

RETAINER AGREEMENT

BETWEEN

P.N KINITHU LIMITED

"THE CLIENT"

AND

K.ONSEMBE & CO.

ADVOCATES

"THE FIRM"

DRAWN BY:-

K.ONSEMBE & CO. ADVOCATES

JACABA CENTRE, ROOM 8

ALONG MARIAKANI KALOLENI ROAD

P.O. BOX 9319-00100

VOI

M/A/CONV/P/GEN/16

RETAINER AGREEMENT

A **RETAINER** made this _____ day of _____ 2019.

BETWEEN

- A. **PN KINITHU LIMITED**, a limited liability company duly incorporated under the Companies Act, Chapter 486 of the Laws of Kenya, and of Post Office Box Number _____, Mombasa in the Republic aforesaid (*hereinafter referred to as the "Client"*) of the one part,

AND

- B. **K.ONSEMBE & CO. ADVOCATES- LAW FIRM** of Post Office Box Number 9319-00100, Voi in the Republic aforesaid, (*hereinafter referred to as the "Firm"*) of the other part;

1. Definitions

- i. "Client" means **PN KINITHU LIMITED**
- ii. "the Firm" means **K.ONSEMBE & CO. ADVOCATES**
- iii. "Services". The legal services to be rendered by the Firm to the client means and includes legal services of any nature including but not limited to;
 - a. Legal representation by an Advocate in court in disputes in court, Arbitration, and every other Judicial or quasi-judicial tribunals.
 - b. Legal advice and representation in buying, selling, leasing, and other dispositions of movable and immovable properties.
 - c. Commercial, conveyance, legal opinions provided by the Firm on behalf of the Client and the Client's request.
 - d. Any other legal matter in which the advice of the firm is sought.

2. Duty of the Firm

- 2.1 It is the professional duty of the Firm to exercise best practice, proper care, skill and attention when providing services to the Client.
- 2.2 The Firm shall, in provision of the services, respond in timely manner to all instructions and correspondence from the Firm. In this regard, the Firm shall endeavor to observe the following response times:

Acknowledgement of instructions:	24 hours
Returning of telephone calls:	2 hours
Response to correspondence:	48 hours

- 2.3 In addition, the Firm shall provide the Client with quarterly reports (or more often if requested in writing) on all matters being handled by the Firm on behalf of the Client.
- 2.4 The quarterly report to the Client shall contain and state the legal status of the matter and (where applicable) the financial implication of to the Client both present and future and the period the matter is likely to take. This report will assist the Client to evaluate and create provisions for any financial uncertainties.

3. Fees

- 3.1 The Firm undertakes to charge the legal fees in accordance with the Advocates Remuneration (Amendment) Order 2014 and/or any other relevant legislation/amendments as may be in place or as agreed between the Firm and Client in writing.
- 3.2 Disbursements shall be restricted to amounts incurred on behalf of the Client including, court fees, registration fees, stamp duties, attestation fees, process service fees, expert witnesses and reasonable charges relating to incidental office expenses such as local telephone calls, photocopying, printing, travel and waiting costs unless agreed upon.
- 3.3 Fee notes are to be settled within Thirty (30) days or within a reasonable time of completion of instructions.
- 3.4 Any costs awarded in favour of the Client at the completion of any court matter are for the benefit of the Client and shall not be retained by the Firm. This will also be applicable to any amounts withheld by the Firm relating to matters handled by the Firm on behalf of the Client prior to the date of this agreement.
- 3.5 The Firm hereby undertakes to remit such amounts to the Client within Seven (7) days of funds being paid.

4. Professional undertakings

Under no circumstances shall the Firm give professional undertakings in any matter that it is handling for and on behalf of the Client without written instructions from

the Client and without getting a confirmation from the Client that the form and substance of the undertaking is acceptable to the Client.

5. Consent Judgments

Under no circumstances shall the Firm record consent judgments in court without written instructions from the Client and without getting a confirmation from the Client that the form and substance of the consent judgment is acceptable to the Client.

6. Professional indemnity

The Firm has maintained and shall continue to maintain with a reputable insurance company professional indemnity cover of a minimum of Kenya Shillings Two million (Kshs. 2,000,000/=).

7. File storage

Files relating to the Client's matters shall be stored for a reasonable period of time at no charge to the Client. No file shall be destroyed without the Firm first informing and getting consent in writing from the Client.

8. Complaints

Any complaints raised by the Client regarding the quality of service or any other matter shall be promptly addressed by the senior most Advocate in the Firm within 48 hours from receipt of complaint

9. Cessation

The Client reserves the right to instruct the Firm to cease work in any matter and hand over the file in connection with that matter to the Client or to any other Firm or advocates.

The Firm will in such case be entitled to a pro rata payment of fees for the work done.

10. Practicing certificate

10.1 The Firm shall provide to the Client a certified true copy of the original practicing certificate for the current year and for any subsequent year that it is retained by the Client.

10.2 It shall be the responsibility of the Firm to ensure that the practicing certificates of its advocates who handle matters for the Client are updated at any time that such advocates handle the Client's matters.

11. Confidential Information

11.1 The Firm agrees that the information provided to it by the Client is confidential and will make all necessary and appropriate efforts to safeguard the information and all material prepared by the Firm which reflects such information, from disclosure. In furtherance of such efforts, the Firm agrees not to duplicate or distribute to anyone any of the information for any purpose other than as directed by the Client.

11.2 The Firm's obligation to keep information confidential will survive the termination of the Agreement and the Firm agrees to inform all of its employees, operatives and agents of the restrictions and disclosure contained herein. The Firm agrees that it will cause its employees, operatives and agents to abide by the terms of this Agreement.

12. Privileged Information

The Firm agrees that all information provided by the Client in relation to this Agreement is privileged, specifically including but not limited to the following:

- (a) The existence of this Agreement;
- (b) The identity of the Client;
- (c) All documents and information provided to the Firm by the Client;
- (d) All information, reports or documents provided by the Firm arising out of or connected in any way with the representation provided under this Agreement;
- (e) All information coincidental to this Agreement, including but not limited to reports, bills, payments, correspondence, memoranda and notes and;
- (f) All information exchanged by the parties to this Agreement in anticipation of the Agreement and shall be caught by the Advocate-client privilege relationship.

13. Conflict of interest

The Firm shall at all times draw the Client's attention and diligently in writing to any matter(s) or issue(s) in their knowledge that may be prejudicial to the Client or which would require that Client's attention.

During the pendency of this Agreement the Firm binds and confirm that it will not advise, act for, assist, take up and or represent an opposing party against the Client in any court or institution in a matter directly affecting the rights or prejudicing the Client and hereby undertakes by acceptance of this appointment to immediately notify the Client of any conflict of interest that may arise in any matter in which the Firm is handling.

14. Dispute Resolution

- a) The Firm agrees that in the event of a dispute relating to legal fees or application of this agreement or breach thereof, the parties shall first endeavor to reach an amicable settlement.
- b) If the parties fail to reach such settlement, the dispute shall be referred to mediation and if still unresolved after Twenty one(21) days to arbitration.
- c) The Arbitrator shall be appointed by the agreement of the Parties failing which, either Party may, in writing, request the Chairperson Chartered Institute of Arbitrators Mombasa Chapter to appoint the Arbitrator.
- d) The decision of the Arbitrator shall be final and binding on the Parties.
- e) The place of the Arbitration shall be within Mombasa or Taita Taveta County as decided by the appointing body.

15. Intention to be Bound

The Firm has signed this Agreement with the intention of being bound by its contents.

16. Termination

Either party has the right to terminate this Agreement with a thirty (30) days written notice where circumstances so dictate.

PROVIDED that each party shall perform all such duties and obligations owing prior to the termination.

EXECUTION

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya the day and year first above written.

SIGNED for and on behalf of the)
CLIENT)
PN KINITHU LIMITED)
)
DIRECTOR) _____
)
)
DIRECTOR/SECRETARY) _____
)
)
In the presence of:)

SIGNED by and on behalf of)
THE FIRM)
K.ONSEMBE & CO.ADVOCATES)
)
)
PARTNER) _____
)
)
)
)
)
In the presence of:)

DRAWN BY
K.ONSEMBE & CO.
ADVOCATES
JACABA CENTRE, ROOM 8
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