

MASTER MORTGAGE GUARANTEE AGREEMENT

**THE TRUSTEES OF THE KENYA MORTGAGE GUARANTEE
TRUST**

AND

[.....]

Table of Contents

1. Interpretation	4
2. Definitions	5
3. Guarantee Facility	8
4. Partial Credit Guarantee.....	8
5. Guarantee Cover Request and Approval Process	8
6. Conditions Precedent.....	10
7. Payment of Guarantee Fees	10
8. Claims Procedure	10
9. Covenants and Undertakings of the Primary Mortgage Lender.....	12
10. Reporting Obligations	13
11. Moral Hazard	13
12. Representations & Warranties	15
13. Termination.....	16
14. Consequences of Termination	18
15. Force Majeure	19
16. Payment Of Costs And Expenses	20
17. Confidentiality.....	21
18. Data Protection.....	24
19. Miscellaneous	25
Signature Pages	29
Schedule A - Guarantee Cover Request	31
Schedule B - Guarantee Cover Agreement	1
Schedule C - Claim Request.....	7
Schedule D - Covenants and Undertakings.....	9
Schedule E - Conditions Precedent.....	11
Schedule F -Primary Mortgage Lender Representations & Warranties	13
Schedule G - Guarantee Eligibility Requirements.....	15
Schedule H - Address for Notice.....	18

This Master Mortgage Guarantee Agreement (the “**Agreement**”) is made at Nairobi on this _____ day of _____ by and between:

1. **KENYA MORTGAGE REFINANCE COMPANY PLC**, a limited liability company incorporated and existing under the laws of Kenya and bearing registration number PLC-LXSM9G and of P. O. Box 15494-00100, and of Old Mutual Tower, Upperhill, Nairobi, Kenya in its capacity as the trustee of **KENYA MORTGAGE GUARANTEE TRUST**, a Common Law Trust set up by the Kenya Mortgage Refinance Company, (hereinafter referred to as the “**KMGT**”, which expression shall, where the context so permits, mean and include its successors and assigns);

AND

2. [.....], a [.....] under the laws of Kenya with registration number [.....] and with its registered office at [.....], Kenya and a [financial institution]/[SACCO Society] registered under the laws of Republic of Kenya and licensed by the Central Bank of Kenya/the Sacco Societies Regulatory Authority (hereinafter referred to as the “**Primary Mortgage Lender**” or “**(PML)**” which expression shall include, where the context so permits, its successors and assigns).

KMGT and the Primary Mortgage Lender are hereinafter collectively referred to as the “**Parties**” and individually as a “**Party**”.

WHEREAS:

- A. KMGT is a common law trust set up by the Kenya Mortgage Refinance Company PLC to provide guarantees for eligible mortgage loans through a risk sharing facility (RSF) mechanism.
- B. The Primary Mortgage Lender is licensed as a [commercial bank]/[microfinance institution]/[SACCO Society] and is permitted under the laws of the Republic of Kenya to provide [banking business]/[microfinance business]/[SACCO business] to consumers in the form of, inter alia, mortgage loans and other housing loans.
- C. The Primary Mortgage Lender is a licensed financial institution by [CBK/SASRA] to carry out the business of, inter alia, lending and taking mortgages on immoveable property as security for such lending.
- D. The Primary Mortgage Lender has expressed interest in obtaining a guarantee facility from KMGT, and KMGT has agreed to provide the Primary Mortgage Lender with the same on the terms and conditions set out in this Agreement.
- E. This Agreement is intended to provide the terms that will govern the rights and obligations of the Parties with respect to the guarantee facility and the various common terms and conditions applicable to individual guarantee covers that may hereafter be executed from time to time pursuant to this Agreement.

F. This Agreement is to be read together with the RSF Manual. If there is conflict or inconsistency between the two documents, this Agreement shall take precedence.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Interpretation

- 1.1. The headings in this Agreement are inserted only for convenience and shall not affect its construction and interpretation.
- 1.2. The recitals and the definitions shall be an integral and operative part of the Agreement and any breach thereof or any misrepresentation contained therein shall entitle the Parties to the same remedies as are available in respect of other terms of this Agreement.
- 1.3. All Schedules and/or Annexures to this Agreement shall be deemed to form an integral and substantive part of this Agreement.
- 1.4. Where appropriate, words denoting a singular number only shall include the plural and vice versa and words importing any gender shall include every gender.
- 1.5. References to person shall include any company, corporation, or any other legal entity and its successors, permitted assigns and permitted transferees.
- 1.6. References to assets shall include present and future properties, revenues and rights of every description including financial assets.
- 1.7. References herein to "Clauses" and "Sub-clauses" without reference to a document are to designated Clauses and Sub-clauses of this Agreement.
- 1.8. The words "herein", "hereof", "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular provision.
- 1.9. The term "include" or "including" shall mean without limitation by reason of enumeration.
- 1.10. Where an expression is defined, another grammatical form or variation of that expression has a corresponding meaning.
- 1.11. Reference to a matter being "to the knowledge" of a person means that the matter is to the best of the knowledge and belief of that person after making reasonable enquiries in the circumstances.
- 1.12. "Control" including, with correlative meanings, the terms "controlled by" and "under common control with", as used with respect to any person, means the possession, directly or indirectly, of the power to nominate or appoint a majority of the members of the board of directors or persons performing similar functions for such Person, or to direct or cause

the direction of the management or policies of such Person, whether through the ownership of voting shares, by contract or otherwise.

- 1.13. Accounting terms not otherwise defined herein have the meanings assigned to them in accordance with applicable International Financial Reporting Standards.
- 1.14. Reference to any "Account" or "account" includes any renewal, redenomination, re-designation or sub-account thereof.
- 1.15. Unless a contrary indication appears, a term used in any Guarantee Cover Agreement in any notice given under or in connection with any Guarantee Cover Agreement has the same meaning as in this Agreement.
- 1.16. Reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation under that legislative provision.
- 1.17. Unless the context requires otherwise, reference to any document, deed or other instrument is a reference to that document, deed or instrument as amended, supplemented or novated from time to time and includes a reference to any document, deed or other instrument which amends, waives, is supplemental to, novates or is entered into, made or given pursuant to or in accordance with any of the terms of such document, deed or other instrument.
- 1.18. Reference to the date of this Agreement shall mean the date first above written.

2. **Definitions**

Unless the context requires otherwise, the terms used in this Agreement shall have the following meanings assigned to them respectively:

"Agreement" means this Master Mortgage Guarantee Agreement between KMGT and the Primary Mortgage Lender, including all Schedules and amendments hereto;

"Applicable Law" means all applicable laws, statutes, ordinances, rules, and regulations, applicable to any person, property or event, whether or not having the force of law, and including all official directives, consents, approvals, authorizations, guidelines, orders and policies of any Government having or purporting to have authority over that person, property or event and all general principles of common law and equity;

"Business Day" means a day (other than Saturday, Sunday or a Public Holiday) on which banks generally are open for business in Kenya;

"CBK" means the Central Bank of Kenya;

"Eligibility Criteria" means the criteria a Mortgage Loan must meet in order to qualify for a guarantee cover as set out in part B of Schedule G of this Agreement;

"Eligible Mortgage Loan" means a Mortgage Loan that meets the Eligibility Criteria;

"Eligible Financial Institution" means a financial institution that meets the qualification criteria and set out in part A of Schedule G of this Agreement;

“Environmental and Social Policy” means the KMRC Environmental and Social Policy as may be defined by KMRC from time to time;

“Government” means the national government, county government, department, any national, or county governmental authority, regulatory or administrative authority or agency, and any other agency, body corporate or instrumentality thereof;

“Guarantee Cover Request” means the formal application for a Guarantee Cover, made by a Primary Mortgage Lender to KMGT as set out in clause 5;

“Guarantee Claim Request” means the formal request for payment made by Primary Mortgage Lender to KMGT under the terms of this Agreement, following an occurrence or event that triggers KMGT's obligation to pay;

“Guarantee Claim Period” means the period during which the Primary Mortgage Lender is entitled to submit a Guarantee Claim Request to KMGT as provided for in clause 8.4.1;

“Guarantee Documents” means this Agreement and the Guarantee Cover Agreement;

“Guarantee Fee” means the guarantee fee to be paid by the Primary Mortgage Lender to KMGT as consideration for the guarantee under the Guarantee Cover Agreements;

“Guaranteed Amount” means, for the relevant Mortgage Loan, the Guaranteed Percentage of the amount outstanding under a Mortgage Loan in the Mortgage Loan Portfolio at the time of Payment Default;

“Guaranteed Percentage” means the percentage of the principal amount of the Eligible Mortgage Loans that KMGT agrees to guarantee, as specified in the RSF Manual from time to time.

“Insolvency” means, in relation to a party, that:

- a) The party is unable or admits in writing its inability to pay its debts as they become due, or the party is deemed unable to pay its debts within the meaning of applicable insolvency laws.
- b) A petition or application is filed, or a proceeding is commenced, in respect of the party under any applicable bankruptcy, insolvency, or similar law seeking: (i) the winding-up, liquidation, or dissolution of the party; (ii) the appointment of a trustee, receiver, liquidator, administrator, or similar official for the party or for all or substantially all of its assets; or (iii) any similar relief, and such petition, application, or proceeding is not dismissed, discharged, stayed, or restrained within twenty one (21) days.
- c) The party voluntarily commences or consents to any proceeding or process referred to in sub-part (b) above, or the party files a petition seeking or consenting to reorganization, arrangement, adjustment, or composition under any applicable bankruptcy or insolvency law.
- d) The party makes a general assignment, arrangement, or composition with or for the benefit of its creditors, or proposes or agrees to do so.
- e) A receiver, trustee, liquidator, administrator, or other similar official is appointed over all or any substantial part of the assets of the party, whether by a court or otherwise, and such appointment is not dismissed, discharged, stayed, or restrained within twenty one (21) days.
- f) The party ceases, or threatens to cease, to carry on its business or substantially all of its business.
- g) The party takes any corporate action or resolution to authorize any of the actions described in sub-part (b) through (f) above.

- h) Any distress, execution, sequestration, or other process is levied, enforced, or sued out upon or against any substantial part of the assets of the party and is not discharged or stayed within twenty one (21) days.
- i) The party enters into any reorganization, restructuring, or composition that materially and adversely affects the ability of the party to perform its obligations under this Agreement, or is subject to a plan of reorganization or restructuring that is approved by a court or creditors.
- j) Any license, permit, or authorization necessary for the party to conduct its business is revoked, suspended, or not renewed, which materially affects the party's ability to operate or to fulfill its obligations under this Agreement, and such revocation, suspension, or non-renewal is not remedied within twenty-one (21) days.

"Lock-In Period" means, for the relevant Mortgage Loan, the period of twelve (12) months commencing on the date of payment of the first loan repayment;

"Moral Hazard Event" means any of the events specified as such in clause 11.1;

"Mortgage Debtor" means the borrower under the Mortgage Loans;

"Mortgage Loan" means a loan extended by the Primary Mortgage Lender to an individual borrower for the construction, purchase, renovation or extension of residential house/apartment, or purchase of plot and construction thereupon, that is secured by a mortgage;

"Mortgage Loan Portfolio" means, in relation to a Guarantee Cover, a group of Eligible Mortgage Loans to which the Guarantee Cover relates and as more specifically identified in the Guarantee Cover Agreement;

"Mortgage Portfolio Documents" means, with respect to a Mortgage Loan Portfolio, the documents detailing information required under this Agreement and the RSF Manual;

"Mortgage Property" means, in respect of an Eligible Mortgage Loan, the immovable property securing the repayment of such Eligible Mortgage Loan;

"Payment Default" means, for the relevant Mortgage Loan, a default giving rise to a claim under clause 8;

"Portfolio Review" means a review (onsite or offsite as determined by KMGT) of the Mortgage Loan Portfolio conducted by KMGT (or its authorized representatives and consultants) to verify that the Mortgage Loans confirm to the Eligibility Criteria;

"Prudential Guidelines" means the various Prudential Guidelines (including any regulations, notices and circulars) issued by the Central Bank of Kenya (or, where relevant, by SASRA), as amended from time to time;

"RSF" means the risk sharing facility mechanism operated by KMGT for the benefit of PMLs

"RSF Manual" means the guiding document developed by KMGT for purposes of providing operational guidance to the parties on the implementation of this Agreement and which may be amended from time to time based on its terms;

"Statutory Notice to Sell" means the notice to sell mortgaged property as provided for under section 96 (2) of the Land Act, No. 6 of 2012

"Taxes" include all present and future taxes, duties, levies, imposts, deductions, octroi, excise duty, sales tax, registration charges, and any other charges and withholdings whatsoever, together with any interest and penalties payable in connection with any failure to pay or delay in paying any of the above.

3. Guarantee Facility

- 3.1. KMGT agrees to establish a guarantee facility (the "Guarantee Facility") for the benefit of the Primary Mortgage Lender, under which KMGT may, from time to time and at the request of the Primary Mortgage Lender, issue individual guarantees ("Guarantee Covers") covering Payment Defaults for Mortgage Loans under specified Mortgage Loan Portfolios, subject to the terms and conditions set forth in this Agreement.
- 3.2. The total liability of KMGT under this Facility shall not exceed the aggregate of the Guaranteed Amounts under all Guarantee Covers issued and outstanding under this Guarantee Facility.

4. Partial Mortgage Guarantee

- 4.1. The guarantee under each Guarantee Cover shall be a guarantee to the Primary Mortgage Lender for the payment obligations under each Mortgage Loan in the specified Mortgage Loan Portfolio.
- 4.2. The liability of KMGT under each Mortgage Loan in the specified Mortgage Loan Portfolios is expressly limited to the Guaranteed Amount under such Mortgage Loan. KMGT shall not be liable for any amounts exceeding the Guaranteed Amount, nor shall KMGT be responsible for any additional interest, penalties, fees, or costs beyond the Guaranteed Amount.

5. Guarantee Cover Request and Approval Process

- 5.1. The Primary Mortgage Lender shall submit to KMGT an application for a Guarantee Cover on a calendar quarterly basis ("Guarantee Cover Request") in accordance with and subject to the terms and conditions of this Agreement. The initial Guarantee Cover Request shall be within 90 days of the execution of this Agreement.
- 5.2. The Primary Mortgage Lender shall be obliged to include in the Guarantee Cover Request all Mortgage Loans that it has issued from the coming into force of this Agreement which meet the Eligibility Criteria except where such Mortgage Loans have already been included in previous Guarantee Cover Requests.
- 5.3. The Guarantee Cover Request shall:
 - 5.3.1. specify the outstanding amount of the Eligible Mortgage Loans;
 - 5.3.2. be in the form set out in Schedule A hereto; and
 - 5.3.3. details of the Mortgage Loan Portfolio to be covered under the Guarantee Cover as set out in the annexure to Schedule A; and
 - 5.3.4. warrant that the Eligible Mortgage Loans to be covered under the Guarantee comply with the Environmental & Social Policy.

- 5.4. The Primary Mortgage Lender shall ensure that all the conditions precedent set out in Clause 6.1 have been fulfilled prior to delivering a Guarantee Cover Request to KMGT except for condition(s) in respect of which specific waivers have been given by KMGT, in its discretion in writing, in terms of this Agreement.
- 5.5. The Primary Mortgage Lender shall ensure the accuracy and completeness of the data provided in the details of the Mortgage Loan Portfolio. The Primary Mortgage Lender hereby represents and warrants that the details provided in relation to the Mortgage Loan Portfolio are accurate and complete.
- 5.6. In the event any of the Mortgage Loans are not Eligible Mortgage Loans, KMGT shall notify the Primary Mortgage Lender and request them to exclude such Mortgage Loans and submit a revised list of Eligible Mortgage Loans for the Guarantee Cover.
- 5.7. KMGT shall, as guided by the RSF Manual, consider the Guarantee Cover Request for approval and shall approve the same within 10 business days of receipt unless it determines that:
 - 5.7.1. The Guarantee Cover Request is not in the form provided for in Schedule A;
 - 5.7.2. The Guarantee Cover Request does not contain details of the portfolio of the Eligible Mortgage Loans;
 - 5.7.3. The Mortgage Loans provided do not qualify as Eligible Mortgage Loans;
 - 5.7.4. The Primary Mortgage Lender is not or has ceased to be an Eligible Financial Institution;
 - 5.7.5. Any one or more of the conditions precedent set out in Schedule E has not been met;
 - 5.7.6. The Guarantee Cover Request is not in compliance with any other requirements under this Agreement or the Primary Mortgage Lender is otherwise in breach of this Agreement.
- 5.8. Upon approval of the Guarantee Cover Request and payment of the Guarantee Fee, KMGT shall issue to the Primary Mortgage Lender two counterparts of the Guarantee Cover Agreement duly signed by the authorized signatories of KMGT.
- 5.9. On execution of the Guarantee Cover Agreement by the Primary Mortgage Lender, the Primary Mortgage Lender shall return an original counterpart of the fully executed Agreement to KMGT and retain the second counterpart of the executed Guarantee Cover Agreement for their records.
- 5.10. Issuance of the Guarantee Cover by KMGT shall be subject to the execution of the Guarantee Cover Agreement referred to Clause 5.9, by the Primary Mortgage Lender and satisfaction of the conditions precedent to issuance of the Guarantee Cover as set out in Clause 6.2 of this Agreement.

6. Conditions Precedent

6.1. Conditions Precedent to a Guarantee Cover Request

The Primary Mortgage Lender shall not deliver a Guarantee Cover Request unless the conditions listed in Part A of Schedule E – Conditions Precedent are met.

6.2. Conditions Precedent to issuance of a Guarantee Cover

KMGT's obligation to issue the Guarantee Cover to the Primary Mortgage Lender shall be further subject to the fulfilment of the conditions precedent listed in Part B of Schedule E – Conditions Precedent.

6.3. Waiver

Notwithstanding anything contained in Clauses 6.1 and 6.2, KMGT may, in its absolute discretion and in writing, waive or postpone the time for fulfilment of any condition precedent with respect to a Guarantee Cover. Where a waiver or postponement is allowed under this Clause 6.3, the Primary Mortgage Lender shall comply with the terms on which the waiver or postponement is granted and immediately notify KMGT of the satisfaction of the condition precedent by the date set by KMGT. KMGT shall be under no obligation to issue the Guarantee Cover if the Primary Mortgage Lender fails to satisfy, by the postponed date, the conditions precedent set out in Schedule E as modified by the terms on which any such waiver was granted.

7. Payment of Guarantee Fees

7.1. Upon approval of a Guarantee Cover Request, the Primary Mortgage Lender shall pay to KMGT the Guarantee Fee.

7.2. The Guarantee Fee may be amended in accordance with clause 11.2 (ii).

7.3. In the event that there is an increase in the guarantee fee in accordance with clause 11.2 (ii), such additional guarantee fee shall be paid within fifteen (15) days of notification of the increase to the Primary Mortgage Lender.

8. Claims Procedure

8.1. Entitlement to Make Claims

The Primary Mortgage Lender is entitled to make a claim under a Guarantee Cover subject to the provisions of this Clause. The claim must be in the form set out in Schedule C.

8.2. Timing of Claims

The Primary Mortgage Lender shall submit any valid claims it may have under a Guarantee Cover on a quarterly basis, with the claim periods ending on the last day of

each calendar quarter (i.e., March 31, June 30, September 30, and December 31).

8.3. Validity of Claims

A claim shall be valid only if, in relation to the Mortgage Loan for which the Primary Mortgage Lender is claiming,:

- a) the Mortgage Debtor has defaulted on its obligations to make payment of the Mortgage Loan and such default is continuing;
- b) the Primary Mortgage Lender has complied with all its servicing obligations and delinquency management process set out in the RSF Manual;
- c) the Primary Mortgage Lender has issued a Statutory Notice to Sell to the Mortgage Debtor;
- d) the Primary Mortgage Lender must not be in breach of the covenants and undertakings in Schedule D;
- e) the Conditions Precedent set out in Schedule E have been met;
- f) the representations and warranties set out in Schedule F must be true except with regard to the payment default giving rise to the Claim Request; and
- g) the eligibility requirements set out in Schedule F must be true except with regard to the payment default giving rise to the Claim Request.

8.4. Guarantee Claim Period

8.4.1. Claims must be submitted within a validity period, which shall commence at the end of the Lock In Period and shall remain in effect for a period of eight (8) years thereafter (the "Guarantee Claim Period"). Any claims submitted outside this Validity Period shall be deemed invalid and will not be honored by KMG T.

8.4.2. Claims must be submitted in the calendar quarter in which they arise, except for claims that become valid less than ten (10) days before the end of the quarter. In such cases, the claim may be submitted in the following calendar quarter.

8.5. Guarantee Claim Request Documentation

The Primary Mortgage Lender shall submit to KMG T the Guarantee Claim Request together with the following documents verified and duly signed by the authorized signatories of the Primary Mortgage Lender:

- a) The payments track record of the Borrower from the date of commencement of the mortgage loan to the month preceding the date of submission of the Claims Request;
- b) Evidence of actions taken by the Primary Mortgage Lender for

- rescheduling/restructuring (on best effort basis) of the Eligible Mortgage Loan. This indicates the dates, documentation and the detailed actions taken to reschedule/restructure the Eligible Mortgage Loan and the results of the rescheduling/restructuring;
- c) Copy of all demands and communication with the Mortgage Debtor including the Statutory Notice;
 - d) Evidence of recovery/foreclosure proceedings;
 - e) Confirmation that the Representations and Warranties provided by the Primary Mortgage Lender are valid as at the date of submission of the Claims Request; and
 - f) Any other documents that may be required by KMGT to verify the claims.

8.6. Review, Payment, and Discharge

- 8.6.1. Upon receipt of a Guarantee Claim Request, KMGT shall, within a reasonable period of time, review the submitted documentation to determine whether the conditions precedent have been met, the claims contained in the Guarantee Claim Requests are valid, and that the Guarantee Claim Request has been made in compliance with this Agreement.
- 8.6.2. If KMGT confirms that the Guarantee Claim Request has been made in accordance with the provisions of this Agreement, it shall, within ten (10) business days, make payment under the claim.
- 8.6.3. Payment under the claim shall constitute a full discharge of KMGT's obligations in relation to the relevant mortgage loan.
- 8.6.4. KMGT retains the right to conduct a more detailed review of the claim request after payment. If any part of the claim is found to have been made in contravention of this Agreement, KMGT shall be entitled to demand reimbursement of the relevant amounts by the Primary Mortgage Lender.
- 8.6.5. KMGT may also request any further information it may require to ascertain the validity and accuracy of the claim. The Primary Mortgage Lender shall comply with any such request promptly, and in any event within five (5) days of receipt of the request.
- 8.6.6. The Primary Mortgage Lender shall acknowledge receipt of any amounts paid under the Guarantee Claim Request and sign and remit a discharge letter to the Trust Officer acknowledging the cessation of KMGT's further obligations in respect of the relevant Eligible Mortgage Loans.

9. Covenants and Undertakings of the Primary Mortgage Lender

9.1. Positive Covenants

Unless and to the extent, specifically permitted otherwise in terms of this Agreement, the Primary Mortgage Lender, in respect of the Guarantee, undertakes and covenants with the Trustees of the KMGT to take all such actions and to do all such things as are listed in Part A of Schedule D - Covenants and Undertakings.

9.2. **Negative Covenants**

Unless and to the extent, specifically permitted otherwise in terms of this Agreement, the Primary Mortgage Lender, in respect of the Guarantee, undertakes and covenants with KMGT to refrain from taking all such actions and doing all such things as are listed in Part B of Schedule D – Covenants and Undertakings.

9.3. **Reliance**

The Primary Mortgage Lender acknowledges that each Guarantee Cover by KMGT will be made on full and absolute reliance on the covenants and undertakings set out in Clauses 9.1 and 9.2.

10. **Reporting Obligations**

10.1. **Reports**

10.1.1. The Primary Mortgage Lender shall, as soon as the same become available, furnish to KMGT its audited annual financial statements.

10.1.2. The Primary Mortgage Lender shall, on a quarterly basis, furnish to KMGT:

- (a) An Eligible Mortgage Loan Performance Report of each of the Eligible Mortgage Loans covered under a Guarantee (on an individual and aggregate basis) in the form set out in the RSF Manual;
- (b) A Delinquent Loans Report in respect of each Eligible Mortgage Loan that have fallen in arrears in the form set out in the RSF Manual; and
- (c) Any other Reports set out in the RSF Manual or as may be requested by the Trustee from time to time.

10.2. **Environmental Performance**

The Primary Mortgage Lender shall comply with all reporting and documentation requirements as set forth in the Environmental and Social Policy.

10.3. **Annual/Ad-Hoc Reviews**

KMGT has the right to conduct annual and ad-hoc reviews on the Primary Mortgage Lender or any Mortgage Loan Portfolio. The Primary Mortgage Lender shall promptly assist KMGT in any such reviews and provide it with any information requested for this purpose.

11. **Moral Hazard**

11.1.1. **Determination of Moral Hazard**

A Moral Hazard Event shall be deemed to have occurred if, based on periodic reviews of and reports received from the Primary Mortgage Lender, KMGT determines that:

- (i) at the point of origination of the Mortgage Loan, the Primary Mortgage Lender did not adopt and implement origination and underwriting practices that are in all respects prudent and customary in the mortgage industry, and in accordance with the Applicable Laws, Prudential Guidelines and the RSF Manual; or
- (ii) the mortgage loans of the Primary Mortgage Lender have a non-performing loan rate which is significantly higher than the market non-performing loan rate as may be specified in the RSF Manual; or
- (iii) the Primary Mortgage Lender does not have a satisfactory methodology for assessing informal income; or
- (iv) the Primary Mortgage Lender failed to carry out servicing of any of the Eligible Mortgage Loans covered under this Agreement in accordance with the Applicable Laws, Prudential Guidelines and the RSF Manual; or
- (v) the Primary Mortgage Lender has failed to submit for guarantee all Eligible Mortgage Loans in accordance with clause 5.2; or
- (vi) the Primary Mortgage Lender has failed to implement any corrective actions notified to it by KMGT within the time specified by KMGT; or
- (vii) the Primary Mortgage Lender has done or failed to do any other thing that can materially increase the risk to KMGT under this Agreement or affect the likelihood of recovery under the Eligible Mortgage Loans as may be provided for in the RSF Manual.

11.1.2. Consequences of Moral Hazard

Upon the occurrence of a Moral Hazard Event, and depending on the severity and extent thereof, KMGT may, in its sole discretion, take one or more of the following actions:

- (i) **Issue a Warning:** KMGT may issue a formal warning to the Primary Mortgage Lender, requiring the Primary Mortgage Lender to remedy the non-compliance within a specified time frame. Failure to remedy such non-compliance may result in further actions under this clause.
- (ii) **Increase the Guarantee Fee:** KMGT may increase the Guarantee Fee payable by the Primary Mortgage Lender to reflect the increased risk resulting from the Moral Hazard Event. The Primary Mortgage Lender shall be obligated to pay the adjusted Guarantee Fee as a condition of the continued validity of the Guarantee.
- (iii) **Terminate the Guarantee:** KMGT may terminate the Guarantee upon providing written notice to the Primary Mortgage Lender. Termination of the Guarantee

shall not affect the KMGT's liability for any claims made prior to the date of termination in accordance with the terms of this Agreement.

- (iv) Refusal to Issue Further Guarantees: KMGT may refuse to issue any further Guarantees under this Agreement or any related agreements until such time as KMGT is satisfied, at its sole discretion, that the Moral Hazard Event has been adequately addressed.

11.1.3. Effect of Clause

The exercise by KMGT of any of its rights under this clause shall not preclude KMGT from exercising any other rights or remedies available to it under this Agreement or Applicable Law.

12. Representations & Warranties

12.1. Representations and Warranties

12.1.1. The Primary Mortgage Lender, as of the date of this Agreement, provides the representations and warranties listed in Part A of Schedule F - Primary Mortgage Lender Representations & Warranties.

12.1.2. The Primary Mortgage Lender shall, as of the date of a Guarantee Cover Agreement, provide the representations and warranties listed in Part B of Schedule F - Mortgage Loan Portfolio Representations & Warranties - with respect to the Mortgage Loan Portfolio and each Eligible Mortgage Loan.

12.2. Repetition

The representations and warranties in Clauses 11.1.1 and 11.1.2 shall be deemed to be repeated by the Primary Mortgage Lender on and as of the date of each Guarantee Cover Agreement as if made with reference to the facts and circumstances existing at such respective date.

12.3. Reliance

The Primary Mortgage Lender acknowledges that any guarantee cover by KMGT under a Guarantee Cover Agreement shall be made on full and absolute reliance on the representations and warranties set out in Clauses 11.1.1 and 11.1.2.

12.4. Effect of Portfolio Review

The rights and remedies of KMGT in respect of any misrepresentation or breach of warranty by the Primary Mortgage Lender shall not be prejudiced or affected by any Portfolio Review conducted by or on behalf of KMGT pursuant to this Agreement.

13. **Termination**

13.1. **Termination of the Guarantee Facility**

- 13.1.1. By Agreement: This Agreement may be terminated at any time by mutual agreement of KMGT and the Primary Mortgage Lender which agreement shall set out the terms on which the termination is to occur.
- 13.1.2. Termination on Notice: Either party may terminate this Agreement by providing ninety (90) days' written notice to the other party, without the necessity of any default or breach by either party.
- 13.1.3. Insolvency: This Agreement shall be terminated automatically if an event of Insolvency occurs in relation to the Primary Mortgage Lender.
- 13.1.4. Breach by Primary Mortgage Lender: KMGT may terminate this Agreement upon the occurrence of a material breach by the Primary Mortgage Lender of its obligations under this Agreement (including but not limited to Clauses 9, 10, 12, 16, 17 and 18), provided that KMGT has given the Primary Mortgage Lender twenty one (21) days' notice of such breach and the Primary Mortgage Lender has failed to remedy the breach within such notice period.
- 13.1.5. Moral Hazard: This Agreement may be terminated by KMGT upon the occurrence of a Moral Hazard Event in relation to the Primary Mortgage Lender and KMGT gives notice to the Primary Mortgage Lender of its intention to terminate this Agreement.
- 13.1.6. Change of Law: This Agreement may be terminated by either party if there is a change in applicable law or regulation that makes the performance of this Agreement illegal, impractical, or impossible.

13.2. **Termination of Individual Guarantee Covers**

- 13.2.1. Termination on Facility Termination: all individual Guarantee Covers shall terminate automatically upon the termination of the Guarantee Facility, except where such termination of the Guarantee Facility occurs by mutual agreement of the parties or on notice from either party without default.
- 13.2.2. Breach by Primary Mortgage Lender: KMGT may terminate an individual Guarantee Cover if the Primary Mortgage Lender breaches any warranty, representation, obligation or covenant related to that Guarantee Cover, and such breach is not remedied within twenty one (21) days of notice from KMGT.
- 13.2.3. Moral Hazard: An individual Guarantee Cover may be terminated by KMGT if a Moral Hazard Event occurs in relation to the Mortgage Loans covered under that Guarantee Cover, and KMGT gives notice to the Primary Mortgage Lender of its intention to terminate the Guarantee Cover.

13.2.4. Termination of Underlying Guarantees: An individual Guarantee Cover shall terminate if all the guarantees related to the individual mortgage loans covered under that Guarantee Cover are terminated.

13.2.5. Force Majeure: An individual Guarantee Cover may be terminated by KMGT if a Force Majeure Event occurs affecting that Guarantee Cover and such Force Majeure Event continues for a period exceeding ninety (90) days, making it impossible or impractical for either party to fulfill its obligations under the Guarantee Cover.

13.3. **Termination of Guarantees on Individual Mortgage Loans**

13.3.1. Termination of Guarantee Cover: The guarantee in respect of an individual Mortgage Loan shall terminate upon the termination of the Guarantee Cover that applies to that Mortgage Loan.

13.3.2. Full Repayment: The guarantee in respect of an individual Mortgage Loan shall automatically terminate upon the full repayment of the principal amount under the Mortgage Loan.

13.3.3. Payment of a Claim: The guarantee in respect of an individual Mortgage Loan shall terminate upon KMGT making payment of a claim related to that Mortgage Loan.

13.3.4. Loss of Eligibility: The guarantee in respect of an individual Mortgage Loan shall terminate if that Mortgage Loan ceases to qualify as an Eligible Mortgage Loan under the terms of this Agreement.

13.3.5. Breach by Primary Mortgage Lender: The guarantee in respect of an individual Mortgage Loan may be terminated by KMGT if the Primary Mortgage Lender breaches any representation, warranty, obligation or covenant relating to that specific Mortgage Loan and such breach is not remedied within twenty one (21) days of notice from KMGT.

13.3.6. Expiry of Guarantee Period: The guarantee in respect of an individual Mortgage Loan shall terminate automatically upon the expiry of a period of eight (8) years from the end of the Lock-In Period applicable to that mortgage loan.

13.3.7. Moral Hazard: An individual Mortgage Loan may be terminated by KMGT if a Moral Hazard Event occurs in relation to that Mortgage Loan, and KMGT gives notice to the Primary Mortgage Lender of its intention to terminate the guarantee in respect of that Mortgage Loan.

13.3.8. Default during Lock-In Period: The guarantee in respect of an individual Mortgage Loan may be terminated by KMGT if the Mortgage Debtor is in default of its payment obligations during the Lock-In Period of the Mortgage Loan.

13.3.9. Force Majeure: The guarantee in respect of an individual Mortgage Loan may be terminated by KMGT if a Force Majeure Event occurs in relation to that Mortgage Loan and such Force Majeure Event continues for a period exceeding ninety (90) days, making

it impossible or impractical for either party to fulfill its obligations under the guarantee.

14. Consequences of Termination

14.1. Termination Notice

Upon the occurrence of a Termination Event under this Agreement, KMGT shall serve a written notice ("Termination Notice") to the Primary Mortgage Lender. The Termination Notice shall clearly declare that a Termination Event has occurred, specifying the nature of the Termination Event and the date on which the termination shall take effect ("Termination Date") as provided for in clause 13 above. The Termination Notice shall be delivered in accordance with the notice provisions set forth in this Agreement.

14.2. Release from Obligations

KMGT shall be released from the following obligations to the Primary Mortgage Lender as follows:

- a) in relation to termination under clause 13.1, all and any further obligations under this Agreement;
- b) in relation to termination under clause 13.2, all and any further obligations under the affected Guarantee Covers; and
- c) in relation to termination under clause 13.3, all and any further obligations under the affected Mortgage Loans.

14.3. Discharge Letter

Following the issuance of the Termination Notice and upon the cessation of the KMGT's obligations as provided under clause 14.2 above, KMGT shall provide a discharge letter (the "Discharge Letter") to the Primary Mortgage Lender. The Discharge Letter shall confirm the release of KMGT from further obligations as provided for under clause 14.2 above.

14.4. Acknowledgment

The Primary Mortgage Lender shall countersign and return the Discharge Letter to KMGT within ten (10) days of receipt, acknowledging termination and discharge of KMGT's obligations. Failure by the Primary Mortgage Lender to countersign the Discharge Letter shall not affect the validity of the termination, but KMGT may take further steps to enforce the acknowledgment.

14.5. Surviving Provisions

Subject to any provision to the contrary, the termination of this Agreement howsoever caused shall be without prejudice to the continuation of any provision which expressly or by implication comes into operation or continues in force after the date of termination and shall be without prejudice to any rights and liabilities of the Parties which may have

already accrued prior to the date of termination.

15. **Force Majeure**

15.1. **Definition of Force Majeure**

For the purposes of this Agreement, "Force Majeure" shall mean any event or circumstance, or combination of events or circumstances (each a "Force Majeure Event"), that is beyond the reasonable control of the affected party, and that materially prevents, hinders, or delays the performance of any obligation under this Agreement, provided that such event or circumstance could not have been avoided or overcome by the affected party through the exercise of reasonable diligence. Force Majeure events may include, but are not limited to:

- a) Acts of God: Natural disasters such as earthquakes, floods, hurricanes, or other extreme weather conditions.
- b) War and Hostilities: Acts of war (whether declared or not), invasion, act of foreign enemies, civil war, terrorism, insurrection, rebellion, or revolution.
- c) Governmental Actions: Actions or decrees by a government authority, including changes in law or regulation, expropriation, or nationalization.
- d) Labor Disputes: Strikes, lockouts, or other industrial actions.
- e) Epidemics and Pandemics: Outbreaks of infectious diseases or other public health emergencies.
- f) Other Events: Any other events or circumstances beyond the reasonable control of the affected party.

15.2. **Notice of Force Majeure**

The party affected by a Force Majeure event shall notify the other party in writing as soon as reasonably practicable after becoming aware of the Force Majeure event, but in any event, no later than five (5) days after the occurrence of the event. The notice shall include:

- a) A description of the Force Majeure event;
- b) The anticipated impact on the affected party's performance of its obligations under this Agreement;
- c) The measures being taken or proposed to mitigate the effects of the Force Majeure event.

15.3. **Suspension of Obligations**

Upon the occurrence of a Force Majeure event, the obligations of the affected party under this Agreement shall be suspended to the extent that performance is prevented, hindered, or delayed by the Force Majeure event. The affected party shall use reasonable efforts to mitigate the impact of the Force Majeure event and to resume performance of its obligations as soon as reasonably possible.

15.4. **Extended Force Majeure**

If the Force Majeure event continues for a period exceeding ninety (90) days, the Agreement or any affected part thereof may be terminated in accordance with clause 13.

15.5. No Excuse for Payment Obligations

Notwithstanding any other provision of this Clause, the occurrence of a Force Majeure event shall not excuse the Primary Mortgage Lender's obligation to make any payment due under this Agreement, except where such payment obligation is directly affected by the Force Majeure event.

15.6. Exclusions

Force Majeure shall not include economic hardship, changes in market conditions, or the inability of a party to obtain financing or fulfill payment obligations.

16. Payment Of Costs And Expenses

16.1. Costs and Expenses

16.1.1. It is hereby agreed that:

- (a) the Primary Mortgage Lender shall, be responsible for, and make payments to KMGT for all reasonable costs and expenses (including all legal and other professional fees, travel costs, and out-of-pocket expenses) incurred by KMGT in connection with the preparation, negotiation, execution, perfection (including registration and filing with the competent authority) and modification (with the consent of the Primary Mortgage Lender or if required by Applicable Laws) of this Agreement and all related documents (including waivers and consents) from time to time; and
- (b) all costs and expenses (including all legal and other professional fees) incurred by KMGT in connection with the preservation (including investigating any event which KMGT reasonably believes is a Moral Hazard Event) of, or enforcement of, any rights under this Agreement shall be shared equally between the Primary Mortgage Lender and KMGT.

16.2. Reimbursement

The Primary Mortgage Lender shall on demand reimburse KMGT of any reasonable costs and expenses and other charges to be borne or paid by the Primary Mortgage Lender pursuant to this Clause 16 that are paid by KMGT. The Primary Mortgage Lender agrees to accept statements of account of such payments and expenses and/or any entries in respect thereof signed by a person authorised by KMGT as conclusive proof thereof without calling for any vouchers, document or any other evidence in support of such payments and expenses, subject to manifest error therein.

16.3. **Time of Payment**

All sums required to be paid by the Primary Mortgage Lender under this Clause 16 shall (unless otherwise stated) be payable within three (3) Business Days of the Primary Mortgage Lender receiving a demand for such payment from KMGT by depositing the same in KMGT's designated bank account by way of RTGS or wire transfer. The Primary Mortgage Lender will notify KMGT that the relevant amount has been deposited in KMGT's designated account. In the event, any such payment is required to be made by the Primary Mortgage Lender, the Primary Mortgage Lender will notify KMGT of the total amount deposited in KMGT's designated account.

16.4. **Taxes**

All Taxes that may be required to be paid in respect of the execution, issuance, delivery, filing, registration, performance or enforcement of this Agreement (including any other documents contemplated by the foregoing), shall be the Primary Mortgage Lender's sole responsibility and shall be paid by the Primary Mortgage Lender to KMGT within two (2) Business Days of the receipt of a demand from KMGT requiring payment thereof. KMGT shall utilise funds so received to discharge the demand made by taxing authorities and shall provide the Primary Mortgage Lender with evidence of payment so made.

16.5. **No Deductions**

16.5.1. All amounts to be paid by the Primary Mortgage Lender under this Agreement shall be paid without any set-off or counterclaim and free and clear of, and without any deduction or withholding for or on account of any Taxes, costs or expenses (other than Taxes on the income of KMGT), except to the extent that the Primary Mortgage Lender is required under Applicable Laws to make any payment subject to any Taxes.

16.5.2. In the event, the Primary Mortgage Lender is required by Applicable Laws to deduct or withhold any Tax on behalf of KMGT (other than Taxes on the income of KMGT) and such Tax is deducted or withheld by the Primary Mortgage Lender from any amounts paid or payable under this Agreement, the Primary Mortgage Lender shall pay such additional amounts to KMGT as may be necessary to ensure that KMGT receives a net amount equal to the full amount which KMGT would have received had payment not been made subject to Tax or other deduction.

16.5.3. All Taxes deducted or withheld by the Primary Mortgage Lender from any amounts paid or payable under this Agreement pursuant to Applicable Law shall be paid by the Primary Mortgage Lender when due and the Primary Mortgage Lender shall, within fourteen (14) Business Days of the payment being made, deliver to KMGT evidence satisfactory to KMGT (including all relevant tax receipts and challans) that the payment has been duly remitted to the appropriate authority.

17. **Confidentiality**

17.1. **Definitions**

17.1.1. For the purposes of this Clause, the following terms will have the definitions set forth below:

- (a) **“Confidential Information”** means Proprietary Business Information and the Primary Mortgage Lender Information;
- (b) **“Proprietary Business Information”** means any valuable, secret business information that is designated or identified as confidential at the time of the disclosure or is by its nature clearly recognizable as confidential information to a reasonably prudent person with knowledge of the Disclosing Party’s business and industry;
- (c) **“Customer Information”** means non-public, personally identifiable information of the customers of the Disclosing Party, and includes, in the case of the Primary Mortgage Lender, non-public, personally identifiable information of the Mortgagors which has been provided to the Primary Mortgage Lender by such persons;
- (d) **“Disclosing Party”** means the Party disclosing any Proprietary Information hereunder, whether such disclosure is directly from or through the Disclosing Party’s personnel;
- (e) **“Receiving Party”** means the Party receiving any Proprietary Information hereunder, whether such disclosure is received directly from or through the Receiving Party’s personnel.

17.1.2. Notwithstanding the definition of Confidential Information in Clause 17.1.1(a), Confidential Information does not include any information that:

- (a) was in the Receiving Party’s possession before disclosed to it by the Disclosing Party without a duty of confidentiality on the Receiving Party;
- (b) is or becomes a matter of public knowledge through no fault of the Receiving Party;
- (c) is rightfully received by the Receiving Party from a third party without a duty of confidentiality;
- (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information; or
- (e) is disclosed by the Receiving Party with the Disclosing Party’s prior written approval.

17.2. **Exchange of Confidential Information**

17.2.1. The Parties acknowledge that each Party may be required to disclose to the other Party certain Confidential Information to ensure the performance of its obligations under this Agreement.

17.2.2. The exchange of Confidential Information shall be subject to Clause 17 of this Agreement.

17.3. **Ownership and Restrictions on Use**

17.3.1. The Receiving Party acknowledges and agrees that except to the extent otherwise expressly provided herein, the Confidential Information of the Disclosing Party will remain the sole and exclusive property of the Disclosing Party or a third party providing such information to the Disclosing Party, and the disclosure of such information to the Receiving Party does not confer upon it any license, interest, or right of any kind in or to the Confidential Information, except as provided under this Agreement.

17.3.2. At all times and notwithstanding any termination of this Agreement, the Receiving Party agrees that it will:

- (a) hold in strict confidence and not disclose to any third party the Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party;
- (b) only permit access to the Confidential Information of the Disclosing Party to those of its personnel who have a need to know and have signed confidentiality agreements or are otherwise bound by confidentiality obligations substantially similar to those contained in this Agreement;
- (c) be responsible to the Disclosing Party for any third party's use and disclosure of the Confidential Information provided to such third party by the Receiving Party;
- (d) only use the Confidential Information that it receives to carry out the purposes of this Agreement and for no other purpose whatsoever; and
- (e) use at least the same degree of care it would use to protect its own Confidential Information of like importance, but in no event less than a reasonable degree of care, including maintaining information security standards for such Confidential Information as are commercially reasonable and customary for the type of information.

17.4. **Permitted Disclosure**

Notwithstanding Clause 17.3, a Receiving Party may disclose the Confidential Information in the following events:

- (a) if required by Applicable Laws;
- (b) if required by an order of the Government;
- (c) if required by an order of a Court; or
- (d) if required, to its professional advisors (including attorneys, lawyers, and accountants) and/or consultants and/or agents, subject to appropriate confidentiality and data protection obligations.

17.5. **Notice of Unauthorized Disclosure**

Each Party to this Agreement will immediately notify the other Parties in writing about discovery of any loss or unauthorized disclosure of the Confidential Information of the other Parties.

17.6. **Limit on Reproductions**

The Receiving Party will not reproduce the Disclosing Party's Confidential Information in any form except as reasonably necessary to fulfil such Party's duties and obligations and otherwise comply with the obligations of such Party under this Agreement. Any reproduction of any Confidential Information by the Receiving Party will remain the property of the Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.

17.7. **Document Destruction**

Except as otherwise set forth in this Agreement, upon the termination of this Agreement, each Receiving Party will either upon written instruction from the other Party, promptly return to the Disclosing Party all documents and other tangible (including electronic) materials containing the Disclosing Party's Confidential Information, including all copies thereof in its possession or control, or erase or destroy all such materials.

17.8. **Equitable Relief**

If any Party should breach or threaten to breach any provision of this Clause 17 of the Agreement, the non-breaching Party, in addition to any other remedy it may have at law or in equity, will be entitled to seek a restraining order, injunction or similar remedy in order to specifically enforce the provisions of this Agreement. Each Party specifically acknowledges that money damages alone would not be an adequate remedy for the injuries and damages that would be suffered and incurred by the non-breaching Party as a result of a breach of any provision of this Agreement.

18. **Data Protection**

18.1. Each Party acknowledges the importance of protecting the privacy of all information provided and warrants that in dealing with data collected from either Party; the other Party shall at all times strictly comply with the Data Protection Legislation (including the Data Protection Act 2019, Laws of Kenya. Each Party hereby agrees that in dealing with data collected for the purposes of this Agreement the data shall be used only in accordance with the terms of this Agreement, and for purposes connected to the provision of the services under this Agreement, in accordance with the lawful and reasonable instructions of the Party providing the data and with the consent of the data subjects.

18.2. Each Party shall: -

- (a) Where applicable comply with the specific obligations imposed on them in terms of the General Data Protection Regulation (GDPR) in respect of the specific role they fulfil in terms of providing the services as agreed between the parties; and
- (b) Take implement and maintain all such technical and organizational security measures and procedure necessary or appropriate to preserve the security and confidentiality of the personal data and Confidential Information in its possession including the application of pseudonymization and encryption and to protect it against

unauthorized or unlawful disclosure access or processing accidental loss destruction or damage.

18.3. Each Party undertakes and agrees not to disclose to any unauthorized person any data compiled, collected or created as a result of implementation of this Agreement.

18.4. The Primary Mortgage Lender shall inform its customers/data subjects the use to which their personal data shall be put and shall obtain their consent for sharing the data with third parties including KMGT.

19. **Miscellaneous**

19.1. **Documents Required for Execution**

The Primary Mortgage Lender confirms that it has on or prior to the date of this Agreement provided to KMGT (in form and substance satisfactory to KMGT) the documents required for the execution of this Agreement.

19.2. **Business Day**

Any sum payable under this Agreement on a day which is not a Business Day shall be payable on the immediately following Business Day.

19.3. **No Waiver**

No failure or delay by KMGT in exercising any right or remedy under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise or waiver of any right or remedy preclude its further exercise or the exercise of any other right or remedy.

19.4. **Severability**

19.4.1. Each provision of this Agreement is severable and distinct from the others. The invalidity, illegality or unenforceability of any one or more provisions of this Agreement at any time shall not in any way affect or impair the validity, legality and enforceability of the remaining provisions of the Agreement.

19.5. **Good Faith**

The Parties shall act in good faith in the performance of all their obligations and in exercise of all their rights, powers and privileges hereunder.

19.6. **Amendments**

19.6.1. No amendment, modification or termination of any provision of this Agreement shall be effective unless the same shall be in writing and signed or executed by KMGT and the Primary Mortgage Lender.

19.6.2. Notwithstanding anything contained in Clause 19.6.1 above, KMGT may amend and modify the Schedules of this Agreement upon prior intimation in writing to the Primary Mortgage Lender, after which such Schedules shall stand modified from the date of such amendments notwithstanding any default in KMGT’s notification obligation.

19.6.3. Notwithstanding anything contained in Clause 19.6.1 above, KMGT may amend and modify the RSF Manual from time to time and shall communicate such amendments to the Primary Mortgage Lender in writing. The RSF Manual shall stand modified from the date of such amendments notwithstanding any default in KMGT’s notification obligation.

19.7. **Reconstruction**

Any reconstruction, division, reorganisation or change in the constitution of KMGT or its absorption in or amalgamation with any other person or body or the acquisition of all or part of its undertaking by any other person or body shall not in any way prejudice or affect its rights or obligations under this Agreement.

19.8. **Successors and Assigns**

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors, permitted assigns and transferees of the Parties, provided that the Primary Mortgage Lender may not assign or transfer any of its rights or obligations thereunder to any person or body without the prior written consent of KMGT which may not be unreasonably withheld. Subject to the terms of this Agreement, KMGT shall be fully and unconditionally entitled to assign or otherwise transfer all its rights under this Agreement.

19.9. **Key Persons**

19.9.1. Each Party shall, from time to time, appoint, authorize and designate at least two (2) officers as contact persons (“**Key Persons**”) to liaise with the other Party on any matter arising out of or pursuant to this Agreement.

19.9.2. The initial Key Persons shall be:

Party	Key Persons	
KMGT	<i>Name: Nyale Yanga Designation: Chief Finance Officer, KMRC Address: Old Mutual Tower, 27th Floor, Upperhill, P. O. Box 15494-00100, Nairobi Email: kmgmt@kmrc.co.ke</i>	<i>Name: Elisha Nyikuli Designation: Head of Legal and Corporate Secretary KMRC Address: Old Mutual Tower, 27th Floor, Upperhill, P. O. Box 15494-00100, Nairobi Email: kmgmt@kmrc.co.ke</i>
Primary Mortgage Lender	<i>Name: [.....] Designation: [.....] Address: [.....] Email: [.....]</i>	<i>Name: [.....] Designation: [.....] Address: [.....] Email: [.....]</i>

19.9.3. Any change in the Key Person shall be communicated in writing by the Parties at least five (5) Business Days in advance of the proposed change.

19.10. Notices

19.10.1. Method of Giving Notices

A notice, consent, approval or other communication (each a “**Notice**”) to be made under or in connection with this Agreement shall be in writing and shall be:

- (i) delivered by hand or reputable overnight courier to its registered office;
- (ii) transmitted by facsimile to its main fax number; or
- (iii) sent by email to its email address.

19.10.2. Addresses

The address and fax number (and the department or officer, if any, for whose attention the Notice is to be made) of each Party for any Notice to be made or delivered under or in connection with this Agreement is as set out in Schedule H – Address for Notice - to this Agreement, or any substitute address or fax number or department or officer as the Party may notify to the other Party by not less than five (5) Business Days’ notice.

19.10.3. Delivery

Any Notice given to a Party in accordance with this Clause 19.10 shall be treated as having been given and received:

- (i) on the day of delivery, if given by hand delivery and delivered before 5 pm on a Business Day, otherwise on the immediately following Business Day;
- (ii) on the second Business Day after posting, if sent by overnight courier;
- (iii) on the day of transmission, if transmitted by facsimile and the transmission report states that the transmission was sent in full and without error and the transmission was completed before 5 pm on a Business Day, otherwise on the immediately following Business Day;
- (iv) on the day of actual receipt (and if such day is not a Business Day, then on the immediately following Business Day), if sent by email.

19.11. Entire Agreement

The making, execution and delivery of this Agreement by the Parties have been induced by no representations, warranties, statements or agreements other than those herein expressed. This Agreement, including the Schedules, annexures and appendices attached hereto, embodies the entire understanding of the Parties, and there are not further or other agreements or understandings, written or oral, in effect among the Parties relating to the subject matter hereof.

19.12. **Governing Law**

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

19.13. **Jurisdiction**

The Parties agree that any dispute or difference in connection with the interpretation of this Agreement or the performance by any Party of its obligations shall be referred to the High Court of Kenya for resolution and the Parties agree that the High Court of Kenya shall have jurisdiction to entertain all legal actions arising out of this Agreement.

Signature Pages

In Witness Whereof, the Parties have caused this Agreement to be executed as a deed by their duly authorized representatives as of the Signing Date.

As Kenya Mortgage Refinance Company PLC

<p>For and on behalf of Kenya Mortgage Guarantee Trust through Kenya Mortgage Refinance Company PLC</p> <p>Name:</p> <p>Designation:</p> <p>in the presence of: signature of Witness</p> <p>Name:</p> <p>Address:</p>		<p>Signature</p> <p>.....</p> <p>Signature</p> <p>.....</p>
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As [.....]

<p>For and on behalf of [.....] through its authorised signatory</p> <p>Name:</p> <p>Designation:</p> <p>in the presence of: signature of Witness</p> <p>Name:</p> <p>Address:</p> <p>ID/Passport No:</p>		<p>Signature</p> <p>.....</p> <p>Signature</p> <p>.....</p>
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Schedule A - Guarantee Cover Request

[ON THE LETTERHEAD OF THE PRIMARY MORTGAGE LENDER]

[Date]

To

Kenya Mortgage Guarantee Trust
[insert address] (hereinafter referred to as "KMGT")

GUARANTEE COVER REQUEST

Dear Sirs:

1. Please refer to the Master Mortgage Guarantee Agreement dated [●] ("**Agreement**") entered into between KMGT and [●], as the Primary Mortgage Lender in respect of the Guarantee Facility. Terms used in this Guarantee Cover Request but not defined shall, unless the context otherwise requires, have the same meanings as in the Agreement.
2. Pursuant to the provisions of Clause 5 of the Agreement, we hereby give notice that we are desirous of availing the Guarantee Cover stated below on the terms and conditions stated in the Agreement. We request KMGT to make arrangements for provision of the Guarantee Cover.
4. We, as the Primary Mortgage Lender hereby certify as follows:
 - (a) all the conditions precedent set out in Clause 6 of the Agreement have been fulfilled or deferred/waived by KMGT in writing;
 - (b) the representations and warranties set out in Clause 12 are true and correct on the date hereof as if such representations and warranties had been made on the date hereof;
 - (c) no Moral Hazard Event has occurred or continues to occur with regard to the Primary Mortgage Lender;
 - (d) that it is in compliance with the Prudential Guidelines of the CBK/ SACCO Societies Regulatory Authority (SASRA);
 - (e) that the Primary Mortgage Lender shall continue to be bound by the covenants contained in the Agreement; and
 - (f) the execution of the Guarantee Cover hereby requested by the Primary Mortgage Lender shall not result in a breach of its organisational documents or any provision of any document to which the Primary Mortgage Lender is a party or by which the Primary Mortgage Lender is bound.
6. Please find enclosed the details of the Mortgage Loan Portfolio documents required to be submitted with the Guarantee Cover Request in terms of Clause 5.3 of the Agreement.
7. The provisions hereof shall *mutatis mutandis* form part of the Agreement, notwithstanding anything to the contrary.

Yours faithfully,

for and on behalf of
[●]

By:
Its:

Witnesses:

1 _____
Name:
Address:

2 _____
Name:
Address:

[Annexure: Details of the Mortgage Loan Portfolio]

Data as of MM/YY

	1	2	3	4	5	6	7	8	9	10	11	12
No.	Collateral Code	Loan Ref.No.	Borrower's A/c No.	Borrower(s) Name(s)	Gender Male/Female	Owner Occupied (Y/N)	Mortgage Property Address	Property Province	Gross Monthly Income	Original Loan Amount	Original Loan Tenor	Remaining Loan Tenor

13	14	15	16	17	18	19	20	21	22	23
Loan Maturity Date	Loan Classification (Normal, Sub-Standard, Doubtful Loans)	Loans Outstanding balance as at _____	Loan Arrears Balance	No. days in Arrears	Loan Instalment Amount	Loan Fully Disbursed (Y/N)	Repayment Frequency	Loan to Value Ratio	Interest Rate	Purchase Price of Property

24	25	26	27	28	29	30
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Original Valuation as at (indicate date of valuation)	Current Property Valuation	Maximum Mortgage Loan amount	Loan Pricing	Size of Housing Unit * (if applicable)	Does the borrower(s) have any other housing loans with guarantor	Guarantee Expiry Date*

Schedule B – Guarantee Cover Agreement

THIS GUARANTEE COVER AGREEMENT (this **Agreement**) is made on this [●] day of [●], [20●] **BETWEEN**

- A. **KENYA MORTGAGE REFINANCE COMPANY PLC**, a limited liability company incorporated and existing under the laws of Kenya and bearing registration number PLC-LXSM9G and of P. O. Box 15494-00100, and of Old Mutual Tower, Upperhill, Nairobi, Kenya in its capacity as the trustee of **KENYA MORTGAGE GUARANTEE TRUST**, a Common Law Trust set up by the Kenya Mortgage Refinance Company, (hereinafter referred to as the “**KMGT**”, which expression shall, where the context so permits, mean and include its successors and assigns);

AND

- B. [.....], a [.....] under the laws of Kenya with registration number [.....] and with its registered office at [.....], Kenya and a [financial institution]/[SACCO Society] registered under the laws of Republic of Kenya and licensed by the Central Bank of Kenya/the Sacco Societies Regulatory Authority (hereinafter referred to as the “**Primary Mortgage Lender**” or “**(PML)**” which expression shall include, where the context so permits, its successors and assigns).

(hereinafter collectively referred to as **Parties** and each individually as a **Party**).

WHEREAS:

- A. The Parties have entered into the Master Mortgage Credit Guarantee Agreement (as defined below), pursuant to which KMGT has agreed to provide the Primary Mortgage Lender with a Guarantee Facility under which, from time to time, KMGT may extend guarantee covers to specified mortgage portfolios following a request to do so by the Primary Mortgage Lender;
- B. The PML has originated Eligible Mortgage Loans listed in Annex A of the Guarantee Cover Agreement;
- C. The Primary Mortgage has, vide a Guarantee Request dated [●], requested KMGT to make arrangements for a Guarantee Cover in respect of the Eligible Mortgage Loans listed in Annexure A; and
- D. KMGT has, in consideration of the Guarantee Fee, agreed to extend to the Primary Mortgage Lender the requested Guarantee Cover on the terms and conditions set forth in this Agreement and the Master Mortgage Credit Guarantee Agreement.

NOW, THEREFORE, in view of the foregoing and in consideration of the mutual benefits to be derived and the representations and warranties, covenants and agreements contained herein and

other good and valuable consideration, the sufficiency of which is hereby acknowledged and intending to be legally bound, the Parties hereby agree as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless specifically defined herein below or where the context requires otherwise, all capitalized terms used in this Agreement (including the recitals) but not defined herein shall have the meanings assigned to them under the Master Agreement.

“**Agreement**” is defined in the preamble hereof;

“**Guarantee Cover Request**” means the Guarantee Cover Request (as defined in the Master Agreement) pursuant to which this Agreement is entered into;

“**Guarantee Fee**” means [insert];

“**Master Agreement**” means the Master Mortgage Credit Guarantee Agreement dated [●] entered into between KMGT and the Primary Mortgage Lender;

“**Primary Mortgage Lender**” is defined in the preamble hereof;

1.2 Interpretation

The provisions of Clause 1 of the Master Agreement shall be incorporated by reference into this Agreement and apply, *mutatis mutandis*, hereto.

2. RELATIONSHIP WITH MASTER AGREEMENT

2.1 In extending the Guarantee Cover, the Primary Mortgage Lender and KMGT shall be relying on the terms and conditions set forth in the Master Agreement, which shall be binding on the Parties. The provisions of the Master Agreement, to the fullest extent applicable, shall stand incorporated herein and be deemed to form an integral part of this Agreement.

2.2 In the event of any conflict or inconsistency between the provisions of this Agreement and any other documents executed or referenced herein, the following order of precedence shall apply:

- a. Master Agreement: The terms of the Master Agreement shall prevail over any conflicting or inconsistent provisions in the Cover Agreement or the Manual;
- b. This Agreement: The terms of this Agreement shall prevail over any conflicting or inconsistent provisions in the Manual;
- c. RSF Manual: The provisions of the Manual shall apply except to the extent they are inconsistent with the terms of the Master Agreement or the Cover Agreement.

3. GUARANTEE COVER

3.1 Scope

The Guarantee Cover contained in this Agreement is made in respect to the Mortgage Loans detailed in Schedule 1 hereto (“Specified Mortgage Loan Portfolio”). KMGT agrees to guarantee the repayment of the Specified Mortgage Loan Portfolio, subject to the terms and conditions set forth in this Agreement.

3.2 Guarantee Obligation

Subject to the terms and conditions of this Guarantee Cover Agreement and the Master Agreement, KMGT hereby guarantees to the Primary Mortgage Lender the payment obligations under each Mortgage Loan in the Specified Mortgage Loan Portfolio.

3.3 Guarantee Cover Amount

KMGT’s liability under each Mortgage Loan in the Specified Mortgage Loan Portfolio shall be limited to the Guaranteed Amount for that Mortgage Loan.

3.4 Payment of Guarantee Fees

As consideration for the issue of the guarantee in clause 3 above, the Primary Mortgage Lender shall pay KMGT the Guarantee Fee. This amount may be amended in accordance with the Master Agreement.

3.5 Effective Date

This Agreement shall become effective on receipt of the Guarantee Fee by KMGT.

3.6 Primary Mortgage Lender Obligations

The Primary Mortgage Lender shall comply with the obligations set out in the Master Agreement including but without limitation:

- a) The Covenants and Undertakings set out in Schedule D of the Master Agreement;
- b) The Conditions Precedent set out in Schedule E of the Master Agreement;
- c) The Representations and Warranties set out in Schedule F of the Master Agreement; and
- d) The Guarantee Eligibility Requirements set out in Schedule G of the Master Agreement.

4. GUARANTEE CLAIMS REQUEST

Any claims made under this Agreement shall be made subject to and in accordance with the terms set out in clause 8 of the Master Agreement.

5. REPRESENTATIONS AND WARRANTIES

- 5.1 The representations and warranties set out in Section 11 (*Representations and Warranties*) of the Master Agreement shall be made and are deemed to be made herein, *mutatis mutandis*, for the benefit of KMGT as if set out in this Agreement in full.
- 5.2 The Primary Mortgage Lender acknowledges that KMGT enters into this Agreement on the basis of, and in full reliance on, each of the representations and warranties referred to in Section 11 of the Master Agreement.

6. **TERMINATION OF THE PRIMARY MORTGAGE LENDER'S OBLIGATIONS**

This Agreement shall subsist until terminated in accordance with clause 13 of the Master Agreement.

7. **GENERAL**

8.1 **Notices**

The provisions of Clause **Error! Reference source not found.** of the Master Agreement shall be incorporated by reference into this Agreement and apply, *mutatis mutandis*, hereto.

8.2 **Governing Law**

This Agreement shall be governed by the laws of the Republic of Kenya.

8.4 **Jurisdiction**

In the event any difference or dispute arises in relation to the subject matter of this Agreement, the High Court of Kenya shall have jurisdiction to entertain all legal actions relating to this Agreement.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as a deed by their duly authorised officers as of the date first above written.

<p>For and on behalf of Kenya Mortgage Guarantee Trust by the Kenya Mortgage Refinance Company PLC as Trustee</p> <p>Name:</p> <p>Designation:</p> <p>in the presence of: signature of Witness</p> <p>Name:</p> <p>Address:</p>		<p>Signature</p> <p>.....</p> <p>Signature</p> <p>.....</p>
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<p>For and on behalf of [.....] through its authorised signatory</p> <p>Name:</p> <p>Designation:</p> <p>in the presence of: signature of Witness</p> <p>Name:</p> <p>Address:</p> <p>ID/Passport No:</p>		<p>Signature</p> <p>.....</p> <p>Signature</p> <p>.....</p> <p>.....</p>
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SCHEDULE 1 - SPECIFIED MORTGAGE LOAN PORTFOLIO

Schedule C - Claim Request

[ON THE LETTERHEAD OF THE PRIMARY MORTGAGE LENDER]

[Date]

To

Kenya Mortgage Guarantee Trust
[insert address] (hereinafter referred to as "KMGT")

GUARANTEE CLAIM REQUEST

Dear Sirs:

1. Please refer to the Master Mortgage Guarantee Agreement dated [insert] ("**Master Agreement**") entered into between KMGT and [insert], and the Guarantee Cover Agreement dated [insert]. Terms used in this Guarantee Claim Request but not defined shall, unless the context otherwise requires, have the same meanings as in the Agreement.
2. Pursuant to the provisions of Clause 8 of the Master Agreement and Clause 4 of the Guarantee Cover Agreement, we hereby give notice that we are desirous of claiming payment under the Guarantee Cover Agreement following default by a Mortgage Debtor. The amount payable under this Guarantee Claim Request is KES. [insert] ("the Claim Amount").
3. We confirm that the claim herein is valid as provided for under clause 8.3 of the Master Agreement.
4. We provide/attach the following supporting documentation:
 - a) List of outstanding principal balance for each of the Mortgage Loans submitted for claims and the relevant Claim Amounts thereunder;
 - b) The payments track record of the Borrower from the date of commencement of the mortgage loan to the month preceding the date of submission of the Claims Request;
 - c) Evidence of actions taken by the Primary Mortgage Lender for rescheduling/restructuring (on best effort basis) of the Eligible Mortgage Loan. This should indicate the dates, documentation and the detailed actions taken to reschedule/restructure the Eligible Mortgage Loan and the results of the rescheduling/restructuring;
 - d) Copy of all demands and communication with the Mortgage Debtor including the Statutory Notice;
 - e) Evidence of recovery/foreclosure proceedings;
 - f) Confirmation that the Representations and Warranties provided by the Primary Mortgage Lender are valid as at the date of submission of the Claims Request.

5. We, as the Primary Mortgage Lender hereby certify that we shall provide any other documents that may be required by KMGT to verify the claims.
6. We request you to credit the following account with the Claim Amount:

[insert account details]
7. The provisions hereof shall *mutatis mutandis* form part of the Agreement, notwithstanding anything to the contrary.

Yours faithfully,

for and on behalf of
[●]

By:
Its:

Witnesses:

1 _____
Name:
Address:

2 _____
Name:
Address:

Schedule D - Covenants and Undertakings

Part A: Positive Covenants and Undertakings

- a. The Primary Mortgage Lender shall do everything necessary to: (i) create and maintain the relevant securities under the Mortgage Loans in full force and effect at all times; and (ii) keep all licenses and permissions for carrying on its business intact and operative in all respects;
- b. The Primary Mortgage Lender shall pay all taxes payable in respect of any of the transactions, services or facilities contemplated by the Guarantee Cover;
- c. The Primary Mortgage Lender shall comply with Applicable Laws (including the Prudential Guidelines) in respect of the conduct of its business, ownership of its assets and properties and performance of its obligations under this Agreement and the Guarantee Agreement;
- d. The Primary Mortgage Lender shall pay and keep paid up the Taxes due from it to any Government;
- e. The Primary Mortgage Lender shall ensure that the reporting requirements set out in this Agreement are complied with to the satisfaction of KMGT;
- f. The Primary Mortgage Lender shall ensure that its books of records and financial statements are prepared in accordance with International Financial Reporting Standards and generally accepted accounting principles applied consistently in Kenya and reflect a true and fair view of its financial condition as at the end of the period to which those financial statements relate and of the results of its operations during such period;
- g. The Primary Mortgage Lender shall comply with all the terms and conditions of this Agreement including but not limited to all the covenants, undertakings, and warranties set forth herein;
- h. The Primary Mortgage Lender shall hold and maintain custody of the Mortgage Loan file in respect of each Eligible Mortgage Loan with due and reasonable care and shall take all necessary steps to prevent any loss or damage to the Mortgage Loan files;
- i. The Primary Mortgage Lender shall make prompt payment of any fees due and payable to KMGT in accordance with this Agreement and the Guarantee Cover Agreement;
- j. The Primary Mortgage Lender shall comply with the Environmental and Social Policy and obtain all necessary regulatory clearances in its housing finance lending operations;
- k. The Primary Mortgage Lender shall have a dedicated officer or team to take prompt actions of Mortgage Loans that fall into arrears;
- l. The Primary Mortgage Lender shall at all times maintain an accurate and complete set of books and records in relation to the servicing of the Eligible Mortgage Loans covered under the Guarantee Cover. Such books and records, together with the Mortgage Loans file with respect to each Eligible Mortgage Loan, shall be available for inspection by the Trustee or its authorized representatives after giving ten (10) Business Days' advance notice in writing;
- m. Comply with any correct actions required in accordance with the directions of KMGT;
- n. Comply with the Arrears/Delinquency Management processes set out in the RSF Manual; and
- o. The Primary Mortgage Lender shall submit all Eligible Mortgage Loans subsisting at the time of issue of a Guarantee Cover Request except to the extent that such Eligible Mortgage Loans have already been submitted under previous Guarantee Cover Requests.

Part B: Negative Covenants and Undertakings

- a. The Primary Mortgage Lender shall not deliver the application for Guarantee Cover if the representations and warranties contained in this Agreement are not true or correct or are misleading;
- b. Unless and to the extent, specifically permitted otherwise in terms of this Agreement, the Primary Mortgage Lender shall not, except with the prior written consent of KMGT:
 - (i) sell, transfer or otherwise dispose of in any manner whatsoever, or part with possession of any Mortgage Loan covered under any Guarantee Cover;
 - (ii) take any action which may have a material adverse effect on the ability of any Mortgage Debtor to perform its obligations under this Agreement; and
 - (iii) assign or otherwise transfer or terminate this Agreement and the Guarantee Cover Agreement.

Schedule E - Conditions Precedent

Part A: Conditions Precedent to Application for a Guarantee Cover

- a. The Primary Mortgage Lender must have properly executed and returned the Master Mortgage Guarantee Agreement;
- b. The Primary Mortgage Lender must have prepared a Mortgage Loan Portfolio in the form prescribed by KMGT from time to time; and
- c. The warranties and representations of the Primary Mortgage Lender must be true and correct as at the date of application for the Guarantee Cover and the application shall contain a statement to that effect.

Part B: Conditions Precedent to issuance of a Guarantee Cover

- a. the Primary Mortgage Lender has complied with Part A of this Schedule E - Conditions Precedent;
- b. KMGT has received a duly completed application for Guarantee Cover signed by an authorized representative of the Primary Mortgage Lender;
- c. KMGT is reasonably satisfied that the statements and certifications made in the application for Guarantee Cover are true and correct;
- d. KMGT is reasonably satisfied that no Moral Hazard Event has occurred and is continuing;
- e. KMGT is satisfied that all regulatory and corporate approvals relating to the Guarantee Cover and completion of all actions under this Agreement have been issued and are subsisting;
- f. KMGT has received all satisfactory evidence for KMGT to determine that the Primary Mortgage Lender is an Eligible Financial Institution;
- g. Satisfactory completion of the Portfolio Review, if KMGT so determines;
- h. KMGT is reasonably satisfied that there is no law, directive, notification, order or decree of any Authority, the CBK, SASRA or any Court in Kenya, as the case may be, which prevents or restricts KMGT from issuing the Guarantee Cover;
- i. the representations and warranties set out in this Agreement shall as of the date of granting of the Guarantee Cover remain true and correct;
- j. KMGT is satisfied that the issuance of the Guarantee Cover would not result in any of the Prudential Guidelines being violated, or in the event it does, necessary waivers have been obtained by the Primary Mortgage Lender from the CBK and documentary evidence confirming the same has been provided to KMGT;
- k. After issuance of the Guarantee Cover, the Primary Mortgage Lender would not be in violation of:
 - (i) its constitutional documents;
 - (ii) any provision contained in any document to which the Primary Mortgage Lender is a party (including this Agreement) or by which the Primary Mortgage Lender is bound; or
 - (iii) any Applicable Law, authorization or agreement or other document binding on the Primary Mortgage Lender directly or indirectly limiting or otherwise restricting the Primary Mortgage Lender's power to incur Financial Indebtedness.
- l. A Guarantee Cover Agreement has been executed in the form provided in Schedule B to this Agreement;
- m. Applicable security for the Mortgage Loans has been perfected in accordance with

Applicable Laws, including registration/filing with: (a) the Companies Registry, Collateral Registry and/or the Lands Registry and certificates of registration issued in respect of the same; and

- n. Copies of the Mortgage Portfolio Documents have been delivered to KMGT in such form and manner as may be required by KMGT.

Schedule F -Primary Mortgage Lender Representations & Warranties

Part A: Primary Mortgage Lender Representations & Warranties

- a. **Status:** The Primary Mortgage Lender is a company limited by shares incorporated/ SACCO Society registered and licensed by the Central Bank of Kenya/the Sacco Societies Regulatory Authority and existing under the laws of Kenya and has all the licenses necessary to carry on the business in which it is engaged.
- b. **Powers:** The Primary Mortgage Lender has full power and authority to provide the Mortgage Portfolio Documents and to perform its obligations thereunder and has taken all necessary corporate action(s) to authorise the execution, delivery and performance thereof.
- c. **Binding obligations:** The Guarantee Documents constitute legal, valid and binding obligations of the Primary Mortgage Lender enforceable against it in accordance with its terms.
- d. **No Conflict:** The execution and delivery by the Primary Mortgage Lender of the Guarantee Documents and its compliance with or the performance of the terms and provisions thereof by the Primary Mortgage Lender will not:
 - (i) contravene any provision of the constitutional documents of the Primary Mortgage Lender;
 - (ii) contravene any provision of any Applicable Law, operating license, or any order, writ, injunction or decree of any court or Government having the force of law; and
 - (iii) conflict or be inconsistent with or constitute a default under or result in a breach or acceleration of, any material contract, agreement or other instrument to which the Primary Mortgage Lender is a party, or which may be applicable to the Primary Mortgage Lender or any of its assets.
- e. **No Litigation:** There is no pending investigation, litigation, arbitration or other proceedings against the Primary Mortgage Lender before any court, administrative or other competent tribunal that is likely to:
 - (i) have a material adverse effect on the Primary Mortgage Lender's ability to perform its obligations under this Agreement; or
 - (ii) affect the legality, validity or enforceability of the Guarantee Documents.
- f. **Consents:** No consent, approval, authorization or order of any court or Government is required for the execution, delivery and performance by the Primary Mortgage Lender of, or compliance by the Primary Mortgage Lender with, this Agreement or the consummation of the transactions contemplated by this Agreement, except for such consents, approvals, authorizations or orders, if any, that have been obtained prior to the execution of this Agreement and/or on the execution of the Guarantee Cover, as applicable.
- g. **Compliance with Applicable Law:** The Primary Mortgage Lender is, in all material respects, in compliance with all Applicable Laws in respect of the conduct of its business and the ownership of its property.
- h. **KMRC's Environment and Social Policy:** The Primary Mortgage Lender is, in all material respects, in compliance with the Environment and Social Policy.
- i. **Change of Applicable Law:** No event, condition, circumstances (including, without limitation, force majeure) or any change of Applicable Law has occurred which would have a material adverse effect on the Primary Mortgage Lender's ability to carry on its

- business or to meet, in the normal course, its obligations under the Guarantee Documents.
- j. **Eligible Financial Institution:** The Primary Mortgage Lender is an Eligible Financial Institution.
 - k. **Accuracy of information:** All financial, legal and commercial information, written statement, report or other document prepared and/or furnished or to be prepared and/or furnished by the Primary Mortgage Lender pursuant to the Guarantee Documents, or any information or documents otherwise provided in connection with the transactions contemplated hereby are true, accurate and complete, and the Primary Mortgage Lender has not omitted or concealed any material facts which would render such information, untrue, incorrect, inaccurate or misleading.
 - l. **Solvency of the Primary Mortgage Lender:** No act of Insolvency has occurred in relation to the Primary Mortgage Lender.

Part B: Mortgage Loan Portfolio Representations & Warranties

- a. **Accuracy of information:** The information provided with respect to any Eligible Mortgage Loan in the Mortgage Loan Portfolio is complete, true and correct;
- b. **Compliance with Eligibility Criteria:** The Mortgage Loan Portfolio as a whole, and each Eligible Mortgage Loan, satisfies, in all respects, the Eligibility Criteria.
- c. **Compliance with Applicable Environmental and Social Requirements:** In respect of each Eligible Mortgage Loan, to the best knowledge of the Primary Mortgage Lender, the Mortgage Debtor and the Mortgage Property is in material compliance with KMRC Environmental and Social Policy, and neither the Primary Mortgage Lender, nor, to the Primary Mortgage Lender's knowledge, the Mortgage Debtor, has received any notice of any violation or potential violation of such Environmental and Social Policy.
- d. **Mortgage Loan Documents:** That all legal agreements entered into in respect to each Eligible Mortgage Loan constitute legal, valid and binding obligations of the Mortgage Debtor thereof and is enforceable in accordance with its respective terms.
- e. **Mortgage Security Agreement:** In respect of each Eligible Mortgage Loan, there is in place a valid, existing and enforceable first exclusive legal or equitable mortgage on the Mortgage Property that has been duly perfected in accordance with Applicable Laws, and the Mortgage Property is not subject to any other security interest ranking ahead of or pari passu with the charge of the Primary Mortgage Lender.
- f. **Defaulted Mortgage Loans:** There has not been any payment default by the Mortgage Debtor in respect of the Eligible Mortgage Loan.
- g. **Origination and Servicing:** The Primary Mortgage Lender has, with respect to each Eligible Mortgage Loan, applied and adopted origination and servicing practices that have been in all respects proper, prudent, customary in the mortgage financing industry and in compliance with Applicable Laws.

Schedule G - Guarantee Eligibility Requirements

A. Primary Mortgage Lenders Eligibility Criteria

The Primary Mortgage Lenders who shall be eligible for the Guarantee Facility shall be financial institutions which:

- a. are licensed and regulated by the Central Bank of Kenya or the Societies Regulatory Authority (SASRA) and are engaged in the business of housing finance.
- b. have unqualified audited financial statements for the most recent financial year.
- c. is in good standing with its regulator;
- d. have sufficient high-quality liquid assets to withstand a thirty (30) day stressed funding scenario that is specified by regulators.
- e. maintain capital ratios as required by the Central Bank of Kenya and/or SASRA.
- f. have been profitable for two (2) out of the last three (3) years as evidenced by Audited Financial Statements.
- g. have a satisfactory methodology for the determination of incomes of informal sector workers.
- h. have clearly spelt out internal controls and segregation of duties in loan underwriting, documentation and servicing.
- i. have computerised systems to handle customers' accounts, particularly relating to servicing of the Mortgage Loans.
- j. have NPLs of Mortgage Loans that are below industry average.
- k. have officers responsible for loan underwriting that have the necessary expertise and experience and that shall proactively follow-up on loans that fall into arrears.
- l. have well documented procedures for loan origination, underwriting and servicing.
- m. have senior management that is committed to lending to low-income borrowers including those in the informal sector.

B. Mortgage Loans Eligibility Criteria

The Mortgage Loans which shall be eligible for the Guarantee Facility which meet the following criteria:

- a. The mortgage loan is for the purchase, construction or renovation of a residential unit, and is fully disbursed to or for the account of the borrower and there is no obligation for the PML to advance additional funds thereunder;
- b. The borrower is a natural person with a source of income (formal or informal) and, to the best knowledge of the PML, is not an undischarged bankrupt nor have any bankruptcy proceedings been commenced against the borrower;
- c. The mortgage loan is in compliance with Applicable Laws, in particular, the Prudential Guidelines issued by the Central Bank of Kenya and SASRA;
- d. The purchase price of the housing unit serving as collateral for the mortgage loan must not exceed KES 4.5 million;
- e. The principal mortgage loan amount must not exceed KES 4 million;

- f. The loan to value ratio must not exceed 90%;
- g. The mortgage loan must not have previously been classified as non-performing;
- h. The borrower under the mortgage loan must have proven willingness to repay the loan evidenced by the criteria set out in the RSF Manual;
- i. The Mortgage Debtor must have proven ability to repay the loan evidenced by the criteria set out in the RSF Manual;
- j. The Mortgage Loan is in compliance with the Environment and Social Policy;
- k. The Mortgage Loan repayment should be current on the date of submission for Guarantee cover;
- l. There is no default, breach, violation or event of acceleration existing under the Mortgage Loan Documents and no event which, with the passage of time or with notice and the expiration of any grace or cure period, would constitute a default, breach, violation or event of acceleration, and the Borrower has not waived any default, breach, violation or event of acceleration;
- m. The Mortgage Loan has not been prepaid in full and the Primary Mortgage Lender has not received any notification from the Mortgagor that a prepayment in full shall be made after the date of the Guarantee Cover Request;
- n. The Mortgage Loan Agreement and/or the Mortgage Security Agreement contains customary and enforceable provisions for enforcement of the Primary Mortgage Lender's rights and remedies against the Mortgage Property, including the right of the Primary Mortgage Lender to: (i) take possession of the Mortgage Property; (ii) sell/assign the Mortgage Property; (iii) commence foreclosure proceedings; and (iv) exercise any other enforcement procedure, right or remedy available under Applicable Laws;
- o. The Mortgage Security Document creates a valid, existing and enforceable exclusive and first mortgage (legal or equitable) on the Mortgage Property, including all improvements on the Mortgage Property, in favour of the Primary Mortgage Lender and such mortgage is duly perfected, in the case of a legal mortgage, through registration with the land registrar/sub-registrar, and in the case of an equitable mortgage, through actual possession of the Title Deeds;
- p. A substantially clean legal opinion has been obtained in respect of the Mortgage Debtor's title to, and encumbrances (if any) on, the Mortgage Property and creation and perfection of valid mortgage;
- q. The Mortgage Property is not subject to any bankruptcy proceeding or foreclosure proceeding or any other enforcement proceedings and the Mortgage Debtor has not filed for protection under applicable bankruptcy laws;
- r. The Mortgage Property is in the lawful possession of the Mortgage Debtor, and all inspections, licenses and certificates required to be made or issued with respect to the Mortgage Property and, with respect to the use and occupancy of the same, if any, have been made or obtained from the concerned Authorities;
- s. The Mortgage Property is insured against loss by fire, hazards of extended coverage and such other hazards as are customary in the area where the Mortgage Property is located. All such insurance policies contain a standard mortgagee clause naming the Primary Mortgage Lender, its successors and assigns as first loss payee and all premiums thereon have been paid. The Mortgage Security Document obligates the Mortgage Debtor thereunder to maintain all such insurance at the Mortgage Debtor's cost and expense, and on the Mortgage

Debtor's failure to do so, authorizes the Borrower to maintain such insurance at the Mortgage Debtor's cost and expense and to seek reimbursement therefor from the Mortgage Debtor.

Schedule H - Address for Notice