

CONTRACT FOR CONSULTANCY SERVICES

Section 1 – Form of Contract

CONTRACT FOR: [Insert Title here]

CONTRACT REFERENCE: [Insert Number here]

THIS CONTRACT dated [Insert date here] is made

BETWEEN:

TradeMark East Africa (“TMEA”) having its principal place of business at Equatorial Fidelity Center, P O Box 313 00606, Nairobi, Kenya;

AND

[Insert Consultant Name] (“The Consultant”) having its principal office located in [Insert Contact Details].

WHEREAS:

TMEA has requested the Consultant to provide certain consulting services as defined in the detailed terms of reference and scope of services attached to this Contract (hereinafter called the “Services”); the Consultant, having represented to TMEA that they have the required professional skills, and personnel and technical resources, have agreed to provide the Services on the terms and conditions set forth in this Contract.

IT IS HEREBY AGREED as follows:

1. Documents

This Contract from page [Insert page no] to page [Insert page no.] shall comprise the following documents:

Section 1 Form of Contract

Section 2 General Conditions

Section 3 The Services

Section 4 Special Conditions and Key Personnel

Section 5 Fees

This Contract constitutes the entire agreement between the Parties in respect of the Consultant's obligations and supersedes all previous communications between the Parties, other than as expressly provided for in Section 3 and/or Section 4.

2. Contract Signature

If the original Contract is not returned to - TMEA duly completed, signed and dated on behalf of the Consultant within 15 days of the date of signature on behalf of TMEA, TMEA will be entitled, at its sole discretion, to declare this Contract void. No payment will be made to the Consultant under this Contract until a copy of the Contract, signed on behalf of the Consultant is returned to TMEA.

3. Commencement and Duration of the Services

- a. The Consultant shall start the Services no later than [Insert start date] ("the Start Date") for [state contract period in terms of days/months/years] and shall complete them by [Insert end date] (End Date") or any other period as may be subsequently agreed by the parties in writing unless this Contract is terminated earlier in accordance with its terms and conditions.

- b. If the services have not commenced in accordance with clause 3a above, TMEA may by not less than 30 days written notice to the consultant, declare the contract to be null and void, and in the event of such declaration, the consultant shall have no claim against TMEA with respect thereto.

4. Financial Limit

Payments under this Contract shall not, in any circumstances, exceed [xxx] for fees and [xxx] for expenses within a total limit of [xxx] inclusive of all taxes applicable ("the Financial Limit").

5. Time of the Essence

Time shall be of the essence as regards the performance by the Consultant of its obligations under this Contract.

For and on behalf of TMEA

Name: **KEN JONES**
Position: **CHIEF OPERATING OFFICER**
Signature:
Date:

For and on behalf of the consultant

Name:

Signature:

Date:

CONTRACT FOR CONSULTANCY SERVICES

Section 2 – General Conditions

1. Definitions

"The Contract" means the agreement entered into between TMEA and the consultant, as recorded in this Contract Document signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

"TMEA Project Manager" means the person nominated by TMEA who is responsible for the management of the Project.

"the Equipment" means any equipment, computer hardware or software, materials, goods and vehicles and associated services necessarily required for the implementation of the Services which are financed or provided by TMEA for use by the Consultant.

"the Financial Limit" means the amount specified in Section 1 and which represents the maximum amount payable by TMEA under this Contract.

"Fees" means the fees payable for the Services as set out in Section 5.

"the Services" means the services to be provided by the Consultant as set out in Section 3.

"the Consultant" means the natural person(s), partnership(s), or company (ies) whose bid to perform this contract has been accepted by TMEA and is named as such in this contract, and includes the legal successors or permitted assigns of the Consultant.

"the Consultant's Personnel" means any person instructed by the Consultant pursuant to this Contract to undertake any of the Consultant's obligations under this Contract, including the Consultant's employees, agents and sub-contractors.

"Subcontractor" means any natural person(s), partnership(s), or company (ies), including its legal successors or permitted assigns, to whom any part of the services to be provided is subcontracted by the Consultant.

2. Interpretation

In the event of any inconsistency between the Form of Contract (Section 1), these General Conditions (Section 2) and the Special Conditions (Section 4), the Special Conditions shall prevail.

3. Project management

TMEA designates the TMEA Project Manager as being responsible for the coordination of activities under this Contract, for the acceptance and approval on behalf of TMEA of the reports and of other deliverables produced by the Consultant, and for receiving and approving invoices for payment.

4. Obligations

- a. TMEA and the Consultant each warrant that it has all the requisite corporate power and authority to enter into this Contract and is fully capable of performing its obligations under this Contract on the terms provided for in this Contract.
- b. The Consultant shall perform the Services and all other obligations under this Contract with all necessary skill, diligence, efficiency and economy to satisfy generally accepted professional standards expected from experts.

- c. The Services shall be provided at the location set out in Section 3. Notwithstanding this, the Consultant may be required to travel to other locations from time to time in carrying out the Services.

5. Indemnification

At its own expense, the Consultant shall indemnify, protect and defend, TMEA, its agents and employees, from and against all actions, claims, losses or damage arising from any act or omission by the Consultant in the performance of the services, including any violation of any legal provisions, or rights of third parties, in respect of patents, trademarks and other forms of intellectual property such as copyrights. Should the act or omission originate from TMEA, then TMEA will indemnify the consultant.

The Consultant hereby indemnifies TMEA, its agents and employees against any legal cost, including attorney/own client costs incurred by TMEA in defending any complaints, disputes or claims lodged by any party as a result of the actions or omissions of the Consultant.

6. Consultant's Personnel

- a. The Consultant acknowledges that it and the Consultant's Personnel have no authority to create or incur any liability or obligation on behalf of TMEA, including but not limited to any liability or obligation to expend or incur capital expenditure and not to recruit, employ or dismiss any member of staff employed by TMEA.
- b. The Consultant shall not at any time, either personally or by an agent, directly or indirectly represent itself as being in any way connected with or interested in TMEA save as being engaged to perform the Services.
- c. Save for the Services agreed and set out at Section 3, TMEA is under no obligation to offer work to the Consultant and the Consultant is under no obligation to accept any work, which may be offered by TMEA.
- d. No changes or substitutions may be made to members of the Consultant's Personnel identified in Section 4, if any, of this Contract without TMEA's prior written consent.
- e. If TMEA considers any member of the Consultant's Personnel unsuitable, the Consultant shall substitute such member as quickly as reasonably possible without direct or indirect charge to TMEA with a replacement acceptable to TMEA.
- f. The Consultant is responsible for all acts and omissions of the Consultant's Personnel and for the health, safety and security of such persons and their property.
- g. TMEA is dedicated to gender equality and ensuring equitable and sustainable human development

7. Fees

- a. Subject as follows, payments shall be due to the Consultant in accordance with the Fee payment schedule set out in Section 5. In the case of Fees that are payable upon the completion of milestones as may be set out in Section 4, such fees shall not become due and payable until the completion, to TMEA's satisfaction, of the relevant milestone event or the delivery of the deliverables to TMEA's satisfaction required for the achievement of the relevant milestone satisfactorily
- b. Payment of the Fees shall be subject to TMEA being satisfied that the Consultant is or has been carrying out its duties, obligations and responsibilities under this Contract.

- c. If for any reason TMEA is dissatisfied with performance of this Contract, an appropriate sum may be withheld from payments that would otherwise be due under this Contract. In such event TMEA shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction, and payment of the amount outstanding will be made upon remedy of any unsatisfactory work or resolution of outstanding queries.
- d. Fees charged and expenses incurred shall not, in aggregate, exceed the Financial Limit without the prior written consent of TMEA.
- e. No payments shall be made in respect of days not worked due to sickness or holiday or otherwise.
- f. Only the fee rates listed in Section 5 of this Contract will apply to any Services performed by the Consultant under this Contract.

8. Expenses

The Consultant shall be entitled to be reimbursed only for those expenses which have been approved and are set out in Section 5.

9. Invoicing Instructions

- a. Invoices should particularise the contract to which they relate and should be sent to the address referenced in Section 5.
- b. All invoices should contain details of the Services provided, milestones achieved and deliverables provided to which the invoice relates. Where expenses are payable, invoices should be accompanied by proof of the expense. Any invoice not presented in accordance with the above may be rejected and in any event shall be liable to query and delay in payment.
- c. TMEA may request proof of payment in respect of any item and shall be entitled to refuse to meet a claim if this cannot be provided.
- d. TMEA reserves the right to audit, or to nominate a reputable accounting firm to audit the Consultant's records relating to amounts claimed under this Contract during its term and any extension, and for a period of three months thereafter.
- e. TMEA reserves the right not to pay any amount due in respect of an invoice received by TMEA more than 60 days after the day of the Consultant becoming entitled to invoice for the payment to which it relates.
- f. TMEA will deduct withholding tax from the consultant's invoiced amounts as per Government of Kenya regulations. Consultants from countries with double tax agreements will be provided with withholding tax certificates. It is the consultant's responsibility to establish their tax status in the country where the Services will be delivered.

10. Payments

Subject to TMEA being satisfied that the Consultant is or has been carrying out their duties, obligations and responsibilities under this Contract, sums duly approved shall be paid within 30 days of receipt of a valid invoice.

11. Nature of relationship

TMEA and the Consultant agree and intend that this relationship is one of undertaking independent services and specifically is not a relationship of employer or employee agency, joint venture or partnership.

Nothing contained herein shall be construed as establishing a relation of master and servant or of principal and agent between TMEA and the Consultant and the Consultant will be solely responsible for the tax status, tax and any statutory contributions payable of and for the Consultant's Personnel and for all or any of its or the Consultant's Personnel's taxes payable in respect of Fees and reimbursements received in connection with this Contract.

12. Performance Standards

The Consultant undertakes to perform the Services with the highest standards of professional and ethical competence and integrity.

13. Termination

Either TMEA or the Consultant may terminate this Contract, by not less than 30 days written notice. In such cases, TMEA shall be liable to make payments only for work completed and delivered, of acceptable standard.

14. Confidentiality

- a. The Consultant shall not, during the term of this Contract and within two years after its expiration or termination, disclose any proprietary or confidential information relating to the Services, this Contract or TMEA's business or operations without the prior written consent of TMEA.
- b. Notwithstanding the above, the consultant may furnish to its subcontractor such documents, data, and other information it receives from TMEA to the extent required for the subcontractor to perform its work under the contract, in which event the consultant shall obtain an undertaking of confidentiality similar to that imposed on the consultant under this contract.

15. Ownership of Material

- a. Any studies, reports or other material, graphic, software or otherwise, prepared by the Consultant for TMEA under the Contract shall belong to and remain the property of TMEA.
- b. Where intellectual property rights in all material produced by the Consultant or the Consultant's Personnel pursuant to the performance of the Services ("the Material") are the property of the Consultant, the Consultant hereby grants to TMEA a worldwide, nonexclusive, irrevocable, royalty free licence to use all the Material.
- c. "use" shall mean, without limitation, the reproduction, publication and sub-licence of all the Material and the intellectual property rights therein, including the reproduction and sale of the Material and products incorporating the same for use by any person or for sale or other dealing anywhere in the world.

16. Code of conduct

The consultant shall at all times act loyally and impartially and as a faithful adviser to TMEA in accordance with the rules and/or codes of conduct of its profession.

It shall in particular refrain from making any public statements concerning the services without prior approval of TMEA, and from engaging in any activity which conflicts with its obligations towards TMEA under this contract.

It shall not commit TMEA in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation to third parties.

17. Conflict of interest

The consultant shall refrain from any relationship which would compromise its independence or that of its personnel. If the consultant fails to maintain independence, TMEA may terminate the contract in accordance with the provisions of this contract.

18. Insurance

The Consultant and his/ her/ their personnel are responsible for ensuring adequate and appropriate medical, travel, Personal Accident or any other insurance cover before beginning work, under a TMEA contract for services. The Consultant's fee is deemed to include an element to cover the cost of all insurance

19. Assignment

The consultant shall not assign, in whole or in part, their obligation under this contract, except with prior written consent of TMEA.

20. Subcontracting

The consultant shall request approval in writing from TMEA for all subcontracts awarded under this contract that are not included in the contract. Subcontracting shall in no event relieve the consultant of any of its obligations, duties, responsibilities or liability under this contract.

21. Law Governing Contract and Language

The Contract shall be governed by the laws of Kenya but in the event of a conflict between Kenyan laws and any other Law, then the laws of Kenya prevail. The language of the Contract shall be English.

22. Dispute Resolution

TMEA and the Consultant agree to seek to resolve any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, by amicable settlement. Where it is not possible to reach an amicable settlement, any dispute, controversy or claim arising out of or relating to this Contract or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Arbitration Act of 1995 or any statutory modifications or re-enactment thereof for the time being in force.

Notwithstanding any adjudication or arbitration proceedings no party shall commit an anticipatory breach of contract.

23. Liability

Except where there has been misconduct, gross negligence, dishonesty or fraud on behalf of the Consultant or the Consultant's Personnel, the Consultant's aggregate liability arising out of or in connection with this Contract shall be limited to the amount of the Financial Limit. The Consultant shall not be liable for any failure to perform or delay in performance of any of its obligations arising out of or in connection with this Contract where such failure or delay is caused by TMEA or any of TMEA's agents, employees or contractors.

24. Force Majeure

- a. The failure of the Consultant to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises

from an act, event, omission or accident beyond its reasonable control ("Force Majeure Event"), provided that the Consultant (i) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, and (ii) has informed TMEA as soon as possible about the occurrence of such an event and in any event not later than 14 days after the occurrence of such event.

- b. Any period within which the Consultant shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which the Consultant was unable to perform such action as a result of the Force Majeure Event.
- c. During the period of their inability to perform the Services as a result of a Force Majeure Event, the Consultant shall be reimbursed for additional costs reasonably and necessarily incurred by it during such period for the purposes of the Services and in reactivating the Services after the end of such period.

Force Majeure shall not include:

Any event which is caused by the negligence or intentional action of the consultant, or such consultant's subcontractors or agents or employees; nor any event which a diligent party could reasonably have been expected to both: Take into account from the effective date of the contract; and Avoid or overcome in the carrying out of its obligations.

25. Joint venture, consortium or association

Unless otherwise specified in this contract, if the Consultant is a joint venture, consortium or association, all of the parties shall be jointly and severally liable to TMEA for the fulfilment of the provisions of this contract.

The composition or constitution of the joint venture, consortium or association shall not be altered without the prior written consent of TMEA. Any alteration of the composition of the joint venture, consortium or association without prior written consent of TMEA shall be considered to be a breach of contract.

26. Travel

All authorized air travel must be economy class through the most direct and economical route.

CONTRACT FOR CONSULTANCY SERVICES

Section 3 – The Services

TERMS OF REFERENCE

[Insert]

CONTRACT FOR CONSULTANCY SERVICES

Section 4 – Special Conditions and Consultant's Key Personnel

1. Special conditions

The proposal-both technical and financial-submitted for this tender forms an integral part of this contract.

2. Key Personnel

The following of the Consultant's Personnel cannot be substituted by the Consultant without TMEA's prior written consent:

[Insert]

CONTRACT FOR CONSULTANCY SERVICES

Section 5 – Fees

1. Professional fees

Consultant	Fee rate per day (\$)	Maximum number of days	Total value (\$)
TOTAL 1			

2. Reimbursable expenses

Item	Number	Cost (\$)	Total value (\$)
GRAND TOTAL (1+2)			

All expenses including accommodation must be supported by valid receipts which must be submitted with the relevant invoice. The only exception to this is the payment of subsistence allowances which are paid at TMEA standard rates and which do not need to be supported by receipts.

3. Invoicing instructions

After approval by the recipient, invoices should be sent to invoices@trademarkea.com. Invoices should clearly list the Contract Number (POXXX) and the details of the Consultant's bank account to which TMEA shall transfer payments.