

CONTRACT FOR SERVICES

THIS AGREEMENT is made this day of between **BAMBURI CEMENT LIMITED**, a public limited liability company incorporated in Kenya and having its registered office at 6th Floor Kenya Re Tower and of P O Box 10921 00100 Nairobi (hereinafter referred to as 'the Company') of the one part and having its registered office at (hereinafter referred to as 'the Contractor') of the other part:

WHEREAS:

- A. The Company wishes to engage the services described hereinafter of the Contractor upon the terms and conditions hereinafter set out:
- B. The Contractor carries out the work of and has the necessary technical expertise and sufficient experience and is ready, willing and able to carry out the services so required by the Company;
- C. The Company has agreed to appoint the Contractor to carry out the aforesaid services and the Contractor has agreed to be so appointed in consideration of the fees set out herein and upon the following terms and conditions:

NOW THIS AGREEMENT WITNESSETH:

1. Effective Date and Duration

This agreement shall be effective (hereinafter referred to as 'the commencement date') and the agreement will be for a duration of two (2) years unless terminated under the provisions of this agreement subject to satisfactory performance by the Contractor.

2. The Services

- 2.1 Subject to the terms and conditions hereof, the Contractor shall provide the Company with the services specified in Schedule 2;
- 2.2 Should the Company request and the Contractor agree to provide services in addition to those specified in a above, the same shall be for all intents and purposes of this agreement be deemed to be included within the definition of services.

3. Safety

- 3.1. It shall be the sole responsibility of the Contractor to ensure the safety of its employees;

- 3.2. The Contractor shall at all times during this agreement observe and comply with legislation and rules affecting safety, health and welfare of its employees;
- 3.3. Prior to the commencement of this agreement, the Contractor shall avail all its employees involved in the performance of this agreement for a safety induction training to be carried out by the Company's Safety Officer;
- 3.4. The Contractor warrants that it has read and understood the Company's safety booklet together with all the rules and regulations contained therein;
- 3.5. The Contractor shall provide all its employees with suitable Personal Protective Equipment (hereinafter referred to as 'PPE') and instruct them on their correct use.
- 3.6. The Contractor shall ensure that the PPE worn by its employees are at all times during the period of this agreement kept in good state of housekeeping. No torn, worn out or dirty items shall be allowed.
- 3.7. The Contractor shall ensure that its equipment is well adapted to the operation at hand, is in good working/operating condition and is properly maintained so as to avoid injury to any personnel, damage to Company equipment and /or obstruction of the Company operations;
- 3.8. The Contractor shall immediately notify the Company's official of any accidents that occur within the site and shall avail to the Company's Safety Officer a written report detailing the circumstances of the accident within twenty-four (24) hours of occurrence. Any near miss accidents must also be reported to facilitate corrective measures to ensure accidents do not occur. All accidents shall be investigated jointly by the Company and the Contractor, and the Contractor shall be under obligation to put in place any actions or measures recommended by the Company to avoid future occurrence of such accidents;
- 3.9. The Contractor warrants that none of its employees shall perform any of the specified for the Company while under the influence of alcohol and/or drugs. The Company reserves the right to instruct the Contractor to remove any of its employees who is under such influence from the site.

4. **Business Standards**

4.1 Code of Business Conduct:

- 4.1.1 The Company is a member of the LafargeHolcim Group. The LafargeHolcim Code of Business Conduct is a set of standards that applies to all employees and officers of the LafargeHolcim Group worldwide (see LafargeHolcim website –

www.lafargeholcim.com). These standards set out basis rules to guide all employees and officers in carrying out their day-to-day business duties.

4.1.2 The same is expected of all of the Company suppliers worldwide. The Contractor warrants that its operations and business strategies are in line with the principles set out in LafargeHolcim's Code of Business Conduct for Suppliers, a copy of which contained in Schedule 1, by putting in place policies and procedures ensuring that all of its employees comply and undertake to keep complying, in all respects, with these principles.

4.2 The Contractor shall establish and maintain precautions to prevent its employees, agents or representatives from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration to employees, agents or representatives of the Company for the purpose of influencing those persons to act contrary to the best interest of the Company. This obligation shall apply to the activities of the employees of the Contractor and its subcontractors in their relations with the employees of the Company and their families and/or third parties arising from this agreement.

4.3 The Contractor represents and agrees that it will not directly or indirectly in connection with this agreement and any business resulting therefrom, offer, pay, promise to pay or authorize the giving of money or anything of value to a government official, including but not limited to employees of government owned institutions, to any officer or employee of a public international organization, to any political party or official thereof or to any candidate for political office, or to any persons, while knowing or being aware of a high probability that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any of the abovementioned parties for the purpose of inducing such party to use his or its influence to obtain an improper advantage in order to assist the Contractor or the Company in obtaining or retaining business for or with or directing business to the Contractor, Company or any other person in relation to this agreement.

5. **Obligations of the Contractor**

The Contractor hereby represents and warrants that:

- 5.1 It has full capacity and authority and all the necessary licenses, permits and consents to enter into and provide the Services under this agreement.
- 5.2 It is not a party or subject to any understanding or agreement restricting its ability to enter into this agreement and to perform all of its obligations and commitments under this agreement.

- 5.3 The execution and delivery of this agreement and the performance by the Contractor of its obligations herein shall not result in a breach of or constitute a default under any agreement to which the Contractor is a party or by which it is bound or result in a breach of any order, judgment or decree of any court or government authority to which the Contractor is party or by which it is bound.
- 5.4 The provisions of the Services and the Company's use thereof shall not infringe any rights of any third party.
- 5.5 The services shall be provided and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence.
- 5.6 It shall not permit, allow or cause any encumbrance to be created or arise over any of the Company's assets.
- 5.7 It shall discharge its obligations pursuant to this agreement with all due skill, care and diligence including, but not limited to, good industry practice and in accordance with the Company's established procedures;
- 5.8 The services shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments including, but not limited to, all applicable health and safety legislation.
- 5.9 All components and equipment supplied and/or used in the course of the provision of the services shall operate in accordance with their technical specifications.

6. **Obligations of the Company:**

- 6.1 In consideration of and subject to the provision of the Services in accordance with the terms of this agreement, the Company shall pay the charges set out in Schedule 3 hereto, subject to receipt of an invoice from the Contractor.
- 6.2 Payment shall be made within sixty (60) days of receipt of a valid invoice by the Company.
- 6.3 The Company shall ensure that the Contractor's personnel shall have access to the Company's premises and the equipment.

7. **Nature of Agreement**

This agreement shall be a non-exclusive agreement and the Company shall have the right at all times to seek alternative and other supplies of the services.

8. **Insurance & Liability**

- 8.1. The Contractor shall at all times indemnify the Client fully against any claims, actions, damages, losses, harm, damages, expenses and payments howsoever suffered or incurred by the Client as a result of any negligent or careless act of omission or commission by the Contractor's employees or agents in carrying out the Services contemplated under this Agreement and/or arising by virtue of any breach by the Contractor or its employees or agents of any of the terms of this Agreement.
- 8.2. Any employees, workers, subcontractors or other persons engaged by the Contractor shall be the employees of the Contractor, who shall indemnify the Client against any expenses, liability, loss, claim or proceedings whatsoever arising under any statute or common law in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Services, unless the injury or death is due to any act or neglect of the Client or of any person for whom the Client is responsible.
- 8.3. The Contractor shall effect and throughout this Agreement keep in force a policy or policies of insurance including but not limitation to, Work Injury Benefits Insurance, Employers' Liability Insurance, Medical Insurance and Professional Negligence Certificate with a reputable insurance Company incorporating the standard conditions and exemptions of such insurance Company, such policy or policies of insurance to cover all public liability claims arising from the exercise by the Contractor of the terms of this Agreement and make available to the Client or its agent on reasonable demand a copy of such policy or a summary of its terms and a copy of the current premium receipt.

9. **Force Majeure**

- 9.1. Subject to compliance with Clause 9.2, neither party shall be liable to the other for any delay or non-performance of its obligations under this agreement arising from any cause beyond its reasonable control including, without limitation, acts of God, governmental act, war, fire, flood, explosion or civil commotion.
- 9.2. In the event of either party being so delayed or prevented from performing its obligations, such party shall:
 - 9.2.1. give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - 9.2.2. use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and

9.2.3. resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

9.3. In the event that such delay or prevention continues for more than eight (8) weeks, the party whose performance is not delayed or prevented may terminate this agreement by giving 30 days notice in writing to the other.

10. **Termination**

10.1. The Company shall be entitled to terminate the contract forthwith without prior notice under any of the following circumstances:

10.1.1. If the Contractor commits any breaches of its obligations herein not capable of being rectified;

10.1.2. If the Contractor commits any serious breaches of its obligations herein and has failed to rectify the same within fourteen (14) days after receipt of a written notice requiring it to do so;

10.1.3. If any of the Contractor's directors and/or senior managers is convicted of a criminal offence other than an offence which, in the reasonable opinion of the Company, does not affect the Contractor's operation and obligations;

10.1.4. If the Contractor transfers the beneficial interest in more than 50% of its issued share capital or allotment of issue of any shares to persons other than its existing shareholders from the date of this Agreement;

10.1.5. If the Contractor's employee is guilty of any gross misconduct or habitually neglects his/her or their duties as contemplated by this Agreement;

10.1.6. If the Contractor becomes insolvent or applies to a court to be adjudged a voluntary winding up or makes any arrangement with its creditors or if a bankruptcy receivership liquidation or any nature of winding up proceedings is instituted against it;

10.1.7. Where the Contractor ceases to carry on business for any reason.

10.2. The Contractor shall be entitled to terminate the contract under any of the following circumstances:

10.2.1. any serious breach of the Company's obligations herein which has not been remedied within fourteen (14) days after written notice requiring the same;

10.2.2. if the Company becomes insolvent or applies to a court to be adjudged a voluntary winding up or makes any arrangement with its creditors or if a bankruptcy receivership liquidation or any nature of winding up proceedings is instituted against it.

- 10.3. Either party can terminate this agreement by giving three (3) months notice in writing to the other and neither party shall be required or be under any obligation to assign any reason for such notice.

11. **Audit**

The Company shall have the right at any time during this Agreement to access the books, records and information of the Contractor in relation to this Agreement in order to audit any acts which are done in performance of this Agreement.

12. **Status of the Parties**

Nothing in this agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the parties hereto or to constitute the Contractor as an agent of the Company for any purpose whatsoever and the Contractor shall not have authority or power to bind the Company or contract in the name of or create a liability against the Company in any way or for any purpose whatsoever.

13. **Dispute Resolution**

- 13.1. The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the dispute shall be referred to arbitration by any party.
- 13.2. The dispute shall be determined by the appointment of a single arbitrator to be agreed between the parties.
- 13.3. The seat of the arbitration shall be Kenya and the arbitration shall be governed by both the Arbitration Act 1995 and rules as agreed between the parties. Should the parties be unable to agree on the arbitrator or the rules of arbitration, any party may, upon giving written notice to the other party, apply to the President or Vice President, for the time being, of the Chartered Institute of Arbitrators, Kenya Chapter for the appointment of an arbitrator and for any decision on rules that may be necessary.

14. **Assignment of Contract**

The Contractor shall not be entitled to assign or transfer any of its rights or duties herein to any person without the prior written approval of the Company.

15. **Applicable Law**

It is understood and agreed that the contract shall be read, construed and performed according to the laws of the Republic of Kenya.

16. **Amendment**

No waiver, alteration, variation or addition to this Agreement shall be effective unless made in writing on or after the date of execution of this Agreement by both parties and executed by both parties.

17. **Ownership**

All information gathered and obtained as a result of carrying out the work by the Contractor in any form in the course of the performance of this agreement shall at all times belong to the Company and the Contractor shall not claim or attach any right to it whatsoever.

18. **Confidentiality**

18.1 It is agreed and understood that all communication and information in any form gathered by the Contractor in the course of or as a result of performance of this agreement is confidential and shall be handled in strict confidentiality by the Contractor and shall not, at any time whatsoever, be disclosed by the Contractor to a third part or published without the prior written consent of the Company;

18.2 Such information shall be handled and kept with the highest degree of care;

18.3 This obligation shall survive the expiry or termination of this agreement.

19. **Severability**

If any term or provision of this agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part thereof shall, to that extent, be deemed not to form part of this agreement but the enforceability of the remainder of the agreement shall be not affected.

20. **Notices**

20.1. Any notice or other communication given or made under or in connection with the matters contemplated by this Agreement shall be in writing and shall be sent;

In the case of the Contractor to the attention of
(insert title, address and phone number)

In the case of the Company to the attention of
(insert title, address and phone number)

20.2. Any such notice or other communication shall be deemed to have been duly given or made as follows:

- 20.2.1. if sent by personal delivery, upon delivery at the address of the relevant party as long as there is proof of delivery;
- 20.2.2. if sent by post, seven (7) working days after the date of posting providing that proof is given that the notice was properly address and duly dispatched;
- 20.2.3. if sent by facsimile when dispatched provided that there is proof of dispatch verified by a transmission report from the sender's fax machine; and
- 20.2.4. if sent by email, on the date of receipt of the mail as confirmed to the sender by the recipient's mail server

provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside normal working hours in the place of service of the notice or other communication it shall be deemed to be given or made at the start of normal working hours on the next working day

SEALED with the common seal of
(insert name of the Contractor)
LIMITED

Director

Director/Secretary

SEALED with the common seal of
BAMBURI CEMENT LIMITED

Director

Director/Secretary

SCHEDULE 1: CODE OF BUSINESS CONDUCT

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SCHEDULE 2: SERVICES

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SCHEDULE 3: PAYMENT

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