

## SERVICE / MAINTENANCE AGREEMENT

**THIS AGREEMENT** is made as of the \_\_\_\_\_ day of \_\_\_\_\_ Two Thousand and Four

### **BETWEEN:**

1. \_\_\_\_\_ (Company Number \_\_\_\_\_) **T/A** \_\_\_\_\_ a limited liability company incorporated in Kenya of Post Office Box Number \_\_\_\_\_- Nairobi (hereinafter called the "Lessor" which expression shall, where the context so admits, include the Lessor's successors in title and assigns); and
2. \_\_\_\_\_, a limited liability company in the Republic of Kenya for the purposes hereof of Post Office Box Number \_\_\_\_\_ Nairobi (hereinafter called the "Lessee" which expression shall, where the context so admits, include the Lessee's successors in title and permitted assigns).

### **WHEREAS:**

- A. The Lessor and the Lessee have entered into Lease Agreements for the leasing of Motor Vehicles by the Lessor to the Lessee.
- B. To facilitate such transactions, the Lessor and the Lessee are entering into this Agreement, the terms and provisions of which shall be incorporated by reference into each Lease Agreement.

### **IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:**

#### **DUTIES AND SERVICES:**

##### Scope of Services:

This Agreement covers all the vehicles referred to in the schedule attached to the Master Lease Agreement signed by the two parties. It governs all the elements relating to the servicing and general maintenance of the same vehicles, and relates to all levels of maintenance, including, but not limited to:

- a. General and Scheduled Service and Maintenance of the vehicles, as set out in the attached general maintenance schedule ,
- b. More comprehensive maintenance work,
- c. Body and Structural repairs,
- d. Paintwork, and
- e. Tyres, which shall be replaced when the tread depth reaches a minimum of 2mm, which is above the internationally recognized standard of 1.6 mm. However, burst tyres and punctures are the sole responsibility of the Lessee.

##### Standard of Performance:

The Lessor agrees that any and all maintenance and / or repair work carried out at the Lessor's premises and under the Lessor's control shall be of the highest standard and that the Lessee or its Agent reserves the right to inspect the Lessor's service premises at any time. The Lessor shall also permit the Lessee or its Agent to inspect any and all work actually carried out by the Lessor and the Lessor shall not in any way prevent and / or obstruct the Lessee from doing so.

The Lessee agrees that it will notify the Lessor in advance and in writing of any unscheduled work that may be needed on any of these vehicles. The Lessee also agrees that it will not in any way obstruct the Lessor from performing its duties under this contract, and that any permission or approval sought from it will not unnecessarily be withheld.

The Lessor's determination of the quality of the work done shall be conclusive and the Lessee, having inspected the service premises beforehand, consents to the work being carried out by the Lessor at its own premises. Any complaints should be raised in writing with the Lessor within 3 days of the vehicle leaving the Lessor's service premises. The Lessor shall make reasonable efforts to address the complaints, but no such obligation shall arise in cases of misuse or neglect of the vehicles by the Lessee or its Agents.

#### Compliance with Regulations:

The Lessor asserts and the Lessee agrees that no work shall be done that may in any way contradict any government, local authority or environmental regulations. Neither will the Lessee modify or ask the Lessor to modify the vehicles in any way contradicting the same.

The Lessor also undertakes that all relevant licensing, labour and environmental regulations shall be adhered to in its service premises. The Lessee for its part undertakes to indemnify the Lessor for any liability it may incur if the Lessee undertakes any repairs and/ or maintenance of the vehicles.

#### **CONFIDENTIALITY:**

Both parties hereby agree that this agreement and all others referred to herein are to be kept in the strictest confidence and that the confidentiality of this agreement is of the essence. Should either party compromise this in any way, the other party has the right subject to the arbitration clause in this contract, to terminate the contract and recover the maximum damages entitled to it under the law, including any injunctive relief that may be granted by a court of competent jurisdiction.

#### **TERMINATION:**

Concurrence with the Master Lease Agreement:

This service contract shall remain in effect for as long as the Master Lease Agreement shall remain in force between the two parties, notwithstanding any notice of breach of this agreement.

Either party wishing to terminate this agreement shall give the other a minimum of 6 MONTHS notice of the same, but only upon the expiry of 12 MONTHS from the date of the inception of the Master Lease Agreement.

In the event of default of this clause, either party may claim damages to the fullest extent possible under the law, including but not limited to any injunctive relief that may be granted by a court of competent jurisdiction in Kenya.

#### **DISPUTES ON THE WORK DONE:**

Notification:

Should the Lessee have any reservations about the amount or the quality of the work done by the Lessor or any of its agents or assigns, it must raise the concern within 2 working days of accepting receipt of the same. The notice must be in writing and delivered to the Lessor's appointed personnel, and spell out the areas of concern clearly and concisely.

The Lessor must, within a reasonable period of time after receiving the complaint above, take reasonable measures to address the concerns raised by the Lessee, including but not limited to assessing the work done again and doing the necessary corrective work needed to bring the vehicle in question to the highest standards possible. The Lessor, however, does not give any warranties whatsoever on the repair work performed, and makes no assurances whatsoever on the quality and acceptability of any body or chassis repair undertaken, including the quality of paint.

## **ADDITIONAL WORK**

The Lessor shall be entitled to debit the Lessee, and the Lessee undertakes to pay the Lessor for any work done on the vehicle, whether mechanical or otherwise, that is not included in the service schedule attached herewith, provided that the Lessee shall be liable only for the pro-rata costs, computed as the unused portion, of the replacement part, and shall have no liability for any labour charges accrued as a result of this additional work.

The Lessor undertakes to notify the Lessee in advance if any unscheduled work needs to be done which is discovered while the car is at the Lessor's service premises and the Lessee undertakes not to prevent the Lessor from doing anything to ensure the long-life and quality of the vehicles.

Notwithstanding any of the above, the Lessor reserves the right to ensure that the vehicles are kept in the very best condition, and does not need the Lessee's permission or direction to perform any service or repairs to ensure the same.

## **INSURANCE**

Policy:

The Motor Vehicles shall be insured to their full replacement value against all risks on a comprehensive policy without excess or restriction. The interest of the Lessor's financiers shall be noted on the Insurance Policy.

Premiums:

The Lessor shall duly pay all premiums and other sums of money payable from time to time in accordance with the Insurance Policies therewith and will upon the request in writing by the other party furnish the Lessee with copies of such Insurance Policies. The Lessor shall take all the steps necessary to maintain the Insurance Policies in full force and effect and neither the Lessor nor the Lessee shall do anything whereby such insurance policies may be voided or vitiated (in whole or in part).

If the Insurance Policies provide for the payment of any excess, the Lessee shall be responsible for the payment of such excess.

Notice:

The Lessee shall in Writing notify the Lessor and the Insurer of any damage to or accident or theft involving any Motor Vehicle within such period as specified in the Insurance Policies and thereafter deal with the Motor Vehicle as directed by the Lessor.

The Lessee shall also report any accident to the police as required by law and obtain all relevant abstracts as required by the Insurer.

Travel outside Kenya:

If the Lessee wishes to take a Motor Vehicle out of Kenya, the Lessee shall obtain from the insurer, in respect of such Motor Vehicle and for the period such Motor Vehicle is out of Kenya, a comprehensive insurance policy together with a PT A insurance policy. The premiums in respect of the comprehensive insurance policy and the PTA insurance policy shall be borne by the Lessee. The Lessee shall further provide the Lessor with not less than two Business Days notice of its intention to remove such Motor Vehicle out of Kenya together with any other relevant information to enable the Lessor to provide the Lessee with the relevant documents, consents and authorisations provided that the Lessee shall not be entitled to take a Motor Vehicle other than to Uganda or Tanzania save with the prior written consent of the Lessor.

Excess:

The Lessee shall at all times be responsible for the payment of the excess under any Insurance Policy.

Lessee's Negligence:

If any Motor Vehicle shall be damaged as a result of the negligence and/or willful misconduct of the Lessee

and/or its agents and/or its servants the cost of repairing such Motor Vehicle shall be the Lessee's responsibility, save to the extent that such cost may be recovered under the Insurance Policies.

### **SUB-CONTRACTING:**

Right to Sub-Contract:

The Lessor reserves the absolute right to sub-contract any and all of the service and maintenance work for the Lessee's vehicles to a sub-contractor of his choice and at his own costs, provided that nothing herein shall eliminate or otherwise limit the Lessor's obligations in any way with regards to this agreement or to the Master Lease Agreement by the appointment of a sub-contractor.

The Lessor shall accept full responsibility for the actions of the sub-contractor and or his agents.

Notice to Lessee:

The Lessor agrees to give the Lessee notice of his intention to hire a sub-contractor at least 7 days in advance of any such appointment, and shall cooperate with the Lessee in providing detailed information as may be required by the Lessee.

The Lessee must, if it desires to do so, object to the appointment of a sub-contractor within 2 days of the receipt of the above notice, giving full particulars and reasons for the objection. The Lessor, however, reserves the discretion to go ahead with the appointment despite the objection, and this shall in no circumstances be seen as a breach of any of the aforementioned agreements between the two parties

### **NOTICES**

Any notice or demand to be made or given by one party hereto to the other shall be in writing and shall be deemed made and served:

when left at the principal place of business of the Lessor on a Business Day or, in the case of the Lessee, at the principal place of business of the Lessee on a Business Day; and

five (5) days after posting provided that proof is given that the notice or demand was properly addressed and adequately stamped and put into the post.

### **ASSIGNMENT**

Both parties shall, subject to receiving written consent from the other (such consent shall not be unreasonably withheld), have a full and unfettered right to assign the whole or any part of the benefit of this Agreement and/or the Lease Agreements and the expression "the Lessor" or "the Lessee" wherever used herein shall be deemed to include the assignees and other successors, whether immediate or derivative, of the Lessor or the Lessee (as the case maybe) who shall be entitled to enforce and proceed upon this Agreement and/or the Lease Agreements in the same manner as if named herein. Both parties shall be entitled to impart any information concerning the other to any such assignee or other successor or proposed assignee or successor.

### **FORCE MAJEUR**

If performance by either party of any of its duties or obligations under or pursuant to this Agreement and/or the Lease Agreements (other than the Lessee's payment obligations hereunder) is prevented, hindered delayed or otherwise made impracticable by reason of any strike, flood, riot, fire, explosion, war, (whether or not actually declared), labour dispute, shortage of labour, fuel raw material or machinery or as a result of any other cause beyond its control which cannot be overcome by reasonable diligence and without unusual expense, such party shall be excused from such performance to the extent that it is so prevented, hindered or delayed thereby during the continuance of any such happening or event and for so long as such event shall continue to prevent, hinder or delay such performance.

If such conditions shall prevent, hinder or delay performance for a period in excess of six (6) months, either party

may terminate this Agreement and/or the Lease Agreements.

**GOVERNING LAW:**

This agreement shall be governed by and according to the Laws of the Land of Kenya.

**ARBITRATION**

Any dispute, controversy or claim arising out of or relating to this Agreement or the interpretation, breach or validity hereof, shall be referred to arbitration by a single arbitrator to be appointed by the Chairman of the Kenya Branch of the Chartered Institute of Arbitrators. The provisions of the Arbitration Act (1995) shall apply to such arbitration proceedings.

The place of arbitration shall be Nairobi and the language of the arbitration shall be English.

The award of the arbitrator shall be final and binding upon the parties and any party may apply to a court of competent jurisdiction for enforcement of such award. The award of the arbitrator may take the form of an order to pay an amount or to perform or to prohibit certain activities.

Notwithstanding the provisions of clause 13.1, a party is entitled to seek preliminary injunctive relief or interim or conservatory measures from any court of competent jurisdiction pending the final decision or award of the arbitrator.

**SEVERABILITY:**

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

**COMPLETE AGREEMENT:**

This agreement shall take effect in substitution of all previous agreements and arrangements whether written oral or implied between the two parties relating to the services of the vehicles and all such agreements and arrangements shall be deemed to have been terminated by mutual consent with effect from the date of this agreement.

The Master Lease Agreement and all other Lease Agreements are hereby incorporated by reference, and in the event of any inconsistencies, the Master Lease Agreement shall supercede the other two agreements for ease of reference.

**IN WITNESS** whereof this Agreement has been duly executed by the Lessor and the Lessee as of the day and year first above written.

The Common Seal of ..... )  
Was affixed in the presence of: )  
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Director )  
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..... )  
Director / Secretary )

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