ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **CORPORATE COMMERCIAL**

DOCUMENT**: COMPUTER MAINTENANCE SERVICES AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting the Computer Maintenance Services Agreement. It may be modified or amended as need may be.
2. This template is applicable in case of Rendering services especially technology services

## **AGREEMENT FOR THE PROVISION OF COMPUTER MAINTENANCE SERVICES**

Dated 2021

**between**

**[PARTY 1]**

**(the “Client”)**

**and**

**PARTY 2**

**(the “Contractor”)**

**-in respect of-**

**[ ]**

**Drawn By: -**



I&M Bank House, 7th Floor

2ndNgong Avenue

P.O. Box 22588-00505,

**Nairobi.**

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This Provision of Computer Maintenance Agreement is dated ………………………. day of …………………………20… by and **BETWEEN**

Parties

1. **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **LIMITED,** a Limited liability company incorporated in the Republic of Kenya with under Certificate of Incorporation Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and of P. O. Box \_\_\_\_\_\_ - 00200, Nairobi, Kenya **“Client”**

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 (Contractor) 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 “**Contractor**” and are hereinafter collectively referred to as “**Parties**” and individually as “**Party**”.

**WHEREAS:**

1. **The Clien**t requires a company with the necessary expertise to provide computer preventive maintenance services (herein after referred to as the **‘Services**’) as more specifically defined in this Contract.
2. T**he Contractor**, having represented to the **Client** that it has the necessary professional skills to provide the Services, has agreed to supply the Services on the terms and conditions set forth in this Contract.

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

**Agreed terms**

# Interpretation

* + 1. Definitions:
       1. **“Business Day”** a day other than a Saturday, Sunday or public holiday in Kenya, when Banks in Kenya are open for business.
       2. **“Delivery Date**” [the date of this agreement **OR** the date set out in Schedule 1].
       3. **“Delivery Location**” the address for delivery set out in Schedule 1.
       4. “**Documentation”** all documents [, plans] [, drawings] [, service documents] [, user manuals] [and operating manuals] relating to the Asset.]
       5. **“Goods/Services”** means the goods/services listed in the First Schedule.
       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. **“Interest Rate”** the rate of ……. per annum.
       8. **“Payment Date[s]**” the date of this agreement **OR** the date[s] for payment of the Price set out in Schedule 1.
       9. **“Price**” the price for the services rendered as set out in Schedule 1
       10. **“Specification**” the specification for the Goods [including any related plans and drawings], set out in Schedule 2.
       11. **“VAT**” value added tax or any equivalent tax chargeable in the Kenya.

# Scope of the Services

* + 1. The **Contracto**r shall provide **Client** with the following Services for the computers on the Client’s premises:
       1. Dust blowing
       2. Rubricating
       3. Form cleaning
       4. Screen grease wiping with alcohol based liquid
       5. Disk fragmenting
       6. Performance boosting

# Obligations of the Parties

* 1. Client
     1. To allow the Contractor’s authorized representatives’ reasonable access to its premises and computer hardware to perform the Services.
  2. Contractor
     1. To ensure that it provides staff who are adequately trained and skilled to perform the Services.

# Payment & Invoicing

* 1. In consideration of the provision of the Services, the Client shall pay the Contractor the sum **of Kenya Shillings (the sum in words) (Kshs. -------)** per the client’s computer serviced per (**state the time period)**, totalling to **Kenya Shillings--------)** for all the Client’s computers serviced (which amount shall be exclusive of VAT) (the “**Service Fee**”), which amount will remain unchanged for the subsistence of this Agreement.
  2. The Service Fee shall be payable as follows:
     + 1. -----------------------------
       2. ----------------------------
  3. The consideration shall be exclusive of all taxes and include, but shall not be limited to, communication, travel and all other ancillary costs incurred by the **Contractor** in the provision of the Services.
  4. The **Contractor** shall issue monthly invoices in arrears for the payment due for the Services and **Client** shall make payment of the invoices Thirty (30) days after the date of receipt of the invoices.

# Confidentiality

* 1. **The Contractor** acknowledges that in the course of performing its obligations under this Agreement and with special regard to its personnel on premises, it may come into contact with, obtain or receive Confidential Information about **The Client’s** business and marketing strategies, organization and any other information regarding the affairs of **The Client**.
  2. **The Contractor** and/or any of its personnel shall not at any time use or disclose to any third parties any Confidential Information or any information concerning or relating to the products, customers, services or business affairs of The **Client** or matters of a similar nature, except with the written consent of **The Client** and only to persons who are authorized by **The Client** to receive such information.
  3. Confidential Information for the purposes of this Agreement shall include but shall not be limited to all exchanged information and/or knowledge, trade secrets both verbal and written transmitted by any means whatsoever.
  4. This Clause of Confidentiality shall survive for a period of Three (3) years even after the termination and/or earlier determination of this Agreement.

# Indemnity and Limitation of Liability

* 1. **The Contractor** hereby indemnifies and holds the **Client**, its affiliates and employees harmless from and against any direct costs or damages that may be incurred by **The Client** as a result of claims for negligence or breach by **The Contractor** of any of its obligations in terms of this Agreement and such indemnity shall extend to the reasonable general or direct costs that may be incurred by **the Client** arising from any loss (including data loss) or damage to the **client’s** computers during the provision of the Services.
  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.

# 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.
  2. 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.
  3. 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.
  4. 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.
  5. 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.
  6. 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 the circumstances.

# Dispute Resolution

* 1. **Good Faith Negotiations**
     1. In case of any dispute arising out of this Agreement including any question regarding its interpretation, existence, validity or termination, each party will use its best efforts to resolve the dispute by good faith negotiation within a period of Thirty (30) Business Days following notification of the dispute.
  2. **Mediation**
     + 1. If the dispute has not been settled pursuant to the Good Faith Negotiations under clause 28.1 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 28.1 or under Mediation under clause 28.2 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.
  2. **The Contractor** shall not assign the benefit of this Agreement without **the Client’s** prior written consent.
  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.
  5. Nothing in this Agreement is intended to or shall be deemed to constitute a partnership or joint venture of any kind between any of the parties. No party shall have authority to act as agent for or to bind the other in any way.
  6. This Agreement shall be governed in all respects by the laws of Kenya.

# Termination of the Agreement

* 1. Notwithstanding anything contained either Party may terminate this Agreement by giving to the other party Seven (7) days written notice to that effect. This Agreement shall be deemed to terminate at the expiry of such notice period.
  2. In the event of breach of this Agreement by **the Contractor**, **the Client** shall be entitled to serve on **the Contractor** written notice requiring **the Contractor** to remedy such breach within (**-------**) days or such longer period as the parties may agree. If after the expiry of the notice period, **the Contractor** has failed to or refused to remedy the breach **the Client** shall be entitled to terminate this Agreement with immediate effect.
  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. The termination or expiration of this Agreement shall not relieve either Party of its obligations which expressly or by implication survives termination.

# Notices

* + 1. Any notices to be made by either Party to the other under this Agreement shall be made in writing and sent to the relevant Party’s head office by personal delivery or post using the last known address; or by facsimile with a confirmation copy to follow by personal delivery or post.

# Whole Agreement

* + 1. The Parties hereby confirm that this Agreement and annex comprise the whole and sole agreement of the Parties regarding the subject matter thereof. This Agreement supersedes all previous negotiations with regard to the issues dealt with herein between the Parties.

# 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: -**

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