## **BUSINESS AND ASSETS TRANSFER AGREEMENT**

## BUSINESS AND ASSETS TRANSFER AGREEMENT

**DATED 2021**

**BETWEEN**

**[PARTY 1]**

**(THE “SELLER”)**

**AND**

**[PARTY 2]**

**(THE “BUYER”)**

**Drawn By: -**



I&M Bank House, 7th Floor

2ndNgong Avenue

P.O. Box 22588-00505,

**Nairobi.**

[www.cmadvocates.com](http://www.cmadvocates.com)

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This Agreement (the “**Agreement**”) is made the [insert text] day of [insert text] 20

**BETWEEN**

1. [FULL COMPANY NAME] a limited liability company incorporated in the Republic of Kenya with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Seller); and
2. [FULL COMPANY NAME] a limited liability company incorporated in the Republic of Kenya with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Buyer).

**WHEREAS:**

1. The **Business** is carried on by the Seller under the **Business** Name.
2. The Seller has agreed to sell and **transfer**, and the Buyer has agreed to buy, the **Business** (comprising the **Assets**) as a going concern on the terms and conditions set out in this **agreement**.

**NOW, THEREFORE**, in consideration of the foregoing, the Parties agree as follows:

# DEFINITIONS AND INTERPRETATION

* 1. **Definitions**
     1. For the purposes of this Agreement,
        1. **Agreement** means this Asset Transfer Agreement.
        2. **Assets** means the fixtures and fittings, equipment and other assets described in Annexure A.
        3. **Book Debts** means the trade and other debts owed to the Seller at the Completion Date in connection with the Business.
        4. **Business** means the business of [DESCRIBE THE NATURE OF BUSINESS] carried on by the Seller as at the Completion Date.
        5. **Buyers Advocates** means [ ].
        6. **Business Day** means a day other than a Saturday, Sunday or statutory public holiday in the Republic of Kenya.
        7. **Business Information** means all information, know-how and techniques (whether or not confidential and in whatever form held) which in any way relate, wholly or partly, to the Business.
        8. **Cash Balance** means all the Seller’s cash-in-hand or at the bank or at any other financial institution including cheques received but not banked or which are in the **course** of clearance and all prepaid expenses and deposits and refunds and other assets.
        9. **Claims** means the benefit of all rights and claims of the Seller arising from the carrying on of the Business (whether during on, prior to or after Completion) under any orders, sales, agreements, licences, warranties, conditions, guarantees, indemnities or other rights (whether express or implied), in favour of the Seller in relation to any of the Assets included in the sale under this Agreement or previously sold or let on hire by the Seller in the course of carrying on the Business.
        10. **Completion** means completion of the sale and purchase of the Assets in accordance with clause 5 and “Complete” shall be construed accordingly.
        11. **Completion Date** means [INSERT DATE] or such other day agreed in writing by the Seller and the Buyer to be the “Completion Date” for the purposes of this Agreement.
        12. **Conditions** means the conditions precedent to Completion set out in clause 4.
        13. **Consideration** means the amount as is set out in clause 3.
        14. **Contracts** means all contracts, engagements, arrangements, licenses, guarantees and other commitments relating to the Business which have been entered into by or on behalf of, or for the benefit of the Seller or the benefit of which is held in trust for or has been assigned or subcontracted to the Seller and which remain to be performed in whole or in part, including those set out in Schedule 3.
        15. **Creditors** means the aggregate amount owed by the Seller in connection with the Business to or in respect of trade creditors and accrued charges or other liabilities as at the Completion Date.
        16. **Disclosed** means [fully, clearly, accurately and] fairly disclosed (with sufficient details to identify the nature and scope of the matter disclosed) in or under the Disclosure Letter.
        17. **Disclosure Bundle** means the bundle of documents [, in agreed form,] annexed to the Disclosure Letter.
        18. **Disclosure Letter** means the letter [, in agreed form,] from the Seller to the Buyer with the same date as this agreement and described as the Disclosure Letter, together with the Disclosure Bundle.
        19. **Fixed Assets** means all fixtures, plant, machinery, equipment and other tangible assets used or intended for use in connection with the Business that are physically attached or fixed to the Properties as at the Effective Date, excluding items subject to leasing and hire agreements.
        20. **Freehold Properties** means the freehold properties, particulars of which are set out in Annexure A.
        21. **Final Payment Date** means the date of payment of the Balance.
        22. **[Goodwill** means the goodwill, custom and connection of the Seller in relation to the Business, together with the exclusive right for the Buyer to carry on the Business and respectively to represent itself as carrying on the Business in succession to the Seller and the right to all lists of Customers and suppliers pertaining to the Business as at the Completion Date.]
        23. **Income Tax Act** means the Income Tax Act (Chapter 470, Laws of Kenya).
        24. **[Intellectual Property Rights** means the trademarks, service marks, trade and business names, rights in designs, patents, copyright, database rights, moral rights and rights in know-how and other intellectual property rights in each case whether **registered** or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world owned, used or held for use by the Seller in connection with the Business. ]
        25. **Inventory** means such inventory owned by the Seller which is identified by the Buyer as **inventory** which is not damaged and still in usable condition or with a reasonable shelf life at the Completion Date for the purposes of or in connection with the Business.
        26. **Leasehold Properties** meansthe leasehold properties, particulars of which are set out in Annexure A, and Leasehold Property means any one of them.
        27. **[Liabilities** means all the liabilities or obligations of or relating to the Business or the Assets of the Seller.]
        28. **Moveable Assets** means all plant, machinery, equipment and other tangible assets used or intended for use in connection with the Business that are not physically attached or fixed to the Properties as at the Effective Date, including for the avoidance of doubt the IT Systems, furniture, furnishings, office equipment and motor vehicles, excluding items subject to leasing and hire agreements.
        29. **Parties** means the Buyer and the Seller and shall where the context so admits include their successors and permitted assigns, and “**Party**” shall mean either one of them.
        30. **Properties** means the Freehold Properties or the Leasehold Properties.
        31. **Records** means all records and other storage media, regardless of form or characteristics, containing or relating to Business Information or on or in which Business Information is recorded or stored, whether machine-readable or not (including computer disks, hard drives, servers, universal serial bus (USB) sticks, the cloud, books, photographs and other documentary materials) [including OR excluding] the VAT Records.
        32. **Sellers Advocates** means [INSERT DETAILS].
        33. **Stock** all raw materials, supplies, work in progress, parts and components, and finished goods held, used or owned by the Seller in connection with the Business as at the Effective Date.
        34. **Subsidiary** in relation to a company wherever incorporated means a “subsidiary” as defined in section 154 of the Companies Act 2015 and any other company which is a subsidiary (as so defined) of a company which is itself a subsidiary of such holding company. Unless the context otherwise requires:
            1. the application of the definition of Subsidiary to any company at any time will apply to the company as it is at that time; and
            2. references to “Subsidiary” or “Subsidiaries” are references to a subsidiary or subsidiaries of the Parties.
        35. **Taxation or Tax** includes, without limitation any and all provincial, state, local and other taxes, assessments and other governmental charges, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all delayed payment fines, penalties and additions imposed with respect to such amounts; and any obligations with respect to such amounts arising as a result of being a member of an affiliated, consolidated, combined or unitary group for any period or under any agreements or arrangements with any other person and including any liability for taxes of a predecessor or transferor entity imposed, collected or assessed by, or payable to a Tax Authority.
        36. **Tax Authority** means any government, state or municipality or any local, state, federal or other authority, body or official anywhere in the world exercising a fiscal, revenue, customs or excise function.
        37. **Warranties** means the warranties and representations set out in [Clause 8 and 9] OR [Annexure B].
        38. **VAT** means Value Added Tax.
        39. **VAT Act** means Value Added Tax Act (No. 35 of 2013).
  2. **Interpretation**
     1. Unless the context otherwise requires, in this Agreement:
        1. clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;
        2. References to clauses and Schedules are to the clauses of and Schedules to this agreement and references to paragraphs are to paragraphs of the relevant Schedule;
        3. The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules;
        4. words importing the singular shall be construed as importing the plural and vice versa;
        5. a reference to one gender, whether masculine, feminine or neuter, shall include a reference to the other two;
        6. references to any statute or statutory provision shall be construed as references to the same as it may have been, or may from time to time be, amended, modified or re-enacted and shall include any subordinate legislation made from time to time under that statute or statutory provision;
        7. references to a governmental authority means any court, administrative agency, commission, ministry, department, official or other authority of any country, state, province, prefect, municipality, county, locality or other government or political subdivision thereof, or any quasi-governmental or private body exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority.
        8. references to a “company” shall be construed so as to include any corporation or other body corporate, wherever and however incorporated or established; and
        9. references to a “person” shall be construed so as to include any individual, firm, company, corporation, body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality).

# SALE AND PURCHASE OF THE BUSINESS

* 1. Subject to the terms of this Agreement, the Seller hereby sells the Assets and the Business as a going concern and the Buyer purchases the Assets with a view of carrying on the Business, with effect from the Completion Date.
  2. [The Buyer hereby confirms that it has conducted due diligence on the Assets to be transferred and the Buyer agrees and acknowledges that it is purchasing the Assets on an ‘as is, where is’ basis free from all liens, charges and encumbrances and the Seller expressly disclaim and negate any express statutory or implied warranties, whether of description, physical condition, merchantability, fitness for a particular purpose or otherwise covering the Assets. The Buyer, by acquiring the Assets on an ‘as is, where is’ basis waives any claims or rights of indemnification, contribution or recourse it may have against or from the Vendor with respect to or arising out of the condition of the Assets.] OR
     1. (IF ACTING FOR THE BUYER)
     2. [The Seller warrants to the Buyer that, except as Disclosed, each Warranty is true, accurate and not misleading on the date of this agreement.
     3. Warranties qualified by the expression so far as the Seller is aware (or any similar expression) are deemed to include an additional statement that they have been made after due and careful enquiry.
     4. Each of the Warranties is separate and, unless otherwise specifically provided, is not limited by reference to any other Warranty or any other provision in
     5. Except for the matters Disclosed, no information of which the Buyer, its agents or advisers has knowledge (in each case whether actual, constructive or imputed), or which could have been discovered (whether by investigation made by the Buyer or on its behalf), shall prejudice or prevent any Claim, or reduce the amount recoverable under any Claim.]
  3. Until Completion, the Seller shall retain possession of and title to the Assets and shall carry on the Business for his own benefit and risk. Upon Completion taking place, title and risk of loss or damage to the Assets shall pass to the Buyer and the Buyer shall carry on the Business for its own benefit and risk and assume responsibility for and carry out, perform and discharge all the debts, liabilities and obligations created by or arising under or in connection with the Assets and the Buyer shall, indemnify the Seller in full against all costs, claims, demands and liabilities incurred by the Seller in respect of them.
  4. The Assets are sold by the Seller as legal and beneficial owner.
  5. The Buyer shall [not] OR [shall acquire] acquire or assume any of the following under this Agreement:
     + 1. the Liabilities;
       2. the Creditors;
       3. any right of action to which the Seller may be entitled (whether in contract, tort or otherwise) other than pursuant to or in connection with any Contract;
       4. all contracts and arrangements relating to the Business entered into outside the ordinary course of business;
       5. all the Seller’s Cash Balance;
       6. the Book Debts;
       7. the Seller’s accounts and accounting records; and
       8. the benefit of any and all insurance claims and repayments arising before the Final Payment Date in relation to the Business.

# CONSIDERATION

* 1. Subject to the satisfaction of the Conditions, the purchase price for the purchase of the Business (comprising the Assets) shall be the payment of [INDICATE THE AMOUNT] to the Seller (the “**Consideration**”) on the Completion Date.
  2. The Consideration shall be paid as follows:
  3. [INSERT THE AMOUNT] on or before the date of this Agreement (by way of deposit) to the [Seller’s Advocates to hold as stakeholders pending Completion] OR [directly to the Seller] [which amount shall be held in a fixed deposit interest earning account]; and
  4. [INSERT THE AMOUNT] on the Completion Date to the Seller to such bank account as the Seller shall advise the Buyer in writing.
  5. The Consideration shall be paid to the Seller’s Advocates to the following account:

|  |
| --- |
| ACCOUNT NAME: |
| BANK NAME: |
| BRANCH: |
| ACCOUNT NUMBER: |
| ADDRESS: |
| TELEPHONE NO: |
| FAX NO: |
| BANK CODE:  BRANCH CODE: |
| SWIFT ADDRESS: |
| FILE NUMBER: |
|  |

# CONDITIONS

* 1. Completion of this Agreement is subject to the following conditions being satisfied on or before the Completion Date:
     + 1. approval by the directors (as the case may be) of the Seller approving the execution of this Agreement and the transactions contemplated in the Agreement;
       2. approval by the shareholders and the directors (as the case may be) of the Buyer approving the execution of this Agreement and the transactions contemplated in the Agreement; and
       3. any other approval, consent or waiver as may be required from any relevant regulatory authority or third party. Each Condition is stipulated for the mutual benefit of the Seller and the Buyer who may, by agreement in writing, waive (in full or in part) (unless such Condition is incapable of waiver), or extend the period for the fulfilment of such Condition.
  2. The Parties shall be jointly responsible for obtaining any approval that may be required in order to implement the transaction contemplated by this Agreement as soon as practicable.

# COMPLETION

* 1. Subject to the satisfaction of the Conditions, the Completion of the sale and purchase of the Assets shall take place on the Completion Date at the offices of the Seller’s Advocates or at such other time or on such other date as the Parties may agree.
  2. On or before the Completion Date the Buyer shall pay the Consideration to the Seller in accordance with Clause 3.
  3. The Seller shall on the Completion Date deliver to the Buyer:
     + 1. physical possession of the Assets which are capable of being transferred by delivery with the intent that title in such Assets shall pass upon such delivery;
       2. the Seller shall hand over to the Buyer:-
          1. duly executed conveyances, assignments, licences and other documents in the agreed form necessary to vest title in the Properties in, or transfer the Properties to, the Buyer or as the Buyer directs;
          2. the title deeds, certificates of title, letters of allotment relating to the Properties and all invoices, policies, premiums, receipts, maintenance contracts, health and safety files and other accounts relating to the Properties;
          3. [duly executed agreements in the agreed form for the assignment or novation of the benefit of the Contracts to the Buyer, or as the Buyer directs, and all requisite notices, consents and licences therefor;]
          4. duly executed assignments in the agreed form to vest the Goodwill;
          5. all such Third Party Consents as the Buyer may require to vest in the Buyer or as the Buyer may direct the full benefit of the Assets;
          6. all documents of title and certificates for the lawful operation and use of, and all service documents pertaining to, the Fixed Assets, the Moveable Assets and the Stock;
          7. duly executed assignments [and licences] in the agreed form, of the Intellectual Property Rights;
          8. all documents of title, certificates, deeds, licences, agreements and other documents relating to the Intellectual Property Rights and all manuals, drawings, plans, documents and other materials and media on which the Business Information is recorded;
          9. the logbooks and test certificates of any motor vehicles that are to transfer under this agreement;
          10. the Contracts;
          11. [all VAT Records;]
          12. releases [or certificates of non-crystallisation] duly executed by [NAME OF RELEVANT PARTY] in the agreed form in respect of all Encumbrances on or affecting any of the Assets;
          13. the Records;
          14. the Disclosure Letter duly executed by the Seller;
          15. a written acknowledgement executed as a deed from the Seller [and each member of the Seller Group] that all arrangements to which the Seller [and any such member] is a party and which affect the Business or Assets [other than the Contracts or as otherwise required by this agreement] have been cancelled by mutual agreement and without any compensation or damages being payable by either party to the other;]
          16. such irrevocable instruction to the bank[s] of the Seller as may be necessary to procure the automatic transfer to the Buyer of any payment that any customer of the Business may make to such bank[s] after the Completion Date;
          17. a certified copy of the resolution, in agreed form, adopted by the board of directors of the Seller authorising the Transaction;
          18. [an assignment of the benefit of the confidentiality undertakings entered into between the Seller and prospective purchasers of the Business, together with copies of the relevant confidentiality undertakings and copies of any notices or demands served on such prospective purchasers for the return or destruction of information or documents.]
          19. to the extent in the Seller’s possession, all information, documents, operation manuals, books and records generally relating to the Assets;
          20. such other papers and documents as are required by the Purchaser to give effect to the transfer of the Assets and to give effect to the terms of this agreement together with all deeds and documents relating to the title of the Seller to the Asset; and
          21. a copy of the minutes of a meeting of the board of directors of the Seller authorising the execution by the Seller of this agreement and all other documents ancillary to it or the transactions contemplated herein, and authorising the relevant signatory or signatories to execute this agreement and any such other documents on the Seller’s behalf.

# VALUE ADDED TAX AND INCOME TAX ELECTION

* 1. Any sum expressed to be payable in respect of the Assets by the Buyer under this Agreement is exclusive of any applicable VAT.
  2. The Seller shall issue a tax invoice in respect of the Assets on the Completion Date and the Buyer shall pay to the Seller the consideration for the Assets (inclusive of VAT) in accordance with the payment schedule set out in Clause 3.
  3. The Seller shall be responsible for payment of capital gains tax and provide the Buyer with the Acknowledgement Receipt and Payment Slip.

# OWNERSHIP, RISK OBLIGATIONS AND LIABILITIES ASSUMED BY THE BUYER

* 1. The risk in and beneficial ownership of the Assets shall be deemed to have passed to the Buyer and the sale and purchase of the Assets will be deemed to have effect on and from the Completion Date.
  2. [The Buyer having had an opportunity to inspect and examine the Assets shall be deemed to have full notice and knowledge of the condition thereof and their identity and the same are sold in the condition in which they were as at the time of such inspection subject to fair wear and tear. ]
  3. [Any condition or warranty whatsoever as to the condition of the Assets or any part thereof and their fitness for any purpose is hereby excluded and the Buyer purchases the same on an “as-is” basis.]

# BUYER'S WARRANTIES

* 1. [The Buyer warrants that it has inspected the Assets that are capable of physical inspection and purchases them with full knowledge of their actual state and condition as they are on the date of this Agreement.
  2. Any condition or warranty whatsoever as to the condition of the Assets and their fitness for any purpose is hereby excluded.]

# SELLER'S WARRANTIES

* 1. The Seller warrants to the Buyer that:
     + 1. the Seller has good and marketable title to each Asset (whether tangible or intangible);
       2. the Seller is the sole legal and beneficial owner of the Assets free from all security interests, options, equities, claims or other third party rights (including, without limitation, rights of pre‑emption) of any nature whatsoever, and has the legal right to dispose of the Assets except for (i) any hire or lease agreement in the ordinary course of business; (ii) title retention provisions in respect of goods and materials supplied to the Seller in the ordinary course of the Business; or (iii) liens arising in the ordinary course of business by operation of law;
       3. the Seller has not agreed to create any new Encumbrances over the Assets or any part of them;
       4. the Seller has the requisite power and authority to enter into and perform this Agreement;
       5. there has been no exercise, purported exercise or claim for any charge, lien, encumbrance or equity over any of the Assets and there is no dispute directly or indirectly relating to any of the Assets; and
       6. the entry into and performance of this Agreement will not breach or constitute a default under the Seller’s articles of association, or any agreement, instrument, order, judgement or other restriction which binds the Seller.

# LIMITATION OF LIABILITY

* 1. The provisions of this clause 10 shall operate to limit the liability of the Seller in relation to any warranty claim.
  2. The aggregate liability of the Seller for all substantiated warranty claims shall not exceed the Consideration.
  3. The Seller shall not be liable for a warranty claim unless notice in writing summarising the nature of the warranty claim and as far as is reasonably practicable, the amount claimed, has been given by the Buyer to the Seller prior to the expiry of the period of 30 days commencing on the Completion Date.
  4. The Seller shall not have any liability to the Buyer under the **Seller’s** **Warranties** if any matter giving rise to such a claim for breach of Warranty by the Seller:
     + 1. has been disclosed to the Buyer;
       2. is a result of any legislation or regulations which were not in force at **Completion** in relation to any claim against the Seller and if it results from an amendment to existing legislation or a modification in the interpretation of any legislation or regulation or an increase in the rate of tax;
       3. is contained in any information disclosed in written form to employee, agent or professional adviser of the Buyer relating to the Seller in the course of any investigation or due diligence exercise carried out into the affairs of the Seller.
  5. Notwithstanding any provisions contained in this agreement, the Seller shall only be liable for any breach of the **Warranties** given by the Seller where the subject matter of those **Warranties** given by the Seller relates to an event which occurred or arose on or before (but not after) **Completion** and further only if the breach remains unremedied as at **Completion**.
  6. A claim under the **Warranties** given by the Seller may only be made once in connection with the same matter giving rise to such claim.
  7. The **Warranties** given by the Seller to the Buyer in connection with the sale of the Assets to the Purchaser are limited to those set out in clause 5 and Schedule 3 and no other warranty will be deemed to be given by the Seller.

# BREACH OF AGREEMENT

* 1. If the Buyer shall fail to comply with any of the conditions hereof or of the condition subject to which this sale is made including the condition relating to the completion of the sale the Seller may give to the Buyer at least five (5) Business days' notice in writing confirming the Seller’s readiness to complete the sale in all respects and specifying the default and requiring the Buyer to remedy the same within five (5) Business Days of such notice (time being of the essence) AND if the Buyer shall fail to comply with such notice the Seller shall at the Seller’s sole option be entitled to rescind this Agreement and forfeit any Deposit paid to the Seller (with interest earned thereon).
  2. If the Seller shall fail to comply with its obligations under this Agreement, the Buyer may give the Seller five (5) Business days' notice in writing to comply with its obligation and such notice shall specify the default and require the Seller to make it good within five (5) Business days of such notice and if the Seller then fails to comply with the notice, the Buyer may (at its discretion) rescind the agreement and the Seller shall refund any sums paid by the Buyer to it.

# NOTICES AND PROCEEDINGS

* 1. Any notice required to be given by any Party to the other Party under or in connection with this Agreement will only be effective:
     + 1. if by way of hand delivery, when it has been delivered to the relevant;
       2. if by way of pre-paid first class registered post, seven (7) Business Days after the envelope addressed to the other Party containing the notice was delivered into the custody of the postal authorities;
       3. if by way of commercial courier, five (5) Business Days after being couriered by a reputable courier service (courier prepaid) in an envelope addressed to the other Party at the relevant address;
       4. if by way of electronic communication, only when the email is actually received in readable form and if the notice letter is scanned and sent with the email addressed to a particular department or officer,
       5. provided further that any notice given or made outside of normal working hours in accordance with the provisions of clause 12.1 shall be deemed to be given or made at the start of the normal working hours on the next Business Day.
  2. Any notice given in accordance with clause 12.1 shall be delivered to the relevant Party at its address set out below:
  3. For the Seller:

Address:

Email:

For the attention of:

and;

[PROVIDE ADVOCATES ADDRESS]

* 1. For the Buyer

Address:

Email: [insert text]

For the attention of: [insert text]

And

[PROVIDE ADVOCATES DETAILS]

* 1. A Party may change its details for service of notices specified in clause 12.2 by giving notice in writing to the other Party.
  2. This clause 12 does not apply to the service of any proceedings or other documents in any legal action.

# COSTS

* 1. Each of the Parties shall pay its own legal, accountancy and other costs and expenses incurred in relation to the negotiation, preparation and execution of this Agreement.
  2. If VAT is payable on transfer of any of the Assets pursuant to this agreement then the Seller shall on receipt of a valid VAT invoice relating to such Assets pay to Kenya Revenue Authority an amount equal to the amount of VAT payable in respect of the same.
  3. The Seller shall pay the nominal stamp duty on this Agreement. All other stamp duties are for the account of the Buyer.
  4. If Capital Gains Tax is payable on the transfer of any asset, the Capital Gains Tax shall be borne by the Seller.
  5. The Buyer shall indemnify the Seller against any other tax claims that shall be made by the Kenya Revenue Authority.

# NO PARTNERSHIP

* + 1. Nothing in this Agreement shall constitute or be deemed to constitute a partnership or agency between any of the Parties and none of them shall have any authority to bind the others in any way whatsoever other than as contemplated or provided for in this Agreement.

# FURTHER ASSURANCE

* + 1. Each of the Seller and the Buyer shall perform (or procure the performance of) all further acts and things, and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably required by the Buyer to implement and give effect to this Agreement.

# TITLE

* + 1. The Seller shall take all necessary steps and co-operate fully with the Buyer to ensure that it obtains the full benefit of the Assets and shall execute such documents and take such other steps (or procure other necessary parties so to do) as are reasonably necessary or appropriate for vesting in the Buyer all its rights and interests in the Assets.

# ACCRUED RIGHTS

* + 1. The termination of this Agreement howsoever caused shall be without prejudice to any obligations or rights of any of the Parties which shall have accrued prior to such termination and shall not affect any provision of this Agreement which is expressly or by implication provided to come into effect on or to continue in effect after such termination.

# ASSIGNMENT

* + 1. No Party shall assign, transfer, charge or otherwise deal with all or any of its rights under this Agreement nor grant, declare or dispose of any right or interest in it except to any member of its Group. For the purpose of this clause “**Group**” means any party to this Agreement, any holding company of any party and any Subsidiary of a party or of any such holding company from time to time.

# CONFIDENTIALITY

* 1. The Parties acknowledge that the amount of the Consideration paid under this Agreement and any information supplied in connection with this Agreement which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them (the “**Receiving Party**”) may consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Party concerned.
  2. The Receiving Party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof other than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other person who has not signed an Agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.
  3. The undertaking and obligations contained in this clause 19 do not apply to information which:
     + 1. is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties;
       2. the Receiving Party demonstrates that it was already in its possession prior to its receipt by or disclosure to such Receiving Party;
       3. is required by Kenyan law to be disclosed; and
       4. after being disclosed to the Receiving Party is disclosed by any other person to the Receiving Party otherwise than in breach of any obligation of confidentiality.
  4. Each Party shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or directors or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or will be disclosed.
  5. Save as may be required by law or any regulatory authority, no announcement or publicity of the existence of this Agreement or its content or the transaction embodied in this Agreement shall be made or issued by or on behalf of any Party without the prior written Agreement of all the Parties.

# GENERAL

* 1. This Agreement together with the Schedules constitutes the entire agreement between the Parties in respect of the matters dealt with herein and supersedes cancels and nullifies any previous agreement or arrangement between the Parties in relation to such matters notwithstanding the terms of any such agreement or arrangement including any terms as to any rights or provisions expressed to survive termination.
  2. Each of the Parties hereby acknowledges that it has not been induced to enter into this Agreement by and is not for any other reason relying upon any statement of fact or opinion or any representation or warranty other than those contained or referred to in this Agreement or in any document referred to in this Agreement and irrevocably and unconditionally waives any right it may have:
     + 1. to claim damages for any misrepresentation (whether or not contained in this Agreement) unless such misrepresentation or warranty was made or given fraudulently; and/or
       2. rescind this Agreement.
  3. No variation of this Agreement shall be valid or effective unless made by one or more instruments in writing signed by, or on behalf of, each Party (or their authorised representatives).
  4. No waiver by any of the Parties of any of the requirements or of any of its rights under this Agreement shall release any of the other Parties from full performance of those remaining obligations under this Agreement and no failure to exercise and no delay in exercising by any of the Parties of any right, power or privilege hereunder shall operate as a waiver nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise or the exercise of any other right, power or privilege.
  5. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies otherwise provided by law.
  6. Each of the provisions of this Agreement is severable and distinct from the others and if any court or administrative body of competent jurisdiction finds any provision of this Agreement to be invalid, unenforceable or illegal, the other provisions of this Agreement shall remain in force.
  7. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable or legal if some parts of it were deleted, the provision shall apply with whatever modification is necessary to make it valid, enforceable and legal.
  8. Any date or period mentioned in this Agreement may be extended by agreement between the parties hereto (or such of the parties as may be affected thereby).

# COUNTERPARTS

* + 1. This Agreement may be executed in any number of counterparts and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by email attachment or telecopy shall be an effective mode of delivery.

# GOVERNING LAW AND DISPUTE RESOLUTION

* 1. This Agreement and any disputes or claims arising out of, or in connection with, its subject matter are governed by and construed in accordance with the laws of the Republic of Kenya.
  2. The Parties irrevocably agree that the courts of the Republic of Kenya have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

**IN WITNESS** of which the Parties have executed this Agreement on the day and year first set forth above.

ANNEXURE A   
THE ASSETS

The **Assets** included in the sale pursuant to this **agreement** and their respective values are as follows:

|  |  |
| --- | --- |
| **ASSET** | **VALUE** |
| Goodwill |  |
| [Freehold Properties | ] |
| [Leasehold Properties | ] |
| Fixed **Assets** |  |
| Moveable **Assets** |  |
| Benefit of the Contracts |  |
| **Business** Name |  |
| **Business** Information |  |
| Intellectual Property Rights |  |
| Third Party Rights |  |
| [Other **assets**] |  |

ANNEXURE B   
WARRANTIES

**EXECUTION**

This Agreement is signed by duly authorised representatives of the Parties:

|  |  |
| --- | --- |
| **SEALED** with the Common Seal of  [INSERT] in the presence of:    Director    Director/Secretary    *Advocate* | )  )  )  )  ) [affix seal]  )  )  )  )  )  )  ) |

|  |  |
| --- | --- |
| **SEALED** with the Common Seal of  [INSERT] in the presence of:    Director    Director/Secretary    *Advocate* | )  )  )  )  ) [affix seal]  )  )  )  )  )  )  ) |

**Drawn By:-**

**CM Advocates LLP**

I & M Bank House, 7th Floor

2nd Ngong Avenue

P.O. Box 22588-00505

**Nairobi.**

[**www.cmadvocates.com**](http://www.cmadvocates.com)