**SHAREHOLDERS LOAN AGREEMENT**

**DATED 20\_\_**

**-BETWEEN-**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

&

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**(TOGETHER THE “SHAREHOLDERS”)**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED**

**(THE “COMPANY”)**

**-IN RESPECT OF-**

**ADVANCEMENT OF SHAREHOLDERS LOAN TO THE COMPANY**

**Drawn By:-**

**CM Advocates LLP**

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P.O. Box 22588 - 00505

**Nairobi.**

[www.cmadvocates.com](http://www.cmadvocates.com)

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**SHAREHOLDERS LOAN AGREEMENT**

**THIS SHAREHOLDERS LOAN AGREEMENT** is made this day of 20\_\_ **BETWEEN**:

1. **………………………..** holder of Kenyan National Identity Number \_\_\_\_\_\_\_\_\_\_\_\_ and of Post Office Box Number \_\_\_\_\_\_\_\_\_\_ - 00\_00 Nairobi in the Republic of Kenya and **……………………** of Kenyan National Identity Card Number\_\_\_\_\_\_\_\_\_\_\_\_\_ and of Post Office Box Number \_\_\_\_\_\_\_\_ - 00\_00 Nairobi in the Republic of Kenya (hereinafter called the “**Shareholders**” which expression shall where the context so admits include their personal representatives and assigns) of the first part

**AND**

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED**, a limited liability company incorporated in Kenya under Certificate of Incorporation Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and of P. O. Box \_\_\_\_\_\_ -00200, Nairobi, Kenya (hereinafter referred to as the **“Company”** which expression shall where the context so requires, include its successors in title and permitted assigns) of the second part.

**WHEREAS:**

1. The Shareholders has agreed to enter into a formal arrangement with the Company wherein the Shareholders shall advance to the Company, the aggregate sum of Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Kshs. \_\_\_\_\_\_\_\_\_\_\_\_/-) (the “**Loan Amount**”) as an unsecured loan to be deployed as working capital in the Company.
2. Pursuant to recital (A) the Shareholders has agreed to advance and the Company has agreed to borrow the Loan Amount subject to the terms and conditions hereinafter appearing.

**NOW IT IS HEREBY AGREED** as follows:

# Definitions and Interpretation

* 1. **Definitions**
     1. In this Agreement including the Recitals, the following words and expressions shall (unless the context otherwise provides) have the following meanings:-
        1. “**Directors**”means the directors of the Company;
        2. “**Commencement Date**” means ……………………… or such later date as may be agreed by the Parties;
        3. “**Interest Rate**” means Ten per cent (10%) per annum;
        4. “**Loan Amount**” means the principal sum of money loaned to the Company by the Shareholders pursuant to this Agreement; and
        5. “**Shares**” means shares in the Company.
  2. **Interpretation**
     1. In this Agreement, including the recitals and the schedules, unless the context otherwise requires:-
        1. reference to any statute and other legislation shall include statutory instrument and regulations issued under the legislation of the Republic of Kenya and shall, where the context requires include:-
           1. all amendments, re-enactments and consolidations thereof;
           2. the provisions of any earlier statute or other legislation of which the said reference is itself an amendment, re-enactment or consolidation; and
           3. except in so far as such amendment, re-enactment or consolidation made after the date hereof would impose any increased or new liability on any Party.
        2. words denoting one gender include all genders, words denoting individuals or persons include corporations and trusts and *vice versa*, words denoting the singular include the plural and *vice versa*, and words denoting the whole include a reference to any part thereof;
        3. clause and paragraph headings are inserted for ease of reference only and shall not affect construction;
        4. reference to recitals, clauses, sub-clauses, paragraphs, sub-paragraphs and schedules are to the recitals, clauses, sub-clauses, paragraphs, sub-paragraphs and schedules of and to this Agreement;
        5. references to this Agreement means this Agreement together with its Recitals and Schedules and reference to this Agreement or any document or agreement includes references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time with the agreement of the Parties;
        6. references to a “**Party**” means a party to this Agreement and shall include that person’s permitted assigns, transferees or successors in title in accordance with the terms of this Agreement and **“Parties”** shall be construed accordingly; and
        7. References to **“KShs”** or **“Shillings”** means shillings, the currency of the Republic of Kenya.

# The Loan

* 1. Subject to the terms and conditions herein the Shareholders agrees to lend to the Company and the Company agrees to borrow from the Shareholders the Loan Amount as a loan to be deployed as working capital.
  2. The Shareholders shall advance the Loan Amount to the Company on the Commencement Date or such other date that the Parties shall agree to in writing (the “**Commencement Date**”) upon the terms and conditions of this Agreement
  3. The Company shall use the Loan solely for the purposes of the growth and expansion of the Company’s business as may be determined by the Directors from time to time.
  4. The Shareholders shall not be entitled to have the Loan Amount converted, and the Company shall not convert the Loan Amount, into ordinary Shares in the Company.

# Interest

* 1. The Loan Amount shall accrue interest at the Interest Rate from the Commencement Date to the date of payment of the Loan Amount or any part thereof.
  2. The interest accrued shall be credited, together with the Loan, by the Company to the Shareholders in accordance with Clause 5.2 below.

# Further Lending

* + 1. It is hereby agreed and declared that the Shareholders may by mutual consent as between Parties and subject to the capital requirements of the Company vary the Loan or provide further credit to the Company on the same terms and conditions as those herein contained.

# Repayment

* 1. Annual aggregate Loan repayment amounts shall be capped at a maximum of \_\_\_\_\_\_\_\_\_\_\_\_ per cent (\_\_%) of the Company’s net income for the year during which the said amounts are paid and shall be paid by the Company to the Shareholders out of the available profits of the Company before payment of any dividends PROVIDED THAT interest at Interest Rate shall continue to accrue for any sum of money not repaid within this period.
  2. Subject to the provisions of Clause 5.1 above, the Company shall be entitled to repay the Loan Amount together with the accrued interest to the Shareholders in one lump sum or rateably and proportionately in such installments as may from time to time be determined by the Directors of the Company.
  3. The Loan shall be subordinated to any financing or banking facilities provided to the Company by commercial banks or any other third parties to the extent that such subordination is required to secure such financing.
  4. The Company shall repay the Loan Amount to the Shareholders free from any legal or equitable right of set-off.
  5. The Company shall repay the Loan with interest calculated at Interest Rate from the Effective Date to the date of payment of the Loan or any part thereof.

# Events of Default

* + 1. Upon the occurrence of any of the events set out in the sub-clauses 6.1 to 6.6 (both inclusive) the Loan Amount will become immediately repayable to the Shareholders upon notice in writing given by the Shareholders to the Company:
       1. the Company committing any continuing or material breach of any provisions of this Agreement and, in the case of a breach which is capable of remedy, fails to remedy such breach within thirty (30) days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
       2. an encumbrancer taking possession or a receiver or a receiver and manager is appointed over any property or assets of the Company;
       3. the Company going into a voluntary arrangement with its creditors;
       4. a petition having been presented or an effective resolution passed for the winding up of the Company (except a winding up for the purposes of a reconstruction or amalgamation in such manner that the company resulting from such re-organisation effectively agrees to be bound by or to assume the obligations imposed on and liabilities of the Company under this Agreement);
       5. the Company ceasing or threatening to cease to carry on business or becoming unable to pay its debts;
       6. Execution being levied against any of the goods of the Company and such execution not being stayed or satisfied within ten days; and
       7. any licence, authorization, consent or registration at any time necessary or desirable to enable the Company to operate the Business fails to be granted or is revoked or withheld.

# Assignment

* + 1. The Company shall not assign or transfer any of its rights or obligations under this Agreement other than with the prior written consent of the Shareholders.

# Waiver

* + 1. The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents the further exercise of the right or remedy or the exercise of another right or remedy.

# Legal Costs and Expenses

* + 1. The costs and expenses relating to the preparation negotiation and execution of this Agreement shall be borne by the Company.

# Notices

* + 1. Any notice or communication under or in connection with this Agreement shall be in writing shall be delivered by hand or sent by post or fax to the addresses aforesaid (for the both parties) or in case of the Company delivered by hand or sent by registered post, telex or fax to the registered office of the Company or at the principal place of business of the Company in Kenya or upon the directors or Company Secretary of the Company or at such other address as the recipient may have notified to the other parties in writing. In the absence of evidence of earlier receipt, any notice or communication shall be deemed to have been received, if delivered by hand, at the time of delivery or, if sent by post, seven days after posting or, if sent by fax, on the completion of transmission**.**

# Arbitration

* 1. The Parties agree that should a dispute arise with respect to the legally binding provisions of this Agreement, they shall make good faith efforts to resolve the dispute on a business basis through negotiations between the Parties’ duly authorised representatives. Such consultations shall begin immediately after either of the Parties has delivered to the other a written request for such consultation. If within fifteen (15) days following the date in which such notice is given the dispute cannot be resolved, the Parties agree to submit the matter to a single arbitrator to be appointed by the Parties jointly and failing agreement by the Chairman, for the time being, of the Chartered Institute of Arbitrators, Kenya branch.
  2. Such arbitration shall be conducted in Nairobi and resolved in accordance with the provisions of the Arbitration Act of 1995 as amended from time to time.

# General

* 1. No failure or delay to exercise any power, right or remedy by the Company shall operate as a waiver of that right, power or remedy and no single or partial exercise by that party of any right, power or remedy shall preclude its further exercise or the exercise of any other right, power or remedy.
  2. The rights and remedies of the Company provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
  3. The Parties intend that the contents of this Agreement shall be legally binding and enforceable.
  4. Each of the provisions of this Agreement is severable and distinct from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
  5. No amendment or variation to this Agreement shall be effectual or binding on the parties hereto unless it is in writing and duly executed by or on behalf of the parties hereto.
  6. This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.
  7. This Agreement constitutes the whole Agreement between the parties hereto in relation to the subject matter of this Agreement and no variations thereof shall be effective unless made in writing and signed by all the parties. This Agreement supersedes and replaces any Agreement whatsoever that may have subsisted between the parties hereto in any way relating to the subject matter.
  8. The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the laws of Kenya and the parties hereby agree to submit to the jurisdiction of the Kenyan courts.
  9. Each of the parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) and the Companies Act that it has executed this Agreement with the intention to bind itself to the contents hereof.

**IN WITNESS** **WHEREOF** this Agreement has been duly executed the year and date first hereinabove written:

Signed by the Shareholders the said)

**……………………………** ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

) **………………………..**

) I.D. Passport No……………………………..

) PIN No…………………………………………

)

**……………………………** ) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

in the presence of: ) **………………………..**

) I.D. Passport No……………………………..

) PIN No…………………………………………

)

)

)

**Advocate** )

**Certificate of Attestation**

I CERTIFY THAT **………………………..** and **………………………..** appeared before me on the .......... day of .....................................202.. and being known to me/being identified by ................................................................................. of ................................................. acknowledged the above signature or mark to be theirs and that they had freely and voluntarily executed this instrument and understood its contents.

**……………………………………………………….**

**Advocate of the High Court of Kenya**

**SEALED** with the Common Seal ]

of **\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ LIMITED**]

in the presence of: ]

]

Director: ]

]

Director/Secretary: ]

]

**Before me:** ]

]

**Advocate**  ]

**Certificate of Attestation**

I **CERTIFY** that the above named director and director/secretary of the Company appeared before me on the…………….. day of ……………………20…… and being known to me acknowledged the above signature or mark to be his/hers/theirs and that he/she/they had freely and voluntarily executed this Agreement and understood its contents.

……………………………………

**Advocate of High Court of Kenya**

**Drawn By:-**

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