

DATED ..... 2019

PPP AGREEMENT

FOR \_\_\_\_\_ PPP PROJECTS<sup>1</sup>

Between

[AUTHORITY]

And

[OPERATOR]

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NOTE: Generally, this PPP Agreement has intentionally been prepared as a simplified version of a “normal” PPP Agreement for small national PPPs which would deal with most matters more extensively and would cover some other matters which are not dealt with at all. This is in order to be “concise and as simple as practicable”.

NOTE 2: Specific project and legal due diligence should be carried out and the draft adjusted to reflect the actual Project and the law pertaining at the time the specific Project is developed.

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<sup>1</sup> Project value of USD 20 million or less

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THIS AGREEMENT (**Agreement**) is made on ..... 2019

BETWEEN

- (1) [CONTRACTING AUTHORITY] (**Authority**) a corporate entity incorporated in the United Republic of Tanzania, whose address is [ ]; and
- (2) [OPERATOR] (**Operator**) a limited liability company incorporated in the United Republic of Tanzania with company number [ ], whose address is [ ].

The Authority and the Operator referred to individually as **Party** and collectively as the **Parties**.

WHEREAS

- (A) The Authority wishes to engage the private sector to deliver the Services, which include development, design, build, finance, operate and transfer of the Facilities.
- (B) The Authority has procured the Services by competitive tender in accordance with the relevant Laws and has selected the Operator to undertake and supply the Services to the Authority.

NOW THEREFORE, in consideration of the mutual covenants and agreements in this Agreement, the Parties AGREE AS FOLLOWS:

**DEFINITIONS AND INTERPRETATION**

**1. Definitions**

1.1 In addition to the terms defined elsewhere in this Agreement, whenever used in this Agreement (including Schedules hereto), unless the context otherwise requires, the following terms shall have the following meanings:

**Agreement Date** means the date of signing of this Agreement.

**Agreement Period** has the meaning given to it in Clause 4.1.

**Applicable Law** means the laws and any other legal instruments having the force of law in the United Republic of Tanzania and includes any applicable statute, ordinance, decree, regulation or by-law or any rule, circular, directive or any licence, consent, permit, authorisation or other approval issued by any Government authority which has appropriate jurisdiction.

**Base Case Financial Model** means the original version of the financial model containing assumptions agreed between the Parties as the base case in effect as from the Effective Date of the PPP Agreement.

**Capital Costs** means the fixed expenses incurred to acquire, upgrade and maintain physical assets such as land, property, industrial buildings, plant and machinery, electrical works, common utilities etc., in order to bring the project to a commercially operable status as reflected in the finalized Base Case Financial Model.

**Certificate of Effectiveness** means the certificate to be issued by the Authority in accordance with Clause 3.1 certifying the satisfaction or waiver as the case may be, of the Conditions Precedent.

**COD** means Commission of Operations Date or Commercial Operations Date.

**Conditions Precedent** has the meaning given to it in Clause 3.1

**Construction Period** means the construction period for the Facilities which shall commence on the Effective Date and end on the date of issue of the final Performance Certificate, which shall be no longer than [ x ]<sup>2</sup> months from the Effective Date

**Contracted User** means a person or legal entity, if any, within the Service Area who has signed a Contracted User Agreement with the Operator for receipt of the Services.

**Contracted User Agreement** means an agreement entered into between the Operator and a Contracted User and approved by the Authority.

**Contracted User Charges** means the charges for Contracted Users as set out in Schedule 3.

**Effective Date** means the date by which all the Condition Precedents are fulfilled and shall be deemed to be the date of commencement of the Construction Period.

**Existing Facilities** means the existing facilities, if any, as specified in Schedule 2, whether immovable or movable, equipment, supplies and other property, owned or used by the Authority on the date of signature of this Agreement to be used by the Operator to deliver the Services.

**Expiry Date** means the last day of the Agreement Period.

**Environmental Impact Assessment** means an assessment of the environmental and social impact of the Project that needs to be conducted prior to the commencement of the construction and based on the various environmental approvals to be obtained as per the Applicable Law.

**Facilities** mean Existing Facilities and New Facilities.

**Financial Close** means the date on which the Financing Documents provided for funding by the Lenders have become effective and the Operator has immediate access to such funding under the Financing Documents.

**Financing Documents** means the documents executed by the Operator in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing<sup>3</sup>) of the Project.

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<sup>2</sup> Construction period would be specified on a project to project basis and could range from 12 to 24 months

<sup>3</sup> Any proposed refinancing extended by the lenders would be subject to consent from the Authority and the Ministry of Finance and Planning according to Regulation 74 of the PPP Regulations 2015.

**Financial Year** means the period from 1 January to 31 December of any year during the Agreement Period, with the first financial year running from the Effective Date until 31 December of that year and with the final year running from 31 December of the previous year to the end of the Agreement Period.

**Force Majeure** means the events specified in Clause 27

**Lease** means the lease agreement to be entered into between the Authority and the Operator in relation to the Facilities as provided under Schedule 13 .

**Lender(s)** means financial institutions, banks, funds, trusts or trustees of the holders of debentures or other securities, including their successors and assignees, which provide financial assistance to the Operator of the Project.

**Liquidated Damages** has the meaning given to it in Clause 21.3.

**Liquidated Damages Payment** has the meaning given to it in Schedule 6

**Material Adverse Effect** means an effect that increases costs or reduces revenues by an amount equal to [ ]<sup>4</sup> of the Capital Cost.

**New Facilities** means new facilities, if any, including those facilities specified in Schedule 2, whether immovable or movable, including vehicles, equipment, supplies and other property, constructed or purchased by the Operator during the Agreement Period for the provision by the Operator of Services in the Service Area.

**Operator Fees** means the fees to be paid to the Operator for Services as set out in Clause 8.18.1(g)

**Operator Grants** means the grants, if any, to be paid by the Authority to the Operator as set out in Clause 8.1(h).

**Operator Staff** means qualified and experienced staff employed by the Operator to carry out the functions under Clause 20.1.

**Performance Certificate** means a certificate issued to the Operator by the Authority stating the date on which the Facilities passed the Performance Tests.

**Performance Tests** means the tests specified in the Specifications and designated as such, which are to be carried out before the Performance Certificate is issued by the Authority.

**PPP Centre** means the Public Private Partnership Centre established under the Applicable Law tasked with promotion and coordination of all matters relating to PPPs in Tanzania.

**Project** means the development of the Facilities, the operation, repair and maintenance of the Facilities and the provision of Services by the Operator.

**Prudent Industry Practice** means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence,

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<sup>4</sup> Say, 1% or such other value of percentage as agreed by both parties.

prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator engaged in the same type of undertaking under the same or similar circumstances and conditions (including the conditions of the Existing Facilities at the Effective Date) as contemplated by this Agreement.

**Public Authority** means a government ministry, department, agency, local government authority and any other person acting on behalf of the government ministry, department, agency, local government authority having jurisdiction in Tanzania with respect to the Project.

**Public User** means any person or legal entity, if any, within the Service Area who receives Services from the project facilities, but who is not a Contracted User.

**Public User Charges** means the charges for Public Users as approved and set out in Schedule 3.

**Recitals** mean the recitals of this Agreement.

**Revenue Collection Account** means an account in the name of the Operator at a bank acceptable to the Authority where all the revenues collected by the Operator are deposited, and from which all the payments are made by the Operator.

**Service Standards** means the standards defined by the key performance indicators (KPIs) listed in Schedule 5.

**Services** means the services provided under this Agreement by the Operator in the Service Area during the Agreement Period, including development, design, build, finance, operate and transfer of the Facilities.

**Service Area** means the area set out in Schedule 1 where the Services shall be delivered.

**Shareholders Agreement** means the agreement entered into between the shareholders of the Operator.

**Specifications** means the specifications for the Facilities set out in Schedule 2.

**Tariff Review Cycle** means time period after which Authority will revise User Charges as per Schedule 3.

**Technical Agent** means qualified agent appointed by both the Authority and Operator who works independently for both Parties to carry out Performance Tests, Users' surveys and monitoring<sup>5</sup> of the Facilities among others. The costs for appointing the agent will be borne by both Parties.

**Temporary Services** means the services, as specified in Schedule 2, to be provided to Users on an interim basis during the rehabilitation and construction activities. These services shall transform into regular Services on achieving COD.

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<sup>5</sup> For small scale projects, an engineer from the Authority can monitor the progress of the construction periodically and Technical Agent may not be required to be appointed

**Termination Payments** mean the amounts payable to the Operator under Schedule 8.

**Time for Completion** means the time by which the Facilities are to have been fully developed and have passed the Performance Tests as (or as extended under Clause 14.3) calculated from the Effective Date.

**TZS** means Tanzanian Shillings which is the lawful currency of the United Republic of Tanzania.

**User Charges** means Contracted User Charges and Public User Charges and as provided under Clause 15

**Users** mean Contracted Users and Public Users.

## **2. Interpretation**

2.1 The Recitals and the Schedules to this Agreement shall form an integral part thereof. This Agreement and the Lease shall be read as a whole. In event of discrepancy and/or contradiction between the Agreement and its Schedules and the Lease, the Agreement shall prevail.

2.2 References to Schedules shall be references to Schedules to this Agreement unless otherwise agreed by the parties. The following Schedules which are incorporated by reference into this Agreement shall be referred to as follows:

- (a) Schedule 1: Service Area.
- (b) Schedule 2: Project, Facilities and Specifications.
- (c) Schedule 3: User Charges.
- (d) Schedule 4: Reporting Requirements.
- (e) Schedule 5: Performance Monitoring.
- (f) Schedule 6: Liquidated Damages Payments.
- (g) Schedule 7: Operator Fees or Grants.
- (h) Schedule 8: Termination Payments.
- (i) Schedule 9: Conditions Precedent.
- (j) Schedule 10: Equity Shareholders of the Operator
- (k) Schedule 11: Baseline Taxes
- (l) Schedule 12: Royalty Payments to the Authority
- (m) Schedule 13: Lease Agreement
- (n) Schedule 14: Handover Procedure

2.3 The headings of Clauses of this Agreement and the Table of Contents are inserted for convenience and for reference purposes only and shall not in any way limit, alter or affect the interpretation of this Agreement.

2.4 In this Agreement, words denoting the singular include the plural and vice-versa, words denoting persons include companies, corporations, partnerships or other legal persons and



references to any Party or person include references to its respective successors and permitted assigns.

- 2.5 The words "include", "includes", and "including" shall at all times be construed as if followed by the words "without limitation".

## **COMMENCEMENT, DURATION, RENEWAL**

### **3. Commencement**

- 3.1 This Agreement shall become effective from the Effective Date. The Operator, and the Authority shall use their best efforts and endeavours to procure the satisfaction of the Conditions Precedent as soon as is practicable and in any event, no later than [one hundred and eighty (180) to three hundred and sixty (360)]<sup>6</sup> days after the date of signing this Agreement. When the conditions precedent set out in Schedule 9 are fulfilled (**Conditions Precedent**), the Authority shall issue a certificate of satisfaction of Conditions Precedent (**Certificate of Effectiveness**).
- 3.2 The Operator shall take over the Existing Facilities and commence the refurbishment and construction activities within thirty (30) days of the Effective Date. If specified in Schedule 2, the Operator shall perform the Temporary Services during the period of refurbishment and construction activities. The Authority shall provide the Operator with a written notice of the Effective Date, and this shall be deemed to be the Effective Date for the purpose of this Agreement.
- 3.3 If the Conditions Precedent are not fulfilled or waived in writing by mutual agreement of the Parties within [three hundred and sixty (360) to five hundred and forty days (540)] days of the date of the signature of this Agreement, each Party shall have the right to terminate this Agreement immediately and no Party hereto shall be liable to the other Party for any damages or losses in respect thereof.

### **4. Agreement Period**

- 4.1 Unless terminated earlier pursuant to Clause 22, this Agreement shall remain in full force from the Effective Date to the end of the PPP Project (expected to be a period of 15 years from the Effective Date) with possibility of an extension not exceeding five years in accordance with the Applicable Law (**Agreement Period**).

## **REPRESENTATIONS AND WARRANTIES**

### **5. Operator Representations and Warranties**

- 5.1 The Operator represents and warrants that:
- (a) It is a legal entity duly registered/incorporated under the Laws of the United Republic of Tanzania and has all requisite legal power and authority to enter into this Agreement and such other agreements, being agreements to which the Operator will be a party, as are contemplated elsewhere in the Agreement and in the Schedules and to carry out the terms, conditions and provisions of this Agreement.

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<sup>6</sup> 180 days will be for small and simple projects and 360 days will be for large and complex projects

- (b) There is no litigation, actual or pending at the date of execution of this Agreement, which relates to the Operator and to which the Operator is a party or of which the Operator is aware which would materially affect the Operator or its ability to perform its Obligations under this Agreement and the transactions contemplated by this Agreement.

## **6. Authority Representations and Warranties**

### **6.1 The Authority represents and warrants that:**

- (a) The execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement do not and will not infringe and are not and will not be contrary to any laws or regulations of any Governmental, administrative or regulatory body to which the Authority is subject to.
- (b) It will provide to the Operator all necessary access to, and exclusive use of, the Existing Facilities, free of charge and without responsibility for any debt, [tax], charges on such assets and without interruption from any other person provided that the Authority has the right at all reasonable times, in all reasonable places, and subject to the operational needs of the provision of the Services to visit, inspect and conduct tests on all documents and the Service Area and the Operator shall make reasonable provision to assist the Authority in such event.

## **RIGHTS AND OBLIGATIONS**

### **7. Operator Obligations**

#### **7.1 The Operator shall:**

- (a) develop the Existing Facilities, design and build the New Facilities in accordance with the Specifications, the Construction Schedule and Prudent Industry Practice (see Schedule 2);
- (b) provide all financing for the development of the Facilities and all necessary and adequate working capital at all times during the Agreement Period to enable it to fulfil its obligations under this Agreement and to provide the Services, including repair and maintenance of the Facilities;
- (c) operate the Facilities in accordance with Prudent Industry Practice and the Service Standards and deliver the Services to Users in accordance with Service Standards;
- (d) operate the Services in accordance with the applicable permits;
- (e) obtain all necessary licenses, permits and warranties necessary to carry out the Services in accordance to the Applicable Law;
- (f) arrange for an electricity supply for the Facilities;
- (g) repair, maintain or make improvements to the Facilities to comply with the provisions of this Agreement, the Applicable Law and to conform to the Service Standards and Prudent Industry Practices;
- (h) not dispose of any of the land or Facilities thereon without the written authorisation of the Authority, including assignment of leasehold rights on the land, project

agreements and the right to operate the Facilities in favour of Lender(s) pursuant to its financing arrangements;

- (i) prepare an asset register within twelve (12) months from the COD, keep a copy thereof on site and maintain such asset register;
- (j) open a Revenue Collection Account as per the requirement of the Lender and to provide the Authority with monthly statements of account;
- (k) obtain appropriate insurance coverage for the Agreement Period with a local Tanzanian insurance company of repute against claims, losses, damages to assets, accidents, injury or death, as further described in Clause 35;
- (l) prepare and submit reports in accordance with this Agreement;
- (m) prepare operating manuals 2 months before the COD for the Facilities, keep a copy thereof on site and keep such operating manuals up to date;
- (n) cooperate with the Authority to allow effective monitoring;
- (o) publicise Public User Charges prominently at the New Facilities;
- (p) be responsible for all fees and expenses related to provision of the Services and development of the Facilities and operation, repair and maintenance of the Facilities, including but not limited to electricity charges, water charges, spare parts, equipment, employee salaries, levies, permit fees and taxes;
- (q) comply with all Applicable Laws;
- (r) make royalty payments to the Authority in accordance with Schedule 12;
- (s) comply with the requirements under Schedule 10 and seek prior written approval from the Authority prior to undertaking/implementing any change of controlling interest in excess of equity shareholding of the Operator either through a single or multiple transfers and/or allotments as provided in Schedule 10;
- (t) assumes liability for the risks arising from the performance of its functions under this Agreement;
- (u) carries out geotechnical survey and tests at the Site before the Effective Date; and
- (v) submits detailed design, drawings and layout for the Project to the Authority in accordance with Clause 7.2.

## 7.2 Drawings

- (a) Preparation of Drawings
  - (i) The Operator may, subject to the design requirements, adopt with or without modification the drawings made available by the Authority or adopt its own drawings, provided that the Operator shall in any event be solely responsible for the adequacy of the drawings. Also if the Operator proposes any modifications to the drawings made available by the Authority or submits alternate drawings or drawings for any item for which no drawings are made available by the Authority, the same shall be subject to review by the Authority as provided in Clause 7.2 (b) below.
- (b) Review of Drawings

- (i) The Operator shall submit a copy of each of the drawings to the Authority in such a sequence as is consistent with construction requirements. By forwarding drawings to the Authority, the Operator shall be deemed to have represented that it has verified and determined that the drawings forwarded are in conformity with the design requirements.
- (ii) Within 15 days of receipt of the drawings, the Authority shall review the same and convey its comments and/or observations to the Operator on conformity of the drawings with the design requirements. If the comments and observations of the Authority indicate that the drawings are not in conformity with the design requirements, such drawings shall be revised by the Operator to the extent necessary and resubmitted to the Authority for further review. The Authority shall give its observations, if any, within 15 days of receipt of the revised drawings, which shall be taken into account by the Operator while finalising such drawings. If the Authority does not respond within the period stipulated as above, the Operator shall proceed with the Project on the basis of such drawings submitted by it to the Authority.
- (iii) Notwithstanding any review or failure to review by the Authority, the Operator shall be responsible for the adequacy of the drawings and their conformity with the design requirements and shall be responsible for delays in meeting the design requirements caused by the drawings not being in conformity with the design requirements.
- (iv) Within 90 days of COD, the Operator shall furnish to the Authority three copies of “as built” drawings duly verified by a Technical Agent, including, without limitation, an “as built” survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of the Facilities reflecting the Project as actually designed, engineered and constructed.

## **8. Operator Rights**

8.1 Notwithstanding the rights provided elsewhere in this Agreement, the Operator is entitled for the Agreement Period to:

- (a) use of the Facilities in accordance with the Lease for the purposes of complying with its obligations under this Agreement and the provision of Services;
- (b) right to provide the Services to Users within the Service Area;
- (c) the Lease of the Facilities and the land necessary to develop the Facilities, together with necessary easements and rights in the Service Area as provided in the Lease Agreement under Schedule 13;
- (d) conclude Contracted User Agreements with Contracted Users for the supply of the Services;
- (e) apply User Charges as approved by the Authority and issue invoices or receipts to Users for the supply of the Services;
- (f) receive payments from Users into the Revenue Collection Account;
- (g) [be paid the Operator Fees, if any, in accordance with Schedule 7;]

- (h) [be paid the Operator Grants, if any, in accordance with Schedule 7;]
- (i) be paid the Termination Payments, if any, in accordance with Schedule 8;
- (j) enter into premises and properties within the Service Area and to exercise all other statutory powers within the Service Area necessary for the purposes of fulfilling its obligations under this Agreement and the Contracted User Agreements; and
- (k) apply to the Authority for any requested User Charges adjustments from time to time. The Authority shall consider the Operator's application but the Authority has the final decision to either grant or reject the Operator's application and under the Authority's own terms.

## **9. Authority Obligations**

### **9.1 The Authority shall,**

- (a) grant to the Operator the Lease over the Facilities and access to the Service Area in respect of which access is required for the performance of the Services by the Operator;
- (b) facilitates the return of vendors and Users once construction is complete;
- (c) undertake strict enforcement and apply penalties, where necessary, on illegal vendors that operate on the roadsides or in an illegal manner within one-kilometre square (1km<sup>2</sup>) of the Project Site. The Authority shall vacate such illegal vendors within one week of being notified of the existence of the illegal vendors, failing which the Authority shall be required to pay compensation to the Operator;
- (d) provide for an improvement of support infrastructure, such as strengthening and widening of the access roads up to the [Service Area] by [specify date], failing which the Authority shall be required to pay compensation to the Operator;
- (e) provide a proper water drainage connectivity by [specify date] and regularly flushing of the drains near the [Service Area], at least once in every [three months] ;
- (f) provide the Operator with access to the municipal solid waste dump / land-fill site for disposal of solid waste generated from the Facilities;
- (g) provide for all approvals and licenses, in a timely manner, in relation to development, construction, utilities and operations of the Facilities;
- (h) assist the Operator, in a timely manner, to coordinate with other government authorities, to obtain all approvals and licenses required for the construction and operations of the Facilities and facilitate the renewal where required. These shall include, but not limited to, environmental approvals, building permits, water permits, work and residence permits, electricity and water connections, tax registration among others;
- (i) grants the Operator the right to provide Services to Users in the Service Area;
- (j) provides a copy of the terms of relevant permits;
- (k) shall make all reasonable efforts to assist the Operator to gain access to assets or to other land on which it is required to exercise its duties in accordance with the Lease Agreement under Schedule 13;

- (l) not interfere and cause its employees and sub-contractors not to interfere or obstruct the Operator in carrying out its obligations under this Agreement and providing the Services;
- (m) shall give the Operator full access to all necessary information, plans, policies, papers, reports and data in order to enable the Operator to carry out the services and assist the Operator to obtain, from the Government, local government or statutory bodies, all necessary consents and permits as required by Applicable Law;
- (n) shall monitor the performance of the Operator under this Agreement in accordance with Schedule 5.
- (o) shall cooperate with the Operator and facilitate periodic consultations with Users and stakeholders in relation to the Facilities every three months;
- (p) shall ensure adequate compensation (in case of land acquisition) has been paid to the land owners and the relocation (in case of Existing Facilities) is carried out before the Effective Date; and
- (q) shall submit mid-year performance reports to the PPP Centre on the implementation of the Project.

## **10. Authority's Rights**

10.1 Notwithstanding the rights provided elsewhere in this Agreement, the Authority is entitled for the Agreement Period to:

- (a) [be paid rent by the Operator for the lease of the Service Area as per the Lease Agreement under Schedule 13];
- (b) be given reasonable access during normal working hours to the Facilities, premises, works and sites of the Operator for the purposes of performance monitoring, inspection and certification to the extent this does not disturb the Operator's performance of its obligations under this Agreement. For the avoidance of doubt the term "Authority" as used herein shall include duly authorised officers, employees and representatives as well as its technical agents, financial advisors and auditors;
- (c) request the Operator to provide periodic performance reports as and when required;
- (d) title to Facilities shall at all times be with the Authority subject to the Lease Agreement and prior approval of the Authority for the assignment of leasehold rights in favour of Lender(s) pursuant to the financing arrangements; Title to the new facilities shall pass to the Authority at the time of completion of the Construction;
- (e) the Operator grants to the Authority a non-exclusive royalty free licence to use for all purposes in connection with the Facilities, and grants a right to use all intellectual property rights for, all such plans, drawings, specifications, designs, reports, and other documents and software together as prepared by the Operator;
- (f) to review the drawings and "as built" drawings submitted to it by the Operator and provide its comments and/or observations to the Operator; and
- (g) regulate and supersede the Project and its operations.

## **11. Authority Review**

- 11.1 The Authority shall review the Operators activities in the performance of its obligations under this Agreement.
- 11.2 The Authority shall review all reports submitted by the Operator pursuant to Schedule 4 and may query any information in the report at any time prior to the completion of the Project.

## **DEVELOPMENT, TESTING AND COMMISSIONING**

### **12. Development of Facilities**

- 12.1 The Operator shall ensure that the Facilities shall pass the Performance Tests by the relevant Time for Completion.
- 12.2 The Operator is entitled to an extension of a Time for Completion if delayed either before or after the Time for Completion by any of the following causes:
- (a) a change in the Specifications that delays materially the Time for Completion set out in Schedule 2;
  - (b) a Force Majeure event;
  - (c) a Material Adverse Government Action;
  - (d) physical conditions or circumstances on the site for the New Facilities, which are adverse and were not (by the Effective Date) drawn to the Operator's attention or within its knowledge (as is evidenced by written records) or foreseeable from the data supplied to the Operator by the Authority;
  - (e) any breach of this Agreement, delay, impediment or prevention by the Authority; or
  - (f) an action by a legally constituted public authority which has delayed, impeded or prevented the Operator from developing the Facilities other than due to the negligence or wilful default of the Operator.
- 12.3 If the Operator intends to apply for an extension of a Time for Completion, the Operator shall give notice to the Authority of such intention as soon as possible, together with supporting information. The Operator shall keep such contemporary records as may be necessary to substantiate any application, at the site and such other records as may reasonably be requested by the Authority. The Operator shall permit the Authority to inspect all such records, and shall provide the Authority with copies as required. The Authority shall respond within twenty eight (28) days of receiving a claim from the Operator by either confirming the Authority's entitlement, or denying the claim with detailed reasons. Any dispute may be referred for resolution in accordance with Clause 30.
- 12.4 The Operator will provide monthly status reports to the Authority during the Construction Period setting out progress on the Facilities and whether there are any delays or issues that have arisen as provided in Schedule 4. The first report shall be provided following the first calendar month after the Effective Date and shall be provided within fourteen (14) days of the end of such calendar month.

### **13. Delay in Development**

- 13.1 If the Operator fails to comply with Clause 12.1 for reasons other than those set out in Clause 12.2, the Operator shall pay to the Authority the Liquidated Damages for such delay (which sum shall be the only monies due from the Operator for such delay) for every day which shall elapse between the relevant Time for Completion and the date stated in the relevant Performance Certificate, provided that the total of all Liquidated Damages payable by the Operator pursuant to this Clause 13.1 shall not exceed the total maximum sum of [ ]<sup>7</sup>
- 13.2 If the delay exceeds 12 (twelve) months, then the Authority shall be entitled to Terminate this Agreement in accordance with the provisions of Clause 29.

### **14. Performance Tests**

- 14.1 The Operator shall carry out the Performance Tests in accordance with this Clause 14 and the Specifications. The Performance Tests shall be carried out in the presence of a Technical Agent, to make the tests more objective and impartial. The Operator shall give the Authority seven (7) days' notice of the date on which the Operator will carry out the Performance Tests and invite the Authority to attend. The Performance Tests may proceed as scheduled irrespective of whether the Authority will be in attendance or not.
- 14.2 As soon as the Facilities have passed the Performance Tests, the Operator shall provide the Authority with a certified report of the results of all such Performance Tests.
- 14.3 If the Facilities fail the Performance Tests, the Operator shall promptly and in any event within fourteen (14) days inform the Authority of the action it proposes to take to ensure that the Facilities pass the Performance Tests when retested. The failed Performance Tests shall be promptly repeated under the same terms and conditions until the Facilities pass the Performance Tests.
- 14.4 After the Facilities have passed the Performance Tests, the Technical Agent notifies the Authority and the Operator of the result of the Performance Tests and proceeds to issue the Operator with a performance certificate. Issuance of the Performance Certificate will mark the COD.

## **USER CHARGES AND USER RELATIONS**

### **15. User Charges**

- 15.1 For each tariff review cycle, the User Charges shall be established based on the methodology and principles set out in the Schedule 3.
- 15.2 The User Charges shall be amended in accordance with the Authority's bye-laws for each cycle on the first day of a financial year, every three years. The User Charges at the end of each cycle of 3 years, have been computed in Schedule 3.
- 15.3 Due to an event which causes a Material Adverse Effect, the Operator may request for an amendment in User Charges which is greater than the tariffs computed as per Schedule 3.

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<sup>7</sup> The maximum amount would be kept at 360 days of Liquidated Damages or the amount of performance guarantee, whichever is lower. The liquidated damages for a delay in development would be calculated as 0.01% of Capital Cost for a week's delay after the relevant Time for Completion. After 360 days, the Operator event of default could get triggered as mentioned under Clause 22.



The Authority may approve the same subject to adequate justification and financial estimates. .

## **16. User Relations**

- 16.1 The Authority will support the Operator in authorising and enforcing new User charges as applicable. If the bye-laws are not revised by the Authority as per Schedule 3, and if the new User Charges are not enforced, then the shortfall would be paid by the Authority.
- 16.2 The Authority shall participate in stakeholder consultations, with Users every three months on an ongoing basis for the duration of the Project. .All User Charges collected will be immediately deposited in the Revenue Collection Account.
- 16.3 The Technical Agent shall conduct user satisfaction surveys on a semi-annual basis.
- 16.4 The Operator shall manage a helpdesk/incident centre wherein they will record all complaints/accidents/incidents as reported by Users. The Authority shall review the database of complaints and incidents lodged at the helpdesk and monitor the resolution of accidents on a monthly basis. The Authority shall also submit monthly MIS reports capturing the type of accidents/incidents/complaints and their resolution process.

## **REPORTING**

### **17. Reporting**

- 17.1 The Operator shall be responsible for submitting periodic reports to the Authority as set out in Schedule 4.

## **FACILITIES AND PERSONNEL**

### **18. Title to the Facilities**

- 18.1 Title to the Facilities shall at all times be with the Authority, subject to the Lease Agreement and prior approval of the Authority for the assignment of leasehold rights in favour of Lender(s) pursuant to the financing arrangements. Title to the New Facilities shall pass to the Authority at the time of completion of the construction.

### **19. Title to Documents**

- 19.1 All plans, drawings, specifications, designs, reports, financial model (including all investments, financing structure etc.) and other documents and software prepared by the Operator in the course of performing its obligations under this Agreement shall remain property of the Operator; and the Operator hereby grants to the Authority a non-exclusive royalty free licence to use for all purposes in connection with the Facilities, and grants a right to use all intellectual property rights for, all such plans, drawings, specifications, designs, reports, and other documents and software together.
- 19.2 In addition the Operator shall provide copies of all contracts with the sub-contractors to the Authority for their review.
- 19.3 On expiry or termination of the Agreement the Operator shall deliver a copy of all documents and software to the Authority, together with a detailed inventory thereof and grant a non-exclusive royalty free license to use such documents and software in connection with the Project.

19.4 The Operator may retain copies of such documents and software.

## **20. Operator Staff**

20.1 The Operator shall at its own cost provide Operator Staff and sub-contractors, as are required, to effectively carry out construction of the New Facilities and the Services.

20.2 The Operator shall have no claim for additional costs arising out of or incidental to the removal and/or replacement of Operator Staff or sub-contractors.

20.3 On expiry or termination of this Agreement the Operator Staff will not be transferred to the Authority unless and subject to prior agreement of the Operator and the Authority.

## **21. Liability**

21.1 The Operator is obliged to meet the Service Standards and shall be subject to Liquidated Damages Payments to the extent that it fails to meet the Service Standards, as set out in Schedule 5.

21.2 The Operator shall not be liable for failure to meet Service Standards and shall not be subject to Liquidated Damages Payments to the extent that such failure is caused by:

- (a) failure by the Authority to perform its obligations under this Agreement; or
- (b) Force Majeure.

21.3 Notwithstanding any other provision of this Agreement, the Parties agree that the maximum cumulative liability of the Operator to the Authority:

- (a) for Liquidated Damages for delay during the Construction Period; and
- (b) for each calendar year of the Agreement Period arising under or in relation to this Agreement,

shall not exceed TZS [ ]<sup>8</sup>, provided that such limitation shall not apply to fraud, gross negligence or wilful misconduct of the Operator, any sub-contractor, or their respective agents or employees.

21.4 Any acts and omissions by the contractors, subcontractors or agents of the Operator shall be imputed on the Operator and the Operator shall be liable for the same towards the Authority.

21.5 Any Party alleging a breach of contract or right to be indemnified in accordance with this Agreement shall be under a duty to take all necessary measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost.

21.6 A Party shall indemnify, defend and hold harmless the other Party and/or its subcontractors or their officers, agents or employees against any and all claims for loss, damage and expense of whatever kind and nature (including all related costs and expenses) in respect of personal injury to or death of third parties and in respect of loss of or damage to any third party property to the extent that the same arises out of any negligence, default or breach of

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<sup>8</sup> The maximum amount may be kept at 360 days of Liquidated Damages or the amount of performance guarantee, whichever is lower. The Liquidated Damages for a delay in construction would be calculated as 0.01% of Capital Cost for a week's delay after the relevant Time for Completion. The Liquidated Damages for a delay during the Agreement Period would be calculated as the sum of Liquidated Damages payments, for a week's delay, for each of the KPIs as mentioned in Schedule 5. After 360 days, the Operator event of default could get triggered.

statutory duty on the part of the other Party, its subcontractors or their officers, agents or employees.

## **TERMINATION, EXPIRY AND HANDOVER**

### **22. Termination and Expiry**

22.1 This Agreement will terminate on the Expiry Date unless terminated earlier under this Clause 22

22.2 The Authority shall be entitled to terminate the Agreement early by giving [three (3)] months' written notice [(which includes a one-month cure period and two-months' notice)] where:

- (a) the Operator fails to perform any of its obligations under this Agreement and this has a material impact on the Project and such failure continues after the lapse of the [three (3)] months' written notice from the Authority to the Operator requesting that such failure be cured;
- (b) the actions of the Operator directly cause a widespread danger to the health of the public in the Service Area and such failure continues after the lapse of the [three (3)] months' written notice from the Authority to the Operator requesting that such failure be cured;
- (c) the Operator becomes insolvent or bankrupt or goes into liquidation whether compulsory or voluntary; or
- (d) the Operator in the reasonable judgment of the Authority has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.

22.3 The Operator shall be entitled to terminate the Agreement early by giving [three (3)] months' notice [(which includes a one-month cure period and two-months' notice)] where the Authority fails to perform any of its obligations under this Agreement in a material respect and such failure continues after the lapse of the [three (3)] months' written notice from the Operator to the Authority requesting that such failure be cured.

22.4 In respect of Clause 22.2(b) and 22.2(c) such right to terminate shall not arise to the extent that the default occurred solely as a result of any breach of the other party of this Agreement or is due to Force Majeure.

22.5 In the case of prolonged Force Majeure, the Parties may terminate this Agreement without further liability to each other in accordance with Clause 28.5.

22.6 In the case of prolonged Material Adverse Government Action, the Parties may terminate this Agreement in accordance with Clause 29.4.

### **23. Termination Payments**

23.1 Upon early termination of this Agreement, the Authority shall pay to the Operator the termination fees set out in Schedule 8.

### **24. Handover**

24.1 On termination or expiration of this Agreement, the Operator shall handover to the Authority the Facilities in good working condition (wear and tear excepted) and operational control of the Facilities and shall not remove any part of the Facilities that are necessary for its

operations. The Operator shall also handover as-built drawings for the Facilities as well as any other drawings, a royalty free license to use any software developed under the Agreement for delivery of the Services, a set of operating manuals and an update inventory of assets.

- 24.2 Except in the case of early termination pursuant to Clauses 22.2(b) and 22.2(c), the Operator and the Authority shall cooperate as reasonably necessary to comply with the handover procedure provided under Schedule 14.

## **25. Authority Step-in**

- 25.1 For the continued provision of the Facilities to Users, at any time following the lapse of the written notice by Authority under Clause 22, or in case of manifest emergency, the Authority may itself take over on a temporary basis the operation and maintenance of the Facilities. Alternatively, the authority may cause a third party, including but not limited to the Lenders, to carry out the same until such time as Operator can demonstrate that it is again able to carry out its obligations in accordance with this Agreement.

- 25.2 The costs incurred by Authority in relation to such operation and maintenance shall be recoverable by Authority from Operator if the emergency arises from, or is a case of default by, Operator.

- 25.3 The exercise by the Authority of the Authority step-in rights shall not affect any other right or remedy the Authority may have, nor shall the existence of the Authority step-in rights or its exercise thereof relieve the Operator of any duty, obligation or liability under the Agreement or any other contract.

## **26. Right to Lenders**

- 26.1 The Lenders will be entitled to recover their dues from the Operator and Project receivables, such as in the form of User Charges and in the event of default by the Operator in failing to complete or implement the Project, the Lenders will have the right to substitute the Operator subject to the approval of the Authority, on the same terms and conditions as applicable to the previous Operator or with such modifications as may be specifically approved by the Authority.

## **FORCE MAJEURE**

### **27. Definition of Force Majeure Event**

- 27.1 Force Majeure means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and which makes a Party's performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible in the circumstances, and includes, but is not limited to natural events such as earthquakes, floods, fire, plague, inundation, landslide, storm, hurricane, cyclone, lightning, adverse weather conditions, Acts of God and indirect political events such as war, riots, civil disorder, strikes, boycotts, labour disruptions, lockouts or other industrial action (except where such strikes, lockouts or other industrial action are reasonably within the power of the Party invoking Force Majeure to prevent), and with respect to the Operator only, any failure, shortage or interruption of the supply of electricity for more than two (2) consecutive days.

27.2 Force Majeure shall not include (a) any event which is caused by the negligence or intentional action of a Party or such Party's sub-contractors or agents or employees, nor (b) any event which a diligent Party could reasonably have been expected both to take into account at the time of the conclusion of this Agreement, and avoid or overcome in the carrying out of its obligations hereunder.

## **28. Force Majeure effect**

28.1 The failure of a Party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of, or default under, this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Agreement.

28.2 A Party affected by an event of Force Majeure shall continue to perform its obligations under this Agreement as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

28.3 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

28.4 In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be settled according to Clause 30.

28.5 If any event of Force Majeure continues for longer than one hundred and eighty (180) days, the Parties shall enter into discussions in order to agree on a mutually satisfactory solution to continue the performance of this Agreement. If the Parties fail to reach a mutually satisfactory solution within sixty (60) days of the commencement of such discussion, either Party shall have the right to terminate this Agreement early by written notice to the other Party and this Agreement shall then immediately terminate.

## **29. Material Adverse Government Action**

29.1 For the purposes of this Agreement, "**Material Adverse Government Action**" means any act or omission by the Authority or any relevant Public Authority or event set out in Clause 29.2 below, which occurs during the term of this Agreement and which (i) directly causes the Operator to be unable to comply with all or some of its obligations under the Agreement and/or (ii) has a [Material] Adverse Effect] on its [costs or revenues].

29.2 For the purposes of Clause 29.1 above any act or omission shall mean and be limited to the following circumstances:

- (a) failure of any relevant Public Authority to grant to the Operator or renew any permit or approval that is required for the purposes of the Operator's proper performance of its obligations and/or enforcement of its rights under this Agreement, in each case within the required timeframe under Tanzanian law, except where such failure results from the Operator's non-compliance with Tanzanian law;
- (b) expropriation, compulsory acquisition or nationalization by any relevant Public Authority of any asset or right of the Operator, including any of the shares in the Operator;

- (c) any competing [name the type of project] project that is tendered or implemented by the Authority within an area of [ ] square kilometre from the Facilities, during the first 10 years of this Project;
- (d) change of law targeting the Operator, including the relevant tax laws which (i) directly causes the Operator to be legally unable to comply with all or some of its obligations under the Agreement and/or (ii) has a [Material] Adverse Effect] on its [costs or revenues]; and
- (e) [add any event specific to the PPP Project such as the construction of certain competing infrastructure (e.g. a free road adjacent to the Project Site) or a pollution event].

29.3 If a Material Adverse Government Action occurs, the Operator (i) shall be excused from the performance of its obligations under the Agreement to the extent that it is prevented, hindered or delayed in such performance by reason of the Material Adverse Government Action; and (ii) shall be entitled to suitable modifications in the quantum and structure of User Charges in Schedule 3 and/or modifications in the terms of the PPP Agreement to bring the Operator back to the same financial position as it would have been prior to the occurrence of the Material Adverse Government Action.

29.4 If a Material Adverse Government Actions subsists for a continuous period of more than [one hundred and eighty (180)] days from the commencement of any event under Clause 29.2, the Operator may in its discretion terminate the Agreement by issuing a written termination notice to the Authority which shall take effect [thirty (30) days] after its receipt. If after the end of this [thirty (30) days] the Material Adverse Government Action continues, the Agreement shall be terminated immediately and the Operator shall be entitled to compensation as set out under Schedule 8.

## **DISPUTE RESOLUTION AND APPLICABLE LAW**

### **30. Dispute Resolution**

30.1 If any dispute arises out of or in connection with this Agreement, a Party shall give a written notice of fourteen (14) days to the other Party. The Parties shall meet promptly and in good faith attempt to reach an amicable settlement through mutual consultation and negotiation.

30.2 In the event that the Parties do not amicably resolve a dispute within thirty (30) days of notice of the dispute either Party may refer the dispute to an agreed Tanzanian mediator. Assuming the Parties are unable to agree on the Tanzanian mediator to be appointed, the [National Construction Council] shall be responsible for appointing a mediator within [x] days from the date of receiving a notice from either of the Parties asking him/her to appoint/agree to a mediator. The costs payable to the mediator shall be [jointly shared] between the Parties on an equal basis. The decision of the Tanzanian mediator shall not be binding on the Parties unless the Parties enter into a written agreement/contract during or following the mediation proceedings.

30.3 In the event that the Parties do not resolve a dispute before the Tanzanian mediator within sixty (60) days from the date the dispute was referred to the Tanzanian mediator, either of the Parties may issue the other Party with a notice of arbitration and submit the dispute to

arbitration that will be binding under the Applicable Law. Arbitration shall be conducted in accordance to the rules of arbitration of [National Construction Council ]<sup>9</sup>

- 30.4 The number of arbitrators shall be 3 (three). Following receipt of notice of arbitration, each Party shall be entitled to appoint one arbitrator and the two appointed arbitrators shall appoint the umpire. Failure of the two arbitrators to appoint an umpire within [x] days of their appointment, [National Construction Council] shall appoint the umpire and such appointment shall be binding on the Parties and the two arbitrators. If either of the Parties does not appoint an arbitrator within [x] from the date the notice of arbitration, [National Construction Council] shall appoint an arbitrator on behalf of the Party who has failed to appoint an arbitrator and such choice shall be binding on the relevant Party. [The costs/fees of the arbitrators shall be borne equally between the Parties]. For avoidance of doubt, legal costs relating or pertaining to arbitration (including legal representation during arbitration) shall be borne by the Parties individually.
- 30.5 The proceedings shall take place either in Dar es Salaam [or Dodoma].
- 30.6 All proceedings shall be conducted in English, however the Parties may agree on any other language to be used.

### **31. Applicable Law**

- 31.1 This Agreement shall be governed by and construed pursuant to the Laws of the United Republic of Tanzania.

## **MISCELLANEOUS**

### **32. Survival**

- 32.1 The dispute resolution provisions contained in Clause 30 and the indemnity clause under Clause 21.6 shall survive termination of this Agreement.
- 32.2 Upon termination or expiration of this Agreement, the Parties shall have no further rights or obligations hereunder except for rights and obligations which arose prior to such termination or expiration and those which expressly survive termination or expiration pursuant to this Agreement.

### **33. Conflicts of Interest**

- 33.1 Neither the Operator nor its sub-contractors nor the Operator Staff shall engage during the term of this Agreement, either directly or indirectly in any business or professional activities in the United Republic of Tanzania which would conflict with the activities assigned to them under this Agreement. Where a dispute arises over definition of conflict of interest, the dispute shall be handled in accordance with Clause 30. Notwithstanding this Clause, the Operator will be eligible to bid for additional contracts related to the Services.

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<sup>9</sup> There are two prominent institutes of arbitration in Tanzania:

- the arbitration rules of National Construction Council (**NCC**); and  
- the arbitration rules of the Tanzania Institute of Arbitrators (**TI Arb**).

Since this is a PPP relating to construction, NCC would be the more appropriate forum. Also either NCC or TI Arb can appoint mediators if the parties fail to agree on the mediator as per Clause 30.2

#### **34. Authorised Representative**

34.1 Any action required or permitted to be taken, and any document required or permitted to be executed under this Agreement by the Authority or the Operator may be taken or executed by the authorised representatives specified in the Clause 44.1.

#### **35. Insurance**

35.1 The Operator shall procure and maintain, and shall cause any Operator sub-contractors to procure and maintain, throughout the term of this Agreement a professional and tortious liability insurance coverage and insurance coverage for the Facilities. Such professional and tort liability insurance shall be purchased by the Operator at its own cost at such levels as are consistent with Prudent Industry Practice. Such insurance shall be effective as of the Effective Date and cover the Operator, the Operator Staff and sub-contractors.

35.2 The Operator shall provide the Authority with certificates of insurance or other satisfactory evidence that the required insurance policies have been issued and are in force and shall promptly pay all insurance premiums, fees or other costs due in relation with the required insurance policies. The said insurance policies may not be cancelled or modified except with the prior written consent of the Authority obtained not less than thirty (30) days before the intended date of cancellation or modification.

35.3 To the extent that a loss or damage suffered by the Operator falls within the terms of the insurance cover required under this Clause 35, the Operator shall forthwith make the appropriate claims thereunder and shall replace or repair such loss or damage.

#### **36. Performance Security**

36.1 The Performance Security shall be in the form of on-demand bank guarantee issued by a reputable bank duly licensed to operate in Tanzania by the Bank of Tanzania, drawn in favour of the Authority as the direct beneficiary, of the nature and amount specified in clauses 36.2, 36.3, 36.4 and 36.5.

36.2 At the Agreement Date, the Operator shall provide the Authority with the Performance Security which shall be termed as the "**Development Bond**". The Development Bond shall permit the Authority to make calls on the Development Bond, where the Authority has met its obligations under this Agreement, but the Operator has failed to fulfil the Conditions Precedent as provided under Schedule 9. The Development Bond shall be issued in an amount which would be equal to 3% of the Capital Cost i.e. TZS [ ] million.

36.3 On or before the Effective Date, the Operator shall provide the Authority with the Performance Security which shall be termed as the "**Construction Bond**". The Construction Bond shall permit the Authority to make calls on the Construction Bond for collection of Liquidated Damages, whether arising by breach and/or for any claims for costs, losses, expenditure or damages resulting from any defects in the construction works. Additionally, the Authority may make calls on the Construction Bond, where the Authority has met its obligations under this Agreement, but the Operator has failed to fulfil the Conditions Precedent as provided under Schedule 9. The Construction Bond shall be kept in place till the issue of Performance Certificate and the Construction Bond shall be issued in an amount which would be equal to 5% of the Capital Cost i.e. TZS [ ] million.



36.4 Within 15 days of issue of Performance Certificate, the Operator shall provide the Authority with the Performance Security which shall be termed as the “Operations & Maintenance Bond”. The Operations & Maintenance Bond shall permit the Authority to make calls on the Operations & Maintenance Bond for any claims for costs, losses, expenditure or damages resulting from any defects during the Agreement Period including penalties and the Operations & Maintenance Bond shall be released on the Expiry Date. The Operations & Maintenance Bond shall be issued in an amount which would be equal to 3% of the Capital Cost i.e. TZS [ ] million. .

36.5 No later than two years before the Expiry Date or ten (10) days after receiving a termination notice, the Operator shall provide the Authority with the Performance Security which shall be termed as the Hand-back Bond. The Hand-back Bond shall permit the Authority to make calls on the **Hand-back Bond** for any claims for costs, losses, expenditure or damages following the transfer of assets on the Expiry Date or Termination Date; and the Hand-back Bond shall be released six (6) months after the Expiry Date or the Termination Date. The procedure for hand back is provided in Schedule 14. Also the Hand-back Bond shall be issued in an amount which would be equal to 5 % of the Capital Cost i.e. TZS [ ] million.

### **37. Assignment of this Agreement**

37.1 The Operator shall not without the prior written consent of the Authority (in consultation with steering committee, the Minister for Finance, relevant stakeholders and the Office of the Attorney General) and the Lender(s), transfer all or any part of its rights or obligations under this Agreement other than by way of security assignment to the Lender(s), such consent not to be unreasonably withheld or delayed.

37.2 Any further assignment or transfer by the Operator and/or Lender(s), of leasehold rights in the land and Facilities owned by the Authority shall be subject to prior written consent of the Authority. Such consent not to be unreasonably withheld or delayed.

37.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Operator, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who shall be another Public Authority and is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's outstanding obligations under this Agreement.

### **38. Confidentiality**

38.1 Each of the Parties, their employees, sub-contractors, consultants and agents, shall hold in confidence all documents and other information, whether technical or commercial, supplied to it by or on behalf of the other Party in relation with this Agreement, and shall not publish or otherwise disclose or use the same for its own purposes otherwise than as may be required by the Applicable Law or to perform its obligations under this Agreement.

38.2 The Parties' obligations under this Clause shall survive for a period of two (2) years following the termination of the Agreement or any extension or renewal thereof.

### **39. Relations between the Parties**

39.1 The Operator shall be an independent contractor in its performance of this Agreement. This Agreement does not create any agency, partnership, joint venture or other joint relationship between the Operator, the Lender and the Authority.

39.2 All Operator Staff and sub-contractors shall be under the complete control of the Operator and nothing contained in this Agreement or any sub-contract awarded by the Operator shall be construed to create any contractual relationship between the Operator’s representatives or subcontractors and the Authority.

39.3 None of the Parties has any responsibility whatsoever with respect to the obligations assumed by the other Parties under this Agreement and nothing in this Agreement shall constitute the Operator, the Lender or the Authority to be a partner, agent or local representative of the other or create a fiduciary relationship or trust between them.

**40. Variations in Writing**

40.1 All additions, amendments and variations to this Agreement shall be binding only if in writing, signed by duly authorised representatives of each of the Parties.

**41. Entire Agreement**

41.1 This Agreement, including the Recitals and the Schedules attached to this Agreement, and the Lease represents the entire agreement between the Parties in relation to the subject matter thereof and supersedes any or all previous agreements, communications or arrangements, whether oral or written, between the Parties.

**42. Severability**

42.1 If any part or parts of this Agreement are agreed by the Parties or declared by any competent tribunal to be invalid, the other parts shall remain valid and enforceable.

**43. Non-Waiver**

43.1 None of the provisions of this Agreement shall be deemed waived by either Party except when such waiver is given in writing. The failure by either Party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

**44. Notices**

44.1 Unless otherwise agreed by the Parties, notices to be given under this Agreement shall be in English, in writing and shall be given by hand delivery, recognized international courier or mail and delivered to the Parties at their respective addresses set forth below:

The Authority: [ ]

Attention: [ ] (Authorised Representative)

Address: [ ]

The Operator: [ ]

Attention: [ ] (Authorised Representative)

Address: [ ]

or such other address as may be notified by that Party to the other Party from time to time, and shall be deemed to have been made or delivered when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address. Notices delivered by any other means e.g. email or fax shall not be considered as notices properly given in accordance this Agreement.

**45. Further Assurances**

45.1 Each Party agrees to execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement.

**46. Language**

46.1 This Agreement is made in the English language.

IN WITNESS WHEREOF, this Agreement has been executed by duly authorised representatives of the Parties hereto on the day, month and year above written.

Sealed with the Common Seal of )  
[ ] ) SEAL  
and delivered in the presence of us )  
Date ..... )  
..... )  
Name of Director ) Signature  
..... )  
Address )  
..... )  
Name of Director / Secretary ) Signature  
..... )  
Address )

Sealed with the Common Seal of )  
[ ] ) SEAL  
and delivered in the presence of us )  
Date ..... )  
..... )  
..... )  
..... )  
Name of Director ) Signature  
..... )  
..... )  
Address )  
..... )  
..... )  
Name of Director / Secretary ) Signature  
..... )  
..... )  
Address )

## **Schedule 1 – Service Area**

**Service Area:** The portion of land assigned by the Authority for use in order to execute the provisions of this Agreement. It means the area within the municipal boundaries of the council including all developed areas, expansion areas and any new areas which maybe included therein from time to time

**Service Area Infrastructure:** Includes all road surfaces, landscape, utilities, buildings, parking lots, electrical transmission and appurtenant structures affixed to the assigned lands in such a manner as to be part of the realty. [Authority to attach Service Area details i.e. project sites and project facilities for the proposed project.]

**Service Area Map:** [Authority to attach an authorized map reflecting the Service Area as on the Effective Date.]

**Service Area Coordinates:** [Authority to mention the coordinates (latitude and longitude) of the service.]

**Schedule 2 – Project, Facilities and Specifications**

This schedule is project and sector-specific and would vary from one project to another. The sector-specific variations for RFQ, RFP and PPP Agreement have been prepared for projects in sectors of public markets, bus terminals/daladala terminals and abattoirs. Request you to kindly refer the document on sector-specific variations. The framework provided under the sector-specific variations will need to be filled up by the Authority and included here before releasing the bidding documents to the bidders.

<b>Existing facilities for project<sup>10</sup></b>
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<b>New facilities for project</b>
-----
<b>Existing user charges</b>
-----
<b>New user charges</b>
-----
<b>Increment in user charges</b>
-----
<b>Relocation plan</b>
-----
<b>Temporary services for project ( if applicable )</b>
-----

**Output specifications for the Project**

<b>Facility</b>	<b>Output Specifications</b>
-----	-----
-----	-----
-----	-----

<sup>10</sup> For greenfield projects, existing facility is undeveloped and vacant land.

Facility	Output Specifications
-----	-----

**Minimum design specifications for the Project**

Facility	Design specifications
-----	-----
-----	-----
-----	-----

### Schedule 3 – User Charges

This schedule is project and sector-specific and would vary from one project to another. The sector-specific variations for RFQ, RFP and PPP Agreement have been prepared for projects in sectors of public markets, bus terminals/daladala terminals and abattoirs. Request you to kindly refer the document on sector-specific variations. The framework provided under the sector-specific variations will need to be filled up by the Authority and included here before releasing the bidding documents to the bidders.

The User Charges, which will apply during the Agreement Period, has been provided below. The User Charges shall be amended for each cycle on the first day of a financial year every three years. The Operator will have the flexibility to provide for bulk or large customer discounts within each category of Users, if required. The tariffs shall be revised every 3 years based on a fixed tariff escalation factor [25%] as per the Authority's amended by-laws.

Category of user	Services	User charges Indexation (%)	Frequency of Adjustment (Years)															
				Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15
Public User																		
Public User																		
Contracted User																		
Contracted User																		
-----																		
-----																		



## Schedule 4 – Reporting Requirements

The Operator shall submit the following reports to the Authority:

### Construction Period

- 1.1 The Operator will provide monthly status reports on development of the Facilities in accordance with Clause 12.

### Agreement Period

- 1.2 Monthly Report including the following information:
- (a) [ ]
- 1.3 Quarterly Report including the following information:
- (a) [ ]
  - (b) Report on quarterly complaints received and actions taken
- 1.4 Annual Report to Authority including the following information:
- (a) Summary of quarterly report data for the full Financial Year
  - (b) Diagnostic assessment of operating and financial performance of the Project (benchmarked against service standards set out in Schedule 5)
  - (c) Condition of assets of the Project
  - (d) Number and roles of staff employed at the Project
  - (e) Diagnostic of levels of service performance
  - (f) Suggested capital investment plans – for next few years and more detail for coming year
  - (g) Annual business plan updated
  - (h) Revenue and expense budget for forthcoming year
  - (i) Compliance with any statutory reporting and operating requirements
- 1.5 Financial accounts of the Operator shall be submitted to an independent financial and technical auditor at the Operator's cost. Not later than three (3) months following the end of the Financial Year, the Operator shall provide the Authority with the audited Annual Report.
- 1.6 Any other reporting requirements that maybe imposed on the Operator by the Applicable Law .

### **Schedule 5 – Performance Monitoring**

This schedule is project and sector-specific and would vary from one project to another. The sector-specific variations for RFQ, RFP and PPP Agreement have been prepared for projects in sectors of public markets, bus terminals/daladala terminals and abattoirs. Request you to kindly refer the document on sector-specific variations. The framework provided under the sector-specific variations will need to be filled up by the Authority and included here before releasing the bidding documents to the bidders.

### Schedule 6 – Liquidated Damages Payments

If the Operator’s performance is below the KPIs set forth in Schedule 5 and the reasons provided for such below average performance are not acceptable to the Authority, the Operator at the end of each quarter will be subject to the following Liquidated Damages Payments owed to the Authority wherever applicable:

	Service Standard	Liquidated Damages Payment
1	User Satisfaction	Liquidated damages payment to the extent of 0.02% of Capital Cost in TZS for a week delay after the cure period
2	Building and facility operations, and facility check	Liquidated damages payment to the extent of 0.02% of Capital Cost in TZS for a week delay after the cure period
3	Satisfactory major maintenance works	Liquidated damages payment to the extent of 0.03% of Capital Cost in TZS for a week delay after the cure period
4	Satisfactory compliance to checklist on inspection of utilities	Liquidated damages payment to the extent of 0.01% of Capital Cost in TZS for a week delay after the cure period
5	Satisfactory resolution of accidents/incidents	Liquidated damages payment to the extent of 0.05% of Capital Cost in TZS for a week delay after the cure period
6	Satisfactory check of Project Covenants	Liquidated damages payment to the extent of 0.05% of Capital Cost in TZS for a week delay after the cure period, note that extended defaults may trigger termination

**Schedule 7 – Operator Fees or Grants**

### Schedule 8 - Termination Payments

All payments due under this Schedule shall be paid within one hundred and eighty (180) days of the date of early termination and the debtor shall otherwise comply with the provisions of Clause 22.

Where relevant, title in the Facilities not already in the name of the Authority shall be transferred on the date when any relevant termination payment is made in full.

This Schedule shall apply to termination before the Expiry Date, whether it occurs before or after the issue of the Performance Certificate.

On early termination of the Contract the Authority shall compensate the Operator as follows:

Category No.	Category of termination	Amount Payable
A.	Termination for Authority Default or Prolonged Material Adverse Government Action	<p>Sum of the following:</p> <ul style="list-style-type: none"> <li>a) the Outstanding Senior Debt, as on the date of termination;</li> <li>b) plus any Sub-Contractor Breakage Costs;</li> <li>c) plus, Initial Equity, less the distributions paid by the Operator to its shareholders as of the date of termination of the PPP Agreement;</li> <li>d) plus, any outstanding principal of the Subordinated Finance Documents, if applicable;</li> <li>e) plus payments to the equity investor(s) for reasonable returns on equity invested, which shall be calculated, as the net present value of forecasted distributions to equity shareholders, as at the termination date, determined based on the Base Case, using the Base Case Equity IRR; and</li> <li>f) less, any amounts received or to be received on or after the termination date as a result of enforcing any other rights that the Operator may have (such as, any residual insurance proceeds).</li> </ul>
B.	Termination for extended Force Majeure due to natural events	<p>Sum of the following:</p> <ul style="list-style-type: none"> <li>a) the Outstanding Senior Debt, as on the date of termination;</li> <li>b) less, any amounts received or to be received on or after termination date as insurance proceeds.</li> </ul>
C.	Termination for extended Force Majeure due to indirect political events	<p>Sum of the following:</p> <ul style="list-style-type: none"> <li>a) the Outstanding Senior Debt, as on the date of termination;</li> <li>b) plus, any Sub-Contractor Breakage Costs;</li> </ul>

		<p>c) (c) plus, Initial Equity, less the distributions paid by the Operator to its shareholders as of the date of termination of the PPP Agreement;</p> <p>d) plus, any outstanding principal of the Subordinated Finance Documents, if applicable;</p> <p>e) less, any amounts received or to be received on or after the termination date as a result of enforcing any other rights that the Operator may have (such as, any residual insurance proceeds).</p>
D.	Termination for Operator default	The Outstanding Senior Debt, as on the date of termination, only.

In interpreting the above methodology for computing the applicable termination payments, following definitions should be used.

**"Outstanding Senior Debt"** means the sum of:

- (i) the total amount outstanding, if any, to the Lenders under any Financing Documents and interest (including default interest) thereon for the sole purpose of the Project; plus
- (ii) the total amount outstanding under any loan agreements for capital improvements to the Facilities approved by the Authority; plus
- (iii) the total amount of any other outstanding debt incurred by the Operator that was approved by the Authority, less any insurance proceeds received by the Operator following a Force Majeure Event and not spent on repairs; plus
- (iv) any winding-up costs, prepayment charges, costs of terminating any hedging arrangements or similar charges or costs passed through by the Lenders in accordance with the Financing Documents less the following:
- (v) Less, all credit balances held in any bank accounts held by or on behalf of the Operator on the termination date; any amounts payable by the Lenders to the Operator as a result of prepayment or termination of the Agreement; and any amounts received or to be received by the Lenders on or after the termination date as a result of enforcing any other rights that they may have (such as, the assignment to the Lenders of any insurance proceeds)

**"Sub-contractor breakage costs"**, means the value of costs (excluding any loss of expected profits) that have been or will be reasonably and properly incurred (such as, under arrangements or agreements that are consistent with terms of ordinary course of business and of reasonable commercial terms) by the Operator as a direct result of the termination of the Agreement, but only to the extent that: (i)The costs are incurred in connection with the Project and in respect of the provision of Services or the completion of works, including any materials or goods ordered or the sub-contracts placed that cannot be cancelled without such losses being incurred; (ii)Any expenditure incurred in anticipation of the provision of services or the completion of works in the future; (iii)The cost of demobilisation including the cost of any relocation of equipment used in connection with the Project; any redundancy payments and repatriation payments for employees of the Operator that will be reasonably incurred as a direct result of termination of the Agreement.

**"Initial Equity"**, means the initial equity investment disbursed by the shareholders of the Operator plus any such other equity contributions approved by the Authority,

**"Subordinated Finance Documents"**, means any agreement under which the equity investors of the Operator make subordinated debt or promoter loan available to the Operator.

**“Base Case”**, means the original version of the financial model containing assumptions agreed between the Parties as the base case in effect as from the Effective Date of the Agreement.

**“Base Case Equity IRR”**, means the equity IRR set out in the original Base Case.

## Schedule 9- Conditions Precedent

### Conditions Precedent to be fulfilled by the Operator:

1. provide a Construction Bond in accordance with Clause 36.3;
2. obtained Financial Close and the Operator obtaining from its finance institution confirmation that the funds for financing the New Facilities are available for drawdown;
3. subject to paragraph 4 below, the Operator shall have received and provided to the Authority all construction contracts with its contractors. These construction contracts should not have restrictive terms which limit the ability of the Operator to perform its obligations under this Agreement;
4. the Operator shall have received written confirmation from relevant authorities that all consents, approvals, licences and permits which cannot be obtained prior to start of the Construction Period will be issued or provided in due course, but in any event before the COD;
5. all construction insurance policies required under Clause 35 shall have been obtained by Operator and shall be in full force and effect to the reasonable satisfaction of Authority;
6. provides written evidence, certified by the Lenders' representative and is reasonably satisfactory to Authority, that the conditions precedent to first draw down under the Financing Documents (other than the meeting of this condition) have been met so as to enable it to complete the design, construction, operation and maintenance of the Facilities;
7. provide the Authority with a duly executed Shareholders Agreement entered into by all the shareholders of the Operator which stipulates the shareholders' undertaking in the Project. The Shareholders Agreement shall not be amended without the written consent of Authority;
8. submission and approval of the financial model;
9. obtained all approvals, licenses and permits, in a timely manner, in relation to development, construction, utilities and operations of the Facilities; and

### Conditions Precedent to be fulfilled by the Authority:

1. ensure adequate compensation (in case of land acquisition) has been paid to the land owners and the relocation (in case of Existing Facilities) is carried out before the Effective Date in a peaceful and organized way;
2. lease the Service Area after execution of the Lease Agreement between the Operator and the Authority.



**Schedule 10 - Equity Shareholders of the Operator**

**[A] Initial Equity Shareholders**

The initial equity shareholders of the Operator are as under:

Name	Equity Share	Role in Consortium	Details of Beneficial Owner
		Lead Member	
		Consortium Member 1	
		Consortium Member 2	
		Consortium Member 3	

**[B] Ownership of Operator**

The Lead Member of the Consortium shall be the single largest shareholder with at least 26% of the subscribed and paid up equity of the Operator for a period of 2 years after the Completion Date.

Each other Member of the Consortium shall hold at least 10 % of the subscribed and paid up equity of the Operator for 2 years after the Completion Date.

**Schedule 11 - Base Line Taxes**

**[Transaction advisor will populate based on prevailing tax rates]**

### Schedule 12 - Royalty Payments to the Authority

Year	Premium	Amount (TZS million)
0	Premium	
1	Premium	
2	Premium	
3	Premium	
4	Premium	
5	Premium	
6	Premium	
7	Premium	
8	Premium	
9	Premium	
10	Premium	
11	Premium	
12	Premium	
13	Premium	
14	Premium	
15	Premium	

## Schedule 13 - Lease Agreement

**THIS LEASE AGREEMENT** ("Lease") is made this [insert date]

Between

**[NAME OF THE AUTHORITY]** a government authority established and existing under the laws of the United Republic of Tanzania with registration number [●] [●] and having its office at [●] ("**the Lessor**") which expression shall, where the context so admits, include its successors and assigns of the one part;

and

**[NAME OF THE OPERATOR]** a company formed and existing under the laws of the [United Republic of Tanzania] with company registration number [●] and having its registered office at [●] ("**Lessee**") which expression shall, where the context so admits, include its successors and assigns of the other part.

The Lessor and the Lessee are hereinafter also individually referred to as the "Party" and collectively the "Parties".

### **WHEREAS:**

- A. The Lessor is the registered holder of a landed property comprised in a Certificate of Title number [●], situated at Plot No. [●], with the total area of [●] square meters (hereinafter referred to as the "**Property**"). The details of the Property, including any evidence thereof, are as described in the Schedule I and deemed to be incorporated into this Lease Agreement.
- B. The Lessor wishes to lease the Property including all the Lessor's fixtures, fittings and fixtures of every kind which shall from time to time be in or upon the Property whether originally affixed or fastened to or upon the Property or otherwise, except any such fixture installed by the Lessee that can be removed from the Property (the **Fixtures and Fittings**) to the Lessee and the Lessee wishes to accept the lease of the Property from the Lessor to carry out the Project ("**Use**"). The details of the Fixtures and Fittings available in the Property as of the Completion Date are as described in the Schedule II and deemed to be incorporated into this Lease.
- C. This Lease shall be read together with the main PPP Agreement entered into between the Lessor and Lessee on [●] (the **PPP Agreement**). Any definitions used in this Lease shall have the same meaning as those in the PPP Agreement. If there is a conflict between the definitions in this Lease and those in the PPP Agreement, the definitions in the PPP Agreement shall prevail.

**NOW THIS LEASE WITNESSETH** as follows:

1. Lease Period
  - 1.1. **IN CONSIDERATION** of the mutual covenants hereinafter reserved and contained the Lessor hereby being legally authorized to do so, grants, leases and demises unto the Lessee the Property for a term of [15] years commencing on the Effective Date (the **Term**)
  - 1.2. Subject to Clause 3 below, this Lease shall become effective upon [signature by both Parties]

2. Rent/Royalty:

2.1. [This shall be paid as stipulated in the PPP Agreement.]

3. Completion

3.1. Completion of this Lease shall take place at the end of the Agreement Period ("**Completion**") of the PPP Agreement between the Parties dated [●].

3.2. If Completion has not taken place on or before [●] this Lease shall immediately terminate.

4. Condition of the Property

4.1. The Lessee acknowledges that, prior to the date of this Lease, the Lessor has given the Lessee and those authorised by the Lessee, the opportunity to inspect, survey and carry out investigations as to the condition of the Property and the Lessee accepts the condition of the Property.

4.2. The Lessee will not be entitled to refuse to complete or to delay completion of the grant of the Lease due to any event occurring after the date of this Lease that results in:

(a) any damage to the Property or any part of it; [or]

(b) [any damage to the means of access to the Property; or]

(c) [any deterioration in the Property's condition.]

5. Possession of the Property

5.1. On the Effective Date, the Property will be granted to the Lessee on receipt of the executed copies of the Lease in triplicate, the initial payment of referred to in Clause 2.1 of this Agreement (i.e. TZS [●] (exclusive of VAT)) following payment of all various amounts the Lessee shall have exclusive use of the Property.

5.2. The Lessee is not entitled to and will not be permitted to take occupation or possession of the Property or of any part of it prior to completion of the grant of the Lease.

6. Lessee's covenants:

The Lessee hereby covenants with the Lessor:

6.1. Throughout the Term, the Lessee shall pay the electricity, water, telephone, sewage and other utilities charges that shall accrued during the Term.

6.2. The Lessee shall maintain and keep in a good state of repair all the Facilities within the Property from time to time.

6.3. The Lessee shall comply with the Applicable Law regarding storage and disposal of hazardous material, wastes.

6.4. The Lessee shall not use or be entitled to use the Property for any use other than the Use specified under this Lease and the PPP Agreement without the prior written consent of the Lessor and shall not use, or permit the use of, the Property or any part thereof for any illegal or immoral purposes.

- 6.5. The Lessee shall not sub-let the Property, whether in part or in whole, to any person or assign or transfer the rights granted to the Lessee under this Lease to any person without the written prior consent of the Lessor.
- 6.6. The Lessee shall observe and perform the terms and conditions of the Certificate of Title in such a manner and at such times that no act, omission or default of the Lessee shall cause or contribute to any breach by the Lessor of any of its obligations under the terms and conditions of the Certificate of Title or any Applicable Law. The Lessee shall indemnify and hold harmless the Lessor from any liabilities, expenses, losses and damages arising from such breach, if any.
- 6.7. The Lessee shall not do or omit to do anything which may result in (i) the revocation of the Certificate of Title, or (ii) the amendment or modification of the terms and conditions of the Certificate of Title, without the prior written consent of the Lessor (such consent not to be unreasonably withheld).
- 6.8. Subject always to the provisions of Clause 6, the Lessee shall obtain all necessary approvals, permits and registrations for the conduct of all construction and improvement works that the Lessee may seek to carry out on the Property, and shall bear all costs and expenses relating to the obtaining of such approvals, permits and registrations and the conduct of any such construction and improvement works.
- 6.9. The Lessee shall ensure that all activities and operations carried out on the Property, and each and every part thereof, and the possession, occupation, use or enjoyment of the Property conform to the terms and conditions of the Certificate of Title and the Applicable Law.
- 6.10. That during the Term, the Lessor shall not be liable for any injury to the Lessee, or the Lessee's staff or visitors, caused by a defect in or negligent construction or maintenance work of any part of the equipment or structure of the Property or any lack or short of electricity, water or drainage and the Lessee shall indemnify the Lessor against all claims actions and proceedings in respect of such injuries;
- 6.11. That notwithstanding any provision contained herein, the Lessee hereby gives irrevocable power and authority without any recourse to the Lessor to enter unto Property with permission of the Lessee for monitoring and evaluation purposes;
- 6.12. During the Term, the Lessee shall be responsible at its own costs for the maintenance, repairs of all wear and tear of the Property and the Fixtures Fittings set out in Schedule II of this Lease; and
- 6.13. That upon termination or on exercising the right to break the Lease pursuant to Clause 10 or on expiry of the Term, the refurbishment and construction work done by the Lessee in the Property shall be the property of the Lessor and the same shall be retained by the Lessor without paying any cost thereof to the Lessee.

7. The Lessor's covenants

The Lessor hereby covenants with the Lessee:

- 7.1. That the Lessor shall pay all rents, rates, assessments, impositions, including Government Land Rent and Municipal Rates which now are or at any time during the Term may be assessed or imposed on the Certificate of Title or the Property (including for the avoidance of doubt, in relation to any buildings, structures and/or fixtures constructed by the Lessor thereon) or any part thereof by the Government or Municipal local or other authority save for the express

provisions to the contrary herein.

7.2. The Lessor shall assist the Lessee for the purpose of obtaining the necessary approvals, permits and registrations for the implementation of any construction and improvement works that the Lessee may seek to carry out on the Property.

8. Lessor's right of entry:

8.1. The Lessee shall permit the Lessor and its agent, employees and invitees:-

(a) To enter upon the Property during normal working hours and upon the provision of reasonable prior notice (of not less than forty-eight (48) hours except in the case of an emergency) for the purpose of ascertaining that the covenants, schedules and conditions of this Lease have been observed and performed and in the event that the Lessee shall be found to be in breach, to leave notice in writing on the Property of such breach or breaches and any defects which the Lessee is liable to repair or remedy under this Lease (as a result of an act/omission of Lessee) and requiring the Lessee to make good the same as soon as reasonably practicable.

(b) To view the state of repair and condition of the Property upon the provision of reasonable prior notice (of not less than forty-eight (48) hours).

(c) At reasonable times and upon reasonable prior notice (of not less than forty-eight (48) hours) for the purposes of undertaking any work to the Property, or that of any adjoining tenant, which may be required to be undertaken by the Lessor.

8.2. If the Lessee has not commenced or is not proceeding diligently with the execution of the work referred to in any notice served under Clause 8.1(a) within two (2) months of the service of such notice, the Lessor shall be permitted to enter the Property to execute such works as may be necessary to comply with the notice and the Lessee shall indemnify the Lessor for the costs of carrying out or procuring the carrying out of such works.

9. Handover:

9.1. At the expiration/termination of the Term, the Lessor and Lessee shall abide by the provisions under the PPP Agreement.

10. Termination:

10.1. Termination of the Lease shall be in accordance with the termination clause of the PPP Agreement.

11. Liability:

11.1. The Parties shall be responsible for and keep each other fully indemnified against all damages, losses, costs, expenses, actions proceedings, claims and liabilities made against or suffered or incurred by a Party arising directly out of an act/omission of the other Party under this Lease.

11.2. In no event shall the Parties be liable for any third party claims, indirect, incidental, consequential, special, exemplary or punitive loss or damages (including but not limited to any loss of revenue, loss of use or data, or production, loss of business profits or savings or any other economic loss, loss of reputation, goodwill or business opportunity or market share (whether direct, indirect or consequential)) whether in respect of breach of contract, tort, under indemnity, a matter of strict liability or any other legal or equitable cause of action or theory, and whether or not a Party or its agents has been advised of the possibility of such.

12. Force majeure:

12.1. In the event of Force Majeure, the Lessor and Lessee shall act in accordance with the provisions of the PPP Agreement.

13. Confidentiality

13.1. Every Party shall at all times keep confidential (and ensure that its employees and agents shall keep confidential) any information which it has acquired or may acquire in relation to any of the other Parties in accordance with the provisions of the PPP Agreement.

14. Governing law

14.1. This Lease shall be governed by and construed in accordance with the laws of the United Republic of Tanzania.

15. Arbitration:

15.1. In case of any dispute, the Lessor and Lessee will follow the dispute resolution mechanism set out under the PPP Agreement.

16. Assignment:

16.1. The Lessee shall not assign or otherwise transfer its rights, duties and obligations under this Lease or any part thereof to any third party, without the prior written consent of the Lessor.

17. Notices:

17.1. Any notice to be given under this Lease may be given by delivering such notice by sending the same by recorded post, or by sending the same by facsimile or email, in each case addressed to the Party concerned at the details given herein below:-

(a) In the case of the Lessor:-  
**[NAME OF THE LESSOR]**  
Address:  
Landline:  
Email:

(b) In the case of the Lessee:-  
**[NAME OF THE LESSEE]**  
Address:  
Landline:  
Email:

17.2. Each Party shall be entitled to amend the contact details contained in Clause 17.1 by written



notice to the other Party.

**IN WITNESS WHEREOF** the Parties hereto have executed this Lease in the manner and on the days hereinafter appearing.

**SEALED** with the Common Seal of  
**[NAME OF THE LESSOR]**  
and **DELIVERED** in the presence .....  
of us thisday of \_\_\_\_\_, 2017)**SEAL**

)  
Full Name: )  
)  
Signature: )  
)  
Address: )  
)  
Designation:)  
)  
)  
Full Name: )  
)  
Signature: )  
)  
Address: )  
)  
Designation:)

**SEALED** with the Common Seal of )  
**[NAME OF THE LESSEE]**  
and **DELIVERED** in our presence ).....  
this day of \_\_\_\_\_, 2017 )**SEAL**

)  
Full Name: )  
)  
Signature: )  
)  
Address: )  
)  
Designation: Director)  
)  
)  
Full Name: )  
)  
Signature: )  
)  
Address: )  
)  
Designation:

**Schedule I**

[Certificate of Title and the Property]

## **Schedule II**

### Fixtures and Fittings

#### **Schedule 14 - Handover Procedure**

1. About 3 years prior to the normal expiry of the Agreement, an independent Technical Agent shall be jointly engaged by the Operator and the Authority, on an equal cost sharing basis.
2. About 30 months prior to the normal expiry of the Agreement, the Operator shall provide its proposal for rectification works required to repair the Facilities to meet the performance standards and specifications associated with a facility of similar years of construction.
3. The Technical Agent shall either approve the Operator's proposal or cause the Operator to modify its rectification proposal, as appropriate, within 30 days after receipt of the notice from the Operator. In case of any disputes, the matter may be referred for dispute resolution as per Clause 30.
4. Upon agreement or determination in accordance with the dispute resolution procedure, the Operator shall carry out the renewal works at its own cost.
5. About 18 months prior to the normal expiry of the Agreement Period, the Operator and the Technical Agent shall conduct a joint inspection (the "**Second Inspection**") of the Facilities to verify the adequacy of the renewal works. During this time, the Operator shall also conduct trainings to the Authority's staff on how to operate the Facilities.
6. Within 30 days after the completion of the Second Inspection, the Operator shall provide to the Technical Agent a report on the condition of the Facilities and a notice setting out any revisions or additions to the renewal works required in order to ensure compliance with the required performance standards and specifications.
7. The Technical Agent may, within 30 days after receipt of the notice from the Operator, object to the proposed revisions by notice to the Operator, giving details of the grounds for such objection and shall give the Operator proposals in respect of such matters. In case of any disputes, the matter may be referred for dispute resolution as per Clause 30.
8. Upon agreement or determination in accordance with the dispute resolution procedure, the Operator shall carry out the renewal works (as so revised) at its own cost.
9. Two years prior to the normal expiry of the Agreement Period, a sum equal to the total revenues realised in the last two years or a higher sum for renewal works estimated by the Technical Agent, shall notwithstanding anything contrary contained in this Agreement, be retained in the Revenue Collection Account provided that if a bank guarantee of an equivalent sum in the form and content acceptable to the Authority has been furnished by the Operator, no such retention shall be made.
10. If following the Second Inspection, it is agreed or determined that no renewal works are required, then within 14 days of such agreement, 50% of the sums so retained in Revenue Collection Account shall be released from the Revenue Collection Account to the Operator.
11. Within 14 days after the completion of Agreement Period and subject to satisfactory completion of all renewal works the remaining sums that have been retained shall be released from the Revenue Collection Account to the Operator.