



KENYA ACCREDITATION SERVICE

FOR OFFICIAL USE
KENAS Reference(s)

KENAS Accreditation Exemption Agreement

This Agreement is made on this day of [Date] _____, day of [Month] _____, [Year] _____, by and between: **Kenya Accreditation Service (KENAS)**, a statutory body established under the Kenya Accreditation Service Act, with its principal office located at [Address]

(hereinafter referred to as "KENAS"), and [Name of Conformity Assessment Body (CAB)]

a conformity assessment body operating in Kenya, accredited by [Name of Foreign Accreditation Body (AB)]

, with its principal office located at _____

(hereinafter referred to as "Foreign accredited CAB").

RECITALS:

(A) WHEREAS KENAS is a State Corporation established vide Kenya Accreditation Service Act, 2019 as the sole national accreditation body for Kenya. Its mandate is to provide internationally recognized Accreditation in accordance with ISO/IEC 17011 aimed at facilitating national, regional, and international trade, enhancing economic outcomes, managing and mitigating risks to quality, health, safety, protection of consumers and the environment, and the transformation of Kenya;

(B) WHEREAS the CAB is desirous of obtaining Exemption from Accreditation of its conformity assessment activities accredited by a Foreign Accreditation Body as provided in the Exemption application to KENAS; and



(C) WHEREAS:

Purpose: This Agreement provides a framework by which the CAB seeks exemption from KENAS accreditation as per the provisions of Section 10A subsections (2), (3), and (4) of the Kenya Accreditation Service Act, as amended by Section 25 of the Business Laws Amendment Act 2024.

Scope: This Agreement applies to the exemption of CABs operating in Kenya as of 27th December 2024 that are accredited by Foreign Accreditation Bodies.

NOW, THEREFORE, the parties hereto agree as follows:

1 Definitions

- 1.1 **Accreditation:** The formal recognition by an Accreditation Body of the competence of a Conformity Assessment Body to carry out specific conformity assessment tasks.
- 1.2 **Conformity Assessment Body (CAB):** An organization that performs conformity assessment activities.
- 1.3 **Foreign Accreditation Body (AB):** An Accreditation Body registered or established in a country/jurisdiction other than Kenya.
- 1.4 **Foreign accredited CAB (FCAB):** A conformity assessment body accredited by a foreign accreditation body (if acceptable replace CAB with FCAB throughout the document)
- 1.5 **Exemption:** The official permission granted by KENAS to a CAB to operate without KENAS accreditation.

2 Commencement and Term of this Agreement

- 2.1 Unless otherwise terminated in accordance with the terms herein, this Agreement shall come into effect on the date indicated on the face of this Agreement and shall remain in force all through the validity of Accreditation.

3 Application for Exemption

The CAB shall submit an application for exemption as per the prescribed procedure.

The application shall include all necessary documentation and the payment of an application fee of KES 50,000.

4 Review and Decision

- 4.1 The application for exemption shall be reviewed by the Scheme Managers.
- 4.2 The CEO of KENAS shall make the final decision on the exemption application.

5 Fees

- 5.1 The CAB shall pay an exemption fee, which shall be 50% of the fees that KENAS would have charged to accredit the CAB's scope accredited by the foreign AB.
- 5.2 All fees are subject to applicable taxes in Kenya and periodic review by KENAS.

6 Term and Renewal

- 6.1 The exemption shall be valid for one year from the date of approval. – (in view of this, countercheck validity statement on clause 2.1. proposal to match it to exemption period)



6.2 The CAB shall re-apply for exemption annually.

7 Penalties for Non-Compliance

- 7.1 A CAB found to have provided false information in their exemption application shall pay a penalty of KES 200,000.
- 7.2 CABs that fail to apply for exemption by 27th March 2025 shall pay a penalty of KES 500,000.
- 7.3 Continued non-compliance beyond 30 days after 27th March 2025 shall incur an additional penalty of KES 100,000 per month until compliance is achieved.

8 Rights and Obligations of KENAS

8.1 Consistent Application of Criteria

- KENAS undertakes to consistently apply the Exemption criteria impartially.

8.2 Issuance of Exemption Certificate

- Once KENAS is satisfied that the CAB meets the requirements for Exemption, KENAS will issue an Exemption Certificate to the CAB. The scope of the CAB's Exemption will be detailed in the schedule accompanying the Exemption Certificate.

8.3 Validity of Accreditation Certificate

- The Exemption Certificate issued by KENAS is valid for one (1) year from the date of the Exemption decision, subject to the CAB complying with the terms set out in this Agreement.

8.4 Contractual Responsibilities

- Exemption by KENAS does not change the contractual responsibilities between the CAB and its clients. Accreditation is an indication of the competence of the CAB but does not guarantee a particular level of competence and performance.

8.5 Non-Compliance and Sanctions

- If the CAB fails to comply with the terms of this Exemption Agreement, KENAS may impose other appropriate sanctions.

8.6 Rejection of Application

- KENAS reserves the right to reject an application or terminate an Exemption process where there is evidence of fraudulent behavior or intentional provision of false information by the CAB.

8.7 Public Information

- KENAS will make public information about the current status of the Exemption granted to the CAB on its website and in the Kenya Gazette.

8.8 Notice of Changes

- KENAS shall give due notice of any changes to its requirements for Exemption

8.9 Compliance Requirements



- If actions are required to maintain Exemption, KENAS will notify the CAB of the requirements, timescales for compliance, and consequences of non-compliance.

8.10 Imposition of Sanctions

- If the CAB fails to comply with the requirements, KENAS may impose sanction. KENAS will notify the CAB immediately upon imposing any sanctions.

9 Rights and Obligations of the CAB

9.1 Provision of Information and Access

- The CAB undertakes to supply KENAS with all required information, provide access to facilities, documents, and persons, and afford cooperation necessary for KENAS to perform its assessment activities.

9.2 Compliance with Agreement Terms

- The CAB undertakes to comply with the terms of this Agreement and the relevant standards and criteria for Exemption at all times.

9.3 Conformity Assessment Services

- The CAB agrees that its conformity assessment services shall conform to the requirements stated in the conformity assessment standards, general rules, procedures, and applicable guidance documents.

9.4 Documentation and Reporting

- The CAB agrees that documents issued for conformity assessment services shall be fully accounted for on the Exemption granted scope, and non-accredited parameters shall be clearly stated as non-accredited.

9.5 Notification of Changes

- The CAB agrees to inform KENAS of any planned changes affecting its conformity with this Agreement and the relevant standards, including changes in policies, premises, organization, legal status, scope of activities, and essential equipment.

9.6 Withdrawal of Materials

- The CAB undertakes to withdraw all materials referring to its Exemption status upon withdrawal of Exemption by KENAS.

9.7 Cooperation for Verification

- The CAB shall afford accommodation and cooperation necessary for KENAS to verify the fulfillment of Exemption requirements.

9.8 Access to Risk-Related Documents

- The CAB shall provide access to documents that provide insight into risks associated with its operations, including risks to impartiality.

9.9 Cooperation for Monitoring



- The CAB agrees to afford KENAS reasonable cooperation to facilitate monitoring of its performance, including access to relevant areas for witnessing conformity assessment activities.

10 Confidentiality

- 10.1 KENAS shall inform the CAB, in advance, of the information it intends to place in the public domain. Except for information that the conformity assessment body makes publicly available, or when agreed between KENAS and the CAB (e.g., for the purpose of responding to complaints), all other information obtained during the Exemption process is considered proprietary information and shall be regarded as confidential.
- 10.2 When KENAS is required by law or authorized by contractual arrangements to release confidential information, the CAB shall, unless prohibited by law, be notified of the information provided.
- 10.3 Information about the CAB obtained from sources other than the CAB (e.g., complainant, regulators) shall be confidential between the CAB and KENAS. The provider (source) of this information shall be confidential to KENAS and shall not be shared with the CAB, unless agreed by the source.
- 10.4 Staff, including any Accreditation Advisory committee members, Accreditation Appeals Tribunal, contractors, personnel of external bodies, or individuals acting on KENAS's behalf, shall keep confidential all information obtained or created during the performance of KENAS activities, except as required by law, and:
 - 10.4.1 to a person authorized to have that information for the performance of a function under the Act;
 - 10.4.2 where that person is authorized under the Act to disclose that information;
 - 10.4.3 where that person discloses that information in accordance with a provision of any written law or an order of a court of competent jurisdiction; or
 - 10.4.4 where the information is disclosed by or on the authority of the Cabinet Secretary, the Board, or the Chief Executive Officer.
 - 10.4.5 Confidential communications

11 Publicity

- 11.1 The CAB has the right to publicize the fact that it has been Exemption to provide conformity assessment services to which the accreditation certificate applies.
- 11.2 Among other methods, KENAS shall give due publicity to the Accreditation or withdrawal of Accreditation of the CAB.

12 Liability

- 12.1 In providing its service(s), information or advice, neither KENAS nor any of its employees, or subcontractors warrants the accuracy or completeness of any information or advice supplied.
- 12.2 Neither KENAS nor any of its employees or subcontractors shall be liable for anything done or omitted in good faith when providing the services(s) save to the extent that such losses arise out of the negligence of KENAS, its officers, employees or subcontractors.
- 12.3 The CAB acknowledges that no employee or sub-contractor of KENAS owes any personal duty of care to it and that it shall not be entitled to bring any claim against



any person other than KENAS arising out of or in connection with this Agreement.

- 12.4 Notwithstanding clause 8.2, KENAS shall have no liability for any indirect or consequential loss or damage, costs or expenses, or to the extent that loss arises out of the provision of false, misleading, or incomplete documentation or information by the CAB.

13 Indemnity

- 13.1 By signing this Agreement, the CAB hereby indemnifies KENAS against any losses suffered by or claims made against KENAS as a result of misuse by the CAB of any Certificate of Accreditation or license to use any Accreditation Marks granted by KENAS or as a result any breach by the CAB, of the terms of this Agreement.

14 Appeals

- 14.1 An Exemption decision is a decision by KENAS to approve or reject an application, grant, renew, maintain, reduce, extend, decline, suspend, or withdraw Accreditation or when KENAS grants or denies an extension of scope. Where the CAB is aggrieved by the accreditation decision made, it has a right of appeal against the decision to the Accreditation Appeals Tribunal established under section 16 of the Kenya Accreditation Service Act, 2019 in accordance with the guidelines set out under Section 17 of the Kenya Accreditation Service Act, 2019. Once the CAB exercises its right of appeal, the decision by KENAS shall stand suspended pending hearing and determination of the Appeal.
- 14.2 The Appeal will be handled in accordance with the provision of the Kenya Accreditation Service Act, 2019.

15 Termination

- 15.1 This Agreement shall continue in force unless and until terminated by either party by giving sixty (60) days written Notice to the other or the accreditation period lapses without renewal.
- 15.2 Notwithstanding the requirement of the notice period, this Agreement shall automatically be terminated upon issuance of withdrawal notice.
- 15.3 This Agreement may also be terminated by Notice:
- 15.3.1 If the CAB, being a company, has entered into liquidation, whether compulsory or voluntary (but not including liquidation for the purposes of reconstruction), or has an administrator, administrative receiver or a receiver appointed.
 - 15.3.2 If the CAB fails to pay, within the suspension period any fees and expenses due to and owed to KENAS.
 - 15.3.3 If the CAB's actions or other circumstances beyond its control, in the reasonable opinion of KENAS, impede its ability to assess the Customer for Accreditation; or
 - 15.3.4 Where there is proven evidence of fraudulent behaviour, or if the CAB intentionally provides false information, or violates accreditation requirements.
- 15.4 Where Notice of termination is given by KENAS, the CAB shall state the arrangements made, on termination, for the protection of its clients holding accredited certification.
- 15.5 On the date of termination of this Agreement, any Certificate of Accreditation



granted hereunder shall immediately cease to be valid and shall be publicized as such and the CAB will immediately cease to use any reference to Accreditation and withdraw all advertising or other matter, including that in electronic form on its website or elsewhere' which contains any reference to Accreditation.

- 15.6 On termination the CAB will discontinue the issue of accreditation certificates and reports and take such action with its existing clients holding accreditation certificates as KENAS may require indicating that the CAB is no longer accredited by KENAS.
- 15.7 On termination, the CAB will surrender back to KENAS the certificates and accreditation marks.
- 15.8 Any termination of the Agreement, however caused, shall be without prejudice to any rights or liabilities of the parties that have accrued on or before the date of termination, but neither party shall have any rights to require performance of or liabilities to perform this Agreement after such date. Upon termination of this Agreement for any reason:
 - 15.8.1 Notwithstanding any other provisions of the Agreement, the terms of this Article (13) and Articles 5 (Confidentiality), 8 (Liability), and 9 (Indemnity) shall continue to be in force in accordance with their terms; and
 - 15.8.2 All fees and charges accrued (but unpaid) pursuant to this Agreement shall forthwith become due and payable.
- 15.9 Any notice or other communication or statement provided for by this Agreement shall be in writing and shall be sufficiently served if addressed and hand-delivered to the party or sent by registered post to the party's last known address.

16 Force Majeure

- 16.1 No failure or omission by either party to carry out or observe any of the stipulations, conditions, or warranties to be performed as set out in this Agreement shall give rise to any claim against such party or be deemed to be in breach of contract to the extent that such failure or omission arises from causes reasonably beyond the control of such party.

17 Assignment

- 17.1 Except as otherwise agreed by KENAS in writing this Agreement shall not be assigned in whole or part by the CAB to any third party.

18 Severability

- 18.1 If any part of this Agreement is found by any court or other competent authority to be invalid, unlawful or unenforceable, then such part shall be severed from the remainder of this Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.

19 Third Parties

- 19.1 No person (other than KENAS, its employees or outsourced agencies) who is not party to this Agreement has or should have any right to enforce any part of this Agreement and no consent of any person who is not a party shall be required to any cancellation or variation of this Agreement.

20 Governing

- 20.1 This Agreement shall be governed and construed in accordance with the laws of the Republic of Kenya.



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first hereinabove written.

Signed by the duly authorized representatives of [CAB]

.....

.....

..... Dated:

Name:

Position:

in the presence of [CAB]

..... Dated

Name:

Position:

Signed by the duly authorized representative of KENAS

..... Dated:

Name:

Position: CHIEF EXECUTIVE OFFICER

in the presence of [KENAS]

..... Dated

Name:

Position: CHIEF MANAGER,