior to the Completion Date whether disclosed or undisclosed by the Shareholders and the Company;
- 8.2 Notwithstanding completion of the sale and the purchase of the Shares all Warranties indemnities and other continuing undertakings and agreements herein contained shall continue thereafter for as long as may be necessary for the purpose of giving effect to each and every one of them;
- 8.3 The Shareholders shall indemnify the Purchasers against any cost, liability, loss, damage, action or expense which the Purchasers may suffer or incur as a result of any document or instrument delivered to the Purchasers pursuant to clause 4 being unauthorised, invalid or for any reason ineffective for its purpose.

## 9. Effect of Completion

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Any provision of this Agreement which is capable of being performed after but which has not been performed at or before Completion and all Warranties and indemnities and other undertakings contained in or entered into pursuant to this Agreement shall remain in full force and effect notwithstanding Completion.

## 10. Creditors and Liabilities

10.1 The Purchasers hereby agree and accept that they are accepting the Company with all its creditors and debtors as of the Completion Date and as disclosed in the Company's Accounts and the Management Accounts as of that date;

10.2 For any debtors as at 30<sup>th</sup> June 2003 not collected by the Company on or before 28<sup>th</sup> February 2004 the amount of the same shall be deducted from vvvvvv's Loan account and in this instance vvvvvv shall indemnify and does indemnify the Company in respect of any moneys not so collected;

## 11. Entire Agreement

This Agreement supersedes all previous agreements or negotiations, whether written or oral, between the parties relating to the sale of the Shares and constitutes the entire agreement and understanding between the parties with respect to all matters, which are referred to.

## 12. Invalidity

If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law that term or provision or part shall to the extent be deemed not to form part of this agreement and the enforceability of the remainder of this Agreement shall not be affected.

## 13. Communications

13.1 All communications and notices between the parties in respect of this Agreement shall be delivered by hand or sent by facsimile transmission to the addressee's address as herein provided or such other address as may be communicated to the other parties hereto (with confirmation posted within 24 hours).

13.2 Communications and notices shall be deemed to have been received:  
if delivered by hand, on the day of delivery;  
if sent by facsimile transmission, at the time of transmission;  
if sent by registered post, Ten (10) days after posting.

13.3 In proving such service it shall be sufficient to prove that the letter or facsimile (as the case may be) containing the notice was properly addressed and posted or (as the case may be) transmitted. Any notice given by hand shall be deemed to have been served at the time of

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delivery.

**14. Legal costs**

Each party shall pay its own legal costs in relation to the negotiations leading up to the sale of the Shares and to the preparation, execution and carrying with effect of this Agreement and of all other documents referred to in it. The Purchaser shall be liable to pay the stamp duty payable on the transfer of the Shares and other disbursements in respect thereof.

**15. Arbitration and Proper Law**

15.1 Any dispute arising out of or in connection with this Agreement shall be referred to one arbitrator to be agreed upon by both parties. If the parties fail to reach an agreement within fourteen (14) days after any party has first put forward the name of the proposed arbitrator the dispute shall be referred to a single arbitrator to be appointed by the Chairman for the time being of the Chartered Institute of Arbitration (Kenya Branch). Such arbitrator shall be nominated by the Chairman within fourteen (14) days of the date when the notice was first delivered to him. The Arbitration Act 1995 or any other existing statutory modification or re-enactment thereof shall apply to the arbitration hereof;

16.2 This Agreement shall be governed by and construed in all respects in accordance with the Laws of Kenya and each party hereby submits to the jurisdiction of the Kenyan Courts.

**SCHEDULE 1**

**Present Shareholders**

**No of Shares**

xxxxxx	333 (33%)
ccccc	333 (33%)
vvvvvv	333 (33%)

**Shareholders Loans**

xxxx	.....
cccc	.....
vvvv	.....

**The Consideration shall be payable to the respective Shareholders as follows:**

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	No of Shares	Amount of payable
Xxxxxxxx	333 (33%)	.....
cccccccccccccccc	333 (33%)	.....
vvvvvvvv	84 (8.4%)	.....

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**SCHEDULE 2 – SHAREHOLDERS AGREEMENT  
HEREINBEFORE REFERRED TO IN THE SALE OF SHARES AGREEMENT**

**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_

**BETWEEN:**

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

**WHEREAS:**

1. The Company was incorporated on \_\_\_\_\_ August \_\_\_\_\_ and at the date hereof has an authorised share capital of Kenya Shillings One Hundred Thousand (KShs 100,000) divided into One Thousand (1,000) shares of Kenya Shillings One Hundred (KShs. 100) each all of which are issued and fully paid.
2. Pursuant to an Agreement dated \_\_\_\_\_ **kkk** \_\_\_\_\_ and \_\_\_\_\_ purchased seventy five percent (75%) of all the issued and paid up Shares in the Company.
3. The Company’s Shareholders at the date hereof comprise of \_\_\_\_\_ and \_\_\_\_\_ holding seventy five per cent (75%) of the Company’s Shares and Derek holding the remaining twenty five percent (25%) of the Company’s Shares respectively.
3. The parties have agreed for the purposes of this Agreement to jointly manage and continue operating the marketing and advertising business carried on by the Company via the Company.
4. The Shareholders have agreed to enter into this Agreement to govern their relationship and regulate the shareholdings and affairs of the Company in accordance with the terms hereof.

**NOW IT IS AGREED** as follows:

**DEFINITIONS AND INTERPRETATION**

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;

**“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 business of the Company as described in clause 3;

**“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;

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

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

**“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 KShs. 100 in the share capital from time to time of the company;

**“Shareholder”** means any registered holder(s) of one or more Shares from time to time or his personal representatives;

**“Shareholder Loan”** means the loan to the Company by vvvvvv amounting to Kenya Shillings .....

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;

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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.

## COMPLETION

As soon as possible hereafter and in any case prior to the Effective Date unless otherwise mutually agreed by the parties :

the parties will procure that a meeting of the Board shall be held to approve and pass resolutions necessary to put into effect these agreements;

the parties will procure that an Extraordinary General Meeting of the Company shall be convened and that the necessary resolutions specified by the Directors to put this Agreement into effect shall be proposed and passed at such meeting;

Prior to the Effective Date.

- 2.2.1 The Shareholders hereby acknowledge that there is a Shareholder's Loan outstanding from the Company to vvvvvv as at the date of signing this Agreement;
- 2.2.2 The Shareholders Loan shall be paid by the Company to Derek within twelve (12) months of the date of this Agreement.
- 2.2.3 Such Shareholder Loan shall be a charge over the Company's assets;
- 2.2.4 It is hereby agreed that until the Shareholder Loan have been repaid, no dividends shall be declared.

2.2.5 The parties shall procure that:

2.2.5.1 The accounting reference date of the Company shall be 30<sup>th</sup> June 2003;

..... shall be immediately appointed or confirmed (as required) as Directors and cccccc's resignation as a Director of the Company shall be confirmed;

The respective share transfers from xxx, ccc and vvv to ..... and ..... shall be duly stamped and ..... and ..... registered in the members register;

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The Company shall at its expense obtain and maintain a class H work permit for .....

The Company shall enter into a service contract with ..... in the form in Schedule 3 of the Sale of Shares Agreement;

xxxxxxx, vvvvvvv, and ..... shall be signatories to the Company's bank accounts with ..... Bank of Kenya Limited ..... Branch and the same shall be operated by either one of ..... or ..... together with either one of ..... or ..... or such other persons as the parties shall agree;

The Board shall meet and appoint the Auditors of the Company;

- 2.3 If in any respect any of the foregoing provisions is not complied with on the Effective Date by any of the parties, the remaining parties (other than the Company) may (acting unanimously) at their option defer Completion (and so that the provisions of this clause shall apply to Completion as so deferred). Unless such remaining parties so defer Completion, the provisions of the clause shall terminate on the Effective Date, but without prejudice to any claim which any party may have against any other party for breach of contract.

### 3. THE BUSINESS

- 3.1 The parties shall procure that the business of the Company shall be that of marketing and advertising in the form presently undertaken and carried on by the Company;
- 3.2 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.

### 4. MANAGEMENT OF THE COMPANY

- 4.1 The Board shall comprise a minimum of ..... Directors and shall initially consist of vvvvvvv, ..... and .....

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 vvvvvvv or xxxxxxxx and one other Director being either ..... or any other person nominated by either ..... to replace .....

The Shareholders shall at all times be given notice of any intended Board meetings and shall be authorised to attend the same either in person or through their authorised representatives or alternates as notified to the Board from time to time.

Throughout the term of this Agreement ..... shall act as Managing Director of the Company and shall use his best skill and knowledge to manage, administer and develop the Business as his duties may require and to efficiently conduct the same to the best of his ability 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;

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

direct and supervise the and be responsible for the day to day management and administration of the Business save that the day to day accounts and finances shall be .....’s responsibility or such other person as may be appointed in her place by the ..... and / or ..... vvvvvvv shall however supervise ..... or any of her successors (as the case may be);

discuss all new and continuing contracts and proposed investments of the Company with ..... and ..... 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 and equipment needed for the development and operation of the Business;

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.

**5. UNDERTAKINGS REGARDING THE OPERATIONS OF THE COMPANY**

The Company undertakes to each of the Shareholders that, and each of the Shareholders shall procure that, it shall;

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 and 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.

## 6. PROCEEDINGS OF SHAREHOLDERS

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 comprise vvvvvvv and ..... and / or .....s each present either in person or by their respective proxies.

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 7, 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 have a casting vote.

## 7. MATTERS REQUIRING APPROVAL

- 7.1 Following Completion, 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 One Hundred Thousand (KShs 100,000));

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;

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;

enter into any partnership or profit sharing agreement or joint venture with any person;

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 three (3) 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 .....

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

company or of any subsidiary;

make any material change to the terms of engagement and any change to the emoluments of any director or senior employee of the company or employ or terminate any person earning in excess of Kenya Shillings

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 7.1.

## 8. FINANCE

- 8.1 The initial capital and cash requirements of the Company shall be satisfied by utilisation of the proceeds of the initial Shareholder Loans as referred to in clause 2 (including such amounts as were contributed by the Shareholders prior to the Effective Date);
- 8.2 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;
- 8.3 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;
- 8.4 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 the other Shareholder not providing its Relevant Proportion of the capital requirement 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;
- 8.5 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.

## 9. FUTURE SALE AND / OR PURCHASE OF DEREK'S SHARES

- 9.1 In the event vvvvvvvv wishes sell his Shares to ..... and ..... during the first year of this Agreement then there shall be no consideration payable and the transfer of such Shares shall be at the par value of such Shares;
- 9.2 In the event that vvvvvv wishes to sell his Shares to .... and ..... during the commencement and continuance of the second year of this Agreement then the consideration payable for the same shall be twenty five percent (25%) of the prevailing open market value of the Shares;
- 9.3 In the event that vvvvvvvv wishes to sell his Shares to ..... and ..... during the commencement and continuance of the third year of this Agreement then the consideration payable for the same shall be fifty percent (50%) of the prevailing open market value of the Shares;
- 9.4 In the event that vvvvvv wishes to sell his Shares to ..... and ..... during the commencement and continuance of the fourth year of this Agreement then the consideration payable for the same shall be seventy five percent (75%) of the prevailing open market value of the Shares;
- 9.5 In the event that vvvvvv wishes to sell his Shares to ..... and ..... after the completion of fourth year from the date hereof then the consideration payable for the same shall be full amount of the prevailing open market value of the Shares;
- 9.6 In the event of the sale of .....s Shares howsoever occurring any Shareholders Loan by him to the Company shall be immediately repaid in full together with the agreed consideration for his Shares;
- 9.7 The parties further agree that in the event .....sells his Shares before the expiry of four (4) years from the date hereof he shall be restricted for a period one (1) year after ceasing to be a Shareholder either alone or jointly with others as a manager agent consultant advisor or executive of any person firm or company from directly or indirectly carrying on or being engaged in any activity or business which shall be in competition with the Business;

## 10. 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.

## 11. TRANSFER OF SHARES

- 11.1 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.

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

11.2.1 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: and

such transfer is made in compliance with Schedule 1 hereof provided always that this is subject in Derek's case to the provisions of clause 9 hereof; or

it is a transfer to which 11.3 applies; or

it is a transfer made as a result of the application of the provisions of clause 11;

and no Shareholder shall otherwise sell, transfer or dispose of any Shares or Shareholder Loans or any interest therein.

The Parties agree that the restrictions contained in Schedule 1 to this Agreement and the Articles of Association shall not apply to:

any transfer of Shares from a Shareholder being an individual (and not holding such Shares as trustee of a family trust) to a family member (other than to a spouse as part of a divorce or separation settlement) or to trustees to be held upon a family trust; and

any transfer of Shares from trustees of a family trust to:

new trustees of that family trust on any changes of trustees; or

any family member of the settlor of the trust

For the purposes of this paragraph:

"family member" means, in relation to a Shareholder, the spouse (or widow or widower) of the shareholder and the lineal descendants of that Shareholder (including any step or adopted child or illegitimate child):

"family trust" means, in relation to a Shareholder, a trust (whether or not arising on death) which does not permit any of the settled property or income therefrom to be applied otherwise than for the benefit of that Shareholder and/ or a family member of that Shareholder, and no power of control over the voting powers conferred by any Shares the subject of the trust is capable of being exercised by or subject to the consent of any person other than the trustees,

such Shareholder or his family members.

The Shareholders will procure that the Directors shall register any transfer of Shares which complies with Schedule 1 or with the provisions of clause 11.2.

## 12. **OUTSIDE OFFERS**

12.1 If the Shareholders or the Company receive an offer for one hundred percent (100%) of the Shares an Extraordinary General Meeting shall be held as soon as possible thereafter at which the offer shall be considered and any decision to accept such an offer on the terms and conditions proposed in the offer or upon any other terms and conditions, whether proposed at the meeting or otherwise, shall be put to the vote and shall require the approval of all the Shareholders. In the case of approval then all of the members shall be obliged to transfer their Shares and assign their Shareholders Loan on such terms and conditions as shall be approved by the Shareholders.

12.2 If as a result of any transaction any person, company or other entity or associates of the same individually or together ("the Controlling Shareholder") own or will own more than 50% of the Shares, the Company shall give Notice thereof within seven (7) days of becoming aware of that eventuality providing all known details of the Controlling Shareholder to all the Shareholders and the Remaining Shareholders shall each be entitled within twenty one (21) days of such Notice, or at any time after becoming aware of that eventuality in the absence of such notice, to serve Notice, (a "Take Along Notice") requiring the Controlling Shareholder to purchase all of the Shares and Shareholder Loans held by that Shareholder on terms and conditions to be agreed between the Controlling Shareholder and the giver of the Take Along Notice and if not agreed within thirty (30) days of the said Notice then to be determined by arbitration in accordance with the procedures laid down herein. A Take Along Notice will have no effect if the transaction that would have created a Controlling Shareholders is not completed and control of fifty percent (50%) or more of the shares by a Controlling Shareholder does not arise but shall otherwise be binding on the Controlling Shareholder and Shareholder.

12.3 Provided always that in the event vvvvvv is forced to sell his Shares in accordance with the terms of this clause the price for his Shares shall not be less than the amount he would have received under clause 9 of this Agreement;

## 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:

- 13.3 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);
- 13.4 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 thirty (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;
- 13.5 The Defaulter withholding its consent in relation to any matter set out in clause 7 without reasonably justifiable reason and so as to jeopardise the business or operations of the Company substantially.
- 13.6 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) month 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.  
  
13.7 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 Schedule 1 hereof as if the Defaulter were the Shareholder referred to therein and the date of the Option Notice were the date of the Notice from a Shareholder requiring the purchase of this Shares and Shareholder Loans referred to therein but provided that the valuation shall also take into account the effect (if any) on the Business of the event of default which has entitled the Other Shareholders to serve the Option Notice.
- 13.8 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.



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

14. **MUTUAL CO-OPERATION**

- 14.1 Each of the Shareholders agrees that it will use all reasonable endeavours to promote the business and profitability of the Company.
- 14.2 Each of the parties 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.
- 14.3 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.
- 14.4 Each Shareholder undertakes with each of the other that whilst they remain 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 them in accordance with directions or subject to the consent of any other person (including any other Shareholder).

15. **DIVIDENDS**

- 15.1 The parties hereto shall (unless otherwise agreed by each of the Shareholders in writing) procure during the continuance of this Agreement that the Company shall:

first discharge all sums advanced by the Shareholders as Shareholder Loans; and

thereafter shall pay or distribute to the Shareholders for the time being of the Company proportionate to their shareholdings and according to the dividend rights attaching to such shareholding the entire consolidated net profits of the Company as indicated in the Company's audited accounts for each accounting reference period as are lawfully available for distribution by way of dividend.

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**

For the avoidance of doubt the Shareholders hereby agree that if and to the extent that the Articles of Association conflict with the provisions of this Agreement, this Agreement shall prevail for so long as it is in force and that they will exercise their respective voting rights as Shareholders and 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 Shareholders 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 Shareholders may not be assigned or transferred except as otherwise agreed by all the other Shareholders or as may arise from a transfer of Shares 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. ENTIRE AGREEMENT

The 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.

### 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 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. 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.

The Company at its Registered Office

vvvvvv P O Box ..... - Nairobi

.....P. O. Box ..... - Nairobi

..... P O Box ..... - Nairobi

## 27. **GOVERNING LAW**

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

## 28. **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 irrevocable submits to the jurisdiction of such court.

## **SCHEDULE 1 TO THE SHAREHOLDERS AGREEMENT HEREINBEFORE REFERRED TO**

### **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 he Company.

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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 these Articles.

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**SCHEDULE 3 – ..... PERSONAL SERVICE CONTRACT  
HEREINBEFORE REFERRED TO IN THE SALE OF SHARES AGREEMENT**

**THIS AGREEMENT** is made the ..... day of .....  
.....

**BETWEEN:**

..... a limited liability company incorporated in Kenya whose postal address is Post Office Box Number ..... - Nairobi, Kenya (the “**Company**” which expression shall where the context so admits include its successors and assigns) of the one part; and

(2) ..... of Post Office Box Number ..... - Nairobi, Kenya (the “**Executive**” which expression shall where the context so admits include his personal representatives and assigns) of the other part.

1. Definitions and interpretation

In this Agreement:

‘**the Board**’ means the board of directors for the time being of the Company;

any reference to a statutory provision shall be deemed to include a reference to any statutory modification or re-enactment of it;

the clause headings do not form part of this Agreement and shall not be taken into account in its construction or interpretation;

Reference in this agreement to any clause sub-clause schedule or paragraph without further designation shall be construed as references to the clause sub-clause schedule or paragraph of this Agreement so numbered.

2. **Term of employment**

The Executive’s employment commenced on the 1<sup>st</sup> day of June .....(now past) and continues thereafter for a term of four (4) years subject however to termination as provided below;

3. **Duties**

3.1 The Executive shall serve the Company in the capacity of its Managing Director;

3.2 The Executive shall during the normal business hours devote the whole of his time attention and abilities to the business and affairs of the Company;

3.3 To perform such other duties and exercise such powers authorities and discretions as the Board shall from time to time delegate to the Executive on such terms and conditions and subject to such restrictions as the Board may from time to time impose;

3.4 In the discharge of such duties and in the exercise of such powers to observe and comply with all resolutions regulations and directions from time to time made or given by the Board;

#### 4. **Hours of employment**

The Executive shall carry on his duties between the hours of 8.30 a.m. and 6.00 p.m. from Monday to Friday and from 9.30 a.m. to 1 p.m. on Saturday in each and every week and such further hours as may from time to time become necessary in order to meet the needs of the Company's business.

#### 5. **Place of employment**

The Executive's place of employment shall be in ....., Kenya.

#### 6. **Work Permit**

The Company shall obtain and maintain at its expense throughout the Executive's employment a class 'H' work permit to entitle him to work and in the event of his termination shall allow such permit to be transferred as required by the Executive.

#### 7. **Remuneration**

7.1 Subject as hereinafter provided the Company shall pay to the Executive during the continuance of his employment hereunder a gross salary of Kenya Shillings ..... per annum or such higher rate as may from time to time be determined upon and notified to the Executive by the Board;

7.2 The said salary shall be payable by monthly equal instalments (and proportionately for any lesser periods) in arrears on the last day of each calendar month;

7.3 Each monthly instalment of the said salary shall be deemed to accrue from day to day;

7.4 The Executive's monthly salary shall be payable less all due taxes and other statutory deductions;

7.5 Any salary review and increments shall be entirely at the discretion of the Board and shall be based on the Executive's overall performance of his duties.

#### 8. **Motor vehicle**



The Company shall pay the Executive Automobile Association of Kenya mileage rates for the use of his personal motor vehicle while on the business of the Company subject to the Executive producing details of the mileage covered.

9. **Expenses**

The Company shall reimburse the Executive all reasonable expenses wholly and exclusively incurred by him in or about the performance of his duties under this Agreement provided that the Executive furnishes the Company with receipts or other evidence of such expenses.

10. **Telephone**

The Executive shall be provided with a mobile telephone for use on the Company's business and the Company shall pay and discharge all reasonable charges and expenses incurred in the use of the said mobile phone.

11. **Holidays**

11.1 The Executive shall in addition to the usual public holidays be entitled to twenty-eight (28) days holiday in each year to be taken at such times as the Board shall consider most convenient having regard to the requirements of the Company's business;

11.2 The Executive may not without the prior written consent of the Board carry forward any unused part of his holiday entitlement to a subsequent year

11.3 Holidays shall be deemed to accrue on a monthly basis.

12. **Travel**

The Company shall in every calendar year of the Executive's employment hereunder provide the Executive with one economy class return ticket to ..... at such time as shall be requested by the Executive.

13. **Illness**

13.1 The Executive shall continue to be paid during absence due to incapacity (such payment to be inclusive of any statutory sick pay or social security benefits to which he may be entitled) for a total of up to six (6) weeks in any one year of employment under this agreement;

13.2 Thereafter the Executive shall continue to be paid salary only at the discretion of the Company provided that if such absence shall aggregate in all Ten (10) weeks in any Fifty-two (52) consecutive weeks the Company may terminate the Executive's employment on a date not more than twenty-eight (28) days after the end of the Tenth (10<sup>th</sup>) week;

#### 14. **Medical cover**

The Company will pay for medical coverage for the Executive with BUPA's gold scheme and shall pay and discharge all taxes payable by the Executive as a benefit in kind.

#### 15. **Confidentiality**

15.1 the Executive is aware that in the course of his employment under this Agreement he will have access to and be entrusted with information in respect of the business and financing of the Company and its dealings and transactions and affairs and likewise in relation to its Associated or Subsidiary companies all of which information is or may be confidential;

15.2 The Executive shall not during or after the course of his employment under this Agreement divulge to any person whatsoever or otherwise make use of any trade secret or confidential information concerning the business or finances of the Company or any of its suppliers agents distributors clients or customers;

15.3 All notes and memoranda of any trade secrets or confidential information concerning the business of the Company or any of their suppliers agents distributors clients or customers which shall be acquired received or made by the Executive during the course of his employment shall be the sole property of the Company and shall be surrendered by the Executive to someone duly authorised in that behalf on the termination of his employment or at the request of the Board at any time during the course of his employment;

#### 16. **Restrictive covenants**

##### 16.1 Non-Solicitation

The Executive covenants with the Company that he will not for the period of one (1) year after ceasing to be employed under this Agreement in connection with the carrying on of any business similar to or in competition with the business of the Company in Kenya on his own behalf or on behalf of any person or firm or company directly or indirectly;

16.1.2 Seek to procure orders from or do business with any person firm or Company who has at any time during the One (1) year immediately preceding such cesser done business with the Company; or

16.1.3 Endeavour to entice away from the Company any person who has at any time during the one (1) year preceding such cesser been employed or engaged by the Company.

##### 16.2 Non-competition

The Executive further covenants with the Company that he will not:

16.2.1 at any time after ceasing to be an employee of the Company disclose to any person, or themselves use for any purpose, and shall use their respective best endeavours to prevent the publication or disclosure of, any information concerning the business,

accounts or finances of the Company or Associated or Subsidiary companies or any of its clients or customers transactions or affairs, which may, or may have, come to his knowledge;

- 16.2.2 for a period of one (1) year after ceasing to be an employee under this Agreement either alone or jointly with others as a manager agent consultant or executive of any person firm or company directly or indirectly carry on or be engaged in any activity or business which shall be in competition with the business of the Company;

## 17. Termination of employment

The employment of the Executive shall be determined by either party giving to the other not less than six (6) calendar months notice in writing.

In the event of any of the following the Company may terminate vvvvvv's employment by giving him one (1) month's notice of its intention to so terminate his services or one (1) month's pay in lieu of notice in respect of the following:

gross misconduct; or  
 gross negligence; or  
 fraud; or  
 willful failure to carry out the duties for which you are employed; or

Gross misconduct shall include without limitation the following:

- (i) any of the matters specified in Section 17 of the Employment Act; or
- (ii) persistent non-observance of these terms and conditions of your employment or any serious breach or any breach continued after written warning from the Company; or
- (iii) any conduct by you tending to bring the Company you or your position with the Company into disrepute; or

## 18. Communications and notices

18.1 All communications and notices between the parties in respect of this Agreement shall be delivered by hand or sent by facsimile transmission to the addressee's address as provided herein or as shall be notified to the other parties from time to time (with confirmation posted within 24 hours)

18.2 Communications and notices shall be deemed to be received:

- (a) if delivered by hand, on the day of the delivery;
- (b) if sent by facsimile transmission, at the time of transmission;
- (c) if sent by registered post, fourteen (14) days after posting.

18.3 Communications and notices by post or telex to the Executive shall be marked for the attention

of Mr vvvvvvvvv of Post Office Box xxxxxxxx, Nairobi .....

18.4 Communications and notices addressed to the Company shall be marked for the attention of ..... of Post Office Box ..... - Nairobi, Kenya (fax number: .....)

19. **Entire Agreement**

This Agreement contains the entire agreement between the parties and replaces all previous correspondence undertakings and warranties whether written or oral and may not be varied except in writing.

20. **Invalidity**

If any term or provision in this Agreement shall in whole or in part be held to any extent to be illegal or unenforceable under any enactment or rule of law, that term or provision or part shall to that extent be deemed not to form part of this agreement and the enforceability of the remainder of this agreement shall not be affected.

21. **Arbitration**

Any dispute difference or question which may arise between the parties to this Agreement or any of them touching upon the construction of this Agreement shall be referred to the decision of a single arbitrator to be agreed between the parties or in default of agreement within fourteen (14) days to be appointed at the request of either of the parties by the chairman for the time being of the institute of Chartered Arbitrators – Kenya Branch in accordance with and subject to the provisions of the Arbitration Act (Cap 49 Laws of Kenya) or any statutory modification or re-enactment thereof for the time being in force.

22. **Applicable law**

This Agreement shall be governed and interpreted in all respects in accordance with the Laws of Kenya.

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**IN WITNESS WHEREOF** all the parties hereto have duly executed this Agreement the day and year first hereinabove written.

**SIGNED** by xxxxxxxxxxxx )

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in the presence of: )  
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 )  
 Advocate )

**SIGNED** by ccccccccc )  
 in the presence of: )  
 )  
 )  
 Advocate )

**SIGNED** by vvvvvvvvvvv )  
 in the presence of: )  
 )  
 )  
 Advocate )

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

**SEALED** by the Common Seal of )  
 ..... )  
 in the presence of: )  
 )  
 Director )  
 )

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