

THIS AGREEMENT dated the day of Two Thousand and Two is made **BETWEEN XXXXXX SERVICES LIMITED** a Limited Liability Company incorporated in the Republic of Kenya and whose address is Post Office Box Number Nairobi in the said Republic (hereinafter called "the Borrower") **AND XXXXXX LIMITED** a limited liability company incorporated in the Republic of Kenya and whose address is Post Office Box Number. xxxxxx Nairobi aforesaid (hereinafter called "the Lender").

WHEREAS:

The Lender has at the request of the Borrower agreed to make available to the Borrower a Term Loan (hereinafter defined) in an aggregate amount not exceeding the sum of United Dollars Seventy Five Thousand (US\$.75,000.00) (hereinafter referred to as the "Term Loan Amount") exclusive of interest and upon having the repayment thereof with interest as hereinafter provided.

The Lender has already advanced to the Borrower the sum of United States Dollars Thirty Five Thousand (US\$.35,000.00) (hereinafter called "the Existing Debt") the receipt of which the Borrower by execution hereof hereby acknowledges.

There is still due and owing by the Borrower to the Lender the Existing Debt and the Borrower and the Lender agree with each other that the repayment of the Existing Debt will be governed by the terms of this agreement.

The Lender has at the request of the Borrower agreed not to demand immediate repayment of the Existing Debt and to grant to the Borrower the balance of the Term Loan Amount in the sum of United States Dollars Forty Thousand (US\$.40,000.00) upon receiving from the Borrower a loan agreement to govern the Term Loan (being this instrument) and such other document as has been specified herein.

NOW IN CONSIDERATION of the Lender agreeing to make or continuing to make advances to the Borrower or refraining from demanding immediate payment of sums already advanced to the Borrower by way of loan and the premises **IT IS HEREBY AGREED** as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"ADVANCE" means an advance or advances made or to be made by the Lender to the Borrower pursuant to either the Term Loan or, as the context may require the principal amount thereof from

time to time outstanding

"BUSINESS DAY" means a day (not being Saturday or Sunday) on which banks are open for business of the kind contemplated by this Agreement

"COMMITMENT" means the commitment of the Lender to make Advances on the terms and conditions of this Agreement as reduced from time to time by the amount of any outstanding Advances and otherwise as provided in this Agreement

"COMMITMENT PERIOD" means the period commencing on the date of this Agreement and ending on one month before the Termination Date

"AVAILABILITY DATE" means, in relation to any Advance, the date on which the Advance is made

"AVAILABILITY NOTICE" means a notice issued by the Lender to the Borrower, informing the Borrower of (a) the Availability Date; (b) the Amount of the Advance; (c) Interest Period relating to the Advance; and (d) the bank account to which proceeds are to be paid:

"ENCUMBRANCE" means any mortgage charge (whether fixed or floating) pledge lien hypothecation assignment security interest title retention or other encumbrance or security agreement or security or preferential arrangement of any kind

"EVENT OF DEFAULT" means any of the events or circumstances described in Clause 12.1

"THE TERM LOAN" means the Term Loan the terms and conditions of which are set out in this Agreement

"THE TERM LOAN AMOUNT" means United States Dollars Seventy Five Thousand (US\$.75,000.00)

"FINANCIAL INDEBTEDNESS" means Indebtedness incurred in respect of:
money borrowed, raised or deposited;
any bond bill of exchange note loan stock debenture commercial paper or similar security or instrument;
acceptance, documentary credit or guarantee facilities;
deferred payments for assets or services acquired;

rental payments under leases, whether in respect of land buildings machinery equipment or otherwise, entered into primarily as a method of raising finance or financing the acquisition of the relevant asset;

payments under hire purchase contracts;

factored debts, to the extent that there is recourse;

guarantees bonds standby letters of credit or other instruments issued in connection with the performance of contracts or obligations;

any interest rate or currency swaps and similar financial transactions;

guarantees indemnities or other assurances against financial loss in respect of Indebtedness of any person falling within any of paragraphs (a) to (i) inclusive above; and

amounts raised or obligations incurred under any other transaction having the commercial effect of any of the above

“INDEBTEDNESS” means any obligation for the payment or repayment of money, whether present or future, actual or contingent, sole or joint

“INTEREST PAYMENT DATE” means the last day of each Interest Period

“INTEREST PERIOD” means each period for the calculation of interest determined in accordance with Clause 7.3

“LOAN” means the aggregate principal amount of Advance(s) for the time being outstanding under this Agreement

“MATERIAL CONSENT” means in relation to the Borrower and any Guarantor any approval authorisation consent exemption licence permission or registration by of or from any governmental or regulatory or other authority or person necessary or appropriate for (i) the carrying on by it of its business and (ii) the execution delivery and performance of this Agreement and any Related Document and the use of the Loan

“PERMITTED ENCUMBRANCE” means any encumbrance referred to in Clause 11.2(b)

“POTENTIAL DEFAULT” means any event which, with the giving of notice or any certificate or the lapse of time or the making of any determination or the satisfaction of any other condition (or any combination thereof), might/would constitute an Event of Default

“RELATED DOCUMENT” means any document or instrument required by this Agreement to be executed delivered or produced by the Borrower or any Guarantor or Subsidiary and designated in writing as such by both the Lender and the Borrower

“REPAYMENT DATE” means the 22nd day of October 2002.

“TAXES” includes all present and future taxes levies imposts duties fees charges or withholdings of whatever nature and wherever levied charged or assessed, together with any interest thereon and any penalties in respect thereof

“TERMINATION DATE” means the 22nd day of October 2004.

Interpretation

- 1) In this Agreement, unless otherwise expressly provided, any reference to:
 - the Borrower and the Lender shall be construed so as to include their respective successors and assigns from time to time;
 - a time of day is a reference to Nairobi time unless otherwise stated;
 - a ‘person’ shall be construed as a reference to any individual firm company body corporate government state or state entity or any association or partnership (whether or not having separate legal personality) or any two or more of the foregoing;
 - this Agreement or any other document or instrument is a reference to this Agreement or that other document or instrument as the same may have been, or may from time to time be, amended or supplemented;
 - the liquidation winding-up or dissolution of a company or body corporate or the appointment of a receiver manager or administrator of or in relation to a company or body corporate or any of its assets shall be construed so as to include any equivalent or analogous proceedings or, as the case may be, person under the law of the jurisdiction in which it is incorporated or any jurisdiction in which it carries on business or has assets or liabilities;
 - a Clause or a Schedule is a reference to a clause of or a Schedule to this Agreement;
 - any statutory provision shall include a reference to such provision as from time to time re-enacted amended extended or replaced.

Fees costs and expenses payable under or pursuant to this Agreement shall be exclusive of any value added tax or similar taxes chargeable on them, which shall accordingly be payable in addition.

In this Agreement, words importing the singular shall include the plural and vice versa.

Headings in and the list of contents of this Agreement are for ease of reference only and shall not affect its interpretation.

2 THE LOAN

Subject to the terms and conditions of this Agreement the Lender agrees to make available to the Borrower a loan facility in the maximum aggregate principal amount equal to the Term Loan Amount.

3 PURPOSE

The Term Loan shall be used by the Borrower for debt relief and transport investment.

The Borrower shall not use any Advance for any purpose except that permitted in this Clause.

However, failure by the Borrower to comply with this Clause shall not prejudice any rights of the Lender, which shall not be responsible for monitoring or ensuring the use or application by the Borrower of any Advance.

4 CONDITIONS

4.1 Conditions for first Advance

The Term Loan may not be made, and the Lender shall not be obliged to make any Advance, in respect of the Loan until it shall have received, in each case in form and substance satisfactory to it, the documents specified in Schedule 1

4.2 Conditions for all Advances

The obligation of the Lender to make each and every Advance in respect of the Loan is subject to the further conditions precedent that:

at the time of the relevant Advance and at the time of such Advance, the representations and warranties set out in Clause 10.1 are true and correct on and as of each such time as if each were made with reference to the facts and circumstances existing at such time; and

at the time of the relevant Advance and at the time of such Advance, no Event of Default or Potential Default shall have occurred and be continuing or would result from the making of such Advance.

5 AVAILABILITY

5.1 Availability of the Term Loan

1) Subject to the terms and conditions of this Agreement, the Lender may from time to time make Advances to the Borrower in respect of the Term Loan provided that:

the aggregate of all Advances shall not exceed the Term Loan Amount;

no Advance shall be made if its duration would extend after the Termination Date.

2) Subject as otherwise expressly provided in this Agreement, each Availability Notice shall be irrevocable and the Borrower shall be obliged to borrow accordingly.

5.2 Payment of Advances

Subject as otherwise provided in this Agreement, each Advance shall be made available on the Availability Date therefor by the Lender crediting the amount of such Advance to such bank account of the Borrower as it shall specify to the Lender for this purpose.

5.3 Cancellation of undrawn Loan

Any part of the Loan which shall not have been made or cancelled by the close of business on the last Business Day of the Commitment Period shall at that time be automatically cancelled and the Commitment shall at that time be reduced to zero.

6 REPAYMENT PREPAYMENT AND CANCELLATION

6.1 Repayment

The Borrower shall repay to the Lender the Principal Term Loan Amount in 24 equal instalments from the Repayment Date. The amount of each instalment shall be made on the Interest Payment Date.

If the amount of the Loan outstanding at the close of business on the last Business Day of the Commitment Period is less than the Facility Amount, the amount of the shortfall shall be applied against and shall reduce or if applicable extinguish the amounts specified in paragraph (1) above in inverse order of maturity

6.2 Prepayment

The prepayment of the Term Loan shall be permitted after the signing of this Agreement.

Thereafter the Borrower may provided that it shall have given to the Lender not less than 30 days' prior notice specifying the date and intended amount of the prepayment prepay to the Lender on the last day of any Interest Period relating to an Advance the whole or any part of such Advance/the Loan.

Prepayments under this Agreement shall be made together with accrued interest thereon and all other amounts payable under and in relation to this Agreement and any Related Document.

7 INTEREST

7.1 Interest

The Borrower shall pay to the Lender interest on each Advance in respect of each Interest Period relating to such Advance at the rate of 12% per annum.

7.2 Payment

The Borrower shall pay interest on each Advance on each Interest Payment Date relating to such Advance.

7.3 Interest Period

Subject to paragraph (2) below, the Borrower and the Lender agree that the duration of the Interest Period for any Advance shall be 1 month.

For the purpose of determining the duration of any Interest Period:

each Interest Period relative to an Advance shall commence on the Repayment Date;

if any Interest Period would end on a day which is not a Business Day, such Interest Period shall be extended to the next Business Day unless that would extend that Interest Period into the next following calendar month, in which event that Interest Period shall be shortened so as to end on the immediately preceding Business Day;

if any Interest Period commences on the last Business Day in a calendar month or if there is no corresponding date in the calendar month in which an Interest Period is due to end, then such Interest Period shall end on the last Business Day in the relevant later month;

if any Repayment Date falls within an Interest Period, the Loan shall be divided into two parts, one part being the repayment instalment due on such Repayment Date and having an Interest Period ending on that date and these other part being the balance of the Loan and having an Interest Period ascertained in accordance with the other provisions of this Clause; and

the last Interest Period relating to each Advance shall end on the Repayment Date for such Advance.

7.4 Default interest

The Borrower shall, on demand by the Lender, pay to the Lender interest on sums (including but without limitation default interest) not paid on their respective due dates under this Agreement from the due date up to the date of actual payment (as well after as before judgement) at the rate of 14%

per annum.

7.5 Basis of calculation

All interest and other payments of an annual nature under this Agreement shall accrue from day to day and be calculated on the basis of the actual number of days elapsed and a 365-day year. Any certificate or determination by the Lender as to any rate of interest payable under this Agreement shall, in the absence of manifest error, be conclusive and binding on the Borrower.

8 FEES AND EXPENSES

8.1 Expenses

1) The Lender shall bear the costs and expenses (including but not limited to legal and out-of-pocket expenses) for the preparation execution and delivery of this Agreement and any Related Document.

2) The Borrower shall pay, on demand and on a full indemnity basis, to the Lender all costs and expenses (including but not limited to legal and out-of-pocket expenses) incurred by it in connection with any actual or proposed amendment or extension of or any waiver or consent under this Agreement and in contemplation of or otherwise in connection with the enforcement (or attempted enforcement) of, or preservation (or attempted preservation) of any rights under, this Agreement and/or any Related Document or otherwise in respect of any monies from time to time owing under this Agreement.

8.2 Duties

The Borrower shall pay all stamp, documentary, registration or other similar duties or Taxes (including any payable by the Lender) imposed in or by the Republic of Kenya on or in connection with this Agreement and/or any other document referred to herein and shall indemnify the Lender against any liability arising by reason of any delay or omission by the Borrower to pay such duties or Taxes.

9 PAYMENTS

9.1 Payments

All payments to be made by the Borrower under this Agreement shall be made in full, without any set-off or counterclaim whatsoever and free and clear of any deductions or withholdings, in immediately available, freely transferable, cleared funds at such account of the Lender as it may from time to time notify to the Borrower.

In the case of a partial payment by the Borrower, the Lender may appropriate such payment towards such of the obligations of the Borrower under this Agreement as the Lender may decide. The Borrower waives any right to make an appropriation in respect of a partial payment. Any appropriation by the Lender shall apply to the exclusion of any actual or purported appropriation by the Borrower.

9.2 Business Days

Save as otherwise provided in this Agreement, if any payment would otherwise be due on a day which is not a Business Day, the next following Business Day shall be substituted for such day unless such Business Day shall be in a new calendar month in which case such payment shall instead be made on the immediately preceding Business Day. Interest and fees shall be adjusted accordingly.

9.3 Accounts

Account(s) maintained by the Lender in connection with the Loan shall (save for manifest error) be conclusive/prima-facie evidence of the amounts from time to time owing by the Borrower to the Lender under this Agreement.

REPRESENTATIONS AND WARRANTIES

10. 1 Representations and warranties

The Borrower represents and warrants to the Lender that:

it is a limited liability company duly incorporated and validly existing under the laws of Kenya and has power to carry on its business and to own its property and other assets;

it has power and authority to execute deliver and perform its obligations under this Agreement and any Related Document and to use the Loan all necessary action has been taken (and not revoked) to authorise the execution delivery and performance of this Agreement and any Related Document; and subject to all applicable insolvency laws this Agreement constitutes, and any Related Document is or when executed and delivered will be, its valid and legally binding obligation enforceable in accordance with the terms thereof;

the execution delivery and performance of this Agreement and any Related Document and the use of the Facility do not and will not:

contravene any law, regulation, directive, judgement or order to which it is subject; or

result in any actual or potential breach of or default under any obligation agreement instrument or Consent to which it is a party or by which it is bound or which it requires to carry on its business; or

contravene any provision of its memorandum and articles of association and/or statutes and/or constitutional documents; or

result in any limitation on its powers to borrow or incur Financial Indebtedness being exceeded; or result in the creation or imposition of or oblige it to create any Encumbrance on its undertaking or any of its assets rights or revenues;

its obligations under this Agreement and any Related Document are its direct, general and unconditional obligations and rank at least pari passu with all other of its present and future secured unsecured and unsubordinated Indebtedness (with the exception of any obligations which are mandatorily preferred by law and not by contract);

no litigation arbitration or administrative proceeding and without limitation no dispute with any statutory or governmental authority is current or pending or to its knowledge threatened against it or any of its assets which might/would be likely to have a material adverse effect on its respective business, assets or financial condition or its ability to observe or perform its respective obligations under this Agreement or any Related Document having regard to all its other obligations;

no Event of Default or Potential Default has occurred and is continuing;

it is not in default in the payment of any due and payable Taxes or in the filing registration or recording of any document or under any legal or statutory obligation or requirement which default might/would be likely to have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement or any Related Document;

it is not (nor/or would with the giving of notice or lapse of time or any certificate or the making of any determination or any combination thereof be) in breach of or in default under any agreement relating to Financial Indebtedness to which it or such company is a party or by which it or such company is bound which might/would be likely to have a material adverse effect on its respective business, assets or financial condition or its ability to observe or perform its respective obligations under this Agreement or any Related Document having regard to all its other obligations;

there exists no Encumbrance other than any Permitted Encumbrance over the whole or any part of the present or future undertaking assets rights or revenues (including uncalled capital) of itself and no obligation to create any such Encumbrance;

the latest consolidated report and financial statements of the Borrower have been prepared in accordance with accounting principles and practices generally accepted in Kenya consistently applied and give a true and fair view of the financial condition, assets and liabilities of the Borrower at the date to which such financial statements have been prepared; and since that date there has been no material adverse change in the financial condition or the business, assets or operations of the Borrower which might/would be likely to have a material adverse effect on its respective business, assets or financial condition or its ability to observe or perform its respective obligations under this Agreement or any Related Document having regard to all its other obligations;

it has obtained and complied with all Material Consents (and the same are in full force and effect);

all factual information supplied to the Lender in contemplation or for the purpose of this Agreement

or the Loan was true and accurate in all material respects as at its date and did not omit anything material, no change has occurred since the date on which such information was supplied which renders the same untrue or misleading in any material respect, and all projections and statements of belief and opinion given by the Borrower to the Lender were made honestly and in good faith after due and careful enquiry and remain valid.

10.2 Effect of Investigation

The rights and remedies of the Lender in respect of any misrepresentation or breach of warranty on the part of the Borrower shall not be prejudiced or affected by any investigation of the Borrower or any other person by or on behalf of the Lender or without limitation any other act or matter which, but for this provision, would or might prejudice or affect any such rights or remedies.

11 UNDERTAKINGS

11.1 General undertakings

The Borrower undertakes with the Lender that, so long as any Commitment is in force or any monies or obligations are outstanding under this Agreement:

it will ensure that its obligations under this Agreement shall at all times rank at least pari passu with all its other present and future secured unsecured and unsubordinated Indebtedness (with the exception of any obligations which are mandatorily preferred by law and not by contract);

it will prepare financial statements in respect of each financial period in accordance with Clause 11.4 and cause the same to be audited by its auditors and deliver 2 copies of the same to the Lender promptly and in any event not later than 60 days after the end of the relevant financial period;

it will deliver to the Lender 2 copies promptly and in any event not later than 30 days after the relevant period, of management accounts relating to it containing financial information (in no less detail than such as having been prepared prior to the date of this Agreement) in respect of successive quarter-yearly periods during each of its financial years;

it will provide the Lender with copies of all notices and other communications despatched to its shareholders or analogous persons (or any class thereof) or its creditors (or any class thereof) when despatched;

it will provide the Lender with such financial and other information concerning its business, assets and affairs as the Lender may from time to time reasonably require except that it will not be obliged to provide any such information which is secret or confidential to it except on the basis of a confidentiality undertaking reasonably acceptable to it or if disclosure requires the consent of any third party which it will on request use best endeavours to obtain;

it will obtain, maintain in full force and effect and comply with all Material Consents and any conditions thereof;

it will not make or permit any material change in the nature of its business or commence any new type of business materially different from its business at the date of this Agreement;

it will maintain insurances on or in relation to its business and assets with underwriters and insurance companies of repute against such risks of the kinds customarily insured against by, and in amounts reasonably and commercially prudent for, companies carrying on similar businesses and will ensure that the Lender is named as the loss payee to the full extent of the Loan;

it will promptly inform the Lender, forthwith upon becoming aware of the same, of any occurrence or circumstance of which it becomes aware which might/would be likely to adversely affect its ability to perform its obligations under this Agreement or any Related Document and of any Event of Default or Potential Default;

it will from time to time, forthwith on request by the Lender, deliver to it a certificate signed by two of its directors (acting without personal liability except in the case of wilful default or misconduct) confirming that, save as may be notified in detail in such certificate, no Event of Default or Potential Default has occurred and is then subsisting and, without limitation, giving detailed computations so as to establish whether it is in compliance with Clause 11.5 to be accompanied by such evidence as to the information and matters contained in such certificate as the Lender may from time to time reasonably require.

11.2 Negative Pledge

The Borrower undertakes with the Lender that, so long as any Commitment is in force or any monies or obligations are outstanding under this Agreement, it will not:

create or permit to subsist any Encumbrance other than any Permitted Encumbrance over all or any part of its present or future undertaking assets rights or revenues;

sell or otherwise dispose of any of its assets on terms whereby it is or may be leased to or acquired by it (except for sale and lease-backs of any asset on normal arm's length commercial terms and in the normal course of business) or sell or otherwise dispose of any of its receivables on recourse terms (except for the discounting of bills or notes in the ordinary course of business), in any such case in circumstances where the transaction is entered into primarily as a method of raising finance or of financing the acquisition of an asset.

Paragraph (1) above shall not apply to any Encumbrance:

created or outstanding with the prior written consent of the Lender provided that, unless permitted by any other exception below, the aggregate principal amount secured by such Encumbrance will not

be increased without further consent of the Lender;
arising by operation of law and not as a result of any default or omission on the part of the Borrower having regard to the custom in the relevant trade for settlement of accounts;
arising under any retention of title arrangements entered into in the ordinary course of trading and not entered into primarily for the purpose of securing any Financial Indebtedness;
over goods or documents of title to goods arising in the ordinary course of documentary credit transactions;
provided that simultaneously with the creation of such Encumbrance the obligations of the Borrower under this Agreement are equally and rateably secured by a comparable Encumbrance on other assets acceptable to the Lender in form and substance satisfactory to it;
on assets acquired after the date of this Agreement provided that:

i) any such Encumbrance is in existence prior to such acquisition and is not created in contemplation of such acquisition; and
the amount secured by such Encumbrance does not exceed, at any time, the maximum amount secured or agreed to be secured by it (in accordance with the original terms on which such Encumbrance was created) as at the date of acquisition; and
such Encumbrance is discharged within a period of 6 months after the acquisition or (only in the case of an acquisition of a body corporate) where the terms of such Encumbrance do not permit repayment of the amount secured by such Encumbrance within such period, on the earliest date or dates permitted by the terms of such Encumbrance for such repayment; and
no guarantee is given by the Borrower in respect of such Encumbrance or the amount secured by it;
pursuant to any order of attachment distraint garnishee order or injunction restraining disposal of assets or similar legal process arising in connection with legal proceedings;
securing Indebtedness incurred to refinance other indebtedness permitted to be secured under paragraphs (a) to (g) above inclusive and/or this paragraph (h), provided that the aggregate principal amount of the Indebtedness secured by such Encumbrance is not increased and such Encumbrance does not extend to any assets other than those which were subject to the Encumbrance securing the refinanced Indebtedness.

11.3 Disposals

The Borrower undertakes with the Lender that, so long as any Commitment is in force or any monies or obligations are outstanding under this Agreement, it will not either in a single transaction or in a series of transactions, whether related or not and whether voluntarily or involuntarily, sell, transfer, lease or otherwise dispose of all or any substantial part of its respective assets.

Paragraph (1) above shall not apply to:

disposals made with the prior consent of the Lender;

disposals made in the ordinary course of business/trading of the disposing entity for not less than market value on an arm's length basis;

disposals of property or assets in exchange for other property or assets of a comparable type and value;

disposals of cash in acquiring any asset at not more than market value;

11.4 Financial Statements

The Borrower will ensure that all audited financial statements prepared by it and each of its Subsidiaries and delivered pursuant to this Agreement shall be prepared in accordance with accounting principles and practices generally accepted in Kenya, consistently applied in respect of each financial period or giving details of any inconsistency, on an individual and if applicable consolidated basis and that such financial statements shall contain a balance sheet giving a true and fair view of the state of affairs of the Borrower and its Subsidiaries as at the end of the period to which they relate and a profit and loss account giving a true and fair view of its/their profit or loss for such period.

12 DEFAULT

12.1 Events of Default

There shall be an Event of Default if:

the Borrower fails to pay EITHER: within 7 days after the due date, in the currency and manner provided in this Agreement, any sum payable by it under this Agreement or any Related Document when due Provided that such failure shall not be an Event of Default if it occurs solely for administrative or technical reasons affecting the transfer of funds despite timely payment instructions by the Borrower and that payment is received by the Lender within 2 Business Days after the due date; or

the Borrower commits any breach of any provision of Clauses 11.1 (a), 11.1 (f), 11.2, or 11.3; or

the Borrower commits any material breach of any other provision of this Agreement or any Related Document and either such breach is in the reasonable opinion of the Lender not capable of remedy or such breach is in the reasonable opinion of the Lender capable of remedy and is not remedied within 21 days after the earlier of the date of notice by the Lender requiring such remedy or the date on which the Borrower first becomes aware of the breach; or

any representation or warranty made or deemed to be made or repeated by the Borrower in or pursuant to this Agreement or any Related Document is or proves to have been untrue or incorrect in

any material respect when made or when deemed to be repeated with reference to the facts and circumstances existing at such time; or

any Encumbrance to secure any Financial Indebtedness of the Borrower exceeding in aggregate KShs.2,000,000.00 becomes enforceable; or

an encumbrancer takes possession or a receiver or administrative receiver or manager or sequestrator is appointed of the whole or any substantial part of the undertaking assets rights or revenues of the Borrower or a distress or other process is levied or enforced upon any of the assets rights or revenues of the Borrower and any such action is not lifted or discharged within 14 days; or

a petition is presented to, or any order is made by, any competent court for the appointment of an administrator in relation to the Borrower; or

the Borrower is, or is adjudicated or found to be, insolvent or stops or suspends payment of its respective debts or is (or is deemed to be) unable to or admits inability to pay its respective debts as they fall due or proposes or enters into any voluntary arrangement or any composition or other arrangement for the benefit of its creditors generally or proceedings are commenced in relation to the Borrower under any law regulation or procedure relating to reconstruction or adjustment of debts; or any petition is presented by any person (other than a petition which, in the opinion of the Lender, is frivolous or vexatious and which is withdrawn or stayed within 14 days) or any order is made by any competent court or any resolution is passed by the Borrower for its winding-up or dissolution or for the appointment of a liquidator of the Borrower (except for the purpose of a solvent amalgamation or reconstruction on terms and conditions which shall have first been approved by the Lender); or

the Borrower ceases or threatens to cease to carry on the whole or a substantial part/or substantially the whole of its business; or

this Agreement or any Related Document is or becomes (or is alleged to be) unlawful or unenforceable in any respect; or

either opinion referred to in paragraphs (v) and of Schedule 2 shall not be or shall cease to be true and correct in any respect which in the reasonable opinion of the Lender is material or would not at any time in the future be true and correct in any such respect if then repeated with reference to the facts and circumstances existing at such time (or the Lender is advised to the effect of any of the foregoing); or

any Material consent is withdrawn or revoked or expires or is modified or made subject to any condition which in the opinion of the Lender may adversely affect the Borrower or its ability to perform or comply with any of its obligations under this Agreement or any Related Document; or

the Borrower becomes a subsidiary of any other person or one person or more than one person acting in concert not having such control at the date of this agreement, obtain control of the Borrower; or

the guarantee and indemnity of any Guarantor is not (or is alleged by such person not to be) valid and in full force and effect except in so far as stated in any assumption qualification or reservation

contained in any original legal opinion given for the purpose of or as a condition precedent pursuant to this Agreement; or
any event described in paragraphs (f) to (j) inclusive above or any analogous event occurs to or in respect of any guarantor; or
any other event or series of events or any circumstances whether related or not (including but without limitation any adverse change in the business, assets or financial condition of the Borrower occur(s) or arise(s) which, in the opinion of the Lender; may/would be likely to have a material adverse effect on the Borrower or its ability or willingness to perform or comply with any of its obligations under this Agreement and/or any Related Document.

12.2 Rights on a Default

The Lender may (without prejudice to any of its rights) upon and at any time after the happening of an Event of Default, so long as the same is continuing, by notice to the Borrower declare that:
the Commitment of the Lender and any obligation of the Lender to make any Advance shall be terminated, whereupon such commitment shall be reduced to zero and such obligation shall be terminated forthwith; and/or
the Loan has become immediately due and payable, whereupon the Borrower shall forthwith repay the same together with all interest accrued and all other sums payable under this Agreement; and/or
the Loan has become due and payable on demand, whereupon the Loan and all interest and other sums payable under this Agreement shall at all times after such declaration be due and payable forthwith on demand.

13 INDEMNITIES

13.1 Indemnities

The Borrower shall on demand indemnify the Lender against any liability loss or expense which the Lender shall certify as incurred by it as a consequence of:
any default in payment by the Borrower of any sum under this Agreement when due;
the occurrence of any Event of Default;
any repayment or prepayment of any Advance or part thereof being received otherwise than on the last day of an Interest Period; or
any Advance not being made for any reason (excluding any default by the Lender) after a Availability Notice therefor has been given including in any such case, but not limited to, any loss of profit and any loss or expense incurred in maintaining or funding the Loan or any Advance or other sum or in liquidating or re-employing deposits from third parties acquired or contracted for in order to effect or maintain the same.

13.2 Currency

If, under any applicable law or regulation or pursuant to a judgement or order being made or registered against or the liquidation of the Borrower or without limitation for any other reason, any payment under or in connection with this Agreement is made or falls to be satisfied in a currency (the 'payment currency') other than the currency in which such payment is expressed to be due under or in connection with this Agreement (the 'contractual currency') then, to the extent that the amount of such payment actually received by the Lender, when converted into the contractual currency at the rate of exchange, falls short of the amount due under or in connection with this Agreement, the Borrower, as a separate and independent obligation, shall indemnify and hold harmless the Lender against the amount of such shortfall. To the extent that the amount of such payment actually received by the Lender, when so converted, exceeds the amount due under or in connection with this Agreement, the Lender shall pay to the Borrower provided that it is then in compliance with its obligations under this Agreement an amount equal to the excess. For the purposes of this Clause, the 'rate of exchange' means the rate at which the Lender is able on or about the date of such payment to purchase, in accordance with its normal practice, the contractual currency with the payment currency and shall take into account (and the Borrower shall be liable for) any premium and other costs of exchange including any Taxes incurred by reason of any such exchange.

TAXES

14.1 Grossing up payments

All payments to be made by the Borrower under this Agreement shall be made free and clear of and without deduction for or on account of Taxes unless the Borrower is required to make such a payment subject to the deduction or withholding of Taxes, in which case the amount payable by the Borrower in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the Lender receives and retains (free from any liability in respect of any such deduction or withholding) a net amount equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.

14.2 Notification

If at any time the Borrower is required by law to make any deduction or withholding from any sum payable by it under this Agreement (or if subsequently there is any change in the rates at which or the manner in which such deductions or withholdings are calculated), it shall promptly notify the Lender upon becoming aware of the same.

14.3 Tax receipts

If the Borrower is required to make any deduction or withholding from any payment hereunder, it shall pay the full amount required to be deducted or withheld to the relevant taxation or other authority within the time allowed for such payment under applicable law and shall deliver to the Lender within 30 days after it has made such payment to the applicable authority an original official receipt issued by such authority and any other appropriate evidence of the payment to such authority of all amounts so required to be deducted or withheld.

14.4 Indemnity

The Borrower shall indemnify and hold harmless the Lender against, and reimburse it on demand, the amount of any Taxes so deducted withheld or accounted for and paid by the Borrower whether or not such Taxes were correctly or legally assessed or demanded.

14.5 Tax credits

If the Borrower pays any increased amount under Clause 14.1 and the Lender effectively obtains a refund of tax or credit against tax by reason of that payment, and if the Lender is able (in its sole opinion, which shall not be capable of being challenged) to identify that refund or credit as being attributable to that payment having regard to its other activities, then the Lender shall reimburse to the Borrower such amount as it shall determine (any such determination being conclusive) to be the proportion of that refund or credit as will leave the Lender after that reimbursement in no better or worse position than it would have been in if that payment had not been required. The Lender shall not be obliged to arrange its tax affairs in any particular manner or to disclose any information regarding its tax affairs or computations to the Borrower.

15 CHANGES IN CIRCUMSTANCES

15.1 Increased costs

If by reason of any change in or introduction of any law regulation treaty or official directive or any change in its interpretation, application or administration and/or compliance with any request from or agreement with or requirement of any central bank or other fiscal monetary or other authority (whether or not having the force of law):

the Lender or any holding company of the Lender incurs a cost as respective obligations under this Agreement; or

there is any increase in the cost to the Lender or any holding company of the Lender of funding or maintaining all or any of the advances comprised in a class of advances formed by or including any

Advance; or

any Lender or a holding company of the Lender is unable to obtain the rate of return on its capital which it would have been able to obtain but for the Lender having entered into or assuming or maintaining its commitment or performing its obligations under this Agreement; or

the Lender or any holding company of the Lender becomes liable to make any payment on or calculated by reference to any Advance and/or to any sum received or receivable by it hereunder;

the borrower shall from time to time on demand by the Lender promptly pay to the Lender amounts sufficient to indemnify the Lender or any such holding company against, as the case may be, such cost, increased cost, reduction in the rate of return or liability.

Notwithstanding sub-clause (1) of this Clause, the Borrower shall not be obliged to make any payment pursuant thereto to the extent that the relevant costs increased cost reduction or liability:

is compensated for by any payment calculated in accordance with the Reserve Costs Rate;

represents Taxes on, or a change in the rate of Taxes on, the overall net income or profits of the Lender;

results from the Lender having exceeded some limit or failed to comply with some obligation, if on the date on which the matters referred to in sub-clause (1) took effect the Lender did not (and was not committed to) exceed such limit or breach such obligation;

the Lender shall promptly notify the Borrower of the circumstances giving rise to the Borrower's obligation to make any such payment, giving reasonable details of how such cost increased cost reduction or liability has been calculated and attributed to the Facility such calculation and attribution by the Lender being conclusive in the absence of manifest error.

15.2 Illegality

If at any time it is or becomes unlawful, or contrary to any request from or requirement of any central bank or other fiscal monetary or other authority (whether or not having the force of law), for the Lender to make fund or allow to remain outstanding any Advance or part of the Loan, then the Lender shall promptly after becoming aware of the same deliver to the Borrower a certificate to that effect and:

the Lender shall not thereafter be obliged to make any Advance and its Commitment shall be reduced to zero; and

if the Lender so requires, the Borrower shall not later than such date as the Lender shall have specified (such date not being earlier than 3 Business Days prior to the latest permitted date) repay each Advance together with accrued interest thereon and any other amounts then due to the Lender hereunder.

15.3 Market Disruption

If in respect of any proposed Advance or forthcoming Interest Period the Lender determines after consulting the Borrower if practicable that adequate and fair means do not exist for ascertaining the interest rate for any Interest Period, the Lender shall notify the Borrower accordingly. If such notification is given before the Drawdown of the first Advance, no Advance shall be made available and, if such notification is given after the Drawdown of the first Advance, the Borrower and the Lender shall negotiate in good faith with a view to arriving within a period of 30 days at an acceptable alternative arrangement (pending which any right of the Borrower to draw Advances shall be suspended), failing which the Borrower shall promptly prepay the Loan together with accrued interest thereon to the date of prepayment (calculated at the rate or rates most lately applicable) and all other sums payable by the Borrower under this Agreement and the Lender's obligations hereunder shall terminate. In such case the Borrower shall also reimburse to the Lender such amount as may be determined by the Lender to be necessary to compensate it for the increased cost (if any) of maintaining any Advance during the period of negotiation referred to in this Clause until such prepayment. The commitment fee payable under Clause 8 shall not accrue in respect of any day on which any right of the Borrower to draw Advances is suspended pursuant to this Clause.

15.4 Prepayment and Mitigation

If the Borrower is or becomes bound to pay any increased amount under Clause 14.1 or to make any payment under Clause 15.1 for the account of the Lender then, so long as such obligation continues, it shall be entitled at any time on giving to the Lender not less than 7 days' notice (which shall be irrevocable) to prepay the whole (but not part only) of the Lender's participation in all outstanding Advances together with accrued interest and any other amount payable under this Agreement but subject always to Clause 13.

If the Borrower is or becomes obliged to pay any increased amount under Clause 14.1 or Clause 15.3 or any amount under Clause 15.1 or to repay any amount under Clause 15.2 then, without affecting any obligation or liability of the Borrower under any such Clause, the Lender shall endeavour (but without a legal obligation) to take such reasonable steps to mitigate the effect on the Borrower, whether by the novation of its rights and obligations under this Agreement to another Lender or financial institution acceptable to the Borrower or by acting in relation to this Agreement through a different facility office or otherwise, provided that such steps will not, in the opinion of the Lender, be prejudicial to it.

16 GENERAL

16.1 Set-off

The Lender may, without prior notice to the Borrower, apply any debts which it owes to the Borrower in or towards satisfaction of any sum then due and payable from the Borrower under this Agreement and in respect of which a default in payment has occurred. The Lender will promptly notify the Borrower of such application.

For the purposes of exercising any rights under this Clause, or any rights under the general law, the Lender may convert or translate all or any part of such debts into another currency applying a rate which in its opinion fairly reflects prevailing rates of exchange.

The Lender is not obliged to exercise any of its rights under this Clause, which shall be without prejudice and in addition to any rights under the general law.

In this Clause 'rights under the general law' means any right of set off, combination or consolidation of accounts, lien or similar right which the Lender has under any applicable law.

16.2 Assignment

This Agreement shall be binding upon, and enure for the benefit of, each of the parties hereto and their respective successors and permitted assigns (and any person to whom the Lender shall transfer or novate any rights and/or obligations under this Agreement).

The Borrower may not assign or transfer any of its rights, benefits or obligations under this Agreement.

The Lender may assign all or any part of its rights or benefits or transfer all or any part of its obligations under this Agreement or any Related Document. The Borrower shall enter into all documents specified by the Lender to be necessary to give effect to any such assignment or transfer. However, if at the time of any such assignment or transfer circumstances exist under which there arises or will arise any obligation on the part of the Borrower under Clause 14 or Clause 15 to pay to the assignee or transferee any sum in excess of the sum (if any) which, but for such assignment or transfer, it would have been obliged to pay to the Lender, the Borrower shall not be obliged to pay the excess.

The Lender may disclose on a confidential basis to any actual or potential assignee or transferee of any rights, benefits or obligations under this Agreement or any Related Document such information about the Borrower and their respective business and financial condition as the Lender shall reasonably consider appropriate.

16.3 Notices

Every notice or other communication under this Agreement shall be in writing and may be delivered personally or by registered post or facsimile transmission (forthwith confirmed by letter) despatched

as follows:

If to the Lender, at its address specified at the head of this Agreement or to the following numbers:

Facsimile Nairobi

For the attention of:

If to the Borrower, at its address specified at the head of this Agreement or its registered or principal office for the time being or to the following numbers:

Facsimile

For the attention of:

or (in any case) to such other address and/or facsimile number as may be notified in accordance with this Clause by the relevant party to the other party for such purpose.

Every notice or other communication shall, subject as otherwise provided in this Agreement, be deemed to have been received (if sent by post) 10 days after despatch and (if delivered personally or by facsimile transmission) at the time of delivery or despatch if during normal business hours in the place of intended receipt on a working day in that place and otherwise at the opening of business in that place on the next succeeding such working day, provided that any notice or communication to be made or delivered to the Lender shall be effective only on actual receipt by the Lender.

16.4 Waivers

No delay or omission on the part of the Lender in exercising any right or remedy under this Agreement shall impair that right or remedy or operate as or be taken to be a waiver of it, nor shall any single partial or defective exercise by the Lender or any such right or remedy preclude any other or further exercise under this Agreement of that or any other right or remedy. The remedies provided in this Agreement are cumulative and are not exclusive of any remedies provided by law.

16.5 Severance

If at any time any of the provisions of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law or regulation of any jurisdiction, neither the legality, validity and enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired as a result.

16.6 Counterparts

This Agreement may be executed in any number of counterparts in which case this Agreement will be as effective as if all signatures on the counterparts were on a single copy of this Agreement.

16.7 Language

All notices or communications under or in connection with this Agreement (including without limitation documents to be delivered pursuant to Clause 4.1) shall be in English or, if in any other language, accompanied by a translation into English certified as the Lender may require. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

16.8 Law and jurisdiction

This Agreement shall be governed by and construed in accordance with the law pertaining in the Republic of Kenya.

The Borrower irrevocably agrees for the exclusive benefit of the Lender that the courts of the Republic of Kenya shall have jurisdiction to hear and determine any suit action or proceeding, and to settle any disputes, which may arise out of or in connection with this Agreement and for such purposes hereby irrevocably submits to the jurisdiction of such courts.

Nothing contained in this Clause shall limit the right of the Lender to take proceedings against the Borrower in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).

The Borrower irrevocably waives any objection which it may have now or in the future to the courts of the Republic of Kenya being nominated for the purpose of subclause (2) above and agrees not to claim that any such court is not a convenient or appropriate forum.

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

SCHEDULE 1

Conditions Precedent

In this Schedule, 'certified' means certified by a director or another duly authorised officer of the Borrower as being a true complete and up-to-date copy as at a date no earlier than the date of this Agreement.

A certified copy of the memorandum and articles of association of the Borrower.

A certified copy of a resolution of the board of directors of the Borrower approving this Agreement and any Related Document required to be delivered under this Agreement to which it is expressed to be a party, authorising the person(s) executing the same to do so and authorising a person or persons to sign all notices or other communications to be given or made by or on behalf of the Borrower under this Agreement or any such Related Document.

Any security and ancillary documents.

Confirmation from any existing security holder that all security and/or guarantees held by it will rank *pari passu* with the securities of the Lender.

A copy, certified to the satisfaction of the Lender, of any other consent licence document opinion or assurance which the Lender considers necessary or desirable in connection with the execution delivery and performance of this Agreement any Related Document and the transactions contemplated thereby.

A duly stamped and registered Debenture and/or Charge executed by the Borrower over those assets specified by the Lender.

A security Agreement executed by any existing Lender in a form and manner satisfactory to the Lender.

SEALED with the Common Seal of)

XXXXXX SERVICES LIMITED)

in the presence of:)

)

Director)

)

Director/Secretary)

SEALED with the Common Seal of)

XXXXXX LIMITED)

in the presence of:)

)

Director)

)

Director/Secretary)

Drawn By: