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Public Private Partnership

Public Private Partnership (PPP) Documents

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2021

# Public Private Partnership Agreement, 2021

The United Republic of Tanzania

Ministry of Finance and Planning

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**PUBLIC PRIVATE PARTNERSHIP AGREEMENT**

**FOR** *[insert name of the project]*

**BETWEEN**

*[insert name of the Contracting Authority]*

**AND**

*[insert name of the private party]*

**NOTE:**

This Public Private Partnership (PPP) Agreement has been prepared as a simplified, standardized Model version of a “normal” PPP Agreement for PPP Project. It serves as a 12<sup>th</sup> Schedule to the PPP Standard Model Request for Proposal Documents Version No. PPRA/PPP/08/2021/RFP. It provides a simplified treatment of most matters and some matters are not dealt with at all. The aim is to ensure the document is as understandable and easy to use as possible while retaining the essential elements of a PPP Agreement.

Specific project and legal due diligence should be carried out and the document adjusted to reflect the actual Project and the law applicable to the Project.

Sections and paragraphs starting with NOTE plus the footnotes contain guidance and instructions for the use of the document. They should be read, acted on and then deleted from the final version.

**NOTE:**

This Standard PPP Agreement is intended for use by the Contracting Authority and Private party in order to carry out Public Private Partnership project. The PPP Agreement highlights

the scope of the project, duration, obligations of the Parties, risk transfer, user charges and relations, termination of the PPP Agreement and dispute resolution among others.

Project specific information will have to be included in the Schedules accordingly.

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THIS Public Private Partnership (PPP) AGREEMENT (herein after referred to as Agreement) is made on this [insert date].....day of [insert month].....[insert year] .....

### BETWEEN

- (1) [insert name of the CONTRACTING AUTHORITY] (herein after referred to as **Contracting Authority**) a public entity or a body corporate established under [insert instrument establishing the entity] in the United Republic of Tanzania, whose address is [insert address];

### AND

- (2) [insert name of the PRIVATE PARTY] (herein after referred to as **Private party**) a limited liability company incorporated in the United Republic of Tanzania with company number [insert incorporation number], whose address is [insert address].

The Contracting Authority and the Private party referred to individually as **Party** and collectively as the **Parties**.

### WHEREAS

- (A) The Contracting Authority wishes to engage the private sector to deliver the Services, which include [development, design, build, finance, operate and transfer (delete whichever is not applicable)] of the Facilities.
- (B) The Contracting Authority has procured the Services by competitive tender in accordance with the relevant Laws and has selected the Private party to undertake and supply the Services to the Contracting Authority.

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

### DEFINITIONS AND INTERPRETATIONS

#### 1. Definitions

1.1 In this Agreement unless the context requires otherwise:

“**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 of Tanzania and includes, but not limited to, any applicable statute, regulation by-law, rules, circular, any licence, consent, permit, authorisation or other approval issued by any Contracting 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;

“**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 Contracting 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

**“Completion Date”** means the date by which the Facilities are to have passed the Performance Tests as set out in section [14] to this agreement calculated from the Effective 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 [insert number] <sup>1</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 Private party for receipt of the Services;

**“Contracted User Agreement”** means an agreement entered into between the Private party and a Contracted User and approved by the Contracting 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, as specified in Schedule 2, whether immovable or movable, equipment, supplies and other property, owned or used by the Contracting Authority on the date of signature of this Agreement to be used by the Private party to deliver the Services;

**“Expiry Date”** means the last date 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 Laws;

**“Facilities”** mean Existing Facilities and New Facilities;

**“Feasibility Study Report”** means the comprehensive report commissioned by the Contracting Authority and prepared by a transaction advisor, which details the socio-economic impact analysis, legal, financial, technical risks, environmental and social impact of the PPP project. It demonstrates that the Agreement shall be affordable to

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<sup>1</sup>Construction period would be specified on a project to project basis and could range from 12 to 24 months

the Contracting authority, provide value for money, transfer appropriate technical, operational or financial risks to the private party;

**“Financial Close”** means the date on which the Financing Documents provided for funding by the Lenders have become effective and the Private party has immediate access to such funding under the Financing Agreement;

**“Financing Documents”** means the documents executed by the Private party 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>2</sup>) of the Project;

**“Financial Year”** means the period of twelve months ending 30<sup>th</sup> June of each year;

**“Lease”** means the lease agreement to be entered into between the Contracting Authority and the Private party in relation to the Facilities as provided under **Error! Reference source not found.**;

**“Lender”** 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 Private party of the Project;

**“Liquidated Damages”** has the meaning ascribed to it under the Clause 21.3;

**“Liquidated Damages Payment”** has the meaning ascribed to it under the Schedule 6;

**“Material Adverse Effect”** means an effect that increases costs or reduces revenues by an amount equal to [ ]<sup>3</sup> of the Capital Cost;

**“New Facilities”** means new facilities, including those facilities specified in Schedule 2, immovable or movable, including vehicles, equipment, supplies and other properties, constructed, purchased or acquired by the Private party during the Agreement Period for the provision of Services in the Service Area;

**“Private Party Staff”** means qualified and experienced staff employed by the Private party to carry out the functions under Clause 20.1.

**“Performance Certificate”** means a certificate issued to the Private party by the Contracting 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 Contracting Authority;

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<sup>2</sup>Any proposed refinancing extended by the lenders would be subject to consent from the Contracting Authority and the Ministry of Finance and Planning according to Regulation 100 of the PPP Regulations 2020.

<sup>3</sup> 1% or such other value of percentage as agreed by both parties.



**“PPP Centre”** means the Public Private Partnership Centre established under the PPP Act;

**“Project”** means a project or service to be implemented under this agreement;

**“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, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Private party 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 body”** means any Ministry, Department or Agency of the Government; any body corporate or statutory body or authority established by the Government; any company registered under the Companies Act; (Cap 212) being a company in which the Government or an agency of the Government, is in the position to influence the policy of the company; or any local government authority;

**“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;

**“Revenue Collection Account”** means an account in which revenues collected from the project are deposited at a bank acceptable to the Contracting Authority;

**“Service Standard”** means the standards defined by the key performance indicators (**KPIs**) or targets listed in Schedule 5;

**“Services”** means the services provided under this Agreement by the Private party in the Service Area during the Agreement Period, including development, design, build, finance, operate and transfer of the Facilities;

**“Service Area”** means a portion of land assigned by the Contracting Authority including all developed areas, expansion areas and any new areas for use in order to execute the provisions of this Agreement;

**“Service Area Infrastructure”** Includes all road surfaces, landscape, utilities, buildings, parking lots, electrical transmission and related structures affixed to the assigned lands in such a manner as to be part of the realty;

**“Shareholders Agreement”** means the agreement entered into between the shareholders of the Private party;

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

**“Technical Agent”** means qualified agent appointed by both the Contracting Authority and Private party who works independently for both Parties to carry out

Performance Tests and monitoring<sup>4</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 Commercial Operation Date which is also known by its acronym as “COD”;

**“Termination Payments”** mean the amounts payable to the Private party under Schedule 7;

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

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

**“User Charge Review Cycle”** means time period after which Contracting Authority will revise User Charges as per Schedule 3;

**“Users”** mean Contracted Users and Public Users;

**“Value for Money Analysis Report”** means the report prepared by the Contracting Authority which demonstrates the criteria for affordability, value for money and substantial technical, operational and financial risk transfer in evaluation of bids;

## 2. Priority of Documents

- 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 Clauses of the Agreement and its Schedules and the Lease, the Clauses of this 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: Map of 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: Termination Payments.

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<sup>4</sup>For small scale projects, an engineer from the Contracting Authority can monitor the progress of the construction periodically and Technical Agent may not be required to be appointed

- (h) Schedule 8: Conditions Precedent.
  - (i) Schedule 82: Equity Shareholders of the Private party
  - (j) Schedule 10: Baseline Taxes
  - (k) Schedule 11: Payments to/from the Contracting Authority
  - (l) **Error! Reference source not found.:** Lease Agreement
  - (m) Schedule 13: 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 AND RENEWAL

### 3. Commencement

- 3.1 This Agreement shall become effective from the Effective Date. The Private party and the Contracting Authority shall use their best efforts and endeavours to meet 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>5</sup> days after the date of signing this Agreement. When the conditions precedent set out in Schedule 8 are fulfilled (**Conditions Precedent**), the Contracting Authority shall issue a certificate of satisfaction of Conditions Precedent (**Certificate of Effectiveness**).
- 3.2 The Private party shall take over the site and commence construction activities within thirty (30) days of the Effective Date. If specified in Schedule 2, the Private party shall perform the Temporary Services construction. The Contracting Authority shall provide the Private party 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 [*insert number of days within which all conditions precedents are to be fulfilled*]<sup>6</sup> (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.

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<sup>5</sup>180 days will be for small and simple projects and 360 days will be for large and complex projects

<sup>6</sup>Between three hundred and sixty (360) / five hundred and forty (540)] days depending on the nature of the project.

#### 4. Duration and Renewal

- 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 (*[insert Agreement period]*).
- 4.2 This agreement may be renewed upon the parties mutual consent. If either party fails to notify the other party within three months prior to expiration, such party shall be deemed to have agreed on the termination there of, and the other party shall be entitled to take any action without assuming any liability for breach of agreement.

### REPRESENTATIONS AND WARRANTIES

#### 5. Private Party Representations and Warranties

- 5.1 The Private party 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 capacity to enter into this Agreement and such other agreements, being agreements to which the Private party 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; and
- (b) there is no litigation, actual or pending at the date of execution of this Agreement, which relates to the Private party and to which the Private party is a party or of which the Private party is aware which would materially affect the Private party or its ability to perform its Obligations under this Agreement and the transactions contemplated by this Agreement.

#### 6. Contracting Authority Representations and Warranties

- 6.1 The Contracting 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 Contracting Authority is subject to; and
- (b) it will provide to the Private party all necessary access to, and exclusive use of, the site without responsibility for any **debt, tax,** charges on such assets and without interruption from any other person provided that the Contracting 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 Private party shall make reasonable provision to assist the Contracting Authority in such event.

### RIGHTS AND OBLIGATIONS

#### 7. Private party Obligations

- 7.1 The Private party shall:

- (a) 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 or certificates;
- (e) obtain all necessary licenses, permits, certificates and warranties necessary to carry out the Services in accordance to the Applicable Laws;
- (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 Laws and to conform to the Service Standards and Prudent Industry Practices;
- (h) not dispose any right to the land or Facilities thereon without the written authorisation of the Contracting 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 Commercial Operation Date (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 Contracting Authority with monthly statements of account;
- (k) obtain appropriate insurance coverage for claims against losses, damages to assets, accidents, injury or death for the Agreement Period with a reputable local Tanzanian insurance company as further described in Clause35;
- (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 Contracting Authority to allow effective monitoring;
- (o) publicise Public User Charges prominently at the Facilities;
- (p) be responsible for payment of 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) make payments to the Contracting Authority in accordance with Schedule 11;
- (r) comply with the requirements under Schedule 9and seek prior written approval from the Contracting Authority prior to undertaking/implementing

any change of controlling interest in excess of equity shareholding of the Private party either through a single or multiple transfers and/or allotments as provided in Schedule 9;

- (s) assume technical, financial and operational risks arising from the performance of its functions under this Agreement;
- (t) carry out geotechnical survey and tests at the Site before the Effective Date;
- (u) submit detailed design, drawings and layout for the Project to the Contracting Authority in accordance with Clause **Error! Reference source not found.**;

## 7.2 Detailed Report, Design and Drawings

### (a) Preparation of Drawings:

- (i) the Private party may, subject to the design requirements, adopt with or without modification the drawings made available by the Contracting Authority or adopt its own drawings, provided that the Private party shall in any event be solely responsible for the adequacy of the drawings. Also if the Private party proposes any modifications to the drawings made available by the Contracting Authority or submits alternate drawings or drawings for any item for which no drawings are made available by the Contracting Authority, the same shall be subject to review by the Contracting Authority as provided in Clause **Error! Reference source not found.**(b).

### (b) Review of Drawings

- (i) The Private party shall submit a copy of each of the drawings to the Contracting Authority in such a sequence as is consistent with construction requirements. By forwarding drawings to the Contracting Authority, the Private party 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 fifteen (15) days of receipt of the drawings, the Contracting Authority shall review the same and convey its comments and/or observations to the Private party on conformity of the drawings with the design requirements. If the comments and observations of the Contracting Authority indicate that the drawings are not in conformity with the design requirements, such drawings shall be revised by the Private party to the extent necessary and resubmitted to the Contracting Authority for further review. The Contracting Authority upon receiving approval of PPP Centre shall give its observations, if any, within 15 days of receipt of the revised drawings, which shall be taken into account by the Private party while finalising such drawings;
- (iii) notwithstanding any review or failure to review by the Contracting Authority, the Private party 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) the detailed project report, design and drawings referred to under para (a) and (b) of this clause save for small scale PPP Projects shall be subject for approval within twenty one (21) working days by the PPP Steering Committee after the recommendations submitted by the PPP Centre.;
- (c) Within ninety (90) days of COD, the Private party shall furnish to the Contracting 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. Private Party Rights

- 8.1 Notwithstanding the rights provided elsewhere in this Agreement, the Private party is entitled for the Agreement Period to:
- (a) use the Facilities in accordance with the Lease Agreement 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 **Error! Reference source not found.**;
  - (d) conclude Contracted User Agreements with Contracted Users for the supply of the Services;
  - (e) apply User Charges as approved by the relevant 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) make payments or receive payments in accordance with Schedule 11;
  - (h) be paid the Termination Payments, if any, in accordance with Schedule 7; and
  - (i) 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.

## 9. Contracting Authority Obligations

- 9.1 The Contracting Authority shall,
- (a) grant to the Private party 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 Private party;
  - (b) facilitate the return of any vendors and Users disrupted by the construction once construction is complete in accordance with the livelihood protection plan for the PPP Project;

- (c) undertake strict enforcement and apply penalties, where necessary, on unauthorised similar business that operate within [insert number of...] kilometre square (...km<sup>2</sup>) of the Project Site. The Contracting Authority shall vacate such unauthorised similar business within three weeks of being notified of the existence of the unauthorised similar business, failure of which the Contracting Authority shall be required to pay compensation to the Private party;
- (d) provide for an improvement of support infrastructure, such as strengthening and widening of the access roads up to the [*insert Service Area*] by [*specify date*], failure of which the Contracting Authority shall be required to pay compensation to the Private party;
- (e) provide a proper electricity and water drainage connectivity by [*specify date*] and regular flushing of the drains near the [*Service Area*], at least once in every [*specify duration*];
- (f) provide the Private party with access to the public solid waste dump / land-fill site for disposal of solid waste generated from the Facilities;
- (g) provide for all approvals and licenses within the Contracting Authority's responsibility, in a timely manner, in relation to development, construction, utilities and operations of the Facilities;
- (h) assist the Private party, in a timely manner, to coordinate with other government authorities, to obtain all other 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) grant the Private party the right to provide Services to Users in the Service Area;
- (j) provide a copy of the terms of relevant permits to the Private party;
- (k) make all reasonable efforts to assist the Private party 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 **Error! Reference source not found.**;
- (l) not interfere and cause its employees and sub-contractors not to interfere or obstruct the Private party in carrying out its obligations under this Agreement and providing the Services;
- (m) give the Private party full access to all necessary information, plans, policies, papers, reports and data in order to enable the Private party to carry out the services and assist the Private party to obtain, from the Government, local government or statutory bodies, all necessary consents and permits as required by Applicable Laws;
- (n) monitor the performance of the Private party under this Agreement in accordance with Schedule 5;
- (o) cooperate with the Private party and facilitate periodic consultations with Users and stakeholders in relation to the Facilities in accordance with the community engagement plan; and



- (p) ensure 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.

## 10. Contracting Authority's Rights

- 10.1 Notwithstanding the rights provided under this Agreement, the Contracting Authority is entitled for the Agreement Period to:
- (a) Depending on the nature of the project be paid rent by the Private party for the lease of the Service Area as per the Lease Agreement under **Error! Reference source not found.**;
  - (b) be given reasonable access during normal working hours to the Facilities, premises, works and sites of the Private party for the purposes of performance monitoring, inspection and certification to the extent this does not disturb the Private party's performance of its obligations under this Agreement. For the avoidance of doubt the term "Contracting 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 Private party to provide periodic performance reports in accordance with Schedule 4; and
  - (d) to review the detailed project report, design and drawings and "as built" drawings submitted to it by the Private party and provide its comments and/or observations to the Private party.
- 10.2 The United Republic of Tanzania and any of its assets, funds or revenues, inside and outside the united Republic of Tanzania shall enjoy rights of immunity from the jurisdiction of any court, set-off, or any legal processes (whether through service or notice, attachments prior to judgement, attachment in aid of execution, execution or otherwise), and as provided under the Laws of Tanzania.

## 11. Contracting Authority Monitoring and Review

- 11.1 The Contracting Authority shall monitor the Private partys performance of its obligations under this Agreement.
- 11.2 The Contracting Authority shall review all reports submitted by the Private party 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 Private party shall ensure that the Facilities pass the Performance Tests by the relevant Time for Completion.
- 12.2 The Private party is entitled to an extension of a Time for Completion if delayed 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 Private party's attention or within its knowledge (as is evidenced by written records) or reasonably foreseeable to the Private party using Prudent Industry Practice from the data supplied to the Private party by the Contracting Authority;
- (e) any breach of this Agreement, delay, impediment or prevention by the Contracting Authority; or
- (f) an action or inaction by a legally constituted public body which has delayed, impeded or prevented the Private party from developing the Facilities other than due to the negligence or wilful default of the Private party.

12.3 If the Private party intends to apply for an extension of a Time for Completion, the Private party shall give notice to the Contracting Authority of such intention as soon as possible, together with supporting information. The Private party 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 Contracting Authority. The Private party shall permit the Contracting Authority to inspect all such records, and shall provide the Contracting Authority with copies as required. The Contracting Authority shall respond within twenty eight (28) days of receiving a claim from the Private party, by either confirming the Contracting 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 Private party will provide monthly status reports to the Contracting 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 Private party fails to comply with Clause 12.1 for reasons other than those set out in Clause 12.2, the Private party shall pay to the Contracting Authority the Liquidated Damages for such delay (which sum shall be the only monies due from the Private party 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 Private party pursuant to this Clause 13.1 shall not exceed the amount of performance security [ ]<sup>7</sup>.

- 13.2 If the Private party delays by the number of days for which the maximum amount of liquidated damages can be deducted, the Contracting Authority shall be entitled to terminate this Agreement in accordance with the provisions of Clause 22.

#### **14. Performance Tests**

- 14.1 The Private party 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 Private party shall give the Contracting Authority seven (7) days' notice of the date on which the Private party will carry out the Performance Tests and invite the Contracting Authority to attend. The Performance Tests may proceed as scheduled irrespective of whether the Contracting Authority will be in attendance or not.
- 14.2 As soon as the Facilities have passed the Performance Tests, the Private party shall provide the Contracting Authority with a certified report of the results of all such Performance Tests.
- 14.3 If the Facilities fail the Performance Tests, the Private party shall promptly and in any event within fourteen (14) days inform the Contracting 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 shall notify the Contracting Authority and the Private party of the result of the Performance Tests and proceed to issue the Private party with a performance certificate. Issuance of the Performance Certificate will mark the COD.

### **USER CHARGES AND USER RELATIONS**

#### **15. User Charges**

- 15.1 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 reviewed and amended in accordance with the Contracting Authority's Subsidiary legislations for each cycle on the first day of a financial year, every [insert number of years] as computed in Schedule 3.

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<sup>7</sup>The maximum amount would be kept at the amount of performance guarantee. The liquidated damages for a delay in development would be calculated as 0.01% of Capital Cost for a day's delay after the relevant Time for Completion. .

**16. User Relations**

- 16.1 The Contracting Authority will support the Private party in authorising and enforcing User Charges as per Schedule 3. If the Subsidiary legislations are not revised by the Contracting Authority as per, and if the User Charges are not enforced, then the shortfall would be paid by the Contracting Authority.
- 16.2 All User Charges collected shall be immediately deposited in the Revenue Collection Account.
- 16.3 The Private party shall implement their responsibilities set out in the Project's Community Engagement Plan, inclusive of operation or a grievance redress mechanism that will record all complaints/accidents/incidents as reported by Users. The Contracting Authority shall review the database of complaints and incidents lodged monitor the resolution of accidents, and report on the resolution in accordance with the Project's Community Engagement Plan.

**REPORTING****17. Reporting**

- 17.1 The Private party shall be responsible for submitting periodic reports to the Contracting 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 Contracting Authority, subject to the Lease Agreement and prior approval of the Contracting Authority for the assignment of leasehold rights in favour of Lender(s) pursuant to the financing arrangements.

**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 Private party in the course of performing its obligations under this Agreement shall remain property of the Private party; and the Private party hereby grants to the Contracting 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 Private party shall provide copies of all significant contracts with the sub-contractors to the Contracting Authority for their review before signing. On expiry or termination of the Agreement the Private party shall deliver a copy of all documents and software to the Contracting 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.

19.3 The Private party may retain copies of such documents and software where applicable.

## 20. Private party Staff

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

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

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

## 21. Liability

21.1 The Private party 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 6.

21.2 The Private party 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 Contracting Authority to perform its obligations under this Agreement; or
- (b) Force Majeure events.

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

- (a) in the event that there is no fraud, gross negligence or wilful misconduct, it shall not exceed TZS [ insert amount]<sup>8</sup>:
  - (i) for Liquidated Damages for delay during the Construction Period; and
  - (ii) for each calendar year of the Agreement Period arising under or in relation to this Agreement.

- (b) in the event that there is fraud, gross negligence or wilful misconduct, it shall be [insert number] times the amount referred to in Clause 21.3(a) above.

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

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<sup>8</sup>The maximum amount would be kept at the amount of performance guarantee. The liquidated damages for a delay in development would be calculated as 0.01% of Capital Cost for a day's delay after the relevant Time for Completion for each of the KPIs as mentioned in Schedule 5. After exhaustion of performance security, the Operator's event of default could get triggered.

- 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 cause the insurance Company to 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 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 shall come to an end on the Expiry Date unless terminated earlier for the circumstances provided under this Clause 22 and any other provisions under this Agreement.
- 22.2 The Contracting Authority is entitled to terminate the Agreement early by:
- (a) giving three (3) months' written notice (which includes a one-month cure period and two-months' notice) where:
- (i) the Private party 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 Contracting Authority to the Private party requesting that such failure be cured;
- (ii) the actions of the Private party 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 Contracting Authority to the Private party requesting that such failure be cured;
- (iii) the Private party becomes insolvent or bankrupt or goes into liquidation whether compulsory or voluntary; or
- (b) giving a one(1) day notice to terminate where it has been established by relevant Authority that the Private party has engaged in corrupt or fraudulent practices in competing for or in executing this Agreement.
- 22.3 The Private party is entitled to terminate the Agreement early where:
- (a) the Contracting 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 Private party to the Contracting Authority requesting that such failure be cured; or
- (b) the Lenders instruct the Private party to terminate this Agreement due to either the Private party or the Contracting Authority's material failure to fulfil its obligations under this Agreement, after the lapse of six (6) months' written

notice from the Lenders to the Private party requesting that such failure by the Private party or the Contracting Authority be cured.

- 22.4 In respect of Clause 22.2(a)(ii)22.2(a)(ii)and 22.2(a)(iii) 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 Clause28.5.
- 22.6 In the case of prolonged Material Adverse Government Action, the Parties may terminate this Agreement in accordance with Clause29.4.

### **23. Termination Payments**

- 23.1 Upon early termination of this Agreement, the Contracting Authority shall pay to the Private party the termination fees set out in Schedule 7.

### **24. Handover**

- 24.1 On termination or expiration of this Agreement, the Private party shall handover to the Contracting Authority the Facilities in good working condition (except wear and tear) and operational control of the Facilities and shall not remove any part of the Facilities that are necessary for its operations. The handover of the facilities by the Private party shall be done in accordance with the procedures and conditions set out in the PPP Regulations.
- 24.2 Except in the case of early termination pursuant to Clauses 22.2(a)(ii)22.2(a)(ii)and 22.2(a)(iii), the Private party and the Contracting Authority shall cooperate as reasonably necessary to comply with the handover procedure provided under Schedule 13.

### **25. Contracting 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 the Contracting Authority under Clause 22, or in case of manifest emergency, the Contracting Authority may itself take over on a temporary basis the operation and maintenance of the Facilities. Alternatively, the Contracting Authority may cause a third party, including but not limited to the Lenders, to carry out the same until such time as Private party can demonstrate that it is again able to carry out its obligations in accordance with this Agreement.
- 25.2 The costs incurred by Contracting Authority in relation to such operation and maintenance shall be recoverable by Contracting Authority from Private party if the emergency arises from, or is a case of default by, Private party.
- 25.3 The exercise by the Contracting Authority of the Contracting Authority's step-in rights shall not affect any other right or remedy the Contracting Authority may have, nor shall the existence of the Contracting Authority

step-in rights or its exercise thereof relieve the Private party 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 Private party and Project receivables, such as in the form of User Charges and in the event of default by the Private party in failing to complete or implement the Project, the Lenders will have the right to substitute the Private party subject to the approval of the Contracting Authority, on the same terms and conditions as applicable to the previous Private party or with such modifications as may be specifically approved by the Contracting Authority.
- 26.2 In the event that the Private party will be substituted, the Contracting Authority shall ensure that the substitute is procured in accordance with Applicable Laws.

## **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, boycotts or other industrial action are reasonably within the power of the Party invoking Force Majeure to prevent), and with respect to the Private party 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.

## 29. Material Adverse Government Action

- 29.1 For the purposes of this Agreement, “**Material Adverse Government Action**” means any act or omission by the Contracting Authority or any relevant Public body or event set out in Clause 29.2 below, which occurs during the term of this Agreement and which (i) directly causes the Private party 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 body to grant to the Private party or renew any permit or approval that is required for the purposes of the Private party's proper performance of its obligations and/or enforcement of its rights under this Agreement, in each case within the required timeframe under laws of Tanzania, except where such failure results from the Private party's non-compliance with laws of Tanzania;
  - (b) expropriation, compulsory acquisition or nationalization by any relevant Public body of any asset or right of the Private party, including any of the shares in the Private party;
  - (c) any competing public investment project that is tendered or implemented by the Contracting Authority within an area of [ *insert number of* ] square kilometre from the Facilities, during the first 10 years of this Project;
  - (d) change of law, which directly causes the Private party to be unable to comply with all or some of its obligations under the Agreement and 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 Private party (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 Private party 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 Private party 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 Private party shall be entitled to compensation as set out under Schedule 7.

### 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 following the notice 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 in accordance with Arbitration Act and its Regulations of 2020. 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 Laws. Arbitration shall be conducted in accordance to the rules of arbitration of National Construction Council<sup>9</sup>
- 30.4 The proceedings shall take place in [*insert name of a place in the United Republic of Tanzania*].
- 30.5 All proceedings shall be conducted in English, however the Parties may agree on any other language to be used.
- 30.6 For the avoidance of doubt, the Parties obligation to perform this Agreement shall continue on the matter which is not related to the dispute, notwithstanding any ongoing dispute process under Clause 30.

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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 (**TIArb**).

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

**31. Applicable Law**

- 31.1 This Agreement shall be governed by and construed pursuant to the Laws 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 Private party nor its sub-contractors nor the Private party 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.

**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 Contracting Authority or the Private party may be taken or executed by the authorised representatives specified in the Clause 47.1.

**35. Insurance**

- 35.1 The Private party shall maintain adequate insurance cover against the following:
- (a) The Private party's general liability arising out of this Agreement to a level not less than *[Insert amount]*. The Contracting Authority shall have the right to review and approve all policies required. The Private party shall by certificates and deposit of copies of insurance policies, provide proof of compliance;
  - (b) tortious liability;
  - (c) risks arising from hazards, deficiencies or failure to dispose of waste materials including those relating of the Facilities;
  - (d) any other risks compulsorily provided for by the laws of Tanzania or the rules and regulations governing the Contracting Authority.
- 35.2 The Private party shall purchase and maintain, at its expense, insurance cover in the name of the Private party and the Contracting Authority against all such loss, damage or destruction to the Facilities and such other fixtures owned by the Contracting Authority and found within the Service Area and/or being in use within the Service Area.

- 35.3 All insurance policies relating to the Facilities (or appropriate endorsements, certifications or other satisfactory evidence of insurance) required to be produced by the Private party under the terms of this Agreement shall be in the name of the Contracting Authority and the Private party, be subject to approval by the Contracting Authority and copies thereof be delivered to the Contracting Authority. All assets owned by the Private party shall be insured by the Private party in the name of the Private party only. All insurance policies must be purchased from reputable local insurers.
- 35.4 The proceeds from such property insurance cover shall be utilized to repair or reconstruct the installations damaged or destroyed with the end view of having the Facilities restored to their condition immediately prior to the event which occasioned the loss or damage. In no case shall the insured amount limit the responsibilities of the Private party under this Agreement.
- 35.5 All insurance policies required by this Agreement shall provide that they shall not be cancelled or terminated without thirty (30) days prior written notice to the Contracting Authority.
- 35.6 In the event that the Private party at any time refuses, neglects or fails to secure and maintain in full force and effect any and all of the insurance required under this Agreement, the Contracting Authority may procure or renew such insurance and all amounts of money expended by the Contracting Authority in connection therewith shall be paid by the Private party, failing which collection may be made by the Contracting Authority in accordance with the provisions of Clause 36.4 against the Operations & Maintenance Bond.
- 35.7 During the continuance of this Agreement, the Private party shall be liable for any and all claims, losses, damages, and liabilities relating to the Facilities, within the Service Area and the Services, and shall keep the Contracting Authority fully indemnified against any and all claims and other legal actions for damages arising there from.
- 35.8 Nothing in this Agreement shall impose any liability upon the Private party in respect of any proceedings or claims arising from the acts of the Contracting Authority, its employees or agents, except if such acts arise, directly or indirectly from the Private party's negligence.

## 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 Contracting 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 Private party shall provide the Contracting Authority with the Performance Security which shall be termed as the "**Development Bond**". The Development Bond shall permit the Contracting Authority to make calls on the Development Bond, where the Contracting Authority has met its obligations under this Agreement, but the Private party has failed to fulfil the Conditions Precedent as provided under Schedule 8.

The Development Bond shall be maintained until the Effective Date and be issued in an amount which would be equal to 3% of the Capital Cost i.e. TZS [*insert amount*].

- 36.3 On or before the Effective Date, the Private party shall provide the Contracting Authority with the Performance Security which shall be termed as the “**Construction Bond**”. The Construction Bond shall permit the Contracting 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 Contracting Authority may make calls on the Construction Bond, where the Contracting Authority has met its obligations under this Agreement, but the Private party has failed to fulfil the Conditions Precedent as provided under Schedule 8. 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 [*insert amount*].
- 36.4 Within 15 days of issue of Performance Certificate, the Private party shall provide the Contracting Authority with the Performance Security which shall be termed as the “Operations & Maintenance Bond”. The Operations & Maintenance Bond shall permit the Contracting 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 Private party shall provide the Contracting Authority with the Performance Security which shall be termed as the Hand-back Bond. The Hand-back Bond shall permit the Contracting 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 13. 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 Private party shall not without the prior written consent of the Contracting Authority with the approval from the steering committee, the Minister responsible for PPP 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 Private party and/or Lender(s), of leasehold rights in the land and Facilities owned by the Contracting

Authority shall be subject to prior written consent of the Contracting Authority. Such consent not to be unreasonably withheld or delayed.

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

### **38. Disclosure of information**

- 38.1 The Private party agrees to facilitate the Contracting Authority's compliance with its disclosure requirements in accordance with Applicable Laws.

- 38.2 Where the Contracting Authority receives a request for information in relation to information that the Private party is holding and which the Contracting Authority does not hold itself, the Contracting Authority shall refer to the Private party such request for information that it receives as soon as practicable and, in any event, within seven working days of receiving the request and the Private party shall:

- (a) provide the Contracting Authority with a copy of all such information in the form the Contracting Authority requires as soon as practicable and in any event within seven working days (or such other period as the Contracting Authority acting reasonably may specify) of the Contracting Authority's request; and
- (b) provide all necessary assistance as reasonably requested by the Contracting Authority in connection with any such information to enable the Contracting Authority to respond to a request for information in accordance with Applicable Laws.

- 38.3 The Private party shall ensure that all information held on behalf of the Contracting Authority is retained during the term of this Agreement for at least two years after the Agreement has been terminated and shall permit the Contracting Authority to inspect such information as requested from time to time. After expiration of two years, the said information shall cease to have legal validity.

- 38.4 Where the Contracting Authority receives a request for information, the Contracting Authority shall be responsible for determining, at its absolute discretion, whether information is exempt from disclosure and for determining what information will be disclosed.

### **39. Publication of Information**

- 39.1 The Parties agree that the Contracting Authority, subject to Clause **Error! Reference source not found.**(Confidentiality), is entitled to disclose the following:

- (a) procurement documents and information in accordance with the Public Procurement Act (Cap 410);
- (b) all documents including this Agreement and other associated documents (including the Feasibility Study Report and the Value for Money Analysis Report);
- (c) summary contract information; and
- (d) performance information related to this PPP Agreement.

39.2 The Private party acknowledges that the Contracting Authority intends to publish the information mentioned under Clause 39.1 above, subject to Clause **Error! Reference source not found.**(Confidentiality), on a web-based platform owned by the Contracting Authority.

#### 40. Confidentiality

##### *Confidential Information*

40.1 For the purpose of this Agreement, Confidential Information means:

- (a) information (however it is conveyed or on whatever media it is stored) the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive intellectual property rights and know-how of either Party, including all personal data and sensitive personal data; or
- (b) any other information (however it is conveyed or on whatever media it is stored) which may fall within the definition of “confidential information” .

40.2 Without prejudice to Clauses 38 and 39, 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 Applicable Law or to perform its obligations under this Agreement.

##### *Confidential Information Related to Public Users*

40.3 Where the Private party, in carrying out its obligations under this Agreement, is provided with personal Information relating to Public Users the Private party shall not disclose or make use of any such information other than for the purpose for which it was provided, unless the Private party has obtained the prior written consent of that Public User and has obtained the prior written consent of the Contracting Authority. Notwithstanding, the Private party shall be required to disclose any such information to various Government authorities dealing with revenue collection or combating corruption (among others) as may be required under Applicable Law. On such occasions, the Private party shall not provide prior notice or seek prior consent from the Users as any such notice may interfere with any investigation or inquiry.

40.4 On or before the expiry date, the Private party shall ensure that all documents or computer records in its possession, custody or control, which contain personal information relating to Public Users including any documents in the possession, custody or control of a sub-contractor, are delivered up to the Contracting Authority.

40.5 Where parties intend to disclose any information and documents related to the project, procedures provided under clause 39 shall be adhered.

#### 41. Performance information

41.1 The Parties agree that the Private party shall provide to the Contracting Authority performance report as set out in Schedule 4 of this Agreement for the duration of this Agreement. This will include a summary of Service Standards and target levels within [*insert number*] working days after signature of this Agreement as well as

each year during the term of this Agreement on information on performance against target levels and performance failure as well as links to performance assessments.

#### **42. Relations between the Parties**

- 42.1 The Private party 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 Private party, the Lender and the Contracting Authority.
- 42.2 All Private party Staff and sub-contractors shall be under the complete control of the Private party and nothing contained in this Agreement or any sub-contract awarded by the Private party shall be construed to create any contractual relationship between the Private party's representatives or subcontractors and the Contracting Authority.
- 42.3 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 Private party, the Lender or the Contracting Authority to be a partner, agent or local representative of the other or create a fiduciary relationship or trust between them.

#### **43. Variations**

- 43.1 Any variations to this agreement shall be agreed and amended by the parties provided that such variations are approved by the respective contracting authority and PPP Steering Committee, and shall be vetted by the Office of Attorney General.
- 43.2 Notwithstanding the requirement in clause 43.1, all amendments to the agreement shall not affect the value for money, affordability, agreed technical, operational and financial risk transfer to the private party.
- 43.3 Any variations effected under clause 43.1, shall ensure that the costs associated with such variations are fairly compensated amongst the parties in accordance with standard commercial terms
- 43.4 All variations to this Agreement shall be binding only if in writing, signed by duly authorised representatives of each of the Parties.

#### **44. Entire Agreement**

- 44.1 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.

#### **45. Severability**

- 45.1 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.



**46. Non-Waiver**

46.1 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.

**47. Notices**

47.1 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 Contracting Authority: [ ]

Attention: [ ] (Authorised Representative)

Address: [ ]

The Private party: [ ]

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.

**48. Further Assurances**

48.1 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.

**49. Language**

49.1 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**

**[Contracting Authority to attach Service Area details i.e. project sites and project facilities for the proposed project.]**

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

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

## Schedule 2–Project, Facilities and Specifications

Note:

This schedule is project and sector-specific and would vary from one project to another. 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 Contracting Authority and included here before releasing the bidding documents to the bidders.

<b>Existing facilities for project<sup>10</sup></b>
-----
<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

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

<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

Note:

This schedule is project and sector-specific and would vary from one project to another. 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 Contracting 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. The Private party will have the flexibility to provide for bulk or large customer discounts within each category of Users, if required. The User Charges shall be revised by applying the user charge indexation periodically in accordance with the frequency of adjustment. The Schedule should match the Contracting Authority's by-laws, amended as necessary.

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																			
-----																			

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## **Schedule 4– Reporting Requirements**

The Private party shall submit the following reports to the Contracting Authority:

### **Construction Period**

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

### **Implementation 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 Contracting 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 Private party shall be submitted to an independent financial and technical auditor at the Private party's cost. Not later than six (6) months following the end of the Financial Year, the Private party shall provide the Contracting Authority with the audited Annual Report.
- 1.6 Any other reporting requirements that maybe imposed on the Private party by the Applicable Law.

## **Schedule 5– Performance Monitoring**

Note:

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. 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 Contracting Authority and included here before releasing the bidding documents to the bidders.

*[insert KPIs or Targets relevant to the Project]*

### Schedule 6– Liquidated Damages Payments

If the Private party'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 Contracting Authority, the Private party at the end of each quarter will be subject to the following Liquidated Damages Payments owed to the Contracting 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-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 Contracting 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 Contracting Authority shall compensate the Private party as follows:

Category No.	Category of termination	Amount Payable
A.	Termination for Contracting Authority Default or Prolonged Material Adverse Government Action	Sum of the following: a)the Outstanding Senior Debt, as on the date of termination; b)plus any Sub-Contractor Breakage Costs; c)plus, Initial Equity, less the distributions paid by the Private party to its shareholders as of the date of termination of the PPP Agreement; d)plus, any outstanding principal of the Subordinated Finance Documents, if applicable; 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 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 Private party may have (such as, any residual insurance proceeds).
B.	Termination for extended Force Majeure due to natural events	Sum of the following: a)the Outstanding Senior Debt, as on the date of termination; b)less, any amounts received or to be received on or after termination date as insurance proceeds.
C.	Termination for extended Force Majeure due to indirect political events	Sum of the following: a)the Outstanding Senior Debt, as on the date of termination; b)plus, any Sub-Contractor Breakage Costs; c)(c) plus, Initial Equity, less the distributions paid by the Private party to its shareholders as of the

		<p>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 Private party may have (such as, any residual insurance proceeds).</p>
D.	Termination for Private party 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 Contracting Authority; plus
- (iii) the total amount of any other outstanding debt incurred by the Private party that was approved by the Contracting Authority, less any insurance proceeds received by the Private party 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 Private party on the termination date; any amounts payable by the Lenders to the Private party 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 Private party 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 Private party 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 Private party plus any such other equity contributions approved by the Contracting Authority,

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

**“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 8- Conditions Precedent

### Conditions Precedent to be fulfilled by the Private party:

1. provide a Project Preparation Fee<sup>11</sup> as a consideration for the cost and efforts expended in preparing the PPP Project, within forty five (45) days from the signing of this PPP Agreement;
2. provide a Construction Bond in accordance with Clause 36.3;
3. obtained Financial Close and the Private party obtaining from its finance institution confirmation that the funds for financing the New Facilities are available for drawdown;
4. subject to paragraph 5 below, the Private party shall have received and provided to the Contracting Authority all construction contracts with its contractors. These construction contracts should not have restrictive terms which limit the ability of the Private party to perform its obligations under this Agreement;
5. the Private party 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;
6. all construction insurance policies required under Clause 35 shall have been obtained by Private party and shall be in full force and effect to the reasonable satisfaction of Contracting Authority;
7. provides written evidence, certified by the Lenders' representative and is reasonably satisfactory to Contracting 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;
8. provide the Contracting Authority with a duly executed Shareholders Agreement entered into by all the shareholders of the Private party which stipulates the shareholders' undertaking in the Project. The Shareholders Agreement shall not be amended without the written consent of Contracting Authority;
9. submission and approval of the financial model; and
10. obtained all approvals, licenses and permits, in a timely manner, in relation to development, construction, utilities and operations of the Facilities.

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

1. ensure adequate compensation (in case of land acquisition) has been paid for access to the Site and any relocation is carried out before the Effective Date in a peaceful and organized way;

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<sup>11</sup>The amount of Project Preparation Fee could be kept in the range of 1.0% - 2.0% of the project cost. The actual percentage would be estimated based on the actual costs incurred and decisions on how much of the cost will be recovered from the Successful Bidder. The fee shall not include any element of profit

2. lease the Service Area after execution of the Lease Agreement between the Private party and the Contracting Authority



### Schedule 9- Equity Shareholders of the Private party

#### [A] Initial Equity Shareholders

The initial equity shareholders of the Private party 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 Private party

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 Private party 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 Private party for 2 years after the Completion Date.

**Schedule 10 - Base Line Taxes**

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



**Schedule 11- Payments to/from the Contracting Authority**

Year	Payment to/from the Contracting Authority	Amount (TZS million)
0	Payment	
1	Payment	
2	Payment	
3	Payment	
4	Payment	
5	Payment	
6	Payment	
7	Payment	
8	Payment	
9	Payment	
10	Payment	
11	Payment	
12	Payment	
13	Payment	
14	Payment	
15	Payment	

\* Note: A positive amount is a payment to the Contracting Authority by the private party. A negative amount is a payment by the Contracting Authority to the private party.

**Schedule 12**

**THIS LEASE AGREEMENT** hereinafter referred to as "**Lease**") is entered into on this [*insert date*] of [*insert month*], [*insert year*].

BETWEEN

**[*insert name of the Contracting Authority*] in this agreement referred to "Lessor"** a government Contracting Authority established and existing under the laws of the United Republic of Tanzania with registration number [*insert registration number*] and having its office at [*insert place*] ("**the [*insert the name of Lessor*]**") which expression shall, where the context so admits, include its successors and assigns of the one part;

AND

**[*insert name of the Operator*] in this agreement referred to "Lessee"** a company formed and existing under the laws of of Tanzania] with company registration number [*insert registration number if any*] and having its registered office at [*insert registration number*] (***insert the name of the 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 [*insert title number*], situated at Plot No. [*insert plot number*] Block [*insert number*] , with the total area of [*insert number*] square meters (hereinafter referred to as the "**Property**"). The details of the Property, including any evidence thereof, are as described in the Schedule I below 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 [*insert the intended project*]. The details of the Fixtures and Fittings available in the Property as of the Completion Date are as described in the Schedule II below and deemed to be incorporated into this Lease.
- C. This Lease shall be read together with the PPP Agreement entered into between the Contracting Authority and Operator on [*insert date the PPP Agreement*]. Any definitions used in this Lease shall have the same meaning as the meaning ascribed in the PPP Agreement. Where there is a conflict between the definitions in this Lease and 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, leases and demises unto the Lessee the Property for a term of [*insert number of years*] years, commencing on the effective date [*insert date*].

- 1.2. Subject to Clause **Error! Reference source not found.**, this Lease shall become effective upon [signing by both Parties].

## 2.Rent:

- 2.1. The rent shall be paid in the manner agreed by the Parties at the amount of Tanzanian shilling [*insert amount*] per month [*insert number of months*]/year].

## 3.Completion

- 3.1. This Lease shall expire at the end of the PPP Agreement Period. Where there arises a need for extension of the PPP Agreement, the Lease be subject to extension upon agreement by the Parties.

## 4.Condition of the Property

- 4.1. The Lessee acknowledges that, prior signing of this Lease, the Lessor has given the Lessee and those authorised by the Lessee, the right 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, complete or delay completion of the grant of the Lease due to any event occurring after the date of this Lease that may results in to:
- (a)any damage to the Property or any part of it;
  - (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 referred to in Clause**Error! Reference source not found.** of this Agreement (i.e. TZS [*insert amount*] (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 covenant with the Lessor:

- 6.1. Throughout the Term, the Lessee shall pay the electricity, water, telephone, sewage and other utilities charges accrued during the period of the Lease.
- 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 Laws 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 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 Laws. 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 **Error! Reference source not found.**, the Lessee shall, on assistance of Lessors 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 Laws.
- 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.
- 6.13. That upon termination or on exercising the right to terminate the Lease pursuant to Clause **Error! Reference source not found.** 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, 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 or fixtures constructed by the Lessor thereon) or any part thereof by the Government or Municipal local or other Contracting 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 (save for 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 or omission of Lessee, and requiring the Lessee to repair or 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; or
  - (c) at reasonable times and upon prior issuance of 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 **Error! Reference source not found.** 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 or 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 the manner as provided in 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 or 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 the manner as provided in 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 laws

14.1. This Lease shall be governed by and construed in accordance with the laws 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 post, or by sending the same by 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:  
Telephone:  
Email: or

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

17.2. Each Party shall be entitled to amend the contact details contained in Clause **Error!**

**Reference source not found.** 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 **[insert name of the Lessor]**

And **DELIVERED** in the presence .....

**SEAL**

of us this *[insert date]* day of *[insert month]* *[insert year]*

Full Name: *[insert name]*

Signature:

Address: *[insert address]*

Designation: *[insert designation]*

)

)

Full Name: *[insert name]*

Signature:

Address: *[insert address]*

)

Designation: *[insert designation]*

**SEALED** with the Common Seal of )

**[NAME OF THE LESSEE]**

And **DELIVERED** in our presence ).....

this *[insert date]* day of *[insert month]* *[insert year]* **SEAL**

Full Name: *[insert name]*

Signature:

Address: *[insert address]*

Designation: *[insert designation]*

Full Name: *[insert name]*

Signature:

Address: *[insert address]*

)

Designation: *[insert designation]*

-

## **Schedule I**

[Certificate of Title and the Property]

## **Schedule II**

### Fixtures and Fittings

### Schedule 13-Handover Procedure

1. About 3 years prior to the normal expiry of the Agreement, an independent Technical Agent shall be jointly engaged by the Private party and the Contracting Authority, on an equal cost sharing basis.
2. About 30 months prior to the normal expiry of the Agreement, the Private party 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 Private party's proposal or cause the Private party to modify its rectification proposal, as appropriate, within 30 days after receipt of the notice from the Private party. 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 Private party shall carry out the renewal works at its own cost.
5. About 18 months prior to the normal expiry of the Agreement Period, the Private party 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 Private party shall also conduct trainings to the Contracting Authority's staff on how to operate the Facilities.
6. Within 30 days after the completion of the Second Inspection, the Private party 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 Private party, object to the proposed revisions by notice to the Private party, giving details of the grounds for such objection and shall give the Private party 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 Private party 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 Contracting Authority has been furnished by the Private party, 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 RevenueCollection Account shall be released from the Revenue Collection Account to the Private party.

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 Private party.