

Please arrange to issue a guarantee in accordance with the following instructions:

**A: APPLICANT INFORMATION**

Applicant's Name:.....  
Account Number:.....  
Applicant's Address:.....  
Telephone Number:.....  
E-mail:.....

**B: BENEFICIARY INFORMATION**

Beneficiary Name:.....  
Beneficiary's Address:.....

**C: GUARANTEE/BOND DETAILS**

Application Date:.....  
Type:  Bid/Tender  Performance  Advance Payment  
 Payment  Customs  Other (specify).....  
Currency:  KES  USD  EUR  GBP  Others (specify).....  
Guarantee Amount (figures):.....  
Guarantee Amount (words):.....

**D: CONTRACT DETAILS**

Reference Number:.....  
Purpose:.....  
.....  
.....  
Validity: From..... To.....

**E: FOR CASH COVERED FACILITIES ONLY**

Cash Margin:  Call Deposit  Pledged Deposit  
Amount in figures:.....  
Amount in words:.....

## F: COUNTER INDEMNITY

By signing this Guarantee Application Form, you confirm your acceptance of and agreement with all the terms herein, read together with the Guarantee Application Terms and Conditions and the Account Opening Terms and Conditions. In addition, your acceptance and use of this facility will be governed by the Bank's General Terms and Conditions. A copy of the requested Guarantee in the agreed format is attached and is an integral part of this application. In consideration of Bank of Africa Kenya Limited ("the Bank") issuing or continuing to issue a Bond/ Guarantee ("the Guarantee") as per this application (which I/We have verified and signed) I/We jointly and severally for myself/ ourselves and my/our legal personal representatives, successors and assigns hereby:

1. Agree to indemnify and keep the Bank indemnified against all actions, proceedings, liability, claims, losses, damages, costs and expenses in relation to or arising out of the said Guarantee as extended and/or amended from time to time at my/our request and to pay the Bank on demand all payments, losses, costs, margins payable there under and expenses suffered or incurred by the Bank in consequence thereof or arising therefrom.
2. Acknowledge that such creates for me/us an absolute, independent and unconditional obligation to comply with its terms even if a dispute or difference arises as to the commercial transaction related to the issuance of such commitment. Consequently, I/We confirm that:
  - a. Upon receipt of a demand for payment which conforms to the terms of the Guarantee, Bank of Africa Kenya Limited will not have any duty to inquire or to make any appreciation as to the Beneficiary's reasons for making such demand;
  - b. Upon notification by the Bank of the receipt of such demand, I/We shall forthwith pay to the bank an amount equal to the amount claimed under the Guarantee. To this effect, the Bank is hereby irrevocably authorized to debit our bank account(s) in the Bank's books with the corresponding sums (or their counter value in the currency of the account) and, should such debiting result in our account showing a debit balance (or in the increase of an existing debit balance), we shall immediately pay to the Bank a sum equal to such debit balance; and,
  - c. I/We are perfectly aware of the nature of the commitment which I/We require the Bank to make on my/our behalf and I/We waive any right to oppose to its automatic execution or to challenge the validity of any payment made in accordance with its terms and I/We counter Guarantee and indemnify the Bank and undertake to keep the Bank indemnified against any consequences and damages which the Bank may incur due to the issuance of this Guarantee, including, without limitation, the effect of any regulation or legal decision of the country of the Beneficiary;
  - d. I/We shall remain fully liable until the Bank has received the original Guarantee issued from the beneficiary or an express written release of the Guarantee signed by the beneficiary. I/We acknowledge that any step which may be necessary for obtaining the release of the Guarantee shall be accomplished by me/us and that the Bank shall not be under any duty in this respect.
3. Agree and undertake that any instruction to cancel or amend the terms and conditions of the Guarantees must be agreed in writing by the named beneficiary(ies).
4. Any action taken or omitted by the Bank or any of its employees or agents or correspondents under or in connection with the Guarantee shall be binding on me/us and shall not place the Bank or its employees or agents or correspondents under any liability to me/us;
5. Understand that this Guarantee shall be construed in accordance with the laws of the Republic of Kenya.
6. Agree that the information contained in this application is true and correct to the best of my/our knowledge and belief and will form the basis of the Guarantee that the Bank may at its discretion decide to issue to me/us.

# GUARANTEE APPLICATION TERMS AND CONDITIONS

## 1. ISSUE OF BANK GUARANTEE

The Bank reserves the right in its sole and absolute discretion to determine whether or not to honor the Application for a Bank Guarantee (hereinafter called "the Facility"). This notwithstanding, the Facility shall be granted subject to the Applicant fulfilling all the Guarantee Application Terms and Conditions as shall be set by the Bank from time to time.

## 2. FEES AND COMMISSIONS

a) The Bank shall apply charges as detailed in the Tariff Guide or those communicated directly to the Applicant for accessing the Facility and the Applicant hereby authorizes the Bank to debit his/her/their account to recover any charges due to the Bank. The Bank reserves the right to change the charges from time to time as shall be communicated in the new or revised Tariff Guide found at any of the Bank's branch networks or on the Bank's website www.boakenya.com

b) All taxes, legal and professional fees incurred in the negotiation, preparation, registration and perfection of any of the Facility documents will be met by the Applicant and shall be debited from the Applicant's account.

## 3. REPAYMENT

The Facility shall be repaid by return of the original Guarantee(s) to the Bank for cancellation or upon its expiry or by debit of any of the Applicant's account for any called up Guaranteed amount, whichever is earlier. An amount called up for payment by the Beneficiary shall immediately be due and owing for payment by the Applicant.

## 4. CANCELLATION OF THE FACILITY BY THE APPLICANT

The Applicant may cancel or terminate the Facility by delivering to the Bank an unconditional and irrevocable written notice of termination signed by the Applicant or his/her/their authorized agent clearly referring to the Facility being terminated. The Bank shall thereafter terminate the Facility subject to the Applicant fulfilling the following conditions:-

a) Returning the original Guarantee(s) issued to the Bank for cancellation;

b) Paying off the administrative charges /fees (to be determined by the Bank), taxes and all costs incurred by the Bank prior to the Applicant presenting the Guarantee cancellation request. Failure of which the Facility will run for its duration and as agreed upon by the parties;

c) The Applicant unconditionally undertaking to indemnify the Bank against any third party claims or any other loss that may arise as a result of the Applicant exercising the cancellation;

d) The Applicant meeting such other requirements as the Bank shall, in its sole and absolute discretion, determine as necessary, and notify the Applicant of.

## 5. CASH MARGIN

The Applicant hereby;

a) Authorizes the Bank to debit its current account(s) or any other account held by the Bank with the relevant bank charges and any amount that may be required to meet the security requirements with respect to the issuance of the Facility.

b) Understands and acknowledges that no interest shall accrue on the Cash Collateral taken by the Bank for the Facility and that the Cash Collateral will be held by the Bank as security until such time as the Applicant will have discharged its liabilities to the Bank in full.

## 6. DEPOSITS

In consideration of the Bank granting or continuing to grant advances, accommodation, credit or banking facilities to or agreeing to forbear, to sue or demand immediate payment from the Applicant, the applicant hereby agrees and declares that:-

a) All monies, deposit, receipts or other evidence of indebtedness (other than book debts) or collateral and/or pledged assets belonging to the Applicant which are now or which shall hereafter be deposited with the Bank or shall come into the Bank's possession for any purpose whatsoever in future, shall be a continuing security for and shall be pledged for, the payment to the Bank on demand of all sums due and which may hereafter become due from the Applicant.

i) Uplift, realize, assign, assure, transfer, collect, convert, sell or otherwise deal with or dispose of, as the Bank may think fit, all or any of the Pledged Assets and/or the properties represented thereby without further notice to the Applicant and;

ii) to apply the proceeds thereof after payment of any expenses in connection therewith in satisfaction in part or in whole of the Applicant's indebtedness to the Bank and for this purpose and for the aforesaid consideration.

c) The Applicant hereby irrevocably constitutes and appoints the Bank as the Applicant's Attorney to do and execute all acts, deeds, matters and things on the Applicant's behalf either in the Bank's name or in the Applicant's name as may be necessary or desirable to give the fullest effect to the powers intended to be hereby conferred without being liable for loss;

d) The Applicant hereby declares that any demand hereunder may be effectually made by prior notice to the Applicant, or its executors or administrators or successors in title or assigns by any of the Bank's Officers or by notice in writing under the hand of any of the Bank's Officers, or by notice in writing under the hand of any such officers.

## 7. REPRESENTATION & WARRANTIES

a) The Applicant represents, warrants and undertakes to the Bank that it has good title to the Pledged Assets and that they are and will remain free from any pledge (other than this Pledge), mortgage, charge, lien, security agreement or any other encumbrance whatsoever until discharged by the Bank.

b) The Applicant undertakes to deposit with the Bank the Pledged Assets and where applicable blank transfers of the Pledged Assets duly signed by the Applicant or in the case of shares and securities transferable by endorsement. The Applicant undertakes to endorse the same in blank in the Bank's favour. The Applicant further undertakes that if required by the bank to execute and sign any transfers, delivery orders or other documents which the Bank may require in order to perfect the title to the Pledged Assets to the Bank, the Applicant shall execute and sign all such documents.

## 8. RIGHT OF SET-OFF

In consideration of granting or continuing to grant the Applicant's express or implied request for the Facilities or accommodation up to such limit as the Bank may from time to time at its absolute discretion decide or agreeing to forbear to sue or demand immediate payment from the Applicant;

a) The Applicant hereby agrees to repay the facility in whatever currency denominated together with interest and charges on the Bank's demand and further declares that, in addition to and without prejudice to any general lien of similar right or other security which from time to time the Applicant may have, the Bank is entitled to hold as security, all monies (and renewals thereof with interest, where applicable, at the rate stated therein) in the Applicant's accounts now and in future at the Bank's branches wherever situated and handed to the Bank herewith.

b) The Applicant hereby irrevocably authorizes the Bank to set off at any time all monies so held by the Bank against the amount owed by the Applicant arising from the aforesaid facilities now or in future whether severally or jointly, actual or contingent as principal debtor(s) or guarantor(s) or otherwise notwithstanding that all liabilities may not be expressed in the same currency in which event the Applicant authorizes the Bank to effect the necessary currency conversions at the rates then prescribed by the Bank as prevailing and at any time to combine or consolidate the Applicant's accounts and to do all the foregoing without giving, or receiving notice.

c) The Applicant declares that the funds in its accounts are not held in any fiduciary capacity and that it has a complete right to their disposal. Further, the Applicant undertakes to notify the Bank in writing in the event of any funds in future lodged in its accounts being subject to any limitation on its complete right to dispose of.

d) The Applicant confirms that a certificate by one of the Bank's managers or officials as to the amount due and owing, shall in the absence of manifest error, be sufficient and conclusive evidence of the actual amount due and owing.

e) The Applicant further declares that this authority to the Bank is irrevocable and shall continue to be in full force and effect until expressly revoked with the Bank's consent.

## 9. LAW

a) These Terms and Conditions and the provision of this Facility shall be construed and regulated in accordance with the laws of Kenya for the time being in force.

b) The availability of the Facility is at all times subject to the Bank's compliance in such manner as it thinks fit with any and all restrictions, rules and regulations of the Central Bank of Kenya or any other applicable regulatory authority from time to time in force and all terms and conditions hereof remain subject to any directions of the Central Bank of Kenya as advised to the Bank from time-to-time.

c) The Applicant hereby covenants and agrees that it shall indemnify and shall not hold the Bank liable for any loss(es) that the Applicant may incur as a result of the Bank's failure to provide the Facility due to any limitations imposed upon the Bank by any law currently in force in Kenya, or which shall come into force, or as a result of any limitations imposed upon the Bank by any regulatory body including but not limited to the Central Bank of Kenya.

## 10. NOTICES

a) All notices, statements, letters and other communication from the Bank may be published in the local daily newspapers or displayed at the Bank's branches and the date on the Bank's copy of any such communication is taken to be the date of such dispatch in the absence of proof to the contrary.

b) Any communication from the Bank to the Applicant, including but not limited to any notice given pursuant to these Facility Terms and Conditions, shall be deemed to have been received by the Applicant:

i) If published in the local daily newspapers or displayed at the Bank's branches, on the date of the publication or communication; or

ii) If delivered by hand, at the time of delivery; or

iii) If sent by electronic mail, at the time of transmission (provided that if the date of transmission is not a business day it shall be deemed to have been received at the opening of business on the next business day); or

iv) If sent by post then Four (4) days after posting if sent to an address in Kenya and Seven (7) days after posting if sent to an address outside Kenya; and in providing such dispatch by post it shall be sufficient to prove that the communication was properly stamped and addressed; or

v) If sent by mobile enabled messaging applications; it is deemed to have been effected when the sender receives a delivery receipt.

c) The Applicant agrees to the mode of notification stated above and shall have no claim on the Bank for damage resulting from losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication whether to or from the Applicant, the Bank or any other third party by hand delivery, post, electronic mail, mobile enabled messaging applications or any other means of communication.

## 11. EVENTS OF DEFAULT

The occurrence of ANY of the events below shall constitute an event of default:

a) If a Demand or claim is served on the Bank by the Beneficiary for part or the whole facility/Guaranteed amount;

b) Failure by the Applicant to comply with any of the obligations of the facility or breach by the Applicant of any of the terms/conditions/covenants express or implied herein or any other facility document whether or not notice has been given to the Applicant; or

c) If in the Bank's opinion, the Applicant (or the Applicant's director(s) in case of an entity) is believed to have committed an act of dishonesty;

d) A Receiver, trustee, official assignee, statutory manager, administrator or similar officer is appointed in respect of the Applicant or any of the Applicant's assets; or the Applicant is unable to pay his/her/their debts with third parties (applicable to corporate entities); or

e) In the Bank's reasonable opinion, a material adverse change occurs to the Applicant; or

f) If any legal or criminal proceedings of any nature are instituted against the Applicant and are likely to affect the Applicant's obligations under the facility; or

g) The Applicant dies, becomes insane or becomes in any way legally incapacitated (applicable to natural persons); or

h) If any representation or warranty, statement or undertaking made or deemed to be made or information provided to the Bank by the Applicant prior to granting of the Facility or during the Facility period is or becomes incorrect or misleading or turns out to be false or untrue; or

i. If the Applicant cross defaults with other creditors within or outside the Bank, and any of the Applicant's properties is advertised for sale or is being realized to recover a debt.

## 12. CONSEQUENCES OF DEFAULT

In case ANY of the events stated in condition 11 above takes place the Bank may without prejudice to its rights and remedies do ANY of the following;

a) Cancel, suspend or terminate the Facility and immediately demand the amount due and owing from the Applicant;

b) Commence charging of interest and expenses/costs on any facility monies paid out by the Bank to the Beneficiary, which monies shall be due and payable immediately or at such later date as the Bank may specify in the recall notice to the Applicant on the indebtedness;

c) The Bank may request the Applicant to rectify the default identified within a given period of time, i.e. thirty (30) days notice failure of which the whole facility shall be due for full and immediate payment; or

d) Engage a third party recovery agent or firm to recover the Facility, fees and accrued interest including penal interest. All recovery costs shall be met by the Applicant and will be recovered from the Applicant's account.

## 13. DATA PROTECTION

By the Applicant utilizing the Facility, the Applicant consents to the use and disclosure of the Applicant's personal data submitted to the Bank. Personal data means any information relating to an identified or identifiable natural person. Personal data may further be defined as any type of Data that can be used to directly or indirectly identify an individual. The Bank and/or its affiliates and third parties, within and outside the jurisdiction of Kenya, will process, use and/or disclose such personal information about the Applicant in accordance with the Bank's Privacy Policy and the Data Protection Act, 2019. By utilizing the facility, the Applicant consents to such processing, use and disclosure and the Applicant warrants that all data provided is accurate. This personal information will be held by the Bank for as long as is necessary for the purposes of the Facility. The Applicant further agrees with the Bank that the Bank may:

a) hold and process by computer or otherwise, any information, Personal Data or Sensitive Personal Data obtained about the Applicant as a consequence of the Guarantee Terms and Conditions;

b) include Personal Data in the Bank's systems which may be accessed by other companies for credit assessment, statistical analysis including behaviour and scoring and to identify products and services (including those supplied by third parties) which may be relevant to the Applicant; and

c) permit other companies within the Bank's Group to use Personal Data and any other information it holds about the Applicant to bring to its attention products and services which may be of interest to the Applicant.

## 14. GENERAL

a) Notwithstanding any instructions by the Applicant stipulated in the application for the Facility, the Bank may at its sole discretion, name or instruct any correspondent(s) or nominated bank to be advising and/or confirming any information on behalf of the Bank in respect of the Facility;

b) The Bank hereby reserves the right to reject any documentation/information submitted with respect to the Facility (whether at the time of application and/or cancellation of the same) that is not in proper form and order, to enable the Bank process the same.

## Acceptance of Guarantee Application Terms and Conditions

I/We confirm and agree to the terms of this Facility and the issuance of the Guarantee and I/We accept that the use of it will be governed by the Bank's General Terms and Conditions and these Guarantee Application Terms and Conditions. I/We further confirm that I/We have read and understood the contents of these Guarantee Terms and Conditions and further confirm that:-

- a. I/We have been advised that I/We have the freedom not to enter into a contractual relationship with Bank of Africa Kenya Limited if I/We am not sure of the suitability of the products and or services or if the terms and conditions for the products or services appear onerous to me/us; b. I/We have had sufficient time to read and consider the terms and conditions of the Bank's products and services and I/We have decided that the same are suitable to my/our needs and that I/We am/are able to comply with the terms and conditions for the same;
- c. I/We confirm that the Bank has explained to me that the terms and conditions of the facility may be subject to change from time to time;
- d. I/We indemnify the Bank in accordance with the terms set out in Section F (Counter Indemnity) above and are agreeable to the Bank issuing an irrevocable Guarantee(s) in accordance with the details provided in Section F (Counter Indemnity) above.
- e. I/We being the Applicant(s) herein confirm that I/We have read and understood my/our rights as a Data Subject (s) with respect to processing of my/our Personal Data and my/our Sensitive Personal Data. For the avoidance of doubt, I/We are aware that I/We have a right to:
  - i. be informed of the use to which my/our Personal Data is to be put;
  - ii. access my/our Personal Data which is in the Bank's custody;
  - iii. object to the processing of all or part of my/our Personal Data;
  - iv. correction of false or misleading data; and
  - v. to deletion of false or misleading data about me/us.

I/we hereby consent to:-

- i. the collection and processing of my/our Personal Data and my/our Sensitive Personal Data for the purposes set out herein;
- ii. the transfer and/or disclosure of my/our Personal Data to third parties in accordance with the terms herein;
- iii. the transfer of my/our Personal Data and Sensitive Personal Data by the Bank outside of Kenya;
- iv. the commercial use of my/our Personal Data by the Bank; and
- v. be subject to a decision based solely on automated processing.

Name of authorized Signatory:.....Signature:.....Date:.....

Name of authorized Signatory:.....Signature:.....Date:.....

Name of authorized Signatory:.....Signature:.....Date:.....

### For third party guarantors;

I/We,..... and ..... being third party guarantors to the facility, having read and understood, agree and accept to these Guarantee Terms and Conditions pursuant to the facility dated ..... (which is attached herewith). I/We append our signatures in acceptance thereof.

The signature of .....  
(Third party guarantor)