ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **CORPORATE COMMERCIAL**

DOCUMENT**: CATERING AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting an Agreement for the provision of catering services. It may be modified or amended as need may be.
2. This template is applicable for provision of services to different organisations.

## CATERING AGREEMENT

Dated 2021

**between**

**[PARTY 1]**

**(the “Client”)**

**and**

**PARTY 2**

**(the “Caterer”)**

**in respect of-**

**[ ]**

**Drawn By: -**



I&M Bank House, 7th Floor

2ndNgong Avenue

P.O. Box 22588-00505,

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**CATERING AGREEMENT**

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

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); 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 (Caterer), 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, “Client” and “Caterer” and are hereinafter collectively referred to as “Parties” and individually as “Party”.

**WHEREAS:**

1. The Client is a limited liability company conducting business in Nairobi;
2. The Caterer has the expertise, ability and capacity to provide catering services (hereinafter referred to as the “**Services**”) and is willing to offer the Services to the Client;
3. The Client is desirous of contracting the Caterer and Caterer has hereby agreed to offerthe Services according to the terms and conditions provided hereinafter.

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

# Definitions and Interpretation

* 1. In this Agreement:
     + 1. **“Agreement”** means any agreements entered into between the Parties to which these standard terms and conditions apply;
       2. “**Client’s Advocates**” means Messrs. CM Advocates LLP, I & M Bank House, 7th Floor, Post Office Box Number 22588-00505, Nairobi;
       3. **“Business Day” or day** means any day, other than a Saturday or Sunday and gazetted public holidays, on which banks are open for business in Kenya.
       4. **“Commencement Date”** means the date set out in clause 3;
       5. **“Confidential Information”** means all information in whatever form including, without limitation, any information relating to suppliers, operations, plans, inventions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium;
       6. **“Parties”** means the Company and the Client and **“Party”** shall be construed to refer to either of them as the context may require;
       7. **“Client’s Advocates”** means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Advocates, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Road, P. O. Box \_\_\_\_\_\_\_ – 00\_00 Nairobi.
  2. In this Agreement, unless the context otherwise requires, any reference to:
     + 1. the singular includes the plural and *vice versa* and reference to the masculine includes a reference to the feminine gender and neuter and vice versa and words importing the whole shall be treated as including a reference to any part thereof*;*
       2. a person includes reference to a natural person, body corporate, unincorporated body, state, state agency, governmental authority or firm;
       3. any written law includes that law as amended, extended or re-enacted from time to time provided that, as between the Parties, no such amendment, extension or re-enactment shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any Party;
       4. any agreement or other document includes that agreement or other document as varied or replaced from time to time;
       5. a clause is to the relevant clause of this Agreement;
       6. clause headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

# Commencement Date, Term and Renewal

* 1. The commencement date of this Agreement is the (INSERT COMMENCEMENT DATE).
  2. The Agreement shall endure for an initial term of(INSERT TIMELINES) from the Commencement Date **(“Term”)**.
  3. At the expiry of the initial Term, the Client shall retain the option to renew this Agreement for a further (INSERT TIME LINES) Term subject to a satisfactory review of the Services provided by the Caterer by the Client prior to the end of the initial Term. In the event that the Client does not wish to renew the Agreement for a further Term following such review, the Agreement shall stand terminated at the expiry of the initial Term.

# Scope of the Services

* 1. The Caterer will deliver cooked food to the Client’s premises by 1.00pm every week from Monday to Friday for a minimum of (Insert number of stuff and number of Plate) The cooked food shall consist of two starches, one protein, vegetarian option, vegetable or salad and fruit in season as set out in the Schedule to this Agreement.
  2. Any change in the scope of the Services as may be requested by the Client shall be agreed between the parties in writing. The Client shall also notify the Caterer in writing of any increase or decrease of the Staff for the provision of the services.

# Catering staff

## Employer

* + 1. The persons engaged by the Caterer to provide the Services (the ‘**Catering Staff**’) shall be duly contracted employees or contractors of the Caterer. The Caterer shall bear all statutory and other responsibilities for the Catering Staff. For the avoidance of doubt these responsibilities shall include but not be limited to salaries, wages, allowances, insurances, medical cover, legal obligations and any attendant costs and the provision of a suitable work environment.

## Appearance and presentation

* + 1. The Caterer shall ensure that the Catering Staff wear the designated uniform whenever they are performing the Services within the Client’s premises. The uniform must be kept clean at all times in accordance with applicable Kenyan public health and sanitation standards.

## Performance Standards

## *Food handling and Storage*

### Perishables

All food served pursuant to this Agreement must be fresh. Food left over will not be recycled or served to any person at the Client’s premises.

### Cleanliness & Safety

Cleanliness and hygiene must be observed by the Caterer in order to ensure that the quality of food served is high.

The Client will ensure safety and absence of risks to health to the Client’s staff in connection with the handling and serving of food by its staff.

The Caterer shall maintain up-to-date workmen’s compensation and personal liability insurance covers with reputable insurance companies for its staff handling the food.

## *Quality of food*

The food served by the Caterer to the Client’s staff shall be balanced in diet and of nutritional value.

## *Meal serving times*

Food should be ready for serving at least fifteen (15) minutes prior to the times scheduled for the serving of the meals set out in Clause 2.1 above. Any changes to the serving time schedules will be communicated to the Caterer at least one (1) day in advance.

# Consideration

* 1. In consideration of the Services rendered by the Caterer, the Client will pay the Caterer a sum of (INSERT THE AMOUNT TO BE PAID) **(inclusive of taxes)** for each plate of food served daily to each of the Client’s staff member as per the records maintained by the Caterer and verified by the Client.
  2. The Caterer will submit monthly invoices to the Client for the verified monthly amounts incurred by the Client as per Clause 5.1 above at the end of every month and the Client shall settle the invoices or before the (insert the date) of the next month. If the Client has any reason for disputing any portion of an invoice, the Client will so notify the Caterer accordingly within Seven (7) calendar days of receipt of invoice and, if such notification is not given, the invoice will be deemed valid. The portion of the invoice which is not in dispute shall be paid in accordance with the procedures set forth herein.
  3. The sums set out in this Clause 5 shall remain constant for the duration of this Agreement and not be subject to any increment unless agreed in writing by the Parties. If there is no agreement reached between the parties on the increment to the sums, then this Agreement shall be terminated by either party giving the other one (1) month’s notice in accordance with Clause 10.1 below.

# Indemnity and Limitation of Liability

* 1. The Caterer(“the First Party”) hereby indemnifies and holds the Client (“the Non-breaching Party”), its affiliates and employees harmless from and against any direct costs or damages that may be incurred by the Non-breaching Party as a result of claims for negligence or breach against the First Party of any of its obligations in terms of this Agreement and such indemnity shall extend to the reasonable cost that may be incurred by the Non-breaching Party in defending any action instituted against it subject to the Limitation of Liability clauses herein contained.
  2. Neither Party shall be liable to the other party under this Agreement for any indirect or consequential loss suffered, whether caused by negligence, breach of contract, misrepresentation or however arising, including, without limitation, loss of profit, goodwill, and business opportunity or anticipated savings.
  3. The parties agree that any liability to the other Party for losses hereunder shall be limited to direct damages.

# Termination of the Agreement

* 1. Notwithstanding anything contained either Party may terminate this Agreement by giving to the other party One (1) month’s written notice to that effect. This Agreement shall be deemed to terminate at the expiry of such notice period.
  2. In the event of the breach of this Agreement by the Caterer as set out in Clauses 7.2.1 and 7.2.2 below, the Client shall be entitled to serve on the Caterer a written notice requiring the Caterer to remedy such breach within Fourteen (14) days or such longer period as the parties may agree. If after the expiry of the notice period, the Caterer has failed to or refused to remedy the breach the Client shall be entitled to terminate this Agreement immediately by written notice forthwith:
     + 1. Continued non-performance by the Caterer of its obligations under this Agreement which have been notified by the Client to the Caterer in writing; or
       2. A material event or breach occurs due to the actions or omissions of the Caterer in the performance of the Services which, in the judgment of the Client, interferes or threatens to interfere with the successful execution of this Agreement.
  3. This Agreement may also be terminated forthwith by either Party if the other Party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy proceedings, has a receiver appointed, or has its assets assigned.
  4. Termination under this Agreement shall be without prejudice to the rights and remedies of either Party against the other in respect of any antecedent rights and obligations of the Parties accrued or incurred prior to the termination.
  5. The termination or expiration of this Agreement shall not relieve either Party of its obligations which expressly or by implication survives termination.
  6. Upon termination of this Agreement, the Caterer shall be entitled to payments for the Services and reasonable reimbursable costs incurred in the provision of the Services up to and until the expiry of the termination notice PROVIDED THAT the Caterer shall not be entitled to reimbursement for costs which are connected to or have been occasioned by its default leading to the termination.

# Dispute Resolution

* 1. **Good Faith Negotiations**
     1. The Parties agree that should any dispute arise with regard to the interpretation, rights, obligations and/or implementation of any one or more of the provisions of this Agreement, the Parties shall use their best efforts to attempt to resolve such dispute by amicable negotiation within a period of Thirty (30) Business Days following notification of the dispute.
  2. **Mediation**
     + 1. If the dispute has not been settled pursuant to the Good Faith Negotiations under clause 8.1 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.
  3. **Arbitration**
     + 1. If the dispute has not been settled pursuant to Good Faith Negotiations under Clause 8.1 or under Mediation under clause 8.2 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.

# Miscellaneous Provisions

* 1. The provisions of this Agreement may only be added, modified or varied by the written agreement of the Parties. Any modifications made will not be effective until the same have been signed by both the authorised representatives of the Parties. Any verbal or written arrangements for abandoning, modifying extending, reducing or supplementing the Agreement, or any of the terms thereof shall be deemed to be provisional and shall not be binding on the parties unless and until the same are incorporated in this Agreement in writing and signed by the authorized representatives of the parties.
  2. The Caterer shall not assign, subcontract or transfer any of its obligations, duties or rights contained herein, except with the prior written approval of the Client on terms and conditions to be agreed.
  3. In the event that any provision of this agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the same shall be deemed as severable from the remainder of this Agreement and shall not cause the invalidity or the unenforceability of the rest of this Agreement.
  4. The failure or delay on part of either party hereto to exercise any right or obligation under this agreement shall not operate as a waiver thereof. No waiver, by either Party, of any provision of this Agreement shall, in any event, become effective unless the same shall be in writing and such waiver shall be effective only in the specific instance described and for the purpose that the waiver is given.
  5. The Caterer is an independent contractor and will be fully responsible for payment of its own taxes on all payments earned under this Agreement. For the avoidance of doubt, it is clarified that the caterer is not an employee, agent or servant of the Client.

# Notices

* 1. The parties select as their respective addresses, the addresses set out in Page 1 above for all purposes arising out of or in connection with this Agreement at which addresses only all processes and notices arising out of or in connection with this Agreement may validly be served upon or delivered by the parties.
  2. Any notice shall be in writing and shall either be delivered by hand or sent by prepaid registered post, facsimile or electronic mail for routine notices and communications:‐
  3. If delivered by hand it shall be deemed to have been duly received by the addressee on the date of delivery;
  4. If posted by prepaid registered post it shall have been received by the addressee on the eighth business day following the date of such posting;
  5. If sent by facsimile it shall be deemed to have been served once the sender has received a receipt indicating proper transmission;
  6. If sent by email it shall be deemed to have been serviced at the time of transmission unless the sender receives a notification of non‐deliver.
  7. Either party may provide changes in the above address by notice in writing given to the other party as aforesaid.

# Applicable Law

* + 1. The construction, validity and performance of this Agreement shall be governed in all respects by the Laws of Kenya.

# 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**

I & M Bank House, 7th Floor

2nd Ngong Avenue

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**Nairobi.**

[**www.cmadvocates.com**](http://www.cmadvocates.com)

**SCHEDULE**

**FOOD MENU**