

# **STANDARD TERMS AND CONDITIONS GOVERNING THE SOCIAL ENTREPRENEURSHIP PROGRAM**

## **1. DEFINITIONS**

1.1 Capitalised terms used in these Standard Terms and Conditions Governing The Social Entrepreneurship Program ("Terms and Conditions") shall have the meaning given to them in the Funding Agreement, unless they are specifically defined in these Terms and Conditions.

1.2 The following words when used have the following meanings respectively set out below:-

"Application Form" means such application form that EUSMS shall provide for the application for the Funding Amount, which EUSMS may amend from time to time;

"Business Day" means a day that is not a Saturday, Sunday or a public or bank holiday in Kenya.

"Currency" shall mean Kenyan Shillings unless otherwise expressly specified by EUSMS.

"Entrepreneur" shall have the meaning given to it in the Funding Agreement, and shall include the person(s) (including any personal representatives, successors or assigns of such person) in whose name the Funding Amount was applied for, granted and/or maintained.

"EUSMS" refers to EUSMS gGmbH and its successors and assigns;

"Funding" means the arrangement between EUSMS and the Entrepreneur that is designed to provide funds to the Entrepreneur to support the Entrepreneur's business under the Social Entrepreneurship Program and the Funding Agreement.

"Funding Agreement" means the agreement between EUSMS and the Entrepreneur which sets forth the terms and conditions of the Funding (including its repayment) and the rights and obligations of both Parties and includes any supplements, amendments, variations or modifications to such agreement.

"Funding Amount" shall have the meaning given to it in the Funding Agreement.

"Kenyan Shillings" and the sign "KShs" or "KES" shall mean the lawful currency of Kenya.

"VAT" means any value added tax payable under the Value Added Tax Act, 2013 of Kenya or any other taxes, levies or charges whatsoever of a similar nature which may be substituted for or levied in addition to any such tax, by whatever name called.

1.3 Unless the context requires otherwise:-

- (a) the singular number shall include the plural and vice versa; and
- (b) references to persons shall include firms and corporations.

1.4 Headings of clauses are for ease of reference only and do not form any part of these

Terms and Conditions or be taken into consideration in the interpretation of these Terms and Conditions.

1.5 All references to statutes and EUSMS's terms and conditions are references to such statutes and terms and conditions as amended, modified, substituted or supplemented from time to time.

## **2. OTHER TERMS AND CONDITIONS**

In addition to these Terms and Conditions and the Funding Agreement, the terms and conditions, including any additions, amendments, variations, supplements and/or substitutions to such agreements, governing any other agreements ("Other Terms and Conditions") which the Entrepreneur and/or Guarantor have entered into with EUSMS, relating to the Funding or products or services linked to the Funding, shall also apply. The Entrepreneur and/or Guarantor are deemed to have read and/or understood such Other Terms and Conditions and will abide and be bound by them accordingly.

## **3. FUNDING**

3.1 Upon EUSMS's acceptance of the application for the Funding, EUSMS shall grant the Entrepreneur the Funding Amount denominated in the Currency on such terms as are set out in the Funding Agreement.

3.2 The obligation of EUSMS to disburse the Funding Amount or any part thereof is subject to the following conditions precedent:

(a) EUSMS's receipt of:

(i) the information and documents specified in the Application Form

(ii) the duly executed original Application Form;

(b) EUSMS's verification that the Entrepreneur has met such other criteria that EUSMS may stipulate from time to time;

(c) The Entrepreneur has an existing bank account OR mobile money account i.e. Mpesa, Airtel Money or T-kash in the Entrepreneur's name; and

(e) No event of default under Clause 7.1(a) to (p) subsists.

3.3 Notwithstanding that the conditions precedent as set forth in Clause 3.2 have been met, EUSMS shall have the absolute discretion to reject any application for the Funding without providing any reason whatsoever.

3.4 Monies disbursed under the Funding may only be applied by the Entrepreneur such purposes permitted by EUSMS and specified in the Funding Agreement.

3.5 EUSMS will disburse the monies under the Funding to the Entrepreneur after deductions of the applicable prevailing fees and charges for disbursement as may be prescribed by EUSMS' Bank or Mpesa service provider from time to time.

3.6 Any subsequent disbursement:

(a) shall be made by EUSMS before the first instalment (as defined in clause 4.1) is due; and

(b) shall be made only upon EUSMS's receipt of: (i) Fourteen (14) days' written notice (sent via mail or by such electronic means as may be permitted by EUSMS) of the

Entrepreneur's request for such subsequent disbursement; and (ii) certified true copies of a letter or other documentary proof as EUSMS may stipulate.

3.7 Upon request by the Entrepreneur, EUSMS may, at its absolute discretion, disburse the Funding Amount in a currency other than the Currency and may, for this purpose, effect the conversion of the relevant amount at EUSMS's own bank's rate of exchange then prevailing. For the avoidance of doubt, such conversion shall not prejudice the fact that the Funding Amount is denominated in the Currency.

3.8 Notwithstanding any other provision in these Terms and Conditions to the contrary, EUSMS may at its absolute discretion at any time without prior notice, and without any liability to the Entrepreneur whatsoever, cancel, alter, modify or review the Funding without giving any reason. If, upon a review of the Funding, EUSMS determines that the Funding should be terminated or reduced, EUSMS may, by notice to the Entrepreneur:

- (a) before the disbursement of the Funding Amount, declare the Funding to be cancelled or reduced, whereupon the Funding shall be cancelled or reduced and the Funding shall forthwith cease to be available or be available only for the reduced amount (as the case may be); or
- (b) in the event the Funding Amount has been disbursed, demand repayment of any or all of the amounts outstanding under or in connection with the Funding.

#### **4. REPAYMENT**

4.1 The Funding Amount shall be repaid by the Entrepreneur by way of instalments ("Instalments") comprising principal and/or interest as set out in the Funding Agreement, or as may be amended by the Parties from time to time.

4.2 Instalments shall be paid in full and in the Currency (or such other currency for payment that EUSMS may expressly accept in writing and in any event subject to EUSMS's own bank's prevailing rate of exchange) into EUSMS's bank account or Mpesa account as set out in the Funding Agreement on such dates as stated in the Funding Agreement ("Payment Due Dates"). Late payment interest and other charges will apply in the event of any overdue payment as stipulated in the Funding Agreement.

4.3 The Entrepreneur shall ensure that they have sufficient funds before the Payment Due Dates to meet the payments for the Instalments.

4.4 The Entrepreneur may, at any time during the tenure of the Funding Agreement, prepay the Funding Amount and interest accrued thereon in full. Partial prepayment shall also be permitted unless otherwise specified in the Funding Agreement, subject to a minimum repayment of an amount agreed by the Parties in writing. The Entrepreneur may not request for the release of or use any part of the Funding Amount which the Entrepreneur has repaid or prepaid.

#### **5. INTEREST**

5.1 Interest shall be charged on the Funding Amount at the rate, on the basis and in accordance with the terms set out in the Funding Agreement provided always that the said rate, basis and terms shall be subject to review by EUSMS from time to time and amended by EUSMS upon thirty (30) days' written notice to the Entrepreneur.

5.2 EUSMS may, in its absolute discretion, charge additional interest on any principal sum due to EUSMS under the Funding and not paid on the relevant due date, at such rate and on such basis as EUSMS may impose from time to time upon notice to the Entrepreneur.

5.3 EUSMS shall be entitled to impose such fees and charges for administering, handling, servicing, adjusting and/or maintaining the Funding as EUSMS may in its absolute discretion impose. Such fees and charges may form part of the Funding Amount. Without limitation to the generality of the foregoing, and without prejudice to any other remedy of EUSMS, the Entrepreneur shall be liable to EUSMS for the following:

- (a) the processing fees of the Funding Amount or such other sum as may be currently imposed by EUSMS at its absolute discretion without notice;
- (b) In the event of default by the Entrepreneur to pay the Funding Amount or any part thereof on the Payment Due Dates, then, and without prejudice to the other remedies of EUSMS and hereunder the Entrepreneur shall pay additional financial charges for the late payment of each instalment.
- (c) If EUSMS recalls the Funding, the Entrepreneur shall pay financial charges incurred on all outstanding principal, interest and other money(s) due and owing to EUSMS from the date of recall until the date of full payment;
- (d) an administrative charge of an amount to be determined at EUSMS's absolute discretion without notice for each cheque given to EUSMS in payment of sums due under the Funding which for any reason EUSMS's bank returns to the Entrepreneur or Guarantor;
- (e) such administrative, processing, disbursement and other fees as may be imposed by EUSMS at EUSMS's absolute discretion without notice, in the event the Entrepreneur withdraws the Entrepreneur's application for the Funding, cancels the Funding prior to EUSMS disbursement of the Funding Amount, cancels any amount of the Funding granted to the Entrepreneur, or EUSMS deems any amount of the Funding granted to the Entrepreneur to be cancelled;
- (f) All VAT, stamp duties, registration fees, legal fees, administrative fees and out-of-pocket expenses incurred by EUSMS in connection with the Funding and the preparation, execution, registration of the security documents and perfection of the securities, and all other documents required by EUSMS in relation to the Funding at such time deemed appropriate by EUSMS;
- (g) Any legal fees, expenses or costs incurred by EUSMS in exercising or enforcing any of EUSMS's rights and remedies for the breach of the Entrepreneur's obligations and liabilities or for recovery of any sum owing by the Entrepreneur or in taking legal advice on any matter whatsoever arising in relation to the Funding; and
- (h) Where any sum under these Terms and Conditions or in relation to the Funding is required to be converted into another currency (which conversion shall be effected at EUSMS's own bank's rate of exchange then prevailing), the exchange rate losses and the costs of conversion (including any handling fees as may be imposed by EUSMS or its bank).

All of the above interest, charges, fees and amounts shall be payable to EUSMS on demand.

5.4 All interest (whether under this Clause or otherwise) shall be charged and payable at the respective prevailing rates provided under these Terms and Conditions up to the date

of full payment of the amounts due, as well after as before any judgment obtained in respect thereof.

## **6. TERMINATION OF FUNDING**

6.1 EUSMS may, at any time after any amount of the Funding granted to the Entrepreneur is cancelled by the Entrepreneur or deemed by EUSMS to be cancelled resulting in the net loan amount of the Funding Amount being reduced to less than KShs.1000, terminate the Funding by notice to the Entrepreneur, in which event all obligations and liabilities thereunder shall become immediately due and payable.

6.2 Notwithstanding any other provision in these Terms and Conditions, in the event that the each instalment payable by the Entrepreneur under the Funding is less than KShs. 100 for any reason whatsoever, EUSMS may at any time thereafter terminate the Funding by notice to the Entrepreneur, in which event all obligations and liabilities thereunder shall become immediately due and payable.

## **7. EVENTS OF DEFAULT**

7.1 EUSMS may at any time after the occurrence of any of the following events terminate the Funding by notice to the Entrepreneur, in which event the obligations and liabilities under the Funding, including but not limited to all amounts outstanding and unpaid under or in connection with the Funding, shall become immediately due and payable:

(a) the Entrepreneur fails to pay any of the Instalments of the Funding Amount and interest thereon or any part thereof either of principal or interest or both or any part thereof when due or any other monies payable hereunder or under any agreement or security document relating to the Funding;

(b) where any present or future indebtedness of the Entrepreneur for or in respect of money borrowed or raised (whether from EUSMS or any other person) becomes (or becomes capable of being declared) due and payable prior to its stated maturity otherwise than at the option of the Entrepreneur or any such indebtedness is unpaid when due or, as the as may be, within an appropriate grace period.

(c) the Entrepreneur commits or threatens to commit a breach of any of the covenants, undertakings, stipulations, of the Funding Agreement, these Terms and Conditions or any agreement relation thereto;

(d) the Entrepreneur's course of business or reasons approved for the purposes of the Funding is cancelled or terminated for any reason whatsoever prior to its completion;

(e) the Entrepreneur becomes bankrupt, commits an act of bankruptcy, or an action to place the Entrepreneur in bankruptcy has been commenced against the Entrepreneur;

(f) any legal proceedings, suit or action of any kind, and whether criminal or civil, is/are brought against the Entrepreneur;

(g) any distress, execution or other process is levied on or threatened against any of the Entrepreneur's assets;

(h) a receiver is appointed over the property, assets or undertaking of the Entrepreneur or any part thereof;

(i) where the Entrepreneur enters into any arrangement or composition for the benefit of creditors or has any petition filed or notice issued or any step taken for making of a receiving or adjudication order against the Entrepreneur;

(j) where any statement, representation or warranty made or given to EUSMS at any time is or shall be incorrect or untrue in any respect or shall be breached;

- (k) the Entrepreneur dies or becomes insane or suffers from any other legal incapacity;
- (l) if in EUSMS's opinion, there is a material adverse change in the financial or other condition of the Entrepreneur which may affect the Entrepreneur's ability to perform their obligations under these Terms or under any other agreement made with EUSMS;
- (m) EUSMS forms the view in good faith, that EUSMS should take action in order to preserve EUSMS's rights or interests under the Funding, or under EUSMS's relationship with the Entrepreneur or Guarantor; or
- (n) in EUSMS's opinion, it is or becomes unlawful or shall contravene any applicable law, regulation or directive for EUSMS to allow all or part of the Funding to remain outstanding and/or to perform all or any of EUSMS's duties or obligations under these Terms and Conditions or otherwise in connection with the Funding or any other agreement(s) with the Entrepreneur.

## **8. CANCELLATION OF DISBURSEMENT**

8.1 Upon successful Funding Amount disbursement, the Entrepreneur shall not be entitled to, but may request EUSMS in writing to, reverse payment of the Funding Amount disbursement. The said request may be granted by EUSMS on such terms and conditions that EUSMS may deem fit to impose on the Entrepreneur, including but not limited to the execution of any indemnity in EUSMS's favour.

8.2 In the event the Entrepreneur intends to cancel the Funding Amount in full prior to disbursement; the Entrepreneur shall forthwith give EUSMS notice of the same.

8.3 Without prejudice to any other provision in these Terms and Conditions, any risk of fraud or forgery relating to or affecting in any way the Funding Amount disbursement, other than fraud or forgery arises as a direct result of EUSMS's gross negligence, shall be solely on the Entrepreneur's account. The Entrepreneur shall indemnify EUSMS in full against all loss which EUSMS may incur or suffer as a result of or in connection with any such fraud or forgery.

## **9. APPLICATION OF MONIES**

If any sum paid or recovered in respect of the Funding is less than the amount due or owing, EUSMS shall be entitled to apply and appropriate such sum received by EUSMS in such manner or order in relation to principal sum, interest, charges, fees, costs, expenses or otherwise as EUSMS deems fit.

## **10. RIGHT TO SET- OFF AND CONSOLIDATION**

In addition to any other rights which EUSMS may have, EUSMS shall be entitled at any time and without notice to the Entrepreneur to combine or consolidate all or any of the Entrepreneur's liabilities with or to EUSMS (in Kenya or elsewhere) or set-off or transfer any sum(s) standing to the positive balance of one or more of such accounts in or towards the satisfaction of any of the Entrepreneur's liabilities to EUSMS on any other account(s) (in Kenya or elsewhere) or in any other respect whether such liabilities are actual or contingent, primary or collateral, several or joint, or such accounts are held by the Entrepreneur singly or jointly with any other persons. If the positive balances on such accounts and the liabilities on any other accounts are not expressed in the same currency, EUSMS shall be entitled to effect any necessary conversions at EUSMS's own bank's rate of exchange then prevailing.

## **11. RULING-OFF OF ACCOUNT**

In addition and without prejudice to any other rights which EUSMS may have, EUSMS may for any reason which EUSMS deems justifiable, open a new or separate funding arrangement ("New Funding") for the Entrepreneur in EUSMS's books and credit (notwithstanding any legal or equitable rule of presumption to the contrary) all or any payments made to EUSMS by the Entrepreneur or on the Entrepreneur's behalf to the New Funding so that such payments shall not reduce the amount owing by the Entrepreneur to EUSMS in relation to the Funding. For the avoidance of doubt, such New Funding shall be subject to EUSMS's right of setoff and consolidation under these Terms and Conditions or otherwise.

## **12. INDEMNITY**

The Entrepreneur shall indemnify EUSMS against any loss, damage, liability, cost and expense which EUSMS may incur or suffer (including legal costs on a full indemnity basis) as a result of or arising out of or in connection with the provision, maintenance, recovery or enforcement of the Funding or in relation to these Terms and Conditions or the terms and conditions set out in the Funding Agreement or any change in law, regulation or official directive which has an effect on the provision or maintenance of the Funding or these Terms and Conditions or the terms and conditions set out in the Funding Agreement provided that the said loss, damage, liability, cost or expense is not caused by EUSMS's own gross negligence or willful default.

## **13. STATEMENT OF INDEBTEDNESS**

A statement or certificate signed by any of EUSMS's authorised officers as to the monies and liabilities for the time being due to or incurred by EUSMS shall, except for clerical mistakes appearing on the face of the statement or certificate, be final and conclusive and be binding on the Entrepreneur.

## **14. NOTICE OF DEMAND**

Any demand for payment of moneys or other demand or notice or communication in relation to the Funding or any matters hereunder may be signed by any of EUSMS's authorised officers for the time being or by EUSMS's lawyers. Such demand, notice or communication may be sent by post or email to or left at the Entrepreneur's last address in Kenya in EUSMS's records and a notice or demand so given or made shall be deemed to be received on the day it was so left or the day after the date of posting notwithstanding that it is returned by the post office undelivered.

## **15. INDULGENCE OF EUSMS**

Notwithstanding that EUSMS may have delayed or failed or omitted to exercise any right, power, privilege, claim or remedy available to EUSMS upon any default by the Entrepreneur or that EUSMS may have accepted payment for any moneys outstanding under the Funding after such default, EUSMS shall not be held to have waived or condoned or acquiesced in such default and may at any time exercise all or any of the remedies available to EUSMS. Any delay or indulgence on EUSMS's part in taking steps to enforce any rights or remedies conferred on or available to EUSMS shall not be held to prejudice or be a waiver of EUSMS's rights of action in respect thereof.

## **16. CHANGE OF ADDRESS OR OTHER PARTICULARS**

The Entrepreneur shall promptly notify EUSMS in writing of any change in their respective addresses or other relevant particulars or information. EUSMS shall be entitled a period of not less than fourteen (14) business days after receipt of the notice to process and update the change(s).

## **17. INFORMATION**

17.1 The Entrepreneur shall supply to EUSMS immediately upon request all statements, information, materials, and explanation (except information of a proprietary nature) regarding the operations and finances of the Entrepreneur as may be reasonably required from time to time.

17.2 The Entrepreneur authorizes and gives EUSMS consent to:

- (i) conduct checks on them (including but not limited to credit checks, background checks, character assessment checks, business plan checks and checks with any credit bureau recognized as such by the Central Bank of Kenya) (collectively the "Checks");
- (ii) obtain and verify any information relating to them (including but not limited to information contained in the application form for the Funding and/or any information derived from the Checks) from any party or source as EUSMS may from time to time deem fit at its own discretion and without any liability or notice to the Entrepreneur; and
- (iii) appoint such third parties as EUSMS deems fit to conduct the Checks on EUSMS's behalf and to such third parties contacting the Entrepreneur to request for more information as they deem necessary in relation to the Funding.

17.3 This authorisation shall survive the termination of the Funding, the Funding Agreement and these Terms and Conditions.

17.4 Where the Entrepreneur is a partnership, these Terms and Conditions and all liabilities incurred in respect of the Funding will bind the partners jointly and severally. The Entrepreneur shall promptly give written notice to EUSMS of any change in the composition or constitution or retirement or admission of one or more partners or otherwise.

## **18. INSTRUCTION BY TELEPHONE, MAIL OR OTHER MEANS**

18.1 In addition to any rights EUSMS has under these Terms and Conditions, EUSMS may, as EUSMS sees fit, act on any instruction or any other matter whatsoever relating to the Funding given or purportedly given by the Entrepreneur by post or any other medium of communication, including via email, WhatsApp, facsimile transmission or telephone.

18.2 Where EUSMS agrees to act on any instruction given by the Entrepreneur via a medium of communication other than post, the Entrepreneur shall indemnify EUSMS from and against any loss which EUSMS may incur as a result of acting on such instructions in accordance with these Terms and Conditions. The Entrepreneur agrees that EUSMS will not be liable to the Entrepreneur for any loss that the Entrepreneur may incur as a result of EUSMS acting on such instructions.

18.3 In the case of telephone or facsimile instruction(s) from the Entrepreneur:-

- (a) EUSMS may but are not obliged to accept, rely on and act in accordance with such instruction(s) given by the Entrepreneur or any person purporting to be the Entrepreneur;



EUSMS may require that instructions be confirmed in such manner as EUSMS may specify from time to time and EUSMS may in its discretion and without notice refuse to act on any such instruction until EUSMS receives such confirmation satisfactory to EUSMS;

(b) EUSMS may require that the Entrepreneur give written instructions (and any other documentary evidence of authority) in the case where the proceeds of any transaction or any funds are to be paid or remitted to any account not in the Entrepreneur's name or to another bank account or mobile money account;

(c) EUSMS may ask questions of and about the Entrepreneur and about particulars of the Entrepreneur's loan for the purpose of verifying his/her identity;

(d) The Entrepreneur consents to EUSMS recording all verbal communication, including the Entrepreneur's telephone conversations with EUSMS and agrees to be bound by such recording; and

(e) EUSMS may refuse to act on any instruction given by the Entrepreneur if such instruction is inconsistent with any applicable law, rule or other regulatory requirement.

## **19. GOVERNMENT CHARGES / VAT**

In the event that any VAT or any other taxes, levies or charges whatsoever are now or hereafter required by law to be paid on or in respect of any sums payable to EUSMS or any other matters under or relating to the Funding or any security relating to the Funding, the same shall be borne by the Entrepreneur and the Entrepreneur shall pay to EUSMS the amount of such VAT or other taxes, levies or charges (or such part thereof which the law does not prohibit EUSMS from collecting from the Entrepreneur) on or before the same becomes due under law, in addition to all other sums payable to EUSMS in relation to the Funding and the Entrepreneur shall indemnify EUSMS against payment thereof.

## **20. CONSENT TO DISCLOSURE**

20.1 The Entrepreneur consents to EUSMS, EUSMS's officials, employees, agents and any other persons who by reason of their capacity or office have access to EUSMS's records, registers or any correspondence or material with regards to the Entrepreneur (including but not limited to information contained in the application form for the Funding and/or any information derived from the Checks (as defined in Clause 17.2)), to disclose any information relating to and any particulars of the Entrepreneur's affairs:-

(a) to any person or organisation participating in the provision of electronic or, without limitation, other services in connection with banking or mobile money services utilized by the Entrepreneur in connection with the Funding, whether in Kenya or outside Kenya for the purpose of the operation of such services, including but not limited to investigating discrepancies, errors or claims;

(b) to any person or organisation to whom EUSMS outsources certain functions or activities or who provide administrative, telecommunication, computer, payment, collection, security, clearing, credit reference or checking, or other services or facilities to EUSMS relating to the operation of EUSMS's operations, whether in or outside Kenya;

(c) to the police or any public officer conducting an investigation in connection with any offence;

(d) to credit or charge card companies;

(e) to EUSMS's stationery printer, external printer, agent or storage or archival service provider (including but not limited to any provider of microfilm service or any electronic storage, archival or recording facility) for the purpose of making, printing, mailing, storage, microfilming and/or filing personalised cheques, statements of accounts, passbooks, cards,

labels, mailers or any other documents or items on which the Entrepreneur's or Guarantor's name and/or other particulars appear, or any data or records or any documents whatsoever;

(f) to any information gathering or processing organisation or department conducting survey(s) on EUSMS's behalf;

(g) to any person or party that has referred the Entrepreneur's application for the Funding to EUSMS;

(h) to any regulatory body, government agency, statutory board, government official, ministry, department or other government bodies or relevant bodies whom EUSMS considers fit to disclose such information;

(i) (in the case where the Entrepreneur is a company) to any person whom EUSMS believes in good faith to be the Entrepreneur's authorized signatory;

(j) to any person or organisation for the purpose of enabling EUSMS to conduct any credit checks on the Entrepreneur to obtain and verify any information relating to the Entrepreneur;

(k) to any person or organisation for the purpose of or in connection with the marketing or promotion of any service or product or investigating any complaint or dealing with any query relating to the marketing or promotion of any service or product;

(l) to any government agency or authority or courts in Kenya or of a jurisdiction where any of EUSMS's operations are situated;

(m) to any person or organisation for the purpose of collecting and recovering for and on EUSMS's behalf any sums of money owing to EUSMS from the Entrepreneur;

(n) to any of EUSMS's related parties (as such term is defined in any law or regulation) for risk management purposes, for monitoring credit exposures across the EUSMS Group or the credit exposure of any EUSMS Group entity to the Entrepreneur and for data processing or cross-selling purposes. "EUSMS Group" means any of EUSMS's subsidiaries, EUSMS's holding company and any subsidiaries of EUSMS's holding company;

(o) to any person or third party in connection with any assignment or transfer, or proposed assignment or transfer by EUSMS of the Funding Agreement or any of EUSMS's rights and obligations under or relating to the Funding and/or any security thereto for any purpose connected with such assignment or transfer or proposed assignment or transfer;

(p) to any person or organisation involved in the sending or delivering of any communication to the Entrepreneur's last known address on EUSMS's records. For the purposes of this clause, communication shall include all forms of direct mailers and advertisements (including messages printed on envelopes with EUSMS's name and logo); and

(q) to any party where EUSMS in good faith deems it reasonable to make such disclosure.

20.2 EUSMS's rights and abilities under this Clause shall be in addition and without prejudice to EUSMS's other rights of disclosure under and pursuant to any statutory provisions and in law and nothing herein is to be construed as limiting any of those other rights.

20.3 This clause shall survive the termination of the Funding, the Funding Agreement and these Terms and Conditions.

## **21. SEVERABILITY AND ASSIGNMENT**

21.1 If any of the provisions contained in these Terms and Conditions are changed by applicable law or declared or deemed invalid, unlawful or unenforceable in any respect by order of a court or under any law, the validity, legality and enforceability of the remaining

provisions in these Terms and Conditions will not be affected but these Terms and Conditions will be interpreted as if the invalid, unlawful or unenforceable provision had never been contained in these Terms and Conditions.

21.2 EUSMS may assign or transfer to any third party (including, without limitation, to any other entity within the EUSMS Group) any of EUSMS's rights, benefits and obligations under the Funding without the Entrepreneur's consent or the need to provide the Entrepreneur with any prior notice of such assignment or transfer and the Entrepreneur irrevocably consents to any such assignment or transfer by EUSMS.

21.3 The Entrepreneur may not assign, transfer any of the Entrepreneur's rights, benefits or obligations under the Funding.

## **22. THIRD PARTY RIGHTS**

Unless expressly provided to the contrary in the Funding Agreement, these Terms and Conditions or the Other Terms and Conditions ("the Relevant Documents"), a person who is not the Entrepreneur or EUSMS, has no right to enforce or enjoy the benefits of any term in the Relevant Documents and notwithstanding any term in the Relevant Documents, the consent of any third party is not required to vary (including to release or compromise any liability) or terminate any of the Relevant Documents.

## **23. DEFERMENT UNDER EXCEPTIONAL CIRCUMSTANCES**

23.1 Without prejudice to any rights EUSMS may exercise under the Funding, EUSMS may, upon production of proof by the Entrepreneur (or his/her personal representative as the case may be) of death, total and permanent disability, terminal illness or total and temporary disability of the Entrepreneur ("Trigger Events"), grant to the Entrepreneur (or his/her personal representative as the case may be) deferment of the Entrepreneur's Instalment payments under the Funding. Any such deferment shall be granted at EUSMS's sole and absolute discretion and on such terms and for such duration that EUSMS may specify. EUSMS may refuse to grant such deferment without having to provide any reason.

23.2 In relation to this Clause, the Entrepreneur hereby agrees:

- (a) that EUSMS, shall have the right to carry out any enquiry or investigation or ask for further information on or from the Entrepreneur before determining whether to grant the deferment of the Instalments;
- (b) to submit all information (including but not limited to NHIF statements) and execute all documents and to do such things (including but not limited to going for health examinations and undergoing tests with such medical practitioners as EUSMS, and/or its insurance carrier may appoint) as EUSMS, and/or its insurance carrier may require, to ascertain whether a Trigger Event has occurred;
- (c) that EUSMS, its officers, employees or agents shall have the right to disclose at any time and from time to time any information regarding the Entrepreneur, the Funding and/or any information obtained by EUSMS in the course of its determination of whether to grant a deferment under these Terms and Conditions to such persons as EUSMS may, in its sole and absolute discretion, deem necessary.

23.3 Any determination made by EUSMS as to whether a Trigger Event has occurred in respect of this Clause shall be final and conclusive.

## **24. AMENDMENT OF TERMS AND CONDITIONS**

24.1 EUSMS reserves the right to add to or vary any of these Terms and Conditions at any time by notifying the Entrepreneur of the changes. The changes shall take effect on the date specified in the notice. The obligation to give the Entrepreneur prior notice does not apply if additions and/or variations are required in an emergency or where it is not practicable to give such notice. Further, EUSMS may make amendments for administrative or clarification purposes without giving the Entrepreneur any notice.

24.2 The prior notice may be given to the Entrepreneur by exhibiting such notice of the amendments or making available a set of the revised Terms and Conditions at EUSMS's offices, on EUSMS's website or via publication through any media. Upon such exhibition or publication, the Entrepreneur is considered to have been notified of such amended Terms and Conditions.

## **25. GOVERNING LAW**

These Terms and Conditions and all matters relating to the Funding are governed by the laws of the Federal Republic of Germany and the Entrepreneur agrees to submit to the exclusive jurisdiction of the Courts in Germany.