

CORPORATE HELICOPTERS LIMITED

Helicopter Flight Charter

TERMS & CONDITIONS

Please read the following terms and conditions carefully. They comprise the carriage agreement between **Corporate Helicopters Limited** and everyone who uses the carriage services provided by Corporate Helicopters Ltd. You must not make any booking unless you understand and agree with the following terms and conditions.

References to “us”, “we” and/or “our” in these terms and conditions shall mean Corporate Helicopters Limited.

These Terms and Conditions apply to bookings you make directly with us or through a travel agent or otherwise (in-store, over phone or by email) as well as online bookings you make on our website.

The entire of these Terms and Conditions shall be deemed to have been read and clearly understood by the Charterer and or passenger either upon the booking of the service or upon payment of the fee applicable or part payment thereof or immediately upon boarding the helicopter.

WHEREAS

- A. Corporate Helicopters Limited is a chartered flights service provider, which has a lease and or ownership and or custody, possession and control of various types models and makes of helicopters, and has accepted an offer from the Charterer for the supply of the service specified herein after as far as relates to such helicopters in the region set out herein under.
- B. The Charterer has expressed an interest and made an offer for the procurement of the service herein after more specifically defined and described.

In consideration of mutual premises, representations, covenants and other good and valuable consideration, the Parties agree to the following terms and conditions and to be bound thereby:

1. DEFINITIONS OF TERMS:

1.1 In these Terms and Conditions, the following expressions shall, unless the context otherwise requires, have the meanings hereby assigned to them:

- (a) **“Terms and Conditions”** means these Terms and Conditions and the Schedules and Annexures thereto;

- (b) **“Aircraft”** means such helicopter as is or such helicopters as are specified and or within the specification set out in SCHEDULE A of these Terms and Conditions;
- (c) **“Actual Hours Flown”** means the aggregate time spent by the aircraft in actual flight;
- (d) **“AMI”** is an acronym for the words aircrew, maintenance and insurance;
- (e) **“Block Hours”** means *continuous hours of chartered flight within the contract;
- (c) **“Business Hours”** every Monday to Friday from 8.00am to 5.00pm and every Saturday from 8.00am to 1.00pm. and excludes every public holiday in Kenya.
- (f) **“Day”** from 12.00am to 11.59pm;
- (g) **“Exclusive”** means in the context of this contract, the procurement of the service during the period of these Terms and Conditions only from the Carrier and from no other provider of helicopter charter or carriage service in any way manner or form;
- (h) **“Flight Share”** means the carriage of more than one passenger or client and or their respective goods, baggage and luggage in one helicopter each meeting a proportionate share of the service fee, which share for each Charterer or passenger shall be determined by the Carrier.
- (i) **“Minimum Guaranteed Flight Hours”** means no less than sixty (60) flight hours per every complete or partial calendar month during the contractual period;
- (c) **“Passenger”** means any person other than the crew of the chartered flight who is duly authorised and registered on the passenger manifest of the aircraft pursuant to the provision of the service by the Carrier to the Charterers;

- (d) **“Region”** means within the East African region in such parts thereof as are set out in SCHEDULE B;
- (e) **“The Carrier”** means **Corporate Helicopters Limited**, a limited liability company incorporated in the Republic of Kenya with its registered address at KRA Hangar, Wilson Airport Nairobi Kenya of P. O. Box 7568-0030 Nairobi, Kenya, which expression shall where the context admits include its successors and assigns;
- (f) **“The Charterer”** means any person who books the service provided by Corporate Helicopter Limited, which expression shall where the context admits include its/his/her successors, assigns or heirs.
- (g) **“The Service”** means the provision of chartered helicopter flights as more specifically described herein after.
- 1.2 the clause headings in these Terms and Conditions have been inserted for purposes of convenience only and shall not be taken into account in its interpretation. Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part of, bear the meaning assigned to such words and expressions in that clause;
- 1.3 The rule of construction that these Terms and Conditions shall be construed against the Party responsible for the drafting or preparation of these Terms and Conditions, shall not apply;
- 1.4 references to any statute, enactment, order, regulation or other similar instrument shall be construed as references to the statute, enactment, order, regulation or instrument as amended from time to time;
- 1.5 the expression “person” includes a natural person, body corporate, unincorporated venture, trust, joint venture, association, statutory corporation, state, state agency, governmental authority or firm;

2. COMMENCEMENT AND DURATION

- 2.1 Unless earlier terminated in accordance with the provisions hereof, these Terms and Conditions shall be deemed to be effective from the moment a booking is made and shall remain in force for such period as the booking retains validity and currency until such time as the Charterer last passenger shall disembark from the helicopter.

3. THE SERVICE

- 3.1 The service shall comprise the providing of chartered AMI helicopter flights to the Charterers and the Charterers' guests, clients, customers, staff, employees and such other persons as are designated to board the chartered flights in relation to the service within the region.
- 3.2 For each separate flight or series of flights provided pursuant to these Terms and Conditions, the Charterers or either of them or either of their duly authorised staff, employee(s) or agent(s) shall be required to provide a local purchase order and or execute a quote sheet or document or manifest to acknowledge the provision of the service. Provided, however, that the mere failure, omission or neglect to provide the local purchase order, or the quote, statement, or other documentation for signing, or the mere failure, omission or neglect to sign the Terms and Conditions, quote, statement, or other documentation, shall not of itself release, exempt, excuse or remove the Charterers or either one of them from liability for the service fee at a rate herein after specified for flights actually booked, boarded, taken or cancelled without sufficient notice.
- 3.3 Additional flight time or flight hours and charges and or fees related thereto may be incurred in the event of weather avoidance and delays, holding, civil aviation authorities and airport authorities related or caused delays, and additional charges and or fees related directly to such additional flight time or

flight hours may not necessarily be included in the original invoice and may instead be billed at a future time.

- 3.4 Where a flight crew is provided as part of the service the terms of the service shall be configured or designed by the Carrier so as to provide for and ensure compliance with the limits set by the civil aviation laws, rules and regulations regarding the flight crews flight and duty hours.
- 3.5 For purposes of billing for the flight crew's accommodation expenses, the Carrier shall have discretion to secure within reasonable limits such accommodation as will guarantee good and sufficient rest for the flight crew.
- 3.6 The chartered helicopter shall be provided with a full tank capacity of fuel and must be returned with a full tank capacity of fuel.
- 3.7 The payment of all crew salary, and oil and helicopter maintenance charges shall be the responsibility of the Carrier.
- 3.8 All helicopters are restricted from the following activities:
- 3.8.1 smoking of any kind;
 - 3.8.2 carriage or transportation of pets, except and upon the written permission of (and in that event in strict adherence to the conditions laid out by) the Carrier first had and received;
 - 3.8.3 carriage or transportation of weapons or drugs of any kind, except and upon the written permission of (and in that event in strict adherence to the conditions laid out by) the Carrier first had and received;
 - 3.8.4 use of mobile phones and electronic gadgets of any kind, except and upon the written permission of (and in that event in strict adherence to the conditions laid out by) the Carrier first had and received;
 - 3.8.5 any activity that is banned, illegal or unlawful or that is dangerous for the flight crew, passengers, helicopter, hangar, hangarage and or cargo.

- 3.9 The Carrier shall at all times have exclusive direction and control over the aircraft, its crew and passengers, and all cargo on board.
- 3.10 The Carrier undertakes to employ and engage all due diligence in the provision of the service but does not guarantee any speed, route, departing or arrival time or date.
- 3.11 The availability of the service and or any particular helicopter for the service is subject to prior booking, crew availability, weather and the civil and airport authority related requirements, events, and maintenance requirements.
- 3.12 Should a particular helicopter that had been booked or reserved for the service be unavailable for whatever reason the Carrier shall employ its best endeavours to arrange for a substitute similar to the booked or reserved helicopter.
- 3.13 The Carrier shall be entitled at its own discretion to subcontract the whole or any part of the service to a qualified and duly certified chartered flight operator or service provider but at no extra charge or unreasonable inconvenience to the Charterers.
- 3.14 The Carrier shall be entitled and at liberty to make interim stops for fuel, supplies, repairs, maintenance, and take whatever steps it deems necessary for the protection of itself, its crew, its helicopter(s), passengers and or cargo, including the substitution after commencement of the service or of a flight of the helicopter, and it shall not be held liable for any loss, damage or expense for any resultant delay or inability to perform the service to conclusion.
- 3.15 The Carrier shall at all times have the right to, at its sole discretion, decline or refuse carriage of any passengers, cargo, baggage, or luggage that intends or is intended to board or is to be loaded onto its helicopters, as well as regards the suitable dressing or packaging thereof, on account of legality, safety, space, operational capacity, law, rules and regulations.

3.16 Prior to each provision of the service the Charterer shall be required to submit to the Carrier a passenger information worksheet in the form and manner and clearly setting out the details and providing the information required by the Carrier, including but not limited to names, nationalities, dates of birth, identification and or passport numbers and details, and visa information (where applicable or necessary).

3.17 If the helicopter cannot be loaded with all the intended cargo or luggage, the luggage may be carried separately via an available air freight or courier service to the intended destination at the option and expense (in the case of any additional expense) of the Charterers.

3.18 The Carrier shall be entitled to receive advance reasonable notice of the intention to carry any unusually heavy, large or bulky cargo, luggage or any other item whatsoever that may require special arrangements for handling and or loading.

3.19 Flight Share:

3.20 A booking for a chartered flight shall only be subject to these Flight Share provisions if it is so indicated by the Charterer or passenger that that is the desired option of the Charterer or passenger and where booking and Flight Share service fee payment is made for the flight at least forty-eight (48) hours prior to the desired or schedules take-off time of the helicopter flight chartered.

3.21 Where the Charterer indicates that the desired service is that of “Flight Share”, the provision of the service by the Carrier shall be dependent on the attainment of the minimum booking and requisite service fee payment of at least four (4) Charterers or passengers for the chartered flight at least forty-eight (48) hours prior to the desired or schedules take-off time of the helicopter flight chartered.

3.22 Where less than the minimum number of four (4) Charterers do not book and pay the requisite service fee for the flight at least forty-eight (48)

hours prior to the desired or scheduled take-off time of the helicopter flight chartered the flight and flight charter(s) will be cancelled and notification given to the Charterer(s) and or passengers at the earliest opportunity after the decision to cancel the flight or charter is made and a full refund of any amounts paid shall be refunded to the Charterer no later than 72 hours after the time when the chartered or scheduled flight was due to take off.

3.23 The time due for the take-off of the flight shall be at the discretion of the Carrier taking into account various factors including but not limited to the desired take-off time of all the Charterers/passengers.

3.24 In all other respects not contradictory to the foregoing Flight Share provisions of these Terms and Conditions the provisions of these Terms and Conditions shall apply.

4. THE SERVICE FEE

4.1 In consideration of and subject to the providing or reserving the service to the Charterers jointly or severally, the Charterers jointly and severally agree to pay the sum of **One Thousand Seven Hundred United States Dollars (USD 1,700.00 or \$1,700.00)** per chartered flight per hour and per any part of an hour not being a full hour, which rate of service fee shall be chargeable to and payable by the Charterers for any calendar month where the aggregate billable/chargeable block hours for provision of the service for that calendar month is less than the minimum guaranteed flight hours, that is, it **does not exceed fifty nine hours (59hrs)**.

Provided that in the case of Flight Share the service fee shall comprise such share of the amount provided for in this sub-clause as the Carrier will at its sole discretion deem to be the appropriate proportion of the service fee to be paid by or for each individual Charterer or passenger for each charter or flight and need not be the same or equal.

4.2 In consideration of and subject to the providing or reserving the service to the Charterers jointly or severally, the Charterers jointly and severally agree to pay the sum of **One Thousand Six Hundred United States Dollars (USD 1,600.00 or \$1,600.00)** per chartered flight per hour and per any part of an hour not being a full hour, which rate of service fee shall be chargeable to and payable by the Charterers for any calendar month or part thereof where the aggregate billable/chargeable block hours for provision of the service for that calendar month is equal to or more than the minimum guaranteed flight hours, that is, it **exceeds fifty nine hours (59hrs)**.

Provided that in the case of Flight Share the service fee shall comprise such share of the amount provided for in this sub-clause as the Carrier will at its sole discretion deem to be the appropriate proportion of the service fee to be paid by or for each individual Charterer or passenger for each charter or flight and need not be the same or equal.

4.3 The service fee is payable in advance prior to the providing or reservation of the chartered flight and the currency for payment of all service fees and charges, including additional charges, shall be made in United States Dollars.

4.4 In the event that the Charterers does not pay the service fee in advance the Carrier shall invoice the Charterers for each service and the Charterers shall make payment in settlement of each invoice within **twenty four (24)** days of receipt of the invoice.

4.5 The service fee herein specified is strictly for the basic hire of the helicopter inclusive of AMI for a chartered helicopter flight with a qualified and duly registered and certified captain.

4.6 The service fee does not include the following:-

4.6.1 landing charges;

4.6.2 navigation charges;

4.6.3 per diem payments from any member of the crew;

- 4.6.4 accommodation charges for any member of the crew;
 - 4.6.5 any additional inflight service provided, including but not limited to snacks, food and drinks;
 - 4.6.6 Charterer and or passenger special requests or itinerary change that result in additional flight hours and or expenses;
 - 4.6.7 after-hours airport operation fees.
 - 4.6.8 any taxes, levies or charges (including without limitation value added taxes and customs duties) assessed or imposed by any airport or air navigation authority or taxing authority on or in connection with the performance of the Charter Services;
 - 4.6.9 car or other transport to or from airports or landing grounds for cargo and/or passengers and their baggage;
 - 4.6.10 the cost of applicable airport taxes for passengers and/or cargo, all of which are payable by the Charterer provided that all expenses of operating the Helicopter including remuneration expenses of crew, running costs.
- 4.7. Unless expressly set out in the Charter Booking Confirmation or other similar documentation emanating from the Carrier:
- 4.7.1. all amounts payable by the Charterer under the Terms and Conditions are exclusive of amounts in respect of value added tax chargeable for the time _____ being _____ (“VAT”); maintenance, repairs and hangars are all included in the Service Fee.
 - 4.7.2 If the Charter Booking Form specified that a deposit or payment is required, such deposit or payment shall be made within the time specified in the Charter Booking Form;
 - 4.7.3 Time for payment is of the essence;
 - 4.7.4 Without limiting any other right or remedy of the Carrier, if the Charterer fails to make any payment due to the Carrier under the Contract by the due date for payment (“Due Date”), The Carrier shall have the right to;
 - 4.7.5 charge interest on the overdue amount at the rate of 2 per cent per month accruing on a daily basis from the due date until the date of actual

payment of the overdue amount, whether before or after judgment, and compounding quarterly and/or

4.7.6 treat non-payment as constituting the cancellation by the Charterer of the Charter Services entitling The Carrier to payment as provided herein below;

4.7.7 The Charterer shall pay all amounts due under the Terms and Conditions in full without any deduction or withholding except as required by law and the Charterer shall not be entitled to assert any credit, set-off or counterclaim against the Carrier in order to justify withholding payment of any such amount in whole or in part. The Carrier may, without limiting its other rights or remedies, set off any amount owing to it by the Charterer against any amount payable by the Carrier to the Charterer;

4.7.8 Should the Charterer for whatever reason cancel the Terms and Conditions or be deemed to cancel the Terms and Conditions, then the following cancellation charges may be applied by the Carrier;

4.7.9 If the Charter Booking Form specifies that the Charter Services is for a “special event”, the Carrier reserves the right to charge the whole of the Service Fee together with any expenses incurred in relation to the Charter Services up to the date of cancellation (including landing and or parking charges and take-off and landing slots expenses); or

4.7.10 In any other event, the following cancellation fees shall be payable by the Charterer to the Carrier:

Amount of notice of cancellation given by the Charterer prior to the scheduled departure time specified in the Charter Booking Form
Cancellation charge (which is expressed as a percentage of the Service Fee)

(a) Over 7 days 15%

(b) 7 days to 48 hours 30%

(c) Less than 48 hours 50%

(d) Less than 24 hours or no show 100%

Cancellation after part of the Charter Services has commenced 100% together with any expenses incurred in relation to the Charter Services

up to the date of cancellation (including landing and or parking charges and take-off and landing slots expenses);

4.7.11 The cancellation charges set out herein above represent a genuine pre-estimate of the loss that the Carrier will suffer as a result of any cancellation.

4.8 If after the date of the Terms and Conditions there is any increase in costs to the Carrier due to any factor beyond its control including security costs, aviation insurance premiums, fuel, landing and airport fees, airport passenger duty or similar costs relating to the operation of the helicopter or any part of the service, the Carrier shall be entitled to increase the Service Fee accordingly.

4.9 The Carrier shall have a general lien over any goods, property, cargo, baggage and or luggage that have been delivered to it or placed in its custody to secure payment or compensation for the service fee(s) due and outstanding during or after the validity of these Terms and Conditions.

4.10 **Service Fee In Relation To Flight Share:**

4.10.1 Upon the cancellation of any Flight Share flight for lack or failure of attainment of the minimum booking and requisite service fee payment of at least four (4) Charterers or passengers for the chartered flight at least forty-eight (48) hours prior to the desired or schedules take-off time of the helicopter flight chartered the Carrier shall no later than seventy two (72) hours after the time when the chartered or scheduled flight was due to take off refund the Flight Share fee to the charterer or passenger who made the booking or payment.

4.10.2 Refund as herein afore provided shall be made to the bank account nominated by the Charterer or passenger from whom the payment was made which nomination shall be made upon receiving an electronic mail (email) at **refunds@corporatehelicopters.co.ke** from the email address to which the cancellation of the flight was made being the email account which the Charterer or passengers as the case might be provided to the

Carrier at the time of booking and or paying the service fee for the Flight Share flight.

4.10.3 The Carrier shall not bear any responsibility or liability whatsoever for the cancellation of any Flight Share charter or flight regardless of the reasons and consequences the cancellation.

4.10.4 The Carrier in the event of a cancellation of a Flight Share charter or flight shall only be liable for refund of the exact amount paid by the Charterer or passenger to the Carrier for the cancelled charter or flight without any bank charges interest or penalties whatsoever that have not been provided for in these Terms and Conditions or by subsequent Terms and Conditions in writing.

4.10.5 In all other respects not contradictory to the foregoing Flight Share provisions of these Terms and Conditions the provisions of these Terms and Conditions shall apply.

5. CARRIER'S OBLIGATIONS

5.1 The Carrier shall provide the service to the Charterers in the region upon request **upon reasonable notice ofhours/days/weeks*. Provided that at no time shall these Terms and Conditions be construed so as to deem or require or make or place responsibility to provide or liability on the Carrier for the lack of provision of more service than is within its capacity from time to time to provide.

5.2 The Carrier may be required to provide security for the safety of the passengers on the chartered flight and when so required by the Carrier shall be responsible for making such security arrangements as shall have been agreed upon within a reasonable time prior to the providing of the service between the Carrier and the Charterers.

5.3 The Carrier shall abide by the civil aviation laws, rules, regulations and best practises as apply for the aircraft and within the region in relation to the provision of the service, and shall bear no liability whatsoever for any damages caused to any party passenger person or entity by virtue of abiding by the civil aviation laws, rules, regulations and best practises.

6. CHARTERERS' OBLIGATIONS

6.1 The Charterers shall procure the service during the period of these Terms and Conditions only from the Carrier and shall not procure the service or a similar form or type of the service from any other provider of helicopter charter or carriage service in any way manner or form during the period of these Terms and Conditions.

6.2 The Charterers shall be responsible for and shall meet and pay, at the same time and together with the payment of the service fee the costs of the following:-

6.2.1 landing charges;

6.2.2 navigation charges;

6.2.3 per diem payments from any member of the crew;

6.2.4 accommodation charges for any member of the crew;

6.2.5 such security as shall have been provided for and deemed necessary and sufficient, or as shall have been agreed upon between the Carrier and the Charterers or requested by the Charterers, for the aircraft, crew and passengers during the provision of the service;

6.2.6 cargo and luggage handling charges, expenses and or costs;

6.2.7 after-hours airport operation fees;

6.2.8 any taxes, levies or charges (including without limitation value added taxes and customs duties) assessed or imposed by any airport or air navigation authority or taxing authority on or in connection with the performance of the Charter Services;

- 6.2.9 car or other transport to or from airports or landing grounds for cargo and/or passengers and their baggage;
- 6.2.10 the cost of applicable airport taxes for passengers and/or cargo, all of which are payable by the Charterer provided that all expenses of operating the Helicopter including remuneration expenses of crew, running costs.
- 6.3 The Charterers shall be responsible for ensuring that its employees abide by the directions of the crew, staff, employees and or agents of the Carrier at all times in the course of, leading up to and after, and during the providing of the service.
- 6.4 The Charterers shall give the Carrier at least forty-eight hours (48hrs) notice before such time as it shall require any special security arrangements to be made by the Carrier.
- 6.5 The Charterers shall not do anything in its use and or access to the service that puts in jeopardy the aircraft, crew, staff, employees, agents, equipment, machinery, gadgets, tools, property or hangar of the Carrier.
- 6.6 The Charterers shall abide by the reasonable rules set by the Carrier and or reasonable directions of the staff employees and or agents of the Carrier regarding the storage space available and provided and safety.
- 6.7 The Charterers shall strictly ensure that any and all provisions of the law in relation to the hangarage of the aircrafts have been adhered to and shall ensure that it does not bring, direct or allow to be brought into the hangar and or the service in any way manner or form anything or person in contravention of or not in accordance with any law, rule or regulation.
- 6.8 The Charterers shall allow and make provisions and give directions for the reasonable access to any of its cargo and passenger luggage for purposes of inspection by the Carrier through it crew, staff, employees, and or agents as and when required prior to undertaking or in arrangement for providing the service.

6.9 The Charterer shall ensure that the following items are not brought on the helicopter with the prior express permission of the Carrier first had and received:

- a) Compressed Gas (exemptions apply)
- b) Acid
- c) Batteries
- d) Bleach
- e) Explosives
- f) Flammable Liquids
- g) Ignitable Gas
- h) Incapacitating Sprays
- i) Matches & Lighters
- j) Poison

6.10 The Charterers shall promptly pay the service fee.

6.11 Charterer's Obligations In Relation to Flight Share:

- a) To book and make full payment of the service fee for the Flight Share charter or flight at least forty eight (48) hours before the desired or scheduled take-off time for the flight.
- b) To provide an email address to which amounts to be refunded will be made.
- c) In all other respects not contradictory to the foregoing Flight Share provisions of these Terms and Conditions the provisions of these Terms and Conditions shall apply.

7. REPRESENTATIONS AND WARRANTIES

Each of the Parties hereby represents and warrants to the other as at the date of these Terms and Conditions that:

- 7.1 it has the power to enter into and perform and comply with its obligations under these Terms and Conditions;
- 7.2 all actions, conditions and things required to be taken, fulfilled and done (including the obtaining of any necessary consents and authorizations) for its

entry into and performance of these Terms and Conditions and the service have been taken, fulfilled and done; and

- 7.3 its entry into and/or performance of or compliance with its obligations under these Terms and Conditions or any of the documents do not and will not violate any law to which it is subject or any third party rights.

8. INDEMNITY

8.1 The Charterers agree to indemnify and keep indemnified and hold harmless the Carrier, 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 Carrier pursuant to any breach or non-observance by the Charterers of any of its obligations or representations under these Terms and Conditions.

8.2. The Charterer will indemnify and keep indemnified the Carrier against any loss, damage, costs, claims and expenses incurred by the Carrier in so far as such liability arises wholly or partly out of any of the following:

8.2.1. any damage caused to the helicopter as a result of any actions of the Charterers' passengers or of any goods carried in the provision of the service or at the request of the Charterer;

8.2.2. any breach of these Terms and Conditions by the Charterer;

8.2.3. any wrongful or negligent act or omission of the Charterer or its employee's agents or sub-contractors or any passenger or owner of goods carried at its request;

8.3.4. any damage to, destruction of or loss of use of any property supplied by or at the request of the Charterer and in the care, custody or control of Carrier.

9. LIMITATION OF LIABILITY

- 9.1 The Carrier shall not be liable for any loss, damage, delay or other liability, and the Charterers shall ensure to make prior arrangements and take out such insurance as shall be necessary to cover any loss, damage, delay or other liability arising in relation to its clients, staff, employees, agents, passengers of whatever designation, cargo and or luggage.
- 9.2 The Carrier shall not be responsible or liable for consequential, incidental or punitive loss, damage or expenses (including but not limited to business interruption, lost business, or lost savings).
- 9.3 Nothing in Terms and Conditions shall limit or exclude any Party's liability for:
- 9.3.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
- 9.3.2. fraud or fraudulent misrepresentation.
- Provided however that in the case of the Carrier such liability shall be limited and not exceed it insurance cover for such eventuality.

10. CONFIDENTIALITY

- 10.1 Each Party shall hold in confidence all Confidential Information received from the other, and shall not divulge the Confidential Information to any person, including any of their employees, save for those employees who are directly involved with provision of the Services.
- 10.2 Each Party shall prevent disclosure of the confidential information, except as may be required by law. In the event of being so required, the Party required to make such disclosure shall notify the other Party to enable such Party to take whatever action it deems fit.
- 10.3 It is recorded that the following information will, for the purpose of these Terms and Conditions, not be considered to be Confidential Information-
- i. information that can be demonstrated to have been known to either of the Parties prior to the date that it was received from the other Party;

- ii. information known to the public or generally available to the public, prior to the date that it was disclosed by either of the Parties to the other;
- iii. information which becomes known to the public, or becomes generally available to the public subsequent to the date that it was disclosed by either of the Parties to the other, through no act or failure to act on the part of the recipient of such information;
- iv. information, which either of the Parties authorizes the other to disclose in writing;
- v. information which is required to be given by any court or governmental or administrative authority (including any relevant tax authority) competent to require the same PROVIDED that the receiving Party:
 - gives the disclosing Party reasonable notice prior to such disclosure to allow the disclosing Party a reasonable opportunity to seek a protective order or otherwise; and
 - uses reasonable endeavours to obtain prior to the disclosures written assurance from the applicable judicial or governmental authority that it will afford the confidential information a reasonable level of protection.

10.4 The confidentiality obligations under these Terms and Conditions will survive the termination of these Terms and Conditions.

11. TERMINATION

11.1 Either party shall be entitled to terminate these Terms and Conditions for any reason by giving thirty (30) days' notice of termination.

11.2 Either party shall be entitled to terminate these Terms and Conditions by notice in writing if the other party shall be in material breach of any of the provisions hereof and shall fail to rectify such breach within thirty (30) days of receipt of written notice requiring the same.

11.3 Either Party may by terminate these Terms and Conditions forthwith if the other Party becomes insolvent or ceases to do business.

12. EFFECTS OF TERMINATION

12.1 Upon receipt of a termination notice and except as may be otherwise directed by the Client, the Agency shall immediately proceed with the following obligations:

- (i) Stop the provision of the service save as may be necessary to complete the continued portion of the Terms and Conditions during the notice period.
- (ii) Terminate any subcontracts in line with the termination notice to the extent they relate to the provision of the Services under these Terms and Conditions.

12.2 The Charterers shall pay to the Carrier any monies due to the Carrier for services rendered and for which payment has not been made.

12.3 Upon termination of these Terms and Conditions, each party shall promptly return to the other party all confidential information and any documentation containing confidential information.

12.4 Any clauses intended by the Parties or these Terms and Conditions to survive the termination of these Terms and Conditions shall survive the termination of these Terms and Conditions by whatever cause.

12.5 The expiration or termination of these Terms and Conditions shall be without prejudice to all accrued rights and obligations of the Parties under these Terms and Conditions and to all obligations under these Terms and Conditions expressed to continue or take effect after expiration or termination.

13. FORCE MAJEURE

13.1 If the performance of this contract or any obligation under it is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the Party obliged to perform it, the Party so affected

(upon giving prompt notice to the other Party), shall be excused from performance to the extent of the prevention, restriction or interference but the Party so affected shall use its best endeavours to avoid the causes of non-performance and shall continue performance under this contract wherever such causes are removed or diminished.

- 13.2 If the force majeure in question prevails for a continuous period in excess of one (1) month, both parties shall enter into bonafide discussions with a view of alleviating its effects, or agreeing upon other alternative arrangements as may be fair and reasonable including (at the option of the unaffected Party) termination of these Terms and Conditions upon giving fourteen (14) days' notice.

14. NOTICES

- 14.1 Any notice given under this deed shall be in writing and may be served:

- a) by hand delivery;
- b) by registered or recorded delivery mail; and
- c) by facsimile transmission or electronic mail (confirmed by post).

- 14.2 Each Party's address for the service of notice shall be the one mentioned in these Terms and Conditions, or such other address as one Party may specify by written notice to the other.

- 14.3 A notice shall be deemed to have been served;

- a) If it was served hand delivery at the time of acknowledged hand delivery;
- b) If it was served by post, seventy - two (72) hours after it was posted; and
- c) If it was served by facsimile transmission or electronic mail, at the time of transmission provided an error free transmission report is received by the sender.

- 14.4 Routine communications relating to the performance of these Terms and Conditions may be conducted by electronic mail. However, the Parties agree that any communication by electronic mail shall not amount to notice in writing for the purposes of this Clause 15(Notices) or sufficient to allow for a

variation of these Terms and Conditions for the purposes of Clause 18.6 (Variation) and that any purported notice under, or variation of, these Terms and Conditions by electronic mail shall have no effect

15. ARBITRATION & DISPUTE RESOLUTION AND GOVERNING LAW

- 15.1 Except in the case of a dispute related to the failure to pay the service fee all disputes in relation to this contract including but not limited to its terms, obligations and interpretation, which dispute shall be subject to Kenyan law, Kenyan legal process and Kenyan Courts of Law, all other disputes shall be referred to arbitration. The construction, validity and performance of these Terms and Conditions shall be governed in all respects by the Laws of Kenya.
- 15.2 The parties shall use their best efforts to settle amicably any dispute arising from or in connection with these Terms and Conditions or the interpretation thereof.
- 15.3 If the dispute has not been settled pursuant to the amicable settlement process within fourteen (14) days or such longer period as may be agreed upon between the parties from when the amicable settlement 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 Terms and Conditions between the Parties or in default of such Terms and Conditions 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 Arbitrators.
- 15.4 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.
- 15.5 To the extent permissible by Law, the determination of the Arbitrator shall be final, conclusive and binding upon the Parties hereto.
- 15.6 Pending final settlement or determination of a dispute, the Parties shall continue to perform their subsisting obligations hereunder.

- 15.7 Nothing in these Terms and Conditions shall prevent or delay a Party seeking urgent injunctive or interlocutory relief in a court having jurisdiction.
- 15.7 Notwithstanding the foregoing provisions of this arbitration clause disputes related to the payment of outstanding service fees shall not be the subject of arbitration unless the parties so agree after the dispute arises.

16. GENERAL

- 16.1 Subject to any other express provision of these Terms and Conditions to the contrary, no remedy for a breach of any provision of these Terms and Conditions which is conferred by any provision of these Terms and Conditions is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one remedy by any Party shall not constitute a waiver by such Party of the right to pursue any other remedy.
- 16.2 Termination of these Terms and Conditions for any cause shall not release either Party from any liability which at the time of termination has already accrued to the other Party or which thereafter may accrue in respect of any act or omission prior to such termination.
- 16.3 These Terms and Conditions and the documents contain the whole Terms and Conditions between the Parties relating to the transactions contemplated by these Terms and Conditions and supersede all previous Terms and Conditions between the Parties relating to these transactions.
- 16.4 Each Party acknowledges that in agreeing to enter into these Terms and Conditions it has not relied on any express or implied representation, warranty, collateral contract or other assurance (except those set out in these Terms and Conditions) made by or on behalf of any other party before the signature of these Terms and Conditions.

- 16.5 Where the approval, Terms and Conditions or consent of any Party is required under any provision of these Terms and Conditions to any particular matter, such approval, Terms and Conditions or consent shall be given in writing and may be given subject to such terms and conditions as that Party may require and any breach of such terms and conditions shall ipso facto be deemed to be a breach of these Terms and Conditions.
- 16.6 No addition to, variation, modification or consensual cancellation of these Terms and Conditions shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 16.7 Notwithstanding anything to the contrary contained herein, these Terms and Conditions shall inure for the benefit of and be binding on the successors-in-title and permitted assigns of the Parties. Accordingly, the rights and obligations of each Party arising out of or pursuant to these Terms and Conditions or its termination or cancellation shall devolve upon and bind its legal representatives, successors-in-title and permitted assigns.
- 16.8 Each Party shall bear its own costs in relation to the preparation and implementation of these Terms and Conditions.
- 16.9 In the event that any term, condition, covenant, Terms and Conditions, requirement or provision herein contained shall be held by any court having jurisdiction or Administrative body to be unenforceable, illegal, void or contrary to public policy, such term, condition, covenant, Terms and Conditions, requirement or provision shall be of no effect whatsoever upon the binding force or effectiveness of any of the other hereof, it being the intention and declaration of the Parties hereto that had they or any of them known of such unenforceability, illegality, invalidity or that the provision is contrary to public policy, they would have entered into a contract, containing all the other terms, conditions and/or covenants set out in these Terms and Conditions. The Parties shall mutually attempt to substitute for any invalid or unenforceable provision, a valid or enforceable provision that achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision

- 16.10 By signature of these Terms and Conditions each Party confirms its acceptance of, and agrees to be bound by, its terms.
 - 16.11 These Terms and Conditions shall be deemed to be effective from the Commencement date.
 - 16.12 No waiver of any right under these Terms and Conditions shall be effective unless contained in writing signed by the waiving Party. No waiver of any right arising from any breach or non-performance shall be deemed to waive any future such right or any other right arising under these Terms and Conditions. The failure of either Party at any time or for any period of time to enforce any term of these Terms and Conditions shall not be construed to waive such term or the right of either Party to enforce each and every such term.
 - 16.13 Unless provided otherwise in these Terms and Conditions the rights that are created by virtue of the provisions of these Terms and Conditions shall be cumulative and do not exclude rights and remedies provided for by law.
 - 16.14 To the extent that any court of competent jurisdiction should determine that any term or provision of these Terms and Conditions is contrary to public policy, the said term or provision is to be interpreted and amended so as to conform to the said public policy.
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