ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **CORPORATE COMMERCIAL**

DOCUMENT**: SERVICES MAINTENANCE AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting a Services Maintenance Agreement. It may be modified or amended as need may be.
2. This template is applicable in case parties want to perform a maintenance Service.

## SERVICES MAINTENANCE AGREEMENT

DATED 2021

**BETWEEN**

**[PARTY 1]**

**(the “The Client”)**

**AND**

**PARTY 2**

**( the “Contractor”)**

**Drawn By: -**



I&M Bank House, 7th Floor

2ndNgong Avenue

P.O. Box 22588-00505,

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

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## SERVICES MAINTENANCE AGREEMENT

This Services Maintenance is dated ………………………. day of …………………………20… by and **BETWEEN**:

**Parties**

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 **“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 **“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, “the Client” and “the Contractor” and “the Client” are hereinafter collectively referred to as “Parties” and individually as “Party”.

**WHEREAS:**

1. The Client requires the services of a reputable company to provide maintenance services (the “**Services**”) at the (state the address) (the “**Project**”) as more specifically defined in this Agreement.
2. The Contractor, having represented to the Client that it has the necessary professional skills to provide the Services, will provide the Services on the terms and conditions set forth in this Agreement including all Schedules set out thereto.

**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;
  3. Clause headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

# Scope of the Services

* 1. The Contractor shall be responsible for carrying out the Services for the Project as set out in the Schedule to this Agreement.
  2. The Contractor will provide a contact person who will sign the weekly sheet when maintenance has been carried out.
  3. Maintenance will be carried out at the scheduled intervals set out in the Agreement.

# Commencement, Duration and Renewal

* 1. The term of this Agreement shall commence on the **Effective Date** and shall, subject to the provisions for termination contained herein, be in force for an initial period of \_\_\_ (\_) year(s) (“**Term**”) unless earlier terminated in accordance with this Agreement and further subject to extension by the Client for further Terms or parts thereof.

# Contract Price, Invoicing, Payments and Applicable Taxes

* 1. **Contract Price**
     1. The monthly Contract Price payable to the Contractor for the Services provided by the Contractor shall be Kenya Shillings \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **(KShs. \_\_\_\_\_\_\_\_\_\_\_/-)** exclusive of 16% VAT.
  2. **Invoicing**
     1. The Contractor shall raise invoices for the Contract Price **monthly in arrears**, i.e. after every month of the provision of the Services.
  3. **Payments**
  4. The Client shall make payments of the invoices in Clause 4.2 above within Seven (7) Days of receipt of the invoices submitted by the 30th of the month of work completed and the Contractor will submit the ETRs upon receipt of payment.
  5. 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 Services covered by the invoice, and shall 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.
  6. When computing subsequent invoice payments, the Client shall not be bound by any entries in previous entries and invoices and shall be permitted to make corrections for factual, mathematical or other manifest errors therein.
  7. Any payments made by the Client shall not constitute a waiver by the Client of any right to claim that upon subsequent investigation that the Services for which payment has been made were not fully performed or were performed in breach of this Agreement provided that there is satisfactory evidence justifying the same.
  8. Without prejudice to any other right or remedy, the Client reserves the right, upon written notice to the Contractor and concurrence received in writing thereof by the Contractor, to set off any amount owing at any time from the Contractor to the Client against any amount payable by the Client to the Contractor under this Agreement.
  9. The Client shall not have a right to withhold an invoice that is undisputed, properly due and payable. Where it is established to the reasonable satisfaction of the Parties that an incorrect amount has been rendered in an invoice then the Contractor shall issue a credit note (in the event payment has been issued) or a corrected invoice.
  10. **Taxes** 
      1. If applicable the Client shall deduct from and pay any applicable taxes that may be set by the Government during the Term of the Agreement payable on the Services at such rate as may be prescribed by the relevant authorities from time to time and avail the Contractor with copies of any applicable tax certificates.

# The Client’s Obligations

* 1. The Client shall make prompt payment of the amounts as set out in the relevant undisputed invoices presented by Contractor for the Services. Such amounts shall be deemed to be the monies owed until the contrary is proven.
  2. The Client shall ensure full access by the Contractor to the Site and provide any other support as may be reasonably required for the execution of the Services.
  3. The Client shall ensure that all applicable statutory approvals for the Services are obtained including, but not limited to, County, NEMA and Health and Safety approvals.
  4. The Client shall inform the Contractor in a timely manner of any issues arising that may affect the performance of the Services.

# The Contractor’s Obligations

* + 1. The Contractor shall:
       1. Deploy such number of appropriately qualified, competent and trained personnel as are necessary to ensure that the Services are professionally and efficiently provided and that the Project is delivered within the timeframe set out in Clause 2.
       2. Provide adequate supervision of the employees and any supervisors assigned to monitor the implementation of the Services shall have a demonstrated record of positive performance.
       3. Comply with all applicable statutory provisions, local authority requirements and all other relevant rules and regulations.
       4. Comply with all safety, health and environmental requirements, not only as contained in this agreement, but also as legislated by the Kenyan Government.
       5. Comply with all written reasonable instructions of the Client’s authorised Representative/Agent in connection with the provision of the Services.
       6. Ensure that its employees and/or its sub-contractors adhere to the Client’s safety and general office management policies and procedures as notified to the Contractor in writing, at all times while performing the Services.
       7. Ensure that it commences the scheduled tasks of the Services in accordance with the agreed Project Schedule/Program of Works, failing which the Client shall issue a notification for the Contractor to commence the Services within Twelve (12) hours of receiving the Client’s instructions. In the event that the Contractor does not commence the Services within the said time, the Client shall arrange to procure the Services from a third party as a remedy for any failure by the Contractor to perform the Services as required by the terms of this Agreement and the Contractor shall be liable for the direct costs and any applicable fees incurred by the Client in procuring the Services from a third party.

# Confidentiality

* 1. The Contractor and the Client hereby undertakes not to disclose any confidential or other proprietary information provided to it by either party as a result of and including content of this Agreement. The confidentiality obligation shall also cover such information that may come to the knowledge of each or any of the employees of both parties in the course of the implementation of this Agreement.
  2. The duty to maintain confidentiality does not extend however to information that:
     + 1. is approved for release by the written authorization of either Party; or
       2. is lawfully required to be disclosed to specific third parties which are directly or indirectly involved in the provision of Services pursuant to this Agreement, subject however to such third parties executing a confidentiality undertaking in a form to be approved by either Party.
  3. The foregoing obligations of confidentiality shall remain in full force and effect from the date on which this Agreement comes into force.
  4. Either Party shall return or destroy confidential information of any kind, as and when requested to do so by the other Party or upon termination of this Agreement.

# Breach of Contract and Indemnity

* 1. In the event that the Contractor is in breach of this Agreement, the Client may withhold the whole or part of any monies due to the Contractor in full or partial compensation for losses resulting from such breach and where such a breach is not remedied within 7 days terminate the Contractor’s services forthwith by notice in writing. In the event that the Client is in breach of this Agreement, the Contractor may suspend their full services and where such a breach is not remedied within 7 days the Contractor may terminate their services in accordance with Clause 11 below.
  2. The Contractor shall indemnify and hold harmless and keep the Client indemnified and the Client’s servants, agents or employees indemnified and held harmless against any expense, liability, cost, claim, loss or proceeding of any kind and character which the Client, the Client’s servants, agents or employees may suffer or have brought against them howsoever arising in connection with the death or sickness of or personal injury to any person provided by the Contractor to perform the Services and/ or damage to or loss of the property of such person or the Contractor in the course of the provision of the Services.

# Assignment and Sub-contracting

* + 1. The Contractor shall not assign this Agreement in whole or in part without obtaining the prior written consent of the Client. The Contractor shall have the right to sub-consult part or parts of the services at any time throughout this Agreement, subject to the Client’s prior written consent (not to be unreasonably withheld), but this shall not relieve the Contractor of its obligations under this Agreement. The Client may assign its rights and obligations under this Agreement to an affiliate of the Client upon giving the Contractor seven (7) days’ written notice.

# Independent Contractor

* + 1. In the performance of the Services under this Agreement, the Contractor shall be an independent contractor. This Agreement shall not be construed as creating any relationship of master and servant or partnership of any form whatsoever between Contractor/Site Agent and the Client.

# Termination

* 1. **Termination for Cause by either Party**
  2. 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.
  3. **Termination for Convenience by either Party**
  4. Either party may terminate this Agreement forthwith without cause and without penalty or obligation upon one (1) Months written notice.
  5. **Termination by the Client**
  6. 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 Contractor, such termination immediately effective upon the giving of such notice of termination, if:
     + 1. the Contractor fails to comply with its obligations under this Agreement, and, if the failure can be cured, the Contractor 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; or
       2. the Contractor abandons or (except where required or agreed upon with the Client) suspends the provision of the Services; or
       3. the Contractor fails to proceed regularly and diligently with the execution of the Services.
  7. **Termination by Contractor**
     1. The Contractor may choose to terminate its services forthwith by notice in writing if the payments in Clause 4.1 above are not received within Seven (7) days of receipt of the invoices in accordance with Clause 4.3 a) above.
  8. **Consequences of Termination**
     + 1. Upon the termination of this Agreement for any reason:
          1. any sum owing by either party to the other under any provisions of this Agreement shall become immediately payable;
          2. the Contractor shall be entitled to the relevant proportion of the respective Contract Sums to the date of termination;
          3. each party shall forthwith cease to use, either directly or indirectly, any Confidential Information, and shall forthwith destroy or return to the other party any documents and copies in its possession or control which contain or record any Confidential Information;
          4. except in respect of accrued rights, neither party shall be under any further obligation to the other.
       2. Termination of this Agreement shall be without prejudice to the rights and obligations of the parties accrued up to the date of termination.

# Notices

* 1. All notices to be given under this Agreement by either party to the other shall be in writing and shall either be delivered personally or sent by first class prepaid post or airmail prepaid post or by telex, cable, facsimile transmission or email and shall be deemed duly served:
  2. in the case of a notice delivered personally, at the time of delivery;
  3. in the case of a notice sent inland by first class prepaid post, two (2) Business Days (any day other than Saturday or Sunday on which ordinary banks are open for their full range of normal business in the Republic of Kenya) after the date of dispatch;
  4. in the case of a notice sent overseas by airmail prepaid post, seven (7) Business Days after the date of dispatch; and
  5. in the case of telex, cable, facsimile transmission or email, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following Business Day.
  6. All notices under this agreement shall be in writing and sent to the address of the relevant party set out above or as advised by the parties from time to time.

# Force Majeure- Excused Performance

* 1. Neither party to this Agreement shall be responsible for delay or failure of any or allof its obligations under this Agreement if such delays or failures resulted from events of force majeure namely, circumstances beyond their control which shall include but not limited to) act of God, perils of the sea or air, fire, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of Government and Authority of whatever nature and from whatever cause arising which the parties were not aware at the time of execution of this Agreement nor responsible for at the time of its occurrence and which the parties could not have foreseen and guarded against.
  2. Either Party prevented from meeting its obligations through conditions of clause 12.1shall so inform the other party to arrange a meeting to evaluate the impact of the delay and to agree on a reasonable extension in the time for performance.
  3. If such delay or extension in the time for performance exceeds 30 (thirty) days, the Parties shall again meet to select a contingent strategy for performance.
  4. Should the Parties fail to agree on a strategy for performance, either Party may terminate the Agreement forthwith and neither Party shall have any further rights or obligations hereunder **SAVE** for the obligations that arise as a result of part performance by either Party.

# Dispute Resolution

* 1. **Good Faith Negotiations**
  2. 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.
  3. **Mediation**
     + 1. If the dispute has not been settled pursuant to the Good Faith Negotiations under clause 16.1 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.
  4. **Arbitration**
     + 1. If the dispute has not been settled pursuant to Good Faith Negotiations under Clause 16.1 or under Mediation under clause 16.2 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. No failure or delay to exercise any power, right or remedy by the Company 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 Company 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

# Governing Law

* + 1. This Agreement shall be governed 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: …………………………….