**STANDARD CLAUSES IN COMMERCIAL CONTRACTS**

**Notices**

* 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 address [and upon proof of delivery by signature of a delivery receipt];
     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 provided further that any notice given or made outside of normal working hours in accordance with the provisions of clause 1.9 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 or made in accordance with this Agreement shall be delivered to the relevant Party at its address set out below:
     1. For the [INSERT PARTY NAME]:

Address: [insert text]

Email: [insert text]

For the attention of: [insert text]

* + 1. For the [INSERT PARTY NAME]:

Address: [insert text]

Email: [insert text]

For the attention of: [insert text]

* 1. A Party may change its details for service of notices specified in clause 1.2 by giving notice in writing to the other Party.
  2. [Any notice or other communication given or made in accordance with this Agreement by or to a party may be given or made by or to the party’s Advocates on behalf of the Party;
  3. This clause 19 does not apply to the service of any proceedings or other documents in any legal action.

**Assignment**

This Agreement shall be binding on the parties and their respective successors/personal representatives and assigns. None of the parties shall be entitled to assign this Agreement or any of its rights and obligations hereunder except as expressly permitted in this Agreement.

OR

This agreement is personal to the [INSERT] and the [INSERT] shall not without the prior written consent of the [INSERT](which consent may be conditioned at the sole discretion of the [INSERT]) assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

The [INSERT] may assign, transfer, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

**Further Assurance**

Each party shall co-operate with the others and execute and deliver to the others such other instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights and the intended purpose of this Agreement.

**Force Majeure**

Neither Party shall be liable in respect of any delay in performing, failure to perform, or failure to adequately perform any of his or its obligations hereunder in consequence of any act, cause or event which:

* + 1. was not within his or its control;
    2. was not caused or precipitated by his or its negligence; and
    3. could not have been prevented by his or its reasonable diligence, including without limitation:
    4. any act of God;
    5. any war or hostilities (whether war be declared or not);
    6. any act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalization;
    7. any plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions;
    8. any sabotage, riots or other act of civil disobedience, civil commotion, rebellion, act of a public enemy or invasions;
    9. any judicial actions, strikes, lockouts, industrial disputes or actions of such nature;
    10. any actions or inactions of any government or any agency or department;
    11. any act of terror;
    12. any storms, floods or other inclement, weather, earthquakes, subsidence, epidemics or other natural physical disasters; and
    13. fire, accident, explosion or shortage of labour

(hereinafter called a “**Force Majeure Event**”) for so long as and to the extent that the effects of the Force Majeure Event continue.

The Party which claims that a Force Majeure Event has prevented it from fulfilling any of his or its obligations under this Agreement shall, within five (5) days of the occurrence of a Force Majeure Event, notify the other Party (the “**Force Majeure Notice**”) of the Force Majeure Event in sufficient detail including the nature and effect of the Force Majeure Event. Similarly, Such Party shall notify the other Party when the Force Majeure Event ceases.

Where the Force Majeure Event continues for more than one (1) months after the date of the Force Majeure Notice either party may terminate this Agreement but without prejudice to any accrued rights either party may have against the other but subject to agreement, such affected Party undertakes to continue its performance of obligations under this Agreement immediately the Force Majeure event ceases. OR Where the Force Majeure Event continues for more than one (1) months after the date of the Force Majeure Notice, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in the circumstances.

Any payment obligations arising during the subsistence of the Force Majeure event shall be deemed to be suspended. In the event that the Agreement is terminated in accordance with the terms of this Clause [INSERT], the [INSERT]shall refund to the [INSERT] any monies that have been paid to the [INSERT] by the [INSERT] under the terms of this Agreement within thirty (30) days of such termination.

**Dispute Resolution**

**Good Faith Negotiations**

In case of any dispute arising out of this Agreement including any question regarding its interpretation, existence, validity or termination, each party will use its best efforts to resolve the dispute by good faith negotiation within a period of Thirty (30) Business Days following notification of the dispute.

**Mediation**

* + 1. If the dispute has not been settled pursuant to the Good Faith Negotiations under clause [INSERT] above within (30) Business Days from when the settlement discussions were instituted, any party may elect to refer the dispute to mediation. The mediation shall take place in in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
    2. The mediator shall be appointed by mutual agreement between the Parties or in default of such agreement within five (5) days of the notification of a dispute, upon the application of either Party, by the Registrar of the Nairobi Centre for International Arbitration in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
    3. The mediation shall take place in Nairobi and shall be conducted in accordance with the Nairobi Centre for International Arbitration (Mediation) Rules, 2015.
    4. Unless otherwise agreed, the mediation will start not later than Fourteen (14) Business Days from the date of notification of the dispute. No party may commence any court proceedings or arbitration in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation and the mediation has terminated.
    5. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

**Arbitration**

* + 1. If the dispute has not been settled pursuant to Good Faith Negotiations under Clause [INSERT] or under Mediation under clause [INSERT] above within thirty (30) Business Days (or such longer period as may be agreed upon between the parties) from when the settlement discussions were instituted, any party may elect to commence arbitration.  Such arbitration shall be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such agreement within fourteen (14) days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration of the United Kingdom.
    2. Such arbitration shall be conducted in Nairobi in accordance with the Rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act 1995.
    3. To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
    4. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
    5. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

**Severance**

1. If any provision of this Agreement or part thereof is rendered under any law void, illegal or unenforceable in any respect (whether against all or only some of the parties), the validity, legality and enforceability of the remaining provisions (and such aforesaid provision against the other parties) shall not in any way be affected or impaired thereby.
2. If any provision or part-provision of this agreement is deemed deleted under clause [INSERT], the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**Survival of Rights, Duties and Obligations**

Termination of this Agreement for any cause shall not release a party from any liability which at the time of termination has already accrued to another party or which thereafter may accrue in respect of any act or omission prior to such termination.

**Waiver**

No failure or delay to exercise any power, right or remedy by either Party 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. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**Variation**

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.

**Cumulative Rights and Remedies**

The rights and remedies of the Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**Entire Agreement**

This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

**Time of the Essence**

Time shall be of the essence in respect of all the obligations of the Parties under this Agreement.

**Third party rights.**

No one other than a party to this agreement shall have any right to enforce any of its terms.

**Authority to Execute**

The Parties warrant that the individuals executing this Agreement on behalf of each Party have been fully empowered to execute this Agreement on behalf of such Party and that all necessary corporate action to authorize the execution of this Agreement have been taken by such Party.

The execution and delivery of this Agreement, and the performance by either party of its obligations under this Agreement, will not result in a breach of any provision of, or constitute a default under, any agreement or instrument to which it is a party or by which it is bound.

**No Agency or Partnership**

Nothing in this Agreement shall create or be deemed to create a partnership or agency between the Parties and neither Party shall enter or have authority to enter into any agreement or make any representation or warranty on behalf of the other or pledge the credit of or otherwise bind the other Party.

Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**Conclusive Evidence**

This Agreement shall be sufficient evidence of the matters specified herein and may be produced in court as evidence of the matters specified herein without the need to call for further or other evidence.

**Counterparts**

This agreement may be executed in any number of counterparts, each of which when executed [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

No counterpart shall be effective until each party has executed [and delivered] at least one counterpart.

Termination

* 1. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
     1. [the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than [NUMBER] days after being notified [in writing] to make such payment;]
     2. the other party commits a material breach of any [other] term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of [NUMBER] days after being notified [in writing] to do so;
     3. [the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;]
     4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or [(being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 323 of the Insolvency Act or as having no reasonable prospect of so doing;
     5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors [other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party];
     6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
     7. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
     8. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
     9. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
     10. [the other party (being an individual) is the subject of a bankruptcy petition, application or order;]
     11. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within [14] days;
     12. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 1.1(d) to clause 1.1(l) (inclusive);
     13. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business [; or]
     14. [the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy [; or]]
     15. [the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation [; or]]
     16. [any warranty given by the other party in clause [NUMBER] of this agreement is found to be untrue or misleading.]
  2. [For the purposes of clause 1.1(b), **material breach** means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from:
     1. a substantial portion of this agreement; or
     2. any of the obligations set out in clauses [NUMBERS],

over [the term of this agreement **OR** any [NUMBER]-month period during the term of this agreement]. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.]

* 1. Without affecting any other right or remedy available to it, [either party **OR** [Party 1]] may terminate this agreement on giving not less than [NUMBER] months' [written] notice to the [other party **OR** [Party 2]].

**Governing Law**

The construction, validity and performance of this agreement shall be governed by Kenyan law.