



**SAMPLE AGREEMENT FOR THE SERVICE OF  
LABORATORY EQUIPMENT BETWEEN CHEM-LABS  
LIMITED AND THE ABC HOSPITAL – TOWN CLINIC**

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**THIS AGREEMENT** is made the \_\_\_\_\_ day of \_\_\_\_\_ 2011 between **THE ABC HOSPITAL – TOWN CLINIC** of P.O. Box 30325-00100, Nairobi in the Republic of Kenya (hereinafter referred to as the “**Company**” which expression shall where the context so admits include its successors and assigns) of the one part AND **CHEM-LABS LIMITED** of P.O. Box 38779-00600 **NAIROBI** in the aforesaid Republic (hereinafter called the “**Consultant**” which expression shall where the context so admits include its successors and assigns) of the other part.

**WHEREAS:**

- A. The “Company” is desirous in having its laboratory equipment more specifically the **Humalyzer 2000 Semi Automated Chemistry Analyzer, PCE 210N Hematology Analyzer and Humalyte Electrolyte Analyzer** serviced (hereinafter referred to as the “project”) within its health facility situated at Nairobi in the Republic of Kenya.
- B. The Consultant has represented to the Company that it is willing and has the necessary expertise, experience, capacity and technical ability to undertake the project herein in accordance with the terms contained in this Agreement as well as such directions and guidelines as the Company may give from time to time.
- C. The Company is desirous of engaging of the Consultant, and the Consultant has duly accepted, to carry out the Services herein in accordance with the terms and conditions as set hereunder.

**IT IS NOW AGREED BY PARTIES AS FOLLOWS:-**

1. **Appointment**

The Company hereby appoints the Consultant to provide the Services in accordance with the terms set out herein and the Consultant accepts the appointment and undertakes to perform the Services in strict accordance with the said terms.

2. **Term**

This Agreement shall run and remain in force for a period of one year from the date of execution. Parties may however agree to extend the same on such terms and conditions as shall be mutually agreed upon.

3. **Provision of the Services**

3.1. The Consultant shall carry out two scheduled maintenance visits per annum and unlimited service visits on demand free of charge. During all such visits, the Consultant’s service engineer shall thoroughly check the electronic, optical and mechanical components of the equipment.

3.2. In the performance of this contract, the Consultant shall ensure that the best professional standards are maintained to the letter.

3.2 Whenever the Consultant discovers any defects in the project herein, the consultant shall immediately notify the Company’s Project Coordinator and the possible remedies.

- 3.3 The contract shall cover labour on maintenance and repair, transport and other miscellaneous costs excluding spare parts.
- 3.4 The client shall bear the cost of all maintenance and replacement parts. The contractor shall avail to the client the spare part price list upon request.
4. **Consideration**
- a. In consideration to the services being offered by the consultant, the Company shall pay the Consultant the following fees:-
- i) Kshs. 35,634/- for the service of the Humalyzer 2000 Semi-Automated Chemistry Analyzer.
  - ii) Kshs. 79,900/- for the service of the PCE 210N Hematology Analyzer
  - iii) Kshs. 37,883/- for the service of the Humalyte Electrolyte Analyzer
- 4.1 The above shall be paid by the Company immediately the Consultant undertakes the service and in any event not later than 30 days on receipt of respective invoice.

5. **Responsibilities**

**The Company shall:-**

- 5.1.1 Avail the equipment as and when inspection is due.
- 5.1.2 Avail appropriate protective clothing to the consultant for purposes of project inspection.
- 5.1.3 Arrange and apply for all the necessary certifications, where necessary, on completion of the service.
- 5.1.4 Ensure that the equipment is adequately protected from damage associated with power surge through the use of UPS and stabilizers.

**6.0 The Consultant shall:-**

- 6.1.1 Carry out the service and quality assurance and be held liable in case of any omission.
- 6.1.2 Take out appropriate insurance covers to it employees assigned to undertake the project herein.
- 6.1.3 Provide appropriate protective to officers assigned to this project.
- 6.1.4 Update the Company on any defects noted and the remedial measures undertaken by the Consultant.
- 6.1.5 Offer manufacturer's software updates on the instrument at no cost at all.
- 6.1.6 Ensure that the Services are rendered by qualified and experienced personnel using the best professional standards expected in the industry.
- 6.1.7 Issue appropriate certificates after every successful service.
- 6.1.8 Issue six months warranty in respect to works/services undertaken.

## **7.0 Joint Responsibilities**

Each Party shall nominate a Contact Person who shall be responsible for coordinating activities under this contract. Each party shall direct all inquiries, requests and reports concerning the implementation of this contract to the other Party's Project Coordinator.

## **8. Exclusions**

The provision of the services herein shall be subject of the following exclusions:-

- 8.1 Breakage or damage occasioned by mishandling
- 8.2 Tampering by unauthorized persons. Authorized for the purposes of this contract shall be personal representatives and or assignees of the Consultant.
- 8.3 Damage caused by civil disturbance, criminal acts, accidents or natural calamities.
- 8.4 Damage caused by power surges on the instrument's electronic and mechanical components.

## **9. Indemnity**

- 9.1 The Consultant hereby indemnifies the Company in respect of any claims, actions or legal proceedings for damages that may be instituted against the Company arising from or connected with the Consultant's gross negligence or willful misconduct in connection with the implementation of the contract.

## **10. Governing Law**

This Agreement shall be governed and interpreted in accordance with the laws of the Republic of Kenya.

## **11. Dispute Resolution**

- 11.1 The Parties agree that should a dispute arise with respect to this Agreement, they shall make good faith efforts to resolve the dispute on a business basis through negotiation in the first instance between their respective chief executives.
- 11.2 If the negotiations fail to resolve the dispute as above then the Parties agree to refer the matter to a sole arbitrator to be appointed by the Parties jointly and failing agreement by the Chairman for the time being of the Chartered Institute of Arbitrators, Kenya Branch. The decision of the arbitrator shall be final and binding upon the Parties to the extent permitted by the applicable law. Each party shall be responsible for its share of the arbitration fees in accordance with the applicable rules of arbitration. In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrators award the other party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.
- 11.3 The dispute shall be resolved in accordance with the provisions of the Arbitration Act of 1995 or any statutory modification or re-enactment thereof for the time being in force.

11.4 Notwithstanding the above provisions of this clause, either Party is entitled to seek preliminary injunctive relief or interim measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.

## **12. Confidentiality**

12.1 The Parties hereby undertake to each other:-

- a) to keep confidential all information (written, including without limitation information contained in electronic format, or oral) concerning the business and affairs of the other that it shall have obtained or received from the other Party
- b) to use the Confidential Information solely in connection with the implementation of this Agreement and not for its own or the benefit of any third party.

## **13. No Assignment**

This Agreement or any rights or benefits hereunder shall not be assigned transferred or divided in whole or in part by either Party without the prior written consent of the other Party

## **14. Termination**

14.1 Either party may on justifiable cause terminate this Agreement at any time by giving the other party Thirty (30) days notice of termination.

14.2 Save as otherwise provided in this Agreement, should either Party (the “**Defaulting Party**”) commit a breach of any of the provisions of this Agreement, then the other party (the “**Aggrieved Party**”) shall be obliged to give the Defaulting Party Fourteen (14) Days written notice to remedy the breach (if capable of remedy). If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to either cancel this Agreement or claim specific performance by the Defaulting Party of all the Defaulting Party’s obligations. The provisions of this clause are without prejudice to such other rights as the Aggrieved Party may have at law, subject always to any contrary provisions of this Agreement.

## **15. Force Majeure**

15.1 Neither Party shall be liable for any failure to fulfill any of its obligations under this Agreement in so far as such failure is due to force majeure including Acts of God, blockade, invasion, insurrection, riot, civil commotion, mob violence, sabotage, embargo, boycott, strikes, lockouts, military or usurped power, bomb blast or terrorist action unless the same is due to the negligence and/or willful act or omission by a Party, its agents or personnel.

15.2 If a Party is prevented from or delayed in performing any of its obligations under this Agreement by force majeure, then it shall promptly notify the other Party in writing of the circumstances constituting the force majeure and of the performance obligation which is thereby delayed or prevented, and subject to due authentication of the event of force majeure, the Party giving notice shall be excused during the inability of the Party to perform but for no longer period and such Party shall use its best endeavors to

remedy the cause thereof so far as possible with all reasonable dispatch provided that either Party may terminate this Agreement if such conditions continue for a period of Fifteen (15) Business Days or more in which event the provisions of clause 14 above shall take effect.

**IN WITNESS WHEREOF** the Parties have signed this Agreement the day and year first hereinabove written.

**Signed by an Authorized Representative of THE ABC HOSPITAL (TOWN CLINIC)**

Name.....

Designation.....

Signature & Company Rubber Stamp.....

**SIGNED** for and on behalf of **THE CONTRACTOR**

Name.....

Designation.....

Signature & Company Rubber Stamp.....