

## EY Kenya Purchase Order Terms & Conditions 30 July 2018

The following terms apply as between the EY entity as set out in the Purchase Order (“EY”) and Supplier. Save for as set out in the paragraphs below, in the event of any conflict, ambiguity or inconsistency between the terms and conditions of this Purchase Order and any other document relating to this transaction, including any terms and conditions in any invoice, proposal, or other Supplier document, the terms and conditions of this Purchase Order shall govern, unless a written agreement has been signed by the parties to this purchase order prior to the issuance of this purchase order, regarding the purchase of the item/s described in this purchase order.

For avoidance of doubt, the aforementioned terms and conditions shall only apply and be binding upon the parties to this purchase order where there is no agreement in place between the parties to this purchase order, regarding the purchase of the item/s described in the purchase order, prior to the issuance of the purchase order. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply to this clause or the aforementioned terms and conditions.

The word “including” shall not limit the sense of the preceding words.

1. **Scope of Services.** Supplier shall perform the services and deliver Work Products (if any) set out in this Purchase Order for the benefit of EY and the EY Network Members, together with any other incidental activities which are reasonably necessary in order to carry out the same (together the “Services”). Where Services are provided on a day-rate basis, Supplier shall on request provide timesheets and breakdowns of time spent, and shall charge on the basis of an 8 hour day, and apply pro-rata for periods of less than 8 hours.
2. **Warranties.** Supplier represents, warrants and undertakes to EY that: (1) the Services and Work Product(s) shall at all times comply with EY’s specifications, if any; (2) the Services and the use by EY and the EY Network Members of the Work Product and/or any other materials provided by Supplier shall not infringe the intellectual property rights or other rights of any third party; (3) Supplier shall perform its obligations under this Purchase Order professionally and competently and in a good and workmanlike manner, consistent with the highest applicable industry practices; (4) Supplier shall obtain all consents, clearances, permissions and licenses necessary to carry out all of its obligations under this Purchase Order; and (5) Supplier shall provide any Services in accordance with the requirements set out in this Purchase Order and in compliance with any EY codes or policies as notified to Supplier by or on behalf of EY from time to time and including (but not limited to) the Supplier Code of Conduct (available at: [https://www.ey.com/Publication/vwLUAssets/EY-supplier-code-of-conduct-feb-2016/\\$FILE/ey-supplier-code-of-conduct-feb-2016.pdf](https://www.ey.com/Publication/vwLUAssets/EY-supplier-code-of-conduct-feb-2016/$FILE/ey-supplier-code-of-conduct-feb-2016.pdf)) and using personnel with knowledge and experience which is sufficient for the tasks assigned to them. Any Supplier’s disclaimers, any limitation of liability and/or any reduction of any applicable statute of limitations shall be deemed of no effect unless explicitly set out in this Purchase Order. In the event of non-conformance with any of the above warranties, Supplier will correct any such non-conformance and if unable to do so promptly shall (at EY’s sole option) replace the Work Product or re-perform the non-conforming Services (as relevant) or promptly refund any fees paid by EY.
3. **Invoices.** EY’s Purchase Order number or requisitioner’s name, date and description of Services and Work Product(s) (if any) shall appear on all invoices, packages and (where relevant) shipping papers. Any shipments shall be prepaid and accompanied by a packing slip. All amounts set out in the Purchase Order are exclusive of VAT or other local applicable equivalent taxes, which will be paid by EY at the rate and in the manner prescribed by applicable law, subject to receipt of a valid VAT invoice (or equivalent). Invoices will be payable by EY by electronic bank transfer within 30 days of receipt of a correct, undisputed and properly due invoice. EY shall not be liable for any amounts not explicitly set out in this Purchase Order. EY may, without limiting its other rights or remedies, set off any amount owing to it by Supplier against any amount payable by EY to Supplier under this Purchase Order.

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4. **Indemnification.** Supplier shall indemnify, defend, save, and hold EY and EY Network Members and its and their partners, directors, employees( as defined under the Employment Act,2007), and agents (the “Indemnified Parties”) harmless from and against any and all losses, damages, liabilities, costs and expenses (including reasonable legal fees) suffered by the Indemnified Parties as a result of any claim or demand by a third party in connection with or arising out of the performance, non-performance, breach or alleged breach of this Purchase Order by Supplier, its agents, employees( as defined under the Employment Act,2007), directors, affiliates or subcontractors.
5. **Limitation of liability.** Neither EY nor the EY Network Members shall be liable under or in connection with this Purchase Order, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, for any: (i) loss of profits, loss of revenue, business, goodwill or of anticipated savings (in each case whether direct or indirect); and/or (ii) any indirect, incidental, consequential, punitive or special damages, whether or not EY or the relevant EY Network Member(s) were advised, knew, or should have known of the likelihood of such damages. The total aggregate liability of EY and the EY Network Members together arising out of or in connection with this Purchase Order, whether in contract, tort (including negligence or breach of statutory duty) or otherwise, shall be limited in relation to events occurring in any calendar year to the charges for the Services paid or payable by EY in such calendar year. Notwithstanding any other provision of this Purchase Order, Supplier’s recourse with respect to any matter (including any obligation of EY hereunder) shall be limited solely to the assets of EY, and Supplier shall have no recourse against, and shall bring no claim against: (i) any other EY Network Member, nor (ii) individual partner, director, employee (as defined under the Employment Act, 2007), or agent of EY or of any EY Network Member. Losses, damages and expenses suffered by EY Network Members in connection with this Purchase Order or its subject matter shall be treated as though they were suffered by EY itself.
6. **Assignment.** Neither this Purchase Order nor any interest herein may be assigned, delegated, transferred or otherwise dealt with by Supplier without the prior written consent of EY. EY may assign any or all of its rights hereunder to any EY Network Member. As used in this Purchase Order, the term “EY Network Member” means any one of the network of entities comprising Ernst & Young Global Limited, EY Global Finance, Inc., EYGN Limited, EYGM Limited, EYGS LLP, EYGI B.V., EY Global Finance, Inc., and their members and any entity controlled by any such entity, under common control with any such entity, or controlling such entity, or any corporation, partnership or other business organisation that is a member firm or a subsidiary of the entity, or which is directly or indirectly a majority owned or controlled subsidiary of the entity, together with any partner, director, employee (as defined under the Employment Act, 2007)or agent of any such entity. For the purposes of this Purchase Order, “control” means: (a) ownership, either directly or indirectly, of equity securities entitling either such entity to exercise in the aggregate of at least 50% of the voting power of such entity in question; or (b) possession, either directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity in question, whether through ownership of securities, by contract or otherwise.
7. **Compliance.** Supplier warrants that its performance of this Purchase Order and all actions in connection therewith shall comply with all applicable laws and regulations, including those relating to anti-bribery and corruption and data privacy, and Supplier shall not do, or omit to do, any act that will cause EY to be in breach of any such laws or regulations.
8. **Cancellation/Termination.** EY may terminate this Purchase Order in whole or in part, with or without cause, at any time and without liability, upon written notice to Supplier. In the event of any termination, Supplier shall promptly refund to EY any fees paid for Services or Work Product(s) that have not been provided as at the effective date of termination, and no further fees shall be due from EY in respect of the Services or Work Product(s). Termination or expiry of this Purchase Order for any reason shall not affect the accrued rights and obligations of the parties at the date of termination or expiry (as applicable).

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9. **Governing Law.** This Purchase Order shall be governed by, and construed in accordance with, the laws of the Republic of Kenya, and any dispute arising in connection with this Purchase Order shall be subject to the exclusive jurisdiction of the Kenyan courts, to which EY and Supplier hereby submit.
10. **Binding Effect.** Performance by Supplier shall be deemed acceptance of all the terms and conditions set forth herein. Any alterations, modifications or additions made to this Purchase Order will be deemed of no effect unless expressly accepted in writing and signed by an EY Representative.
11. **No Use of Name.** Supplier shall not use, or permit the use of, the name, trade name, service marks, trademarks, or logo of EY or of any EY Network Member in any form of publicity, press release, advertisement, or otherwise without EY's prior written consent.
12. **Additional Representations and Undertakings.** Supplier represents and warrants, on and as of the date of this Purchase Order, that: (1) entering into this type of agreement is in the ordinary course of the Supplier's business with customers such as EY; (2) the Services and / or Work Products are being offered for purchase at market rates or otherwise in accordance with Supplier's internal pricing policies and practices; (3) during the Term of this Agreement, the Supplier and none of the individuals with significant responsibility for providing services to EY shall be a partner, executive officer, member of the Board of Directors, or a direct or indirect substantial equity owner (or otherwise with control), of any audit client of an EY Network Member. For the purposes of this clause, a person or entity shall be deemed a "substantial equity owner" of an entity if he or it (i) is a general partner in such entity, if such entity is a limited partnership; (ii) holds a 5% or more direct or indirect equity interest in (or the power, by contract or other relationship, to direct the affairs or management of) such entity, if such entity is publicly-traded; (iii) holds a 20% or more direct or indirect equity interest in (or the power, by contract or other relationship, to direct the affairs or management of) such entity, if such entity is privately-held; and (4) the aggregate amounts contemplated to be paid by EY to Supplier under this Purchase Order, and under all other agreements between EY and Supplier in effect within any fiscal year period, shall not exceed 10% of the Supplier's total revenues during such period.
13. **Insurance.** Supplier shall maintain in effect throughout the Term such insurance, issued by a nationally recognised insurance company of sound financial status, as is sufficient to cover all liabilities to which it may be subject in relation to this Purchase Order. Supplier shall deliver certificates of insurance evidencing required coverage upon EY's request.
14. **Confidential Information.** The parties may, from time to time during the Term, provide to one another confidential information, including any information identified as confidential or proprietary, or which ought reasonably under the circumstances to be treated as confidential and/or proprietary, such as this Purchase Order, and information relating to a party's (which in the case of EY includes the EY Network Members') business, operations, products, customers, clients, services or methodologies (collectively, "Confidential Information"). Confidential Information shall not include information that: (1) is or becomes part of the public domain through no act or omission of the receiving party; (2) was in the receiving party's lawful possession prior to initial disclosure by the disclosing party; (3) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; (4) is independently developed by the receiving party; or (5) is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulated body, provided that (to the extent not prohibited from doing so under applicable law) prior written notice of such required disclosure is furnished to the disclosing party as soon as practicable in order to afford it an opportunity to seek a protective order. During the Term, and for a period of five (5) years following the expiration or termination for any reason of this Purchase Order, each party shall hold all Confidential Information relating to the other in confidence and shall treat such Confidential Information with the same degree of care that it uses to protect its own confidential information, which shall be no less than a reasonable degree of care. Supplier shall not, at any time during or after the Term, use

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any Confidential Information received from EY for any purpose other than carrying out its obligations under this Purchase Order. Upon EY's request, and upon the expiration or termination for any reason of this Purchase Order, Supplier shall promptly return to EY or, if so directed by EY, destroy all EY Confidential Information (in every form and medium), and certify such return or destruction in writing. Notwithstanding the foregoing, unless prohibited by law, Supplier understands and agrees that EY may disclose Supplier Confidential Information received from Supplier to other EY Network Member, and EY Network Member persons and third parties providing services on its behalf who may collect, use, transfer, store or otherwise process it in the various jurisdictions in which they operate for purposes related to the provision of the services, to comply with regulatory requirements, to check conflicts, for quality, risk management, or financial accounting purposes and/or for the provision of other administrative support services. EYG Services shall be responsible to Supplier for maintaining the confidentiality of Supplier Confidential Information.

15. **Data Protection.** In this clause "Data Protection Laws" means all laws and regulations governing or related to the access to, transfer of, storage of, or breach of data that can be used to identify and, "EY Personal Data" means any data obtained by Supplier under or in connection with the performance of its obligations under this Purchase Order that can be used to identify an individual and any other personal data or data that is covered by the Data Protection Laws, and "processing", "data processor", and "personal data" shall have the meaning given in the European Data Protection Directive 95/46/EU or the prevailing Data Protection legislation in Kenya at that time. With respect to EY Personal Data, EY appoints Supplier as data processor. Supplier will not assume any responsibility for determining the purposes for which and the manner in which EY Personal Data is processed. Supplier will and will procure that all sub-contractors will: (i) process EY Personal Data only in accordance with instructions from EY, (ii) unless otherwise requested by EY, process EY Personal Data only to the extent, and in such manner, as is necessary for the performance of Supplier's obligations under this Purchase Order; (iii) implement appropriate, technical and organisational measures to protect EY Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure; (iv) notify EY or any unauthorised or unlawful processing or any accidental loss, destruction, damage, alteration or disclosure of EY Personal Data as soon as it becomes aware and keep EY informed of any related developments; (v) comply with all Data Protection Laws in the processing of EY Personal Data and (vi) not process or permit the processing of EY Personal Data outside the European Economic Area.
16. **Survival and Severance.** Clauses 4, 5, 9, 11, 13, 14, 15 and this clause 16 shall continue in full force and effect following the termination or expiry of this Purchase Order for any reason. If any provision of this Purchase Order or any part thereof is determined to void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it will be void or unenforceable to that extent only and the validity and enforceability of any of the other provisions or the remainder of any such provision will not be affected.