ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **COMMERCIAL**

DOCUMENT**: WEBSITE DEVELOPEMENT AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting the Website Development Agreement. It may be modified or amended as need may be.
2. This template is applicable in case of Website development

## **WEBSITE DEVELOPMENT AGREEMENT**

Dated 2021

**between**

**[PARTY 1]**

**(the “Supplier”)**

**and**

**PARTY 2**

**(the “Purchaser”)**

**-in respect of-**

**[ ]**

**Drawn By: -**



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**TABLE OF CONTENTS**

[1. Interpretations 1](#_Toc78201014)

[2. Confidentiality 2](#_Toc78201015)

[3. Description of the Work 3](#_Toc78201016)

[4. Obligations of The Parties 4](#_Toc78201017)

[5. Reservation of Rights 5](#_Toc78201018)

[6. Permissions and Releases 5](#_Toc78201019)

[7. Term 5](#_Toc78201020)

[8. Termination 5](#_Toc78201021)

[9. Payment Schedule 5](#_Toc78201022)

[10. Due Dates 7](#_Toc78201023)

[11. Additional Services 7](#_Toc78201024)

[12. Expenses 7](#_Toc78201025)

[13. Assignment of Work 7](#_Toc78201026)

[14. Publication 7](#_Toc78201027)

[15. Project Handover 7](#_Toc78201028)

[16. Governing Law 8](#_Toc78201029)

[17. Arbitration 8](#_Toc78201030)

[18. Force Majeure 8](#_Toc78201031)

[19. Amendments 9](#_Toc78201032)

[20. Exclusion of Partnership/Agency 9](#_Toc78201033)

[21. Entire Agreement 9](#_Toc78201034)

[22. Notices 10](#_Toc78201035)

[23. Severability 10](#_Toc78201036)

[24. Authority to Execute 10](#_Toc78201037)

[25. Limitation of Liability 10](#_Toc78201038)

[26. Waiver 11](#_Toc78201039)

[27. Survival 11](#_Toc78201040)

[28. Non-Exclusivity 11](#_Toc78201041)

[29. Conclusive Evidence 11](#_Toc78201042)

[30. Costs 11](#_Toc78201043)

[31. Counterparts 11](#_Toc78201044)

[32. General 11](#_Toc78201045)

**WEBSITE DEVELOPMENT AGREEMENT**

This Website Development Agreement is dated ………………………..day of …………………………20…by and **BETWEEN**:

**Parties**

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED**, a limited liability company incorporated in Kenya under Certificate of Incorporation Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and of P. O. Box \_\_\_\_\_\_ - 00200, Nairobi, Kenya (hereinafter referred to as the (Supplier); and which expression shall where the context so requires, include its successors in title and permitted assigns) of the one part;

AND

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED**, a limited liability company incorporated in Kenya under Certificate of Incorporation Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and of P. O. Box \_\_\_\_\_\_ - 00200, Nairobi, Kenya (hereinafter referred to as the (Client), which expression shall where the context so requires, include its successors in title and permitted assigns) of the one part.

As the context may require, “Purchaser” and “Supplier” and are hereinafter collectively referred to as “Parties” and individually as “Party”.

**WHEREAS**:

1. The Supplier is able to provide the website development service required by the Purchaser, and which service is to be rendered by the Supplier to the Purchaser as described herein.
2. The Purchaser desires to procure and the Supplier is prepared to provide the service subject to the terms and conditions as set out in this agreement

**NOW THIS AGREEMENT WITNESSES AS FOLLOWS: -**

# Interpretations

* + 1. **Definitions**
       1. **Confidential Information**: means information in any form which is disclosed by any means by or on behalf of the Disclosing Party to the Receiving Party (including its employees, directors, officers and agents) and which relates to the Disclosing Party’s (or any associated Company of the Disclosing Party’s) operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers or other business affairs.
       2. **Confidential Record:** means any document, computer software or other material containing confidential information.
       3. **Disclosing Party**: means the party disclosing confidential Information to the other party pursuant to this agreement.
       4. **Effective Date**: means the commencement date of this agreement.
       5. **Receiving Party**: means the party receiving confidential Information from the other party pursuant to this agreement.
       6. **Intellectual Property Rights**: patents, utility models, rights to inventions, copyright related rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
       7. **The Parties**: shall Mean the **SUPPLIER AND THE CLIENT.**
       8. **The Work**: shall mean the updating of the Client’s website by the Supplier through the inclusion of a content management system integrated to the Client’s communications team to keep the Client’s information displayed on the website up-to-date.

# Confidentiality

* 1. Each party undertakes that it shall not [at any time **OR** at any time during this agreement, and for a period of [five **OR** [NUMBER]] years after termination of this agreement,] disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party [or of any member of the group to which the other party belongs], except as permitted by clause 1.2 (b). [For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.]
  2. Each party may disclose the other party's confidential information:
     + 1. to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 1; and
       2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
     1. No party shall use any other party's confidential information for any purpose other than to perform its obligations under this agreement.]
  3. **Ownership**
     1. All Confidential Information, including that which is contained in files, letters, memoranda, reports, records, data, sketches, notebooks, program listings, or other written, photographic, or other tangible, intangible, or other materials, or which shall come into a Receiving Party’s custody or possession, is and shall all times be the exclusive property of the Disclosing Party, and shall be used by the Receiving Party only for the purposes expressly contemplated by this Agreement.

# Description of the Work

* + 1. The scope of Work and corresponding timelines required by the Client shall include the following as per the Project Schedule contained in “Addendum A” to the Agreement.
       1. **Scope of Work**
          1. This will include:
          2. The re-designing of the Client’s website on a new and improved template within the existing domain and hosting framework to allow the website to be accessible from multiple devices, including mobile phones, tablets and desktop computers.
          3. Ensuring that the Client’s website will have the provision of integration into other websites and web systems to cross-share and automatically update data extending the system’s functionality over and beyond the short term needs of the website.
          4. Ensuring that the content updates to the website can be easily accommodated to ensure that the website retains its optimum relevance to the organization
  1. **Deliverables of the Work**
     1. The following shall be the deliverables for the Works
        1. System Design
           1. Visual layout of the website
           2. User interface design
           3. User experience design
           4. Correct use of colour palettes and logo
           5. Correct use of fonts
           6. Navigation and flow between pages
           7. General aesthetics of the webpage
        2. System Development
           1. Functional components and modules of code
           2. Navigation tabs work
           3. Links to different pages work
           4. Image popup (if included) work
           5. Web fonts are consistent
           6. Web colours are consistent
           7. Mailing function works from webpage
        3. Content Integration and Deployment
           1. CMS (Content Management System
           2. Active login page for the website administrator to enable website update at will
           3. Upload functions for images
           4. Page generator for additional pages
  2. **Timelines of the Work**
     1. The following timelines shall apply for the Works:
        1. System Design: (Insert timelines)
        2. System Development: (Insert Timelines)
        3. Content Integration and Deployment: **(**Insert Timelines)

# Obligations of The Parties

* 1. The Client
     + 1. To provide the body copy of the website and stock photography.
       2. To provide all necessary assistance to the Supplier to enable it to provide the Services.
       3. To pay the Supplier’s fees for the Work
  2. The Supplier
     1. To perform the Services with all due diligence, efficiency and economy, in accordance with appropriate professional standards.
     2. To give weekly status reports for the Work.

# Reservation of Rights

* + 1. All rights not expressly granted hereunder are reserved to the Supplier, including but not limited to all rights in sketches, comps or other preliminary material.

# Permissions and Releases

* + 1. The Client agrees to indemnify the Supplier against any and all claims, costs, and expenses, including attorney's fees, due to materials included in the Work at the request of the Client for which no copyright permission or previous release was requested or uses which exceed the uses allowed pursuant to a permission or release.

# Term

* 1. The term of this agreement shall commence on the Effective Date and shall continue to the end of the business negotiations, agreement and transactions between the parties unless earlier terminated in accordance with Clause 7 of this Agreement.
  2. Commencement of the Work shall be subject to on the payment of the deposit as per Clause 8 of this Agreement.
  3. Completion of the Work shall require the minimum timeline indicated in the project proposal, titled “Addendum A”. The project schedule shall come into effect one (1) day after payment of the deposit as per the terms of payment indicated in the cost estimate, titled “Addendum B”.

# Termination

* 1. Without limiting its other rights or remedies, either party may terminate the agreement with immediate effect by giving written notice to the other party if:[the other party commits a material breach of any term of the agreement and (if such a breach is remediable) fails to remedy that breach within [NUMBER] days of that party being notified in writing to do so;][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.
  2. The Supplier may terminate this Agreement with Seven (7) days’ notice to the Client if the Client suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business PROVIDED THAT on termination of the Agreement the Client shall pay the full Price for the services rendered to the client within the Seven (7) days’ notice period.
  3. Termination of the agreement, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.
  4. Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

# Payment Schedule

* 1. **Contract Price**
     + 1. The initial Contract Price charged by the Supplier to the Client for the Services is (Insert Contract Price) consisting of:
          1. (Insert Amount) for the System Design deliverables of the Work as per Clause 2.2
          2. (Insert Amount) for the System Development deliverables of the Work as per Clause 2.2
          3. (Insert amount) for the Content Integration deliverables of the Work as per Clause 2.2 c) above.
       2. The Supplier has granted the Client a special introductory discount for the (Insert Amount) which amount shall be off-set against the initial Contract Price in the form of a Credit Note to be issued by the Supplier to the Client.
       3. The final Contract Price payable for the Works by the Client to the Supplier is therefore (Insert amount) exclusive of 16% VAT.
  2. **Invoicing**
     1. The Supplier shall raise invoices to the Client for the portion of the Remuneration due for the specific deliverables of the Work rendered under Clause 2.2 as follows:
        + 1. Thirty (30) per cent (OR a certain percentage) upon completion of the System Design deliverables.
          2. Fifty (50) per cent (OR a certain percentage) upon completion of the System Development deliverables.
          3. Ten (10) per cent (OR a certain percentage) upon completion of the Content Integration and Deployment deliverables.
  3. **Paymen*t***
     + 1. The Client shall pay the invoices set out in Clause 8.2 above as follows:
       2. For the amounts due to the Supplier under Clauses 8.2 i. and ii. above, within (Insert payment timelines) of receipt of the invoices; and
       3. For the amount due to the Supplier under Clause 8.2 iii., within (Insert payment timelines) after completion of the Content Integration and Deployment deliverables and acceptance of the Works by the Client.
  4. **Liquidated Damages**
     1. The applicable liquidated damages shall consist of Ten per cent (10%) of the Remuneration for every calendar week’s delay or part thereof on a week to week basis up to a maximum of Thirty per cent (30%) of the total order after which the Client reserves the right to cancel the order.
  5. **Taxes** 
     1. If applicable, the Client shall deduct from and pay any withholding taxes and any other applicable taxes that may be set by the Government during this Agreement payable on the Services at such rate as may be prescribed by the relevant authorities from time to time and avail the Sub-contractor with a copy of the Withholding Tax Certificate or any other applicable tax certificates.

# Due Dates

* 1. Supplier agrees to deliver samples of the design on dates as agreed in the Project Schedule in the section titled Addendum A and set out in Clause 2.2 above.
  2. The Supplier will make every effort to meet the deadlines and be liable to the company for the liquidated damages set out in Clause 8.4 above arising from delays in meeting the timelines set out in Clause 2.2.
  3. The Client acknowledges that failure to submit any required information by the Supplier may cause subsequent delays in the Work. Any other form of Client delays shall result in significant delays in delivery of finished work of which the Supplier shall not be held responsible.

# Additional Services

* + 1. Changes in the client input/direction or excessive changes to the Work will be charged at (INSERT AMOUNT) per hour. Any additional Work the Client wishes the Supplier to create which is not specified in the Project Schedule section of this agreement (Addendum A) or in Clause 2.1, will be considered an additional service. Such Work shall be included in an addendum and invoiced separately as agreed by both parties.

# Expenses

* + 1. The Client agrees to reimburse Supplier for any of the following reasonable expenses necessary in completion of the Work: (e.g. Fonts, Messengers, Templates, Proofs, Props, Research, Shipping, Software, Stock photography, Travel, Scripts) where applicable subject to the production of receipts for such expenses for the Client’s approval.

# Assignment of Work

* 1. This agreement is personal to the Client and the Client shall not without the prior written consent of the Supplier (which consent may be conditioned at the sole discretion of the Supplier) 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.
  2. The Supplier may assign, transfer, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

# Publication

* + 1. The Client may publish or disclose information regarding the Work and shall acknowledge the support of the Supplier in all such publications. The Client shall not use the name of Supplier, in any advertising or publicity without the prior written consent of the Supplier. The Supplier shall not use the name of Client in any advertising or publicity without the prior written consent of the Client.

# Project Handover

* + 1. Upon completion of the Work, the Supplier will send the completed project schedule outlining the various tasks of the Work accomplished via email or private courier to which the Client will revert and confirm the Work as completed. Final payment will follow in accordance with the billing documents after handover the work is uploaded to the Client’s online property in accordance with the provisions of Clause 8.2 iii).

# Governing Law

* + 1. This Agreement and the relationship of the parties in connection with the subject matter in this Agreement shall be governed and determined in accordance with the laws of the Republic of Kenya

# Arbitration

* 1. Should any dispute arise between the parties, they shall enter into negotiations to resolve the same, failing which:
  2. The dispute will be referred to arbitration by a single arbitrator to be appointed by agreement between the Parties or in default of such Agreement within ten (10) days of the failure of negotiations, upon the application of either Party, to the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators.
  3. 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.
  4. To the extent permissible by law, the determination of the arbitrator shall be final conclusive and binding upon the parties.
  5. Pending final settlement or determination of a dispute, the parties shall continue to perform their subsisting obligations hereunder.
  6. Nothing in this Agreement shall prevent a Party from seeking urgent injunctive or interlocutory relief in a court of competent jurisdiction.

# Force Majeure

* 1. Definition of Force Majeure
     1. For the purposes of this Deed, “Force Majeure” means an event which could not reasonably have been avoided by the Seller in the circumstances, which is beyond the reasonable control of a party and which makes a party’s performance of its responsibilities hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances and includes, but is not limited to, war, riots, civil disorder, earthquake, storm, flood or adverse weather conditions, strikes, lockouts or other industrial action, terrorist acts, confiscation, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, act of authority whether lawful or unlawful, compliance with any law or governmental order, rules, regulations or directions, curfew restrictions, expropriations, compulsory acquisition, seizure of works, requisition, nationalization, Act of God or natural disaster such as but not limited to violent storms, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage, or destruction by lighting, drought, explosion, fire, destruction of machines, equipments, factories and of any kind of installation, prolonged break down of transport, telecommunication or electric current, general labour disturbance, such as but not limited to boycott, strike and lockout, go-slow, occupation of premises and factories, storage or inability to obtain critical material or supplies to the extent not subject to the reasonable control of the subject party or any other action by government agencies.
        1. Force Majeure shall not include any event which is caused by the negligence or intentional action of a Party or such Party’s subcontractors or agents or employees, or by a failure to observe good professional practice.
        2. The failure of a Party to fulfil any of its obligations hereunder shall not be considered to be a breach of, or default under, this Deed insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms of this Deed.
        3. A Party affected by an event of Force Majeure shall take all reasonable measures to remove such Party’s inability to fulfil its obligations hereunder with a minimum of delay. The Parties shall take all reasonable measures to minimise the consequence of any event of Force Majeure.
        4. A Party affected by an event of Force Majeure shall notify in writing the other Party of such event as soon as possible, and in any event not later than five (5) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give notice of the restoration of normal conditions as soon as possible.
        5. Not later than fourteen (14) days after a Party, as a result of an event of Force Majeure, has become unable to discharge a material portion of its obligations, the Parties shall consult with each other with a view to agreeing on appropriate measures to be taken in

# Amendments

* + 1. No amendment, interpretation or waiver of any provision of this Agreement or any Annexures to this Agreement shall be effective unless reduced to writing and signed by authorized representatives of both parties.

# Exclusion of Partnership/Agency

* + 1. Nothing in this Agreement shall constitute or be deemed to constitute partnership between the parties hereto or constitute or be deemed to constitute the Supplier as an agent of the Client for any purpose whatsoever and the Supplier shall have no authority or power whatsoever to bind the Client or vice versa in the name of and create any liability against the any party in any way or for any purpose whatsoever.

# Entire Agreement

* 1. 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.
  2. 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.

# Notices

* 1. Any notice or other communication given to a party under or in connection with this agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, [fax] or email.
  2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20(a); if sent by pre-paid first class post or other next working day delivery service, at [9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by [fax or] email, one Business Day after transmission.
     1. The provisions of this clause do not apply to the service of any proceedings or other documents in any legal action.

# Severability

* + - 1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
      2. If any provision or part-provision of this agreement is deemed deleted under clause 17(a), 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. Remain in full force except otherwise mutually agreed in writing. Agreement shall be carried out as nearly as possible in accordance with its original terms and intent.

# Authority to Execute

* 1. The Parties warrant that the individuals executing this Agreement on behalf of each Party has 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 has been taken by such Party.
  2. 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.

# Limitation of Liability

* 1. Nothing in this agreement shall limit or exclude the Supplier's liability for:
     + 1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
       2. fraud or fraudulent misrepresentation; or
       3. any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
  2. Subject to clause 24.1:
     + 1. the Supplier shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Agreement; and
       2. the Supplier's total liability to the Buyer for all other losses arising under or in connection with the agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to [% of the Price].

# Waiver

* + 1. No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right 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.

# Survival

* + 1. Notwithstanding completion or termination of this Agreement, this Agreement shall remain in full force with regards to anything remaining to be done performed or observed hereunder.

# Non-Exclusivity

* + 1. The rights and remedies provided by this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

# Conclusive Evidence

* + 1. 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.

# Costs

* + 1. [The parties shall each bear their own legal costs in relation to the preparation, negotiation and enforcement of this Agreement.] OR [The Buyer shall bear and pay the costs of negotiating, drafting, preparing and implementing this Agreement. The Buyer shall bear the costs of stamping this Agreement.

# Counterparts

* 1. 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.
  2. No counterpart shall be effective until each party has executed [and delivered] at least one counterpart.

# General

* 1. No failure or delay to exercise any power, right or remedy by a 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.
  2. The rights and remedies of the Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
  3. The Parties intend that the contents of this Agreement shall be legally binding and enforceable.
  4. 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.
  5. 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.
  6. This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.
  7. This Agreement constitutes the whole Agreement between the parties hereto in relation to the subject matter of this Agreement and no variations thereof shall be effective unless made in writing and signed by all the parties. This Agreement supersedes and replaces any Agreement whatsoever that may have subsisted between the parties hereto in any way relating to the subject matter.
  8. The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the laws of Kenya and the parties hereby agree to submit to the jurisdiction of the Kenyan courts.
  9. Each of the parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) and the Companies Act that it has executed this Agreement with the intention to bind itself to the contents hereof.

**IN WITNESS** **WHEREOF** this Agreement has been duly executed the year and date first hereinabove written:

**SIGNED** on behalf of **\_\_\_\_\_\_\_\_\_\_\_** ]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED** ]

by: ]

]

Director ] …………………….

]

**In the presence of** ]

]

**Witness** ] Signature: …………………………….

] Name: …………………………….

] Date: …………………………….

**SIGNED** on behalf of **\_\_\_\_\_\_\_\_\_\_\_** ]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED** ]

by: ]

]

Director ] …………………….

]

**In the presence of** ]

]

**Witness** ] Signature: …………………………….

] Name: …………………………….

] Date: …………………………….

**Drawn By: -**

**CM Advocates LLP**

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