ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **CORPORATE COMMERCIAL**

DOCUMENT**: RECRUITMENT AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting a Recruitment Agreement. It may be modified or amended as need may be.
2. This template is applicable in case of rendering Recruitment Services to different organisations.

## **RECRUITMENT AGREEMENT**

DATED 202\_

**BETWEEN**

**[PARTY 1]**

**(the “Consultant”)**

**AND**

**PARTY 2**

**(the “Prospective Employer”)**

**Drawn By: -**



I&M Bank House, 7th Floor

2ndNgong Avenue

P.O. Box 22588-00505,

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**RECRUITMENT AGREEMENT**

This Recruitment 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 **“Consultant”** 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 **“Prospective Employer”** 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, “Consultant” and “Prospective Employer” are hereinafter collectively referred to as “Parties” and individually as “Party”.

**WHEREAS**:

1. The Consultant has the expertise, ability and capacity to provide recruitment services (hereinafter referred to as the “**Services**”) and is willing to offer the Services to the Prospective Employer;
2. The Prospective Employer is desirous of contracting the Consultant and the Consultant has hereby agreed to offer the 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. “**Prospective Employer’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 Prospective Employer and **“Party”** shall be construed to refer to either of them as the context may require;
       7. **“Prospective Employer’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.

# Purpose of Agreement

* + 1. The Prospective Employer engages the services of the Consultant to identify, recruit and screen suitable candidates as set out in the Schedule to this Agreement for its vacant positions including the Supply Chain Manager and any other position that may arise during the term of this Agreement

# Commencement, Term & Renewal

* 1. The Agreement shall remain in force for an initial \_\_\_ (\_) year period from the date in Clause 1.0 above unless terminated earlier by either Party in accordance with Clause 8.0 above.
  2. The Prospective Employer shall retain the option to renew this Agreement for a further term at the expiry of the initial \_\_\_ (\_) year period subject to a satisfactory review by the Prospective Employer of the recruitment services provided by the Consultant at the end of the initial Term. In the event that the Prospective Employer 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.

# Recruiter Undertaking

* + 1. The Consultant agrees to use its best efforts to find suitable candidates for the Prospective Employer and will actively source, recruit and screen candidates. The Consultant’s work includes, but is not limited to: -
       1. Initial briefing by the Prospective Employer,
       2. Candidates screening through resume reviews,
       3. Identification and selection of potential candidates,
       4. Referral of selected and potential candidates’ resumes to the Prospective Employer,
       5. Co-ordination of candidates’ interviews with the Prospective Employer,
       6. Verification of candidates’ documents and references at the request of the Prospective Employer.

# Candidate Referrals

* 1. The Consultant will provide identified and selected resumes for the candidates directly to the Prospective Employer’s Human Resource Manager or his/her representative,
  2. It is understood that Prospective Employer will not disclose or share any names or information of the referred candidates, which would identify candidates or cause candidates to be referred to any third parties,
  3. All referred candidates, whether directly, are considered to be valid referrals from the Consultant to the Prospective Employer,
  4. Referred candidates shall always be considered active Consultant’s candidates from the date of initial referral to the Prospective Employer until employment by the Prospective Employer.

# Recruitment Expenses

* 1. The Prospective Employer is not responsible to the Consultant for any reimbursements for prior expenses incurred by the Consultant during conducting of recruitment of potential candidates, except where the Prospective Employer mandates the Consultant to incur such direct costs in writing.
  2. The Prospective Employer understands that the Consultant incurs recruiting expenses on a risk based contingency basis and will be remunerated through payment of a recruitment fee set out in Clause 7 below upon successful hire of a referred candidate.

# Professional Fees, Invoicing, Payment & Taxes

* 1. The fee chargeable by the Consultant for the recruitment services shall be the equivalent of the employee’s gross salary for one month inclusive/exclusive of VAT and Withholding Taxes.
  2. The Consultant shall raise an invoice to the Prospective Employer once the candidate commences his/her employment with the Prospective Employer.
  3. The invoice shall, if undisputed and approved, be payable by the Prospective Employer within Thirty (30) days after the date of receipt of the invoice.
  4. The Prospective Employer shall deduct from the payments and pay any applicable taxes payable on the recruitment services at such rate as may be prescribed by the relevant authorities from time to time.

# Limitations of Liability

* + 1. The Consultant shall: -
       1. Have no authority to hire any applicant on behalf of Prospective Employer,
       2. Make no representation or warranty as to the truthfulness or completeness of any statement made by any applicant or referees or even the suitability of any candidate submitted for interview,
       3. Not be held liable for any tort or breach of contract committed by any hired candidate,
       4. Be indemnified by the Prospective Employer and the said Prospective Employer will hold harmless the Consultant, its agents, employees, officers and directors, from all loss, cost or damage in the event of claims by any hired candidate, arising out of the hired candidate’s employment, including legal fees and court costs,
       5. Not be bound by any agreement entered between the Prospective Employer and candidates or other third parties thereof.

# Guarantee Clause

* + 1. Should the hired candidate leave the services of the Prospective Employer during the initial Three (3)months period from the date of recruitment, the Consultant will find a replacement, suitable to the company, at no additional cost to the Prospective Employer, as set out in Clause C of the Schedule.

# Termination of Agreement

* 1. This agreement may be terminated at any time by either party without cause upon Thirty (30) days written notice. However, this agreement will continue to be binding beyond termination if a referred candidate supplied by the Consultant is subsequently hired by the Prospective Candidate within one (1) year of the date of termination notice or two (2) years of initial referral date, whichever occurs first.
  2. In case of termination of this agreement as above stated, the contract of employment shall remain valid, binding and enforceable between the Prospective Employer and hired candidate, in accordance with the terms thereof.

# Entire Agreement

* + 1. This Agreement is the entire agreement of the Prospective Employer and the Consultant, regarding its subject matter and all changes, whether before execution of this Agreement or afterward, must be in writing and signed by both parties to be effective.

# Indemnity and Limitation of Liability

* 1. Each Party (“the First Party”) hereby indemnifies and holds the other Party (“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 by 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.

# Force Majeure

* 1. Neither Party shall be liable for the failure to perform any of its obligations under this Agreement as a result of the occurrence of a Force Majeure event or situation which for the purposes of this Agreement means any event or situation which makes it impossible for either party to perform its obligations and includes but is not limited to acts of God, national emergencies, prohibitive decisions of government or local authority, war or civil conflict.
  2. In the event of a Force Majeure situation or event, the performance of the obligations of this Agreement shall be extended by the period of the Force Majeure situation or event provided it does not exceed Thirty (30) days. In the event that the Force Majeure situation or event continues for a period of Thirty (30) days or more either Party shall be entitled to terminate this Agreement forthwith by written notice to the other Party.

# 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 14.1 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 14.1 or under Mediation under clause 14.2 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.

# Governing Law & Jurisdiction

* + 1. 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

P.O. Box 22588 - 00505

**Nairobi.**

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

# Schedule Recruitment, Placement & Replacemnt Process

* 1. **Recruitment**
  2. The Consultant shall advertise for the positions on behalf of the Prospective Employer and search within various databases available for suitable candidates.
  3. The Consultant shall receive applications for the vacant position(s), shortlist and prepare / prescreen them for the main interviews.
  4. The Consultant shall communicate the results of the shortlisting and pre-screening interviews to the Prospective Employer.
  5. The Consultant shall confer with Prospective Employer on probable and suitable dates and interview venue for interviews for the shortlisted candidates.
  6. The Prospective Employer shall, together with the Consultant’s representative(s), interview and select the candidates according to Prospective Employer’s requirements.
  7. The Consultant shall provide all necessary documents so as to enable Prospective Employer to determine candidates’ suitability for the role. This shall include but not limited to

1. Relevant Psychometric Tests
2. Reference Checks feedback
3. E-interview feedback
   1. All Documentation received in this process by the Consultant remains proprietary to the Consultant.
   2. **Placement**
4. The Prospective Employer shall after the interviews inform the Consultant of choice of candidate for the vacant position(s)
5. The Consultant shall communicate the interview results to the candidate(s).
6. The Prospective Employer shall make an offer to the selected candidate through the Consultant to facilitate engagement process.
7. The Consultant is expected to communicate the availabilities for on-boarding after the offer to the Prospective Employer.
8. The Prospective Employer will provide the Consultant with job offer letter and terms for onward transmission to the successful candidate(s). The Consultant will place the candidate (take up position) in the designated work site within 30 days after receipt of job offer letter or as the Prospective Employer may state in its terms of placement.
9. The candidate is considered placed at the station of work on the day s/he signs acceptance of offer letter from the Prospective Employer.
10. Should the Prospective Employer disengage from the process at any point in the recruitment and placement process after the signing of this agreement, the Consultant shall be entitled to bill the Prospective Employer 100% of the agreed fee.
    1. **Replacement**

In the event that the candidate does not complete at least Three (3) months work for health reasons, incompetence or refusal to work for any invalid reason, and through no fault of the Prospective Employer, the Prospective Employer shall notify the Company in writing of such non-completion of the employment engagement within 7 days of the said non-completion of the employment engagement and the Consultant shall, after verification, shall provide a replacement at no cost within Four (4) weeks from the date of Prospective Employer’s written notice.