**ARCHITECTURAL SERVICE AGREEMENT**

**Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2021**

**between**

**(as the “Client”)**

**and**

**(as the “Lead Architect”)**

**relating to the provision of certain services by the Lead Architect to the Client pertaining to the Developments**

**Drawn By: -**

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**ARCHITECTURAL SERVICE AGREEMENT**

**THIS AGREEMENT** is made this day of 20……

**BETWEEN**:

1. **[PARTY 1],** a limited liability company incorporated under the laws of Kenya and whose address is, Post Office Box Number [INSERT ADDRESS] (hereinafter referred to as the “**Client”**) of the one part; and

2. **[PARTY 2],** a limited liability company incorporated under the laws of Kenya and whose address is, Post Office Box Number [INSERT ADDRESS] (hereinafter referred to as the “**Lead Architect”**) of the other part.

**WHEREAS**

**NOW IT IS HEREBY AGREED** as follows:

# Definitions and Interpretation

* 1. In this Agreement, including the Recitals, the following words and expressions shall (unless the context otherwise provides) have the following meanings:
     + 1. “**Architect**” means the local architect who will be appointed separately by the Client;
       2. “**Adjudicator**” means a professional in the construction industry with a minimum of Twenty (20) years’ experience and of impeccable integrity and high standing in society appointed by the Parties to resolve any disputes arising between them as provided in Clause 18 of this Agreement;
       3. “**Brief”** means the written brief prepared by the Client with the assistance of the Lead Architect and includes any revisions made to the brief by the Lead Architect and approved by the Client and initialled by both Parties for purposes of identification describing the objectives, Project Execution Plan, Project Cost Plan, timelines, cost, quality, Site and Function of the Project;
       4. “**Client’s Project Committee**” means a committee comprising the officers of the Client which has been mandated to oversee the Project;
       5. “**Commencement Date**” means the date on which this Agreement comes into effect as provided under Clause 4.2;
       6. “**Confidential Information**” means all information in whatever form including, without limitation, any information relating to suppliers, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine – readable medium;
       7. “**Consultants**” means the Lead Architect, the Architect, Quantity Surveyor, Engineers, Designers and similar professionals appointed by the Client to undertake specialist design and other functions in connection with the Project and “**Consultant**” shall be construed accordingly;
       8. “**Design**” means work undertaken by the Consultants that shows and describes solutions to the Client’s objectives as stated in the Brief and “**Designs**” shall be construed accordingly;
       9. “**Development Manager**” means [PLEASE INSERT]
       10. “**Documents**” means all reports, sketches, drawings, models and information prepared by or on behalf of the Lead Architect in connection with the Project;
       11. “**ETR**” means Electronic Tax Register;
       12. **“Fees**” means the sum of [INSERT AMOUNT];
       13. “**Function”** means [INSERT];
       14. “**Group**” in relation to a company means any subsidiary, any holding company and any subsidiary of any holding company;
       15. “**Parties**” means the parties to this Agreement and “**Party**” shall be construed accordingly;
       16. “**Practical** **Completion Date**” means the date or time certified by the Architect that the Project has been completed in all material respects;
       17. “**Project Cost Plan**” means a document that forms part of the Brief that shows the estimated cost of each step of the Project;
       18. “**Project Execution Plan**” means a document that forms part of the Brief and produced by the Client or Development Manager and revised by the Lead Architect with the approval of the Client showing the steps to be followed in implementing the Project and time frames for each step;
       19. “**Services**” means the services to be provided by the Lead Architect as set out in clause 5 and the First Schedule hereto;
       20. “**Site**” means the location of the properties where the Developments will be carried out and as shall be described in the Brief;
       21. “**Variation**” means a change in the quantity or quality of the scope agreed to or in the time allowed for completion of a component of the Project; and
       22. “**VAT**” means Value Added Tax.
  2. **Construction of Certain References**
     + 1. Unless the context or express provisions of this Agreement otherwise require:-
       2. expressions in the singular shall include the plural and words importing a gender shall include every gender;
       3. references to any statute or statutory provision shall be construed as references to such statute or statutory provision as respectively amended or re-enacted or as their operation is modified by any other statute or statutory provision (whether before or after the date of this Agreement) and shall include any provisions of which they are re-enactments (whether with or without modification) and shall include subordinate legislation made under the relevant statute;
       4. references to recitals clauses and schedules are references to recitals and clauses of and schedules to this Agreement;
       5. reference to persons shall include any firm, company, corporation, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the foregoing and any other legal entity; and
       6. the expression “hereof”, “herein” and similar expressions shall be construed as references to this Agreement as a whole and not be limited to the particular clause or provisions in which the relevant expression appears.
  3. **Headings**
     1. The headings and sub-headings are inserted for convenience only and shall not affect the construction of this Agreement.

# Appointment

* + 1. The Client hereby appoints the Lead Architect to perform the Services in accordance with and subject to theterms of this Agreement and the Lead Architect accepts the appointment and agrees to provide the Services.

# Duration

* + 1. This Agreement shall commence on the Commencement Date and shall continue for a further period of [INSERT] from the Practical Completion Date or earlier termination in accordance with Clause 15 below.

# The Services

* + 1. The Lead Architect shall undertake the Services set out in the First Schedule.

# The Obligations of the Client

* + 1. The Client shall: -
       1. provide the Lead Architect with the following documents on the Commencement Date or at any time not later than thirty (30) days thereafter;
          1. Aerial Maps;
          2. Topographical surveys of the areas with contours;
          3. Copies of the title deeds;
          4. Physical identification of beacons marking plots boundaries.
       2. Liaise with the Lead Architect in preparation of the Brief.
       3. ensure that all information reasonably required by the Lead Architect is provided expediently and without charge;
       4. on request and within a reasonable time, give written consent with regard to the matters requiring the Client’s prior consent under this Agreement;
       5. provide the Lead Architect with such information and facilities as the Lead Architect shall require for the proper performance of the Services;
       6. formally notify any Consultants of the authority given to the Lead Architect to act on its behalf in the performance of the Lead Architect’s duties under this Agreement; and
       7. inform the Lead Architect in writing of the contact person in the Client’s Project Committee through whom all instructions to the Lead Architect shall be given and all reports and enquiries made.

# The Architect’s Personnel

* 1. The Lead Architect shall throughout the duration of this engagement appoint [INSERT NAME] as the Lead Architect’s principal representatives (the “**Architect’s Representatives**”) in the Project. The Lead Architect understands that this is a fundamental term of this engagement breach of which will result in instant termination of this Agreement.
  2. The Lead Architect may in addition to the Lead Architect’s Representatives appoint qualified and competent additional staff upon obtaining the Client’s prior written consent to undertake the Lead Architect’s duties as set out in this Agreement.
  3. The Lead Architect shall not replace the Lead Architect’s Representatives without the written consent of the Client.
  4. The Client may from time-to-time request for the replacement of any of the Lead Architect’s staff with a qualified and competent member of the Lead Architect’s staff approved in writing by the Client.

# Limitation of Authority

* + 1. The Lead Architect shall not without the prior written consent of the Client issue to any contractor, supplier, consultant, expert or other person any instruction the effect of which would be to materially increase the cost or extend the time to be taken to complete the Project.

# Duty to Co-operate

* 1. The Lead Architect undertakes to co-operate with the Client, Development Manager and all other Consultants in the implementation of this Agreement to ensure that the objectives are met on a timely and cost-effective manner.
  2. The Lead Architect acknowledges that it does not have sole or exclusive possession of the Site, and shall coordinate with the other Consultants to prevent any delay or disruption to the progress of the Project or the works of the other Consultants, including complying with all of its obligations.
  3. If any part of the works depends upon the work of another Consultant, the Lead Architect shall, prior to proceeding with the relevant part of the Services, inspect the work of such other Consultant and promptly report to the Client any apparent discrepancies or defects in such work that renders it unsuitable for such proper execution of the Services. Failure of the Lead Architect to report shall constitute acceptance of the other Consultant’s work as fit and proper.
  4. The Lead Architect shall, when requested and at no additional cost to the Client, provide all information and execute all documentation required under applicable Laws or by any Governmental Authority in relation to the performance, testing or approval of the Developments.
  5. The Lead Architect shall be responsible for its activities on the Site, and shall co-ordinate its own activities with those of other Consultants to the extent required in connection with the development of the Developments.
  6. The Lead Architect agrees to use reasonable endeavors to perform the Services in such a way as not to adversely affect any other party’s work on the Site.
  7. If and to the extent that the Lead Architect unreasonably causes delay or disruption to any other party, including Consultants, the Lead Architect shall indemnify the Client for the claims, costs, fines, penalties or other liabilities properly incurred by the Client and/or the Lead Architect.
  8. The Parties recognize that this Agreement cannot reasonably take into consideration all matters or circumstances that may arise during the execution of the Services. In this regard, should a situation not addressed by this Agreement arise, then the Parties shall cooperate to resolve it bearing in mind the completion timelines and to develop a mechanism for the resolution of similar issues arising in the course of the Developments. Any mechanism so developed shall be appended to this Agreement and be adopted as a part of this Agreement.

# Duty to Report and Advise

* + 1. The Lead Architect shall promptly inform the Client in writing with a copy to the Development Manager of anything which may or is likely to or which the Lead Architect believes would materially vary or change the financial viability or the time frame of the Project with a recommendation on any remedial action that should be taken.

# Lead Architect’s Liability

* 1. The Lead Architect shall perform the Services with reasonable skill, care and diligence using qualified and experienced personnel.
  2. The Lead Architect shall be liable for any omission or act of negligence or wilful misconduct or the failure to act in good faith as contemplated in this Agreement.
  3. The Lead Architect shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Lead Architect shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally.
  4. The Lead Architect shall comply with all the relevant labour Laws applicable to the Lead Architect’s Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
  5. The Lead Architect shall require its employees to obey all applicable Laws, including those concerning safety at work.
  6. The Lead Architect shall at all times take all reasonable precautions to maintain the health and safety of all its personnel and persons on the Site from time to time.
  7. The Lead Architect shall take out a professional indemnity insurance policy with reputable insurers previously approved in writing by the Client (the “**Policy**”) to cover its liability hereunder and the following terms shall apply: -
     + 1. the Lead Architect will at its expense maintain the Policy for a minimum of the total Fees and the duration of this Agreement;
       2. the Lead Architect will pay not later than Seven (7) days prior to the same becoming due all premiums and other monies necessary for effecting and keeping in force the Policy and on demand produce to the Client the written Policy and proof of such payments;
       3. if the Lead Architect becomes aware that the Policy has been or is about to be cancelled or materially modified or becomes aware of the occurrence of any event which may, ought to or would give rise to a claim under the Policy, the Lead Architect shall immediately give written notice to the Client of such event and, if required, produce such details or evidence as the Client may require;
       4. if any claim is made on the Policy, the Lead Architect hereby irrevocably confirms, acknowledges and agrees that all monies payable as the excess amount under the terms of the Policy will be for the account of the Lead Architect; and
       5. all monies to be received under the Policy relating to the Project shall be paid to the Client.

# Exclusion of Liability

* + 1. The Client shall not incur any liability to the Lead Architect or any other person by reason of any failure on the part of the Lead Architect to honour any contract entered into with any third party including but not limited to its sub-contractor(s), employees or other third party nor a failure to ensure compliance with any law.

# Representations and Warranties

* + 1. The Lead Architect warrants to the Client as follows:
       1. All information furnished to the Client by or on behalf of the Lead Architect in relation to its proposal to carry out the Services was, and remains, true and accurate in all material respects and that such proposal did not omit any material information which might reasonably be expected to affect the decision of the Client to enter into this Agreement.
       2. There are no proceedings pending or, to its knowledge, threatened, and there is no existing basis for any such proceedings, against or affecting it by or before any court, arbitrator, or other governmental authority which, if adversely determined, individually or in the aggregate might be reasonably expected to materially and adversely affect its properties, business, prospects, profits or condition or adversely affect its ability to perform its obligations under this Agreement.
       3. It validly exists or has been duly registered and has all the necessary power and authority to enter into this Agreement.
       4. That the particulars and information given to the Client by the Lead Architect are complete and accurate and it shall notify the Client immediately in writing of any change therein. In the event that any information is not complete and accurate then the Client may terminate this Agreement immediately by written notice to the Lead Architect without prejudice to any rights or remedies it may be entitled to at law.
       5. That its execution, delivery and performance of this Agreement will not be in conflict with or breach any other agreement or obligation to which it is a party or is bound.

# Copyright

* 1. The copyrights in the Documents shall remain vested in the Lead Architect, but subject to the Lead Architect having received payment of any fees agreed as properly due under this Agreement, the Client shall have a licence to copy and use the Documents and to reproduce the content of them with no limit as to time for any purpose relating to the completion, promotion, advertisement, reinstatement, refurbishment and repairs of the Developments.
  2. The Lead Architect shall not be liable for the use by the Client of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Lead Architect.

# Consideration

* 1. In consideration of the provision of Services, the Client shall pay to the Lead Architect the Fees.
  2. The Fees shall be paid based on the progress of the Project and upon completion of the milestones more particularly set out in the Second Schedule.
  3. The Lead Architect shall raise invoices for the Fees or the applicable amount within thirty (30) days from the date of completion and approval by the Client of the respective contract deliverables as set out in the Second Schedule.
  4. The Client shall make payment of the invoices within thirty (30) days from the date of receipt of the invoice by the Client.
  5. The Client may, not later than fifteen (15) days from the date of receipt of the invoice give the Lead Architect a written notice disputing the amount of the invoice and setting out the amount which the Client proposes to pay and the basis on which the amount is calculated.
  6. Where no notice is given pursuant to Clause 14.5 above, the amount to be paid shall be as stated in the invoice.
  7. Where the Client intends to withhold payment of any amount stated in the Lead Architect’s invoice, the Client shall give written notice to the Lead Architect not later than fifteen (15) days from the date of receipt of the invoice, stating the amount to be withheld and the reasons for withholding payment.
  8. The Lead Architect shall be responsible for the provision and maintenance of all materials, equipment and services required to fulfil its obligations under this Agreement and, accordingly, the Fees shall be inclusive of all disbursements and expenses but excluding travel expenses such as Air travel, taxi and car hire expenses as well as subsistence and accommodation costs incurred by the Lead Architect. The Air travel and ground transportation and accommodation expenses will be borne by the Client.

# Payment for Additional Services

* + 1. Any additional or new works occasioned by additional requirements by the Client shall be charged at a fee to be mutually agreed upon between the Client and the Lead Architect. The Lead Architect shall not proceed with work that is considered additional without the prior written approval of the Client.

# Suspension and Termination

* 1. In the event that the Client is in default of payment of any sums due under this Agreement and has not issued notices pursuant to clauses 14.5 and 14.7 above, the Lead Architect may suspend performance of any or all the Services subject to the following: -
     + 1. this right is subject to the Lead Architect first giving the Client not less than Thirty (30) days’ written notice of such intention and stating the grounds for suspension;
       2. the right to suspend performance shall cease when the Client makes payment of the amount due or refers the matters for settlement pursuant to Clause 17 below; and
       3. any such period of suspension shall be disregarded for the purposes of contractual time limits previously agreed for the completion of the Services.
  2. The Client may terminate this Agreement by giving Thirty (30) days’ notice in writing without the necessity of giving any reasons therefor.
  3. The Client may terminate this Agreement forthwith: -
     + 1. If the Lead Architect without reasonable cause wholly or partially suspends or fails to perform the Services;
       2. if the Lead Architect is in breach of any of its obligations under this Agreement and fails to remedy the breach after being given Seven (7) days written notice; and
       3. if the Lead Architect becomes insolvent, is wound up or a receiver manager is appointed or the Lead Architect otherwise fails to pay its debts.
  4. **Consequences of Suspension**
     + 1. Following suspension, the following shall take place in the sequence set out below: -
       2. the Client shall retain ownership of all proposals, reports and documents prepared by the Lead Architect in the performance of the Services;
       3. the Lead Architect shall ensure a proper hand over of all the matters it was handling in a detailed report;
       4. the Client shall pay the Lead Architect all undisputed amounts under this Agreement; and
       5. the disputed amounts shall be resolved in accordance with Clause 17 below.
  5. **Consequences of Termination**
     + 1. The Client shall retain ownership of all proposals, reports, work-plans and documents prepared by the Architect in the performance of the Services.
       2. The Architect shall ensure a proper handover of all the matters it was handling in a detailed report to the satisfaction of the Client.
       3. Other than with regard to accrued rights, neither Party shall have any further claims against the other.

# Relationship of the Lead Architect with the Development Manager

* 1. **Notification of appointment and role of the Project Manager**
     + 1. To facilitate the supervision of the Project, the Client has entered into an agreement with the Development Manager pursuant to which the Development Manager will provide project management services.
       2. By entering into this Agreement, the Lead Architect recognises the Development Manager’s supervisory role and confirms that it will comply with all directions issued by the Development Manager and that are approved by the Client relating to the Project.
  2. **Default of Contractor in Complying with Development Manager instructions**
     1. If within five (5) days (or such other period as may be prescribed by the Development Manager) after receipt of a written notice from the Development Manager requiring compliance with an instruction the Lead Architect does not comply therewith, then the Client may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instructions. All costs incurred in connection with such employment shall be recoverable from the Lead Architect by the Client as a debt or may be deducted from the Fee payable to the Lead Architect or any money due or to become due to the Lead Architect under this Agreement.
  3. **Other issues relating to the Development Manager**
  4. The Development Manager shall have the right to visit the Site to familiarize itself generally with the progress and quality of the works and to determine in general if the Project is proceeding in accordance with the Agreement. On the basis of the on-site observations the Development Manager shall keep the Client informed of the progress of the Project. The Lead Architect shall provide facilities for such access so that the Development Manager may perform his functions under the Agreement.
  5. The Development Manager shall have authority to reject work which does not conform to the Agreement.

# Dispute Resolution

* 1. **Amicable Settlement**
     1. If a dispute arises out of this Agreement, the Client and the Lead Architect shall attempt to resolve the dispute amicably through negotiations between the Parties’ representatives within fourteen (14) days from the date the dispute arose.
  2. **Adjudication**
     + 1. If the dispute is not thus resolved either the Client or the Lead Architect may at any time give notice to the other in writing that they wish to refer the dispute to an Adjudicator. The person who is to adjudicate the dispute as the Adjudicator shall be agreed between the Client and Architect within Two (2) days of such notice having been given or failing agreement be a person appointed by Chairman of the Chartered Institute of Arbitrators (Kenya Branch) within Five (5) days of such notice having been given. The referring Party shall refer the dispute in writing to the Adjudicator within Seven (7) days of such notice having been given.
       2. The Adjudicator shall not be liable for any act or omission in the discharge or purported discharge of his function as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator shall be similarly protected from liability.
       3. The decision of the Adjudicator shall, subject to the provisions of Clauses 18.2.4 and 18.2.5, be binding until the dispute is finally determined by arbitration.
       4. The Client and the Lead Architect may agree to accept the decision of the Adjudicator as finally determining the dispute.
       5. If the Client or the Lead Architect is dissatisfied with the Adjudicator, the dispute:-
          1. May be determined by agreement between the Parties; or
          2. referred at the instance of either Party to be determined by an arbitrator in accordance with Clause 18.3 below.
  3. **Arbitration**
  4. If the dispute has not been settled pursuant to Amicable Settlement under clause 18.1 above or Adjudication under Clause 18.2 above within thirty (30) 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.
  5. The person who is to act as an Arbitrator shall be agreed between the Parties within Fourteen (14) days of the one Party giving the other written notice of its wish to refer the decision to an Arbitrator, or failing agreement at the end of that period shall be referred to the person to be appointed by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitration at the instance of either Party.
  6. Such arbitration shall be conducted in Nairobi and resolved in accordance with the provisions of the Arbitration Act of 1995 as amended from time to time.
  7. The decision of the Arbitrator shall be final and binding upon the Parties to the fullest extent permissible by law.
  8. Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.
  9. Nothing in this Agreement shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.

# Delays in the Performance of the Services

* 1. Any delay by the Lead Architect in the execution of the Project Execution Plan without the prior written approval of the Client shall attract a penalty equal to [INSERT PERCENTAGE] percent of the Fees for each day of delayed performance, being the agreed liquidated damages.
  2. The Client may in its sole discretion waive the provisions of clause 19.1 above if the Lead Architect demonstrates to the reasonable satisfaction of the Client that the delay in the execution of the Project Execution Plan was occasioned by a different Consultant and further that the Architect undertook its duties in accordance with the terms of this Agreement.
  3. If the Client waives the provisions of clause 20.1 as indicated above, the Client may in its sole discretion penalise the Consultant who occasioned the delay.

# Force Majeure

* 1. **Definition of Force Majeure**
     1. 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.

* 1. **Negligence and intentional acts**
     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. **Performance excused**
     1. 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 Agreement 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 Agreement.
  3. **Duty to mitigate**
     1. 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 minimize the consequence of any event of Force Majeure.
  4. Notification
     1. 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. **Consultation**
     1. Not later than fourteen (14) days after the Lead Architect, 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 the circumstances.

# 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 E-mail or facsimile transmission or by registered post to the Party due to receive the notice or communication at the address set out in Clause 21.3 or such other address as that Party may (for the purposes of this Clause) specify from time to time in writing to the first 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 9.30 a.m. on the next business day and provided electronic confirmation of such transmission is obtained;
       3. in the case of registered post, 7 days from the date of posting; and
       4. in the case of electronic mail on the same day the email was delivered.
  3. The addresses are: -
     + 1. in the case of the Client: -

Name:

Address:

E-Mail:

Marked for the attention of:

* + - 1. if to the Lead Architect: -

Name:

Address:

E-mail:

Marked for the attention of:

# Confidentiality

* 1. The Lead Architect undertakes at all times to keep confidential and not to disclose to any third party without the Client’s prior written consent the contents hereof, or the contents of discussions and negotiations concerning the subject matter hereof whether written or oral and any Confidential Information relating to the Client, the Client’s Group or customers.
  2. The Lead Architect accepts that such information is valuable and secret, and that unauthorized disclosure of such information would be likely to cause the Client unquantifiable loss and damage.
  3. The Lead Architect agrees that it shall not copy or use in any way any Confidential Information except to the extent necessary for the purpose of achieving the objectives of this Agreement.
  4. This obligation of confidence shall survive the termination of this Agreement for whatever reason and shall not be effected or in any way diminished by the termination of this Agreement.

# No Agency or Partnership

* + 1. 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.

# Independent Contractor

* 1. In providing the Services, the Lead Architect shall be an independent contractor to the Client. The express terms hereof set forth the limited extent to which the Lead Architect is authorized to act on behalf of the Client in its independent contractor capacity.
  2. The Lead Architect shall not and shall ensure that its employees, agents and/or representatives shall not, carry on any negotiations or enter into correspondence on behalf of the Client, or use the name of the Client in any media, nor shall the Lead Architect or the Lead Architect’s employees, agents and/or representatives have, or purport to have, authority to execute legal documents, enter into legal agreements or otherwise in any way bind the Client or create or incur any legally binding commitments or liabilities or any kind or nature on behalf of the Client.
  3. The Lead Architect shall be responsible to the Client and third parties for the consequences of the Lead Architect’s actions or conduct which exceed the express limited scope of the Lead Architect’s authority herein.

# Indemnity

* 1. Subject to clause 25.2 below the Lead Architect hereby agrees to indemnify and hold harmless the Client, from and against all claims, liabilities, losses, damages, and expenses incurred (including any legal costs or penalties and liabilities awarded or imposed by a court or expenses properly incurred) by the Client pursuant to any breach or non-observance by the Lead Architect or any of its sub-contractors, agents, employees, officers or consultants of any of its obligations or representations under this Agreement.
  2. The Lead Architect acknowledges and agrees that its obligations hereunder shall be in addition to any rights that the Client may have at law or otherwise.
  3. Where the Client is entitled to claim any indemnity under this Agreement, the Client shall have the right to offset the value of such indemnity against the Fees payable by the Client to the Lead Architect or any other amounts owing to the Lead Architect from the Client under this Agreement.

# 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.

# Public Announcements

* + 1. Neither Party shall issue or make any public announcement regarding the content of this Agreement unless prior to such public announcement it:-
       1. furnishes the other Party with a copy of such announcement; and
       2. obtains the approval of such other Party to the terms of such announcement, which should not be unreasonably withheld;

**PROVIDED THAT** no Party shall be prohibited from issuing or making any such public announcement if it is necessary to do so in order to comply with any applicable law or the regulations of any recognized stock exchange.

# Assignment

* + 1. This Agreement or any rights or benefits hereunder shall not be assignable, transferable or divisible in whole or in part by the Lead Architect without the prior written consent of the Client. The Client may assign this Agreement to a Group member or to the applicable party or Parties in the event of a merger, reorganization, consolidation, sale of business or sale or lease of the Property.

# Waiver

* + 1. 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.

# Variation

* + 1. 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

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

# 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.

# 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. The Lead Architect 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.

# Governing law

* + 1. This Agreement shall be governed by and construed in accordance with the laws of Kenya.

**IN WITNESS** whereof this Agreement has been duly executed by the Parties in the year and date first hereinabove written.

# The First Schedule

## The Services

## Fee Payment Milestones

Sealed with the Common Seal )

of the Client the said **[INSERT]** )

in the presence of: -)

)

Director )

Name: )

Signature: )

)

)

Director/Secretary )

Name: )

Signature: )

)

in the presence of: )

)

)

)

Advocate )

Sealed with the Common Seal )

of the Architect the said **[INSERT]**  )

in the presence of: -)

)

Director )

Name: )

Signature: )

)

)

Director/Secretary )

Name: )

Signature: )

)

)

)

)

)

Advocate/Notary Public )

**Drawn by:**