ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **CORPORATE COMMERCIAL**

DOCUMENT**: OUTSOURCING AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting an Outsourcing Agreement. It may be modified or amended as need may be.
2. This template is applicable for guiding Contractors in drafting different Outsourcing Agreements.

## OUTSOURCING AGREEMENT

## OUTSOURCING AGREEMENT

DATED 2021

**BETWEEN**

**[PARTY 1]**

**(the “Client”)**

**and**

**PARTY 2**

**(the “Supplier”)**

**-in respect of-**

**[ ]**

**Drawn By: -**



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2ndNgong Avenue

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**Nairobi.**

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## OUTSOURCING AGREEMENT

This Outsourcing 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” 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 “Supplier” which expression shall where the context so requires, include its successors in title and permitted assigns) of the other part.

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

**WHEREAS**:

1. The Client is involved in the provision of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ products/services.
2. The Client is desirous of outsourcing the management of its products/services by procuring high quality administration and management services (**“the Services”**) from a reputable and qualified company.
3. The Supplier has presented itself to the Client as being a reputable company having the requisite professional skills, qualifications and know-how to effectively provide the Services to the Client.
4. In consideration of Client’s payments to the Supplier and in accordance with the terms and conditions of this Agreement the Supplier will provide the Services together with any ancillary services reasonably required to ensure the proper and efficient management of the products/services.

**THEREFORE**, in consideration of mutual premises, representations, covenants and other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties agree to the following terms and conditions and to be bound thereby:

# Definitions And Interpretation

* 1. In this Agreement:
     + 1. **“Agreement”** means this Agreement and its Schedules;
       2. **“Fees”** means the sum paid by the Client to the Supplier for the provision of the Services and as more particularly described in Schedule 1;
       3. **“Intellectual Property”** means the copy-right, know-how, the trade names and any marks, trade device, service mark, symbol, code or specification, patents, designs and other individual or intellectual property rights used in or associated with a person;
       4. **“KES” or “Kenya Shillings”** means the lawful currency of the Republic of Kenya;
       5. **“Service Levels”** means the performance levels that the Supplier is required to adhere to while performing the Services and as more particularly detailed in Schedule 2 hereof;
       6. **“Services”** means the provision of management services for the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ products/services of the Client as is more particularly described in Schedule 2;
       7. **“Site”** means the locations where the Services will be performed as set out in Schedule 2.
  2. In this Agreement, unless the context otherwise requires, any reference to:
     + 1. the singular includes the plural and vice versa;
       2. a person includes reference to a body corporate or other legal entity;
       3. any written law includes that law as amended or re-enacted from time to time;
       4. any agreement or other document includes that agreement or other document as varied or replaced by the Parties in writing from time to time;
       5. a clause is to the relevant clause of this Agreement;
       6. any Party includes that Party’s successors and assigns.
  3. Clause headings are inserted for convenience only and shall be ignored in construing this Agreement.

# Application Of Terms And Scope Of Agreement

* 1. The terms and conditions set out in this Agreement are the only terms on which the Client is prepared to deal with the Supplier in relation to the provision of the Services and they shall govern the relationship between the Parties to the entire exclusion of all other agreements entered into with the Supplier in relation to the provision of the Services.
  2. If the Supplier proposes to supply additional services not covered under this Agreement the Parties may agree in writing that those additional services shall also be covered by this Agreement. The prices and payment terms shall then be adjusted accordingly and appended to this Agreement.
  3. No terms or conditions endorsed upon delivered with or contained in the Supplier’ quotation, acknowledgement, acceptance of purchase order, delivery note or other of its documents will form a part of this Agreement and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

# Commencement And Duration

* 1. This agreement shall come into force on the (INSERT DATE) and shall remain in force for a period of \_\_\_\_\_\_\_\_ (\_) months (“term”) until the (INSERT DATE), unless earlier terminated in accordance with the provisions of this agreement.
  2. Prior to the expiry of the agreement the parties may enter into negotiations for the extension of the agreement for such period and subject to such terms and conditions as the parties may agree in writing.

# Representation And Warranties

* + 1. The Supplier warrants to the Client as follows:
       1. All information furnished to the Client by or on behalf of the Supplier 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 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 under the laws of Kenya and has all the necessary power and authority to enter into this Agreement.
       4. That the particulars and information given to the Client 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 Supplier 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.
       6. That no third party, officer or employee of the Client has received or will receive any material or other benefit for the purpose of influencing the action of a Client officer or employee in the Supplier selection process and in the execution, retention or amendment of this Agreement or securing any determination in respect to the Supplier’ performance

# Obligations and responsibilities of the CLIENT and the supplier

## Exclusion of Liability

* + 1. The Client shall not incur any liability to the Supplier or any other person by reason of any failure on the part of the Supplier to honour any contract entered into with its sub-contractor(s) and suppliers and a failure to ensure compliance with any law including but not limited to any health and safety regulations.

## The Client’s Obligations

* + - 1. Payment Terms
         1. In consideration of the provision of the Services, the Client shall pay the Supplier the Fees in Kenya Shillings inclusive of VAT.
         2. The Fees shall be all-inclusive and provide for Services duly and properly completed in accordance with terms and conditions of this Agreement. No additional amounts shall be payable over the quoted Fee, except as may be reviewed and authorized by the Client in writing.
         3. If applicable the Client shall deduct from and pay to the Kenya Revenue Authority withholding tax payable on the Fees at such rate as may be prescribed by the Kenya Government from time to time. Upon such deduction the Client shall present the Supplier with a Withholding Tax Certificate in such form as may be prescribed by the Kenya Revenue Authority from time to time.
         4. Payments will be made within sixty (60) days from the date of receipt of the Supplier’ invoice and will be made in Kenya Shillings by cheque or electronic funds transfer to the Supplier’ Nominated Bank Account.
         5. Without prejudice to any other right or remedy, the Client reserves the right to set off any amount owing at any time from the Supplier to the Client against any amount payable by the Client to the Supplier under this Agreement.
         6. No payments made by the Client under this clause or any other clause in this Agreement shall be deemed to signify or imply approval of the works for which payment is being sought nor will any payment operate as an admission on the part of the Client as to the propriety or accuracy of any of the amounts covered by any payment requests. The Client shall be permitted to make corrections for factual, mathematical or other manifest errors identified with any payments made or requested to be paid.
      2. Access to Site

The Client shall:

* + - * 1. Make arrangements for the Supplier to have reasonable and timely access to the Sites to enable the Supplier to perform its obligations as is further provided in Schedule 2.
        2. Make available to the Supplier any information which the Supplier reasonably requests and which is necessary for the performance of Services.

## Support

* + - * 1. The Client shall ensure that the Supplier has timely and reasonable access to appropriate personnel to answer any questions relating to any problems reported to the Supplier regarding the Services.

## Suppliers Obligations

* + - 1. Suppliers General Undertaking

During the subsistence of this Agreement, the Supplier undertakes that it will comply with all of its obligations under this Agreement including, without limitation, the undertakings and other requirements set out in this Clause 5.3.1 (*Supplier Obligations*) and will observe the best business practices. Furthermore the Supplier, its employee’s and sub-contractors will at all times promote and uphold the good name of the Client.

* + - 1. Supplier’s Warranty on the Quality of Service

The Supplier warrants that the Services shall be performed by appropriately qualified and trained personnel, within specified timelines and with due care and diligence and to such high standard of quality consistent with applicable industry standards and as it is reasonable for the Client to expect in all the circumstances.

* + - 1. Response Time
         1. The Services will be provided within the service levels set out in Schedule 2 and all faults will be classified in accordance with the classification provided in that Schedule.
         2. the Supplier recognises and appreciates that the Client relies upon a prompt turnaround of the Services by the Supplier as per agreed response timelines in order to ensure that the Sites are operational at all times. Therefore, time shall be of the essence in this Agreement and this being the case if response is not made on time then the Client shall have the right without liability and without prejudice to any other rights it may have to take one or more of the following actions:
         3. direct the use of such means of transportation as the client shall prescribe to ensure that the Supplier’ technicians are on site without further delay for which the Supplier shall bear all increased costs, including but not limited to, increased transportation charges;
         4. To terminate this Agreement in accordance with Clause 14 (*Termination*) at anytime following the failure of the Supplier to meet the agreed response times;
         5. Claim service credits calculated in accordance with Clause 6 (*Delays and Service Credits)*;
         6. Recover from the Supplier any expenditure reasonably incurred by the Client in securing the operation of the Sites from another supplier;
      2. Records

The Supplier will maintain an incident database to record the progress in respect of all incidents reported and to demonstrate that the Services have been performed in accordance with the provisions of this Agreement.

* + - 1. Employment of Appropriate Resources
         1. The Supplier will employ such number of appropriately qualified and trained personnel as are necessary to ensure that the Services are professionally and efficiently provided.
         2. The Supplier shall deploy adequate tools and equipment as required for the purposes of carrying out the Services. The tools and equipment used shall be fit for the purpose, maintained and where necessary calibrated.
         3. The Supplier shall be responsible for its staff members employee related taxes and shall hold the Client harmless for claims regarding such taxes. Furthermore the Supplier will be responsible for all costs associated with applying for, procuring and maintaining entry permits for any of its non-Kenyan staff engaged to provide the Services.
         4. If at any time and on reasonable grounds, the Client is not satisfied with the work product of, or work relationship with any of the Supplier’ or sub-contractor’s staff assigned to provide the Services it shall communicate its disapproval to the Supplier who shall replace such staff member without delay with a duly qualified person within a reasonable period of time so as not to affect the Project Plan.
      2. Site Regulations and discipline

The Supplier will:

* + - * 1. Comply with and observe such rules or regulations governing the terms of access to and from the Sites as may be made by Client from time to time and communicated to the Supplier.
        2. Not obstruct any service road or other means of access to, from or within the Sites.
        3. Not do, or permit to be done, at the Sites any act or thing which may cause a nuisance, discomfort or annoyance to the Client or any other users of the Sites or to any premises neighbouring the Sites.
        4. Not install or use within the Sites any instrument, equipment, apparatus or machinery which may cause structural damage.
        5. Not convey any goods or materials into or from the Sites except through entrances designated for such purposes.
        6. Ensure that its and its subcontractor’s personnel exhibit good discipline and acceptable behaviour at all times to avoid situations likely to lead to a disruption in the provision of the Services.
      1. Safety Requirements
         1. Supplier to observe safety requirements

The Supplier, its employees and agents shall at all times observe and comply with all safety, security, operational or administrative regulations, instructions, guidelines or rules from time to time promulgated, issued, laid down or required and communicated by the Client to be observed or complied with in addition to any industry accepted safety guidelines and shall indemnify the Client for any loss or damage incurred by it as a direct result of the Supplier’ or its employees’ or agents’ failure to so observe or comply with any such regulations, instructions, guidelines or rules.

* + - * 1. Protective gear

In particular, but without limitation, the Supplier shall ensure that all protective gear or other equipment required for the safety of the Supplier’ employees including, where necessary, suitable gloves, harnesses, footwear, goggles and head covering is worn at all times during the performance of the Services and maintained for the use of such employees and other persons visiting the Sites.

* + - * 1. Accidents and incidents to be notified by the Supplier

The Supplier shall notify Client of any accident or incident in the course of performance of the Services immediately upon its occurrence other than minor injuries requiring only first aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job. The Supplier shall as soon as possible thereafter and in any case within five (5) days of the occurrence provide to the Client a written report thereof including details of the response measures taken by the Supplier.

* + - * 1. Hazards to be notified by Supplier

The Supplier shall promptly bring to the attention of the Client all matters or issues likely to affect adversely the health and safety of persons visiting the Sites or any equipment within the Sites.

* + - 1. Obligation to make Good

Without prejudice to the obligations of the Supplier under Clause 11 (*Indemnity)* the Supplier shall be liable for and make good any damage occasioned by the negligent act or omission of the Supplier or the Supplier’ personnel, representatives, agents or sub-contractors to:

* + - * 1. The property or assets of Client;
        2. The premises in which the Site is located; or
        3. Any premises neighbouring the Sites.

The Supplier shall in addition bear all incidental costs, including any costs of removal associated with the repair, replacement or making good of the damage.

* + - 1. Protection of the Environment

The Supplier will comply with the all applicable laws, regulations and by laws relating to the protection of the environment.

# Delays, Substituted Service & Service Credits

* 1. In the event that the Supplier has reason to believe that circumstances exist that may prevent it from performing its obligations in a timely manner it shall promptly and in any event within 48 hours inform the Client in writing including the remedial measures it has implemented to ensure compliance with its obligations. For the avoidance of doubt the notification by the Supplier to the Client of any such delay will not prejudice any other rights client may have under this Agreement including but not limited to claim for service credits.
  2. Without prejudice to any other rights the Client may have, if the Supplier fails to execute the Services in accordance with the timelines specified in Schedule 2 (Service Level Agreement) the Supplier shall be liable to pay to the Client service credits as set out in Schedule2. Failure by the Supplier to remedy the situation or provide an alternate solution within five (5) days shall constitute a breach of this Agreement and the Client may terminate this Agreement. The Client’s right to receive the service credits above will accrue until the applicable Services are completed, or this Agreement is terminated. The payment of the aforesaid service credits are considered to be fair and reasonable by both parties, as a reasonable pre-estimate of fair compensation for the losses that may be reasonably anticipated from a failure by the Supplier to perform its obligations under this Agreement.
  3. Service credits as set out above shall not be payable where the delay is caused by:
     + 1. any act or omission of the Client, its servants or agents; or
       2. an act of force majeure as defined in clause 15 of this Agreement.

## Substituted Services

* + - 1. The Client shall have the right, without prejudice to its other rights and remedies under this Agreement or at law, to procure the Services from a third party as a remedy for any failure by the Supplier to perform the Services as required by the terms of this Agreement.
      2. If the Client chooses to procure the Services from a third party due to such failure by the Supplier to perform its obligations under this Agreement, the Supplier shall reimburse the Client for the difference, if any, between the costs incurred by the Client in procuring the Services from a third party and the percentage of the Service Fee that the Client would have paid the Supplier had the Supplier performed the Services as required by the terms of this Agreement.

# Project Management Team

* 1. Each party shall nominate members of its staff to function as the points of contact for the delivery of the Services such nominated persons shall be responsible for notification of and response to any unscheduled repairs and emergency breakdown services.
  2. Either party shall notify the other of any changes to the contact persons and in case of changes to the composition of the above response team, shall offer a replacement member with suitable skills.
  3. For the avoidance of doubt the contact persons shall not have the authority or the right to vary the terms of this Agreement. However, the provisions of Schedule 2 may be amended as provided therein.

# Storage Space

* 1. In the event that the Client provides storage space at the Sites for the storage of equipment or supplies by the Supplier, then for the avoidance of doubt the use of such storage space by the Supplier will not give the Supplier exclusive possession of any part of the Sites nor will it create a lease or tenancy in any way whatsoever.
  2. The storage space shall be provided on an “as is where is” basis and the Supplier will be responsible for maintaining the order and cleanliness of such space.
  3. The Supplier will store all equipment, supplies and materials used in the provision of the Services in such space and will not use such storage space to store equipment and materials used to serve any other clientele.
  4. the Supplier will ensure that in utilising such storage space and accessing any part of the Sites it shall not act in a manner likely to cause a termination of the Client’s lease, licence or other rights entitling the Client to utilise the Sites or likely to breach any environmental or local laws and by-laws.
  5. All materials stored by the Supplier in such storage space shall be stored at the Supplier’ risk.
  6. The right to use such storage space will terminate immediately upon the termination of this Agreement at which point the Supplier will remove all materials and equipment stored therein and leave the storage space in a clean, tidy and safe condition.

# Assignment And Subcontracting

* 1. **Assignment**
     1. Neither Party can assign the rights or obligations created hereunder without prior written consent of the other Party. Any unauthorized assignment or attempt to assign automatically terminates this Agreement.
  2. **Subcontracting**
     1. Subject to obtaining the prior written consent of the Client, the Supplier shall be entitled to subcontract all or any part of this Agreement to competent Subcontractor(s) PROVIDED ALWAYS THAT the Supplier guarantees the Subcontractor(s) obligations to the Client and guarantees the proper performance of this Agreement in the same manner as if the Supplier had itself have performed the obligations under this Agreement AND PROVIDED FURTHER THAT the Supplier remains primarily and wholly responsible to the Client for all actions, omissions and representations of the Subcontractors whether or not acting within the terms of their Agreement with the Supplier. The Client shall not be liable for the acts or omissions of the Supplier or the Supplier’ employees, agents or representatives.

# Compliance with other laws and Code of Conduct

* 1. The Supplier will, at its expense, obtain and renew, in accordance with any law or regulations from time being in force, all permits, licences and authorisations that may be required for the performance of its obligations under this Agreement. The Supplier shall produce to the Client on request certified copies of such permits, licences and authorisations and a failure to provide such proof will amount to a breach of this Agreement entitling the Client to terminate the agreement.
  2. The Supplier will comply with the provisions of the Client’s Supplier Code of Conduct as set out in Schedule 3 to this agreement and as may be amended and communicated to the supplier from time to time.

# Indemnity & Limitation Of Liability

# Indemnity

* + - 1. Subject to clause 11.2 below the Supplier 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 Supplier of any of its obligations or representations under this Agreement.
      2. The Supplier shall not, however, be liable under the foregoing indemnity to the extent that any such losses are determined to have resulted directly from the proven negligence or wilful misconduct of the Client.
      3. The Supplier acknowledges and agrees that its obligations hereunder shall be in addition to any rights that the Client may have at law or otherwise.
  1. Limitation of Liability
     + 1. None of the parties excludes or limits liability to any other party for death or personal injury arising from the breach of duty of such party or any breach of any obligations implied by any applicable statute.
       2. The Parties agree that Client’s sole liability to the Supplier under this Agreement will be for the amount due under this Agreement for which payment has not been issued.

# Insurance

* 1. The Supplier shall, at its own expense, obtain and maintain such insurance as may be necessary to cover all liability which the Supplier may incur in respect of any personal injury, death, loss or damage to property howsoever caused or arising out of or in the course of performance of the Services.
  2. The Supplier shall upon request by the Client at any time produce to the Client a copy of such policy of insurance and the receipt for the current year’s premium.

# Independent CONTRACtor and authority

* 1. Nothing contained in this agreement shall constitute or be deemed to constitute the supplier the agent or partner of the Client for any purpose whatsoever.
  2. the supplier shall not, and shall ensure that its employees, agents and/or representatives shall not, carry on agreement negotiations or enter into correspondence on behalf of the Client, or use the name of the Client in any media or printed matter, nor shall the supplier or the supplier’ 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.

# Termination

* 1. Termination for Convenience
     1. The Client may terminate this Agreement at any time by giving to the Supplier thirty (30) days’ notice.
  2. Termination by the Client for default
     1. The Client shall be entitled to terminate this Agreement immediately without prejudice to any other remedy at its disposal by giving written notice to the Supplier, such termination immediately effective upon the giving of such notice of termination, if:
        1. The Supplier fails to comply with its obligations under this Agreement, and, if the failure can be cured, the Supplier fails to cure such a failure within fourteen (14) days written notice from the Client or declares that it will not be able to remedy the default within such time.
        2. the Supplier abandons or (except where required or agreed upon with the Client) suspends the provision of the Services.
        3. the Supplier fails to meet the agreed service levels;
        4. the Supplier fails to provide or maintain the required insurance.
        5. the Supplier has subcontracted all of the Services without having obtained the prior written consent of the Client.
        6. Any pre-contractual statements made by the Supplier and on which the Client has relied upon are found to have been false or misleading. For the avoidance of doubt such pre contractual statements include but are not limited to the Supplier’ Response to the Request for Quotation issued by the Client.
        7. the Supplier is found to have been fraudulent in the course of fulfilling its obligations under this Agreement. For the purpose of this clause acts of fraud include but are not limited to all those activities involving dishonesty and deception that can drain value from the Client’s business and accrued goodwill, directly or indirectly, whether or not there is personal benefit.
        8. the Kenya Government, the Communications Commission of Kenya or any Kenyan court should take any decision or perform any act which suspends and/or revokes the Client’s License or makes the Client unable to perform its commitments under this Agreement;
        9. the Supplier is found not to have been compliant with the provisions of the Supplier Code of Conduct and failing to remedy such breach (where breach is remediable) within fourteen (14) days after written notice to that effect from the Client;
        10. Any competitor of the Client appoints one or more directors to the Supplier’s board;
        11. Any competitor of the Client becomes able to materially influence the business decisions of the Supplier.
  3. Termination by Either Party
     + 1. Each Party shall be entitled to terminate this Agreement by giving written notice to the other Party such termination immediately effective upon the giving of such notice of termination:-
          1. if one Party ceases or threatens to cease to carry on its business;
          2. if a receiver, administrator or similar officer is appointed over all or any part of the assets or undertaking of the other Party;
          3. if one Party makes any arrangement for the benefit of its creditors;
          4. if one Party goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;
          5. in the event of either party being prohibited by any law or official requirement from complying with the terms of this Agreement;
       2. Upon termination of this Agreement, the Client shall promptly return to the Supplier (or otherwise dispose of as the Supplier may instruct) all Confidential information and any Documentation containing Confidential Information and the Supplier shall promptly return all or any Confidential Information relating the Client.
       3. The termination of this Agreement shall not discharge the liabilities of the defaulting Party.
       4. Any Clauses intended by the Parties or this Agreement to survive the termination of this Agreement shall survive the termination of this Agreement by whatever cause.
       5. Where termination has occurred pursuant to Clause 14.2(f) and 14.2(g) the Client will not be obliged to make any form of payment or compensation to the Supplier and the Supplier will be required to refund the Client by way of cleared funds any sums paid to it and for which any part of the works have not been executed within thirty (30) days of the such written notice of termination.
       6. Where termination has occurred pursuant to Clause 14.2(h) neither party shall have the right to claim for any compensation provided that nothing in this clause shall relieve the Client of any obligation to pay arising prior to the date of termination.

# Intellectual Property Rights

* 1. Nothing in the Agreement shall grant, suggest, or imply any authority for the Supplier to use the name, trademarks, service marks, or trade names or any intellectual property rights of the Client for any purpose whatsoever.
  2. The Supplier shall indemnify and hold the Client harmless from all liability, losses, damages, claims, demands and expenses (including legal costs) made incurred or awarded against the Client arising from any acts performed by the Supplier in connection with the provision of the Services infringe the intellectual property rights of any third party and the Supplier shall take all necessary measures to remedy the infringement of third party intellectual property rights, including but not limited to, the replacement of any equipment or supplies provided by the Supplier in connection with the Services that infringes any third party intellectual property rights.
  3. Unless otherwise agreed in writing between the Parties the Copyright in respect of all electrical circuit diagrams and or any other similar drawings or graphic representations prepared by the Supplier, its servant’s agents or licensees in the course of the provision of the Services shall vest with the Client.

# Variation

* + 1. This Agreement shall not be varied or cancelled, unless such variation or cancellation shall be expressly agreed in writing by each party

# 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.
  2. 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.
  3. Financial constraints
     1. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.
  4. 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 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.
  5. 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 minimise the consequence of any event of Force Majeure.
  6. 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.
  7. Consultation
     1. Not later than thirty (30) days after Supplier, 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.

# General

* 1. Confidentiality
     1. The Supplier shall not at any time disclose, directly or indirectly to any other person whatsoever (including to the public or any section of the public) any information concerning this Agreement or any other information of any nature whatsoever concerning the Client or any other matter regarding the internal affairs of the Client, whether such information or matter is stated to be confidential or not, without the express written permission of the Client. This covenant is given by the Supplier on its own behalf and the Supplier also undertakes to ensure that it will take all reasonable steps to enforce obligations in like form against its directors and personnel.
  2. Language
     1. This Agreement and any notices to be given shall be in the English language. Where texts exist in more than one language, including any part of this Agreement, the English language text shall govern.
  3. Entire Agreement
     1. Subject to Clause 14.2(f) (*pre-contractual statements*) this Agreement contains the whole agreement between the Parties relating to the subject matter of this Agreement and no variation, extension or cancellation of the expressed terms of this Agreement shall be binding upon the Supplier or the Client as the case may be unless and until such variation, extension or cancellation is confirmed in writing under the hands of authorised representatives of both Parties.
  4. No Waiver
     1. Except where this Agreement provides otherwise, the rights and remedies contained in it are cumulative and not exclusive to rights or remedies provided by law. The failure by either Party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Agreement.
  5. Severability
     1. If any provision of this Agreement is declared by any judicial or other competent authority or an arbitrator appointed hereunder to be void, voidable, illegal or otherwise unenforceable, the Parties shall amend that provision in such reasonable manner as achieves the intention of the Parties without illegality or at the discretion of the Client it may be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect.
  6. Counterparts
     1. 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 Agreement.

# Dispute Resolution

* 1. Amicable Settlement
     1. The parties shall use their best efforts to settle amicably any dispute arising from or in connection with this Agreement or the interpretation thereof.
  2. Arbitration
     + 1. If the dispute has not been settled amicably within thirty (30) days from when the dispute resolution process was 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.

# Notices

* 1. The Parties select as their respective addresses, the addresses set out below 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.
     1. The Client’s Address:
     2. The Supplier’s Address:
  2. Time of delivery
     1. Any notice shall be in writing and shall either be delivered by hand or sent by registered post, facsimile or e-mail:
        1. if delivered by hand it shall be deemed to have been duly received by the addressee on the date of delivery;
        2. if posted by prepaid registered post it shall be deemed to have been received by the addressee on the eighth business day following the date of such posting;
        3. if sent by facsimile it shall be deemed to have been served once the sender has received a receipt indicating proper transmission;
        4. if sent by email it shall be deemed to have been served at the time of transmission unless the sender receives a notification of non-delivery.

# Change Of Address

* + 1. Either Party may provide changes in the above addressees by notice in writing given to the other Party as aforesaid.

# Costs

* + 1. Each party shall bear its own costs incurred in the negotiation, preparation and execution of this Agreement**.**

# Governing Law

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

**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

P.O. Box 22588 - 00505

**Nairobi.**

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# Schedule 1 Payment terms

# Schedule 2 Service level agreement

# Schedule 3 Code of conduct