

**MODEL IMPLEMENTATION AGREEMENT**

**between**

**THE GOVERNMENT OF THE UNITED REPUBLIC OF TANZANIA  
THROUGH THE MINISTRY OF ENERGY (MoE)**

**and**

***[THE PROJECT COMPANY]***

**FOR**

**THE DEVELOPMENT OF *[NAME OF THE PROJECT, CAPACITY &  
TECHNOLOGY OF THE POWER PLANT]* AT *[LOCATION OF THE POWER  
PLANT]***

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**THIS IMPLEMENTATION AGREEMENT** (hereinafter referred to as the "Agreement") is made this .....day of ..... [year];

**BETWEEN:**

The Government of the United Republic of Tanzania acting through the Ministry of Energy having its office located at Nishati Street, Government City – Mtumba, Dodoma, Tanzania (hereinafter referred to as "**the Government**") on one part;

**AND**

*[Name of the Company]*, a company incorporated under the Laws of Tanzania, of P.O. Box [insert address], having its registered office located at [Location], Tanzania (hereinafter referred to as "**the Project Company**") on the other part.

**WHEREAS:**

- (A) The Government has determined the needs for additional power generation capacity and intends to involve the private sector;
- (B) The Government has adopted policies to promote private sector participation in the development, financing, construction, ownership, operation and maintenance of power generation projects in order to ensure reliable, affordable and sustainable electricity supply;
- (C) The Project Company has agreed to develop, finance, construct, own, operate and maintain a [**\*\***MW] power generation facility based on [technology] (the "Project");
- (D) The Project Company has entered into a Power Purchase Agreement dated [**\*\***] (the "PPA") with [Insert the name of the Off-taker] (the "Off-taker") for the sale of electricity generated by the Project; and
- (E) The Parties wish to set out the principles, rights, obligations, assurances and undertakings governing the implementation of the Project and the facilitation thereof by the Government.

**NOW THEREFORE**, the Parties wish to enter into this Agreement in consideration of the mutual covenants herein contained:

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires the following terms shall have the meaning set forth herein:

**"Affiliate"** means any person that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person. Where a person is a company, the ultimate holding company of such person, any holding company of such person and any subsidiary (direct or indirect) of such holding company.

**"Agreement"** means this Implementation Agreement, including all [schedules] and any other Annexes thereto, as amended or supplemented from time to time.

**"Approval"** means any acknowledgement approval, authorization, consent, concession, exemption, license, permit, privilege, and waiver from, or filing with, or notice to or from, any Government Authority required for all or any of the Project Company, the Project Company's contractors or the Lenders, and their respective employees, agents, representatives or contractors, in relation to the Project;

**"Business Day"** means any Day other than a Saturday or a Sunday, on which business by and between banks may be carried out and which is not a national public holiday in Tanzania.

**"Change in Law"** means the occurrence of any of the following after the Effective Date of the PPA which materially and adversely affects the original economic equilibrium of the project or the ability of the Project Company to perform its obligations under this Agreement or the PPA:

- (a) the enactment of any new Applicable Laws;
- (b) the repeal, amendment of any existing Applicable Laws;
- (c) the commencement of any Applicable Laws which has entered into effect after the Effective Date of the PPA;
- (d) a change in the interpretation or any application of any Applicable Laws by a judgement of a court of record which has become final, conclusive and binding or by the competent Governmental

Authority, as compared to such interpretation or application by the court of record prior to the Effective Date; or

(e) any change in the rates of any of the Taxes that have a direct effect on the Project.

**"Complex"** means the electricity generation facility located at the project site and comprising all plant, machinery and equipment, within the boundaries of the Project Site, all associate buildings, structures, roads on the Project site that are not Regional, α Rural and Urban Roads and other appurtenances, together with all required interface to be constructed for the safe, efficient and timely Operation of that facility;

**"Decommissioning"** means the dismantle, removal or disposal of power plant facilities, structure, generating units, fuel processing units and transmission equipment and environment remediation;

**"Dispute"** has the meaning given to it in Clause 10 of this Agreement;

**"Energy"** means any net electrical energy dispatched to TANESCO and delivered from the Facility in accordance with the PPA.

**"Excepted Assets"** means the assets listed under Clause 8.2 of this Agreement and any other assets protected by diplomatic and consular privileges under the 1978 State Immunity Act, Cap 33 of the Laws of the United Kingdom and the 1976 Foreign Sovereign Immunities Act of the United States or any successor or analogous legislation.

**"Facility"** means the Complex.

**"Financial Closing"** means the signing of the Loan Documents (where applicable) and the fulfilment of all conditions precedent to the initial availability of funds thereunder.

**"Financing Agreement"** means -

- (a) the agreement pursuant to which any loans, credit facilities, commercial paper, bonds, letters of credit or other funds will be made available to the Project Company to finance or refinance the Project; and
- (b) any security agreement and hedging agreement in respect of any indebtedness incurred or to be incurred by the Project Company under any of the agreement in paragraph (a);

**"Government Authority"** means GoT and any subdivision thereof, or local government authority, department, authority, instrumentality, agency or judicial body of GoT, and any court, tribunal or independent regulatory agency or body in Tanzania having jurisdiction over the project company, the Contractors, the Finance Parties or the Project or any part thereof.

**"Lenders"** means the entities that finances or persons providing construction or permanent financing to the Seller in connection with installation of the Project;

**"Nationalization or Expropriation"** means any direct or indirect acquisition whether wholly or in part, of:

- a) any property, right or interest of the Project Company or any of its Affiliates, to the extent used in, connected with, benefiting or affecting the Project or the activities of the Project Company or any of its Affiliates; or
- b) any equity, shares or ownership interests of whatever nature held in or by the Company or any of its Affiliates;

**"Project Company"** means the Company/Special Purpose Vehicle (SPV) duly incorporated under the Laws of Tanzania, designated for the purpose of developing, financing, designing, constructing, owning, operating and maintaining a power project, and includes its permitted successors and assigns, in each case in accordance with the terms of this agreement, the PPA and the financing agreement (where applicable)

**"Parties"** means parties to this Agreement, being the Government and the Project Company and **"Party"** shall mean either one of them;

**"Political Event"** means order, proclamations, notice made by the Office of the President of the United Republic of Tanzania

**"PPA"** means the Power Purchase Agreement entered into between the Project Company and (insert the name of the Off-taker);

**"PPA Payment"** means any payment due by (insert the name of the Off-taker) to the Project Company in terms of the PPA;

**"PPA Termination Date"** shall have the meaning as ascribed to it in the PPA

**"Project"** means the development, design, engineering, manufacture, financing, acquisition of the Site, construction, permitting, completion, testing, Commissioning, insurance, ownership, operation and maintenance of the Facility and all activities incidental thereto.

**1.2** In this Agreement:

- 1.2.1 references to a statutory provision include any subsidiary legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 1.2.2 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 1.2.3 references to a "person" include a natural person, company, corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 1.2.4 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.5 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 1.2.6 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last Day shall be the next succeeding Business Day;
- 1.2.7 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- 1.2.8 the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

## **2. EFFECTIVE DATE AND TERM**

**2.1** This Agreement shall enter into full force and effect from the date the PPA becomes effective (the “Effective Date”) and shall remain in effect for the term of the PPA.

**2.2** This Agreement shall continue to be in force and effective until the PPA Termination Date, unless terminated earlier pursuant to the provisions of this Agreement.

## **3. RIGHT TO DEVELOP THE PROJECT**

The Government hereby grants the Project Company throughout the term, the right to;

**3.1** develop the Project; design, finance, construct, complete, own, operate, maintain and manage the Facility pursuant to the PPA; and

**3.2** sell the Energy and any ancillary services that the Facility is capable of making available pursuant to the PPA.

## **4. OBLIGATIONS OF THE GOVERNMENT**

### **4.1 General Support**

The Government shall, upon a reasonable request by the Project Company, use its best endeavors to facilitate the Project Company to perform its obligations to undertake the Project.

### **4.2 No Adverse Interference**

The Government shall not take any illegal action that would prevent or interfere with the performance of (*insert the name of the Off-taker*) of any of its obligations under the PPA.

### **4.3 Government Approvals**

Provided that the Project Company has complied with its Obligations under Clause 3, the Government shall ensure that in timely manner, the Project Company obtains all permits, licences and approvals as required by Government Authorities and applicable laws.

### **4.4 Assistance with rights of way, easements and other rights**

a) The Government will in accordance with applicable laws facilitate

the process of obtaining, all necessary rights of way, easements and other rights in connection with the Project to enable the Project Company to carry out its obligations and to exercise its rights under this Agreement and the PPA.

- b) From time to time, the Project Company may request the Government intervention of any difficulties encountered in relation to the enforcement of any rights of way, easements or other rights in connection with the Project. Where any such difficulties create a significant risk that the Project Company may be prevented or materially impaired in performing its obligations under the PPA, the Government shall, upon such request, use reasonable efforts within its powers to facilitate the resolution of such difficulties in the manner reasonably requested by the Project Company.
- c) All assistance provided by the Government pursuant to this Agreement shall be in accordance with the laws of Tanzania and, in any event, shall not contravene any applicable law.

#### **4.5 Government Support**

- a) The Government undertakes to support (*insert the name of the Off-taker*) to perform its obligations under the PPA.
- b) Without prejudice to Clause 4.5 (a), the Government support to the payment obligations is limited to the following: -
  - i. During the term of the PPA and for so long thereafter as any obligation of (*insert the name of the Off-taker*) in connection with the PPA may be outstanding, the Government undertakes to ensure (*insert the name of the Off-taker*) obtain and maintain liquidity security which shall be fully effective and in force.
  - ii. During the term of the PPA and for so long thereafter as any obligation of (*insert the name of the Off-taker*) in connection with the PPA may be outstanding, the Government undertakes to ensure (*insert the name of the Off-taker*) pays the termination payments under the PPA.

#### **4.6 Nationalization or Expropriation**

- a) The Government shall not nationalize or expropriate all or any part of the Project, any assets, rights or interest of the Project Company;

- b) Without prejudice to Clause 4.6 (a), where nationalization or expropriation is done (a) for the purposes which is in the public interest, (b) in a non-discriminatory manner and (c) under a due process of laws, then, the Project Company will be compensated by the Government in accordance with the Laws of Tanzania. The compensation shall be fair, adequate and prompt, reflecting the Fair Market Value.
- c) The Project Company may, at its discretion, terminate this Agreement upon occurrence of a Nationalization or Expropriation Event, if the Event materially prevents or frustrates the performance of the PPA.
- d) Termination pursuant to this Clause shall trigger the compensation provisions set out in Clause 4.6(b). Provided that, no termination or compensation under this Clause shall occur without prior notice to the Lenders and observance of any step-in, cure, or consultation rights granted under the financing documents if any.

#### **4.7 Construction, Operation and Maintenance**

Subject to the provisions of this Agreement and the PPA, the Government and other Government Authorities shall not intervene, except as required by the law, in the construction, operation and maintenance of the Project in a manner that is adverse to the Project or the Project Company. At the request of the Project Company, the Government shall assist to prevent and to stop any illegal or unauthorized interference in the construction, operation and maintenance of the Project.

#### **4.8 Non-Discrimination**

The Government hereby agrees that in exercising its power in connection with the Project and this Agreement it will act in a fair, impartial and non-discriminatory manner and in good faith. For the purpose of this Agreement non-discriminatory is not intended to prohibit or limit in anyway Government from making rational distinctions between persons or from utilizing measures, establishing conditions or enforcing requirements that are, in each case lawful, not arbitrary or capricious and intended or designed to advance legitimate Government purposes.

## **5. OBLIGATIONS OF THE PROJECT COMPANY**

### **5.1 Application for Approvals**

The Project Company shall make (or cause to be made) and diligently pursue an application that complies with the necessary legal, regulatory and procedural requirements for each Approval necessary for the Project Company to design, develop, construct, finance, insure, own, operate and maintain the Project as contemplated in this Agreement and the PPA.

### **5.2 Construction of the Project**

The Project Company shall design, develop, construct, finance, insure, own, operate and maintain the Project in accordance with the Applicable Laws and as required by the terms of the PPA and this Implementation Agreement.

### **5.3 Environmental, Health and Safety Compliance, and Decommissioning**

- a) The Project Company shall comply, and shall ensure that its contractors and subcontractors comply, with all Applicable Laws, permits, approvals and standards relating to environmental protection, occupational health and safety, and social safeguards in connection with the development, construction, operation and maintenance of the Project.
- b) Upon the expiry or termination of this Agreement or the Power Purchase Agreement, the Project Company shall, at its own cost, decommission the Complex and restore the Project Site in accordance with Applicable Laws, and an approved Decommissioning Plan, except where the Project or any Project Assets are required to be transferred to the Government pursuant to the PPA or Applicable Law.
- c) Decommissioning shall be carried out in a manner that ensures the protection of the environment, public health and safety, and shall include the removal, treatment or disposal of materials, equipment and waste in accordance with Applicable Laws.
- d) Provided that, the obligations under this Clause shall survive termination of this Agreement to the extent necessary to give effect to decommissioning and site restoration requirements.

### **5.4 Corporate Documentation**

- a) Seven days before signing of this Agreement the Project Company shall deliver to the Government certified copies in accordance with the Notary Public and Commissioner for Oaths Act, of the following:
  - i. The Memorandum and Articles of Association and the certificate of incorporation of the Project Company; and
  - ii. resolutions passed by the board of directors of the Project Company authorizing the execution, delivery and performance by the Project Company of the PPA, this Agreement and any other agreement or document to be executed and delivered in respect thereof.
- b) Before Financial Closing, the Project Company shall deliver to the Government a certified copy in accordance with the Notary Public and Commissioner for Oaths Act, of resolutions passed by the board of directors of the Project Company authorizing the execution, delivery and performance by the Project Company of the Financing Agreement; the Construction Contract and all security documents provided by the Construction Contractor pursuant to the Construction Contract, substantially in accordance with the terms of the Power Purchase Agreement.

## **5.5 Tax and Non-Tax Liabilities**

The Project Company shall pay tax, duties, charges, levies or fees in accordance with the Laws of Tanzania.

## **6. FINANCIAL PROVISIONS**

### **6.1 Security**

- a) For the purpose of financing the Project and upon approval by the Government, the Project Company may charge or assign by way of security, in favor of the Lenders, its interests in:
  - i. this Agreement;
  - ii. the PPA;
  - iii. any other agreement or document

- related to the Project;
- iv. the Site;
- v. the immovable property situated on the Site; or
- vi. the moveable property and intellectual property of the Company.

b) the Government agrees to execute and give all acknowledgement of any security or assignments created pursuant to Clause 6.1(a) as are reasonably requested by the Project Company to give effect to Clause 6.1.

## **6.2 Project Earnings**

Earnings generated from the Project shall be held in banks and financial institutions duly established in the United Republic of Tanzania; provided that the Project Company may repatriate such income, profits, or dividends to offshore accounts in accordance with the Laws of Tanzania.

## **7. REPRESENTATIONS AND WARRANTIES**

### **7.1 The Project Company's Representations and Warranties.**

The Project Company hereby represents and warrants to the Government that:

- a) the Project Company is duly incorporated, and validly existing, in accordance with the Laws of Tanzania;
- b) the Project Company has full corporate power and authority to carry on its business and to enter into, legally bind itself by, and perform its obligations under this Implementation Agreement;
- c) the execution, delivery and performance of this Implementation Agreement by the Project Company have been duly authorized by all requisite cooperate action on the part of Project Company and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

- d) the execution, delivery, and performance of this Agreement do not, and will not, constitute a violation of (i) any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to the Project Company, its assets or its businesses, or (ii) the Project Company's articles of association or other organic documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound;
- e) the Project Company has the capacity to secure finance, design, develop, construct, finance, insure, own, operate and maintain the Project in accordance with the applicable laws and as required by the terms of the PPA and this Implementation Agreement;
- f) there are no outstanding judgments against the Project Company, and to the best knowledge of the Project Company, no action, claim, suit or proceeding is pending or threatened against the Project Company before any court, governmental authority or arbitrator of competent jurisdiction that could reasonably be expected to affect materially and adversely the financial condition or operations of the Project Company or the ability of the Project Company to perform its obligations under this Agreement or any other agreement relating to any aspect of the Project or which purports to affect the legality, validity or enforceability of this Agreement;
- g) the Project Company is not in default under any agreement to which it is a party or by which it or its property may be bound, nor in any default of any technical or financial obligation, which could have a material adverse effect on the ability of the Project Company to perform its obligations under this Agreement; and
- h) no information given by the Project Company in relation to this Agreement contains any misstatement of fact or omits to state a fact which would be materially adverse to the enforcement of the rights and remedies of the Project Company or which would be necessary to make any statement, representation or warranty contained herein or therein true and correct in all material respects.

## **7.2 Representations and Warranties of the Government**

The Government represents and warrants to the Project Company that as at the Signature Date (which representations and warranties are deemed to be repeated on the Commercial Operations Date):

- a) it has full power to enter into, legally bind itself by, and perform its obligations under, this Agreement;
- b) this Agreement has been duly authorized, executed, and delivered by it and constitutes its legal, valid and binding obligation;
- c) the execution, delivery, and performance of this Agreement does not, and will not, constitute a violation of any statute, judgment, order, decree or regulation or rule of any court, governmental authority or arbitrator of competent jurisdiction applicable or relating to it, its assets or its businesses;
- d) no information given by it in relation to this Agreement contains any misstatement of fact or omits to state a fact which would be materially adverse to the enforcement of the rights and remedies of the other Party or which would be necessary to make any statement, representation or warranty contained herein or therein true and correct in all material respects.

## **8. CHANGE IN LAW**

**8.1** In the event of any Change in Law, the Project Company shall promptly notify the Government, providing reasonable details of the impact of such Change in Law.

**8.2** Following such notice, the Parties shall meet and consult in good faith, as soon as reasonably practicable and in any event no later than thirty (30) days from the date of the Project Company's notice, to assess the impact of the Change in law, identify mitigation measures and agreeing on the appropriate remedies to restore the project Company to the same economic equilibrium as it would have been in has such Change in Law not occurred. Such measures include, as appropriate:

- a) Payment by the Government of compensation for all reasonable and demonstrable, additional capital or operating costs, financing and funding costs directly attributable to the Change in Law; and losses not recoverable under the PPA, so as to restore the Project Company to the no better and no worse position;
- b) Amendment and or reasonable extension of time for the achievement of any Project milestone without penalty or liquidated damages; or
- c) Use of reasonable efforts by the Government, to the extent permitted by the Applicable Law, to remedy or mitigate the effects of such Change in Law.

**8.3** If the Parties fail to agree on the appropriate measures to address such Change in Law within thirty (30) days, either Party may refer the matter for dispute resolution in accordance with the dispute resolution provisions of this Agreement.

**8.4** Provided that, the Project Company shall not be entitled to recover the same costs, losses or impacts more than once, and any relief granted under this Agreement shall be taken into account in determining any entitlement under the PPA.

## **9. FORCE MAJEURE**

**9.1** Any occurrence of a Force Majeure Event under the PPA, shall be deemed a Force Majeure Event under this Agreement. For the purposes of this Agreement, remedies for Force Majeure shall be limited exclusively to Political Events affecting the Project Company, and all other Force Majeure Events, shall be governed solely under the PPA.

**9.2** The Party affected by a Political Force Majeure Event shall:

- a) notify the other Party in writing as soon as reasonably practicable, but in any event within thirty (30) days of becoming aware of the occurrence of such event; and
- b) provide reasonable details of the nature and cause of the Political Force Majeure Event; the obligations affected; the estimated duration of the event; and the measures taken or proposed to mitigate its effects.

**9.3** Failure to give timely notice shall not bar relief except to the extent the other Party is materially prejudiced by such failure.

- 9.4** The Party affected shall, use all reasonable efforts to mitigate the effects of the Political Force Majeure Event, and continue to perform its unaffected obligations under this Agreement to the extent reasonably practicable.
- 9.5** Without prejudice to the foregoing, the Government shall use reasonable efforts, within its constitutional and legal powers, to remedy or alleviate the effects of any Political Force Majeure Event attributable to it.
- 9.6** Subject to compliance with the conditions set forth in this Clause:
- a) Upon occurrence of a Political Force Majeure Event and subject to compliance with notice and mitigation measures requirements, the Party affected shall be excused from performance of the affected obligations for the duration of the Political Force Majeure Event;
  - b) no breach of this Agreement shall be deemed to have occurred as a result of such non-performance; and
  - c) the time for performance of the affected obligations shall be extended accordingly.
- 9.7** Parties shall consult in good faith to agree on measures to restore the Project Company to a no-better and no-worse economic equilibrium than it would have been in had the Political Force Majeure Event not occurred. Such measures may include, without limitation:
- a) the Government shall reimburse the Project Company for any excess amount and additional costs, if any, subject to verification by the Government, after the Political Event has been remedied under the applicable Insurance Cover;
  - b) Extension of the Project term; or
  - c) Amendment of Government obligations under this Agreement.
- 9.8** The Government shall, use reasonable efforts within its powers to remove, remedy or alleviate the effects of the Political Force Majeure Event and facilitate reinstatement, renewal or replacement of any affected licence, permit or approval where the revocation or refusal was unlawful or without valid cause and cooperate with the Project Company to enable continued performance of the Project to the extent reasonably practicable.
- 9.9** If a Political Force Majeure Event, continues for a continuous period exceeding one hundred and eighty (180) days and materially and permanently prevents the achievement or continuation of the Project, either

Party may, upon written notice, refer the matter for consultations. If no mutually acceptable solution is agreed within sixty (60) days, either Party may terminate this Agreement in accordance with Clause [\*\*\*].

**9.10** Any termination of this Agreement pursuant to this Clause shall:

- a) constitute a corresponding termination event under the Power Purchase Agreement; and
- b) be without prejudice to any rights, remedies or liabilities accrued prior to the date of termination.

## **10. WAIVER OF IMMUNITY**

**10.1** Each Party irrevocably and unconditionally acknowledges and agrees that the execution, delivery and performance by it of this Agreement constitutes a commercial act. Accordingly, each Party irrevocably and unconditionally agrees that it shall not assert any right to immunity (either present or future, existing in any jurisdiction) on behalf of itself or its assets, its revenues or its property (other than the Excepted Assets) in connection with any proceedings arising out of or in connection with this Agreement (including any arbitration under Clause [\*\*] (Resolution of Dispute). Each Party consents generally to the making, enforcement or execution (by attachment or otherwise) of any order, judgment or award against it or any of its assets, its revenues or its property (other than the Excepted Assets) in any jurisdiction and to the giving of any relief or the issue of any process in connection with such proceedings, whether before or after final judgment or arbitral award.

**10.2** In this Agreement, "**Excepted Assets**" includes:

- a) property, including any bank account, which is used in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organisations or delegations to organs of international organisations or to international conferences;
- b) property of a military character or used in the performance of military functions;
- c) property of the central bank or other monetary authority of the State;
- d) property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale;

- e) property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale;
- f) all other assets not used for Government commercial purposes;
- g) all natural resources of a state in their natural form within the natural environment of that state;
- h) real property used in provision of public health, a public utility or any social service of a state (including, to the extent that they constitute non-commercial assets, the Tanzanian National Natural Gas Infrastructure – NNGI);
- i) any Aircraft, components and parts of aircraft owned by the Government of the United Republic of Tanzania or its Agencies;
- j) any ports, harbours, port infrastructure or facilities, including quays, jetties, terminals, breakwaters, navigational channels, docks, wharves and related installations, owned, operated or controlled by the Government of the United Republic of Tanzania or any of its Agencies;
- k) power generation, transmission and distribution assets owned by the Government of the United Republic of Tanzania or its Agencies; and
- l) Railway rolling stocks assets owned by the Government of the United Republic of Tanzania or its Agencies.

## **11. TERMINATION**

**11.1** Subject to the provisions of this Agreement and the PPA, the termination or expiry of the PPA for any reason shall result in the automatic termination of this Agreement on the same date as such termination or expiry of the PPA. For the avoidance of doubt, the termination of this Agreement pursuant to this Clause shall not relieve either Party of any rights, obligations or liabilities accrued prior to the date of termination.

**11.2** Where this Agreement is terminated earlier prior to termination of the PPA upon occurrence of the events under Clause 4.6 and or Clause 8, such termination shall constitute a corresponding termination event under the PPA, entitling the Project Company and the Lenders to exercise their rights and remedies thereunder.

**11.3** Except where it is clearly stated under this Agreement, each party shall have the right to be remedied for the loss sustained from termination caused by the other party.

## **12. RESOLUTION OF DISPUTES**

### **12.1 Mutual Discussions**

If any dispute or difference of any kind whatsoever ("Dispute") shall arise between the Government and the Project Company in connection with, or arising out of this Agreement, the Parties shall attempt in good faith to settle such Dispute in the first instance within thirty (30) Days by mutual discussions between the Project Company and the Purchaser, which may include referring the Dispute to the Operating Committee for resolution within such thirty (30) Days period. The Parties shall commence such discussions within fifteen (15) Days of a request by either Party.

### **12.2 Referral to an Expert**

12.2.1 If the Dispute cannot be settled within the period allowed in Clause [\*\*], either Party may upon written notice to the other Party refer the Dispute to an expert for determination, the notice shall propose an expert from a list of experts and the other Party shall confirm the proposed expert or choose from the list of experts proposed as the case may be, or object to the proposed expert or list of experts, giving reasons for the objection and proposing an alternative expert instead.

12.2.2 In the event that the Parties are unable within fifteen (15) Days to agree upon an expert to be appointed hereunder or upon the terms of such expert's reference or both, then either Party may request the ICC International Centre for ADR to make an appointment and such party shall do so in accordance with the Rules for the Appointment of Experts and Neutrals of the International Chambers of Commerce.

12.2.3 Notwithstanding any other provision of this Clause [\*\*], no expert appointed pursuant to Clause [\*\*] shall be a national of the jurisdiction of either Party to this Agreement or of the jurisdiction of any of the Initial Shareholders (nor shall such expert be a former employee or agent of any such person).

12.2.4 Within thirty (30) Days of the appointment of the expert, the expert shall nominate a time and place [NEUTRAL GROUND] for a hearing of the Parties on the Dispute, which time shall not be more than thirty (30) Days after the expert's appointment.

- 12.2.5 The expert must render his decision on the Dispute within thirty (30) Days after completion of the hearing and must forthwith advise the Parties in writing of his determination and his reasons thereof.
- 12.2.6 The proceedings shall be without prejudice, and any evidence given or statements made in the course of the hearing may not be used against a Party in any other proceedings.
- 12.2.7 The proceedings shall not be regarded as an arbitration and the laws relating to commercial arbitrations shall not apply.
- 12.2.8 Once a Dispute is referred to an expert, the expert may shorten any of the time periods required by this Clause [\*\*] if, in the expert's best judgment, the Dispute requires expeditious resolution.
- 12.2.9 The decision of the expert shall be final and binding upon both Parties upon the delivery to them of the expert's written determination, save in the event of fraud, collusion, partiality, material departure from instruction.
- 12.2.10 If the expert does not render a decision within a period of thirty (30) Days of his appointment or such longer or shorter period as the Parties may agree in writing, either Party may, upon giving notice to the other, terminate such appointment, and a new expert shall be appointed who shall resolve the Dispute in accordance with the provisions of this Clause [\*\*]. If the Dispute is not resolved by one or more experts within three (3) Months after the receipt by the Respondent of the Notice of Intention to Refer, then either Party may refer the Dispute for arbitration in accordance with this Agreement.
- 12.2.11 The costs of engaging an expert shall be borne equally by the Parties, irrespective of whether the Respondent engages in the process, and each Party shall bear its own costs in preparing materials for, and making presentations to, the expert.

### **12.3 Arbitration**

- 12.3.1 Any Dispute arising out of or in connection with this Agreement that has not been resolved following the procedures set forth in Clauses [\*\*] and [\*\*] shall (regardless of the nature of the Dispute but without prejudice to the provisions of this Agreement requiring any matter to be referred to an expert for final

determination) be referred to arbitration and finally settled in accordance with [the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "Convention") and the Rules of Procedure for Arbitration Proceedings of the International Centre for Settlement of Investment Disputes ("ICSID") established by the Convention]/ [the United Nations Commission on International Trade Law (UNCITRAL Rules)/ the International Chamber of Commerce ("ICC Rules") [Rules of the London Court of International Arbitration ("LCIA Rules") which LCIA Rules are deemed incorporated into this Agreement] and the Parties hereby consent to arbitration thereunder.

12.3.2 The arbitral tribunal shall be composed of three arbitrators appointed as follows:

- a) each Party shall nominate one arbitrator, and the two arbitrators so appointed shall appoint a third arbitrator who shall act as president of the tribunal;
- b) if either Party fails to nominate an arbitrator within thirty (30) Days of receiving written notice of a request for arbitration and the nomination of an arbitrator by the other Party, such arbitrator shall at the request of that Party be appointed by the [INSERT APPROPRIATE OFFICE]; and
- c) if the two arbitrators to be nominated by the Parties fail to agree upon a third arbitrator within thirty (30) Days of the appointment of the second arbitrator, the third arbitrator shall be appointed in accordance with the Arbitration Rules at the written request of either Party.

12.3.3 No arbitrator appointed pursuant to Clause 20.3.2 shall be a national of the jurisdiction of either Party to this Agreement or of the jurisdiction of any of the Initial Shareholders (nor shall any such arbitrator be an employee or agent or former employee or agent of any such person).

12.3.4 The place of the arbitration shall be in Dar es Salaam and any other place mutually agreed by parties and the language of the arbitration shall be English. The Seat of Arbitration shall be mutually agreed by the parties.

12.3.5 The Parties undertake as a general principle to keep confidential all awards and orders in the arbitration, as well as all materials created for the purpose of the arbitration and documents produced by another party in the arbitration not otherwise in the public domain, save and to the extent that a disclosure may be required of a Party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

12.3.6 Each Party hereby agrees to be bound by any final decision or award of any arbitrators duly appointed under this Agreement.

12.3.7 Except as awarded by the arbitrators, each Party shall be responsible for its own costs incurred by it in connection with an arbitration hereunder.

### **13. CONFIDENTIALITY**

Each Party shall keep confidential any information whether written or oral, concerning the other Party or their directors, officers or employees, or the Project, which that Party shall receive from the other Party and which is marked (if the information is delivered in written form) or otherwise designated as or indicated to be "confidential" at the time of disclosure or which must be understood to be confidential by reason of the circumstances applicable to its disclosure ("**Confidential Information**") and shall not divulge the same to any third party (save in so far as may be necessary for the purpose of carrying out this Agreement) and save in respect of disclosure:

- i. to any Party's professional advisers or the Construction Contractors;
- ii. to the extent required by law;
- iii. to any Government Authority lawfully requesting such information;
- iv. to any court of competent jurisdiction acting in pursuance of its powers; or
- v. if it was or is in the public domain other than through its fault or the fault of any person to whom such Confidential Information has been disclosed as permitted by this Clause 15.

## 14. ASSIGNMENT

**14.1** Without prejudice to Clause 6.1, neither Party may sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "Assign") all or any part of its rights and/or obligations hereunder to a third party without the prior written approval of the other Party, which approval shall not be unreasonably withheld.

**14.2** In any effective assignment of this Agreement by the Project Company, the Project Company shall be released from liabilities under this Agreement to the extent assumed by the assignee.

## 15. SURVIVAL

**15.1** The provisions of Clauses [4, 5, 7, 10, 12 and 13] shall survive the expiry, cancellation or termination of this Agreement (however arising) and shall continue in full force and effect until all of the Parties' obligations and liabilities under them have been performed and discharged in full.

**15.2** Without prejudice to the generality of this Clause 15.1, the cancellation, expiry or termination of this Agreement or any arbitration of disputes shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration or termination, including warranties, remedies, promises of indemnity and confidentiality.

## 16. NOTICES

### 16.1 Address for Notices

16.1.1 The Parties shall give each other notice or other communication under this Agreement in writing in English and, unless otherwise provided, by fax or letter. Any notice or communication given by one Party to another under this Agreement shall (unless one Party has by five Days' notice to the other Party given another address) be given to that other Party at the respective address below:

#### Government:

Address: \_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Email: \_\_\_\_\_

#### Project Company:

Address: \_\_\_\_\_

Attention: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
Email: \_\_\_\_\_

16.1.2 Any notice or other communication given by a Party is deemed to have been received:

16.1.2.1 if sent by fax, with a confirmed receipt of transmission from the receiving machine on the Day it was transmitted;

16.1.2.2 if sent by email, with a confirmed acknowledgment of receipt and read of transmission from the receiving device on the Day it was transmitted;

16.1.2.3 in the case of a notice given by hand, on the Day of actual delivery;

16.1.2.4 if posted, on the [fifth] Business Day following the Day it was posted by first class mail postage prepaid, on condition that a notice given but received on a Day which is not a Business Day or after normal business hours is deemed to have been received on the next Business Day.

## **16.2 Change in address**

Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, in Tanzania or its contact details by giving at least fifteen (15) days' prior written notice to the other Party.

## **17. MISCELLANEOUS**

### **17.1 No set-off**

No set-off, counterclaim, deduction, withholding, reduction or diminution shall be permitted in respect of any obligation of either Party under this Agreement.

### **17.2 Entire Agreement**

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

### **17.3 No Third-Party Beneficiaries**

Save as expressly provided in this Agreement, nothing in this Agreement is intended to, or shall be deemed to, create or confer any right, benefit or remedy upon any person other than the Parties, and no person who is not a Party to this Agreement shall have any right to enforce any of its terms.

#### **17.4 No representations**

Each Party acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether made negligently or innocently) other than those expressly set out in this Agreement.

#### **17.5 Variation, cancellation, amendment and waiver**

This Agreement may not be varied, amended, supplemented, cancelled or waived except by a written instrument duly executed by authorised representatives of the Parties, and no waiver of any provision shall be deemed to constitute a waiver of any subsequent breach.

#### **17.6 Indulgences**

Any indulgence, extension of time, or relaxation granted by a Party in respect of any provision of this Agreement shall not constitute a waiver of any right of that Party, nor shall it prevent or adversely affect the exercise by that Party of any existing or future right under this Agreement.

#### **17.7 Language**

This Agreement is made in English language. Each document referred to in this Agreement or to be delivered under it shall be in English language.

#### **17.8 Applicable Law**

This Agreement is to be governed, interpreted and implemented in accordance with the Laws of Tanzania.

#### **17.9 Costs**

Each Party shall bear that Party's own legal costs and disbursements of incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

#### **17.10 Signature in counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which

together shall constitute one and the same Agreement.

**17.11 Good faith**

The Parties shall at all times act in good faith towards each other and shall not bring any of the other Parties into disrepute.

**17.12 Co-operation**

Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement

For and on behalf of the Government of **the United Republic of Tanzania**

Signed at .....

By: Name.....

Designation.....

on.....

Signature .....

**Witness**

By: Name.....

Designation.....

Signature: .....

For and on behalf of the ***[Name of the Project Company]***

Signed at .....

By: Name.....

Designation.....

On .....

Signature .....

**Witness**

By: Name.....

Designation.....

Signature: .....