Notes:

Deed of Assignment and Novation

An assignment agreement transfers one party's rights under a contract to another party. The party transferring their rights is the assignor; the party receiving them is the assignee. Under an assignment only the benefits of the contract are transferred whilst the obligations remain with the assignor.

Novation is a mechanism where one party transfers all its obligations and rights under a contract to a third party, with the consent of the original counterparty.

This standard document has integrated notes with important explanations and drafting tips.

**DEED OF ASSIGNMENT AND NOVATION**

**DATED 2020**

**(the “Assignor”)**

**- and -**

**(the “Assignee”)**

**-and-**

**(the “Continuing Party”)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**DEED OF ASSIGNEMENT AND NOVATION**

**IN RESPECT OF**

**[INSERT THE NAME AND DATE OF THE AGREEMENT]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Drawn By:-**

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**DEED OF ASSIGNMENT AND NOVATION**

**THIS DEED** is **DATED** the day of 202……

**BETWEEN:**

1. **[PARTY 1],** a limited liability company incorporated in the Republic of Kenya and Post Office Box Number [INSERT ADDRESS], (herein after called the “**Assignor**” which expression shall where the context so admits include its appointed nominees, successors and assigns);
2. **[PARTY 2]**,a limited liability company incorporated in the Republic of Kenya and whose address is P.O Box [INSERT ADDRESS] (hereinafter the “**Assignee**” which expression shall where the context so admits include its appointed nominees, successors and assigns); and
3. **[PARTY 3]**,a limited liability company incorporated in the Republic of Kenya and whose address is P.O Box [INSERT ADDRESS] (hereinafter the “**Continuing Party**” which expression shall where the context so admits include its appointed nominees, successors and assigns).

**WHEREAS:**

1. The Assignor entered into the [INSERT NAME AND DATE OF THE AGREEMENT] with the Continuing Party (the “**Agreement**”) for purposes of [DESCRIBE THE PURPOSE OF THE AGREEMENT]. A copy of the signed and dated [INSERT] is attached to this Deed.
2. The Assignee has requested and the Assignor has agreed to assign and novate all its rights and obligations under the Agreement to the Assignee subject to the terms and conditions set out in this Deed with effect from the date of this Deed (the “**Effective Date**”).
3. The parties hereto wish to vary the Agreement to effect the said assignment and novation.
4. This Deed is supplemental to the Agreement.

**NOW THIS DEED WITNESSETH AS FOLLOWS**

# Definitions and Interpretations

* + 1. The definitions and interpretations contained in the Agreement shall unless otherwise expressly defined herein, continue to apply to this Deed.

# Assignment and Novation

* 1. With effect from the Effective Date:
     + 1. The Assignors assigns and novates all its rights and obligations under the Agreement to the Assignee.
       2. [The Assignor shall continue to be liable for any failure by it to perform its obligations under the Agreement before the Effective Date]

**OR**

[The Assignee has agreed to release the Assignor from liability for any failure by the Assignor to perform its obligations under the Agreement before the Effective Date, on the basis that the Assignee is to assume liability for those failures in the Assignor's place.]

* + - 1. The Assignee shall enjoy all the rights and benefits of the Assignor under the Agreement. The Assignee agrees to perform the Agreement and be bound by its terms in every way as if it were the original party to it in place of the Assignor.
      2. The Continuing Party agrees to perform the Agreement and be bound by its terms in every way as if the Assignee were the original party to it in place of the Assignor.
      3. All references to the Assignor in the Agreement shall be read and construed as references to the Assignee.

# Release of Obligations and Liabilities

* + - 1. The Continuing Party and the Assignor release each other from all future obligations to the other under the Agreement.
      2. [The Continuing Party releases and discharges the Assignor from all claims and demands under or in connection with the Agreement, arising before, on or after the Effective Date, and in each case whether known or unknown to the Continuing Party.]
      3. The Continuing Party and the Assignee may enforce the Agreement and pursue any claims and demands under or in connection with the Agreement against the other with respect to matters arising before, on or after the Effective Date as though the Assignee were the original party to the Agreement instead of the Assignor.

# Undertakings by Assignor

* 1. The Assignor, shall at its own expense, execute and do all such assurances, acts and things as the Assignee in its absolute discretion may require for:
     + 1. preserving or protecting any of the rights of the Assignee under this Deed; and
       2. enabling the Assignee to vest all or part of the Agreement in its name or in the name(s) of its nominee(s) or agent.
  2. The Assignor hereby undertakes to indemnify the Assignee for any loss or liability incurred by the Assignee as a result of failure by the Assignor to observe its obligations herein.

# Indemnity

* 1. The Assignee shall indemnify the Assignor against all liabilities, costs, expenses, damages and losses that the Assignor may suffer or incur under or in connection with the Agreement as a result of the Assignee's failure to perform the Agreement from the Effective Date.
  2. [The Assignor shall indemnify the Assignee against all liabilities, costs, expenses, damages and losses that the Assignee suffers or incurs under or in connection with the Agreement as a result of the Assignor’s failure to perform the Agreement before the Effective Date.]

# Consent of the Consultants

* + 1. The Continuing Party HEREBY UNCONDITIONALLY CONSENT to the above assignment and novation in respect of the Agreement.

# Variation

* 1. Save as otherwise provided in this Deed and pursuant to the aforesaid assignment, novation and transfer the parties to this Deed hereby agree that the Agreement shall be and the same is HEREBY VARIED to the intent that all references to the Assignor in the Agreement shall be read as references to the Assignee.
  2. Save and except as hereby expressly varied the Agreement shall remain in full force and effect and binding on the parties thereto.

# Miscellaneous

* 1. This Deed shall not be varied or cancelled, unless such variation or cancellation shall be expressly agreed in writing by each Party.
  2. If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, the legality, validity or enforceability of (i) the remaining provisions of this Deed and (ii) such provision under the law of any other jurisdiction, shall not in any way be affected or impaired thereby.
  3. The provisions of clause [INSERT] (Notices) of the Agreement apply in respect of any notice to be delivered by any person to another hereunder as if set out in full herein.
  4. Other than as amended by this Deed, the provisions of the Agreement shall remain in full force and effect and no other provision of the Agreement is amended.
  5. This Deed may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Deed.
  6. Each Party shall bear its own legal costs in connection with the negotiation, preparation, execution and performance of this Deed. The Assignor shall pay for the stamp duty fees for this Deed.
  7. This Deed is governed by the laws of Kenya and all disputes arising out of or in connection with this Deed, including any question regarding its existence, enforceability, validity, interpretation or termination, shall be resolved in accordance with the Agreement.

**IN WITNESS WHEREOF** this Deed has been duly executed by the parties as a deed hereto the day and year first hereinbefore written.

**SEALED** with the Common Seal )

of **[INSERT NAME OF ASSIGNOR]** )

in the presence of: )

)

Director: )

)

Director/Secretary: )

)

**Before me:** )

)

)

**Advocate**  )

**SEALED** with the Common Seal )

of **[INSERT NAME OF ASSIGNEE]** )

in the presence of: )

)

Director: )

)

Director/Secretary: )

)

**Before me:** )

)

)

**Advocate**  )

**SEALED** with the Common Seal )

of **[INSERT NAME OF THE CONTINUING PARTY]** )

in the presence of:- )

)

Director: )

)

Director/Secretary: )

)

**Before me:** )

)

)

**Advocate**  )

**Drawn By:-**

**[INSERT]**