DEED OF SUBORDINATION

THIS DEED OF SUBORDINATION is made the ……. day of …….. Two Thousand and One and made **BETWEEN** **XXXXX LIMITED** a Limited Liability Company incorporated in the Republic of Kenya and of Post Office Box Number xxxxx Nairobi in the said Republic (hereinafter called "the Borrower" which expression shall where the context so admits include its successors and assigns) of the first part **AND XXXXX N.A.** a Banking Company incorporated in the United States of America and registered as a bank pursuant to the provisions of the Banking Act (Chapter 488 of the Laws of Kenya) in the said Republic and having its registered office in Nairobi in the said Republic and of Post Office Box Number xxxxx Nairobi in the said Republic (hereinafter called "the Senior Lender" which expression shall where the context so admits include its successors and assigns) of the second part **AND XXXXX AND BROTHERS LIMITED** a Limited Liability Company incorporated in the in the said Republic **AND XXXXX CHEMICALS LIMITED** a Limited Liability Company also incorporated in the Republic of Kenya and all of Post Office Box Number xxxxx Nairobi, in the said Republic (hereinafter both collectively called "the Subordinated Lenders" which expression shall where the context so admits include their respective successors and assigns) of the third part:

WHEREAS:

1. By a letter of offer dated the 15th day of December 2000 from the Senior Lender to the Borrower, the Senior Lender confirmed that it was willing to avail credit facilities (hereinafter called "the credit facilities") to the Borrower subject to the terms and conditions therein specified.

2. It was (inter alia) a condition precedent of the granting of the credit facilities that the Borrower would subordinate all the loans and facilities (hereinafter called "the subordinated loans") advanced by the Subordinated Lenders to the Borrower to the credit facilities of the Senior Lender.

3. The Borrower and the Subordinated Lenders agree with each other and each of them agrees with the Senior Lender that the amounts of the Subordinated Loans which are for the time being outstanding shall be subordinated on the terms set out in this Deed.

NOW IN CONSIDERATION of the premises and in pursuance of the said agreements this **DEED WITNESSES** as follows:

1. DEFINITIONS

1.1 In this Deed following words and expressions shall have the following meanings unless otherwise expressly provided or the context otherwise requires:

(a) **"Advance"** means any amount drawn down by the Borrower or otherwise made available to the Borrower by either the Senior Lender or the Subordinated Lenders

(b) **"Arrangement"** means any kind of transaction, contract, arrangement or understanding

(c) **"Senior Lender's Loan Agreement"** means the credit facilities granted in pursuance of the letter of offer dated 15th December 2000 which is referred to above, as it may from time to time be varied in any respect

(d) **“Subordinated Loan”** means the credit or other facilities advanced by the Subordinated Lenders to the Borrower under the Subordinated Lenders’ Loan Agreement or the amount of it which is for the time being outstanding [together with all interest, fees, costs and other sums from time to time payable under that Agreement]

(e) **“Subordinated Lenders’ Loan Agreement”** means the loan agreements or any agreement which has been made or which shall be made between the Borrower and the Subordinated Lenders under clause 3 below (as it may from time to time be varied in any respect) under which the Subordinated Lenders have made or intend to make any advance to the Borrower

1.2 For the purposes of this Deed the “Subordination Period” is the period commencing on the date of this Deed and ending on the day after:

(a) the date on which the Borrower makes the payment (hereinafter referred to as the 'last payment') that results in its having no obligation (present, prospective or contingent) under the Senior Lender's Loan Agreement, if the Borrower produces evidence which satisfies the Senior Lender that the Borrower was not unable to pay its debts for the purposes' of sections 220 of the Companies Act (Chapter 486 of the Laws of Kenya) on the date of the last payment and will not become so as a result of the last payment;

(b) the second anniversary of the date of the last payment, if the Borrower does not produce evidence which so satisfies the Senior Lender unless on or before that second anniversary a petition is presented on which an administration order is made in relation to the Borrower or a winding up of the Borrower commences;

(c) in any other case, the date on which the administration order is discharged (unless a winding up of the Borrower has commenced) or the winding up of the Borrower is concluded for the purposes of the Companies (Winding Up) Rules or, if later, the last payment date.

1.3 The Senior Lender may by notice to the Borrower and the Subordinated Lenders make any modifications to the previous sub-clause which the Senior Lender considers appropriate if:

(a) any amendment is made to the Companies Act (Chapter 486 of the Laws of Kenya) or the Companies (Winding Up) Rules (or either is replaced) in a manner which the Senior Lender considers is relevant to the previous sub-clause; or

(b) the Senior Lender considers it appears that if the Borrower were to become insolvent it (or some or all of its affairs or assets) would be or would probably be within the scope of the insolvency law of a jurisdiction outside Kenya.

2. THE SUBORDINATED LOAN AGREEMENT

2.1. The Borrower and the Subordinated Lenders agree with each other, and each of them agrees with the Senior Lender, that:

(a) any variation (or purported variation) to the Subordinated Lenders' Loan Agreement; or

(b) any agreement between them which relates to the Subordinated Lenders' Loan Agreement;

shall be ineffective for all purposes unless and until the Senior Lender specifically consents to it in writing.

3. ADVANCE OF SUBORDINATED LOAN

3.1 Where the Borrower seeks to enter into a loan agreement with either or both of the Subordinated Lenders, the Borrower shall deliver to the Senior Lender a letter signed by the director of the Borrower outlining the terms of the proposed advance.

3.2. The Borrower shall not enter into a loan agreement or any arrangement with either or both of the Subordinated Lenders whereby monies are advanced to the Borrower unless the Senior Lender consents thereto and any such arrangement shall be ineffective for all purposes unless and until the Senior Lender specifically consents to it in writing.

3.3 In the event and to the extent only that any Court shall not permit reliance upon or restrict the ambit of clause 3.2 herein then the amount of the advance which is for the time being outstanding under that clause [together with all interest, fees, costs and other sums from time to time

payable under that Agreement or arrangement] shall be subordinated on the terms set out in this Deed.

4. SUBORDINATION

4.1 This clause applies during the Subordination Period while any amount **is** outstanding (in respect of principal or otherwise) or is committed (or conditionally committed) under the Senior Lender's Loan Agreement.

4.2 The Borrower shall not make, and the Subordinated Lenders shall not receive, any payment in respect of the principal amount of the Subordinated Loan.

4.3 The Borrower and the Subordinated Lenders shall not enter into an arrangement under which:

(a) the Borrower's obligations in respect of all or part of the principal amount of the Subordinated Loan are reduced, released or discharged; or

(b) the Subordinated Lenders are not to enforce those obligations either at all or in certain situations; or

(c) any right of the Subordinated Lenders in respect of all or any part of the principal amount of the Subordinated Loan is transferred to the Borrower, a person under the direct or indirect control of the Borrower or a person acting for the Borrower or for a person so controlled.

4.4 The Borrower shall not make a gift to the Subordinated Lenders or otherwise enter into an arrangement with or

for the benefit of the Subordinated Lender under which the Borrower will receive no consideration.

4.5 The Borrower shall not enter into an arrangement with or for the benefit of the Subordinated Lender for a consideration the value of which to Borrower is significantly less than the value of the consideration provided by the Borrower.

4.6 The Borrower shall not:

(a) make a loan or provide credit to the Subordinated Lenders (or permit any such to remain outstanding);

(b) provide a guarantee, mortgage or other security in respect of any liability or obligation incurred by the Subordinated Lenders whether after the date of this Agreement or otherwise;

(c) acquire any shares in, or bills, bonds or other securities issued by the Subordinated Lenders.

4.7 The Subordinated Lenders shall not, on the ground of any liability of the Borrower under the Subordinated Lenders' Loan Agreement, claim any set-off, abatement or other extinction or reduction in respect of an amount payable by either or both of them to the Borrower.

4.8 In the previous six sub-clauses references to the Subordinated Lenders include references to a person or persons under their direct or indirect control and to a person or persons acting for the Subordinated Lender or for a person or persons so controlled.

4.9 It is for the Borrower and the Subordinated Lenders to show that an arrangement which the Borrower enters into with or for the Subordinated Lender complies with the previous sub-clauses.

4.10 The Borrower shall not make any kind of distribution of its assets, whether in cash or otherwise, to its members; in particular, this includes an issue of shares as fully or partly paid bonus shares, the redemption or purchase of any of the Borrower's own shares, or the reduction of the Borrower's share capital or the declaration or payment of a dividend.

4.11 Any money or other asset which the Subordinated Lenders receive in contravention of this clause or clause 5.2 below shall be held by it apart from its other moneys and assets and shall stand charged by way of first fixed charge to secure the liabilities of the Borrower under the Senior Lender's Loan Agreement; and the Senior Lender's prior consent shall be necessary before the Subordinated Lenders deal with any such money or asset.

4.12 The obligations of the Borrower and the Subordinated Lenders under this clause are several, but each guarantees to the Senior Lender full and punctual compliance by the other.

5. BORROWER'S INSOLVENCY

5. 1 This clause applies if an insolvency of the Borrower commences while any amount is outstanding (in respect of

principal or otherwise) under the Senior Lender's Loan Agreement.

5.2 Upon the commencement of the insolvency, the restrictions in clause 4.2 and 4.3 shall extend also to all interest (and any other amount) payable under the Subordinated Lenders’ Loan Agreement.

5.3 Subject to clause 5.5, at the expiration of 30 days after the commencement of the insolvency the Borrower shall automatically cease to have any liability in respect to the Subordinated Loan.

5.4 Subject to clause 5.5, the Subordinated Lenders shall, within 40 days after the commencement of insolvency, deliver to the Senior Lender a release duly executed as a deed by the Subordinated Lenders of all the Borrower's liabilities in respect of the Subordinated Loan.

5.5 If, however, the Senior Lender notifies the Borrower and the Subordinated Lenders within 30 days after the commencement of the insolvency that the Senior Lender is satisfied that a release of the Borrower's liabilities for a specified amount in respect of the Subordinated Loan will result in its liabilities under the Senior Lender's Loan Agreement being paid in full by dividends in the insolvency, clauses 5.3 and 5.4 shall apply as if they referred to that amount instead of the entirety of the Subordinated Loan.

5.6 For the purposes of clause 5.5, the Senior Lender is entitled to make conservative assumptions and to adopt a conservative approach.

5.7 “Commencement of insolvency” means, in relation to the Borrower, any of the following:

(a) the appointment of a receiver, receiver and manager or administrative receiver over all or any part of the property of the Borrower.,

(b) the making of an administration or winding up order in relation to the Borrower or of an order which subjects the Borrower to any procedure under the insolvency law of a country outside Kenya;

(c) the presentation by the Borrower or its senior management of proposals to the Borrower's creditors, or to its principal financial creditors, for any rescheduling, refinancing or restructuring of all or a substantial part of the Borrower's financial debt or of its financial debt [except that due under bonds, notes, commercial paper and similar instruments].

5.8 In clause5.7 'financial debt' means liabilities of the Borrower in respect of:

(a) loan capital; or

(b) a banking facility, including an overdraft; or

(c) a foreign exchange contract or a currency or interest rate swap or similar contract; or

(d) a lease of plant or equipment (including an aircraft or a vessel) which may reasonably be regarded as a finance lease.

6. SENIOR LENDER'S RIGHTS

6.1 The Senior Lender is entitled:

(a) to make any variations to the Senior Lender's Loan Agreement, including variations which increase or reduce the obligations of the Borrower and/or lengthen or shorten their duration;

(b) to enter into any rescheduling, refinancing or reorganisation of the Borrower's liabilities under the Senior Lender's Loan Agreement;

(c) to take, vary, enforce, release or enter into any other arrangement in relation to any guarantee, mortgage or other security for or connected with the Borrower's liabilities under the Senior Lender's Loan Agreement.

6.2 None of the arrangements referred to in clause 6.1 will impair any of the obligations of the Borrower or the Subordinated Lenders under this Deed or any charge arising under clause 4. 1 1.

7. REPRESENTATIONS AND WARRANTIES

7. 1 The Borrower and the Subordinated Lender each represent and warrant to the Senior Lender:

(a) that this Deed is in all respects binding on both the Borrower and the Subordinated Lenders; and

(b) that during the three months before the date of this Deed, no arrangement was entered into which would

have contravened clause 4 if it had been entered into after the date of this Deed.

8. POWER OF ATTORNEY

8.1 The following power of attorney is irrevocable and is given by way of security for the purpose of securing the performance of the Subordinated Lenders' obligations under clause 5.4; but it cannot be exercised until the expiration of 30 days after the commencement of insolvency as defined in clause 5.

8.2 The Subordinated Lenders each appoint the Senior Lender its attorney on its behalf, and in its name or otherwise:

(a) to execute as a deed a release of all the Borrower's liabilities in respect of the Subordinated Loan; and

(b) to execute any other deeds or documents and take any other steps which are necessary to give effect to the release.

8.3 The release can be in any terms which the Senior Lender considers appropriate.

8.4 The Senior Lender can delegate the exercise of this power of attorney to any one or more of its directors or employees.

9. TRANSFERABILITY

9.1 The Subordinated Lenders may not effect any disposition in respect of any of its rights in relation to the

Subordinated Loan, or the interest on it, unless the person in whose favour the disposition is to be made and the Borrower have first executed a deed in terms satisfactory to the Senior Lender by which they each undertake to be bound by terms similar to those contained in this Deed.

9.2 The Senior Lender is freely entitled to effect any disposition of its rights under the Senior Lender's Loan Agreement, this Deed or any deed executed under clause 9. 1.

9.3 In this clause 'disposition' includes an equitable charge and a floating charge.

10. AMENDMENT

10.1 No amendment to this Deed is effective for any purpose unless it has been expressly agreed to in writing by the Senior Lender.

10.2 The Senior Lender does not need:

(a) the Subordinated Lenders’ consent to effect an amendment to this Deed which alters only the obligations of the Borrower and the corresponding rights of the Senior Lender;

(b) the Borrower's consent to effect an amendment of this Deed which alters only the obligations of the Subordinated Lender and the corresponding rights of the Senior Lender.

11. LAW

11.1 This Deed is governed by and shall be construed in accordance with Kenyan Law.

IN WITNESS whereof the Borrower and the Subordinated Lenders have respectively executed this Deed and caused their Common Seals to be hereunto affixed and the duly constituted Attorney of the Lender has hereunto set his hand the day and year first hereinbefore written.

SIGNED AS A DEED AND SEALED)
with the Common Seal of)
XXXXX LIMITED)
in the presence of:-)
)
Director)
)
Director/Secretary)

SIGNED by … … … … … … … … …)
the duly Authorised Attorney of)
XXXXX N. A. in the presence of:)
)
)
)
Advocate)

SIGNED AS A DEED AND SEALED)
with the **COMMON SEAL** of)
XXXXX)
AND BROTHERS LIMITED)
in the presence of:-)
)
Director)
)
Director/Secretary)

SIGNED AS A DEED AND SEALED)
with the **COMMON SEAL** of **XXXXX**)
CHEMICALS LIMITED)
in the presence of:-)
)
Director)
)
Director/Secretary)

Drawn By: