



# MASHARIKI

MEDICAL SUPPLIES

MF 30, Door H, Ramsey Court,  
Off Ole-Sangale Rd., NAIROBI  
0727 969 371 / 0717 514 411 / 0707 792 657  
[info@masharikimedical.co.ke](mailto:info@masharikimedical.co.ke)

QUALITY HEALTHCARE SOLUTIONS  
[www.masharikimedical.co.ke](http://www.masharikimedical.co.ke)

IMPLEMENTATION CONTRACT:

**I.C.T INFRASTRUCTURE  
UPGRADE AND  
IMPLEMENTATION OF  
Q-AFYA H.M.I.S IN  
NAROK LEVEL 5,  
TRANSMARA WEST LEVEL 4  
AND LOLGORIAN LEVEL 4  
HOSPITALS IN  
NAROK COUNTY.**

**PREPARED FOR:**

DEPARTMENT OF HEALTH AND SANITATION,  
NAROK COUNTY GOVERNMENT

## PREAMBLE:

This agreement is made and entered into effective \_\_\_\_\_ between **Mashariki Medical Supplies Limited**, a limited liability Company incorporated in the Republic of Kenya with its place of business for the purpose of this agreement at **MF 30, Door H, Ramsey Court, Off Ole-Sangale Road, Nairobi, Kenya** (hereinafter referred to as '**The Service Provider**' or '**The Provider**' or '**Mashariki**' and acting in the same time as necessary), which expression shall where the context so admits include its representatives successors and assigns on the first part and **The Department of Health and Sanitation, County Government of Narok**, with its place of Business for the purpose of this agreement at **County Health Administration Offices, Narok Town, P.O. Box 898-20500, Narok, Kenya** (hereinafter referred to '**The Client**'), which expression shall where the context so admits include its representatives successors and assigns on the secondpart.

## CONTACT INFORMATION:

<b>CLIENT:</b> COUNTY GOVERNMENT OF NAROK	<b>SERVICE PROVIDER:</b> Mashariki Medical Supplies Ltd.
<b>ADDRESS:</b> The Department of Health Services, County Government of Narok, P.O Box 898-20500, Narok, KENYA.	<b>ADDRESS:</b> MF 30, Door H, Ramsey Court, Off Ole-Sangale Road, P.O Box 27520 - 00506, Nairobi, KENYA.
<b>CONTACTS:</b> Dr. Francis Kiio, County Director of Health, Department of Health and Sanitation, Narok County Government. +254 724 299 633	<b>CONTACTS:</b> John Ndiritu, Managing Director, 0707 792 657  Alex Mbaka, Project Manager, 0727 596 626
<b>TELEPHONE:</b> 0724 299 633	<b>TELEPHONE:</b> * 0727 969 371
<b>EMAIL:</b> publichealth@narok.go.ke	<b>EMAIL:</b> info@masharikimedical.co.ke ndiritu@masharikimedical.co.ke

\* Call logging and incident reporting channel

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## CONTRACT OBJECTS:

**Contract Originated By:** MASHARIKI MEDICAL SUPPLIES LIMITED

**Contract Reference No.:** MASHARIKI/NAROKCG-033/SIC/001

**Level Of Responding Party:** DIRECTOR, PROJECT MANAGER and ELECTRONIC & COMPUTER ENGINEERS

**Language:** ENGLISH

**Scope:** SOFTWARE SYSTEMS

- o Q-Afya Hospital Management Information System

### ICT INFRASTRUCTURE

- o Structured LAN, Routing & Switching Infrastructure
- o Power Backup
- o Server Computers
- o Personal Desktop Computers

**WHEREAS,** The Client desires to have the systems developed and installed by Mashariki; and

**WHEREAS,** Mashariki represents that it has the expertise to implement such systems; and

**WHEREAS,** Mashariki desires to install the systems for The Client upon the terms and conditions hereinafter set forth;

**NOW, THEREFORE,** in consideration of the mutual covenants and promises herein set forth, the parties hereby agree as follows:

## 1. DEFINITIONS:

The following bold terms, when used in this Agreement, shall have the meanings ascribed to them in this Section 1:

- 1.1 **'Product'** shall mean the ICT infrastructure and/or software programs to be installed by Mashariki pursuant to this Agreement in accordance with the Specifications, together with user manuals, other documentation and any other ancillary materials to be developed by Mashariki pursuant hereto.
- 1.2 **'Specifications'** shall mean the specifications for the Product as directed by The Client, together with any additional specifications or modifications to the specifications that may be agreed to in writing by the parties during the term of this Agreement.
- 1.3 **'Intellectual Property'** shall mean all intellectual property other than the Technology owned by Mashariki prior to the Effective Date or licensed to Mashariki by a third party, and used in the development of the Product

Other bold terms shall have the meanings ascribed to them in the body of this Agreement.

## 2. TERMS AND CONDITIONS:

### 2.1 INSTALLATION OF THE PRODUCTS:

The Client hereby retains Mashariki to design, develop & implement, and Mashariki hereby agrees to design, develop & implement the Product in accordance with:

- (a) the project outline set forth on the Scope of Work and/or
- (b) the Product Specifications developed jointly by The Client and Mashariki.

The parties shall work together in a joint effort to accomplish the tasks and objectives set forth in the Product Specifications. Mashariki shall be responsible for delivering and performing only those professional services specifically identified in the Product Specifications. Any modifications to the Product Specifications shall be pursuant to the Change Order process set forth below.

### 2.2 CHANGE ORDERS:

In the event The Client desires to make any modifications to the Product Specifications or a deliverable, The Client must provide a detailed change order in writing. This may be provided in the form of email, certified letter, or via technologies and/or tools provided by Mashariki. In the event of a conflict between the terms of this Agreement and a Change Order, the terms of this Agreement shall govern.

## 2.3 SUPPORT AND MAINTENANCE:

Any support and maintenance services, updates, versions, or new releases shall be contracted under a separate agreement between Mashariki and The Client. Maintenance and support rights or obligations for any third party products or equipment that are used in the Product and are available through the respective vendor(s) or manufacturer(s) of such content and equipment shall be assigned by Mashariki to The Client. Mashariki shall not use any intellectual property of any third-party in the product without The Client's written consent.

## 2.4 THE CLIENT RESPONSIBILITIES:

The Client agrees to perform all tasks assigned to The Client as set forth in this Agreement, the Product Specifications, or a Change Order, and to provide all assistance and cooperation to Mashariki in order to complete timely and efficiently the Product. Mashariki shall not be deemed in breach of this Agreement, the Product Specifications, a Change Order, or any milestone in the event Mashariki's failure to meet its responsibilities and time schedules is caused by The Client's failure to meet (or delay in) its responsibilities and time schedules set forth in the System Specifications, a Change Order, or this Agreement. In the event of any such failure or delay by The Client,

- (i) all of Mashariki's time frames, milestones, and/or deadlines shall be extended by the product of the number of days of The Client's failure multiplied by two (2); and
- (ii) The Client shall continue to make timely payments to Mashariki as set forth in this Agreement, the Product Specifications, and any Change Order(s) as if all time frames, schedules, or deadlines had been completed by Mashariki.

The Client shall be responsible for making, at its own expense, any changes or additions to The Client's current systems, software, and hardware that may be required to support operation of the Product. Unless otherwise contracted with Mashariki or reflected in a Change Order, The Client shall be responsible for initially populating and then maintaining any databases on the Product as well as providing all content for the Product. With the execution of a Change Order specifically asking Mashariki to assesses the Client's systems, software and hardware from time to time, Mashariki may agree to perform this function at normal Mashariki rates.

## 2.5 PROJECT MANAGERS:

The Client and Mashariki shall assign a Project Manager for managing the implementation of the Product. The Project Managers shall be responsible for:

- (i) managing the day-to-day activities under this Agreement,
- (ii) serving as liaisons between the parties
- (iii) assigning and scheduling the appropriate personnel to perform all of the required services under this Agreement, and
- (iv) authorizing and executing any and all Change Order(s).

The Client hereby acknowledges and agrees that the Client Project Manager shall have the proper authority and power to execute and perform the duties and responsibilities set forth in this Section.

Mashariki hereby acknowledges and agrees that the Mashariki Project Manager shall have the proper authority and power to execute and perform the duties and responsibilities set forth in this Section.

## 2.6 ASSIGNMENT OF PROJECT:

Mashariki reserves the right, and The Client hereby agrees, to assign subcontractors to this project to insure that the terms of this agreement are met as well as on-time completion.

## 2.7 MARKETING:

The Client hereby grants Mashariki the right to use the name and service marks of The Client in its marketing materials or other oral, electronic, or written promotions, which shall include naming The Client as a The Client of Mashariki and a brief scope of services provided. Any use of Mashariki logos or links on The Client's Product must be approved in writing by The Client. Either party may elect to issue a press release related to this Agreement. In doing so, any release shall be approved by the other party and such approval shall not be unreasonably withheld.

## 2.7 COMPATIBILITY:

Unless otherwise specifically identified in the System Specifications or a Change Order, the Software System is compatible solely with the following internet browsers:

- (i) Firefox version 30.0 or higher
- (ii) Safari version 5.0 or higher
- (iii) Chrome version 60.0 or higher
- (iv) Microsoft Edge version 20.0 or higher

## 3. FEES, EXPENSES, AND PAYMENT:

### 3.1 EXPENSES:

Mashariki shall obtain The Client's prior written authorization before incurring any individual or 3<sup>rd</sup> party expense. All out-of-scope expense reimbursements shall be made at Mashariki's direct out-of-pocket costs, without any markup for overhead, administrative costs, or otherwise. Expenses not paid directly by The Client shall be paid within seven (7) days of receipt of Mashariki's invoice.

### 3.2 FEES:

The Client agrees to pay Mashariki for the completion of the Scope of Work as set forth in accordance with accompanying documents hereto to the amount of **KSh. 20,280,000/- (Kenya Shillings Twenty Million, Two Hundred and Eighty Thousand only)**

### 3.3 TAXES:

The Client shall pay, reimburse, and/or hold Mashariki harmless for all sales, use, transfer, privilege, tariffs, excise, and all other taxes and all duties, whether international, national, state, or local, however designated except income taxes, which are levied or imposed by reason of the performance of the professional services under this Agreement or by use of the Product. As such, only Withholding Taxes shall be remitted to the applicable government revenue authority (5% to KRA).

### 3.4 OTHER FEES:

Unless otherwise provided in this Agreement or in a Change Order, payment for all other services rendered by Mashariki shall be contracted under a separate agreement between Mashariki and The Client.

### 3.5 FORM OF PAYMENT:

All payments made to Mashariki under this Agreement shall be in Kenyan currency in the form of company check, cashier's check, or electronic wire transfer as described in the schedule set as:

INSTALLMENT	AMOUNT	CONDITION
1 <sup>st</sup> Installment	KSh. 8,112,000.00	Contract signing and client endorsement. Site visit and preparation
2 <sup>nd</sup> Installment	KSh. 8,112,000.00	Six weeks after Narok Referral Hospital implementation has commenced, is functioning well. We are starting Kilgoris and Lolgorian simultaneously.
3 <sup>rd</sup> Installment	KSh. 4,056,000.00	On project completion tentatively six weeks after second installment. Project implementation has finalized and all facilities running smoothly.

### 3.6 PAYMENT OF INVOICES:

All invoices shall be paid by The Client within seven (7) days of receipt. Payments not made within such time period shall be subject to negotiation and agreement in mutual respect. In case of disagreement, Mashariki may suspend all services on fourteen (14) days written notice until the amounts outstanding are paid in full.

## 4. INTELLECTUAL PROPERTY RIGHTS AND LICENCE:

### 4.1 PRODUCT:

All materials, including, but not limited to, software, programs, source code and object code, comments to the source or object code, specifications, documents, abstracts and summaries thereof (collectively, the "Products") developed by Mashariki in connection with the provision of the Services to The Client, or jointly by The Client and Mashariki, or by Mashariki pursuant to specifications or instructions provided by The Client, shall **belong exclusively to The Client**. Mashariki acknowledges that the Products shall be deemed "works made for hire" by Mashariki for The Client, and, therefore, shall be the exclusive property of The Client. To the extent the Products are not deemed "works made for hire" under applicable law, Mashariki hereby irrevocably assigns and transfers to The Client all right, title and interest in and to the Products, excluding, all source code, patents and copyright interests.



## 4.2 PRE-EXISTING INTELLECTUAL PROPERTY:

Notwithstanding any provision of this Agreement to the contrary, any routines, methodologies, processes, libraries, tools or technologies created, adapted or used by Mashariki in its business generally, including all associated intellectual property rights (collectively, the "Development Tools"), shall be and remain the sole property of Mashariki, and Customer shall have no interest in or claim to the Development Tools, except as necessary to exercise its rights in the Products. In addition, notwithstanding any provision of this Agreement to the contrary, Mashariki shall be free to use any ideas, concepts, or know-how developed or acquired by Mashariki during the performance of this Agreement to the extent obtained and retained by Mashariki's personnel as impression and general learning. Subject to and limited by The Client's intellectual property rights described in Section 4.1 above, nothing in this Agreement shall be construed to preclude Mashariki from using the Development Tools for use with third parties for the benefit of Mashariki.

## 4.3 THIRD PARTY LICENCES:

In addition to any other fees set forth in this Agreement, The Client shall be required to purchase any applicable third party licenses for any third party products that are necessary for Mashariki to design and develop the Product. Such third party products may include, but are not limited to: server-side applications, clip art, "back-end" applications, music, stock images, or any other copyrighted work which Mashariki deems necessary to purchase on behalf of The Client to design and develop the Product. Mashariki shall obtain The Client's prior written consent before incorporating such third party product into the Product. Mashariki shall provide The Client with a list of all third party products upon launch of the Product.

## 5. TERM AND TERMINATION:

### 5.1 TERM:

This Agreement shall be effective as of the Effective Date and shall continue in effect until complete payment of the installation Price or until earlier terminated as provided in this Agreement or until the contracted services as outlined in specification document have been completed

### 5.2 TERMINATION FOR CAUSE:

This Agreement may be terminated by either party upon written notice to the other, if the other party breaches any material obligation provided hereunder and the breaching party fails to cure such breach within thirty (30) days of receipt of the notice.

### 5.3 EFFECT OF TERMINATION:

The Client shall pay Mashariki for all services rendered and work performed up to the effective date of termination for any reason subject to The Client's rights to only pay fair value if The Client terminates for cause. Mashariki shall provide The Client with an invoice for the foregoing fees within thirty (30) days of the effective date of the termination. The Client shall pay the invoice within fourteen (14) days of receipt.

## 5.4 RETURN OF PROPRIETARY OR CONFIDENTIAL INFORMATION:

Within ten (10) days after the termination or expiration of this Agreement, each party shall return to the other all Proprietary or Confidential Information of the other party (and any copies thereof) in the party's possession or, with the approval of the party, destroy all such Proprietary or Confidential Information. "Proprietary or Confidential Information" shall include, but is not limited to, written or oral contracts, trade secrets, knowhow, business processes, business policies, memoranda, reports, records, computer retained information, notes, or financial information. Proprietary or Confidential Information shall not include any information which:

- (i) is or becomes generally known to the public by any means other than a breach of the obligations of the receiving party;
- (ii) was previously known to the receiving party or rightly received by the receiving party from a third party;
- (iii) is independently developed by the receiving party; or
- (iv) is subject to disclosure under court order or other lawful process.

## 6. LIMITED WARRANTIES:

### 6.1 PRODUCT:

Mashariki warrants that for a period of twelve (12) months, from launch of the Product, the Product will operate in accordance with all the material terms of the Product Specifications. All warranty claims not made in writing within such period shall be deemed waived. As the sole and exclusive remedy of The Client for breach of the foregoing warranty, Mashariki shall, at its option, either correct the nonconformity or refund to The Client the Kenya shilling amount attributable to the number of actual hours Mashariki spent developing the defective portion of the Product. Mashariki shall not be liable for failures caused by third party hardware or software (including The Client's own systems), misuse of the Product, or the negligence or willful misconduct of The Client.

### 6.2 PERFORMANCE OF PROFESSIONAL SERVICES:

Mashariki warrants that the professional services will be performed in a workmanlike and professional manner by appropriately qualified personnel.

### 6.3 NOTWITHSTANDING THE ABOVE:

The Client's exclusive remedies for all damages, losses, and causes of actions whether in contract, tort including negligence or otherwise, shall not exceed the aggregate Kenya shilling amount which The Client paid during the term of this Agreement.

## 7. LIMITATION OF LIABILITY:

Under no circumstances shall Mashariki, its contracted providers, officers, agents, or anyone else involved in creating, producing, or distributing The Client's Product be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Product; or that results from mistakes, omissions, interruptions, deletion of files, errors, defects, delays in operation, or transmission or any failure of performance, whether or not limited to acts of God, communication failure, theft, destruction or unauthorized access to The Client's records, programs or services. The Client hereby acknowledges that this paragraph shall apply to all content on said Hosting Service. THE TOTAL LIABILITY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE) TO THE OTHER SHALL NOT EXCEED THE INSTALLATION PRICE (AS DEFINED IN SECTION 3.2). THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF THE EXPRESS WARRANTIES SET FORTH ABOVE FAIL IN THEIR ESSENTIAL PURPOSE.

## 8. THIRD PARTY DISCLAIMER:

MASHARIKI MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH REGARD TO ANY THIRD PARTY PRODUCTS, THIRD PARTY CONTENT OR ANY SOFTWARE, EQUIPMENT, OR HARDWARE OBTAINED FROM THIRD PARTIES

## 9. INDEMNIFICATION OBLIGATIONS:

### 9.1 THE CLIENT INDEMNITY

The Client agrees that it shall defend, indemnify, save and hold Mashariki harmless from any and all demands, liabilities, losses, costs and claims, including reasonable attorneys' fees, (collectively "Liabilities") asserted against Mashariki, its contracted providers, agents, The Clients, servants, officers and employees, that may arise or result from any service provided or performed or agreed to the performance of any product sold by The Client, its agents, employees or assigns. The Client agrees to defend, indemnify and hold harmless Mashariki against Liabilities arising out of

- (i) any injury to any person or property caused by any products sold or otherwise distributed in connection with the Product;
- (ii) any material supplied by The Client infringing or allegedly infringing on the proprietary rights of a third party; or
- (iii) copyright infringement and/or litigation regarding content-related disputes

## 9.2 MASHARIKI INDEMNITY

Mashariki shall indemnify and hold harmless The Client (and its subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees) from any and all claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees and all related costs and expenses) incurred by The Client as a result of any claim, judgment, or adjudication against The Client arising from a claim that The Client's use of the Mashariki Content, as permitted under this Agreement, infringes Intellectual Property rights of a third party or arising from a claim which results from Mashariki's breach of the warranties and agreements contained in this Agreement. To qualify for such defense and payment, The Client must:

- (i) give Mashariki prompt written notice of a claim; and
- (ii) allow Mashariki to control, and fully cooperate with Mashariki in, the defense and all related negotiations.

Mashariki shall have no obligation to indemnify The Client under this Section to the extent the infringement arises from:

- (i) the Client Content,
- (ii) specifications provided by The Client or its agents;
- (iii) derivative works of the Product created by The Client,
- (iv) use of the Product in combination with non-Mashariki approved third party products, including hardware and software,
- (v) modifications or maintenance of the Product by a party other than Mashariki,
- (vi) misuse of the Product, and
- (vii) failure of The Client to implement any improvement or updates to the Product, if the infringement claim would have been avoided by the use of the improvement or updates.

## 9.3 OBLIGATIONS

Promptly after receipt by a person entitled to indemnification pursuant to the foregoing Section 9.1 or 9.2 (the "Indemnified Party") of notice of the commencement of any action, the Indemnified Party will, if a claim in respect thereof is to be or has been made against a party who has agreed to provide indemnification under Section 9.1 or 9.2 (an "Indemnifying Party"), promptly notify in writing the Indemnifying Party of the commencement thereof; but the omission to so notify the Indemnifying Party will not relieve it from any liability which it may have to the Indemnified Party except to the extent the Indemnifying Party is prejudiced by the delay or failure to notify it. In case any such action is brought against an Indemnified Party, and it notifies the Indemnifying Party of the commencement thereof, the Indemnifying Party will be entitled to participate in, and, to the extent that it may wish, jointly with any other Indemnifying Party similarly notified, to assume the defense thereof, subject to the provisions herein stated, with counsel reasonably satisfactory to the Indemnified Party, and after notice from the Indemnifying Party to the Indemnified Party of its election to so assume the defense thereof, the Indemnifying Party will not be liable to the Indemnified Party under this Section 9 for any legal or other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof other than reasonable costs of investigation. The Indemnified Party shall have the right to employ separate counsel

in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the Indemnifying Party if the Indemnifying Party has assumed the defense of the action with counsel reasonably satisfactory to the Indemnified Party; provided that the fees and expenses of such counsel shall be at the expense of the Indemnifying Party if (i) the employment of such counsel has been specifically authorized in writing by the Indemnifying Party or (ii) the named parties to any such action (including any impleaded parties) include both the Indemnified Party or parties and the Indemnifying Party and, in the judgment of counsel for the Indemnified Party, it is advisable for the Indemnified Party or parties to be represented by separate counsel (in which case the Indemnifying Party shall not have the right to assume the defense of such action on behalf of the Indemnified Party or parties, it being understood, however, that the Indemnifying Party shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the Indemnified Party or parties. No settlement of any action against an Indemnified Part shall be made without the consent of the Indemnifying Party and no Indemnifying Party, in the defense of any such claim or action, shall, except with the consent of the Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect to such claim or litigation. If the Indemnified Party fails to execute a release or other settlement agreement under circumstances where all of the conditions of the preceding sentence have been met, the Indemnifying Party shall have no further obligation to the Indemnified Party pursuant to this Agreement or otherwise.

## 10. CONFIDENTIALITY:

The parties agree to hold each other's Proprietary or Confidential Information in strict confidence. The parties agree not to make each other's Proprietary or Confidential Information available in any form to any third party or to use each other's Proprietary or Confidential Information for any purpose other than as specified in this Agreement. Each party's Proprietary or Confidential Information shall remain the sole and exclusive property of that party. The parties agree that in the event of use or disclosure by the other party other than as specifically provided for in this Agreement, the non-disclosing party may be entitled to equitable relief. Notwithstanding termination or expiration of this Agreement, Mashariki and The Client acknowledge and agree that their obligations of confidentiality with respect to Proprietary or Confidential Information shall continue in effect for a total period of three (3) years from the Effective Date.

## 11. FORCE MAJEURE:

Except with regard to payment obligations, either party shall be excused from delays in performing or from failing to perform its obligations under this Agreement to the extent the delays or failures result from causes beyond the reasonable control of the party, including, but not limited to: default of subcontractors or suppliers; failures or default of third party software, vendors, or products; acts of God or of the public enemy; Kenya or foreign governmental actions; strikes; communications, network/internet connection, or utility interruption or failure; fire; flood; epidemic; and freight embargoes.

## 12. CHOICE OF LAW; VENUE; LIMITATION OF ACTIONS:

This Agreement shall be governed and construed in accordance with the Laws of Kenya, and the parties consent to the sole and exclusive jurisdiction of the Law courts of Kenya for any dispute arising out of this Agreement. No action by Mashariki or The Client arising under this Agreement may be brought at any time more than two (2) years after the facts occurred upon which the cause of action arose.

## 13. INDEPENDENT CONTRACTOR STATUS:

The relationship of Mashariki to The Client will be that of an independent contractor, and neither Mashariki nor any employee of Mashariki will be deemed to be an agent or employee of The Client. It is expressly understood that this undertaking is not a joint venture.

## 14. NOTICES:

Any written notice or demand required by this Agreement shall be sent by registered or certified mail (return receipt requested), personal delivery, overnight commercial carrier, or other guaranteed delivery to the other party at the address set forth herein. The notice shall be effective (a) as of the date of delivery if the notice is sent by personal delivery, overnight commercial courier or other guaranteed delivery, and (b) as of five (5) days after the date of posting if the notice is transmitted by registered or certified mail.

## 15. ENTIRE AGREEMENT:

This Agreement and all exhibits, schedules, and Change Order(s) set forth the entire agreement between the parties with regard to the subject matter hereof. No other agreements, representations, or warranties have been made by either party to the other with respect to the subject matter of this Agreement, except as referenced herein. This Agreement may be amended only by a written agreement signed by both parties.

## 16. DISPUTES:

The Client and Mashariki agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation. Should the parties fail to resolve any such disagreement within ten (10) days, any controversy or claim arising out of or relating to this Agreement, including, without limitation, the interpretation or breach thereof, shall be submitted by either party to arbitration in accordance with the Commercial Arbitration Rules set by such a governing body in Kenya. The arbitration shall be conducted by one arbitrator, who shall be a licensed attorney with at least ten (10) years' experience in the practice of law and at least five (5) years' experience in the negotiation of technology contracts or litigation of technology disputes. The arbitrator shall have the power to enter any award that could be entered by a judge of the law courts of Kenya sitting without a jury, and only such power, except that the arbitrator shall not have the power to award punitive damages, treble damages, or any other damages which are not compensatory, even if permitted under the laws of Kenya or any other applicable law.

The arbitrator must issue his or her resolution of any dispute within thirty (30) days of the date the dispute is submitted for arbitration. The written decision of the arbitrator shall be final and binding and enforceable in any court having jurisdiction over the parties and the subject matter of the arbitration. Notwithstanding the foregoing, this Section shall not preclude either party from seeking temporary, provisional, or injunctive relief from any court.

## 17. SEVERABILITY:

In the event that a court finds any provision of this Agreement invalid and/or unenforceable, the parties agree that the remaining provisions shall remain valid and in force.

## 18. WAIVER:

Neither party shall be deemed by mere lapse of time (without giving notice or taking other action hereunder) to have waived any breach by the other party of any of the provisions of this Agreement. Further, the waiver by either party of a particular breach of this Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such breach, or of other breaches of the same or other provisions of this Agreement.

## 19. SURVIVAL:

The following provisions shall survive termination or expiration of this Agreement: Sections 3 (Fees, Expenses, and Payment), 4 (Intellectual Property Rights and License), 5 (Term and Termination), 6 (Disclaimer of Warranties), 7 (Limitation of Liability), 8 (Third Party Disclaimer), 9 (Indemnification obligations) 10 (Confidentiality), 12 (Choice of Law; Venue; Limitation of Actions), 16 (Disputes), and 19 (Survival).

## 20. DAYS AND MONTHS:

Unless indicated otherwise, all references to "days" shall mean calendar days and all references to "months" shall mean calendar months.

## 21. APPROVAL:

This Agreement shall not be binding upon either party until it has been signed by an officer of both The Client and the Service Provider.

## 22. TRADEMARKS:

The Client unconditionally warrants and guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to Mashariki and/or its assigns for inclusion in the Product are owned by The Client, or that The Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify and defend Mashariki, its assigns and its subcontractors from any liability (including attorney's fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements furnished by The Client..

## 23. THIRD PARTY SOFTWARE:

Additionally, in the event The Client elects to install or seek assistance from Mashariki in connection with the installation of any third-party software, the following terms shall apply. The Client represents and warrants that The Client has the right to use and install the third-party software, and have paid the applicable licensing fees for the third party software, and the third-party software does not and shall not infringe on the intellectual property rights of any other person or entity. The Client agrees to defend, indemnify and hold harmless Mashariki and its employees, officers and directors for, from and against any and all claims brought against Mashariki and its employees, officers and directors by a third-party alleging the software infringes: (i) the third-party's rights; or (ii) a Kenya patent, trademark, copyright or other intellectual property right. The Client agree that in such an event The Client shall pay all resulting costs, damages, expenses and reasonable attorneys' fees that a court awards and settlements incurred by Mashariki in connection with any such claims.

## 24. LAW AFFECTING ELECTRONIC COMMERCE:

The Client agrees that The Client is solely responsible for complying with such laws, taxes, and tariffs, and will hold harmless, protect, and defend Mashariki and its subcontractors from any claim, suit, penalty, tax, or tariff arising from The Client's use of Internet electronic commerce. Mashariki warrants that it will secure, as needed on e-commerce platform, a valid SSL certificate on any site which will transmit, receive, process or have access to sensitive data of any sort.

## 25. LAWFUL PURPOSE:

The Client may only use the Product for lawful purposes.

## 26. ASSIGNMENT:

Neither party may not assign this Agreement or any of its rights or obligations or the license hereunder, without the prior written consent of the other

## 27. RESERVATION OF RIGHTS:

Mashariki reserves all rights not specifically granted herein.

## 28. REMEDIES NOT EXCLUSIVE:

The remedies available to the parties under this Agreement are cumulative and not exclusive to each other, and any such remedy will not be deemed or construed to affect any right which either of the parties is entitled to seek at law, in equity or by statute.

## 29. CHOICE OF LAW AND JURISDICTION:

This Agreement will be governed and interpreted by the laws of the jurisdiction of the Republic of Kenya, without regard to its conflicts of law provisions. The parties hereby irrevocably and unconditionally agree to the non-exclusive jurisdiction of the courts of the jurisdiction of the Republic of Kenya, and all courts competent to hear appeals there from.



## CONSENT OF PARTIES:

**IN WITNESS WHEREOF**, Mashariki and The Client have executed this Agreement effective as of the date and year first written above.

### MASHARIKI MEDICAL SUPPLIES LIMITED REPRESENTATIVE:

-----  
*Name*

-----  
*Designation*

-----  
*Autorising Signature*

-----  
*Date DD/MM/YEAR*

*Company Seal and/or Stamp*

### NAROK COUNTY DEPT. OF HEALTH AND SANITATION REPRESENTATIVE:

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*Name*

-----  
*Designation*

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*Autorising Signature*

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*Date DD/MM/YEAR*

*Company Seal and/or Stamp*