

MASTER EQUIPMENT LEASE AGREEMENT

THIS LEASE AGREEMENT is made this day of 20...
BETWEEN

1) **Messrs**.....a limited liability company incorporated in the Republic of Kenya and Post Office Numberin the said Republic (Hereinafter called the “Lessor”, which expression shall, where the context so admits include its successors and assigns) of the one part; **AND**

2) **Messrs**.....of Post Office Numberin the said Republic (Hereinafter called the “Lessee”, which expression shall, where the context so admits, include its successors and assigns) on the second part.

WHEREAS:

- A) The Lessor is the legal and beneficial owner of the equipment (as hereinafter defined)
- B) The lessee wishes to take a lease of and the lessor is willing to let the equipment to the lessee upon the terms and subject to the conditions of this Agreement.

NOW IN CONSIDERATION of the mutual covenants hereinafter set out and other valuable consideration the receipt and sufficiency of which is hereby acknowledged, **IT IS HEREBY AGREED** as follows:

Definitions and Interpretation

Unless otherwise stated, or the context otherwise requires, the following words and expressions when used in this Agreement shall have the following meanings:

"Agreement" means this Agreement and each and every Lease Schedule entered into between the Lessor and the Lessee pursuant to this Agreement, as may from time to time be amended or varied;

In this agreement, reference to acts or omissions of the lessee or lessor shall be deemed to include acts or omissions of their servants and agents

"Business Day" means a day on which banks are open in Nairobi for ordinary banking business;

"Lease Term" means the period referred to as such in the Lease Schedule;

"Rental" means the Rental referred to as such in the Lease Schedule;

"Supplier" means the vendor, supplier or manufacturer of the equipment specified in the Lease Schedule;

"Equipment" means the equipment or equipments described in the Equipment Lease Schedule and includes any component part of each equipment so described and all substitutions, replacements, renewals, additions and accessories made in or to the same together with all handbooks and manuals, relating thereto;

"Equipment Lease Schedule" means each and every equipment lease schedule entered into between the Lessor and the Lessee pursuant to this Agreement;

- a) Reference to this Agreement or any other agreement or document shall include this Agreement or such agreement or document as amended, varied, supplemented or novated from time to time.
- b) Reference to any statutory provision shall include that provision as amended or re-enacted from time to time and any instruments, orders and regulations from time to time in force and made under or deriving validity from the relevant statute.
- c) Headings are to be used for ease of reference only and shall be ignored in construing this Agreement.
- d) The terms of this Agreement shall be deemed to be incorporated into each Equipment Lease Schedule. In the event of any conflict between the terms of this Agreement and the terms of a Equipment Schedule, the latter shall prevail. Each Equipment Schedule shall constitute a separate contract for the letting of the Equipments the subject thereof.

The Agreement.

- e) By the instrument of this agreement, the lessor is transmitting to the lessee the right to have in their possession and to use the equipment that is the property of the lessor.
- f) The lessor asserts, and the lessee expressly acknowledges, that the equipment, including all components that may from time to time be added to replace those originally supplied with the equipment, remains at all times the property of the lessor, and the lessee acquires no proprietary claims whatsoever in the equipment by reason of the lease
- g) In exchange for this right, the lessee is obligated to pay all deposits and lease instalments due under this agreement, whether or not the lessee is actually using the equipment, and if not using it –howsoever this may have come about.
- h) The obligations of the lessor to lease the equipment to the lessee are subject to successful acquisition of the equipment by the lessor and completion of a lease schedule in respect of the equipment

3. Protecting the expected return of the lessor

- a) The lessee is to make payments to the lessor as agreed and written into the agreement
- b) The factors on the basis of which future payments by the lessee are calculated are set out in the lease schedule
- c) All future payments have been calculated on assumption that these factors have been correctly determined and do not change during the term of the lease
- d) If these factors change during the term of the lease, or it turns out they were incorrectly determined, then the parties accept compensating adjustments to be made to the payment obligations of the lessee
- e) Timing of receipt of payments by the lessor is a factor in determining the return the lessor realizes. The lessor is therefore justified to make adjustments to payments in the event of changes in payment schedules.
- f) The payments to be received by the lessor and presented in the agreement have been calculated clear/net of all taxes and other dues to third parties
- g) The lessor may not, for any reason (except if required by the law) withhold any payments due to the lessor under the lease or apply them to offset claims the lessee or some third party may have against the lessor
- h) Costs of arranging the lease is separately payable by the lessee
- i) Administrative details of executing these adjustments

4. Upholding/protecting the integrity of the security in the lease agreement, i.e. the equipment

Keep and operate the equipment in such a manner that it will stay in safe and good working order and will uphold its functional and re-sale value. The lessee will specifically:

- a) Let only properly skilled people operate the equipment and to use it only for the purposes for which it was designed
- b) Let only qualified people repair and maintain the equipment and only in accordance with the manufacturers recommendations
- c) Keep the equipment at all times in its control and at a location known and approved by the lessor
- d) Do everything that requires to be done in order that no claims on the equipment arise from third parties that compromise in any way the rights of the lessor to the equipment
- e) Comply with all licensing and other legal and regulatory requirements in respect of this agreement, in respect of the ownership, possession and

operation of the equipment, and in respect of the premises within which it is kept or operated

- f) Not use or allow the equipment to be used for illegal activities
- g) Permit no components of (or marks, identification numbers etc. on) the equipment to be removed except if being replaced in the ordinary course of repair or maintenance, in which case permit them to be replaced only with equivalent or, in the case of components, superior ones of the same make and model as the ones being replaced.
- h) Not alter or allow anything to be done to the equipment that would invalidate warranties or insurance cover in respect of the equipment
- i) Notify the lessor of any damage to the equipment and, as required, facilitate the obtaining of evidence by, and supply the lessor with evidence of compliance with these requirements
- j) Furnish the lessor with information as from time to time required to enable the lessor confirm the lessee's continuing ability to pay the lease instalment.

5. Defining limits of responsibility for the merchantability and suitability of the equipment

- a) The lessee understands and affirms that they, and not the lessor, selected the equipment
- b) The lessor is merely financing the lease, and is not competent to, nor are they in fact making any statements regarding the suitability of the equipment for the purposes of the lessee. The Lessee therefore hereby discharges the lessor of all liabilities arising from suitability of the equipment for its purposes
- c) The equipment is being delivered as supplied by the Supplier, without alterations or modifications. It is the responsibility of the lessee to inspect the equipment. By accepting and taking delivery of the equipment, the lessee is acknowledging that they have found it at that time to be in sound condition and working order, and to be free of claims by third parties
- d) At the expense of the lessee, the lessor may assign to the lessee rights it has against the Supplier. The lessor may by prior agreement further assist the lessee to prosecute any action that the lessee may have against the Supplier in respect of performance and suitability of the equipment, subject to receipt in exchange of the right to require that any awards won be applied first to the rectification of defects in the equipment or to settlement of future rentals

6. Risks and Uncertainties

- a) Responsibility for damage to or loss of the equipment, or for loss/harm suffered by third parties by virtue of the lessee entering this lease agreement

reside with the lessee from the instant the Supplier relinquishes ownership to the lessor, and continue to do so for the period of the lease

- b) The lessee shall take out with an insurance provider approved by the lessor, a level of insurance cover satisfactory to the lessor, covering such risks as the lessor determines and on terms acceptable to the lessor
- c) The equipment will be insured against loss or damage for a value at least equal to the present value of all future earnings expected by the lessor out of the lease from the time of insuring onwards
- d) The lessor will be named as first insured in all insurance policies required under this agreement
- e) The lessee will refund the lessor all payments the lessor makes as a result of successful claims brought against it by third parties and arising by reason of this lease agreement being in force.

7. Termination

a) The lessor may with or without notice terminate the lease agreement and take possession of the equipment if:

- i. the lessor fails to pay any lease instalments on its due date, or within 2 business days of receiving a written demand for payment
- ii. The lessee fails to honor any of the terms of this agreement or neglects to discharge any of its obligations under this agreement
- iii. In the judgement of the lessor, the lessee's ability to service its debts in general, or the lease instalment in particular comes into doubt/question

b) The lessee may terminate this lease agreement at any time after 14 days from the date of the lease schedule by

- i. returning the equipment to the lessor and paying a termination sum equal to the total of the monthly instalments for one in every four months (or parts thereof) still outstanding on the lease term
- ii. paying to the lessor the fair market value of the equipment at the time of terminating the lease and taking ownership of the equipment
- iii. The lessee will be liable to pay the termination sum whenever the lessor terminates the lease agreement due to the reasons cited above
- iv. If sale of the equipment by the lessor to the lessee does not attend the termination of the lease, the lessee will, at its own cost, deliver

the equipment to the lessor in the condition it is required to be kept, and at an address in Kenya specified by the lessor

8. General clauses and signatures

- a) The lessee and lessor affirm that they are eligible to carry on business in Kenya, and have the legal capacity to enter into, to exercise their rights and perform their obligations under this agreement
- b) The lessee affirms that it does not, by entering this agreement, breach the terms of any other agreement it is bound by, or create encumbrances on any of its other assets
- c) The lessor and lessee assert that, to the best of their knowledge, their obligations under this agreement are legal, valid, binding and enforceable
- d) This agreement and each schedule is construed and shall be governed in accordance with the laws of Kenya. Any dispute arising out of the subject matter of this agreement shall be referred to a single arbitrator agreed upon by the disputants, or in default, nominated by the Chairperson of the Institute of Arbitrators (Kenya Chapter) in accordance with the Arbitration Act 1995 Laws of Kenya, or any statutory modification or re-enactment of it for the time being in force in Kenya in relation to arbitration.

IN WITNESS WHEREOF the parties have hereto set their seals and hands the day and year first before written

Sealed by {LESSOR}

Sealed by {LESSEE}

In the presence of

In the presence of

Attachment: The lease schedule – which describes the specifics of the particular agreement