

**MODEL CONTRACT FOR PROVISION OF SERVICE IN THE INSURANCE SECTOR**

# **PARTIES**:

# Supplier i.e. Investigators, Assessors, Motor Vehicle Repair, etc

* 1. Name (business name)

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* 1. Legal Form (e.g. limited liability company) Registration number:

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* 1. Address (address of place of business of the seller, phone, fax, e-mail)

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* 1. Represented by (surname and first name, address, position, legal title of representation)

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# Insurance Company (Client)

* 1. Name (name of company)

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* 1. Legal Form (e.g. limited liability company) Registration Number:

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* 1. Address (address of place of business of the buyer, phone, fax, e-mail)

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* 1. Represented by (surname and first name, address, position, legal title of representation)

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Hereinafter, **‘the parties’**

**WHEREAS**:

The client agrees to appoint the supplier and the supplier agrees to provide the services in accordance with and upon the terms and conditions of this agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

* 1. The supplier agrees to provide the services described in Annexure A (the services) in accordance with this Agreement (Agreement).
	2. The supplier shall carry out the services at the times and places as set out in Annexure A or as otherwise agreed in writing by the supplier and the client.
	3. This Agreement shall take effect on the effective date and shall expire on completion of the services, unless it is otherwise terminated in accordance with the provisions of this Agreement or lawfully terminated or lawfully extended as agreed between the Parties.
	4. Once the client has booked a service, repair work, or assessment with the supplier, this will act as binding between both parties. *(Bookings can be through a written letter, telephone call, SMS, email or physical meeting).* Orders taken via the telephone or internet will be treated as binding.
	5. The client will provide the supplier (investigator) with the policy documents, underwriting files and any other necessary claim documents.
	6. The supplier (investigator/assessor) shall carry out investigations within the set benchmarks (Motor Claims Stakeholders Standards and Benchmarks) agreed by the parties on 10th March, 2009 and revised on 8th July 2015. Any additional time spent must be in writing and the investigator/assessor must provide an interim report with details of progress of the investigation/assessment report.
	7. The supplier (investigator/assessor) will ensure that the report forwarded to the client is comprehensive and significant to the claim at hand, having exhausted all avenues of investigation/assessment.
	8. The client will provide the supplier (assessor) with the policy documents and underwriting details of the vehicle.
	9. The client will provide the supplier with the full cost of each service and work required within the Revised Motor Claims Stakeholders Standard and Benchmarks.
	10. The supplier (garage) will provide estimates and carry out repairs in a safe, ethical, timely and professional manner and in accordance with the method of repair, the current industry practice and the parts specified by the client and/or its agent.
	11. All estimates prepared by the supplier (garage and/or assessor) must be in writing and signed off by the duly appointed supplier.
	12. Any additional work, including the price of parts, must be approved by the client before the repairs are carried it out.
	13. Where the client opts to supply repair auto parts or any such related items it will pay the handling fees of ………. % of the price to cover the risk of handling at the garage plus the cost that maybe involved in making the parts usable in the repair process.
	14. If there are any delays beyond the supplier’s control or parts not being delivered, the client will advise the insured accordingly.
	15. All parts used for servicing any vehicle will be manufacturer approved.
	16. Unless in the case of second hand market auto parts, repairers shall be required to provide a guarantee for parts and/or paint to the extent that the manufacturer, distributor, supplier or importer of the parts and /or paint is so liable under an express warranty or under the law, other than to the extent that the quality of the repair arising from the use of the parts and/or paint arises from faulty workmanship.
	17. All parts and labour completed by the supplier is to be guaranteed for …... months (labour) and ………. months (parts) (parties to specify).
	18. Once a service or repair works have been completed by the supplier, payment must be made within 60 days.
	19. Payment can be made by cash, mobile money, credit or debit card and cheques.
	20. Delays in payment over and above the number of days specified in clause 18 above will attract interest as agreed between the parties and where not indicated in line with the prevailing Central Bank of Kenya interest rates.
	21. The client has the right to cancel service or repairs at any time provided payment has been made to the supplier for all works carried out.
	22. The supplier(garage) may sub-contract any and all of the service and maintenance work for the buyer (insurer’s) vehicles to a sub-contractor of its choice and at its own cost, provided nothing herein shall eliminate or otherwise limit the garage’s obligations in any way with regard to this agreement. The garage shall accept full responsibility for the actions of the sub-contractor and or the agents of the sub-contractor thereof.
	23. Storage of damaged motor vehicles on behalf of the client by the supplier (garage) which are in the form of write offs will be limited to 30 days for the unchargeable (free) time.
	24. All Health and Safety laws will be adhered to at all times by the supplier.
	25. All disputes and complaints will be dealt with as agreed by the parties within fourteen (30) days.

# Dispute resolution mode:

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* 1. Where the price, work or document is disputed, the client must raise concerns within fourteen (14) days after the date of the official release of the motor vehicle.
	2. Notice of such dispute must be in writing and should be served upon the garage’s appointed personnel who shall acknowledge receipt of the notice by appending their signature or stamping on it.
	3. The notice of the dispute should unequivocally state the areas of concern based on the work authorized to be done but not rendered either wholly or partly to the satisfaction of the client.
	4. The supplier (garage) must within a reasonable period but in any event, not exceeding thirty (30) days after receiving the notice of dispute take reasonable measures to address the concerns raised by the client including but not limited to assessing the work to be done again and taking the necessary corrective actions to ensure that the safety, structural integrity, presentation and utility of the subject motor vehicle is restored.
	5. At the option of the parties, appeals shall lie to the Competition Authority of Kenya for disputes related to section 24A of the Competition Act No. 12 of 2010 arising from conduct set out at annexure B below.
	6. The client shall pay the rates set out in Annexure A (the Charges).
	7. The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
	8. The supplier shall provide a written report (assessment/inspection report) prior to the completion of the services setting out the services provided and the results achieved.
	9. The supplier (assessor) shall provide a re-inspection report upon completion of the repairs by the garage.
	10. The client will issue a release letter in writing upon completion of repair work once the assessor has re-inspected the work-done.

**Dispute resolution procedure**

* 1. Any dispute, controversy or claim arising out of or relating to this contract, including its conclusion, interpretation, performance, breach, termination or invalidity, shall be dealt with as agreed under clause 25 above.
	2. Any dispute, controversy or claim arising out of or relating to this contract, in particular to abuse of Buyer Power under clause 30 shall be settled by the Competition Authority of Kenya.

# Applicable law and guiding principles

* 1. Questions relating to this contract that are not settled by the provisions contained in the contract shall be governed by the laws of the Republic of Kenya.
	2. All notices authorized or demands required herein shall be in writing and shall be considered given;
1. When left at the principal place of business of the garage on a business day or, in the case of the buyer (insurer) at the principal place of business on a business day and in both cases proved to have been received accordingly.
2. Five days after posting provided that proof is given that the notice or demand was properly addressed and adequately stamped and put into the post, courier or hand delivery.
3. Electronically by email to authorized recipient and sufficient proof that it must have been received and unless proved otherwise.
	1. This contract shall be performed in the spirit of good faith and fair dealing.
	2. This Agreement supersedes all previous agreements and/or contractual arrangements between the Parties in respect of the provision of assessment services.

Client ………………………. Supplier ……………………………….

Signature …………………... Signature ………………………………

Date ………………………… Date …………………………………….

# Annexure A

* + 1. Services to be provided by the supplier *(As specified in the Revised Motor Claims Stakeholders Standards and Benchmarks)*

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* + 1. Place and time of service *(As specified in the Revised Motor Claims Stakeholders Standards and Benchmarks)*

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* + 1. Duration of service *(As specified in the Revised Motor Claims Stakeholders Standards and Benchmarks)*

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* + 1. Charges (in Kshs) – to be detailed in the invoice. *(As specified in the Revised Motor Claims Stakeholders Standards and Benchmarks)*

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* + 1. Other conditions for termination (in addition to clause 3 of the main agreement)

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# Annexure B

Conducts in Abuse of Buyer Power: -

* 1. Delays in payment of a supplier without justifiable reason in breach of agreed terms of payment;
	2. Unilateral termination or threats of termination of the commercial relationship without notice or on an unreasonably short notice period, and without an objectively justifiable reason;
	3. Refusal to receive or return any goods or part thereof without justifiable reason in breach of the agreed contractual terms;
	4. Transfer of costs or risks to the Supplier by imposing a requirement for the Supplier to fund the cost of a promotion of the Suppliers’ goods or services;
	5. Transfer of commercial risks meant to be borne by the Buyer to the Supplier;
	6. Demands for preferential terms unfavourable to the Supplier or demanding limitations on the Supplier to other Buyers;
	7. Reducing prices by a small but significant amount where there is difficulty in substitutability of alternative Buyers or reducing prices below competitive levels; or
	8. Bidding up of inputs by the Buyer with the aim of excluding competitors from the market.