

COUNTY GOVERNMENT OF BUNGOMA,
P.O. BOX 437 - 50200,
BUNGOMA.

If to the Supplier:

DIRECTOR,

M/S WEBMAR INVESTMENTS LIMITED
(WEBUYE TOTAL SERVICE STATION)

P.O. BOX 1096-50203

WEBUYE.

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15. Nature of this contract (Assignment).

15.1 This contract is personal to the parties and the client shall not assign, mortgage, charge or dispose of any of its duties and obligations under this contract without the prior written consent of the Employer /client

15.2 Nothing in this contract shall create any partnership, joint venture or relationship of principal and agent between the parties.

15.3 This contract contains the entire agreement between the parties in respect to its subject matter and supersedes all previous agreements and understandings between the parties and may not be modified except by an instrument in writing signed by the duly authorized representatives of the parties.

15.4 Each party agrees that it enters into this contract without relying on any representation, warranty or other provision except as expressly provided in this contract.

16. Right of audit.

The client shall ensure that it and its representatives; maintain true and correct records in connection with goods to be supplied under this contract and all related transactions and retain all such records for at least 24 months after termination of this contract for any reason; and permit and assist webmar investments limited (webuye total service station)'s representatives (at any time during the term of the contract and for a period of 24 Months following termination for any reason) to audit any and all records of the client for the purpose of determining whether there has been compliance with the contract.

17. Change of address

Each party shall give notice to the other of the change or acquisition of any address or telephone or similar number at the earliest possible opportunity but in any event within forty eight(48)hours of such change or acquisition.

18. Amendment

This contract may be amended provided such amendment is in writing, agreed to and signed by all the parties hereto.

19. Joint Drafting

The parties have participated jointly in the negotiation and drafting of this contract. In the event an ambiguity or question of intent or interpretation arises, this contract shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise as to bias of any party by virtue of the authorship of any of the provisions of this contract.

20. Conflict of interest 🔥 **#IKUWEIKUWE COPY**

Neither the client nor any of its representatives shall give to, or receive from, any representative of webmar investments limited (webuye total service station) (or any of its affiliates) any commission, fee, rebate or any gift or entertainment of value in connection with product to be supplied under this contract, or enter into any other business arrangement with any representative of webmar investments limited (webuye total service station) without the prior consent of webmar investments limited (webuye total service station). The client shall, Promptly notify webmar investments limited (webuye total service station) of any violation

21. Waiver.

Subject to applicable law, no delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. For any waiver, to be effective, the same must be in writing.

22. Entire agreement and variation.

This Agreement contains the full and complete understanding between the parties and supersedes all prior arrangements and understandings whether written or oral appertaining to the subject matter of this Agreement and may not be varied except by an agreement in writing signed by the parties to this Agreement.

23. Severability



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If any provision of this agreement or provision thereof shall to any extent be illegal, invalid or unenforceable, the remainder of the Agreement shall not be affected thereby and solely each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. The parties shall negotiate in good faith the text of a provision, which shall replace the provision which is affected by such invalidity or alternatively, if it is deemed necessary not to replace such provision, the parties shall agree to restructure the transaction in such a way that the scope of the affected provision shall be maintained.

24. Indemnity

The Service Provider agrees to indemnify The Employer from and against all losses, claims, damages, liabilities, proceedings and all related expenses, including court and legal fees, occasioned by any claim against The Employer arising out of dishonesty, failure, negligence or willful misconduct of the Service Provider or its employees and/or servants and agents in relation to the works executed.

25. No partnership or Agency or employment relationship

This Agreement shall in no way be interpreted as constituting a partnership, agency or employment relationship between the Employer and The Service Provider or its employees and/or servants and agents.

26. Force majeure

- a) Neither party shall be held liable for or in respect of any loss or damage or deemed to be in default for any delay or failure in performance of its obligations under this Agreement resulting from force majeure

circumstances. Such circumstances shall include but not be limited to war, riots, usurped power, civil commotion, fire, industrial dispute, strikes, acts of God, acts of Government, acts of public enemy, boycott, embargo or any form of strike, explosions, failure of communications system, default of carrier or any cause or other circumstances beyond the reasonable control of the parties.

- b) The party pleading force majeure shall immediately notify the other party of the circumstances constituting the same and of the obligations that are affected and will take every reasonable measure to minimize the delays or inconvenience arising there from.
- c) If the force majeure circumstances persist for more than Fourteen (14) days after the initial notification by the party pleading force majeure, either party may serve the other party with seven (7) days' notice of termination.

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27. Dispute resolution

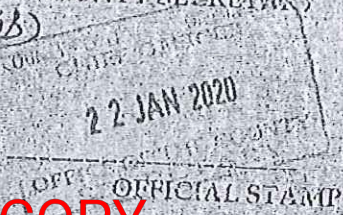
In case any dispute or difference arises between the Employer or the Project Manager on his behalf and the service provider, either during the progress or after the completion or termination of the works with respect to this Agreement, the parties shall make good faith efforts to resolve the dispute through negotiations between them. Any dispute arising out of the Agreement which cannot be amicably settled between the parties shall within seven (7) days from the date the dispute is notified be referred by either party to arbitration for the final decision of an Arbitrator to be agreed between the parties. Failing agreement on the appointment of an Arbitrator within fourteen (14) days from the date of notification of the dispute, the Arbitrator shall be appointed by the Chairman of the Chartered Institute of Arbitrators, Kenya Branch, on the request of the party applying for arbitration pursuant to and in accordance with the Arbitration Act of 1995 or any statutory modification or re-enactment thereof.

28. Applicable law and compliance with the law.

- a) The Contract shall be governed by the Laws of Kenya and the language of the Contract shall be English Language.
- b) The Service Provider shall ensure that it complies with all the laws and regulations in particular those that relate to supply and delivery of super petrol and diesel- card dispensed services, herein and shall, in respect of all persons employed by it anywhere for purposes of this Agreement observe and fulfill the conditions stipulated by the relevant laws of Kenya.

IN WITNESS WHEREOF the parties thereto have caused this Agreement to be executed in accordance with their respective laws the day and year first before written. Signed Sealed, and Delivered by the said

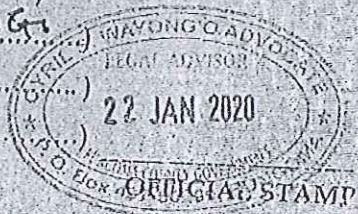
1. THE COUNTY CHIEF OFFICER, OFFICE OF THE COUNTY SECRETARY
Full Name D.R. SIMIYU CHAL XTONGEN (P.B)
Signature [Signature]
Date 22/01/2020



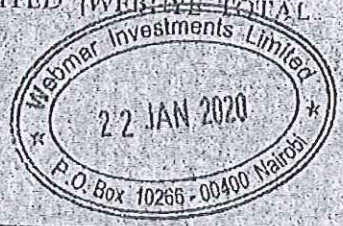
[For and on behalf of the Employer]

in the presence of: **#IKUWEIKUWE COPY**

2. COUNTY LEGAL AFFAIRS ADVISOR.
Full Name CHAL S. UATONGI
Signature [Signature]
Date 22/01/2020



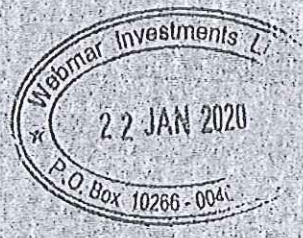
3. DIRECTOR M/S WEBMAR INVESTMENTS LIMITED (WEBUYE TOTAL SERVICE STATION).
Full Name NYCLIFFE NYONGUESA MUKUNDA
Signature [Signature]
Date 22/01/2020



[The Tenderer/Contractor]

OFFICIAL STAMP

4. SECRETARY M/S WEBMAR INVESTMENTS LIMITED (WEBUYE TOTAL SERVICE STATION).
Full Name Richard Keter
Signature [Signature]
Date 22/01/2020




In the presence of

5. A.g DIRECTOR SUPPLY CHAIN MANAGEMENT SERVICES.
Full Name SHEBON JUMA
Signature [Signature]
Date 22/01/2020



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This is the exhibit marked "BIEN 11"
referred to in the annexed Affidavit / Declaration
of Barasa Kundi Nyumba
Sworn/Declared before me this 2nd
day of Aug 2020 at NR 15

Commissioner for Oaths

COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA

OFFICE OF THE CLERK

BUNGOMA COUNTY

SECOND ASSEMBLY – FOURTH SESSION - 2020

COMMITTEE ON HEALTH

A REPORT

ON

UNPROCEDURAL TRANSFER OF FUNDS FROM BUNGOMA
REFERRAL HOSPITAL AND EXPENDITURE TOUCHING ON COVID -
19 MITIGATION AND OTHER FINANCIAL MALPRACTICES IN THE
COUNTY GOVERNMENT OF BUNGOMA

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Clerks Chambers
County Assembly Buildings
PO BOX 1886, BUNGOMA, KENYA

May, 2020

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PREFACE

COMMITTEE MANDATE

Mr. Speaker Sir,

The Committee on Health derives its mandates from the provisions of Standing Order No.196 (5), (a) (d) and (e) which defines among others functions of the Committee, as to; investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Departments. Section 14(1) of the County Governments Act,2012 states that; A County Assembly-

- a) may make standing orders consistent with the constitution and this Act regulating the procedure of the County Assembly including, in particular, orders for the proper conduct of proceedings; and
- b) subject to standing orders made under paragraph (1), may establish committees in such manner and for such general or special purposes as it considers fit, and regulate the procedure of any committee so established.

One of the most important features of our Constitutional framework is the requirement of County Assemblies having the mandate to exercise oversight over their respective County Executives and their organs/departments. Article 185(3) of the Constitution of Kenya,2010 on legislative authority of County Assemblies state inter- alia that, `A County Assembly, while respecting the principle of the separation of powers, may exercise oversight over the County Executive Committee and any other County Executive organs". Further, Article195 empowers a County Assembly or any of its committees to summon any person to appear before it for the purposes of giving evidence or providing information. An Assembly has the same powers as the High Court to-

- a) enforce the attendance of witnesses and examining them on oath, affirmation or otherwise; and
- b) compel the production of documents; and
- c) issue a commission or request to examine witnesses abroad.

COMMITTEE MEMBERSHIP

Mr. Speaker Sir,

The Sectoral Committee on Health currently consists of the following members;

1. Hon. George Makari	Chairperson
2. Hon. Meshack Simiyu	Vice – Chairperson
3. Hon. Joseph Magudah	Member
4. Hon. Ali Machani	Member
5. Hon. Jane Chebet	Member
6. Hon. Rosemary Khisa	Member
7. Hon. Tony Barasa	Member
8. Hon. Joan Kirong	Member
9. Hon. Eric Wapang'ana	Member
10. Hon. Milih Masungu	Member
11. Hon. Elvis Abuka	Member
12. Hon. Jack Wambulwa	Member
13. Hon. Vitalis Wangila	Member
14. Hon. Peter Sindani	Member
15. Hon. Aggrey Mulongo	Member

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ACKNOWLEDGEMENT

Mr. Speaker Sir,

The Committee wishes to thank the Offices of the Speaker and the Clerk of the County Assembly for the support given to the Committee in the accomplishment of its mandate.

Mr. Speaker Sir,

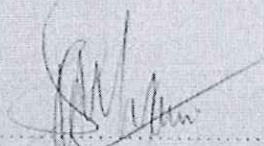
I wish to record my gratitude to the House for having entrusted the Committee with the execution of the important duty of contributing to the efforts of restoring the image of the Health Sector in Bungoma County. The Committee is thankful to the entire Membership and our Secretariat for ably coordinating the investigations and report writing activity that made this report a reality.

Mr. Speaker Sir,

It is now my pleasant duty, on behalf of the Committee on Health, and pursuant to the provisions of Standing Order 180 (1) as read together with Standing Order 196(5) (g), to present and table this report and recommend it to this Honourable House for debate and adoption.

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Signed



Date:

8th JUNE 2020

HON. GEORGE MAKARI, MCA
(CHAIRPERSON, SECTORAL COMMITTEE ON HEALTH).

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