

DATED _____ 2024~~2~~

BETWEEN

(1) **THE DAR RAPID TRANSIT AGENCY (Agency)**

and

(2) *******-TRANSDAR LIMITED (SP)**

SERVICE AGREEMENT

for the Provision of Bus Transport Services for Phase 1 of the
DART System, Dar es Salaam, Tanzania

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This Public Private Partnership Service Agreement is made on
2024~~2~~

BETWEEN:

- (1) **THE DAR RAPID TRANSIT AGENCY**, a Government Agency established by Government Notice No 120 of 25 May 2007 made under the Executive Agencies Act No 30 of 1997 of Ubungo Maji, Morogoro Road, PO Box 724, Dar es Salaam, Tanzania (**Agency**); and
- (2) **TRANSDAR ~~****~~LIMITED**, a company registered in Tanzania under Companies Act 2002 with certificate of incorporation number ~~****~~138437752 of Plot 1196, Haile Selassie ~~****~~, Kinondoni, PO Box 12729****, Dar es Salaam, Tanzania (**SP**).

WHEREAS:

- (A) The Agency has been vested by the Government of the United Republic of Tanzania with the power and authority to develop dependable, coordinated, fast, safe, efficient, and reliable rapid bus transport system service in Dar es Salaam city.
- (B) The Agency has been mandated to procure, amongst other things, the following roles for the DART System:
 - (i) bus service providers;
 - (ii) fare collector; and
 - (iii) fund manager.
- (C) The Agency ~~shall has agreed to~~ give ~~non-exclusive~~ access to SP to such of the Agency Assets as SP will require to carry out its services under this Agreement.
- (D) SP is a special purpose company which has been set up as a majority owned subsidiary by EMIRATES NATIONAL GROUP LLC, a company registered in Abu Dhabi under Commercial License number ~~****~~ dated ~~****~~ of Mussafah, Industrial 2, ENG HQ Building, PO Box 6365, Abu Dhabi, United Arab Emirates (ENG) for the purposes of entering into this Agreement ~~which and~~ has been selected by competitive process in accordance with the Public Private Partnership legislation to provide buses with operating and maintenance crews, certain equipment and software and other services, together being the SP Services (as defined in clause ~~4.14-14.1~~).
- (E) Following negotiations with **ENGSP**, it appears to the Agency to be expedient for the discharge of its functions to enter into this Agreement, which sets out the terms and conditions upon which SP will provide the SP Services.

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NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION / EFFECTIVENESS

1.1 This Agreement shall be interpreted according to the provisions of Schedule X (*Definitions and Interpretation*).

1.2 The provisions in Clauses 1, 5, 6, 7, 8 and 9 to 24 (inclusive) shall have effect from the Effective Date.

1.3 The provisions in Clauses 2, 3, 4 (excluding 4.1, 4.13, 4.17 to 4.22 (inclusive)) shall have effect from the date the conditions set out in Schedule F (Conditions Precedent) are satisfied (CP Satisfaction Date).

1.4 The provisions in Clauses 4.1, 4.13, 4.17 to 4.22 (inclusive) shall have effect from the Readiness Date (SP Actual).

2. CONDITIONS

Conditions Precedent

2.1 SP shall use all reasonable endeavours to procure that each Condition Precedent set out in paragraph 1 of Schedule F is satisfied as soon as practicable and in any event before the CP Long Stop Date.

2.2 The Agency shall use all reasonable endeavours to procure that each Condition Precedent set out in paragraph 2 of Schedule F is satisfied as soon as practicable and in any event before the CP Long Stop Date.

2.3 The obligations of the Agency under or in connection with this Agreement shall only come into effect on the date of satisfaction, in form and substance satisfactory to the Agency, or waived by the Agency, in its absolute discretion by written notice, of the conditions set out in Schedule F (Conditions Precedent) (Effective Date). The Agency may, at its discretion, by written notice to SP waive any of the Conditions Precedent set out in Schedule F, paragraph 1, in whole or in part. SP may, at its discretion, by written notice to SP waive any of the Conditions Precedent set out in Schedule F, paragraph 2, in whole or in part. Only when a written confirmation that the Conditions Precedent have been satisfied in full (or waived in accordance with this Clause 2) has been signed by both parties, shall the CP Satisfaction Date have occurred.

2.4 In connection with the satisfaction or waiver of the Conditions Precedent:

(a) Each Party shall:

(i) keep the other Party informed in all material respects regarding progress and material developments;

(ii) promptly disclose to the to the other Party in writing any matter of which it becomes aware that prevents or may reasonably be expected to prevent such Condition Precedent from being fulfilled by the CP Long Stop Date; and

(iii) promptly notify the other Party after the relevant Condition Precedent is satisfied and provide it with evidence of satisfaction in a form acceptable to the other Party; and

~~2.12.5~~ Each Party shall provide, insofar as it is within its reasonable power or control, assistance as may be reasonably required by the other Party to be able to fulfil its obligations under this Clause ~~22~~, including by providing to the other Party all information and documents reasonably required by the other Party.

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Own risk

~~2.22.6~~ Any steps taken by SP prior to the ~~CP Satisfaction Date Effective Date~~ shall be at its own risk and, in the event that the Agency shall give written notice that the ~~CP Satisfaction Date Effective Date~~ has not occurred, SP shall not be entitled to recover any losses or other damages.

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3. TERM

3.1 The term of this Agreement (**Term**) shall:

- (a) commence on the Effective Date; and
- (b) end on the 12th (twelfth) anniversary of the ~~Effective Date~~ Readiness Date (SP Actual) (**Term End Date**).

4. SP SERVICES

~~4.1~~ SP shall provide at its own cost and expense the services as set out in Schedule A (~~SP Services~~) and the other Schedules referred therein (collectively the **SP Services**) from the Readiness Date (SP Actual), and in accordance with Schedule C (~~Operation and Maintenance of SP Buses~~).

~~4.2~~ To assist with the provision of SP Services, from the CP Satisfaction Date, the Agency shall grant to SP, the [exclusive] rights to access and use the Agency Assets, together with all related rights and easements related thereto as further described in Schedule S (~~Responsibilities of the Agency~~).

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~~4.3~~ SP shall ~~make available and operate~~ order and import during the Term, and prior to the Readiness Date (SP Actual) a ~~specified fleet in compliance with Schedule B (SP Buses)~~ of up to a total of **177 (one hundred and seventy seven) 18 (eighteen) meter articulated buses in compliance with Schedule B (SP Buses) as follows (the SP Buses)**. The specific dates for delivery of the SP Buses into Tanzania will be confirmed by SP to the Agency as soon as reasonably practical after the Effective Date following the execution of the relevant supply contract.

****DATES TO BE REVIEWED BASED ON MAY LETTER FROM SUPPLIER****

~~86 (eighty six)~~ **18 (eighteen) meter articulated buses which are expected for delivery on or before 21 days after 25 July 2024;**

~~58 (fifty eight)~~ **additional 18 (eighteen) metre articulated buses which are expected for delivery on or before 21 days after 24 August 2024; and**

~~33 (thirty three)~~ **additional 18 (eighteen) metre articulated buses which are expected for delivery on or before 21 days after 2 September 2024;**

~~and SP shall provide at its own cost and expense the services as set out in Schedule A (SP Services) (collectively the SP Services).~~

~~4.14.4~~ SP shall use its~~all~~ reasonable endeavours to deliver and make available for operation all the SP Buses and achieve the Readiness Date (SP Actual) by no later than **[1 October 2024] (Readiness Date (SP Planned))** and in any event no later than **[1 November 2024] (Readiness Date (SP Long Stop))**.

Activities

4.24.5 SP shall not engage in any business or activity other than the business or activities related to, and conducted for, the purpose of the SP Services.

Contracting

4.34.6 SP shall not enter into a contract with a supplier or contractor of goods or services to assist with the provision of SP Services, including without limitation the SP Bus supplier, with an annual value or cost to SP of more than TZS 1,000,000,000 (one billion Tanzanian Shillings) (**Material Contracts**) without the prior written consent of the Agency (such consent not to be unreasonably withheld or delayed). The foregoing restriction shall not apply to contracts with -Exemption is the fuel supplier company, for which SP shall have no obligation to seek the Agency's prior consent.

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4.44.7 SP shall subject to applicable confidentiality requirements, supply the Agency with a copy of each Material Contract after it has been approved by the Agency and duly executed by SP and supplier or contractor.

Change in Control

4.54.8 No Change in Control in SP any or all of the shares in SP, whether through a transfer or other dealing, including the grant of an economic interest in SP such shares, shall be permitted without the prior written approval of the Agency (not to be unreasonably withheld or delayed).

Passengers

4.64.9 SP shall, from the Readiness Date (SP Actual) -be responsible for the health and safety of Passengers whilst they shall be on an SP Bus, or and for Passengers whilst they are embarking on or disembarking off such SP Bus.

Taxes

4.74.10 SP shall pay all taxes applicable to SP pursuant to the laws of Tanzania as stated on the Effective Date. and assumes the risk of future changes in tax laws of general application.

4.11 The fiscal obligations under this Agreement shall be complied in line with the tax laws administered by the Tanzania Revenue Authority as applicable on the Effective Date.

4.12 The Agency shall maintain, or procure the maintenance of, the stability of the fiscal conditions of this Agreement, as they result from Applicable Law in force as of the Effective Date, for the entire Term. If, at any time after the Effective Date:

(a) there is any change to Tax Laws in force on the Effective Date (a "**Change of Tax Law**"); and

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(b) the fiscal position of SP under this Contract is materially either beneficially or detrimentally affected by such Change of Tax Law;

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4.13 then the Agency and SP shall alter the terms of this Contract so as to place SP in the same overall economic position as that which SP would have been without any Change of Tax Law.

4.14 Should the Agency not agree with SP in respect of the effect of the Change of Tax Law, either Party may refer the Dispute to Dispute Resolution as provided in Schedule W (*Dispute Resolution*) without first referring the matter to negotiation and mediation.

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Regulations

4.15 SP shall comply with:

- (a) all laws on land public transport and regulations of LATRA and other Relevant Authority in relation to the provision of public transport services, the maintenance of vehicles and insurance as the same may be supplemented by the standards of the Agency which may be issued from time to time;
- (b) Public Private Partnership Act ~~RE-2019~~2010 and its corresponding Regulations, Rules and Guidelines;
- (c) all relevant Tanzanian road & traffic rules and regulations pertaining to operation of public transport services on the road infrastructure and trunk way;
- (d) applicable operational safety and health laws and regulations, including in relation to COVID 19 or other pandemic events; and
- (e) all other relevant permits and registrations required under Tanzanian laws for the ~~kind of business provision of the SP conducts~~Services.

SP Depot

~~4.104.16~~ SP shall have the exclusive right to occupy, use and maintain the SP Depot from the CP Satisfaction Date in accordance with Part 1 (*Terms*) of Schedule U (*SP Depot*) and the licence entered into by the Agency and SP in substantially the form set out in Part 2 (*Licence*) of Schedule U (*SP Depot*). Notwithstanding the above, the Agency shall grant SP reasonable access to the SP Depot as and when needed from the Effective Date to allow SP to prepare for the provision of the Services in advance of the Readiness Date (SP Actual).

ITS Supply

~~4.14.17~~ SP shall:

- (a) on or immediately after the issue of a Readiness Certificate, and without prejudice to its obligations under this Agreement to support and maintain the same, [transfer to the Agency all rights and interest in the Agency ITS]¹;
- (b) deliver to the Agency prior to and as a condition for the issue of a Readiness Certificate, a collateral agreement from any SP contractor appointed to

¹ Note to Draft: Agency to clarify. SP does not have any rights in Agency ITS.

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supply and maintain Agency ITS in form and substance acceptable to the Agency and pursuant to which such contractor will agree inter alia to supply the ~~the~~ SP sServices to the Agency ~~on notwithstanding~~ termination of this Agreement as it is obliged to supply to SP pursuant to its contract with SP ~~and~~

~~not engage any new or any replacement contractor referred to in Clause 4.11(b)4.10(b) until such contractor has delivered to the Agency a duly executed agreement substantially in the form of the collateral agreement referred to in Clause 4.11(b)4.10(b) duly executed as a deed, and in each case such collateral agreements must be delivered to the Agency before such contractor carries out or commences any of its obligations under the relevant contract.~~

Licence

~~4.11 SP licences for bus passenger operations shall be issued by LATRA.~~

SP Debt

~~4.124.18~~ Any proposed refinancing of debt extended by lenders to SP shall be done subject to the consent of the Agency and the Ministry responsible for finance.

~~4.134.19~~ Any debt extended to SP by, or on behalf of, any of the shareholders of SP shall be interest free to SP.

Local content

~~4.144.20~~ [SP shall enshrine and implement local content and corporate social responsibility obligations as required by the Law, including sections 25 and 28(2)(g) of the PPP Act.]²

~~4.21~~ SP shall comply with the local content plans submitted by SP to the Agency in its bid to supply the SP Services.

SP Buses Timetable

~~4.22~~ The Parties agree to comply with their respective obligations in relation to the SP Buses timetable as set out in Schedule G (*Timetabling*).

5. PERFORMANCE GUARANTEE

~~5.1~~ Within one (1) month of the Effective Date, SP shall provide to the Agency a performance guarantee of, in form and substance satisfactory to the Agency, for the performance of the obligations of SP under this Agreement to be delivered to the Agency by SP as a Condition Precedent, being a payable on demand renewable bond / security to the Agency from a financial institution acceptable to the Agency for ~~United States Dollar 1,000,000 (United States Dollars one million)~~ 2,500,000,000 TZS for a period of at least 12 (twelve) months (**Performance Guarantee**) which shall be in place for the Term and which can be called ~~at any time by notification by the Agency that an SP Event of Default has occurred upon~~

² Note to Draft: Agency to clarify what these are.

a final judgment being rendered against SP and for the amount awarded in the judgment.

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~~Without prejudice to its other rights and remedies, the Agency may, at any time after SP does not rectify an SP Event of Default within the required time period in accordance with Schedule T (Termination), call the Performance Guarantee.~~

~~5-15.2~~ In the event that the Performance Guarantee is (a) not renewed in full 1 (one) month before its date of termination or (b) utilised before the Term End Date, SP will ensure that the Performance Guarantee is replenished in full within 15 (fifteen) Business Days. Failure of SP to do so shall be deemed to be default of a material term of this Agreement.

~~6.0 Failure of SP to do so shall be deemed to be default of a material term of this Agreement and shall permit the Agency to make full demand under the Performance Guarantee.~~

7.6. SP SERVICES READINESS DATE

~~7-16.1~~ SP shall give the Agency Representative not less than ~~10-5 (fiveten)~~ Business Days' notice **(Readiness Notices)** of the date when SP considers that the Readiness Date (SP Actual) will occur and shall provide the Agency Representative with all information and documentation necessary to demonstrate that ~~the Readiness Date (SP Actual) will occur on such date SP is ready to provide the SP Services and can satisfy with (Readiness Notice), the Agency's criteriarequirements as set out in Schedule Z (Readiness Certificate Criteria) (Readiness Criteria).~~

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~~7-26.2~~ Within ~~510 (fiveten)~~ Business Days after such date referred to in the Readiness Notice, the Agency Representative shall inspect the SP Buses ~~and all the other criteria set out in Schedule Z (Readiness Certificate Criteria)~~ and examine the information and documentation provided and witness the SP Assets Tests to determine whether the Readiness Criteria have been satisfied.

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~~7-36.3~~ Within ~~210 (twoten)~~ Business Days of such inspection, examination and witnessing the Agency Representative shall ~~acting in a commercially reasonable manner,~~ either:

(a) issue a certificate confirming satisfaction of the Readiness Criteria stating the date on which the Readiness Date (SP Actual) occurred (Readiness Certificate), in which case the first Business Day following SP's receipt of the Readiness Certificate shall be the Readiness Date (SP Actual) and, for the purposes of determining whether the Readiness Date (SP Actual) has occurred, the Agency Representative shall apply the criteria set out in Schedule Z (Readiness Certificate Criteria); or

(b) give notice to SP that he will not issue such a Readiness Certificate, giving reasons.

~~7-46.4~~ If the Agency Representative issues a notice under Clause ~~6.3(b)6.3(b)6.3(b)~~, SP shall take such action as is necessary to resolve the reasons for the non-issue of the Readiness Certificate before issuing a further Readiness Notice under Clause ~~6.16.16.1.~~

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~~7.56.5~~ The issue of a Readiness Certificate shall, in the absence of manifest error, bad faith or fraud, indicate for the purpose of ascertaining the Readiness Date (SP Actual) that SP is at that date in compliance with the requirements necessary to the achievement of the Readiness Date (SP Actual), but shall not relieve SP of any of its other obligations under this Agreement or signify the Agency's approval of the means of delivery of the SP Services.

~~8.7.~~ PAYMENT

Remuneration

~~7.1~~ SP shall submit invoices for payment due on a monthly basis. Subject to the provisions of this Agreement, the Agency shall ~~make payments~~ settle those ~~invoices to SP calculated~~ in accordance with Schedule E (*Payments*).

~~8.17.2~~ The Agency shall procure that the Ministry of Finance shall issue and deliver to SP on the Effective Date a first demand guarantee pursuant to which the Ministry of Finance agrees to act as a primary obligor under this Agreement in relation to the payment obligations of the Agency and to pay SP, on demand, the amounts due and payable under this Agreement to the extent the Agency fails to make any such payments.

Payment disputes

~~8.27.3~~ If either Party (acting in good faith) disputes all or any part of any amount calculated in accordance with Schedule E (*Payments*) then the Agency shall pay the undisputed amount.

~~8.37.4~~ As to any disputed amount, the Parties shall refer the matter to the Dispute Resolution Process, save that the periods in paragraphs 1.6 to 1.7 inclusive of Schedule W (*Dispute Resolution Process*) shall be abbreviated to 7 (seven) and 14 (fourteen) days respectively and Expert Determination shall apply.

— The provisions of Part 2 (*Multi-Party Disputes*) of Schedule W (*Dispute Resolution Process*) shall apply save that the Agency shall procure that any Relevant Provider as defined by Schedule W (*Dispute Resolution Process*) shall agree to the accelerated timetable.

— Set Off

~~8.4~~ Whenever any sum of money shall be agreed, or determined, as due and payable by:

(a) ~~SP to the Agency, such sum may at the Agency's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, to SP from the Agency under this Agreement provided the money shall have been first deposited by the respective party to the respective account and that the Agency has given SP not less than 14 (fourteen) Business Days' notice of its intention to deduct or apply such sum; and~~

(a) ~~the Agency to SP, such sum may at SP's discretion be deducted from or applied to reduce the amount of any sum then due, or which at any time afterwards may become due, from SP to the Agency under this Agreement provided that the money shall have been first deposited by the respective party to the respective~~

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Account and SP has given the Agency not less than 14 (fourteen) Business Days' notice of its intention to deduct or apply such sum,

~~7.5~~ provided that if SP fails to provide a Remedial Works Bond in accordance with Clause 12.5, then the Agency shall be entitled to withhold payment of any amount due to SP under this Agreement up to the required amount of the Remedial Works Bond until SP provides a Remedial Works Bond in accordance with Clause 12.5.

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No deduction

~~7.6~~ All sums due under this Agreement shall be paid in full without any deduction or withholding other than as required by Applicable Law and no Party shall be entitled to assert any credit, set-off or counterclaim against the other Party in order to justify withholding or deducting payment of any such amount in whole or in part.

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~~9.8.~~ AGENCY UNDERTAKINGS

Responsibilities of Agency

~~8.1~~ The Agency shall undertake to perform its requirements comply with the obligations set out in Schedule S (*Responsibilities of Agency*).

Licence

~~9.18.2~~ The Agency shall procure that the LATRA licences for bus passenger operations and any other licenses required for SP to provide the Services are issued to SP before the Readiness Date (SP Actual) for the entire Term.

Police Enforcement

~~8.3~~ The Agency will use all reasonable endeavours to arrange, in compliance at all times with applicable laws, that the Police are engaged to ensure that the relevant ROWs are available to the Service Providers for the Term.

Agency Rights

~~9.28.4~~ The Agency shall have the right to advertise on the SP Buses as set out in Schedule Q (*Advertising*).

~~10.9.~~ REPRESENTATIONS AND WARRANTIES

SP Representations

~~10.19.1~~ SP makes the representations and warranties set out in Part 1 of Schedule O (*Representations and Warranties*) to the Agency.

Agency Representations

~~10.29.2~~ The Agency makes the representation and warranty set out in Part 2 of Schedule O (*Representations and Warranties*) to SP.

~~11.10.~~ VARIATIONS

~~11.10.1~~ Either Party may suggest a variation to SP Services, which the Representatives shall then discuss in accordance with Schedule Y (*Variations*).

~~11.210.2~~ Any variations of this Agreement shall ~~may only~~ be agreed and amended by the Parties ~~adopted by the parties in accordance with this Clause 10 and Schedule Y (Variations). Any material changes to this Agreement that essential impact the economics of it (e.g. financial modellingsubmitted/approved Financial Model change and/or higher impact than +10% on the Variation Coefficient) shall also require the prior provided that such input data variations keeping initial conditions as same are approved by the Agency. The major changes which imply (Financial Model change) and will obtain written approval from of the PPP Steering Committee and/or shall be vetted by the Office of Attorney General, as more fully described in Schedule Y (Variations).~~

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~~11.310.3~~ Any variations effected under Clause ~~10.110.110.1~~ shall ensure that the costs associated with such variations are fairly compensated amongst the Parties in accordance with standard commercial terms.

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~~12.11. REPRESENTATIVES³~~

~~12.111.1~~ Each Party shall notify the other within 2 (two) weeks of signature of this Agreement of the 2 (two) representatives appointed by each of the Agency and SP.

~~12.211.2~~ Each representative shall exercise the functions and powers of the Party appointing him or her in relation to the SP Services other than those powers which are to be performed by the chief executive or other specifically designated person of the relevant Party.

~~12.311.3~~ Each representative shall be entitled at any time, by notice to the other representative, to authorise any other person to exercise the functions and powers of the party which appointed him or her delegated to him or her pursuant to this Clause ~~11.111.1~~, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of such representative and all references to the representative of a Party in this Agreement (apart from this Clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

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~~12.411.4~~ Each Party may by notice to the other change its representative but shall (as far as practicable) consult with the other Party prior to the appointment of any replacement for its representative, taking account of the need for liaison and continuity in respect of the SP Services. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the other Party in the performance of its obligations under this Agreement).

~~12.511.5~~ During any period when no representative of a Party has been appointed (or when such representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his or her functions under this Agreement) the chief executive of that Party shall carry out the functions which would otherwise be performed by its representative.

³ Note to Draft: A power of attorney will be required from SP under local laws in order for this provision to be effective. A letter from the Agency CEO will be sufficient.

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~~12.611.6~~ No act or omission of a Party, that Party's representative or any officer, employee or other person engaged by such Party shall, except as otherwise expressly provided in this Agreement:

- (a) in any way relieve or absolve such Party from, modify, or act as a waiver or estoppel of, any liability, responsibility, obligation or duty under this Agreement; or
- (b) in the absence of an express order or authorisation under Clause ~~101010~~ (*Variation*), constitute or authorise a Variation.

~~11.7~~ Except as previously notified in writing before such act by the relevant Party to the other that other Party and its representative shall be entitled to treat any act of the relevant Party's representative which is authorised by this Agreement as being expressly authorised by that Agency and shall not be required to determine whether an express authority has in fact been given.

~~13.0~~

~~14.12.~~ **HANDOVER**

~~14.112.1~~ SP shall ensure that where the SP Assets are charged to one or more Lenders, then, when enforcing their rights under such charge, such lender or lenders shall make available to the Agency such of the SP Assets as the Agency shall require in order to ensure continuity of the passenger services on the DART System.

~~14.212.2~~ Upon the Term End Date, the Parties shall have no further rights or obligations under this Agreement except for rights and obligations which arose prior to such expiration and those which expressly survive expiration pursuant to this Agreement.

~~14.312.3~~ 2 (two) years prior to the originally stated Term End Date the Parties shall carry out an inspection of the SP Assets and shall identify those areas where remedial work is required in order that the SP Assets shall comply with Schedules A, B, C and H and that records have been kept in accordance with Schedule N (*Management System and Reporting Requirements*).

~~14.412.4~~ If the Parties are unable to agree either or both the scope and budgeted cost either Party may commission an independent surveyor acceptable to the other Party to carry out such inspection.

~~14.5~~ ~~After Agency's inspection (before two years to expire the contract), SP shall issue a remedial works bond in the sum of TZS 1,000,500,000,000 (one billion five hundred million Tanzanian Shillings) or such lesser amount as agreed between the Parties as being the costs of the remedial works (**Remedial Works Bond**). Such Remedial Works Bond shall be surrendered by the Agency upon completion of the remedial works.⁴~~

~~14.612.5~~ On the Term End Date, SP shall hand over to the Agency the SP Assets in good working condition (subject to wear and tear~~excepted~~) and free of any

⁴ Note to Draft: SP has a maintenance obligation in relation to the SP Assets and to the extent SP does not comply with it, SP will be in breach of the agreement which will trigger the Agency's right to call the performance bond (on the terms and conditions set out in this agreement). It is not necessary to have a second bond for remedial works.

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Security Interest or other third party rights, and operational control of the SP Assets and shall not remove any part of the SP Assets that are necessary for their operation. SP shall, in addition to its obligations under Schedule N (*Management System and Reporting Requirements*), transfer to the Agency an up to date version of the asset condition register.

~~14.7~~12.6 SP and the Agency shall cooperate as reasonably necessary during the 6 (six) months before the Term End Date in order to ensure the smooth continuation and provision of SP Services, including the selection of a new SP company, if relevant.

12.7 SP shall ensure that on hand over it shall comply with the provisions of Regulation 125 of the PPP Regulations 2020.

~~15.0~~ SP shall utilise and till at the Term End Date to handover to the Agency the SP Buses which are replaced on each SP Bus Replacement Date in accordance with paragraph 2.17 (Replaced SP Bus Utilisation) of Schedule A (SP Services).

~~16.13.~~ **TERMINATION**

~~16.1~~13.1 This Agreement may be terminated by the Agency, or by SP, in accordance with Schedule T (*Termination*).

~~16.2~~13.2 The Agency may step in without termination of this Agreement in accordance with paragraph 9 (*Step in*) of Schedule T (*Termination*).

Continuing Obligations

~~16.3~~13.3 Save as otherwise expressly provided, termination of this Agreement shall:

- (a) be without prejudice to any accrued rights and obligations as at the date of termination; and
- (b) not affect the continuing rights and obligations of SP and the Agency under Clauses ~~777~~ (*Payments*), ~~141414~~ (*Corrupt Gifts and Payments*), ~~161616~~ (*Indemnity*), ~~171717~~ (*Information and Audit Access*), ~~181818~~ (*Confidentiality*), ~~212120~~ (*Notices*) and ~~232322~~ (*Law and Dispute Resolution*) or under any other provision of this Agreement which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination.

Damages

~~16.4~~13.4 All rights to [liquidated] (including any accounts specified in Schedule H (Key Performance Indicators)) and unliquidated damages are payable under this Agreement to compensate a Party for costs incurred as a result of the breach.

~~16.5~~13.5 The Parties acknowledge that it is difficult to ascertain the amount of actual damages that would be incurred by a Party in such circumstances, and that such liquidated and ascertained damages are a reasonable estimate of the presumed actual damages that would be incurred by that Party both in its own right and, in respect of the Agency, as agent for the Government of Tanzania in connection with the DART System, the inability of the Agency to provide bus operations to Passengers and the impact of any delay on the development of Dar es Salaam and its surrounding areas.

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~~17.14.~~ **CORRUPT GIFTS AND PAYMENTS**

Warranty

~~17.14.1~~ SP warrants that in entering into this Agreement it has not committed any Prohibited Act.

Undertaking

~~17.214.2~~ SP undertakes to the Agency that it will throughout the duration of this Agreement use all reasonable endeavours to have in place adequate procedures designed to prevent persons associated with SP from bribing any person with the intention of obtaining or retaining business for SP or with the intention of obtaining or retaining an advantage in the conduct of business for SP.

Remedies

~~17.314.3~~ If a Prohibited Act ~~occurs~~ occurs, then the provisions of paragraph 4 (*Corrupt Gifts and Fraud Termination*) of Schedule T (*Termination*) shall apply.

Permitted payments

~~17.414.4~~ Nothing contained in this Clause shall prevent SP from paying any proper commission or bonus to its employees within the agreed terms of their employment.

Notification

~~17.514.5~~ SP shall notify the Agency of the occurrence (and details) of any Prohibited Act promptly upon SP becoming aware of its occurrence.

~~18.15.~~ **DELAY / RELIEF / COMPENSATION EVENTS AND FORCE MAJEURE**

Delay Events

~~18.115.1~~ **Notice:** SP shall give notice in writing to the Agency Representative as soon as SP (or its contractors or agents) can reasonably foresee a Delay Event occurring or, if not reasonably foreseeable, as soon as it (or its contractors or agents) shall become aware of a Delay Event.

~~18.215.2~~ **Time extension:** The Agency shall allow SP an extension of time equal to the delay or impediment caused by such Delay Event (taking into account reasonably foreseeable consequences of the Delay Event) and shall fix a new relevant Readiness Date (SP Planned) which shall replace the existing relevant Readiness (SP Planned) and a new relevant Readiness Date (SP Long Stop) which shall replace the existing relevant Readiness (SP Long Stop) by the same extension of time, provided that:

- (a) SP has given notice and details under Clauses ~~15.115.115.1~~ and ~~15.415.415.4~~;
- (b) SP has maintained records and made available facilities for inspection to the Agency Representative;

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- (c) the Agency Representative, acting reasonably, is satisfied, or it is determined in accordance with the Dispute Resolution Process, that such delay or impediment has arisen as a result of the occurrence of a Delay Event;
- (d) SP has complied with the requirements in Clause ~~15.315.315.3~~ (*Mitigation*); and
- (e) no entitlement of SP to an extension of time shall entitle it to an extension of the Term End Date as a result of any such Delay Event.

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~~18.315.3~~ **Mitigation:** If SP is (or claims to be) affected by a Delay Event it shall (and shall procure that its contractors and agents) take and continue to take all reasonable steps to eliminate or mitigate the consequences of such an event upon the performance of its obligations under this Agreement and, where relevant, resume performance of its obligations affected by the Delay Event as soon as practicable.

~~18.415.4~~ **Further Details:** SP shall within 5 (five) Business Days after notice under Clause ~~15.115.115.1~~, give further written details to the Agency Representative which shall include:

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- (a) a statement of which Delay Event the claim is based upon;
- (b) details of the circumstances from which the Delay Event arises;
- (c) details of the contemporary records which SP will maintain to substantiate its claim for extra time;
- (d) details of the consequences (whether direct or indirect, financial or non-financial) which such Delay Event may have upon achieving Readiness Certificate; and
- (e) details of any measures which SP proposes to adopt to mitigate the consequences of such Delay Event.

~~18.515.5~~ **Further Particulars:** The Agency Representative shall, after receipt of written details under Clause ~~15.415.415.4~~, be entitled by notice in writing to require SP to provide such further supporting particulars as he may reasonably consider necessary. SP shall afford the Agency Representative reasonable facilities for investigating the validity of SP's claim including, without limitation, on-site inspection.

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~~18.615.6~~ **Declaration:** Subject to the provisions of this Clause, the Agency Representative shall declare a revised relevant Readiness Date (SP Planned) within ~~10-two~~ (~~ten~~2) Business Days of the later of:

- (a) the date of receipt by the Agency Representative of SP's notice and details given in accordance with Clauses ~~15.115.115.1~~ and ~~15.415.415.4~~; and
- (b) the date of receipt of any further particulars (if such are required under Clause ~~15.515.515.5~~).

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~~18.715.7~~ **Delay Events** means any of the following to the extent in each case that there will be (or is likely to be) a delay in any Readiness Date (SP Planned):

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- (a) a Relief Event;
- (b) an event of Force Majeure; or
- (c) a Compensation Event.

Relief Events

~~18.8~~15.8 **Notice:** SP shall give notice in writing to the Agency Representative as soon as SP (or its contractors or agents) can reasonably foresee a Relief Event occurring or, if not reasonably foreseeable, as soon as it (or its contractors or agents) shall become aware of a Relief Event.

~~18.9~~15.9 **No termination:** The Agency shall not ~~be entitled to~~ terminate this Agreement by reason of a failure by SP to perform its obligations under this Agreement to the extent that such failure to perform occurs because of the occurrence of a Relief Event, provided that:

- (a) SP has given notice and details under Clauses ~~15.8~~15.8 and ~~15.11~~15.11;
- (b) the Agency Representative, acting reasonably, is satisfied, or it is determined in accordance with the Dispute Resolution Process, that such event is a Relief Event; and
- (c) SP has complied with the requirements in Clause ~~15.10~~15.10 (*Mitigation*).

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~~18.10~~15.10 **Mitigation:** Where SP is (or claims to be) affected by a Relief Event, SP shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the Relief Event as soon as practicable and use all reasonable endeavours to remedy its failure to perform.

~~18.11~~15.11 **Further Details:** SP shall within ~~1 five (one)~~5 Business Days after such notification give further written details to the Agency Representative which shall include:

- (a) a statement of which Relief Event the claim for relief is based upon;
- (b) details of the circumstances from which the Relief Event arises;
- (c) details of the contemporary records which SP will maintain to substantiate its claim for relief;
- (d) details of the consequences (whether direct or indirect, financial or non-financial) which such Relief Event may have upon the carrying out of the SP Services; and
- (e) details of any measures which SP proposes to adopt to mitigate the consequences of such Relief Event.

~~18.12~~15.12 **Further Particulars:** The Agency Representative shall, after receipt of written details under Clause ~~15.11~~15.11, be entitled by notice in writing to require SP to provide such further supporting particulars as he may reasonably

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consider necessary. SP shall afford the Agency Representative reasonable facilities for investigating the validity of SP's claim including, without limitation, on-site inspection.

~~10.13~~15.13 **Declaration:** Subject to the provisions of this Clause, the Agency Representative shall declare either that there has been, or has not been, a Relief Event within ~~10 two~~ ~~(ten)~~2 Business Days of the later of:

- (a) the date of receipt by the Agency Representative of SP's notice and details given in accordance with Clauses ~~15.8~~~~15.8~~~~15.8~~ and ~~15.11~~~~15.11~~~~15.11~~; and
- (b) the date of receipt of any further particulars (if such are required under Clause ~~15.12~~~~15.12~~~~15.12~~).

~~10.14~~15.14 **End of Relief Event:** SP shall notify the Agency as soon as the consequences of the Relief Event have ceased and of when performance of its affected obligations can be resumed.

~~10.15~~15.15 **Relief Event** means any of the following events:⁵

~~(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;~~

~~(b)~~(a) the carrying out of development works in the airspace above the SP Depot and Terminals and the related support works on such sites;

~~(e)~~(b) accidental loss or damage to Stations, Terminals, ROW or any roads used for the purposes of delivering the SP Services;

~~(d)~~(a) ~~failure or shortage of power, fuel or transport;~~

(c) blockade or embargo falling short of Force Majeure;

(d) delays in the delivery of any SP Buses (or replacement SP Buses) by the SP Buses manufacturer or delivery of any SP Buses (or replacement SP Buses) that are not conform to the specifications set out in Schedule B (SP Buses Specifications);

(e) delays in the issue of the LATRA license or any other license required by SP for the provision of SP Services, to the extent the delay is due to no fault of SP; or

~~(f)~~ ~~official or unofficial strike, lockout, go slow or other dispute in each case generally affecting the transport industry or the bus manufacturing industry; or~~

~~(g)~~(f) the occurrence of an event in paragraph 4.1.1 to 4.1.6 inclusive of Schedule C (*Operation and Maintenance of SP Buses*),

⁵ Note to Draft: Events that are typically force majeure events have been removed from this section.

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provided in each case that such event does not arise (directly or indirectly) as a result of any wilful act or default of SP (or any SP Party).

Force Majeure

~~18.16~~15.16 **Notice:** The Party claiming relief shall serve written notice on the other Party within five (5) Business Days of it becoming aware of an event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.

~~18.17~~15.17 **Relief:** The Party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the Force Majeure it is not able to perform its obligations under this Agreement, provided that:

- (a) the Party claiming relief has given notice and details under Clauses ~~15.16~~15.16 and ~~15.19~~15.19;
- (b) the other Party is satisfied, or it is determined in accordance with the Dispute Resolution Process, that such event is Force Majeure; and
- (c) the Party claiming relief has complied with the requirements in Clause ~~15.18~~15.18 (*Mitigation*).

~~18.18~~15.18 **Mitigation:** Where a Party is (or claims to be) affected by an event of Force Majeure it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon as practicable and use all reasonable endeavours to remedy its failure to perform.

~~18.19~~15.19 **Further Details:** The Party claiming relief shall within 5 (five) Business Days after notification under Clause ~~15.16~~15.16 give further written details to the other Party which shall include:

- (a) such relevant information relating to the failure to perform (or delay in performing) as is available;
- (b) the effect of the event of Force Majeure on the ability of the Party to perform;
- (c) the action being taken in accordance with Clause ~~15.18~~15.18 (*Mitigation*);
- (d) the date of the occurrence of the event of Force Majeure; and
- (e) an estimate of the period of time required to overcome either or both it and its effects.

~~18.20~~15.20 **Further Information:** If, following the issue of any notice referred to in Clause ~~15.19~~15.19, the Party claiming relief receives, or becomes aware of, any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Party as soon as reasonably possible.

~~18.21~~15.21 **End of Force Majeure:** The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and of when performance of its affected obligations can be resumed.

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~~18.22~~15.22 **Force Majeure** means any of the following events or circumstances:

(a) fire, explosion, lightning, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, ionising radiation (to the extent it does not constitute Force Majeure), earthquake, riot or civil commotion;

(b) official or unofficial strike, lockout, go slow or other dispute in each case generally affecting the transport industry or the bus manufacturing industry;

(c) failure or shortage of power, fuel or transport;

~~(a)~~(d) war, civil war, armed conflict or terrorism;

~~(b)~~(e) nuclear contamination unless in any case SP and/or any SP Party is the source or cause of the contamination;

~~(c)~~(f) chemical or biological contamination of the Agency Assets and/or the SP Assets from any of the events referred to in Clause ~~15.22(a)~~~~15.22(a)~~~~15.22(a)~~; or

~~(d)~~(g) pressure waves caused by devices travelling at supersonic speeds,

which directly causes a Party to be unable to comply with all or a material part of its obligations under this Agreement.

Compensation Event

~~18.23~~15.23 **Notice:** SP shall give notice in writing to the Agency Representative as soon as SP (or its contractors or agents) can reasonably foresee a Compensation Event occurring or, if not reasonably foreseeable, as soon as it (or its contractors or agents) shall become aware of a Compensation Event.

~~18.24~~15.24 **Compensation Payment:** If SP has incurred loss and / or expense as a direct result, in whole or in part, of a Compensation Event, SP shall be entitled to a compensation payment as would place SP in no better or no worse position than it would have been in had the relevant Compensation Event not occurred. The amount of the compensation payment due to SP under this Clause shall be agreed between the Parties or, failing agreement, determined pursuant to the Dispute Resolution Process.

~~18.25~~15.25 **Further Information:** SP shall promptly provide the Agency Representative with any additional information he may require in order to determine the amount of the compensation payment.

~~18.26~~15.26 **Mitigation:** SP shall take all reasonable steps so as to minimise the amount of any compensation payment any compensation payment payable shall:

(a) exclude any amounts incurred or to be incurred as a result of any failure of SP (or any SP Party) to comply with this Clause; and

(b) be reduced by any amount which SP will recover under any insurance policy (or would have recovered if it had complied with the requirements of this Agreement or of any policy of insurance required under this Agreement) which amount, to avoid doubt, shall not include any excess or deductibles or

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any amount over the maximum amount insured applicable to any such insurance policy.

~~18.27~~15.27 SP's sole right to compensation shall be as provided for in this Clause and no other Delay Event or Relief Event pursuant to which SP incurs a loss or expense shall entitle SP to receive any compensation save as otherwise expressly provided in Schedule Y (*Variations*).

~~18.28~~15.28 **Compensation Event** means any of:

- (a) the carrying out of development works in the airspace above the SP Depot and Terminals and the related support works on such Sites, which in accordance with this Clause ~~15.15.15~~ is a Relief Event;
- (b) breach by the Agency and/or any Agency Party of any of the Agency's express obligations under this Agreement to the extent that such breach is not materially caused, or contributed to, by SP (or its contractors or agents);
- (c) a Change in Law (Discriminatory); ~~or~~

(d) a Change in Law (Specific); or

~~(d)(e)~~ a Change in Law that materially impacts the economics of this Agreement other than those specifically addressed in Clause [4.14.1].

~~19.16.~~ INDEMNITY

SP indemnities to Agency

~~19.16.1~~16.1 SP shall indemnify and keep the Agency indemnified at all times from and against all Direct Losses sustained by the Agency in consequence of:

- (a) any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, SP or any SP Party ~~notwithstanding any act or omission of the Agency or any Agency Party;~~
- (b) any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause ~~16.3(a)~~16.3(a)~~16.2(a)~~16.2(a) (*Agency Party employees*)) arising out of, or in the course of, the SP Services, ~~save to the extent caused (or contributed to) by any negligent act by the Agency or any Agency Party, breach of any express provision of this Agreement by the Agency or any Agency Party or any deliberate act or omission of the Agency or any Agency Party;~~
- (c) any physical loss of or damage to Agency Assets arising by reason of any act or omission of SP or any SP Party, ~~save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by the Agency or any Agency Party or any deliberate act or omission of the Agency or any Agency Party;~~ and
- (d) any loss of or damage to property or assets of any third party arising by reason of any act or omission of SP or any SP Party, ~~save to the extent that such loss or damage arises out of the breach of any express provision of this Agreement by the Agency or any Agency Party or any deliberate act or omission of the Agency or any Agency Party.~~

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~~(d)16.2~~ For the avoidance of doubt, SP shall not be responsible for damages to the Agency Assets which are the result of a Force Majeure event.

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Agency indemnities to SP

~~19.2~~16.3 The Agency shall indemnify and keep SP indemnified at all times from and against all Direct Losses sustained by SP in consequence of:

- (a) any claim for, or in respect of, the death and/or personal injury of any employee of, or person engaged by, the Agency or any Agency Party ~~notwithstanding any act or omission of SP or any SP Party;~~
- (b) any claim for, or in respect of, the death and/or personal injury of any third party (other than a person referred to in Clause ~~16.1(a)16.1(a)16.1(a)~~ (SP and SP Party employees)) arising by reason of any negligent act by the Agency or any Agency Party, breach of any express provision of this Agreement by the Agency or any Agency Party or any deliberate act or omission of the Agency or any Agency Party, ~~save to the extent caused (or contributed to) by any act or omission of SP or any SP Party;~~
- (c) any physical damage to any part of the SP Assets arising by reason of any breach of any express provision of this Agreement by the Agency or any Agency Party or any deliberate act or omission of the Agency or any Agency Party, ~~save to the extent caused (or contributed to) by any act or omission of SP or any SP Party;~~ and
- (d) any loss of or damage to property or assets of any third party arising by reason of any breach of any express provision of this Agreement by the Agency or any Agency Party or any deliberate act or omission of the Agency or any Agency Party, ~~save to the extent caused (or contributed to) by any act or omission of SP or any SP Party.~~

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~~provided that in the case of Clause (c) and (d) there shall be excluded from the indemnity given by the Agency any liability for the occurrence of risks against which and to the extent to which SP is bound to insure under this Agreement.~~

Conduct of claims

~~19.3~~16.4 Where a Party (**Indemnifier**) from whom an indemnity is sought under this Agreement, in respect of claims made by a third person against a Party (**Beneficiary**) having (or claiming to have) the benefit of the indemnity then:

- (a) if the Beneficiary receives any notice, demand, letter or other document concerning any claim for which it appears that the Beneficiary is, or may become entitled to, indemnification under this Agreement, the Beneficiary shall give notice in writing to the Indemnifier as soon as reasonably practicable and in any event within twenty (20) Business Days of receipt of the same;
- (b) on the giving of a notice by the Beneficiary pursuant to Clause ~~16.4(a) above16.4(a) above16.3(a) above~~ where it appears that the Beneficiary is or may be entitled to indemnification from the Indemnifier in respect of all (but not part only) of the liability arising out of the claim, the Indemnifier shall (subject to providing the Beneficiary with a secured indemnity to its reasonable satisfaction against all costs and expenses that it may incur by

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reason of such action) be entitled to dispute the claim in the name of the Beneficiary at the Indemnifier's own expense and take conduct of any defence, dispute, compromise, or appeal of the claim and of any incidental negotiations. The Beneficiary shall give the Indemnifier all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim;

(c) with respect to any claim conducted by the Indemnifier pursuant to Clause ~~16.4(b) above~~~~16.4(b) above~~~~16.3(b) above~~:

- (i) the Indemnifier shall keep the Beneficiary fully informed and consult with it about material elements of the conduct of the claim;
- (ii) the Indemnifier shall not bring the name of the Beneficiary into disrepute; and
- (iii) the Indemnifier shall not pay or settle such claims without the prior consent of the Beneficiary, such consent not to be unreasonably withheld or delayed.

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~~19.4~~~~16.5~~ The Beneficiary shall be free to pay or settle any claim on such terms as it thinks fit and without prejudice to its rights and remedies under this Agreement if the Indemnifier fails to meet its obligations in relation to this Clause ~~16.4~~ or to conduct litigation in its own right and all costs, expenses losses and damages incurred shall be recoverable as a debt.

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~~19.5~~~~16.6~~ If any payment by one Party under an indemnity in this Agreement is subject to income tax or corporation tax (or any tax replacing them) in the hands of the recipient which cannot be offset against any other tax otherwise payable by or on behalf of the recipient or by any connected person to the recipient, the recipient may demand in writing to the Party making the payment that the payment shall be increased by such amount as would ensure that, after taking into account any such tax payable in respect of such additional amount, the recipient receives and retains a net sum equal to the amount it would have otherwise received had the payment not been subject to such tax.

~~19.6~~~~16.7~~ The Party making the payment shall pay such additional amount within 10 (ten) Business Days of receipt of such demand.

Exclusions

~~19.7~~~~16.8~~ The indemnities under this Agreement shall not apply and (without prejudice to the Agency's rights under Schedule E (*Payments*)) there shall be no right to claim damages for breach of this Agreement, in tort or on any other basis whatsoever to the extent that any loss claimed by either Party is for loss of profits, loss of use, loss of production, loss of business or loss of business opportunity or is a claim for consequential loss or for indirect loss of any nature (**Indirect Losses**) suffered or allegedly suffered by either Party.

~~20.17.~~ INFORMATION AND AUDIT ACCESS

~~20.1~~~~17.1~~ SP shall provide to the Agency's Representative reasonable access to all information, documents, records and the like in the possession of, or available to,

SP (and to this end SP shall use all reasonable endeavours to procure that all such items in the possession, custody or control of SP or any Contractor or sub-contractor shall be available to it and SP has included, or shall include or procure the inclusion, relevant terms in all contracts with any Contractor or any sub-contractor to this effect) as may be reasonably requested by the Agency's Representative ~~for any purpose in connection with~~ to ensure compliance with the terms of this Agreement or if required by Law.

~~20-217.2~~ SP shall provide and shall procure that its Contractors and their sub-contractors shall provide such information as the Agency may reasonably require from time to time to enable it to meet its obligations to provide reports and returns pursuant to regulations, directions or guidance applicable to the Agency or as required by external agencies including, without limitation, reports and returns regarding the physical condition of any of the vehicles, maintenance areas or SP Depot where the vehicles may be stored, maintained or repaired, health and safety, relating to environmental health, security or otherwise relating to the supply of the SP Services.

~~20-317.3~~ SP shall allow the Agency access to all areas where records may be maintained including access to all electronic equipment on which such data may be stored and will allow the Agency to take copies of such data (whether in electronic form or otherwise).

- (a) SP shall ensure that in its contracts with any contractor, consultant or other supplier that similar rights are conferred for the benefit of the Agency.
- (b) In addition, SP shall procure that the Agency shall be given full access, subject to adhering to safety regulations to any premises where work in relation to the carrying out of the SP Services is taking place including but not limited to maintenance areas or SP Depot where the vehicles may be stored, maintained or repaired.

~~21-18.~~ **CONFIDENTIALITY**

Confidential Information

~~21-118.1~~ In this Agreement **Confidential Information** means all commercially sensitive information relating to the other Party which is:

- (a) supplied by or on behalf of the other Party (whether before or after the date of this Agreement);
- (b) either in writing, orally or in any other form;
- (c) directly or indirectly from or pursuant to discussions with the other Party or which is obtained through observations made by the receiving Party; and
- (d) includes all analyses, compilations, studies and other documents whether prepared by or on behalf of a Party which contain or otherwise reflect or are derived from such information.

Use and disclosure of Confidential Information

~~21-218.2~~ Each Party shall hold in confidence any Confidential Information, provided that the provisions of this Clause ~~181818~~ shall not restrict either Party from

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passing such information to its professional advisers, to the extent necessary, to enable it to perform (or to cause to be performed) or to enforce its rights or obligations under this Agreement, and provided further that SP may, subject to obtaining appropriate confidentiality restrictions:

- (a) pass to SP funders such documents and other information as are reasonably required by the funders in connection with the raising of finance for the SP Services or which SP is obliged to supply by the terms of the relevant funding agreements; and
- (b) pass to a Contractor any SP's documents and other information which are necessary for SP's performance of this Agreement.

Exceptions

~~21.3~~18.3 The obligation to maintain the confidentiality of the Confidential Information does not apply to Confidential Information:

- (a) which the other Party confirms in writing is not required to be treated as Confidential Information;
- (b) which is or comes into the public domain otherwise than through any disclosure prohibited by this Agreement;
- (c) to the extent any person is required to disclose such Confidential Information by law or any regulatory or government authority (but only to that extent);
- (d) as the Agency may require for the purpose of the SP Services or for the operation, maintenance or improvement of what were the assets used by SP in the event of, or following, termination of this Agreement; or
- (e) disclosed pursuant to Clause ~~18.5~~18.5 (*Agency Disclosure*).

Announcements

~~21.4~~18.4 Unless otherwise required by any law or any regulatory or governmental authority (but only to that extent), neither Party shall make or permit or procure to be made any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information or in the case of SP of its (or any SP Party's) interest in the SP Services or, in any such case, any matters relating thereto, without the prior written consent of the other Party (which shall not be unreasonably withheld or delayed).

Agency Disclosure

18.5 The Agency shall be free to disclose the terms of this Agreement to any competent authority within the Government of Tanzania provided such competent authorities are made aware of the confidentiality of this Agreement and are contractually bound by confidentiality terms at least as restrictive as the terms of this Agreement and the Parties agree that the Agency shall be free to use and disclose such information on such terms and in such manner as it sees fit.

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19. INTELLECTUAL PROPERTY

19.1 The Parties agree to comply with their respective obligations in relation to the Intellectual Property as described in Schedule P (*Intellectual Property*).

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~~23.20.~~ ASSIGNMENT

~~23.20.1~~ SP shall not, without the prior written consent of the Agency’s representative, assign, transfer, sub-contract or otherwise dispose of any interest in this Agreement including but not limited to any economic interest.

~~23.220.2~~ The provisions of Clause ~~20.120.119.1~~ do not apply to the grant of any security, in a form approved by the Agency prior to its grant (such approval not to be unreasonably withheld or delayed), for any loan made to SP, provided that any assignee in relation to SP Buses shall enter into a direct agreement in relation to the leasing of SP Buses if the Agency so requires.

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~~23.320.3~~ This Agreement shall be binding on, and shall enure to the benefit of, SP and the Agency and their respective permitted successors and permitted transferees and assigns.

~~23.420.4~~ In the case of the Agency, its successors shall include any person to whom the Relevant Authority, in exercising his statutory powers to transfer property, rights and liabilities of the Agency upon the Agency ceasing to exist, transfers the property, rights and obligations of the Agency under this Agreement, and such other agreements in connection with the SP Services to which the Agency and SP are both a party.

~~23.520.5~~ Other than as provided in Clause ~~20.420.419.4~~, the Agency shall not assign or otherwise dispose of the benefit of the whole or part of this Agreement or any agreement in connection with this Agreement to which SP and the Agency are a party without the consent of SP (such consent not to be unreasonable withheld or delayed).

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~~24.21.~~ NOTICES

~~24.21.1~~ All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, leaving the same at:

If to SP Address: Plot 1196, Haile Selassie, Kinondoni****, PO Box 12729****, Dar es Salaam, Tanzania

email: [redacted]6****

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If to the Agency Address: DART Agency, Ubungo Maji, Morogoro Road, PO Box 724, Dar es Salaam, Tanzania

⁶ Note to Draft: SP to confirm.

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[email: info@dart.go.tz](mailto:info@dart.go.tz)

~~24.221.2~~ Either Party to this Agreement may change its nominated address by prior notice to the other Party.

~~24.321.3~~ Notices given by post shall be effective upon the earlier of actual receipt and 5 (five) Business Days after mailing.

~~24.421.4~~ Notices delivered by hand shall be effective upon delivery.

~~25.22.~~ MISCELLANEOUS

Entire agreement

~~25.122.1~~ This Agreement constitutes the entire agreement between the Parties in respect of its subject matter and supersedes all prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter.

Nature of the relationship

~~25.222.2~~ Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the Parties.

~~25.322.3~~ At all times during the provision of the performance of SP's other obligations under this agreement; SP is an independent contractor and not an employee or agent of the Agency.

Application of Agreement

~~25.422.4~~ This Agreement applies to the provision of the SP Services and the performance of SP's other obligations under this Agreement whether provided or performed before, on or after the date of this Agreement.

Contra proferentem

~~25.522.5~~ In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one Party on the basis that it put forward this Agreement or any part of it.

Right, power or remedy

~~25.622.6~~ A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

Variations and waivers

~~25.722.7~~ A provision of or a right created under this Agreement may not be [varied except in writing signed by the Parties, or](#) waived except in writing signed by the party granting the waiver, ~~or varied except in writing signed by the Parties.~~

Approval or consent requirements

~~25.822.8~~ Unless otherwise expressly provided in this Agreement, where a Party's approval or consent to any act, matter or thing is required under this Agreement:

- (a) the approval or consent must be in writing;
- (b) the approval or consent must be obtained prior to the act, matter or thing to which it relates;
- (c) the approval or consent may be refused, given unconditionally or given subject to conditions in the discretion of the Party giving it;
- (d) a Party seeking approval or consent must use its best endeavours to ensure that the Party giving approval or consent is given reasonable time and information to make a determination as to the act, matter or thing (and not object to the Party taking reasonable time in making that determination); and
- (e) the Party must not be unreasonable in refusing, delaying or imposing conditions on its approval or consent.

No implied approval by the Agency

~~25.922.9~~ SP acknowledges that no comment, review, representation, vetting, inspection, testing or approval by the Agency in respect of SP's obligations under this Agreement will lessen or otherwise affect SP's obligations under this Agreement.

Parties' rights and remedies not affected

~~25.1022.10~~ The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

Counterparts

~~25.1122.11~~ This Agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered shall be an original but all counterparts shall together constitute one and the same instrument.

Further Assurance

~~25.1222.12~~ Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

Amendments

~~25.1322.13~~ The provisions of this Agreement may not be amended (otherwise than in accordance with the terms of this Agreement) except by written agreement between all the Parties to this Agreement.

~~26.23.~~ LAW AND DISPUTE RESOLUTION PROCESS

Law of this Agreement

~~26.1~~23.1 This Agreement is governed and construed by the laws of the Mainland Tanzania.

Dispute Resolution Process

23.2 Where a dispute arises between the Parties in relation to this Agreement, either Party may give a Dispute Notice to the other Party to initiate the Dispute Resolution Process.

Waiver of Immunity


23.3 The Agency hereby irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any proceedings.

~~26.2~~

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This Agreement has been entered into on the date stated at the beginning of it.

Signed for and on behalf of)
THE DAR RAPID TRANSIT AGENCY) Stamp / [Seal](#)
by)
)
)
).....
) Signature
Name of Signatory)
Title:)
)
)
)
Address)
)
)
).....
) Signature
Name of Signatory)
Title:)
)
)
Address)

Sealed with the Common Seal of)
TRANSDAR  **LIMITED**) SEAL
 and delivered in the presence of us)
 Date)
)
 Name of Director) Signature
)
 Address)
)
 Name of Director / Secretary) Signature
)
 Address)