

## **GUARANTEE AND INDEMNITY**

### **TO: BARCLAYS BANK OF KENYA LIMITED**

This Deed of Guarantee and Indemnity is made between the person(s) and whose name(s) and address(es) appear in Part I of the Schedule hereto (together "the Guarantor") and Barclays Bank of Kenya Limited ("the Bank") whose registered office is at Bank House, Moi Avenue, P.O.Box 30120, Nairobi.

In consideration of the Bank granting or continuing to make available banking facilities or other accommodation or granting time for so long as it may think fit to the person(s) whose name(s) and address (es) appear in Part II of the Schedule hereto (together "the Principal"), the Guarantor, unconditionally and irrevocably, undertakes and agrees with the Bank as follows:

#### **GUARANTOR TO PAY ON DEMAND**

The Guarantor, as primary obligor and not merely as surety, on demand will pay to the Bank all moneys and discharge all obligations and liabilities, whether actual or contingent, now or hereafter due, owing or incurred to the Bank by the Principal whether on any current or other account or otherwise in any manner whatsoever (whether alone or jointly and in whatever style, name or form and whether as principal or surety) including all liabilities in connection with foreign exchange transactions, accepting, endorsing or discounting any notes or bills or under bonds, guarantees, indemnities, documentary or other credits or any instruments whatsoever from time to time entered into by the Bank for or at the request of the Principal together with interest (as well after as before any demand or judgement) to date of payment at such rates and upon such terms as may from time to time be payable by the Principal (or which would have been so payable but for the death, bankruptcy, liquidation, administration or other incapacity of the Principal) and all commission, fees and other charges and all legal and other costs and expenses incurred by the Bank in relation to the Principal or this Deed or any other guarantee, indemnity basis. Any statement of account of the Principal signed as correct by any duly authorised officer of the Bank shall be conclusive evidence against the Guarantor of the indebtedness of the Principal to the Bank.

The total amount recoverable under this Deed shall be limited to the principal sum stated in Part III of the Schedule to this Deed to which shall be added all interest, fees, commission, costs, charges and expenses referred to above which shall have accrued or shall accrue due to the Bank before or at any time after any demand made pursuant to the provisions of this Deed provided that if no principal sum is so stated, the liability of the Guarantor hereunder shall be unlimited.

#### **CONTINUING SECURITY AND TERMINATION ON NOTICE**

This Guarantee is a continuing security and shall secure the ultimate balance from time to time owing to the Bank by the Principal in any manner whatsoever notwithstanding the death, bankruptcy, liquidation, administration or other incapacity or any change in the constitution of the Principal or the Guarantor or any of the persons comprising the Guarantor or in the name or style thereof or any intermediate payment or settlement of account or other matter whatsoever subject only to termination by notice in accordance with the provisions of this Clause.

The Guarantor may, at any time, give to the Bank notice in writing to determine this Guarantee at a date ("the Cessation Date") not less than three months after the receipt by the Bank of the notice provided that, notwithstanding determination as to one or more of the persons comprising the Guarantor, this Guarantee shall remain a continuing security as to any other persons comprising the Guarantor and such notice shall not diminish or affect the liability of such persons hereunder and provided further that any Guarantor giving notice pursuant to the provisions of this Clause shall remain liable under this Guarantee:

in respect of all obligations to the Principal to the Bank outstanding at the Cessation Date together with interest on such obligations until actual payment at the rate charged by the Bank against the Principal; and  
in respect of all moneys, interest, fees, commissions, costs charges and expenses which will or may become due to the Bank from the Principal under or in respect of any dealing, transaction or engagement effected or entered into either prior to the Cessation date or on or after the Cessation Date pursuant to any commitment, express or implied, assumed or undertaken by the Bank to the Principal prior to the Cessation Date; and  
for all legal and other costs, charges and expenses which the Bank may incur in enforcing or obtaining payment of any moneys from the Principal or the Guarantor or attempting to do so.

This Guarantee is in addition to and shall not merge with or otherwise prejudice or affect any other right, remedy, guarantee, indemnity or security and may be enforced notwithstanding the same or any other bill, note, mortgage, charge, pledge or lien now or hereafter held by or available to the Bank.

Notwithstanding any notice of termination or that this Guarantee ceases to be continuing for any reason whatever, the Bank may continue any account of the Principal or open one or more new accounts and the liability of the Guarantor hereunder shall not in any manner be reduced or affected by any subsequent transactions or receipts or payments into or out of any such account.

## **PROTECTIVE CLAUSES**

If any purported obligation or liability of the Principal to the Bank which, if valid, would have been the subject of the Guarantee is not or ceases to be

valid or enforceable against the Principal on any ground whatsoever, whether or not known to the Bank, including but not limited to any illegality or defect in or want of powers of the Principal or irregular exercise thereof or lack of authority by any person purporting to act on behalf of the Principal or any legal or other limitation (whether under the Limitation of Actions Act, Chapter 22 of the Laws of Kenya or otherwise), disability, incapacity or any change in the constitution of or any amalgamation, reconstruction, liquidation or administration of the Principal, the Guarantor shall nevertheless be liable to the Bank in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor was the principal debtor in respect thereof. As a separate and independent stipulation, the Guarantor undertakes to keep the Bank fully indemnified against all damage, loss, costs and expenses arising from any failure of the Principal to carry out any such purported obligation or liability.

The liability of the Guarantor shall not be affected and this Guarantee shall not be discharged or diminished by reason of:

any present or future bill, note, guarantee, indemnity, mortgage, charge, pledge, lien or other security or right or remedy held by or available to the Bank being or becoming wholly or in part void, voidable or unenforceable on any ground whatsoever or by the Bank from time to time dealing with, exchanging, varying, releasing or failing to perfect or enforce any of the same; or

the bank compounding with, discharging, releasing varying the liability of or granting any time, indulgence or concession to the Principal or any other person (including any person comprising the Guarantor) or reviewing, determining, varying or increasing any bill, promissory note or other negotiable instrument, accommodation, facility or transaction in any manner whatsoever or concurring in, accepting or varying any compromise, arrangement or settlement or omitting to claim or enforce payment from the Principal or any other person; or

any act or omission which would not have discharged or affected the liability of the Guarantor had the Guarantor been principal debtor or by anything done or omitted which but for this provision might operate to exonerate the Guarantor.

The Guarantor warrants to the Bank that the Guarantor has not taken or received and undertakes not to take or receive the benefit of any security from the Principal or any person extending to liabilities under this Guarantee. If any such security is taken or the Guarantor receives the benefit of the same, the Guarantor agrees forthwith to deposit an amount equal to the value of the same with the Bank until such security is released or the benefit thereof returned to the Principal.

Until the ultimate balance owing by the Principal to the Bank paid or satisfied in full and notwithstanding payment of a dividend in any compromise or arrangement and notwithstanding that one or more of persons comprising the Guarantor may have discharged the amount of this Guarantee, the Guarantor

waives all rights of subrogation and indemnity against the Principal and agrees (unless so required by the Bank) not to demand or accept or to negotiate, assign, charge or otherwise dispose of any moneys, obligations or liabilities now or hereafter due or owing to the Guarantor from the Principal or any co-guarantor or any promissory note, bill of exchange, guarantee, indemnity, mortgage, charge or other security from the same or to take any step to enforce any right against the Principal or any co-guarantor or to claim any set off or counterclaim against the same or to claim or prove in competition with the Bank in the bankruptcy or liquidation of the Principal or any co-guarantor or have the benefit of or share in any payment or composition from the same or in any other guarantee, indemnity or security now or hereafter held by the Bank for any moneys, obligations or liabilities of the Principal. If the Guarantor is required to do any of the same by the Bank or otherwise receives any payment, promissory note, bill of exchange, guarantee, indemnity, mortgage, charge or other security or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause, the Guarantor agrees forthwith to deposit an amount equal to the value of any benefit derived or indirectly therefrom with the Bank until anything so received or benefit so derived has been returned.

### **SET OFF AND LIEN**

The Bank may, at any time and without notice or demand and notwithstanding any settlement of account or other matter whatsoever, combine or consolidate all or any then existing accounts including accounts in the name of the Bank (whether current, deposit, loan or of any other nature whatsoever whether subject to notice or not) of the Guarantor alone or jointly with others wheresoever situate and set off or transfer any sum standing to the credit of any one or more such accounts in or towards satisfaction of any obligations or liabilities to the Bank of the Guarantor whether such liabilities be present, future, actual contingent, primary, collateral, several or joint.

Until the ultimate balance owing by the Principal to the Bank has been paid or satisfied in full, the Bank shall have a lien on all property and assets of the Guarantor from time to time in the possession of the Bank, whether registered in the name of the Bank or its nominees or otherwise and whether the same be held for safe custody or otherwise.

### **POWERS OF THE BANK**

Any money received in connection with this Guarantee may be placed to the credit of a suspense account with a view to preserving the right on the Bank to prove for the whole of its claims against the Principal or any other person liable or may be applied by the Bank in or towards satisfaction of such of the moneys, obligations or liabilities of the Principal hereby guaranteed as the Bank in its absolute discretion may from time to time conclusively determine.

Any release, discharge or settlement between the Guarantor and the Bank shall be conditional upon no security, disposition or payment to the Bank by

the Principal, the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to bankruptcy, liquidation or insolvency or for any reason whatever and, if such condition shall not be fulfilled, the Bank shall be entitled to enforce this Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made.

The Bank shall be entitled to retain this Guarantee and any security held for the liability of the Guarantor hereunder after as well as before the payment, discharge or satisfaction of all moneys, obligations and liabilities that are or may become due owing or incurred to the Bank from the Principle for such period as the Bank may determine.

### **CHANGES IN CONSTITUTION OF PRINCIPAL, GUARANTOR OR BANK**

If the Principal or the Guarantor is a partnership or company, this Guarantee shall remain in full force and effect notwithstanding any change in the constitution of the Principal or the Guarantor.

This Guarantee shall continue to bind the Guarantor notwithstanding any amalgamation or merger that may be effected by the Bank with any other company and notwithstanding any reconstruction by the Bank involving the formation of and transfer of the whole or any part of the undertaking and assets of the Bank to a new company and notwithstanding the sale or transfer of the whole or any part of the undertaking and assets of the Bank to another company, whether the company with which the Bank amalgamates or merges or the company to which the Bank transfers the whole or any part of its undertaking and assets shall or shall not differ in its name, objects, character or constitution, it being the intent that this Guarantee shall remain valid and effectual in all respects and for all purposes in favour of, against and with reference to, and that the benefit of this Guarantee and all rights conferred upon the Bank by this Guarantee may be assigned to and enforced by, any such company and proceeded on in the same manner to all intents and purposes as if such company had been named in this Guarantee instead of and/or in addition to the Bank.

### **JOINT AND SEVERAL LIABILITY**

Where this Guarantee is signed by more than one person as guarantor or is signed by one person for himself and on behalf of other persons (whether such person is signing on behalf of a partnership or otherwise), the expression "the Guarantor" shall include all such persons and the liability of the Guarantor under this Guarantee shall be the joint and several liability of such persons and any demand for payment made by the Bank to any one or more of the persons. The Bank may release or discharge any one or more of such persons from this Guarantee or compound with or otherwise vary or agree to vary the liability of or to grant time or indulgence to or make other arrangements with any or more of such persons without prejudicing or affecting the rights and remedies of the Bank against any other of such

persons.

The Guarantor agrees to be bound by this Guarantee notwithstanding that any other person who was intended to sign or to be bound may not do so or may not be effectual bound and notwithstanding that this Guarantee may be determined or become invalid or unenforceable against any such other person, whether or not the deficiency is known to the Bank.

### **MISCELLANEOUS**

Any demand under this Guarantee shall be delivered by hand or sent by post, telex, cable or facsimile transmission addressed to the Guarantor or to the person to or upon whom the demand is to be made at the registered or principal office or last known place of abode of the Guarantor or of such person, as the case may be. Any demand so made shall be deemed to have been duly made, if delivered by hand, on the day of delivery or, if sent by post, four days after the time when the demand was put in the and, in such case, it shall be sufficient to prove that the demand was properly addressed and posted. Any demand sent by telex, cable or facsimile transmission shall be deemed to have been duly made at the time of despatch.

No failure or delay by the Bank in exercising any right or remedy shall operate as a waiver thereof and no single or partial exercise or waiver of any right or remedy shall preclude its further exercise or the exercise of any other right or remedy. The rights and remedies provided in this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

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

The paper on which this Guarantee is written shall remain at all times the property of the Bank.

### **INTERPRETATION**

In this Guarantee, unless the context otherwise requires:

the expression "the Bank" includes its successors in title and/or assigns;

the expression "the Guarantor" includes the personal representatives and successors of the Guarantor;

the expression "person" includes an individual, firm, company, corporation and an unincorporated body of persons;

words signifying the singular number only shall include the plural number and vice versa;

headings are inserted for convenience only and have no legal effect.

In witness whereof the Guarantor has duly sealed and delivered this  
Guarantee this ..... day of .....  
..... 19 .....

**SIGNED SEALED AND DELIVERED** }

By the Guarantor SIMPLE SIMON }

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In the presence of: - }

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