***[ON LETTERHEAD OF XXXXXXXXX SCHOOL]***

**PRIVATE AND CONFIDENTIAL.**

**A B Another**

P. O. Box ……………………

Nairobi.

Tel No. …………….……………

Email: [xxxxxxxx@xxxxxx.com](mailto:xxxxxxxx@xxxxxx.com)

**Dear …………..,**

**RE: CONSULTANCY AGREEMENT**

We are pleased to appoint you as a Consultant Tutor in **XXXXXXXXXXXXX SCHOOL** (“**School**”) with effect from …………………………….. on the following terms and conditions:

1. **Engagement**
   * 1. The School hereby engages the Consultant as a facilitator to provide teaching, training and coaching services (“**Services**”)to the School.
2. **Consultancy Fee**
   1. In consideration of the Services to be rendered hereunder, the School shall pay you a Consultancy fee, payable monthly in arrears, to be calculated at the rate set out below, subject to the deduction of the applicable withholding tax;

**Consultancy Fee per month = ………………………**

* 1. You shall submit to the School a monthly invoice detailing the Services performed during the preceding month and the amounts due by the 5th day of the month. All such invoices shall be due and payable within seven (7) calendar days after receipt by the School.
  2. You shall be entitled to reimbursement for all pre-approved expenses reasonably incurred in the performance of the Services, upon submission and approval of written statements and receipts in accordance with the usual procedures of the School.

1. **Key Responsibilities**
   * 1. Your main duties and responsibilities shall be as set out below and as may be directed by the School from time to time;
        1. …………………………………………………….;
        2. …………………………………………………….;
        3. …………………………………………………….;
        4. …………………………………………………….;
        5. …………………………………………………….;
        6. …………………………………………………….;
2. **The School Involvement**
   * 1. The School’s obligations shall include the following;
        1. Communicate to the Consultantany required relevant information as soon as possible;
        2. Accord the Consultant access to facilities and equipment necessary to carry out the Services;
        3. Conduct any necessary training and coaching on the curriculum;
        4. Provide access to any other relevant information and content necessary to carry out the Services; and
        5. Provide any other facilitation support as required by the consultant.
3. **Term**
   1. Subject to Clause 5.2 below, the term of the consultancy shall be for an initial period of **three (3)** months.
   2. The Parties may extend the term of the consultancy for a further period of three (3) months commencing on the day following the expiration of the initial term provided that you: -
      * 1. have achieved an average of the Minimum Performance throughout each term based on the findings of the performance report;
        2. have properly observed and performed your obligations under this Agreement throughout the term; and
        3. executed a renewal consultancy agreement with the School in such form as the School requires upon the expiry of each term.
4. **Hours of Work**
   1. You shall attend to the performance of the Services during such times as may be agreed with the School from Monday to Friday and /or based on the dates and times agreed upon between the School and the families under the Tutoring Programme. You shall agree with the School management of your proposed hours of attendance for the days of Monday to Friday each week and agree on the same in writing at least of one (1) week in advance of that week.
   2. The School management will maintain a schedule of your attendance which shall be signed off by yourself and the School management’s representative on a weekly basis.
5. **Independent Contractor**
   1. You shall provide the Services to the School as an independent consultant thus you shall not be considered to be an employee of the School. Accordingly;
      * 1. You agree that the School shall have no liability or responsibility for the payment of any statutory dues, employment insurance premiums or Employee Pension Plan contributions on any amounts paid by the School to the Consultant or amounts paid by the Consultant to its employees or contractors.
        2. You agree that as an independent consultant you will not be qualified to participate in or to receive any employee benefits that the School may extend to its employees.
        3. You shall be free to provide services to other clients as long as there is no interference with your contractual obligations to the School.
        4. You shall have no authority to and will not exercise or hold yourself out as having any authority to enter into or conclude any contract or to undertake any commitment or obligation for, in the name of or on behalf of the School.
   2. You shall bear exclusive responsibility for the payment of all statutory dues as a consultant, including taxes, social security payments and health insurance payments arising from the Services performed by you under this Agreement and you hereby agree to indemnify the School from any and all claims in respect of your failure to withhold and/or remit any such payments to the relevant Government authorities.
   3. Save as specifically stated in this Agreement, the School shall not be liable to pay you any additional benefits or allowances including, without limitation, any terminal benefits.
6. **Insurance** 
   * 1. You shall be responsible for your own medical insurance cover and needs as well as both public liability and professional indemnity insurance covers in respect of the consultancy services (if applicable).
7. **Termination of Service**
   1. **Termination by Either Party**
      1. Either Party shall be entitled to terminate this Agreement by giving one (1) month written notice to the other Party. The termination to be immediately effective upon the expiry of such notice of termination.
   2. **Grounds for Termination**
      1. This Agreement shall terminate with immediate effect: -
         1. if any Party is found in breach of the terms of this Agreement or fails to comply with its obligations under this Agreement, and, if the breach/failure can be cured, it/he/fails to cure such a breach/failure within seven (7) days of receipt of written notice from the Party not in default or declares that it/he will not be able to remedy the default within such time;
         2. if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of either Party;
         3. if one Party makes any arrangement for the benefit of its/his creditors;
         4. in the event of either party being prohibited by any law or official requirement from complying with the terms of this Agreement;
         5. on the expiration of the term;
         6. on the death of the Consultant or if he is incapacitated for a period lasting for a continuous period of Seven (7) Working Days or a total of Seven (7) Working Days within a single period of one (1) month; and
         7. On the part of the Consultant, in the event that the Minimum Performance averaged over during the Term has not been achieved or dereliction of duties or poor performance of Services.
   3. **Consequences of Termination**
      1. Upon termination of this Agreement for any reason whatsoever, all legal obligations, rights and duties arising out of this Agreement shall terminate except for such legal obligations, rights and duties as shall have accrued prior to the effective date of termination. Further;
         1. You shall return to the School any files and documents in your possession or under your control which belong, contain or record any confidential information or matters relating to the School.
         2. The termination of this Agreement shall not discharge the liabilities of the defaulting Party; and
         3. Any clauses intended by the Parties or this Agreement to survive the termination of this Agreement shall survive the termination of this Agreement by whatever cause.
8. **Obligations**
   1. You shall at all times perform your obligations with promptness and diligence in a professional and workmanlike manner and at a level of proficiency to be expected of a consultant with the background and experience that you have represented as possessing. The School shall provide such access to its information, property and personnel as may be reasonably required in order to permit you to perform the Services.
   2. You shall be required to show loyalty, sincerity and integrity beyond reproach to the School in the performance of your Services.
   3. You shall at all times whether on duty or not, conduct yourself in a manner consistent with the traditions and code of behavior of the School and in such a way as not to bring the School’s reputation into dispute. In particular, you shall be expected to exercise tact and discretion in your dealings with members of the public, public affairs, members of staff and any impropriety or intolerance, however provoked, must be avoided.
   4. You shall perform your duties in accordance with the Services enumerated in clause 3 above and other instructions handed down by the School from time to time.
9. **Confidentiality**
   1. **Definition**
      1. In this Agreement the term “**Confidential Information**” shall mean the Work Product and any and all information relating to the School’s business, including, but not limited to, research, developments, product plans, products, services, diagrams, formulae, processes, techniques, technology, firmware, software, know-how, designs, ideas, discoveries, inventions, improvements, copyrights, trademarks, trade secrets, customers, suppliers, markets, marketing, finances disclosed by School either directly or indirectly in writing, orally or visually, to Consultant. Confidential Information does not include information which;
         1. is in or comes into the public domain without breach of this Agreement by the yourself;
         2. was in your possession prior to receipt from the School and you did not acquire by the School under an obligation of confidentiality or non-use;
         3. you acquired from a third party not under an obligation of confidentiality or non-use to the School; or
         4. is independently developed by the Consultant without use of any Confidential Information of the School.
   2. **Obligations of Non-Disclosure and Non-Use.**
      1. Unless otherwise agreed to in advance and in writing by the School, you will not, except as required by law or court order, use the Confidential Information for any purpose whatsoever other than the performance of the Services or disclose the Confidential Information to any third party. You may disclose the Confidential Information only to such persons who need to know such information. In addition, prior to any disclosure of such Confidential Information to any such persons, such person shall be made aware of the confidential nature of the Confidential Information and shall execute, or shall already be bound by, a non-disclosure agreement containing terms and conditions consistent with the terms and conditions of this Agreement. In any event, you shall be responsible for any breach of the terms and conditions of this Agreement by any such persons. You shall use the same degree of care to avoid disclosure of the Confidential Information as you employ with respect to your own Confidential Information of like importance, but not less than a reasonable degree of care.
   3. **Return of Confidential Information**.
      1. Upon the termination or expiration of this Agreement for any reason, or upon the School’s earlier request, you will deliver to the School all of the School’s property or Confidential Information in tangible form that you may have in your possession or control. You may retain one copy of the Confidential Information in your legal files.
10. **Non Compete**
    1. During the term of this Agreement, you will not engage in a business or other activities that are, directly or indirectly, in competition with the business activities of the School without obtaining the prior written consent of the School.
    2. The parties agree that for a period of one (1) year after termination of this Agreement, you shall not:
       * 1. divert or attempt to divert from the School any business of any kind in which it is engaged, including, without limitation, the solicitation of or interference with any of its suppliers or customers, or
         2. employ, solicit for employment, or recommend for employment any person employed by the School, during the Consultation Period and for a period of one (1) year thereafter.
11. **Licence To Operate**
    * 1. You shall maintain at your sole expense and liability the costs for any necessary licensing covering the performance of the Services in this Agreement provided that you shall furnish the School with a valid registration certificate or licenses from relevant government bodies or institutions.
12. **Dispute Resolution**
    1. If any party violates his obligations under this Agreement, the violating party must first be given written notice of the violation with suggested recourse from the aggrieved party and given a seven (7) day resolution period to address the matter. It is agreed that during the seven (7) -day resolution period all parties involved in the matter will
    2. seek to pursue resolution through dialogue. Following the resolution period, if no mutually satisfactory solution has been reached, the aggrieved partner may refer the dispute to arbitration in accordance with clause 14.2 below.
    3. Any dispute, disagreement or question arising out of or relating to or in consequence of this Agreement or relating to its construction or performance which cannot be settled amicably as referred to in clause 14.1 above shall be referred to and finally resolved by arbitration in accordance with the provisions of the Arbitration Act, 1995 of the laws of Kenya by one arbitrator appointed by the Chairman for the time being of the Chartered Institute of Arbitration, Kenya Branch, on the application of any party. The language of the arbitration shall be English. Each Party shall bear its own cost of preparing and presenting its case. The costs of arbitration (including the fees and expenses of the arbitrators) shall be shared equally between the parties unless the award provides otherwise.
13. **Force Majeure**
    1. Either Party shall be excused from any delay or failure in performance required hereunder if caused by reason of any occurrence or contingency beyond its reasonable control, including, but not limited to, acts of God, acts of war, , insurrection, strikes, lock-outs or other serious labour disputes, riots, earthquakes, floods, tempest, fire, explosions, disease, plaque, endemic or pandemic or other acts of nature.
    2. The obligations and rights of the Party so excused shall be extended on a day-to-day basis for the time period equal to the period of such excusable interruption. When such events have abated, the Parties’ respective obligations hereunder shall resume.
    3. In the event the interruption of the excused Party’s obligations continues for a period in excess of fourteen (14) calendar days, either Party shall have the right to terminate this Agreement in accordance with the provisions of clause 9 above.
14. **Assignment**
    1. The Services you will perform hereunder are personal in nature, and School has engaged you as a result of your expertise relating to such Services. You, therefore, agree that you will not assign, sell, transfer, delegate or otherwise dispose of this Agreement or any right, duty or obligation under this Agreement without the School’s prior written consent.
    2. Nothing in this Agreement shall prevent the assignment by the School of this Agreement or any right, duty or obligation hereunder to any third party.
15. **General**
    1. All sums of money payable to you pursuant to your letter of appointment shall be the gross amount. You shall be responsible to submit the statutory deductions and taxes imposed by the laws of Kenya.
    2. Although the School will endeavor to comply with and ensure the observance of the conditions of service contained in this letter of appointment, it is expected that you will draw in writing the attention of the School to any inadvertent omission by the School in performing its obligations under these terms.
    3. Where government regulations in Kenya do not permit provision of any of the benefits contained herein, the obligations created by these terms will be discharged according to the discretion of the School.
    4. The benefits accruing to you under this letter of appointment shall be limited to yourself and not any other third party.
    5. “Power of Interpretation”. Words used in this letter of appointment are intended to carry their ordinary meaning in common English usage.
    6. Words used in the masculine gender shall include the feminine gender.
    7. Words used in plural shall include the singular and vice-versa.
    8. No failure or delay to exercise any power, right or remedy by the School shall operate as a waiver of that right, power or remedy and no single or partial exercise by that party of any right, power or remedy shall preclude its further exercise or the exercise of any other right, power or remedy.
    9. The rights and remedies of the School provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
    10. The Parties intend that the contents of this Agreement shall be legally binding and enforceable.
    11. Each of the provisions of this Agreement is severable and distinct from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
    12. No amendment or variation to this Agreement shall be effectual or binding on the parties hereto unless it is in writing and duly executed by or on behalf of the parties hereto.
16. **Governing Law**
    * 1. This Agreement shall be governed by and construed in all respects in accordance with laws of Kenya.
17. **Notices**
    1. Any notice or other communication under or in connection with this Agreement is to be in writing in the English language and signed by or on behalf of the Party giving it. The notice or communication may be served by being delivered personally or sending it by electronic mail, facsimile transmission or by registered post to the Party due to receive the notice or communication at the Parties address noted herein or such other address as that Party may specify from time to time in writing to the other Party.
    2. In the absence of evidence of earlier receipt any notice or communication so served is deemed to have been received:
       * 1. in the case of personal service, on delivery;
         2. in the case of facsimile transmission, on completion of such transmission except where the time of transmission is not during the addressee’s normal business hours in which case it shall be 11.30 a.m. on the next business day and provided electronic confirmation of such transmission is obtained; and
         3. in the case of registered post, seven (7) days from the date of posting.

Please signify your acceptance of these terms and conditions by signing and returning the attached copy of this letter.

Yours faithfully,

**For and on behalf of XXXXXXXXXX SCHOOL LIMITED**

**…………………………..**

**Director**

**ACKNOWLEDGEMENT BY CONSULTANT**

I ………………………………………, accept the above terms and conditions and agree to be bound by them.

SIGNATURE…………………………………………..

Date…………………………………………………..

**In the presence of Witness:**

SIGNATURE…………………………………………..

Name ………………………………………

Date…………………………………………………..