

# AGREEMENT OF SUB-LEASE

between

## KILOMBERO SUGAR COMPANY LIMITED

a limited liability company incorporated under the laws of Tanzania

(registration number 2539)

("Kilombero")



and

## ILLOVO DISTILLERS (TANZANIA) LIMITED

a limited liability company incorporated under the laws of Tanzania

(registration number 85231)

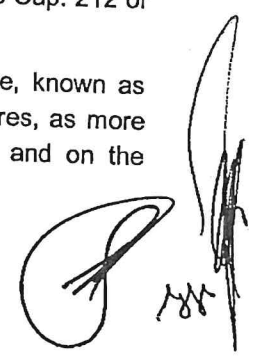
("IDTL")

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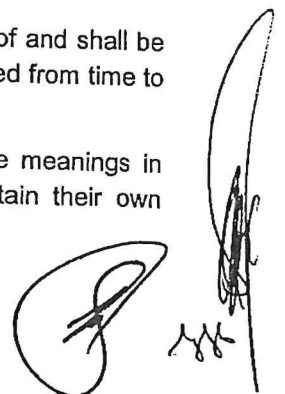
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1 **INTERPRETATION**

- 1.1 The following expressions, unless inconsistent with the context in which they are used, shall bear the meanings assigned to them below, and cognate expressions shall bear corresponding meanings :-
- 1.1.1 "**this agreement**" means this agreement read with the annexures hereto, and any written amendments from time to time;
- 1.1.2 "**applicable laws**" – means all laws, bye-laws, regulations and legislation (including subordinate legislation, all environmental and/or health and safety laws regulations and practices) in force from time to time in Tanzania;
- 1.1.3 "**business day**" – means a calendar day excluding a Saturday, Sunday or public holiday in South Africa or Tanzania;
- 1.1.4 "**Certificate of Occupancy**" – means the Certificate of Occupancy dated 14 October 1990 (title number 37249) issued in favour of Kilombero, in terms of which Kilombero was granted the right of occupancy in and over the Land for a period of 99 years from 1 October 1982;
- 1.1.5 "**CMS**" means the condensed molasses solids produced by IDTL at the Distillery;
- 1.1.6 "**Commencement Date**" – means 1 January 2012, or such other date as may be agreed between the parties in writing;
- 1.1.7 "**Control**" – means the beneficial ownership of the majority in number of the issued equity of any entity (or the whole or majority of the entity's assets), and/or the right or ability to direct or otherwise control the votes attaching to the majority of the entity's issued share capital, and/or the right or ability to appoint or remove directors holding a majority of voting rights at meetings of the board of the entity in question and "controlled" or "under common control" shall have a similar meaning;
- 1.1.8 "**Distillery**" – means the alcohol distillery to be constructed and operated by IDTL on the Leased Property;
- 1.1.9 "**IDTL**" – means ILLOVO DISTILLERS (TANZANIA) LIMITED (registration number 85231), a company incorporated under the laws of Tanzania;
- 1.1.10 "**ISL**" – means Ilovo Sugar Limited (registration number 1906/000622/06), a limited liability public company duly registered and incorporated in accordance with the laws of the Republic of South Africa;
- 1.1.11 "**ISL Group**" – means ISL, its holding company, and each other company in which either of them, directly or indirectly, holds the majority of the shares, or otherwise controls from time to time;
- 1.1.12 "**Kilombero**" - means KILOMBERO SUGAR COMPANY LIMITED (registration number 2539), a company incorporated under the Companies Ordinance Cap. 212 of the Laws of Tanzania;
- 1.1.13 "**the Land**" – means the land on which the Leased Property is situate, known as Farm No. 105 situated at Ruembe Kilosa District, in extent 4,576 hectares, as more fully described on the plan attached to the Certificate of Occupancy and on the registered survey plan numbered 23811 referred to therein;



- 1.1.14 "the Leased Property" – means those portions of the Land (in extent approximately three comma eight five (3.85) hectares) in the aggregate demarcated on the plan annexed hereto as **Annexure A**, which are leased to IDTL in terms of this agreement and includes all buildings structures and other improvements erected or established thereon from time to time during the term of this lease;
- 1.1.15 "Loan Agreement" – means the loan agreement to be executed between the parties in terms of which IDTL will lend to Kilombero an amount sufficient to enable Kilombero to procure the installation of certain plant and equipment at its sugar mill at Ruembe, to enable Kilombero to provide electricity, water and steam to IDTL;
- 1.1.16 "Permitted Use" – means the construction and operation of the Distillery and all other uses ancillary thereto;
- 1.1.17 "Prime Rate" – means interest, calculated from due date to date of payment, both days inclusive, at an annual rate equal to the publicly quoted prime overdraft lending rate charged by the National Bank of Commerce in Tanzania from time to time on monies lent and advanced on unsecured overdraft;
- 1.1.18 "Proportionate Share" – means the ratio which the area of the Leased Property bears to the total bearer of the Land;
- 1.1.19 "Ruembe Mill" - means Kilombero's Ruembe sugar mill at Kidatu in Tanzania;
- 1.1.20 "Signature Date" – means the date of execution of this agreement by the party signing last in time;
- 1.1.21 "Tanzania" – means the United Republic of Tanzania;
- 1.2 Clause headings in this agreement are for convenience only and shall not be taken into account in the interpretation hereof.
- 1.3 Words importing a particular gender shall be deemed to include the other genders, words importing natural persons shall be deemed to include corporate bodies and associations of persons, and words importing the singular shall be deemed to include the plural, and vice versa.
- 1.4 If any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement.
- 1.5 When any number of days is prescribed in this agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day is not a business day in which case the last day shall be the next succeeding business day.
- 1.6 Where figures are referred to in numerals and in words, If there is any conflict between the two, the words shall prevail.
- 1.7 Any reference to any Act is to such Act as at the date of last signature hereof and shall be deemed to include also a reference to any such Act as amended or re-enacted from time to time.
- 1.8 Definitions and expressions defined in this agreement shall bear the same meanings in schedules or annexures to this agreement which do not themselves contain their own definitions.



1.9 References to "**including**" and "**in particular**" shall not be construed restrictively but shall mean "including, without limitation to the generality of the foregoing" and "in particular, but without limitation to the generality of the foregoing" respectively;

1.10 The terms of this agreement having been negotiated, the *contra proferentem* rule (ie, the rule of construction that in the event of ambiguity an agreement shall be interpreted against the party responsible for the drafting or preparation thereof) shall not be applied in the interpretation of this agreement.

1.11 Each of the parties hereto acknowledges that it has been free to secure independent legal and/or other advice as to the nature and effect of all of the provisions of this agreement and that it has either taken such independent legal and/or other advice or dispensed with the necessity of doing so.

## 2 BASIS OF AGREEMENT

This agreement is entered into on the basis that:-

2.1 In terms of the Certificate of Occupancy, Kilombero holds the right of occupancy in and over the Land, on which Kilombero conducts sugar cane farming and milling operations, until 30 September 2081.

2.2 IDTL wishes to construct and operate a distillery on the Leased Property, and for such purposes IDTL requires the long term use and occupation rights in respect of the Leased Property.

2.3 Kilombero is willing to sublet the Leased Property to IDTL, upon the terms and conditions recorded in this agreement.

## 3 CONDITIONS OF AGREEMENT

3.1 If any of the following conditions is not fulfilled within a period of 3 (three) months after the Signature Date (or such later date as the parties may agree in writing prior to or within 30 days after that date), then either party shall be entitled to cancel this agreement upon written notice to the other, and in such event, save for claims for restitution, neither party shall have any claim against the other arising from the execution of this agreement, or the termination thereof:-

3.1.1 the Director of Lands and/or appropriate governmental and/or municipal authority in Tanzania:-

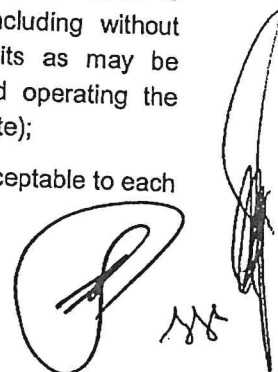
3.1.1.1 authorises Kilombero to lease the Leased Property to IDTL;

3.1.1.2 authorises IDTL to utilise the Leased Property for the Permitted Use;

3.1.1.3 to such extent as may be necessary, authorises the establishment and operation of the easements referred to in clause 10;

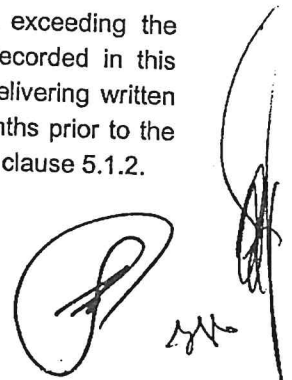
3.1.2 IDTL is granted such permits and/or consents as are required to enable IDTL to construct and operate the Distillery on the Leased Property (including without limitation, such environmental and health consents and/or permits as may be necessary or requisite for the purposes of IDTL establishing and operating the Distillery, and for the discharge and disposal of effluent and other waste);

3.1.3 Kilombero and IDTL execute the following agreements upon terms acceptable to each of them:-



- 3.1.3.1 a Utilities Supply Agreement, in terms of which Kilombero agrees to make electricity, water, fire water and steam available to IDTL;
- 3.1.3.2 a Management, Maintenance and Development Services Agreement, in terms of which Kilombero agrees to provide certain services to IDTL;
- 3.1.3.3 a Molasses and CMS Supply Agreement, in terms of which Kilombero will supply molasses to IDTL, and IDTL will supply CMS and/or liquid fertilizer to Kilombero; and
- 3.1.3.4 the Loan Agreement;
- 3.1.4 ISL and IDTL enter into:-
- 3.1.4.1 an Operational Support Agreement, in terms of which ISL will provide IDTL with certain support services relative to the Distillery operations;
- 3.1.4.2 a Marketing Agency Agreement, in terms of ISL will provide services to IDTL in relation to the marketing and sale of the products manufactured at the Distillery;
- 3.2 Each of the parties undertakes to co-operate with the other in order to procure the fulfilment of the conditions referred to in clause 3.1.
- 4 LEASE**
- 4.1 Kilombero hereby sublets the Leased Property to IDTL, and IDTL hereby agrees to sublet the Leased Property from Kilombero, with effect from the Commencement Date, upon the terms recorded in this agreement.
- 4.2 IDTL acknowledges that it has inspected and is fully acquainted with the locality, extent and condition of the Leased Property.
- 4.3 The portions of Land constituting the Leased Property are leased together as one indivisible unit.
- 5 DURATION OF AGREEMENT**
- 5.1 Subject to clause 3.1, this agreement shall:-
- 5.1.1 commence on the Commencement Date; and
- 5.1.2 continue thereafter until the expiry of the Certificate of Occupancy (ie, until 30 September 2081), unless terminated prior to the expiry of such period in accordance with the terms of this agreement, or renewed in terms of clause 5.2.
- 5.2 If Kilombero's right of occupancy in and over the Land is extended beyond 30 September 2081, then:-
- 5.2.1 Kilombero shall forthwith after the right of occupancy has been extended notify IDTL in writing of the terms and duration of such extension ("**Renewal Period**"); and
- 5.2.2 IDTL shall be entitled to renew this agreement for a period not exceeding the Renewal Period, upon the same terms and conditions as those recorded in this agreement (as it may have been amended from time to time) by delivering written notice of its intention to do so to Kilombero not less than 6 (six) months prior to the expiry of the initial period of the Certificate of Occupancy referred to in clause 5.1.2.
- 5.3 Notwithstanding clause 5.1.2, this agreement shall terminate:-



- 5.3.1 if IDTL advises Kilombero in writing prior to the commencement of construction, that it has elected not to proceed with the construction of the Distillery; or
- 5.3.2 if the Certificate of Occupancy terminates or is cancelled for any reason prior to its expiry, provided that Kilombero warrants and undertakes to IDTL that it will timeously comply with all its obligations under the Certificate of Occupancy so as to ensure that the Certificate of Occupancy is not terminated by reason of a breach thereof by Kilombero;
- 5.3.3 if Kilombero acquires the Distillery business and assets from IDTL.
- 5.4 Notwithstanding any termination of this agreement:-
- 5.4.1 IDTL shall remain liable to pay to Kilombero all amounts payable in terms of this agreement and/or the agreements referred to in clauses 3.1.3 and 3.1.4 prior to the date of termination; and
- 5.4.2 each party shall remain liable to the other for any damages or compensation payable as a consequence of such termination.

6 **RENTAL**

- 6.1 The rental payable by IDTL shall be an annual amount equal to the Proportionate Share of the annual rental payable by Kilombero in terms of the Certificate of Occupancy.
- 6.2 The annual rental shall be paid by IDTL to Kilombero in Tanzanian shillings, without set-off, deduction or demand, annually in advance, with effect from the Commencement Date, and thereafter on the first day of July of each year, into a bank account nominated by Kilombero in writing from time to time.

7 **TAX AND INTEREST**

- 7.1 The rental referred to in clause 6 and all other amounts payable in terms of this agreement are expressed exclusive of value added tax (and any other applicable tax that may be payable thereon), which shall be payable thereon at the prevailing rate prescribed by law from time to time, against presentation of a tax invoice reflecting the amount payable.
- 7.2 All amounts payable in terms of this agreement shall be paid on due date, without deduction or demand and free of any withholding tax or other impost, provided that should either party at any time be compelled by law to withhold or deduct any withholding tax or other impost from any amounts payable, then the amounts payable shall be increased to the extent necessary to ensure that the other party receives a net amount equal to that which would have been paid to it had no such deduction or withholding been made.
- 7.3 If either party fails to pay the other party ("**the aggrieved party**") any amount payable in terms of this agreement on due date, then without prejudice to any other rights which the ~~aggrieved party~~ may have in terms of this agreement or according to law, the aggrieved party shall be liable for interest on the overdue amount, at the Prime Rate, compounded monthly in arrear from due date until the date upon which the relevant amount is received by the aggrieved party as cleared funds available for withdrawal, both dates inclusive.

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*LB*

*[Signature]*

**8 RATES AND OTHER IMPOSTS**

- 8.1 In addition to the rental, IDTL shall pay to Kilombero a Proportionate Share of all or any rates, taxes and all other imposts which may be levied upon and payable by Kilombero at any time in respect of the Land, which amounts shall be paid by IDTL within thirty (30) days after the delivery to IDTL of an invoice advising IDTL of the amount payable.
- 8.2 In addition to the amounts payable in terms of clause 8.1, IDTL shall on or before due date pay directly to any governmental, local or other competent authority, all taxes, levies and other imposts as may be levied upon and payable by IDTL specifically in respect of the Leased Property from time to time, and shall at the request of Kilombero produce proof that such payments have been made.
- 8.3 In addition to the amounts referred to in clauses 8.1 and 8.2, in the event that the rates taxes and other imposts relative to the Land are themselves increased by virtue of the establishment and operation of the Distillery, such increase shall be borne by IDTL.

**9 USE AND OCCUPATION OF THE LEASED PROPERTY**

- 9.1 Notwithstanding the Commencement Date, IDTL shall be entitled, with effect from the Signature Date, to unrestricted access of the Leased Property for the purposes of procuring the necessary permits, authorities and licenses required for the construction and operation of the Distillery. For such purposes, IDTL is hereby granted unrestricted rights to traverse the Land for the purposes of gaining access to the Leased Property.
- 9.2 IDTL shall use the Leased Property solely for the Permitted Use and for no other purposes without the prior written consent of Kilombero, provided always that Kilombero does not warrant, and this agreement is not entered into on the basis that the Leased Property is or will at any time be fit for the use or uses referred to herein or for any other purpose.
- 9.3 IDTL shall at all times during the currency of this agreement be responsible for obtaining and maintaining the validity of all necessary governmental and other permits and/or licences required in respect of IDTL's business operations on the Leased Property.
- 9.4 Subject to the grant of all necessary authorities, permits and licences, Kilombero grants to IDTL the right, at its own cost, to construct the Distillery on the Leased Property (including storage facilities for the housing of equipment, and such other ancillary facilities and infrastructure as may be required for the establishment and conduct of the Distillery business, roads and dams), and to make any alterations to such buildings and structures as may be necessary from time to time.
- 9.5 Save as provided for in the Utilities Supply Agreement referred to in clause 3.1.3.1, Kilombero shall not be responsible for the supply of any utilities or other services to IDTL.

**10 EASEMENTS**

- 10.1 Kilombero hereby grants to IDTL the following easements, granting to IDTL:-
- 10.1.1 a general right of way servitude over the existing routes traversing the Land and not exceeding the width thereof, for both vehicular and pedestrian purposes to the nearest public road;
- 10.1.2 a general pipeline servitude for the purpose of transmitting molasses from the Ruembe Mill to the Distillery;

- 10.1.3 a general pipeline and/or canal servitude for the purpose of transmitting water from the main water canal and/or boreholes on the Land to the Distillery;
- 10.1.4 such servitudes as may be required for the transmission of electricity from the Ruembe Mill and/or the national grid to the Distillery, and for the transmission of steam from the Ruembe Mill to the Distillery.
- 10.2 The locality and route of the easements referred to in clause 10.1 will be as identified and determined by the surveyors to be appointed by IDTL, at IDTL's cost subject always to the prior approval thereof by Kilombero which approval will not be withheld unreasonably.
- 10.3 The easements referred to in clause 10.1 shall endure for the duration of this agreement and any extension thereof.
- 10.4 Save as provided for to the contrary in the Utilities Supply Agreement, Kilombero shall be responsible for carrying out the maintenance of the servitudes at its cost.

## 11 MAINTENANCE OF THE LEASED PROPERTY

Save as provided for in the Management and Operational Services Agreement, referred to in clause 3.1.3.2, Kilombero shall not be responsible for any maintenance and repairs to the Leased Property, or any of the improvements thereon, and IDTL shall:-

- 11.1 at its expense maintain the whole of the Leased Property and all improvements thereon in good and secure order and condition;
- 11.2 keep the Leased Property neat and tidy and not permit any litter to be strewn on the Leased Property;
- 11.3 upon the termination or expiration of this lease or any renewal hereof (for any cause whatever) re-deliver the Leased Property to Kilombero and until it has complied with this obligation, IDTL shall:-
- 11.3.1 continue to pay to Kilombero an amount equivalent to the rental, and all other amounts payable in terms of this lease until the due fulfilment of its obligations hereunder; and
- 11.3.2 continue duly to fulfil all obligations and undertakings in terms of this agreement that would have been applicable had this lease not expired or been otherwise terminated.

## 12 OBLIGATIONS OF IDTL

### 12.1 Alterations and modifications

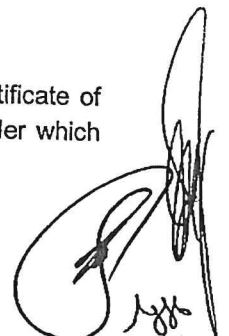
Any alterations, additions or modifications to the Leased Property and/or any of the improvements thereon that are required by any competent authority for the grant or renewal of any authority or permit to IDTL for its occupation of the Leased Property and/or for the ~~conduct of its business thereon~~, shall be carried out by IDTL at its cost, and in accordance with such authority's requirements.

### 12.2 Compliance with Laws and Certificate of Occupancy

IDTL shall:-

- 12.2.1 not contravene or permit the contravention of any of the terms of the Certificate of Occupancy or any of the conditions of title permits or other consents under which Kilombero occupies the Leased Property;

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- 12.2.2 not contravene or permit the contravention of any applicable laws which are required to be observed in relation to the Leased Property and/or in relation to IDTL's operations thereon;
- 12.2.3 carry on and conduct its operations on the Leased Property in such a manner as not to constitute or become a nuisance or prejudice to Kilombero or any occupier of any part of the Land, or any adjacent property;
- 12.2.4 not cause, or permit to be caused, on the Leased Property, any excessive noise or odour pollution or other pollution.

**12.3 Refuse, Effluent, Waste and Environmental Obligations**

IDTL shall:-

- 12.3.1 ensure that all refuse, effluent and waste is disposed of in accordance with the applicable laws alternatively, with the reasonable requirements of Kilombero, and shall conform to the requirements of any local authority or other competent authority including Kilombero, in connection with such disposal;
- 12.3.2 promptly upon demand attend to the eradication of any environmental contamination resulting from the construction of the Distillery and/or from IDTL's operations on the Leased Property.

**12.4 Inspection**

IDTL shall permit Kilombero's representatives, to have access to the Leased Property and the improvements thereon at all reasonable times for the purposes of inspecting same.

**12.5 Insurance**

- 12.5.1 Kilombero will procure that the Land is insured through the ISL Group insurance policy and IDTL shall reimburse Kilombero for a Proportionate Share of the premiums which Kilombero is obliged to reimburse to ISL;
- 12.5.2 IDTL shall, at its cost, through the ISL Group insurance policy, keep in force during the currency of this agreement, insurance policies to cover the Leased Property and all improvements thereon, as well as public liability insurance for such amounts as will reasonably provide indemnity in respect of all claims which may foreseeably be made by or against Kilombero arising out of IDTL's use and occupation of the Leased Property, and any dispute between the parties as to the ambit or amount of any such insurance policy to be taken out by the tenant shall be referred to an independent insurance assessor nominated by ISL's insurance brokers. Such insurance assessor shall determine the dispute and his decision in regard thereto (acting as expert and not as arbitrator) shall be final and binding on the parties.

**13 DISCLAIMER OF LIABILITY**

**13.1 Kilombero shall not be liable:-**

- 13.1.1 for any loss of, or damage to, the Leased Property or any assets upon the Leased Property, howsoever such loss or damage may be caused;
- 13.1.2 to IDTL or any of IDTL's employees, agents, servants, invitees or customers or any other persons, for any injury or loss or damage of any description which IDTL or any such other person aforesaid may suffer or sustain directly or indirectly in or about the

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*[Signature]*  
*[Signature]*

Leased Property, or arising out of IDTL's occupation of or activities in the Leased Property;

- 13.1.3 for any environmental contamination caused by the construction of the Distillery and/or arising from IDTL's operations on the Leased Property, nor for the cost of removing any such contamination

and IDTL hereby indemnifies Kilombero and its directors and officers against any claims that may be made against it (including all costs and expenses and any penalties or fines incurred or payable by Kilombero or by any director or officer in connection therewith), which IDTL undertakes to pay upon demand, notwithstanding that Kilombero has not yet paid such claim, costs or expenses.

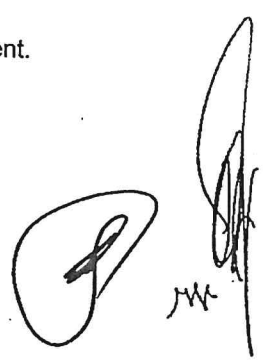
14 **INDEMNITY**

- 14.1 Subject to clause 14.2, IDTL hereby indemnifies Kilombero against any losses, claims, damages or demands incurred by, suffered by, or made against, Kilombero by any third parties, in respect of any loss, liability, damage, expense, (and shall include claims arising from bodily injury or death, damage to property, any damages, fines, penalties, reasonable attorneys' and consultants' fees, cost of investigation, containment, removal, remediation, monitoring, risk evaluation, clean-up or abatement of pollution or damage and reporting to the relevant authorities and third parties) arising directly or indirectly out of:-

- 14.1.1 the construction, operation, maintenance and repair of the Distillery;
- 14.1.2 any malfunctioning or failure of the Distillery, and any failure on the part of IDTL properly to maintain and repair the Distillery;
- 14.1.3 any non-compliance by IDTL and/or its employees, agents, contractors, sub-contractors and agents with the applicable laws, and any conditions prescribed in the applicable approvals, authorisations, licenses and permits relating to the construction and operation of the Distillery;
- 14.1.4 any obligation, fine and/or penalty imposed in terms of all applicable laws;
- 14.1.5 all costs of and incidental to the eradication and/or cleaning up of any environmental contamination resulting from the construction of the Distillery and/or arising from IDTL's operations on the Leased Property;
- 14.1.6 any negligent and/or wrongful acts or omissions by IDTL and/or its employees, agents, contractors, sub-contractors and agents;
- 14.1.7 any breach of IDTL's obligations and undertakings in terms of this agreement.

- 14.2 The indemnity in clause 14.1 shall not apply in respect of any losses, claims, damages or demands contemplated therein which arise, directly or indirectly, by reason of any breach or non-compliance by Kilombero of its obligations under any other agreement between it and IDTL and/or by reason of any negligent or wrongful act or omission on the part of Kilombero, its employees, agents, contractors and/or sub-contractors.

- 14.3 The provisions of this clause 14 shall survive the termination of this agreement.



**15 EXPROPRIATION AND NATIONALISATION**

15.1 If the Land or the Leased Property or part thereof is expropriated or compulsorily taken over by any authority, or if Kilombero's operations are nationalised (wholly or partly) and if as a result thereof:-

15.1.1 IDTL will be deprived of the beneficial use of only part of the Leased Property but to any extent which does not prevent IDTL from having beneficial occupation of a major portion thereof, then this agreement shall continue on the same terms and conditions in respect of the remainder of the Leased Property; or

15.1.2 IDTL will be deprived of the beneficial use of the whole or a material part of the Leased Property, then IDTL shall be entitled to cancel this agreement on written notice to Kilombero (without prejudice to its rights in terms of clause 15.2).

15.2 No compensation shall be payable by Kilombero to IDTL as a result of any expropriation, compulsory acquisition, or nationalisation contemplated in clause 15.1, but IDTL shall be entitled to proceed to claim and recover such compensation (if any) as it may be entitled to recover according to law, against the relevant expropriating or nationalising authority.

**16 DESTRUCTION OF / DAMAGE TO THE LEASED PROPERTY**

16.1 Should the Leased Property be destroyed or damaged to any extent which prevents IDTL from having beneficial occupation of a major portion thereof for a period in excess of three (3) months, or should the Leased Property thereby become substantially untenable, either party shall have the right within 90 (ninety) days of the occurrence of the event causing such destruction or damage, to terminate this agreement, in which event, subject to clause 16.3, neither party shall have any claim against the other by reason of such termination.

16.2 Should the Leased Property be damaged to a lesser extent than that which prevents IDTL from having beneficial occupation of the major portion of the Leased Property:-

16.2.1 this agreement shall not be cancelled;

16.2.2 the rental payable by IDTL shall be reduced pro-rata to the extent to which IDTL is deprived of beneficial occupation of the Leased Property.

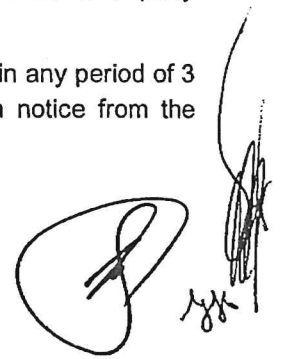
16.3 Nothing contained in this clause 16 shall operate to relieve either party of liability to the other in the event that any destruction or damage contemplated herein arises out of, or is attributable to, any wrongful act or omission, negligence or breach of this lease by a party or any person for whom such party may be responsible in law.

**17 DEFAULT**

17.1 If either party:-

17.1.1 commits any breach of any of the terms of this agreement and fails to remedy such breach within 10 (ten) days after the delivery of a written notice from the other party calling upon it to remedy such breach; or

17.1.2 commits any breach of this agreement on more than two occasions in any period of 3 (three) consecutive calendar months after having received written notice from the other party to desist therefrom;



- 17.1.3 consistently breaches this agreement so as to justify the other party holding that the conduct of the defaulting party is inconsistent with its intention or ability to carry out the conditions of this agreement; or
- 17.1.4 is wound-up (provisionally or finally), or either party initiates or becomes subject to any bankruptcy, business rescue proceedings or other similar procedures,
- then without prejudice to its rights in terms of this agreement or according to law, the aggrieved party shall be entitled at its option either to claim specific performance, or to cancel this agreement, in either event without prejudice to its rights to claim damages.
- 17.2 If Kilombero cancels this lease and IDTL disputes Kilombero's right to cancel and remains in occupation of the Leased Property, IDTL shall, pending settlement of such dispute either by negotiation or litigation, continue to pay an amount equivalent to the rental provided in this lease, and Kilombero shall be entitled to accept and recover such payments and the acceptance thereof shall be without prejudice to and shall not in any way whatsoever affect Kilombero's claim of cancellation then in dispute. Should the dispute be determined in favour of Kilombero, the payments made and received in terms of this clause shall be deemed to be amounts paid by IDTL on account of damages suffered by Kilombero by reason of the cancellation of the lease and/or the unlawful holding over by IDTL.
- 17.3 If either party is obliged to instruct an attorney arising out of any breach by the other party of any of its obligations hereunder, the party in breach shall be responsible for all legal costs and other costs and charges (including collection charges) so incurred, on the scale as between attorney and own client.
- 17.4 It is agreed that any breach of any of the agreements referred to in clause 3.1.3 by either party thereto, shall be deemed to be a breach of this agreement, and in such event the provisions of this clause 17 and clause 18 will apply *mutatis mutandis*.
- 18 **CONSEQUENCES OF TERMINATION AND COMPENSATION**
- 18.1 If either party lawfully cancels this agreement, or if this agreement otherwise terminates in accordance with its terms then:-
- 18.1.1 Kilombero shall be entitled to enter upon and take possession of the Leased Property and all improvements thereon;
- 18.1.2 save where expressly provided to the contrary in clause 15.2 and elsewhere in this agreement, and save where this agreement is terminated by reason of a breach by IDTL, Kilombero shall pay to IDTL compensation for the infrastructure and improvements erected on the Leased Property in such amount as may be agreed in writing between the parties, or failing such agreement an amount equal to the higher of:-
- 18.1.2.1 five (5) times the asset value of such infrastructure and improvements, as reflected in IDTL's financial records at the date of termination or expiry of this agreement (as the case may be); and
- 18.1.2.2 five (5) times the asset value of such infrastructure and improvements, as determined by an independent valuer appointed by agreement between the parties, or failing such agreement, appointed by the auditors of ISL,
- and any dispute between the parties in regard to the determination aforesaid asset value, shall be referred to arbitration in accordance with clause 20.

18.2 Any compensation payable by Kilombero shall be set-off against all and any amounts that may be owing to it by IDTL.

**19 ASSIGNMENT / CHANGE OF CONTROL**

19.1 IDTL shall not without Kilombero's prior written consent:-

19.1.1 grant any rights of use and occupation of, or to part with possession of the Leased Property, or any part thereof; or

19.1.2 cede, assign, alienate or encumber its rights or obligations, or mortgage, pledge or encumber any of its rights under this agreement.

19.2 Save as contemplated in clause 15.1, any change in the Control of IDTL without Kilombero's prior written consent shall constitute a breach of this agreement.

19.3 This agreement shall be binding on all successors-in-title to the rights of occupancy and/or ownership of the Land, whether pursuant to a Certificate of Occupancy, or otherwise.

19.4 Kilombero warrants and undertakes to IDTL that it shall not dispose of, or in any manner alienate, any of its rights under the Certificate of Occupancy, or any other rights which it may have or acquire in respect of the Land to any person, unless such person undertakes in writing to be bound by all the terms and conditions of this agreement and the agreements referred to in clause 3.1.3.

**20 DISPUTE RESOLUTION**

20.1 Any dispute regarding any amount payable by either party to the other in terms of this agreement shall be referred for determination, at the instance of either party, to an independent practising chartered accountant appointed by agreement between the parties (or failing such agreement by the auditors of ISL), whose decision, acting as expert and not as arbitrator, shall be final and binding on the parties in the absence of patent error. The appointed accountant shall determine which of the parties shall be responsible for the costs or such determination.

20.2 Save as provided in clause 20.1 or elsewhere in this agreement, any dispute between the parties in relation to any matter pertaining to this agreement, including any cancellation thereof, shall be referred to arbitration in terms of the Rules of Arbitration of the International Chamber of Commerce, by a single arbitrator appointed by agreement between the parties to the dispute, or failing such agreement, by an arbitrator appointed in accordance with the said Rules.

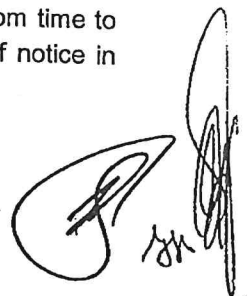
20.3 The arbitrator shall be entitled to make a determination as to which party or parties shall bear the costs of the arbitrator and of the proceedings.

20.4 This clause shall be severable from the rest of the agreement and shall remain in effect ~~even if this agreement or any part thereof is terminated for any reason.~~

20.5 Notwithstanding anything to the contrary contained in this clause, the parties shall not be precluded from approaching any Court of competent jurisdiction for urgent relief in the form of an interdict or otherwise.

20.6 The arbitration proceedings shall be conducted in the city of Johannesburg, South Africa, which shall be the seat of the arbitration. The procedural law applicable to the arbitration proceedings shall be the laws of South Africa.

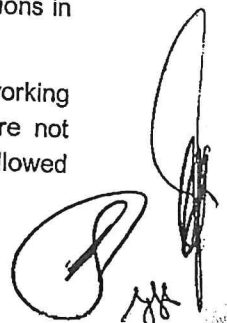
- 20.7 The decision of the arbitrator shall be final and binding on the parties (in the absence of patent error), shall be carried into effect, and shall be capable of being made an order of any Court of competent jurisdiction. For all purposes in relation to the arbitration proceedings, each of the parties irrevocably consents and submits to the exclusive jurisdiction of the Courts of the Republic of South Africa.
- 20.8 The provisions of this clause 20 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw therefrom or claim at any such proceedings that it is not bound by such provisions, are severable from the rest of this agreement and shall remain in effect despite the termination of or invalidity for any reason of this agreement.
- 21 **NOTICES**
- 21.1 All notices by one party to the other shall be given in writing by prepaid registered post, telefax or delivered by hand –
- 21.1.1 to **KILOMBERO** at:-
- |                    |  |
|--------------------|--|
| Physical Address:- | Kilombero Sugar Estate, Kidatu, Tanzania |
| Postal address     | PO Box 50, Kidatu, Tanzania              |
| Telefax number     | +255 23 2626188                          |
| Attention:         | The General Manager                      |
- 21.1.2 to **IDTL** at:-
- |                   |   |
|-------------------|---|
| Physical address: | c/o Illovo Sugar Limited<br>Illovo Sugar Park,<br>1 Montgomery Drive, Mount Edgecombe |
| Postal address:   | PO Box 194, Durban, 4000  |
| Telefax No:       | +27 31 508 4525   |
| Attention:        | The Company Secretary   |
- 21.2 In the absence of proof to the contrary, any notice sent by one party to the other:-
- 21.2.1 by registered post, shall be deemed to have been received fourteen (14) days after it is posted to the addressee's nominated postal address;
- 21.2.2 by hand, shall be deemed to have been received on the date of delivery to the addressee's nominated physical address;
- 21.2.3 by telefax or email, shall be deemed to have been received on the next business day after it is successfully despatched to the addressee's nominated telefax number.
- 21.3 The parties shall be entitled to change the addresses referred to hereinabove from time to time provided that any such change shall only become effective upon receipt of notice in writing by the other party of such change.



21.4 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a party shall constitute adequate notice to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

22 **GENERAL PROVISIONS**

- 22.1 The parties undertake at all times to do such things, perform all such actions and take all such steps to procure the doing of all such things, and the taking of all such steps as may be open to them, and necessary for and incidental to the putting into effect and maintenance of the terms, conditions or import of this agreement.
- 22.2 This agreement together with the agreements referred to in clause 3.1.3 above constitutes the entire contract between the parties hereto regarding the subject matter hereof, and replaces and supersedes all previous communications, negotiations and agreements between them in that regard.
- 22.3 No variation or, addition to, or consensual termination of this agreement shall be of any force or effect unless it is reduced to writing and signed by the parties hereto or by their duly authorised representatives.
- 22.4 No extension of time which either party may at any time give to the other in regard to the carrying out by the latter of any of its obligations in terms of this agreement, nor any waiver or relaxation of any of the provisions or terms of this agreement, shall prejudice or be deemed to be a waiver by, nor operate as an estoppel against the first-mentioned party of its rights in terms of this agreement, nor shall it operate so as to preclude such party thereafter from exercising its rights strictly in accordance with this agreement.
- 22.5 If any of the terms of this agreement is held to be invalid, illegal or unenforceable, whether in whole or in part, such invalidity, illegality or unenforceability shall not prejudice the effectiveness of the remainder of this agreement, and shall be severable therefrom, or the scope of the relevant provision shall be deemed to have been limited to exclude such illegality, or invalidity.
- 22.6 The termination of this agreement (whether by the effluxion of time or otherwise) shall not affect those provisions of this agreement which expressly provide that they will operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly so provide, nor shall any such termination affect each party's rights to enforce any obligation that arose prior to such termination.
- 22.7 Each of the signatories to this agreement hereby warrants that he is duly authorised to conclude this agreement by the party on whose behalf he appends his signature hereunder, and that such party is duly authorised to enter into this agreement.
- 22.8 This agreement shall be governed by and interpreted in accordance with the laws of Tanzania.
- 22.9 Each party warrants and represents to the other that in the performance of its obligations in terms of this agreement, it will:-
- 22.9.1 protect its workers' rights, including by ensuring: safe and hygienic working conditions, freedom of association, living wages are paid, working hours are not excessive, no discrimination is practiced, no harsh or inhumane treatment is allowed and no child labour is used;



- 22.9.2 ensure environmental management programmes are in place;
- 22.9.3 not offer, promise, give or receive any improper financial payment and/or other improper advantage to or from any person, customer or supplier; and
- 22.9.4 not make or offer, directly or indirectly, any payment, gift or other advantage to a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business.


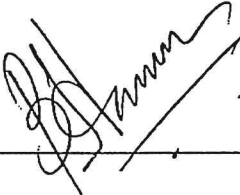
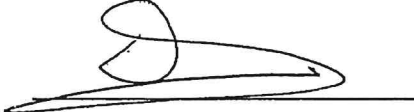
**23 COSTS**

IDTL shall pay the costs and disbursements (including stamp duty) payable in respect of:-

- 23.1 the preparation and execution of this agreement;
- 23.2 the registration of this agreement (if required) with the relevant governmental authority; and
- 23.3 the registration of the easements referred to in clause 10.


SIGNED on behalf of KILOMBERO SUGAR COMPANY LIMITED

at \_\_\_\_\_ on \_\_\_\_\_ 2011

  
\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

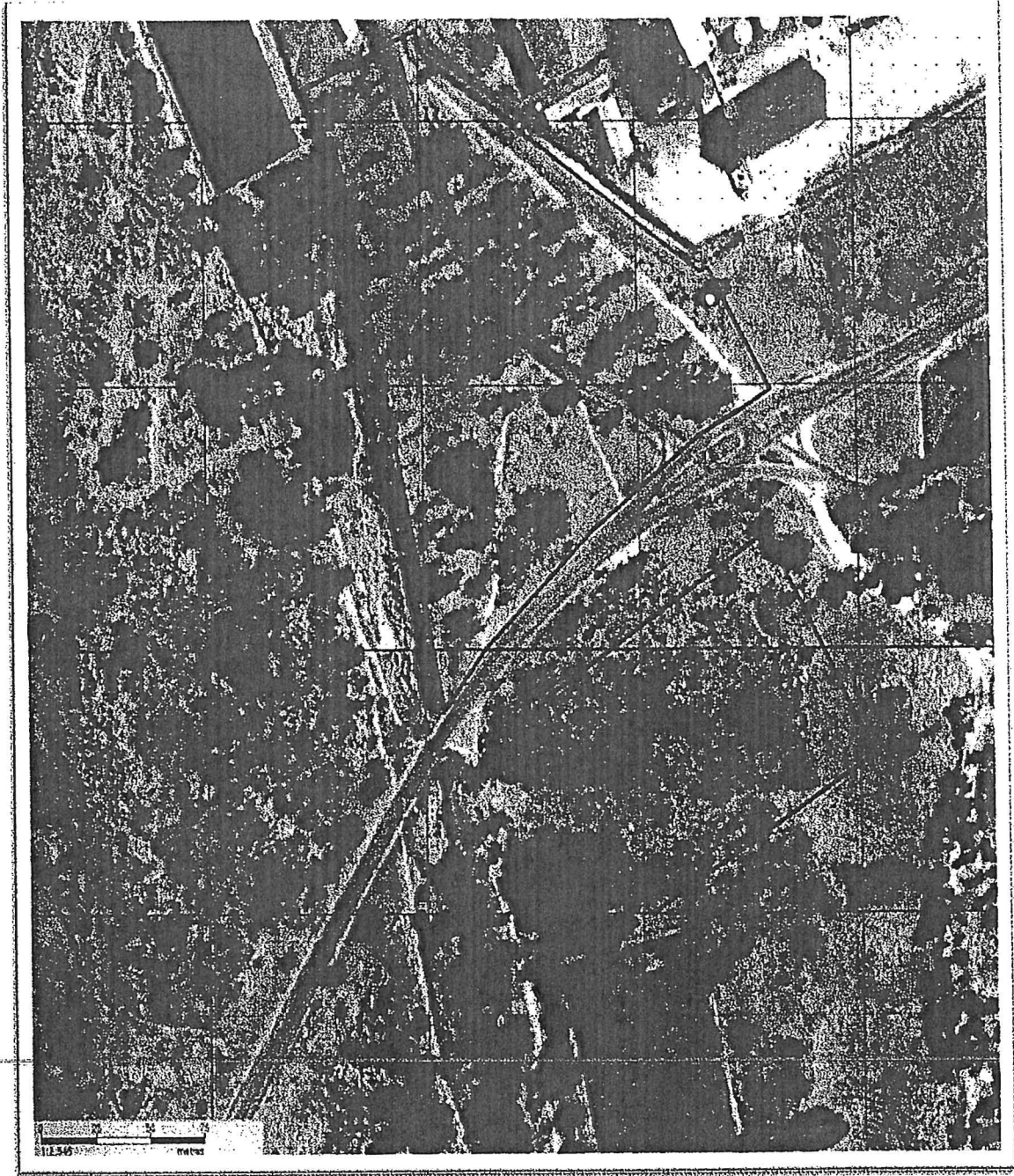
SIGNED on behalf of the ILLOVO DISTILLERS (TANZANIA) LIMITED

at \_\_\_\_\_ on \_\_\_\_\_ 2011

  
\_\_\_\_\_  
  
\_\_\_\_\_

ANNEXURE A

PLAN OF THE LEASED PROPERTY REFERRED TO IN CLAUSE 1.1.14



*BA* *MA*  
*OB*

*[Signature]*