

DATED THIS 13TH DAY OF SEPTEMBER 2019

GALLBERRY LIMITED
AND
SHANNON TECHNOLOGIES LIMITED

JOINT VENTURE AGREEMENT

Drawn by:



ORARO & COMPANY
ADVOCATES

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This **Agreement** is made as of the ^{13TH} day of ~~SEPTEMBER~~ 2019 between

- (1) **SHANNON TECHNOLOGIES LIMITED**, a limited liability company incorporated and registered in the Republic of Kenya with Company Number PVT-JZU9BZ8 and P.O. Box 15610-00100 Nairobi, Kenya (hereinafter referred to as "**Shannon**" which expression shall where the context so admits include its successors in title and permitted assigns); and
- (2) **GALLBERRY LIMITED**, a limited liability company incorporated in the Republic of Mauritius, with Company Number 118657 and of c/o Axis Fiduciary 26 Cybercity Ebene 72201, 2nd Floor the Axis, Ebene, Mauritius (hereinafter referred to as "**Gallberry**" which expression shall where the context so admits include its successors in title and permitted assigns) of the second part,

(each a "**party**" and together the "**parties**").

Recitals

- (A) Shannon is engaged in the business of application and software development.
- (B) Gallberry is a limited liability company duly registered as a holding company in the Republic of Mauritius.
- (C) The parties have agreed to establish the Company (as hereinafter defined) as a joint venture company in relation to offering of an online financial platform to the public through a mobile application which, inter alia, enables members of the public to raise, borrow or lend money and to enter into this Agreement for the purpose of regulating the management of the Company, their relationship with each other and certain aspects of the affairs of, and their dealings with, the Company.

It is agreed as follows

1 Definitions and Interpretation

- 1.1 In this Agreement (including its recitals and the Schedules), unless the context otherwise requires, the following terms shall have the meaning ascribed to them below:

Acceptance Notice has the meaning ascribed to it in sub-clause 13.4.7;

Affected Shareholder has the meaning ascribed to it in Clause 16.1;

Affiliate means, in relation to any specified person, any other person directly or indirectly Controlling or Controlled by, or under direct or indirect common Control with, the specified person; provided that the Company and any of its Subsidiaries shall not be regarded as being an Affiliate of any Shareholder;

Agreement means this Joint Venture Agreement;

Applicable Law means any common law, constitutional law, statute, regulation, resolution, rule, ordinance, enactment, judgement, order, code, decree, directive, notification, clarification, guideline, policy, requirement or any other governmental direction having the force of law and any form or decision or any determination by or interpretation of any of the foregoing by

any Governmental Authority, now or hereafter in effect, in each case as amended, re-enacted or replaced to the extent applicable to Group;

Approved Transferee means any of the persons referred to in Clause 13.2;

Articles means the articles of association of the Company as amended or replaced from time to time;

Auditors means the auditors of the Company appointed by the Shareholders from time to time;

Board means the board of directors of the Company, as appointed from time to time in accordance with the terms of this Agreement and the Articles;

Board Reserved Matters has the meaning ascribed to it in Clause 9.1;

Business means the business of offering of an online financial platform which, inter alia, enables members of the public to raise, borrow or lend money;

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banking and financial institutions are generally open for the conduct of business in Kenya;

Business Plan means the annual business plan for the Company prepared by the Company which shall include in relation to the Financial Year to which it relates: (a) a cashflow statement giving an estimate of the working capital requirements and an indication of the amount (if any) that it is considered prudent to retain, for the purpose of meeting those requirements, out of those profits of the previous Financial Year that are available under the Applicable Law for distribution to the Shareholders; (b) a monthly projected profit and loss account; (c) an operating budget (including capital expenditure requirements) and balance sheet forecast; (d) a management report giving business objectives for the Financial Year; and (e) a financial report which shall include an analysis of the estimated results of the Group for the previous Financial Year compared with the Business Plan for that year, identifying variations in sales, revenues, costs and other material items;

Chairman has the meaning ascribed to it in Clause 5.7;

Closed Period means the period of three (3) years from (and including) the Effective Date;

Condition means the conditions precedent to this Agreement set out in Clause 2.1 and **Conditions** shall be construed accordingly;

Confidential Information has the meaning ascribed to it in Clause 33.1;

Continuing Provisions means Sections 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 40 all of which shall continue to apply after termination of this Agreement;

Control means, in relation to a body corporate, the power or ability of a person to secure that the affairs of the body corporate are conducted directly or indirectly in accordance with the wishes of that person: (1) by means of the holding of shares, or the possession of voting power, in or in relation to that or any other body corporate; or (2) by virtue of any powers conferred by the articles of association, or any other document, regulating that or any other body corporate, and **Controls**, **Controlling** and **Controlled** shall be construed accordingly, and **Change of Control** occurs if a person who

Controls any body corporate ceases to do so or if another person acquires Control of that body corporate;

Deadlock has the meaning ascribed to it in Clause 17.1;

Deadlock Notice has the meaning ascribed to it in Clause 17.1;

Deed of Adherence means a deed substantially in the form set out in Schedule 1;

Digital Notice has the meaning ascribed to it in Clause 31.6;

Director means any person duly appointed in the capacity of a director of the Company pursuant to the provisions of Clause 5.2 and including, where applicable, any alternate director appointed pursuant to Section 6, and **Directors** shall be construed accordingly;

Disposal in relation to a Share includes, without limitation:

- (a) sale, assignment or transfer;
- (b) creating or permitting to subsist any pledge, charge, mortgage, lien or other security interest or encumbrance;
- (c) creating any trust or conferring any interest;
- (d) any agreement, arrangement or understanding in respect of votes or the right to receive dividends;
- (e) the renunciation or assignment of any right to subscribe or receive a Share or any legal or beneficial interest in a Share;
- (f) any agreement to do any of the above, except an agreement to transfer Shares which is conditional on compliance with the terms of this agreement; and
- (g) the transmission of a Share by operation of law;

Drag Notice has the meaning ascribed to it in Clause 15.2;

Drag Option has the meaning ascribed to it in Clause 15.1;

Drag Price the meaning ascribed to it in sub-clause 15.2.3;

Dragged Shares has the meaning ascribed to it in Clause 15.1;

Dragged Shareholders has the meaning ascribed to it in Clause 15.1;

Effective Date means the date of this Agreement;

Encumbrance means any claim, charge (fixed or floating), mortgage, pledge, lien, option, equity, power of sale, hypothecation, right of first refusal, trust, right of set-off, right of pre-emption or other third party right or interest (legal or equitable), any assignment by way of security, reservation or retention of title or any other security interest of any kind howsoever created or arising or any other agreement or arrangement (including a sale and purchase agreement) having similar effect;

Event of Force Majeure has the meaning ascribed to it in Clause 7.3;

Excess Securities has the meaning ascribed to it in Clause 12.2;

Excess Shares has the meaning ascribed to it in sub-clause 13.4.4(c);

Fair Market Value means the fair market value of each Share as claimed by the Proposing Transferor or agreed between the relevant Shareholders based on an arm's length sale between a willing vendor and a willing purchaser and disregarding any diminution in the value of the Shares by reason of the operation of any Clause of this Agreement or in the absence of agreement between the Shareholders, as determined by the Independent Expert in accordance with Section 19;

Family Member means, in relation to any Shareholder or any shareholder in any one of the corporate Shareholders (as the context may require), that person's spouse, widow or widower or that person's parent or any lineal descendants of that person;

Family Settlement means, in relation to any Shareholder or any shareholder in any one of the corporate Shareholders (as the context may require), a settlement made by such person under which no one other than that person and/or any Family Member of that person is or may become entitled to any beneficial interest in such settlement;

Financial Year means, in relation to the Company, a financial accounting period of twelve (12) months beginning on 1 January and ending on 31 December of each calendar year;

Governmental Authority means any regional, national, county, municipal and/or local authority or any governmental, administrative or regulatory body inside or outside Kenya having statutory competence to promulgate rules and regulations having force of law with regard to the Company, the Business or the transactions and matters referred to in this Agreement;

Group means the Company and its Subsidiaries, and **Group Company** means any one of them;

Group Transferee has the meaning ascribed in sub-clause 13.2.1;

Independent Expert has the meaning ascribed to it in Clause 19.1;

Insolvency Event means, in respect of any party, any distress, execution, sequestration or other similar process being levied or enforced upon or sued out against property of any party which is not discharged within twenty one (21) days; or an encumbrancer taking possession of, or an administrator, administrative receiver, receiver, trustee or liquidator being appointed over the whole or any substantial part of any party's undertaking, property or assets or a petition is presented/order is made or a resolution is passed for the winding-up of any party;

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, topography rights, rights to use and protect the confidentiality of Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Joint Venture means the joint venture created by this Agreement and any agreements supplemental to it;

Long Stop Date means three (3) months from the Effective Date or such later date as may be agreed in writing between the parties;

Minority Shareholders has the meaning ascribed to it in Clause 14.1;

New Opportunity means any business prospect relating to the Business;

New Securities has the meaning ascribed to it in Clause 12.1;

Obligatory Transfer Event has the meaning ascribed to it in Clause 16.1;

Obligatory Transfer Notice has the meaning ascribed to it in Clause 16.3;

Offer Period has the meaning ascribed to it in sub-clause 13.4.4(c);

Proposing Transferor has the meaning ascribed to it in sub-clause 13.4.1;

Pro-Rata Entitlement has the meaning ascribed to it in sub-clause 13.4.4(b);

Purchaser has the meaning ascribed to it in sub-clause 13.4.7;

Purchasing Group has the meaning ascribed to it in Clause 14.1 and Clause 15.1;

Purchasing Party has the meaning ascribed to it in sub-clause 18.6.2;

Record Date has the meaning ascribed to it in sub-clause 13.4.4(b);

Related Party Transaction means a transaction between the any Group Company on the one hand and a Shareholder or any Affiliate of a Shareholder, or their respective officers and directors, or a member of any such Shareholder's, Affiliate's, officer's or director's family, on the other hand, or any transaction to which a Group Company is a party in which a Shareholder or any Affiliate of a Shareholder, or their respective officers or directors, or a member of any such Shareholder's, Affiliate's, officer's or director's family, has a material commercial interest;

Relevant Entitlement means, in the case of each Shareholder, such percentage of the New Securities as equates to its Shareholding Percentage immediately prior to the issue of the New Securities;

Relevant Shares has the meaning ascribed to it in Clause 15.2;

Shareholder means a person entered in the register of members of the Company as the holder of Shares from time to time either by virtue of having executed this Agreement or having entered into a Deed of Adherence, and **Shareholders** means all of them;

Shareholding Percentage means, in respect of a Shareholder, the proportion which the total number of the paid up Shares of such Shareholder bears to the aggregate number of the paid up Shares of all the Shareholders, from time to time and **Shareholding Percentages** shall be construed accordingly;

Shareholder Reserved Matters has the meaning ascribed to it in Clause 9.2;

Shares means the ordinary shares in the share capital of the Company of whatsoever nature from time to time;

Software means a software application, owned by Shannon, which allows subscribers to raise, borrow and lend money;

Subsidiaries means the subsidiaries or subsidiary undertakings of the Company;

Tag Acceptance Notice has the meaning ascribed to it in Clause 14.2;

Tag Notice has the meaning ascribed to it in Clause 14.1;

Tax means all forms of tax payable by law including any charges, duties, levies, imposts and social security charges, withholdings or liabilities and including without limitation corporate income tax, withholding tax, compensating tax, payroll taxes, national social security contributions, national hospital insurance fund contributions, value added tax, sales tax, customs and excise duties, stamp duties, capital gains tax, dividend withholding tax, (municipal) real estate taxes, rates, land rents, other municipal taxes and duties, environmental taxes and duties and any other type of taxes or duties, withholdings or deductions of any nature whatsoever in the Republic of Kenya, together with any interest, penalties, surcharges or fines relating thereto, due, payable, levied, imposed upon or claimed to be owed in any jurisdiction and **Taxation** and **Taxes** shall be construed accordingly;

Third Party has the meaning ascribed to it in sub-clause 13.4.8;

Third Party Offer has the meaning ascribed to it in sub-clause 13.4.8;

Third Party Price has the meaning ascribed to it in sub-clause 13.4.8;

Third Party Terms has the meaning ascribed to it in sub-clause 13.4.8;

Transfer Notice has the meaning ascribed to it in sub-clause 13.4.1;

Transfer Shares has the meaning ascribed to it in sub-clause 13.4.1; and

Transferee Shareholders has the meaning ascribed to it in sub-clause 13.4.3.

1.2 In this Agreement (including its recitals and the Schedules), unless the context otherwise requires:

1.2.1 references to Sections, Clauses, sub-clauses and Schedules are to sections, clauses, sub-clauses of and Schedules to, this Agreement and references to paragraphs are to paragraphs of the relevant Schedule;

1.2.2 references to any document in the **agreed form** means that document in a form agreed by the parties and initialled for the purposes of identification by or on behalf of all the parties;

1.2.3 words denoting the singular number shall include the plural and vice versa and reference to the masculine gender includes a reference to the feminine gender and neuter and vice versa and words importing the whole shall be treated as including a reference to any part thereof;

1.2.4 a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted and shall include any subordinate legislation made from time to time under that statute or statutory provision provided that, as between the parties, no such amendment, modification or re-enactment made after the Effective

Date shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party;

- 1.2.5 reference to a **company** shall be construed so as to include any corporation or other body corporate, whenever and however incorporated or established;
- 1.2.6 references to a **person** shall be construed so as to include any individual, firm, company, corporation, body corporate, national and/or county government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- 1.2.7 references to **indemnity** and **indemnifying** any person against any circumstances include indemnifying and keeping him harmless on an after-Tax basis from all actions, claims and proceedings from time to time made against that person and all loss or damage and all payments, costs or expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- 1.2.8 any reference to a day (including the phrase Business Day) shall mean a period of twenty four (24) hours running from midnight to midnight;
- 1.2.9 references to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.2.10 references to any Kenyan legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than Kenya be deemed to include what most nearly approximates in that jurisdiction to the Kenya legal term;
- 1.2.11 the *ejusdem generis* principle of construction shall not apply to this Agreement. Accordingly, general words shall not be given a restrictive meaning by reason of their being preceded or followed by words indicating a particular class of acts, matters or things or by examples falling within the general words. Any phrase introduced by the terms other, including, include and in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.12 all headings and titles are inserted for convenience only and are to be ignored in the interpretation of this Agreement;
- 1.2.13 when any number of days is prescribed in this Agreement, the same shall exclude the first and include the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;
- 1.2.14 if figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail;

- 1.2.15 the Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules;
 - 1.2.16 reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other agreement or document as varied or amended from time to time (such variation or amendment in each case occurring other than in breach of the provisions of this Agreement, and in accordance with the law to which that agreement or document is subject and the particular conditions (if any) of such agreement or document); and
 - 1.2.17 any covenant by a party not to do an act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person so far as this is within the party's power or Control.
- 1.3 If a definition of a particular term or expression in this Agreement imposes substantive rights and obligations on a party such rights and obligations shall be given effect to and shall be enforceable notwithstanding that they are contained in a definition.
 - 1.4 Where any term is defined within the context of any particular Clause, sub-clause or any paragraph of a Schedule, the term so defined, unless it is clear from the Clause, sub-clause or paragraph in question that the term so defined has limited application to the relevant Clause, sub-clause or paragraph, shall bear the meaning ascribed to it in that Clause, sub-section or paragraph whenever it is used in this Agreement notwithstanding that that term has not been separately defined in this Section 1.
 - 1.5 The parties hereby agree that this Agreement is a complex commercial contract that has been negotiated and drafted jointly by sophisticated commercial parties represented by advocates and, accordingly, that no rule of contract, construction or interpretation pursuant to which ambiguities are construed against the party who drafted the contract shall be applied to the construction or interpretation of this Agreement.
 - 1.6 Subject to Section 28, this Agreement shall be binding on, and enure to the benefit of, the parties and their respective personal representatives, successors and permitted assigns, and a reference to a party shall include that party's personal representatives, successors and permitted assigns.

2 Conditionality

2.1 Conditions

This Agreement is conditional upon:

- 2.1.1 the incorporation of the company in accordance with the terms of this Agreement to undertake the Joint Venture (hereinafter referred to as the "**Company**");
- 2.1.2 entry into a software assignment agreement in relation to the assignment of the Software by Shannon to the Company;

- 2.1.3 approval/exemption under the Competition Act No. 12 of 2010 of the Laws of Kenya by the Competition Authority of Kenya (if applicable).

2.2 Obligations concerning satisfaction of Conditions

- 2.2.1 The parties shall, and hereby undertake to, use their commercially reasonable endeavours as soon as reasonably practicable after the Effective Date to ensure satisfaction of the Conditions set out in Clause 2.1;
- 2.2.2 Shannon shall, and hereby undertakes to, use its commercially reasonable endeavours to ensure satisfaction of the Condition set out in Clause 2.1.2 and to dedicate software engineers to ensure the success of the product; and
- 2.2.4 Each party shall use all reasonable endeavours, and shall co-operate with the other parties as required, to fulfil or procure the fulfilment of the Condition set out in Clauses 2.1.1 and 2.1.3 as soon as possible and in any event on or before the Long Stop Date.

2.3 Waiver of Conditions

No waiver of any of the terms and conditions of this Agreement will be binding and effectual for any purpose unless in writing and signed by the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of any party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

2.4 Non-satisfaction of Conditions

If at the Long Stop Date, all of the Conditions have not been fulfilled, then:

- 2.4.1 the parties may defer the period within which any outstanding Conditions shall be fulfilled by such time as it may consider appropriate; or

2.1.3 approval/exemption under the Competition Act No. 12 of 2010 of the Laws of Kenya by the Competition Authority of Kenya (if applicable).

2.2 Obligations concerning satisfaction of Conditions

2.2.1 The parties shall, and hereby undertake to, use their commercially reasonable endeavours as soon as reasonably practicable after the Effective Date to ensure satisfaction of the Conditions set out in Clause 2.1;

2.2.2 Shannon shall, and hereby undertakes to, use its commercially reasonable endeavours to ensure satisfaction of the Condition set out in Clause 2.1.2 and to dedicate software engineers to ensure the success of the product; and

2.2.4 Each party shall use all reasonable endeavours, and shall co-operate with the other parties as required, to fulfil or procure the fulfilment of the Condition set out in Clauses 2.1.1 and 2.1.3 as soon as possible and in any event on or before the Long Stop Date.

2.3 Waiver of Conditions

No waiver of any of the terms and conditions of this Agreement will be binding and effectual for any purpose unless in writing and signed by the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of any party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

2.4 Non-satisfaction of Conditions

If at the Long Stop Date, all of the Conditions have not been fulfilled, then:

2.4.1 the parties may defer the period within which any outstanding Conditions shall be fulfilled by such time as it may consider appropriate; or

- 2.1.3 approval/exemption under the Competition Act No. 12 of 2010 of the Laws of Kenya by the Competition Authority of Kenya (if applicable).

2.2 Obligations concerning satisfaction of Conditions

- 2.2.1 The parties shall, and hereby undertake to, use their commercially reasonable endeavours as soon as reasonably practicable after the Effective Date to ensure satisfaction of the Conditions set out in Clause 2.1;
- 2.2.2 Shannon shall, and hereby undertakes to, use its commercially reasonable endeavours to ensure satisfaction of the Condition set out in Clause 2.1.2 and to dedicate software engineers to ensure the success of the product; and
- 2.2.4 Each party shall use all reasonable endeavours, and shall co-operate with the other parties as required, to fulfil or procure the fulfilment of the Condition set out in Clauses 2.1.1 and 2.1.3 as soon as possible and in any event on or before the Long Stop Date.

2.3 Waiver of Conditions

No waiver of any of the terms and conditions of this Agreement will be binding and effectual for any purpose unless in writing and signed by the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of any party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

2.4 Non-satisfaction of Conditions

If at the Long Stop Date, all of the Conditions have not been fulfilled, then:

- 2.4.1 the parties may defer the period within which any outstanding Conditions shall be fulfilled by such time as it may consider appropriate; or

- 2.1.3 injection of an amount of United States Dollars One Hundred Thousand (USD 100,000) to the Company to be used for marketing of the Company's product. The United States Dollars One Hundred Thousand (USD 100,000) will be invested as follows: United States Dollars Fifty Thousand only (USD 50,000) will be the consideration for purchase of shares in the Company in favour of Gallberry comprising Forty percent (40%) equity in the Company and the balance of United States Dollars Fifty Thousand only (USD 50,000) will be a shareholder loan to the Company at an interest rate of zero percent (0%) to be repaid back to Gallberry prior to any dividend distribution to the Shareholders; and
- 2.1.4 approval/exemption under the Competition Act No. 12 of 2010 of the Laws of Kenya by the Competition Authority of Kenya (if applicable).

2.2 Obligations concerning satisfaction of Conditions

- 2.2.1 The parties shall, and hereby undertake to, use their commercially reasonable endeavours as soon as reasonably practicable after the Effective Date to ensure satisfaction of the Conditions set out in Clause 2.1.
- 2.2.2 Shannon shall, and hereby undertakes to, use its commercially reasonable endeavours to ensure satisfaction of the Condition set out in Clause 2.1.2 and to dedicate software engineers to ensure the success of the product;
- 2.2.3 Gallberry shall, and hereby undertakes to, use its commercially reasonable endeavours to ensure satisfaction of the Condition set out in Clause 2.1.3; and
- 2.2.4 Each party shall use all reasonable endeavours, and shall co-operate with the other parties as required, to fulfil or procure the fulfilment of the Condition set out in Clauses 2.1.1 and 2.1.4 as soon as possible and in any event on or before the Long Stop Date.

2.3 Waiver of Conditions

No waiver of any of the terms and conditions of this Agreement will be binding and effectual for any purpose unless in writing and signed by the party giving the same. Any such waiver will be effective only in the specific instance and for the purpose given. Failure or delay on the part of any party in exercising any right, power or privilege hereunder will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

2.4 Non-satisfaction of Conditions

If at the Long Stop Date, all of the Conditions have not been fulfilled, then:

- 2.4.1 the parties may defer the period within which any outstanding Conditions shall be fulfilled by such time as it may consider appropriate; or

- 2.4.2 the parties may, if agreed by the Parties in writing, commence implementation of the Project so far as practicable (without prejudice to the rights of any of the parties under this Agreement); or
- 2.4.3 either party may terminate this Agreement by written notice to the other party (without prejudice to any rights that may have accrued to any party before such termination).
- 2.5 Each party undertakes to disclose in writing to the other anything which will or may prevent any of the Conditions from being satisfied on or before the Long Stop Date, immediately it comes to the notice of that party.

3 Establishment of the Company

- 3.1 Upon execution of this Agreement, the parties shall incorporate the Company with a share capital of United States Dollars One Hundred (USD 100) divided into One Hundred (100) ordinary Shares of United States Dollars One (USD 1) each.
- 3.2 At incorporation Sixty (60) ordinary Shares of United States Dollars One (USD 1) each in the Company shall be allotted and issued to Shannon as the registered and beneficial holder.
- 3.3 At incorporation Forty (40) ordinary Shares of United States Dollars One (USD 1) each in the Company shall be allotted and issued to Gallberry as the registered and beneficial holder.
- 3.4 Upon incorporation of the Company, the parties shall ensure that the Company executes a deed substantially in the form of the Deed of Adherence pursuant to which the Company shall undertake to be bound by the provisions hereof as if it were an original party hereto and upon the delivery of such deed, the Company shall be treated as a party to this Agreement.
- 3.5 It is the intention of the parties to set up a holding company (the "Holdco") in Mauritius or any other jurisdiction agreed by the parties for purposes of undertaking the Business in Africa. The Shareholders agree to transfer their shares in the Company to the Holdco upon determination or resolution of the parties to set up the Holdco.

4 Financing

- 4.1 The Shareholders acknowledge that the Company will require finance to fund its projected cash requirements under the Business Plan.
- 4.2 Unless otherwise determined by the Company at a general meeting, the Company's fixed and working capital requirements from time to time shall, so far as possible, be provided from the following sources:
 - 4.2.1 Firstly, from the cash flow generated by the Company;
 - 4.2.2 Thirdly, from existing capital reserves;
 - 4.2.3 Fourthly, from external funding sources such as commercial banks and investors and on terms to be agreed between the parties and any relevant third parties. Any security required in relation to such external

funding shall if possible be provided by the Company without recourse to the Shareholders and if not possible be guaranteed by the Shareholders in proportion to their holding of Shares from time to time; and

4.2.4 Finally, from the Shareholders subscribing for additional Shares in proportion to their Shareholding Percentages in the Company on such terms as agreed with the Company.

4.3 The amount of funding from Shareholders required by the Company from time to time shall be determined by the Board. If the Board determines in accordance with the provisions of this Agreement that the Shareholders should contribute to the funding requirements of the Company by way of subscription (and whether for cash or in kind) for further equity or by way of shareholder advances to the Company (whether convertible into equity or not), each Shareholder shall be entitled to participate in such subscription or providing such advances on a pro rata basis to its Shareholding Percentage as at the date of the determination by the Board of the funding requirements of the Company as aforesaid (although Shareholders will also be required to state whether they would wish to subscribe for more or less than their pro rata entitlement). If a Shareholder fails to make payment within the time determined by the Board, the other Shareholders (the **Investing Shareholders**) shall be at liberty to make payment (in full or in part at the discretion of the Investing Shareholders) to the Company of the relevant amount provided that the shareholding in the Company of the Shareholder who does not make payment of its required contribution shall be accordingly reduced in the case of such amount being provided as subscription for equity or upon such contribution being converted into equity (as the case may be). Where the decision made by the Board is in relation to shareholder advances the terms of the shareholder advances and the interest payable (if any) shall be as determined by the Board.

4.4 Each Shareholder shall be obliged to participate for the benefit of the Company in any guarantee, bond or financing arrangement with any bank or financial institution, whether as a guarantor or in any other capacity whatsoever.

4.5 If and to the extent that all the Shareholders agree to participate in any such guarantee, bond or financing arrangement then, unless the Shareholders agree otherwise, any liability or obligation to be assumed by them in relation to that guarantee, bond or financing arrangement shall be borne by the Shareholders in proportion to their Shareholding Percentages. If a Shareholder incurs any liability under any such guarantee, bond or financing arrangement, that Shareholder shall be entitled to a contribution from the other Shareholders to ensure that the aggregate liability of the Shareholders is borne by them in proportion to their Shareholding Percentages at the time the relevant guarantee, bond or financing arrangement is made.

5 The Board and Committees

5.1 The Board shall have responsibility for the overall direction, supervision and management of the Company and its Business save in respect of those matters which are specifically reserved for Shareholders as Shareholder Reserved Matters pursuant to Clause 9.2.

- 5.2 There shall be no more than five (5) Directors on the Board.
- 5.3 The Directors shall be appointed as follows:
- 5.3.1 Shannon shall be entitled to nominate and appoint up to three (3) Directors; and
- 5.3.2 Gallberry shall be entitled to nominate and appoint two (2) Directors.
- 5.4 Any appointment or removal of a Director shall be effected by serving a written notice on the Company and sending a copy thereof to the other Shareholders and shall take effect upon the delivery of the notice to the Company together with a consent to act as a Director, or if such consent to act is not delivered with the notice, upon such consent to act being produced to a duly convened meeting of the Board. Upon the Company receiving such written notice and consent to act (if applicable), the Company shall promptly procure for the Register of Directors to be updated and the Registrar of Companies to be notified of the appointment and/or removal of Directors(s), as the case may be.
- 5.5 Any Shareholder removing a Director shall be responsible for and agrees with the other Shareholders (contracting for itself and as trustee for the Company) to indemnify and keep indemnified the other Shareholders and the Company on demand against all losses, liabilities and costs which the other Shareholders and/or the Company may incur arising out of, or in connection with, any claim by the Director for wrongful or unfair dismissal or redundancy or other compensation arising out of the Director's removal or loss of office.
- 5.6 The Board may submit and delegate, any matter, function or responsibility to any committee established by the Board as it deems appropriate, under guidelines which it may determine. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
- 5.7 There shall be a chairman of the Company who shall preside at all meetings of the Board and at the general meetings of the Shareholders (the **Chairman**). The Chairman shall have no second or casting vote at meetings of the Board or at any general meeting of the Company. If the Chairman is not present within thirty (30) minutes after the time appointed for holding the meeting, the Directors present may elect one of their number to be the chairman for such meeting.
- 5.8 The Directors shall appoint one of their numbers to be the Chairman from time to time. The parties agree that the initial Chairman shall be Ezra Bunyenyezi.
- 5.9 The Company shall, upon the production of appropriate invoices and/or receipts, reimburse each Director for his reasonable travel, accommodation and out-of-pocket expenses incurred in connection with his or her activities as a Director.
- 5.10 The Company may purchase and maintain on behalf of itself and each other Group Company, or shall purchase and maintain for itself and shall procure that each other Group Company shall purchase and maintain, with a reputable insurer, insurance, for or for the benefit of any person who is or was at any time a Director or officer of the Company or a director or officer of any

Group Company against any liability incurred by or attaching to him in respect of any act or omission in the proper discharge of his duties and/or powers, in each case from and including the date of this Agreement.

6 Alternate Directors

- 6.1 Each Director shall, with the prior approval of the Board except where the person is already a Director, have the power to nominate any person, whether a member of the Company or not to act as alternate director in his place during his absence or inability to act as such Director and on such appointment being made, the alternate director shall, in all respects, be subject to the terms, qualifications and conditions existing with reference to the other Directors.
- 6.2 The alternate directors, whilst acting in the stead of the Directors who appointed them, shall exercise and discharge all the powers, duties and functions of the Directors they represent (except the power to appoint alternates). The appointment of an alternate director shall be revoked and the alternate director shall cease to hold office whenever the Director who appointed it ceases to be a Director or gives notice to the Company that the alternate director representing him has ceased to do so.

7 Board Meetings

- 7.1 Meetings of the Board shall be properly convened and held at such times as may be determined by the Board and in any event not less than four (4) times annually at the Company's principal place of business in Kenya, or such other place as the Board may agree from time to time. A Director may, and the secretary of the Company at the request of a Director or Shareholder shall, call a meeting of the Directors.
- 7.2 The quorum for meetings of the Board shall be three (3) Directors provided that one (1) Director appointed by Gallberry and one (1) Director appointed by Shannon are present. A quorum must be present at the beginning of and throughout each meeting. If a quorum is not present at a meeting of the Directors at the time when any business is considered any Director may require that the meeting be reconvened. At least five (5) Business Days' notice of the reconvened meeting will be given unless all the Directors agree. At the reconvened meeting, a quorum shall exist with respect to those matters on the agenda which were not disposed of at the original meeting if any two or more Directors are present or represented by an alternate.
- 7.3 Notwithstanding anything to the contrary contained in this Agreement, a meeting of a Board shall be adjourned in the instance of an Event of Force Majeure until the Event of Force Majeure has passed, in which event the Chairman shall reconvene the Board meeting as soon as is reasonably possible thereafter. For the purposes of this Clause an **Event of Force Majeure** means flight delays or cancellations, a natural catastrophe, state of war, civil unrest including strikes, blockades and/or any other circumstances beyond a Director's reasonable control which prevents a Director from attending a Board meeting in person or by teleconference, videoconference or other suitable means of communication.
- 7.4 Unless otherwise agreed by the Directors or except in the case of an emergency (the Chairman shall in his sole discretion have the right to decide

on whether there is an emergency), there shall be given to each Director not less than seven (7) Business Days' notice in writing (whether in the case of a routine Board meeting or in the case where a meeting has been requested by a Director) of a meeting of the Board.

- 7.5 The notice convening a Board meeting shall contain an agenda of the business intended to be conducted at such meeting. Any Director may, by not less than four (4) Business Days' notice in writing to the other Directors, request that further matters be added to the agenda for discussion at the Board meeting.
- 7.6 Each Shareholder undertakes to the others that it shall use its best endeavours to procure that the Directors appointed by it attend Board meetings to the intent that a quorum is present at each and every Board meeting.
- 7.7 Each Director of the Board shall be entitled to one vote with respect to any matter or question to be decided at any meeting of the Board. Unless otherwise required by the Applicable Law or under this Agreement, no resolution may be passed at a meeting of the Board unless a majority of the Directors present at such meeting vote in favour of such resolution.
- 7.8 Any Director may participate in a Board meeting by means of a telephone or video conference whereby all persons participating in the meeting can hear and communicate with each other throughout the duration of the meeting. Participation in such meeting shall constitute attendance and presence in person at the meeting by the Director so participating.
- 7.9 To the extent permissible under Applicable Law:
- 7.9.1 a resolution in writing signed by all the Directors entitled to receive notice of a Board meeting shall be as valid and effectual as if it had been passed at a Board meeting duly convened and held;
- 7.9.2 such resolution may be contained in one document or in several documents each stating the terms of the resolution and signed by one or more Directors;
- 7.9.3 the text of any such written resolution may be faxed or emailed to a Director for the purposes of his signature; and
- 7.9.4 a resolution signed by an alternate director need not also be signed by his appointor and, if it is signed by a Director who has appointed an alternate director, it need not be signed by the alternate director in that capacity.

■ Shareholders Meetings

- 8.1 The Shareholders shall meet on a regular basis to discuss the development and operation of the Company, provided that the Shareholders shall meet at least once annually within three (3) months following the end of each Financial Year.
- 8.2 A Shareholders' meeting may be called (a) by the Board, (b) on the request of any Shareholder. A Shareholders' meeting shall be held within twenty one (21) days from the date on which the Board calls such meeting or receives such request.

- 8.3 A Shareholders' meeting (other than an adjourned meeting) shall be called by giving notice of at least twenty one (21) days to all the Shareholders. The notice shall specify the time, date and place of the meeting and the general nature of the business to be dealt with at the meeting. A Shareholders' meeting may be called by shorter notice if it is so agreed by all the Shareholders.
- 8.4 No business is to be transacted at a Shareholders' meeting if the members present at the meeting do not constitute a quorum. The quorum for any Shareholders' meeting shall be Shareholders holding or representing not less than 65% of the Shares. Any Shareholder may participate in a Shareholder meeting by means of a telephone or video conference whereby all persons participating in the meeting can hear and communicate with each other throughout the duration of the meeting. Participation in such meeting shall constitute attendance and presence in person at the meeting by the Shareholder so participating.
- 8.5 If a quorum is not present within one (1) hour of the time at which the meeting was due to start, or if during a meeting a quorum ceases to be present, the meeting will be adjourned for fourteen (14) days (unless such day is not a Business Day in which event it shall be adjourned to the immediately following Business Day) to be held at the same time and location, unless each of the Shareholders agrees in writing that the adjourned meeting may be held at shorter notice and/or a different time and location, subject to Applicable Law.
- 8.6 Unless otherwise required by Applicable Law or under this Agreement, any resolutions passed at a Shareholders' meeting shall be valid if adopted by the holders of a simple majority of the Shares. Each Shareholder shall have one (1) vote for each Share held by it.
- 8.7 A body corporate which is a Shareholder may, by resolution of its directors or other governing body, authorise a person or persons to act as its representative or representatives at any Shareholders' meeting of the Company.
- 8.8 The Chairman of the Board shall preside as chairman at every Shareholders' meeting, provided that, in the Chairman's absence, the Shareholders shall appoint a Director mutually agreed by the Shareholders to preside as chairman for that meeting. In the case of equality of votes, such chairman shall not have a second or casting vote.
- 8.9 Subject to the provisions of the Applicable Law, a resolution in writing signed by all the Shareholders for the time being entitled to receive notice of and to attend and vote at general meetings or, being corporations, by their representatives shall be as valid and effective as if the same had been passed at a general meeting of the Company duly convened and held. Such resolution may be contained in one document or in several documents in like form each signed by one or more of the members or by their representatives as aforesaid.

9 Reserved Matters

- 9.1 Notwithstanding anything to the contrary in this Agreement, none of the matters set out in Part 1 of Schedule 2 (the **Board Reserved Matters**) shall be taken or decided on in relation to the Company and the Company shall not,

as far as it is legally able, carry out or give effect to any Board Reserved Matters unless first agreed by at least one (1) Director appointed by Shannon and one (1) Director appointed by Gallberry.

- 9.2 Notwithstanding anything to the contrary in this Agreement, none of the matters set out in Part 2 of Schedule 2 (the **Shareholder Reserved Matters**) shall be taken or decided on in relation to the Company and the Company shall not, as far as it is legally able, carry out or give effect to any Shareholder Reserved Matters unless first agreed Shareholders holding 75% of the Shares (either in writing or by voting in favour at a Shareholders' meeting properly held and convened).

10 Financial Information

- 10.1 The parties shall procure that the Company shall at all times maintain accurate and complete accounting and other financial records including all corporation tax computations and related documents and correspondence with relevant taxation authorities in accordance with the requirements of the Applicable Law and generally accepted accounting principles applicable to the Company.
- 10.2 Each party and its authorised representatives shall be allowed access at all reasonable times to examine the books and records of the Company and to discuss the Company's affairs with its Directors and senior management.
- 10.3 The Company shall prepare and submit to the Board and the Shareholders the following information as soon as possible and in any event will use reasonable endeavours to ensure that it is submitted to the Board and the Shareholders no later than the dates set out below:
- 10.3.1 the unaudited results of the Company for the previous Financial Year within twenty five (25) Business Days of the end of each Financial Year;
- 10.3.2 a copy of the audited accounts of the Company for the previous Financial Year within six (6) months of the end of each Financial Year;
- 10.3.3 a draft Business Plan for the Company for the following year three (3) months before the end of each Financial Year;
- 10.3.4 monthly unaudited management accounts including:
- (a) a profit and loss account, balance sheet and cash flow statement and cash flow forecast for the next three (3) months; and
 - (b) a review of the Business Plan including a reconciliation of results with revenue and capital budget;
- 10.3.5 quarterly unaudited management accounts including a detailed profit and loss account, balance sheet and cash flow statement and cash flow forecast for the next three (3) months; and
- 10.3.6 such further information as any Shareholder may reasonably require relating to the financial condition of the Company.

11 Dividend Policy

- 11.1 The parties agree that the Company shall not declare, pay or make any dividend or other distribution until all loans made to the Company by the Shareholders or their Affiliates have been repaid in full including any and all interest accrued thereon.
- 11.2 Subject to Clauses 11.1 and the requirements of the Applicable Law and unless the parties agree otherwise in relation to any particular Financial Year, the dividend policy of the Company shall be determined by the Board as it deems prudent.

12 Pre-Emption

- 12.1 If the Company proposes to issue to any person any Shares or other securities for subscription (the **New Securities**), each Shareholder shall exercise its rights as a Shareholder (so far as it is able to) to procure that no such New Securities will be issued unless each Shareholder has first been offered an opportunity to subscribe, on the same terms, for not less than its Relevant Entitlement of each such type and number of New Securities.
- 12.2 The offer referred to in Clause 12.1 shall be made by the Company by written notice specifying the number of the New Securities offered, the Relevant Entitlement of each Shareholder, the price per New Security and specifying a period (not being less than thirty(30) Business Days) from receipt of such notice at the expiration of which the offer, if not accepted, will be deemed to be declined. Within the specified period, each Shareholder may send a written notice to the Company accepting all or a portion of its Relevant Entitlement and indicating any amount of New Securities in excess of its Relevant Entitlement (the **Excess Securities**) which it is willing to purchase. A Shareholder shall be entitled to apportion the offer right referred to in Clause 12.2 in such proportions as it deems appropriate, among itself and its Affiliates, provided that each such Affiliate is not a competitor of the Company (as reasonably determined by a majority of the Board) and agrees to enter into this Agreement as a Shareholder.
- 12.3 At the expiration of the time limited for any notice given pursuant to Clause 12.2, the Directors shall allot the New Securities so offered to or amongst the Shareholders who have notified their willingness to subscribe for all or any of such New Securities in accordance with the terms of the relevant offer. No Shareholder shall be obliged to accept a number exceeding the maximum number of New Securities it had indicated its willingness to accept. In the event that any Shareholders notify their willingness to subscribe for aggregate New Securities in excess of the number proposed to be offered, the entitlement of each such Shareholder shall be determined in the following manner:
- 12.3.1 to each Shareholder who has accepted the offer referred to in Clause 12.1 in whole or part there shall be allocated its Relevant Entitlement or such lesser amount of New Securities for which it may have applied;
- 12.3.2 if the amount of any New Securities which remain unallocated under sub-clause 12.3.1 is less than the aggregate of the Excess Securities applied for by the Shareholders, the unallocated securities shall be allocated to the Shareholders who have indicated their willingness to

purchase Excess Securities in proportion to the Excess Securities applied for by such Shareholders (and making such adjustments for fractions as the Directors see fit); and

- 12.3.3 if the amount of any New Securities which remain unallocated under sub-clauses 12.3.1 and 12.3.2 is equal to or greater than the aggregate of the Excess Securities applied for, each Shareholder which has applied for Excess Securities shall be allocated the Excess Securities for which it applied.

13 Transfer of Shares

- 13.1 Save in accordance with Clause 13.2, unless otherwise unanimously agreed by the Shareholders, no Shareholder can do or agree to do, any of the following without the unanimous prior written consent of the other Shareholders:

13.1.1 Dispose of all or any part of its Shares unless such Disposal is in accordance with the provisions of this Section 13; or

13.1.2 Dispose of all or any part of its Shares during the Closed Period.

- 13.2 Subject to the provisions of this Clause 13.2, a Shareholder may Dispose of all or some of its Shares to an Approved Transferee being:

13.2.1 a Group Member (as hereinafter defined) (the **Group Transferee**); or

13.2.2 a Family Member or the trustees of a Family Settlement;

13.2.3 a person approved by all the Shareholders,

provided that the Shareholder shall give to the other Shareholders not less than ten (10) days prior notice in writing of its intention to Dispose of its Shares as aforesaid the said notice to give the name and address of the Approved Transferee and (in the case of an Approved Transferee being a company) details of the directors of and legal and beneficial shareholders in the Approved Transferee. For the purposes of this Section 13 Group Member shall mean a company in which the Shareholder is the sole beneficial shareholder and which is Controlled by it. If, while it holds Shares, a Group Transferee ceases to be a Group Member of the Shareholder from whom it obtained the Shares, it shall be the duty of the Group Transferee and the Shareholder in question to notify the Directors in writing within thirty (30) days of the Group Transferee ceasing to be a Group Member as aforesaid that such event has occurred and (unless the Shares are thereupon transferred to the Shareholder in question or another Group Member of such Shareholder, any such transfer being deemed to be authorised under the foregoing provisions of this Clause 13.2) the Group Transferee in question shall be deemed to have given a Transfer Notice (as defined in sub-clause 13.4.1) at the expiry of the aforesaid thirty (30) days and the provisions of Clause 13.4 shall thereupon, *mutatis mutandis*, apply.

- 13.3 If a Shareholder shall Dispose of all or some of its Shares to an Approved Transferee it shall be a condition precedent to any such Disposal (and to the registration of the transfer in favour of the Approved Transferee) that the Approved Transferee execute a deed substantially in the form of the Deed of Adherence pursuant to which the Approved Transferee shall undertake to be

bound by the provisions hereof as if it were an original party hereto and where all the Shares held by the transferor Shareholder are intended to be transferred and if the context so permits, as if all references herein to the transferor Shareholder were a reference to the Approved Transferee and, upon the delivery of such deed, each such Approved Transferee shall be treated as a party to this Agreement.

- 13.4 Unless otherwise agreed by all the Shareholders and subject to clauses 13.1, 13.2 and 13.3, a Shareholder may Dispose of part or all of its Shares only in accordance with the provisions of this Clause 13.4:

13.4.1 Any Shareholder proposing to Dispose of his Shares (the **Proposing Transferor**) shall give notice in writing (a **Transfer Notice**) to the Board stating that the Proposing Transferor desires to transfer such Shares (the **Transfer Shares**).

13.4.2 The Transfer Notice shall constitute the Company (by its Board) as the agent of the Proposing Transferor empowered to sell the Transfer Shares (together with all rights attaching thereto at the date of the Transfer Notice or at any time thereafter) at the Prescribed Price (as defined in sub-clause 13.4.10) during the Offer Period (as defined in sub-clause 13.4.4(c)). Once given, a Transfer Notice may not be revoked except with the consent of the Board.

13.4.3 Within fourteen (14) days after receipt of any Transfer Notice the Board shall serve a copy of that Transfer Notice on all the other Shareholders (other than any Shareholder who has given a Transfer Notice in respect of all or any of his Shares or who is deemed to have given a Transfer Notice) (the **Transferee Shareholders**).

13.4.4 The Transfer Notice shall offer the Transfer Shares for purchase at the Prescribed Price and shall specify:

- (a) the total number of Transfer Shares;
- (b) the number of Transfer Shares offered to each Transferee Shareholder (**Pro-Rata Entitlement**) which shall be such number of Shares as nearly as may be in proportion to their Shareholding Percentages, such Shareholding Percentages being determined as of the date immediately prior to the date of the Transfer Notice (**Record Date**);
- (c) a period (being not more than twenty-one (21) Business Days) (the **Offer Period**) within which the offer must be accepted or shall lapse, and shall be accompanied by a form of application for use by each Transferee Shareholder in applying for his Pro-Rata Entitlement, less than his Pro-Rata Entitlement or for any shares in excess of such entitlement (if any) which he wishes to purchase (**Excess Shares**);
- (d) the purchase price in respect of the Transfer Shares which shall be the Prescribed Price;
- (e) whether the Proposing Transferor is prepared to accept that only some of the Transfer Shares may be purchased by the Transferee Shareholders or whether the Proposing Transferor

will only sell the Transfer Shares to the Transferee Shareholders if all of the Transfer Shares are accepted by the Transferee Shareholders; and

- (f) the terms and conditions of any bona fide and arms' length third party offers that the Proposing Transferor has obtained for the Transfer Shares including the identity of the third party and documentary evidence of such offers.

13.4.5 Upon the expiry of the Offer Period, the Board shall allocate Transfer Shares in the following manner:

- (a) the Pro-Rata Entitlement to each Transferee Shareholder who has indicated that they would purchase their Pro-Rata Entitlement;
- (b) if any Transferee Shareholder has applied for less than his Pro-Rata Entitlement, the remaining Shares shall be allocated to the Transferee Shareholders who have applied for Excess Shares in proportion to the number of Shares held by them at the Record Date respectively (but without allocating to any Transferee Shareholder a greater number of Transfer Shares than the maximum number applied for by him) and any remaining Shares shall be apportioned by continuing to apply this sub-clause 13.4.5(b) to those Transferee Shareholders that have not received the total Excess Shares they requested.

13.4.6 If any Transfer Shares shall not be capable of being offered to the Transferee Shareholders in proportion to their Shareholding Percentages without fractions, then as many of such shares as possible shall be offered to the Transferee Shareholders in proportion to their Shareholding Percentages and the remainder shall be offered in such proportions or in such manner as may be determined by lots drawn in regard thereto and the lots shall be drawn in such manner as the Directors may think fit.

13.4.7 If, by the foregoing procedure, the Board shall receive acceptances in respect of all or some of (if sub-clause 13.4.4(e) applies) the Transfer Shares the Board shall forthwith give notice in writing (**Acceptance Notice**) as hereinafter mentioned to the Proposing Transferor and to each Transferee Shareholder who has agreed to purchase the same (the **Purchaser**) and the Proposing Transferor shall thereupon become bound upon payment of the Prescribed Price in full to the Proposing Transferor (whose receipt shall be a good discharge to the Purchasers, the Company and the Board none of whom shall be bound to see to the application thereof) to transfer to the Purchasers those Transfer Shares accepted by the Purchasers. Every such Acceptance Notice shall state the name and address of the Purchasers, the number of Transfer Shares agreed to be purchased by the Purchasers and the place and time appointed by the Board for the completion of the purchase (being not less than thirty (30) Business Days nor more than forty five (45) Business Days after the date of the Acceptance Notice).

13.4.8 If the Company shall not by the expiry of the Offer Period find purchasers willing to purchase all the Transfer Shares (the Company

shall in this case give notice in writing to the Proposing Transferor) then the Proposing Transferor shall be at liberty, within a period of thirty (30) days from the date of receipt by the Proposing Transferor of the Company's notice, to sell the Transfer Shares to the bona fide third party notified to the Company under sub-clause 13.4.4(f) on the same terms and conditions as specified in the Transfer Notice. If the Proposing Transferor had not under sub-clause 13.4.4(f) notified the Company of any third party offer then the Proposing Transferor shall be entitled to solicit and obtain a bona fide and arms' length offer acceptable to it (the **Third Party Offer**) for the Transfer Shares from a third party (the **Third Party**) ready, able and prepared to purchase the Transfer Shares at a price not being less than the Prescribed Price (after deducting, where appropriate, the amount of any dividend or other distribution declared or made after the date of the Transfer Notice and to be retained by the Proposing Transferor) within a period of six (6) months from the date of receipt of notice in writing from the Company to the Proposing Transferor referred to above. Upon obtaining the Third Party Offer, the Proposing Transferor shall give notice in writing to the Company setting out the identity of the Third Party, the price that the Third Party is prepared to pay for the Transfer Shares (the **Third Party Price**), the terms upon which the Third Party is prepared to purchase the Transfer Shares including, but without limitation, the terms and conditions of payment (the **Third Party Terms**) and the information set out in sub-clauses 13.4.4(a) and 13.4.4(e). The Proposing Transferor shall, subject as hereinafter provided, be at liberty to sell the Transfer Shares to the Third Party on the Third Party Terms and at the Third Party Price provided that completion of the purchase of the Transfer Shares by such Third Party shall take place no later than the date which is thirty (30) days after the date of the notice in writing to the Company. References in this sub-clause 13.4.8 to the **Transfer Shares** shall include a reference to such of the Transfer Shares as may not have been purchased following the service of a Transfer Notice, if applicable, by the Shareholder.

- 13.4.9 The Directors may require to be satisfied that Transfer Shares are being transferred in pursuance of a bona fide sale for the consideration stated in the transfer without any deduction, rebate or allowance whatsoever. If following the transfer of the Transfer Shares pursuant to sub-clause 13.4.8 a Transferee Shareholder proves that the price at which the Transfer Shares were transferred to the Third Party was less than the Prescribed Price at which the Transfer Shares had been offered for sale to the Transferee Shareholder or that the Third Party Price was not a bona fide price then (but without prejudice to any other right or remedy which the Transferee Shareholder may have in respect of such breach of this Agreement by the Proposing Transferor) the Proposing Transferor shall pay to the Transferee Shareholder an amount equal to twice the difference between the Prescribed Price and the Third Party Price, which sum shall constitute a genuine pre-estimate of liquidated damages which the Transferee Shareholder may have suffered. The Proposing Transferor shall give the Transferee Shareholder(s) access to such of its books and records and provide such other information as the Transferee Shareholder(s) may

reasonably require to enable the Transferee Shareholder(s) establish whether or not the provisions of this sub-clause 13.4.10 are applicable.

13.4.10 Unless otherwise agreed between the Proposing Transferors and the Purchaser(s) and subject to the provisions of Clause 16.3, the price at which the Transfer Shares shall be sold at (the **Prescribed Price**) will be:

- (a) the price claimed by the Proposing Transferor for the Transfer Shares; or
- (b) the price offered for the Shares by any Third Party in the event that the Transfer Shares are purchased by a Third Party.

13.5 It shall be a condition precedent to the right of any Shareholder to Dispose of any Shares to a Third Party (whether in respect of the legal or beneficial interest therein), any beneficial holder having transferred to it legal title in its shareholding or the allotment of any unissued Shares that the Third Party transferee or allottee or legal holder (if not already bound by the terms of this Agreement) executes a deed substantially in the form of the Deed of Adherence and, upon the delivery of such deed, each such Third Party transferee or allottee or legal holder shall be treated as a party to, and (where relevant) as a Shareholder for the purposes of this Agreement.

13.6 Upon the death of a Shareholder or a person with the controlling interest in a corporate Shareholder, the remaining Shareholders shall procure that the Board shall approve the transfer of Shares by transmission provided that the transfer is to a Family Member or a Family Settlement and provided further that the Family Member or the representatives of the Family Settlement execute a deed substantially in the form of the Deed of Adherence and upon delivery of such deed, each such Family Member or Family Settlement shall be treated as a party to and as a Shareholder for the purposes of this Agreement.

14 Tag Along

14.1 No transfer of Shares shall be made or registered if the same would result in a person or persons acting in concert (the **Purchasing Group**) holding or increasing their shareholding in the Company to 50% or more of the issued share capital of the Company unless before the transfer is made or registered, the Purchasing Group has made a written offer to all the other Shareholders (the **Minority Shareholders**) to purchase the Shares in issue (the **Tag Notice**). The Tag notice shall specify the number of Shares desired to be transferred, the name of the Purchasing Group and the consideration per Share agreed with the Purchasing Group, including all other terms or conditions. The provisions of Section 13 shall apply to any transfer of Shares made pursuant to this Section 14.

14.2 Within thirty (30) days after receipt of the Tag Notice, each Minority Shareholder may, by written notice (a **Tag Acceptance Notice**) to the Purchasing Group require the Purchasing Group to buy a number of Shares from such Minority Shareholder up to a maximum of its entire shareholding on the same terms and conditions (including the same consideration or cash price equivalent per Share) as apply to the proposed transfer to the Purchasing Group (as reflected in the Tag Notice).

- 14.3 If a Minority Shareholder fails to timely deliver a Tag Acceptance Notice, such Minority Shareholder shall have no right to participate in the transfer to the Purchasing Group. If a Minority Shareholder has timely delivered a Tag Acceptance Notice, the proposed transfer to the Purchasing Group shall not be made or registered unless the Purchasing Group simultaneously completes the purchase of the Shares, as contemplated by this Clause 14.3, of each Minority Shareholder that has timely delivered a Tag Acceptance Notice.

15 Drag Along

- 15.1 If a transfer of Shares (the **Relevant Shares**) would result in a person or persons acting in concert (the **Purchasing Group**) holding or increasing their shareholding in the Company to 75% or more of the issued share capital of the Company, the Purchasing Group shall have the option (the **Drag Option**) to require the other Shareholder(s) (the **Dragged Shareholder(s)**) to each transfer a pro rata proportion of their shares (the **Dragged Shares**) to the Purchasing Group in accordance with this Section 154. The provisions of Section 13 shall apply to any transfer of Shares made pursuant to this Section 15.
- 15.2 To exercise the Drag Option the Purchasing Group shall give an irrevocable notice in writing (the **Drag Notice**) to the Dragged Shareholders. The Drag Notice shall specify:
- 15.2.1 that the Dragged Shareholders are required to transfer their Dragged Shares to the Purchasing Group;
 - 15.2.2 the price for the Relevant Shares (including details of any non-cash consideration receivable by the Dragged Shareholder(s) (or any of them) which, having regard to the substance of the transaction as a whole, can reasonably be regarded as forming part of the price paid or payable for the Relevant Shares (or any of them));
 - 15.2.3 the price the Dragged Shareholders will receive for each Dragged Share (the **Drag Price**) and details of how that price has been calculated;
 - 15.2.4 the name of the Purchasing Group; and
 - 15.2.5 the proposed date for completion of the transfer of the Relevant Shares and the Dragged Shares (which shall be at least thirty (30) days after the date of the Drag Notice).
- 15.3 The Drag Price shall be equal to the price per Relevant Share (including the cash equivalent of any non-cash consideration). Any dispute about the calculation of the Drag Price shall immediately be referred to an Independent Expert as described in Section 198 and, pending its determination neither the Relevant Shares nor the Dragged Shares shall be transferred to the Purchasing Group.
- 15.4 The transfer of the Relevant Shares and the Dragged Shares (including the payment of the consideration) shall take place on the same day.

16 **Obligatory Transfer**

- 16.1 A Shareholder (the **Affected Shareholder**) suffers an obligatory transfer event (an **Obligatory Transfer Event**) where:
- 16.1.1 he becomes or is declared bankrupt;
 - 16.1.2 it is subject to a Change of Control;
 - 16.1.3 it is subject to an Insolvency Event; or
 - 16.1.4 it commits a material breach of this Agreement and either the breach is not capable of being remedied or the Affected Shareholder does not remedy that breach within thirty (30) Business Days of any other Shareholder sending it written notice requiring it to remedy that breach.
- 16.2 If an Obligatory Transfer Event occurs, the Affected Shareholder shall notify the other Shareholders as soon as reasonably practicable, and if it does not, it is deemed to have given notice of it on the date on which the any other Shareholder becomes aware of the Obligatory Transfer Event.
- 16.3 Following notification of an Obligatory Transfer Event, the non-affected Shareholders may, within thirty (30) Business Days of receiving the notice referred to in Clause 16.2, give written notice (an **Obligatory Transfer Notice**) to the Affected Shareholder requiring that the Affected Shareholder sell all of the Shares held by him to the non-affected Shareholders on (unless the non-affected Shareholders agree otherwise in writing) a pro rata basis to the Shareholding Percentages of the non-affected Shareholders and in the event that any non-affected Shareholder is unable or unwilling to take up his rights pursuant to this Clause, then the other non-affected Shareholders shall have the right, pro rata to their existing shareholdings to take up such Shares, in each case at a price per Share equal to 85% of the Fair Market Value of such Shares.
- 16.4 If an Obligatory Transfer Notice is issued, the Affected Shareholder must sell its Shares to non-affected Shareholders in accordance with the terms of the Obligatory Transfer Notice.
- 16.5 The sale of Shares in accordance with this Clause shall be made in accordance with the provisions of Section 18.
- 16.6 The Shareholders waive their pre-emption rights to the transfer of Shares contained in this Agreement, the Articles and the Applicable Law to the extent necessary to give effect to this Clause.
- 16.7 If an Obligatory Transfer Event set out in sub-clause 16.1.4 has occurred, the Affected Shareholder shall indemnify the non-affected Shareholders against all liability, loss, damage, claim or expense (including reasonable and properly documented out-of-pocket, legal fees and expenses) and fines or penalties of whatever nature suffered or incurred by the non-affected Shareholders arising out of or in connection with Obligatory Transfer Event, except to the extent such liability, loss, damage, claim or expense is caused by the fraud, wilful misconduct or gross negligence of the non-affected Shareholders. In addition, the Affected Shareholder shall indemnify the non-affected Shareholders in accordance with this Clause 16.7 against all liability, loss, damage, claim or

expense (including reasonable and properly documented out-of-pocket, legal fees and expenses) and fines and penalties of whatever nature suffered or incurred by the non-affected Shareholders arising out of or in connection with such event during the remedial period set forth in sub-clause 16.1.4, even if such event is later remedied (except to the extent such liability, loss, damage, claim or expense is caused by the fraud, wilful misconduct or gross negligence of the non-affected Shareholders).

17 Deadlock

- 17.1 If the Directors fail to agree on a Board Reserved Matter or the Shareholders fail to agree on a Shareholder Reserved Matter following two duly convened and consecutive Board or Shareholders' meetings (as applicable), a deadlock shall be deemed to have occurred (**Deadlock**). Whenever a Deadlock is deemed to have occurred any Shareholder may, within one (1) month after the event that has given rise to the Deadlock, provide notice in writing to the other Shareholders that in its opinion there is a Deadlock (the **Deadlock Notice**) and identifying the matter in respect of which the Deadlock has occurred.
- 17.2 Within a period of fourteen (14) days following service of the Deadlock Notice, the Board or the Shareholders (as applicable) shall refer the matter which has given rise to the Deadlock to Arbitration for resolution as specified in Clause 40.

18 Terms of transfer of Shares

- 18.1 The transfer of any Shares (the **Sale Shares**) pursuant to Sections 13, 14, 15, 16 and 17 shall be made on the following terms:

18.1.1 the Sale Shares shall be transferred with:

- (a) full title guarantee and free from any Encumbrance; and
- (b) the benefit of all rights attaching to them as at the date of the relevant Transfer Notice, Tag Notice, Drag Notice, Obligatory Transfer Notice or Deadlock Sale Acceptance Notice, as appropriate.

18.1.2 the selling Shareholder must deliver to the transferee in respect of the Sale Shares which it is transferring on or before the date on which the transfer is required to be undertaken pursuant to Sections 13, 14, 15, 16 and 17, as the case may be, (the **Transfer Date**):

- (a) duly executed share transfer forms in favour of the transferee or its nominee together with the corresponding statutory declarations for filing at the companies registry;
- (b) a Form D certified by the Auditors in respect of the stamp duty payable on the transfer of the Sale Shares;
- (c) the relevant share certificates or an indemnity for any lost share certificates;
- (d) a power of attorney in such form and in favour of such person as the purchaser may nominate to enable the purchaser to exercise

all rights of ownership in respect of the Sale Shares including, without limitation, the voting rights; and

- (e) the transferee must pay in immediately available funds on the Transfer Date the consideration due in respect of the Sale Shares to the selling Shareholder by telegraphic transfer to the bank account of the selling Shareholder notified to it for the purpose no less than four (4) Business Days prior to the Transfer Date.

- 18.2 If a selling Shareholder fails or refuses to comply with its obligations under Clause 18.1, the Company shall authorise a person to execute and deliver the necessary transfer on its behalf and the Company shall register the transferee as a holder of such Sale Shares. The Company shall receive the purchase money in trust for the selling Shareholder and cause the transferee to be registered as the holder of the Sale Shares. The receipt by the Company of the purchase money shall be a good discharge to the purchaser (who shall not be bound to see to the application of those moneys). After the purchaser has been registered as holder of the Sale Shares in purported exercise of these powers the validity of the proceedings shall not be questioned by any person.
- 18.3 The parties shall procure that a transfer of the Sale Shares is not approved for registration unless this Agreement and the Articles have been complied with.
- 18.4 Each party shall do all things and carry out all acts which are reasonably necessary to effect the transfer of the Sale Shares in accordance with the terms of this Agreement in a timely fashion.
- 18.5 The parties shall procure that no person other than an existing Shareholder acquires any Shares unless it enters into a Deed of Adherence agreeing to be bound by this Agreement as a Shareholder.
- 18.6 Upon completion of the Disposal of any Shares pursuant to the foregoing provisions:
 - 18.6.1 the selling Shareholder shall procure the resignation of all its nominees to the Board, and, at the continuing Shareholders' request, it shall do all such things and sign all such documents as may otherwise be necessary to procure the resignation or dismissal of such persons from such appointments in a timely manner. Such resignations shall take effect without any liabilities on the Company for compensation for loss of office or otherwise except to the extent that the liability arises in relation to a service contract with a Director who was acting in an executive capacity; and
 - 18.6.2 the purchasers of such Shares (whether being Shareholders or a Third Party) (the **Purchasing Party**) shall procure that any current balance of any advances made by the selling Party and the Directors appointed by the Selling Party to the Company be repaid or repaid in proportion to the resultant shareholding of the Selling Party by the Company or, at the discretion of the Purchasing Party, that such advances be assigned by the Selling Party to the Purchasing Party upon payment in full for the advances being assigned and the Selling Party shall execute such assignments as the Purchasing Party may reasonably require in this

regard. The provisions of Clause 18.2 permitting the Company to authorise a person to execute transfers and permitting the Company to take receipt of consideration shall apply, *mutatis mutandis*, to the execution of such assignment and the receipt of such advances.

- 18.7 Where any action contemplated under this Agreement (including, without limitation Disposals under Sections 13, 14, 15, 16 and 17 requires any regulatory approval, the Board shall procure that the Company co-operates in obtaining such regulatory approval and any time limit in respect of such contemplated action shall only commence upon the last of any regulatory approvals required in respect of such contemplated action being obtained.

19 Independent Expert

- 19.1 Where a provision of this Agreement requires a Disposal to be effected at Fair Market Value, if the Shareholders are unable to agree on Fair Market Value within the time required by the provision, the Shareholders shall instruct an independent investment bank or accounting firm of international repute as agreed between the Shareholders or, in the absence of agreement within seven (7) days of either party serving details of a suggested expert on the other, as appointed by the then president of the Institute of Certified Public Accountants of Kenya (the **Independent Expert**), to determine the Fair Market Value.
- 19.2 The Independent Expert shall act as an expert and not as an arbitrator. The Independent Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- 19.3 To the extent not provided for by this Section 19, the Independent Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate, including (to the extent he considers necessary,) instructing professional advisers to assist him in reaching his determination.
- 19.4 The Shareholders shall be entitled to make submissions to the Independent Expert, including oral submissions, and shall provide (or procure that others including the Company provide) the Independent Expert with such assistance and documents as the Independent Expert reasonably requires for the purpose of reaching a decision, subject to the Independent Expert agreeing to give such confidentiality undertakings as the parties may reasonably require, and each Shareholder shall with reasonable promptness supply (and procure that others including the Company supply) each other with all information and give each other access to all documentation and personnel as each other party reasonably requires to make a submission under this clause.
- 19.5 The Independent Expert will be instructed to determine the Fair Market Value of the Transfer Shares as soon as possible after, and in any case within one (1) month of, being instructed and to notify the Shareholders in writing of the Fair Market Value.
- 19.6 The Independent Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Independent Expert) shall be borne by the Company.

20 Protective Covenants

- 20.1 Unless it has obtained the prior written consent of the other parties, no party shall (and it shall procure that none of its Affiliates shall) either alone or jointly, with, through or on behalf of any person, directly or indirectly at any time when the party in question is a Shareholder nor for a period of twenty four (24) months after the party in question ceases to be a Shareholder:
- 20.1.1 in Kenya carry on or be employed, engaged, concerned or interested in any business which is or would be in competition with any part of the business of any Group Company including any developments in the business of any Group Company after the date of this Agreement;
 - 20.1.2 deal with or seek the custom of any person that is, or was within the previous twelve (12) months, a client or customer of any Group Company;
 - 20.1.3 offer employment to, enter into a contract for the services of, or attempt to solicit or seek to entice away from any Group Company any individual who is at the time of the offer a director, officer or employee with any Group Company or procure or facilitate the making of any such offer or attempt by any other person; or
 - 20.1.4 solicit or endeavour to entice away from any Group Company any supplier who supplies, or has supplied goods and/or services to any Group Company at any time during the period of twelve (12) months immediately preceding the party in question ceasing to be a Shareholder if that solicitation or enticement causes or would cause such supplier to cease supplying, or materially reduce its supply of, those goods and/or services to any Group Company.
- 20.2 Each Shareholder agrees to procure that each of its directors and Affiliates shall comply with the provisions of this Clause as though it applied directly to them.
- 20.3 Nothing in this Clause prevents or restricts any Shareholder or any of its Affiliates from:
- 20.3.1 holding for investment purposes only not more than five (5) per cent of any class of shares or securities of any company whose shares are listed on a recognised stock exchange; or
 - 20.3.2 carrying on any activity carried on by it in the twelve (12) months prior to the signing of this Agreement.
- 20.4 Each covenant in this Clause:
- 20.4.1 is an entirely separate and independent restriction on each Shareholder and the validity of one restriction shall not be affected by the validity or unenforceability of another; and
 - 20.4.2 is considered fair and reasonable by the parties and no more than is necessary for the protection of the interests of any Group Company. If any such restriction shall be found to be unenforceable but would be valid if it were deleted in whole or in part or an area of application reduced, the restriction shall apply with such modifications as may be necessary to make it valid and enforceable.

21 Termination

21.1 This Agreement shall terminate immediately (except for the Continuing Provisions) and without prejudice to any rights, liabilities or remedies arising under this Agreement prior to such termination):

21.1.1 if the Shares are listed on, or dealings in the Shares commence in, a securities market;

21.1.2 if only one Shareholder (together with its Affiliates) remains holding Shares; or

21.1.3 in respect of the rights and obligations of any Shareholder if it and all its Affiliates cease to hold any Shares and each person to whom Shares have been transferred by that Shareholder and its Affiliates has entered into a Deed of Adherence.

22 Warranties

22.1 Each Shareholder warrants to the other Shareholders that:

22.1.1 (in the case of a company) it is duly incorporated under the laws of its country of incorporation, has been in continuous existence since incorporation and has the right, power and authority to conduct its business as conducted at the date of this warranty;

22.1.2 it has the right, power and authority, and has taken all actions necessary, to execute, deliver and exercise its rights, and perform its obligations, under this Agreement and its obligations under this Agreement are enforceable in accordance with their terms;

22.1.3 the execution and delivery of, and the performance by it of its obligations under, this Agreement and any agreement entered into pursuant to the terms of this Agreement will not:

(a) (in the case of a company) result in a breach of, or conflict with, any provision of its articles of association, articles of incorporation, by-laws or equivalent constitutional documents;

(b) result in a breach of, or constitute a default under, any instrument to which it is a party or by which it is bound where such breach or default would adversely affect to a material extent its ability to enter into, or perform its obligations under, this Agreement; or

(c) result in a breach of any applicable laws or regulations or of any order, decree or judgment of any court or any Governmental Authority which is binding on it; and

22.1.4 it is not subject to an Insolvency Event.

22.2 The warranties set out in Clause 22.1 shall be deemed to be repeated by each person who shall enter into a Deed of Adherence as of the date of the Deed of Adherence.

23 Status of Agreement and Shareholder Undertakings

- 23.1 Each Shareholder shall, to the extent that it is able to do so, exercise all its voting rights and other powers in relation to the Company to procure that the provisions of this Agreement are properly and promptly observed and given full force and effect according to the spirit and intention of this Agreement.
- 23.2 If any provision in the Articles conflicts with any provision of this Agreement, this Agreement shall prevail as between the Shareholders.
- 23.3 The Shareholders shall, when necessary, exercise their powers of voting and any other rights and powers they have to amend, waive or suspend a conflicting provision in the Articles to the extent necessary to permit the Company and the Business to be administered as provided in this Agreement.
- 23.4 Each Shareholder undertakes to the other Shareholders and the Company that it will not, and will (to the extent within its powers) procure that the persons Controlled by it and the Company will not, engage in any activity, practice or conduct in connection with its interest in the Company or the operation of the Business which would give rise to an offence under or non-compliance with any anti-bribery and anti-corruption laws or regulations that may apply to the Company or the Shareholder from time to time.

24 Undertakings by the Company

- 24.1 To the extent to which it is able to do so by law, the Company undertakes with each of the Shareholders that it will comply with each of the provisions of this Agreement. Each undertaking by the Company in respect of each provision of this Agreement shall be construed as a separate undertaking and if any of the undertakings is unlawful or unenforceable the remaining undertakings shall continue to bind the Company.
- 24.2 The Company undertakes to the Shareholders that it will not, and will procure that its Subsidiaries will not, engage in any activity, practice or conduct which would give rise to an offence under or non-compliance with any anti-bribery and anti-corruption laws or regulations that may apply to the Company or any other member of the Group from time to time.

25 No Partnership and Fiduciary Relationship

- 25.1 The parties acknowledge and agree that:
- 25.1.1 nothing in this Agreement and no action taken by the parties under this Agreement shall constitute a partnership, association or other co-operative entity between any of the parties or constitute any party the agent of any other party for any purpose; and
- 25.1.2 no fiduciary relationship or fiduciary duties shall exist between the parties arising out of or in connection with this Agreement.

26 Variation

- 26.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

27 Remedies and Waiver

- 27.1 A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the person waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.
- 27.2 No delay or omission by any party to this Agreement in exercising any right, power or remedy provided by law or under this Agreement shall:
- 27.2.1 affect such right, power or remedy; or
- 27.2.2 operate as a waiver of it.
- 27.3 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 27.4 The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

28 Assignment

- 28.1 No party shall assign, or declare any trust in favour of a third party over, all or any part of the benefit of, or its rights or benefits under, this Agreement.

29 Further Assurance

- 29.1 Each of the parties shall, at its own cost, use all reasonable efforts from time to time on or following the Effective Date, on being required to do so by any other party, to execute any additional documents in a form satisfactory to such other party and to do or procure that any other acts or things are done to give full effect to such party's obligations under this Agreement and secure to the parties the full benefit of the rights, powers, privileges and remedies conferred upon the parties in this Agreement.
- 29.2 Each Shareholder undertakes to the others to comply fully and promptly with the provisions of the Articles so that each and every provision of the Articles (subject to Clause 23.2) shall be enforceable by the Shareholders as between themselves in whatever capacity.

30 Entire Agreement

- 30.1 This Agreement constitutes the whole and only agreement between the parties relating to the subject matter of this Agreement.
- 30.2 Except in the case of fraud, no party shall have any right of action against any other party to this Agreement arising out of or in connection with any Pre-contractual Statement except to the extent that it is repeated in this Agreement.
- 30.3 For the purposes of this Section, **Pre-contractual Statement** means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Agreement made or given by any person at any time prior to this Agreement becoming legally binding.

31 Notices

31.1 All notices or other communications to be given under this Agreement shall be made in writing, and sent by letter, e-mail or facsimile transmission (save as otherwise stated).

31.2 Any notice or communication given under this Agreement shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

31.2.1 in the case of personal delivery, when delivered;

31.2.2 in the case of e-mail, when a delivery-receipt has been received by the sender in respect of the email address notified or an acknowledgement of the e-mail by the recipient sent to the sender; or

31.2.3 in the case of a post, five (5) Business Days after being deposited in the post, postage prepaid by the quickest mail available and by registered mail if available to such party at its address specified in Clause 31.3, or at such other address as such party may hereafter specify for such purpose to the other by, notice in accordance with this Section 31.

31.3 The addresses referred to in Clause 31.2 are:

In the case of Shannon:

Shannon Technologies Limited
International House, Mama Ngina Street
P.O Box 15610-00100
Nairobi, Kenya
Email: erick@dynamodigital.co.ke
Attention: Erick Oyugi

In the case of Gallberry:

Gallberry Limited
c/o Axis Fiduciary, 26 Cybercity Ebene 72201
2nd Floor the Axis, Ebene
Mauritius
Email : ezra@comzapayphone.com
Attn: Ezra Bunyenyezi

31.4 A notice or other communication received on a day other than a Business Day, or after business hours, in the place of receipt shall be deemed to be given on the next following Business Day in such place.

31.5 A party may notify the other party of a change to its address for the purposes of Clause 31.3 provided that such notification shall only be effective on:

31.5.1 the date specified in the notification as the date on which the change is to take place; or

31.5.2 if no date is specified or the date specified is less than ten (10) Business Days after the date on which notice is given, the date falling fifteen (15) Business Days after notice of any such change has been given.

- 31.6 Each party hereby waives any rights it may have or obtain against any of the other parties arising directly or indirectly from any losses or damages which it may suffer because the other parties act on any notice given to it by e-mail (a **Digital Notice**), and it hereby indemnifies the other parties in respect of any claims, demands or actions made against it or losses or damages suffered by it by reason of having acted upon a Digital Notice.
- 31.7 Each party hereby:
- 31.7.1 acknowledges that it is not practical or reasonable for the other parties to establish the authenticity of all Digital Notices;
- 31.7.2 agrees that all Digital Notices which purport to emanate from it shall be deemed to have been given by it in the form actually received by the relevant other party notwithstanding that such Digital Notices may, as a result of the malfunction of equipment, the distortion of communication links and the like, be different to that intended or sent;
- 31.7.3 agrees that this indemnity will not be affected by any failure by any other party to impose any or sufficient procedures or restrictions or to ensure that any, or all of them are adhered to; and
- 31.7.4 agrees that the other parties may, but shall not be obliged to, act on any Digital Notices that appear to be defective or distorted.

32 Announcements

- 32.1 No announcement concerning this Agreement, the Business or the assets of the Company shall be made by any party without the prior written approval of the other parties, such approval not to be unreasonably withheld or delayed. This Clause does not apply in the circumstances described in Clause 32.2.
- 32.2 A party may, after notice to the other parties, make an announcement concerning the sale of the Sale Shares or any ancillary matter if required by:
- 32.2.1 law;
- 32.2.2 existing contractual obligations; or
- 32.2.3 any securities exchange or regulatory or governmental body or any Tax Authority to which that party is subject or submits, wherever situated, whether or not the requirement has the force of law,
- in which case the party concerned shall take all such steps as may be reasonable and practicable in the circumstances to agree the contents of the announcement with the other parties before making the announcement.
- 32.3 The restrictions contained in this Section shall continue to apply without limit in time.

33 Confidentiality

- 33.1 Each party shall treat as confidential all communications between the parties and the Company and/or any of them and all information and other materials supplied to the parties or received by any of them from the others which is either marked confidential or is by its nature confidential or intended to be for the knowledge of the recipient alone, and all information concerning the business, transactions and the financial arrangements of the parties or the

Company with any person with whom any of them is in a confidential relationship with regard to the matter in question coming to the knowledge of the recipient as well as the terms and conditions of this Agreement (**Confidential Information**).

33.2 Notwithstanding the other provisions of this Clause, a party may disclose any Confidential Information:

33.2.1 to the extent required by law or for the purpose of any judicial proceedings;

33.2.2 to the extent required by existing contractual obligations;

33.2.3 to the extent required by any securities exchange or regulatory or governmental body or any Taxation Authority to which that party is subject or submits, wherever situated, whether or not the requirement for information has the force of law;

33.2.4 to the extent required for the purpose of any arbitration pursuant to Section 39;

33.2.5 to the extent required to vest the full benefit of this Agreement in that party;

33.2.6 to its professional advisers, auditors and bankers provided they have a duty to keep such information confidential;

33.2.7 to the extent the information has come into the public domain through no fault of that party;

33.2.8 to a person to whom any Share is bona fide proposed to be transferred; or

33.2.9 to the extent the other party has given prior written consent to the disclosure, such consent not to be unreasonably withheld or delayed.

33.3 Any information to be disclosed pursuant to sub-clauses 33.2.1, 33.2.2, 33.2.3 and 33.2.4 shall be disclosed only after notice to the other party.

33.4 The restrictions contained in this Section shall continue to apply without limit in time.

34 Costs and Expenses

34.1 Except as otherwise stated in this Agreement, each party shall pay its own costs and expenses in relation to the negotiation, preparation, execution and carrying into effect of this Agreement.

35 Counterparts

35.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.

35.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

35.3 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other

agreed format), shall take effect as delivery of an executed counterpart of this agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.

36 Severance

36.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:

36.1.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

36.1.2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.

36.2 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable.

37 Inadequacy of Damages

37.1 Notwithstanding any express remedies provided under this Agreement and without prejudice to any other right or remedy which any party may have, each party acknowledges and agrees that damages alone may not be an adequate remedy for any breach by it of the provisions of this Agreement, so that in the event of a breach or anticipated breach of such provisions, the remedies of injunction and/or an order for specific performance would in appropriate circumstances be available.

38 Negative Pledge


Subject to the provisions of this Agreement, each Shareholder undertakes to the others not to create or permit to subsist any Encumbrance over or upon the Shares held by it, any rights in connection with the Shares held by it from time to time, or any claims or rights against the Company to any third party without the prior written consent of the other Shareholders.

39 Governing law

This Agreement shall be governed by and construed in accordance with the laws of Kenya.

40 Arbitration

40.1 In case of any dispute arising out of or in connection with this Agreement (including as to the interpretation validity, termination or enforceability of this Agreement) between the parties (any such dispute hereinafter referred to as a **Dispute**), the parties shall use all reasonable efforts by consultation to resolve the Dispute on an amicable basis. Such consultation shall begin immediately after one party has delivered to the other party a written request for such consultation. If such Dispute cannot be settled within thirty (30) days after a request for such consultation is made, then any party may refer the Dispute to arbitration in accordance with the provisions of Clauses 40.2 to 40.8 (both inclusive).

- 40.2 Arbitration proceedings shall be conducted in accordance with the Arbitration Rules of the London Court of International Arbitration (**LCIA**), which rules are deemed to be incorporated by reference into this Section 40.
- 40.3 The seat, or legal place, of the arbitration shall be Nairobi, Kenya.
- 40.4 The language used in the arbitral proceedings shall be English.
- 40.5 If the parties so agree, the dispute shall be referred to a single arbitrator or if they are unable to agree upon the person to be appointed as arbitrator within ten (10) days from the date of the notice requesting arbitration, the arbitrator shall, at the request of either party, be appointed by the Registrar of the LCIA Court.
- 40.6 The decision of the arbitrator shall be final and binding.
- 40.7 Notwithstanding any other provisions in this Section 40, any party may seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrators.
- 40.8 Liability in respect of the administration costs of the arbitration, legal costs or other costs incurred by the parties shall be determined in accordance with the LCIA Rules.
- 

This Agreement has been entered into on the date stated at the beginning of it.

SEALED with the Common Seal of
SHANNON TECHNOLOGIES LIMITED
in the presence of:

DIRECTOR
NAME: ERICK OYUGI



SIGNATURE:

DIRECTOR
NAME:



SIGNATURE:



ADVOCATE

I CERTIFY that the above-named
..... and

.....
being the Directors of the Shannon Technologies Limited appeared before me on the
..... day of 20 and being
known to me/identified by ID Nos and
..... acknowledged the above signatures or marks to
be theirs and that they had freely and voluntarily executed this Joint Venture
Agreement and understood its contents.

.....
Signature and designation of the
person certifying



SEALED with the Common Seal of
GALLBERRY LIMITED
in the presence of:

DIRECTOR
NAME: EZRA BUNYENYEZI

SIGNATURE:

DIRECTOR
NAME:

SIGNATURE:

ADVOCATE

I CERTIFY that the above-named
.....
.....

being the Directors of the Gallberry Limited appeared before me on the
..... day of 20 and being
known to me/identified by ID Nos and
..... acknowledged the above signatures or marks to
be theirs and that they had freely and voluntarily executed this Joint Venture
Agreement and understood its contents.

.....
Signature and designation of the
person certifying




Schedule 1 Form of Deed of Adherence

This Deed is made on [] by [Name of New Shareholders] [a company incorporated [in/under the laws of] [] under registered number [] [whose registered office is at] [address] (the **New Shareholder** [which expression shall include the successors in title of any such person(s)]).

Whereas:

- (A) By a Shareholders Agreement dated [*], 20..... the parties thereto agreed to regulate their relations as shareholders in the manner therein appearing.
- (B) [By Deeds of Adherence dated [] and made in substantially similar form to this Deed, [names of prior New Shareholders] became parties to the Shareholders Agreement. The Shareholders Agreement, as amended by the said Deeds, is hereinafter referred to as the **Agreement**.]
- (C) [By a transfer dated [], [] transferred to the New Shareholder [] Shares of [] each in the capital of [insert name of joint venture company] (the **Company**)
- OR
- [By an allotment of shares on [], [insert name of joint venture company] (the **Company**) allotted [] shares of [] each in the capital of the Company to the New Shareholder.]
- (D) This Deed is entered into in compliance with the terms of Clause [] of the Agreement.

Now this Deed witnesseth as follows:-

- 1 The New Shareholder undertakes to adhere to and be bound by the provisions of the Agreement, and to perform the obligations imposed by the Agreement which are to be performed on or after the date of this Deed, in all respects as if the New Shareholder were a party to the Agreement and named therein as a Shareholder.
- 2 This Deed is made for the benefit of (a) the original parties to the Agreement and (b) any other person or persons who after the date of the Agreement (and whether or not prior to or after the date of this Deed) adheres to the Agreement.
- 3 This Deed shall be read together with the Agreement which shall accordingly be construed as one instrument.
- 4 The address of the New Shareholder for the purposes of Clause [] of the Agreement is as set out below:

Address:

Email:



Attention:

- 5 This Deed shall be governed by and construed in accordance with the laws of Kenya.

IN WITNESS WHEREOF this Deed has been executed and delivered by the New Shareholder as a deed on the day and year first before written.

[EXECUTION]

Schedule 2 Reserved Matters

Part 1: Board Reserved Matters

1 Major Disposals and Acquisitions

- 1.1 Other than in accordance with the Business Plan, the disposal by any means (including by lease or licence) by the Company of any asset or the whole or a significant part of any Subsidiary, in each case at a price or with a (book or market) value not exceeding USD 50,000 (Fifty Thousand United States Dollars) in aggregate.
- 1.2 The acquisition by any means (including by lease or licence) by the Company of any asset at a price or with a (book or market) value not exceeding USD 50,000 (Fifty Thousand United States Dollars) in aggregate.

2 Senior Employees

- 2.1 The appointment, termination or change to the terms of employment (including remuneration or compensation of any employee with an annual base salary or the payment of USD 40,000 (Forty Thousand United States Dollars)

3 Equity Incentive

- 3.1 The creation, amendment or modification of any equity incentives issued or granted by the Company to any individual or employee of the Company.

4 Related Party Transaction

- 4.1 The entry into, termination or variation of any Related Party Transaction.

5 Policies

- 5.1 The formulation of the Company's risk management strategy, health and safety policy or environmental policy and the making of any material changes to those policies.

6 Capital Expenditure

- 6.1 Capital expenditure outside of budgeted expenditure (including obligations under hire purchase or finance leasing arrangements) which exceeds USD 20,000 (Twenty Thousand United States Dollars) in aggregate in any 12-month period, treating the entry into of any lease, licence or similar obligation as capital expenditure of an amount equal to the rental and other payments payable as a result of that obligation.

7 Agreements Outside the Ordinary and Normal Course of Trading

- 7.1 The entry by the Company into any contract, commitment or arrangement outside the ordinary and normal course of trading or otherwise than at arms' length, or of any contract or arrangement which is, or is likely to be, material in the context of the Company as a whole or the making of any payment by the Company other than on an arms' length basis, or which is of an unusual or onerous nature.

8 Material Contracts

8.1 The making of any material change in the terms of, or the termination of, any material contract of the Company.

9 Restrictive Agreements

9.1 The entry by the Company into any agreement which restricts its freedom to do business.

10 Encumbrances and Guarantees

10.1 The creation of any security over any uncalled capital of, or any asset of the Company or the giving of any guarantee, indemnity or security, or the entry into of any agreement or arrangement having a similar effect by the Company or the assumption by the company of any liability, whether actual or contingent, in respect of any obligation of any person other than a (direct or indirect) wholly-owned subsidiary undertaking of the Company or the making of any loan by the Company to any person other than a (direct or indirect) wholly-owned subsidiary undertaking of the Company.

11 Borrowing

11.1 The Company incurring, or the entry by the Company into any agreement or facility to obtain, any borrowing, advance, credit or finance or any other indebtedness or liability in the nature of borrowing (which cannot in any circumstances be converted into equity).

12 Loans

12.1 The lending of money or granting of credit by the Company except:

12.1.1 to employees of the Company in the ordinary course of Business in amounts not exceeding US 500 (Five Hundred United States Dollars) per employee and USD 10,000 (Ten Thousand United States Dollars) in aggregate;

12.1.2 credit (other than to employees) given in the ordinary course of Business; or



12.1.3 to a (direct or indirect) wholly owned subsidiary undertaking.

13 Insurance

13.1 Any material alteration to any of the insurance policies of the Company.

14 New Subsidiaries and Branches

14.1 The incorporation of a new subsidiary of the Company or the acquisition of an interest in any shares in the capital of any body corporate or in any instrument convertible into the share capital of any body corporate or the establishment of a branch or the acquisition of any other interest in a company, business or undertaking or concern, including the acquisition of any share or marketable security which is traded on a recognised investment exchange or any other public securities market.



15 Litigation

15.1 The instigation, subsequent conduct, or the settlement of any litigation or arbitration proceedings by the Company (except relating to debt collection in the ordinary and normal course of the Company's business or applications for an interim injunction or other urgent application where it is not reasonably practicable to obtain the requisite consent) where the amount claimed does not exceed USD 50,000 (Fifty Thousand United States Dollars).

16 Business Plan

16.1 The approval of any new and any replacement of or alteration to the Business Plan for the relevant Financial Year or the taking of steps which are materially inconsistent with it.

Part 2: Shareholder Reserved Matters

17 Major Disposals and Acquisitions

17.1 Other than in accordance with the Business Plan the disposal by any means (including by lease or licence) by the Company of any asset or the whole or a significant part of any Subsidiary, in each case at a price or with a (book or market) value exceeding USD 5,000 (Five Thousand United States Dollars) in aggregate.

17.2 The acquisition by any means (including by lease or licence) by the Company of any asset at a price or with a (book or market) value exceeding USD 10,000 (Ten Thousand United States Dollars) in aggregate.

17.3 The disposal by any means of any or all of the Shares (other than a disposal of the Shares pursuant to and in accordance with this Agreement or the Articles) or the dilution of the Company's interest directly or indirectly in any of its Subsidiaries.

18 Accounting Policies and Practices

18.1 The alteration of the accounting reference date of the Company, or the alteration of the accounting policies or practices, bases or methods of the Company except, as required by law or to comply with a new accounting standard.

19 Share Capital

19.1 The variation, creation, increase, re-organisation, consolidation, subdivision, conversion, reduction, redemption, repurchase, re-designation or other alteration of the authorised or issued share capital of the Company or the variation, modification, abrogation or grant of any rights attaching to any such share capital except, in each case, as may be permitted or required by this Agreement or the Articles.

19.2 The entry into or creation by the Company of any agreement, arrangement or obligation requiring the creation, allotment, issue, sale, disposal, encumbering of, redemption or repayment of, or the grant to a person of the right (conditional or not) to require the creation, allotment, issue, sale,

disposal, encumbering of, redemption or repayment of, a Share (including an option or right of pre-emption or conversion) except, in each case, as may be permitted or required by this Agreement or the Articles.

20 Constitutional Documents and Name

20.1 The alteration of the constitution (or equivalent documents) of the Company in a manner that is materially adverse to a Shareholder.

21 Borrowing

21.1 The Company incurring, or the entry by the Company into any agreement or *facility to obtain, any borrowing, advance, credit or finance or any other indebtedness or liability in the nature of borrowing with an aggregate value exceeding USD 50,000 (Fifty Thousand United States Dollars).*

22 Encumbrances and Guarantees

22.1 The creation of any security over any uncalled capital of, or any asset of the Company or *the giving of any guarantee, indemnity or security, or the entry into of any agreement or arrangement having a similar effect by the Company or the assumption by the company of any liability, whether actual or contingent, in respect of any obligation of any person other than a (direct or indirect) wholly-owned subsidiary undertaking of the Company or the making of any loan by the Company to any person other than a (direct or indirect) wholly-owned subsidiary undertaking of the Company.*

23 Distributions

23.1 The recommendation, declaration, making or paying of any dividend or other distribution of profits, assets or reserves by the Company in accordance with Section 11.

24 Senior Employees

24.1 The appointment, termination or change to the terms of employment (including remuneration or compensation) of any employee where annual base salary or the payment for whose services exceeds USD 40,000 (Forty Thousand United States Dollars).

25 Equity Incentive

25.1 The creation, amendment, modification of any equity incentives or equity incentive plans issued or granted by the Company to any individual or employee of the Company.

Creation and Amendment of Equity Plans

The creation, amendment or modification of any equity plan of the Company.

Capital Expenditure

Other than in accordance with the Company's Business Plan, capital expenditure (including obligations under hire purchase or finance leasing arrangements) which is greater than USD 20,000 (Twenty Thousand United States Dollars) in aggregate in any 12-month period, treating the entry into of

any lease, licence or similar obligation as capital expenditure of an amount equal to the rental and other payments payable as a result of that obligation.

28 Material Change in Nature of Business

Any material change (including cessation) in the nature or scope of the Business of the Company, including entering a new line of business.

29 Joint Ventures

The entry into, modification and/or termination by the Company of any partnership, joint venture arrangement, profit sharing agreement, technology licence or collaboration with any person.

30 Mergers and Amalgamations

Any amalgamation, demerger, corporate reconstruction or consolidation of the Company or any subsidiary undertaking.

31 Litigation

The instigation, subsequent conduct or the settlement of any litigation or arbitration proceedings by the Company (except relating to debt collection in the ordinary and normal course of the Company's business or applications for an interim injunction or other urgent application where it is not reasonably practicable to obtain the requisite consent) where the amount claimed exceeds USD 50,000 (Fifty Thousand United States Dollars) or any matter relating to the instigation, subsequent conduct, settlement of any litigation or arbitration proceedings by the Company relating to the Company's Intellectual Property Rights irrespective of value.

32 Related Party Transaction

The entry into, termination or variation of any Related Party Transaction for a value exceeding USD 2,000 (Two Thousand United States Dollars), or any Related Party Transaction relating to the Company's Intellectual Property Rights irrespective of value.

33 Additional Regulation

33.1 The entry by the Company into any contract, commitment or arrangement outside the ordinary and normal course of trading or otherwise than at arms' length that would subject any of the Shareholders to additional compliance or regulation. For purposes of this paragraph, the entry by the Company or any of its subsidiary into any new jurisdictions or geographical markets shall be deemed to be outside the ordinary and normal course of trading.

34 Winding-up

34.1 The taking of steps to:

34.1.1 effect an Insolvency Event of the Company;

34.1.2 wind up or dissolve the Company;

34.1.3 obtain an administration order in respect of the Company;

- 34.1.4 invite any person to appoint a receiver or receiver and manager of the whole or any part of the Business or assets of the Company; or
- 34.1.5 do anything similar or analogous to those steps referred to above, in any other jurisdiction.

35 Directors

- 35.1 The number of Directors permitted on the Board, or any variation in the remuneration or other benefits or the terms of service of any of the Directors or other officers of the Company, or the election or removal of the Independent Director.



Drawn by:

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