ORGANIZATION: **CM ADVOCATES LLP**

DEPARTMENT: **CORPORATE COMMERCIAL**

DOCUMENT**: TEAMING AGREEMENT**

LAST MODIFIED:

**Notes:**

1. This precedent is intended to act as a guide in drafting a Teaming Agreement. It may be modified or amended as need may be.
2. This template is applicable in case parties want to team up in order to perform a certain contract or Tender.

## **TEAMING AGREEMENT**

Dated 2021

**between**

**[PARTY 1]**

**(the “Lead Partner”)**

**And**

**PARTY 2**

**( the “Second Partner”)**

**PARTY 3**

**(the “Third Partner”)**

**-in respect of-**

**[ ]**

**Drawn By: -**



I&M Bank House, 7th Floor

2ndNgong Avenue

P.O. Box 22588-00505,

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

**TABE OF CONTENTS**

[1. Purpose of the Agreement 2](#_Toc78203004)

[2. Responsibilities of the Parties for the Project 2](#_Toc78203005)

[3. Commencement and Duration of Agreement 4](#_Toc78203006)

[4. Revenue Sharing 5](#_Toc78203007)

[5. Interface/Consortium Manager 6](#_Toc78203008)

[6. Confidential Information 7](#_Toc78203009)

[7. No Rights Granted 8](#_Toc78203010)

[8. Relationship of the Parties 8](#_Toc78203011)

[9. Indemnity and Limitation Of Liability 8](#_Toc78203012)

[10. Exclusivity 9](#_Toc78203013)

[11. Termination 9](#_Toc78203014)

[12. Dispute Resolution 9](#_Toc78203015)

[13. Notices and Domicilia 11](#_Toc78203016)

[14. Language 11](#_Toc78203017)

[15. Miscellaneous Provisions 11](#_Toc78203018)

[16. Governing Law 12](#_Toc78203019)

[17. General 12](#_Toc78203020)

**TEAMING AGREEMENT**

This Teaming Agreement 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 **“Lead Partner”** 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 **“Second Partner”** 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 **“Third Partner”** 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, “Lead Partner” and “Second Partner” and “Third Partner” are hereinafter collectively referred to as “Parties” and individually as “Party”, and for the Second and Third Partners collectively referred to as “Subcontractors”

**WHEREAS**:

1. The Parties have come together in relation to their joint participation in bidding for an **EXPRESSION OF INTEREST (Ref. No. Credit No. ---------- and ------------; Project ID No. -----------) FOR THE PROVISION OF CONSULTANCY SERVICES FOR THE {STATE THE PROJECT NAME)** (the ‘**Project**’) by the **(State the Company)** (the “Client”).
2. The Parties hereby agree to collaborate with each other to jointly participate in the Tender without prejudice to either party’s rights or entitlement.
3. In the event of award of the Tender, the Parties acknowledge the Lead Partner’s role as the Lead Partner for the Project as binding to them all;
4. The parties herein desire to enter into this Agreement setting forth the terms of their collaboration and engagement in the Project in the event of an award to the Lead Partner.

**NOW THEREFORE** in consideration of the premises, covenants and agreements hereinafter contained, the Parties agree as follows:

# Purpose of the Agreement

* 1. In the event that the Tender is awarded to the Lead Partner, the Subcontractors will perform the work in accordance with Clause 2(b) of the Agreement (Responsibilities of the Subcontractors)" of this agreement at the prices in accordance with the financial proposal submitted by Third Partner to the LEAD PARTNER.
  2. The Subcontractors will work with the Lead Partner for the Project on a subcontract basis and shall have no right to quote to any other bidders and/or tenderers for the Project PROVIDED THAT the Lead Partner shall have no right to engage other contractors for the Project without the prior written consent of the Third Partner.
  3. The Parties further agree that the Lead Partner shall have the right to assign the provision of its portion of the Project services to any of its subsidiaries and/or affiliates.
  4. The Subsidiaries hereby grant to the Lead Partner the right a first right of refusal to provide labour and other support services upon such competitive terms and conditions as they shall agree and shall be confirmed in writing.

# Responsibilities of the Parties for the Project

* 1. **(Lead Partner/Prime Bidder)**
     + 1. Obtain, prepare and submit the tender documents as per the Tender requirements;
       2. Attend and participate meeting or clarification as may be required from time to time by the Client;
       3. Undertake the management of the Project from commencement to completion as the Lead Partner;
       4. Dissemination, coordination and collection of relevant information on behalf of the Parties (at the various stage pre bid and post award)
       5. Preparation of necessary Project Execution contract documents between the Parties;
       6. Preparation of Project invoices and supporting documents and certificates for follow up and payment.
       7. Oversee on ground project coordination and facilitation.
       8. To appraise the Subcontractors about taxes to be catered for in their pricing subject to the provisions of Clause 4.6.
       9. To be responsible for the provision of Licences for the Project.
       10. To be responsible for timely payments to the hardware / software partner (Oracle) for the smooth implementation of the Project.
       11. To engage the Client to ensure payments are made as per the Project Contract.
  2. **Subcontractors**
     1. Second Partner
        1. To provide specifications (sizing) of the hardware required for the Project as requested by the Client;
        2. To undertake the assignments specified in the Subcontractors’ Scope of Works together with Third Partner;
        3. To facilitate, in collaboration with the Third Partner and the person appointed by the Consortium as the Project Manager, that the Project timelines and conditions are met so as to avoid penalties arising from delay in execution of the services;
        4. To be responsible for payment of all taxes imposed upon income or imposed in respect of any payments made pursuant to the Project Contract and shall hereby indemnify and hold harmless the Lead Partner and the Client from any claim in respect of such taxes howsoever arising.
        5. To ensure timely payments from Lead Partner so as to settle TEAM SYNTHESIS dues timely
        6. Third Partner
        7. To provide recommendations for the hardware sizing to the Second Partner as required for the proposed Project solution;
        8. To undertake the assignments specified in the Subcontractors’ Scope of Works together with the Second Partner;
        9. Ensure at all times, in collaboration with the person appointed by the Consortium as the Project Manager and the Second Partner, that the Project timelines and conditions are met to avoid penalties arising from delay in execution of the services;
        10. To be responsible for payment of all taxes imposed upon income or imposed in respect of any payments made pursuant to the Project Contract and shall hereby indemnify and hold harmless the Lead Partner and the Client from any claim in respect of such taxes howsoever arising.
        11. To ensure timely delivery of the project at all times to meet all mile-stones as per project plan and to avoid any penalty / delay in payment. The Third Partner will be solely liable for any consequences due to such delay in the execution of the project.

# Commencement and Duration of Agreement

* + 1. Notwithstanding the Signature Date, this Agreement shall be regarded as having commenced with effect from the Effective Date and shall endure until the earlier of –
       1. The expiry of the Bid Validity period being ninety (90) days from the date of submission of the Proposal;
       2. An official communication by the Client that an award will not be made based on the Request for Proposal and the Client abandons the Bid process;
       3. an official announcement by the Client that the Bid process has been cancelled;
       4. the Project being awarded to another consortium;
       5. in the event of the Project Contract being awarded to the Consortium, the Agreement will continue in force until the Project Contract is executed and handed over to the Client.

# Revenue Sharing

* 1. All contractual payments due to the Consortium from the Client in settlement of a Tender’s Financial Proposal shall be paid into the Lead Partner’s bank account and the Lead Party shall ensure that the Project Contract entered into between the Consortium and the Client expressly provides for this.
  2. Each of the Subcontractors shall be entitled to receive such portion of the Project Contract Sum as equate to teach Subcontractor’s Financial Proposal (or a pro-rata amount if a contractual payment received from time to time is less than the total contractual payment due from the Client).
  3. The Subcontractors undertake to sign all bank instructions and authorisations required to ensure that the payments due to the Subcontractors under Clause 4.2 shall be effected within not more than seven (7) business days after receipt of payment from the Client in accordance with the Project Contract and/or the structure set out in the Tender and after receipt of invoices for the payment.
  4. All sums due to the Subcontractors shall be made payable to an account(s) at such bank(s) as the Subcontractors shall direct the Lead Partner in writing. Any payment made by the Lead Partner to the Subcontractors after the 7 day period stated in 4.3 above will be subject to interest chargeable at the base lending rate of (State the Name of the Bank) Bank Kenya Limited.
  5. The payments made under this clause shall be made to each party inclusive of all taxes (unless withheld by the Client prior to payment) in clear funds without deductions (including taxes or charges) and without the right of set-off.
  6. Each Subcontractor shall be individually responsible for payment of any taxes relating to its Financial Proposal, including any income tax or VAT.
  7. The rates specified in the Subcontractors’ quotation to the Lead Partner shall be deemed as inclusive of all their overheads, expenditure and profit.
  8. As otherwise provided herein or within the contract, the rates quoted by each Subcontractor to the Lead Partner shall remain fixed and firm and shall not be subject to revision or escalation during the duration of the Project Contract for any reason whatsoever including but not limited to currency fluctuation, labour price revisions.
  9. Any price modification or variation by a Subcontractor due to unforeseen special circumstances can only be made by written agreement between the Parties and shall not be effective until the Lead Partner has independently verified and consented to the modification and payment shall be the prevailing market price(s).
  10. If at any time during the provision of the Project services a/the Subcontractor(s) incur additional costs which necessitate a revision of a/the Subcontractor(s) Financial Proposal(s), the Lead Partner will not negotiate or agree additional contractual payments with the Client without the full participation and involvement of the Subcontractor(s) and any additional contractual payment agreed with Client shall be determined and submitted to the Client. It is agreed that the Lead Partner shall not be entitled to recover costs or deduct the amount of such costs from any payment due or that may become due to the Subcontractor(s) under the Tender or this Agreement.
  11. It is agreed that, for any extra services which may be required by the Client outside the scope of this Project, the payment due to the Parties for the services shall first be discussed and agreed in writing by the Parties.

# Interface/Consortium Manager

* 1. The Lead Partner shall appoint an Interface/Consortium Manager to be the Consortium’s single point of contact with the Client for relationship management and business development.
  2. The Interface/Consortium Manager shall be in charge of the day to day management of the Consortium and shall have the responsibility and authority to act on behalf of the team in all matters related to the Client account.
  3. The Interface/Consortium Manager shall co-ordinate the communication within the Project’s chain of command and between multiple parallel team members working independently.
  4. The Interface/Consortium Manager shall provide interim and final products for the Client’s review and forward all comments and questions for the Subcontractors’ teams to the Project Manager.
  5. The Consortium Manager may appoint staff and personnel as will be necessary for the expedient performance of the functions of the Consortium.
  6. The Consortium Manager shall: -
     + 1. Prepare and present to the Consortium reports and audits detailing an analysis of the performance of the business at least every three (3) months;
       2. Liaise with the Client on the day to day usage and management of the Business opportunities and/or operations;
       3. Liaise with other service providers of the Client to ensure a beneficial business relationship between the Consortium and other service providers is achieved;
       4. Undertake the marketing of the Consortium;
       5. Collect monetary contributions from the Parties to pay the expenses incurred by the Consortium and which expenses the Parties have agreed to share; and
       6. Carry out any other roles as may be assigned by the Consortium from time to time.

# Confidential Information

* 1. Each Party undertakes in favour of the other Party that for the duration of this Agreement and for a period of two (2) years thereafter –
     + 1. it will not disclose any confidential information of any other Party or any aspect thereof to any third party save as is required in terms of this Agreement or as may be required by law;
       2. it will take all reasonable steps that may be necessary to ensure that any confidential information disclosed by any Party prior, during and after this Agreement, will not be accessible to any third party, save with the prior written consent of the other Parties; and
       3. it will not use any of the other Party’s confidential information for their own benefit.
  2. For purposes of the interpretation of this clause, "**confidential information**" means all information, data, source code, financial and accounting records, the contents of any discussions, proposals or submissions and of any negotiations or agreements flowing from such discussions, proposal or submissions between the Parties, any details of persons used to provide the services to the Client, (whether in written form, given verbally or captured electronically) pursuant to the negotiation and drafting of this Agreement, all documentation furnished pursuant to the content of this Agreement, and, the contents of any other agreements, excluding the following –
     + 1. information or documentation which is now or hereafter becomes part of the public domain, other than by default of any of the Parties; or
       2. information or documentation which was in any Party's possession without confidentiality obligation prior to the date on which such Party commenced negotiations; or
       3. information or documentation which comes into any Party’s possession after the date of signature of this Agreement and which such Party can demonstrate was not acquired pursuant to this Agreement; or
       4. Information which any Party is required to disclose in terms of any law or the rules of any recognised stock exchange.
       5. No Party shall make any public statement about this Agreement, any other Party, any breach of this Agreement or the financial arrangements pursuant to this Agreement, without the other Party’s prior written consent.
  3. This clause shall survive termination of this Agreement, and continue to bind the Parties.

# No Rights Granted

* + 1. Nothing in this Agreement shall be construed as granting any rights under any patent, copyright, or other intellectual property right of either party in relation to a Tender, nor shall this Agreement grant either party any rights in or to the other party’s Confidential Information other than the limited right to review such Confidential Information solely for the purpose of promoting each other’s solutions and services.

# Relationship of the Parties

* + 1. Nothing contained or implied in this Agreement shall create or constitute a partnership between the Parties and none of the Parties shall have any authority to bind or commit any other Party in any way except as provided in this Agreement.

# Indemnity and Limitation Of Liability

* 1. Each 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 or a Tender 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 in relation to the Tender.

# Exclusivity

* + 1. The Subcontractors are prohibited from directly or indirectly soliciting, initiating or participating in discussions or negotiations with any third party in relation to the Project and any such dealing by a Subcontractor(s) for the duration of the Project shall constitute a material breach of this Agreement for which the Lead Partner shall have the right to terminate the Agreement and claim damages accordingly.

# Termination

* 1. This Agreement can onlybe terminated forthwith in writing by either Party if the other Party becomes insolvent, is unable to pay its debts within the meaning of section 220 of the Companies Act Chapter 486 Laws of Kenya, convenes a meeting of its creditors, or proposes or makes any arrangement or composition with or any assignment for the benefit of its creditors, or a petition is presented or a resolution is proposed for its winding up, is the subject of involuntary bankruptcy proceedings, has a receiver appointed in respect of all or a part of its assets, or has its assets transferred (other than for the purposes of a reconstruction or amalgamation, the terms of which have previously been approved in writing by the other party, such approval not to be unreasonably withheld).
  2. 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.
  3. The termination or expiration of this Agreement shall not relieve either Party of its obligations which expressly or by implication survives termination.

# 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 by good faith negotiations between their respective authorized representative as each shall be informed in writing, and failing to reach an agreement after thirty (30) days from the commencement of such negotiations the Parties agree to immediately seek amicable non-binding settlement by mediation.
       2. Parties shall agree upon the name of a person to act as mediator and shall in writing request such person to act as mediator. Such person shall within seven (7) days of the receipt of the request communicate in writing to the Parties either accepting or declining the request. If such person declines the request or if the Parties are unable to agree on the name of a person to act as mediator, the dispute shall be referred to arbitration in accordance with the arbitration sub-clause 12.2 below.
       3. The Parties shall, within a period of fifteen (15) days from the date the mediator communicates in writing acceptance of the request, supply to the mediator any and/or all documents and information relevant to the dispute for the purpose of settling the dispute.
       4. If at any time after thirty (30) days or such other period as may be agreed between the parties after the commencement of the mediation no settlement has been achieved either party may refer the dispute to arbitration in accordance with sub-clause 12.2. Neither party shall be entitled to commence an arbitration pursuant to this clause unless mediation has been attempted and has after period of thirty (30) days, failed to settle the dispute.
       5. If the dispute is settled by mediation then the Parties shall enter into a binding agreement to reflect what is agreed at which time such agreement will be final and binding. Until such an agreement has been duly signed, none of the Parties shall be bound by the mediation process and may withdraw from it at any time, in which event the dispute shall be settled by arbitration in accordance with sub-clause 12.2.
  2. **Arbitration**
     + 1. If the dispute has not been settled pursuant to the mediation thirty (30) days after the commencement of the mediation or such longer period as may be agreed upon between the Parties from when the mediation 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 and Domicilia

* 1. Each Party chooses the address set out opposite its name below as its address at which all notices, legal processes and other communications must be delivered for the purposes of this Agreement:

|  |  |  |  |
| --- | --- | --- | --- |
| **NAME** | **PHYSICAL ADDRESS** | **POSTAL ADDRESS** | **TEL/FAX/ EMAIL** |

* 1. Any notice shall be in writing and shall either be delivered by hand or sent by prepaid registered post or electronic mail for routine notices and communications: ‐
     + 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 have been received by the addressee on the eighth business day following the date of such posting;
       3. If sent by email it shall be deemed to have been serviced at the time of transmission unless the sender receives a notification of non-delivery.
       4. Either Party may provide changes in the above address by notice in writing given to the other Party as aforesaid.

# Language

* + 1. All Agreements, correspondence and other documents relevant to this Agreement shall be in English.

# Miscellaneous Provisions

* 1. The provisions of this Agreement may only be added, modified or varied by the written agreement of the Parties.
  2. Neither Party shall assign the benefit of this Agreement without the prior written consent of the other Party.
  3. The failure or delay on part of either party hereto to exercise any right or obligation under this Agreement shall not operate as a waiver thereof. No waiver, by either Party, of any provision of this Agreement shall, in any event, become effective unless the same shall be in writing and such waiver shall be effective only in the specific instance described and for the purpose that the waiver is given.
  4. If at any time any one or more of the provision of this Agreement become invalid, illegal or unenforceable in any respect under any law the validity and enforceability of the remaining provisions hereunder shall not in any way be affected or impaired thereby.
  5. This Agreement is effective from the day of signature and shall remain effective unless terminated in accordance with the provisions of Clause 11.
  6. 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 either Party 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.
  7. Each of the parties shall do and execute or procure to be done and executed all such acts, deeds, documents as may be within its power to give full effect to this Agreement and to procure that all provisions of this Agreement are observed and performed
  8. Each Party shall bear its own pre-bid, tendering and bidding expenses incurred by reason of and for the preparation and submission of the bid and negotiation of a Tender.

# Governing Law

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

# General

* 1. No failure or delay to exercise any power, right or remedy by a Party shall operate as a waiver of that right, power or remedy and no single or partial exercise by that party of any right, power or remedy shall preclude its further exercise or the exercise of any other right, power or remedy.
  2. The rights and remedies of the Parties provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
  3. The Parties intend that the contents of this Agreement shall be legally binding and enforceable.
  4. Each of the provisions of this Agreement is severable and distinct from the others and, if at any time one or more of these provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
  5. No amendment or variation to this Agreement shall be effectual or binding on the parties hereto unless it is in writing and duly executed by or on behalf of the parties hereto.
  6. This Agreement may be executed in several counterparts, each of which shall be an original but all of which shall together constitute one and the same instrument.
  7. This Agreement constitutes the whole Agreement between the parties hereto in relation to the subject matter of this Agreement and no variations thereof shall be effective unless made in writing and signed by all the parties. This Agreement supersedes and replaces any Agreement whatsoever that may have subsisted between the parties hereto in any way relating to the subject matter.
  8. The construction, validity and performance of this Agreement shall be governed by and construed in accordance with the laws of Kenya and the parties hereby agree to submit to the jurisdiction of the Kenyan courts.
  9. Each of the parties hereby agrees and confirms for the purposes of the Law of Contract Act (Chapter 23, Laws of Kenya) and the Companies Act that it has executed this Agreement with the intention to bind itself to the contents hereof.

**IN WITNESS** **WHEREOF** this Agreement has been duly executed the year and date first hereinabove written:

**SIGNED** on behalf of **\_\_\_\_\_\_\_\_\_\_\_** ]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED** ]

by: ]

]

Director ] …………………….

]

**In the presence of** ]

]

**Witness** ] Signature: …………………………….

] Name: …………………………….

] Date: …………………………….

**SIGNED** on behalf of **\_\_\_\_\_\_\_\_\_\_\_** ]

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ LIMITED** ]

by: ]

]

Director ] …………………….

]

**In the presence of** ]

]

**Witness** ] Signature: …………………………….

] Name: …………………………….

] Date: …………………………….

**Drawn By: -**

**CM Advocates LLP**

I & M Bank House, 7th Floor

2nd Ngong Avenue

P.O. Box 22588 - 00505

**Nairobi.**

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

**ANNEX (A)**

**SUBCONTRACTORS’ SCOPE OF WORK**

**(To be attached later)**

**ANNEX (B)**

**SUBCONTRACTOR'S SCHEDULE OF PRICES**

**(To be attached later)**