

## HOUSING AND INFRASTRUCTURE DEVELOPMENT AGREEMENT

Between

**THE EASTERN EQUATORIA STATE MINISTRY OF PARLIAMENTARY AND  
LEGAL AFFAIRS**

herein represented by

**THE HONORABLE MINISTER JOSEPH OPIO WILSON**

in his/her capacity as the MINISTER and duly authorized thereto

and

**EVEREST CONSTRUCTION BS N DEVELOPMENTS (PTY) LTD**

hereinafter referred to as the "Developer" represented by

**MR MPUMI PAPIYANA**

In his capacity as Chief Executive Officer duly authorized thereto in respect of

### **THE DESIGN AND CONSTRUCTION OF:**

- 200 – 10 000 HOUSES,
- 1500KM ROAD INFRASTRUCTURE,
- DESIGN AND CONSTRUCTION OF PARLIAMENT,
  - PROVISION OF WATER
  - ELECTRICITY,
  - CONSTRUCTION OF SCHOOLS,
  - CONSTRUCTION OF HOSPITAL AND
    - CEMENT FACTORY
  - AGRICULTURE AND AGRO-PROCESSING
  - SECRETARIAT BUILDING



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## 1 PREAMBLE

Whereas:

- 1.1. the Ministry Of Housing, Physical Planning And Environment will over the next 5 (five) to 10 (ten) years, focus on building human settlements where people have access to housing, water, roads and economic opportunities;
- 1.2. it has become necessary and desirable for urgent delivery of roads, water, energy and other important infrastructures for all human settlements in an efficient and cost-effective manner, to allow a larger number of people to benefit;
- 1.3. the radical spatial transformation of the country/region represents a move toward planning an all-inclusive and people-centred economy that takes into consideration the holistic needs of the citizens;
- 1.4. the Project implementation strategy is to be based on a controlled human settlements delivery management standard, that seeks to yield the required housing and related infrastructure units as part of the development strategy in the state;

## 2 INTRODUCTION

It is hereby recorded that:

- 2.1. the Project forms part of the country's housing projects implementation strategy;
- 2.2. the Ministry has recommended and the Minister has approved the Project as per Schedules attached hereto and more fully set out in clause 36 below, and as described in the Phasing Schedule.
- 2.3. the Parties hereby enter into this Agreement for purposes of carrying out the Project in terms of the applicable housing and other infrastructure standards.

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

## 3 DEFINITIONS

The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have a corresponding meaning, namely:

- 3.1. **"Agreement"** - means this Agreement including all annexures and schedules attached hereto and any such modification, variations, amendments or additions as per the parties to this agreement may agree in writing from time to time;
- 3.2. **"Business Day"** - means a day of the week, excluding Saturday, Sunday or a public holiday in the Republic of South Sudan;
- 3.3. **"Commencement Date"** - means the Signature Date, being the date on which site establishment on the Project site shall commence;
- 3.4. **"Completion Date"** - means the date of completion of the Project as set out in the Development Plan;





- 3.5. **"Contractor or Developer"** - Everest Construction BS N Development, appointed by the State of Eastern Equatoria; South Sudan for the works required for the whole or parts of the Project;
- 3.6. **"Development Programme"** - means the programme in a format acceptable to the Ministry that includes the milestones as described in the Detailed Schedule and cash flow statement
- 3.7. **"Development Rights Agreement"** - means a written agreement being either a land availability agreement or a Deed of Sale or any other deed or written document in terms of which the Developer's rights develop the Project Area are secured as described in the Agreement;
- 3.8. **"EIA"** - means environmental impact assessment studies, in terms of the Environment Conservation Act, based on South Sudan National Environmental Act, (as amended); and includes, but is not limited to scoping reports and related studies;
- 3.9. **"External and Internal Services"** - means bulk civil services (in line with applicable standards by the Ministry of ..... ) to be provided for the proposed development and construction works;
- 3.10. **"Housing Code"** - means the national housing code published in terms of the Housing Act.
- 3.11. **"Implementation Agent"** - means an agent to be appointed by the (client) to assist with the implementation of the project
- 3.12. **"Internal Services"** - means the provision of the civil and electrical engineering services, and the upgrading of existing civil and electrical engineering services to human settlements standards, comprising:
- 3.12.1. roads, whether tarred or resurfaced, as may be necessary and rainwater drainage; and
- 3.12.2. water reticulation up to, and including a water connection to, each of the Housing Units; and
- 3.12.3. sewer reticulation up to, and including a sewer connection to, each of the Housing Units; and
- 3.12.4. electricity reticulation under terms to be agreed to the between the Developer and the client;
- 3.12.5. the development of human settlement, including but not limited to the implementation and use of gas reticulation systems, renewable energy, solid waste and wastewater recycling, along with broadband internet connectivity;
- 3.13. **"Land"**- means the undeveloped and un- serviced pockets of land in Eastern Equatoria State identified in the map or layout plan
- 3.14. **"Milestones"** - mean stages of achievement expressed in the Development Plan in accordance with the Housing Code;



- 3.15. **"Parties"** - means the Client and the Developer, and "Party" means either one of them as the context requires;
- 3.16. **"Phasing Schedule"** - means the phasing schedule attached hereto marked Schedule...
- 3.17. **"Project"** - means the development Project comprising human settlements establishments, the provision, supply and installation of engineering services, the design and construction of 200 – 10 000 houses, 1500 km road infrastructure for the province, design and construction of parliament and construction of schools and hospital;
- 3.18. **"Project Area"** - means the area to be developed comprising that portion of land as is depicted on the layout plan (to be attached) hereto as Schedule...;
- 3.19. **"Project Period"** - means that period from the Commencement Date until the Completion Date of the Project as described in the Detailed Schedule;
- 3.20. **"Project Programme"** - means those details directed at expressing the progress and the completion of the Project within agreed time periods, expressing specific milestones to be achieved by the Developer during the Project period, which are recorded in the Development Programme attached hereto as Schedule ....
- 3.21. **"Project Representative"** - means the person nominated by each Party to act as its representative as detailed in contract data;
- 3.22. **"Project Steering Committee"** - means a committee to be established by the Parties for the purposes of establishing an agreed framework for the governance and strategic oversight to ensure that the Project achieves its intended objectives;
- 3.23. **"Signature Date"** - means the date of signature of this Agreement by whichever of the Parties signing last;
- 3.24. **"Standards"** - means the following regulatory prescripts which the Parties shall endeavour to comply with in the execution of the Project:
- 3.24.1. the Housing Act, as amended;
  - 3.24.2. the Building Standards Act ;
  - 3.24.3. the Housing Consumers Protection Measures Act, as amended;
  - 3.24.4. the National Housing Code;
  - 3.24.5. the State Ministry Infrastructure Norms and Standards;
  - 3.24.6. Local Municipality by-laws

#### 4 INTERPRETATION

Except to the extent to which the context may otherwise require, this Agreement shall be construed in accordance with the following:

- 4.1. Headings in this Agreement are for convenience only and shall not be deemed part thereof or be taken into consideration in the interpretation or construction thereof;
- 4.2. Any reference in the Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and or enacted.

- 4.3. References herein to the preamble, clauses and appendices are to the preamble, clauses, schedules and appendices to this Agreement unless the context requires otherwise. The appendices to this Agreement form part of this Agreement.
- 4.4. In the event of a conflict between the provisions contained in this Agreement and any other expression of interest those provisions contained in the agreement will prevail unless specifically provided to the contrary; and in the event of a conflict between the provisions in this Agreement and those contained in the Annexures, the provisions in this Agreement will prevail unless specifically provided to the contrary.
- 4.5. Words importing the singular include the plural and vice versa where the context requires.
- 4.6. Any reference to any Agreement, Annexure or Schedule shall be construed as including a reference to any Agreement, Annexure or Schedule amending or substituting that Agreement, Annexure or Schedule.
- 4.7. Any word or expression related to a word or expression defined in this Agreement bears a corresponding meaning.
- 4.8. Any word or expression importing any gender shall include the other genders.
- 4.9. Any reference to the provisions of law any reference to the provision of law and any similar reference of general application shall be construed to include both legislation and the common law, and any reference to the provisions of law and any similar reference of general application shall be construed to include both legislation and the common law, and any reference to "legislation" includes any statute, any regulations passed under any statute, as well as any public notice, ruling or similar legislative instrument passed or approved by a Relevant Authority with the requisite authority.
- 4.10. Save where specifically provided otherwise, references to statutory provisions are to be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions (whether before or after the Signature Date) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).
- 4.11. The words "include" and "including" are to be construed without limitation.
- 4.12. Wherever provision is made for the giving or issuing of any notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instructions or determination by any Person, unless otherwise specified, such notice, decision, consent, acceptance, agreement, expression of satisfaction, endorsement, approval, certificate, instruction or determination must be in writing and the words "notify", "decide", "consent", "accept", "agree", "endorse", "approve", "certify", "instruct", or "determine" and other related expressions are to be construed accordingly.
- 4.13. "Writing" shall exclude any written document that is in the form, either wholly or partially, of a data message, and "signed" shall mean a signature executed by hand with a pen and without any electronic process or intervention.
- 4.14. References to materials, information, data and other records are to materials, information, data and other records whether stored in electronic, written or other forms.





- 4.15. Whenever this Agreement provides for approvals, consent or expressions of satisfaction by any one of the Parties, that Party may not unreasonably withhold or delay that approval, consent or expression of satisfaction.
- 4.16. Each Party must ensure that any decision, determination, instruction, inspection, examination, testing, consent, approval, expression of satisfaction, acceptance, agreement, the exercise of discretion (whether sole or otherwise) or similar act required by it from another Party in respect of this Agreement or any Associated Agreements must be applied for or requested promptly.
- 4.17. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 4.18. The rule of construction that the terms and provisions thereof shall, in the event of uncertainty or ambiguity, be interpreted against the Party responsible for the drafting or preparation thereof shall not apply.
- 4.19. Where any number of days is prescribed in the Agreement, same shall be reckoned exclusively of the first and inclusively of the last day and where the last day falls on a Saturday, Sunday or a public holiday, the next day which is not a Saturday, Sunday or a public holiday shall be included. Any reference to "days" in the Agreement shall be to calendar days.
- 4.20. Where any provision of the Agreement requires a Party to perform any act in writing, this requirement will only be satisfied if such performance is made in written form.

## 5 THE PROJECT DEVELOPMENT

- 5.1. The Project comprises mainly the construction of residential dwellings as well as:
- 5.1.1. the development of roads infrastructure,
  - 5.1.2. design and construction of schools (Primary and Secondary),
  - 5.1.3. design and installation of Power Supply
  - 5.1.4. design and construction of parliament building, and
  - 5.1.5. provision of bulk and internal services – water, sewer, and stormwater management infrastructure;
  - 5.1.6. provision of electricity and related infrastructure
  - 5.1.7. Construction of a Cement Factory around Eastern Equatoria State
- 5.2. the operationalization of these constructed areas in accordance with the terms and conditions of this Agreement, including the guidelines contained in the Housing Standard;
- 5.3. The project will adopt the Traditional Pre-planned Contract Strategy as a procurement method for the implementation of the Project Development otherwise referred to as a turnkey agreement.





## 6 THE ROLES OF THE EASTERN EQUITORIA STATE GOVERNMENT (CLIENT)

The Ministry hereby undertake to:

- 6.1. sign all necessary documents, agreements to give effect to this Agreement;
- 6.2. nominate a person to act as the Ministry's representative, who shall at all reasonable times avail him/herself to liaise with the Developer;
- 6.3. act in good faith and use its best endeavours to assist the Developer to enable proper performance of the Project;
- 6.4. assist the Developer insofar as it is necessary, to obtain all necessary authorisations from the appropriate authorities, which may be necessary for the implementation of the Project to enable the Developer to carry out and complete its functions, duties and responsibilities;
- 6.5. perform such other responsibilities or tasks which may arise from time to time, relevant to the implementation of the Project; and
- 6.6. comply with all relevant laws, regulations and by-laws in force and affecting the implementation of the Project

## 7 ROLES, FUNCTIONS, WARRANTIES AND OBLIGATIONS OF THE DEVELOPER

- 7.1. The Developer shall, in consultation with the Ministry, have the responsibility of facilitating and/or procuring the implementation of all services, in accordance with the concept of human settlements.
- 7.2. The Developer shall develop and complete the Project in accordance with the provisions of this Agreement, the Schedules hereto and the Standards referred to in this agreement.
- 7.3. The Developer shall endeavour to develop and complete the Project in accordance with the following prescriptions:
  - 7.3.1. a minimum of 50% of the civil works on the Project shall be sub-contracted to local owned entities;
  - 7.3.2. 50% of the works related to the construction of houses of the Project shall be sub-contracted to local developing contractors;
- 7.4. It shall be the Developer and Ministry's responsibility to source all the sub-contractors and suppliers in terms of clause 7.3 above. All such subcontractors and suppliers shall only commence work subsequent to approval by the Ministry (client).
- 7.5. The Developer shall commence with the development of the Project on the commencement date and shall proceed with due skill, diligence, regularity and expedition and shall complete the Project by the completion date.
- 7.6. The Developer warrants and represents that:



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- 7.6.1. it has full capacity and authority and all the necessary licences, permits and consents to enter into and perform in terms of this Agreement and to provide the Project to the Ministry;
- 7.6.2. it is the owner of or has the right to use under license any intellectual property employed by it during or as part of the Project;
- 7.6.3. the Project shall be performed in compliance with the applicable laws of the Republic of South Sudan;
- 7.6.4. the Project shall be provided in accordance with the provisions of this Agreement to support the Ministry in achieving its objectives, and by avoiding any liability or exposure that could arise from the provision of the Project by the Developer;
- 7.6.5. the Project will be performed in a professional manner and it shall use personnel that is appropriately experienced, suitably qualified and has sufficient knowledge, expertise and competence to perform the Project, in accordance with the highest standard of its industry;
- 7.6.6. the Project will be performed within the time frames and specifications as set out in this Agreement;
- 7.6.7. deadlines, as communicated by the Ministry, shall be adhered to;
- 7.6.8. it will comply with all the instructions of the Ministry regarding the rendering of the Project, at all times and will provide any assistance, progress reports and/or information required by the Ministry in connection with the Project, as and when requested by the Ministry.

## 8 ACCESS TO INFORMATION

The Developer shall be obliged to give the Ministry full and unlimited access to all information relating to the Project, and specifically:

- 8.1. the Ministry shall have the right to request any information pertaining to the Project and the Developer shall be obliged to provide such information upon written request, within 14 (fourteen) working days;
- 8.2. the Ministry shall have the right to inspect any records and/or documents or make copies thereof, including financial records of the Developer relating to the Project;
- 8.3. the Developer or its appointed agent, shall, on reasonable notice, be obliged to attend all meetings called by the Ministry or its appointed agent;
- 8.4. the Developer shall at the request of the Ministry, cause unrestricted access to the information and records relating to the Project held by or under the control of any person appointed or assigned by the Developer;
- 8.5. the Developer acknowledges that during the course of the Project, it shall have access to the Project information (whether of a commercial, technical, scientific, operational, administrative, financial, marketing, business, intellectual property nature or otherwise), whether oral or written, relating to the Ministry that is provided to the Developer pursuant to this Agreement;



- 8.6. the Ministry agrees to disclose and provide to the Developer Information. The Developer acknowledges that the Information is a valuable, special and unique asset belonging to the Ministry or to a third party who has authorised the disclosure thereof by the Ministry ("the Third Party");
- 8.7. the Developer agrees that it will not during or after the term of this Agreement disclose the Information to any person, firm, corporation, association or any other entity for any reason or purpose whatsoever without the prior express written consent of the Ministry;
- 8.8. notwithstanding the above, the Parties agree that Information may be disclosed to the Developer's professional advisors, agents and consultants, providing that such professional advisors, agents and consultants sign an undertaking relating to confidentiality on the same terms as contained herein;
- 8.9. all information of the Ministry is acknowledged by the Developer to be the property of the Ministry or the Third Party and the disclosure of the Information shall not be deemed to confer any rights to that Information on the Developer;
- 8.10. the Developer shall restrict the Information to the officers, employees and professional advisors of the Developer with a need to know and will not disclose the Information to any other persons except in the execution of the Project.
- 8.11. the Ministry may cancel this agreement where the Developer has disclosed Information other than in bona fide execution of the Project.
- 8.12. the Developer shall not use the Information other than for the purposes for which it is disclosed;
- 8.13. the Developer agrees that it shall protect the Information using not less than the same standard of care that it applies to its own proprietary, secret or confidential information and that the Information shall be stored and handled in such a way as to prevent unauthorized disclosure;
- 8.14. the Ministry may request in writing at any time that any written Information disclosed pursuant to the terms of this Agreement and any copies thereof be returned with a written statement to the effect that upon such return it has not knowingly retained in its possession or under its control, either directly or indirectly any Information or copies thereof and the Developer shall comply with any such request within seven (7) days of receipt of such request;
- 8.15. as an alternative to the return of the Information, the Developer may be subject to 8.14. above, destroy such Information and copies and supply a written statement to the effect that all Information and copies have been destroyed;
- 8.16. notwithstanding the provisions of 8.1. to 8.15. above, the obligations of the Developer pursuant to this Agreement shall not apply to any Information that:
- 8.16.1. is in possession of the Developer prior to receipt from the Ministry;
- 8.16.2. is or becomes publicly known, otherwise than as a consequence of a breach of this Agreement;
- 8.16.3. is developed independently by the Developer;



8.16.4. is disclosed by the Developer to satisfy a legal demand by a competent court of law or governmental body, provided however that in these circumstances, the Developer shall advise the Ministry prior to disclosure so that the Ministry has an opportunity to defend, limit or protect against such production or disclosure provided further that the Developer will disclose only that portion of the Information which is legally required to be disclosed and the Developer will exercise its reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded to any Information required to be disclosed;

8.16.5. is disclosed to a third party pursuant to written authorisation from the Ministry;

8.16.6. is received from a third party without similar restrictions and without breach of this Agreement.

## 9 RIGHTS TO DEVELOP

The Developer by signing this Agreement warrants that:

- 9.1. it holds the right to develop the Land it has acquired through the development rights in terms of the permission granted by the Ministry; or
- 9.2. it holds the right to develop the Land by virtue of a separate Agreement with the Ministry; and
- 9.3. such rights held by the Developer are authentic and lawfully granted by a duly authorised person.
- 9.4. The Developer shall not in any way alienate the land as described in this Agreement without prior consent of the Ministry. It is an express term of the Agreement that the Developer shall reimburse the Ministry for monies expended by the latter for the improvements on the land before such consent is given.

## 10 ENVIRONMENTAL PROTECTION

Subject to the fulfilment of the conditions of an EIA study, the Developer shall use its best endeavours to ensure that:

- 10.1. the Project is designed and maintained in accordance with applicable legislation and regulations to the environment;
- 10.2. the Developer shall promptly advise the Ministry in writing of any incidents or derogation from the applicable legislation and regulations, which may or cause any material negative effect on the environment.

## 11 SURVEYING AND PLANNING

- 11.1. The Developer shall strictly follow and not deviate from the principles regarding the requirements laid down in terms of the legislation applicable to the development of infrastructure and construction of houses, schools and any public amenities.

- 11.2. The Developer warrants that it is and will remain for the duration of this Agreement, fully cognisant of any relevant legislative or regulatory requirements and rulings of any competent authority that has jurisdiction over the provision of services under this Agreement.
- 11.3. The Developer shall promptly identify and notify the Ministry of any relevant changes in law, legislative enactments and/or regulatory requirements and of rulings of any competent authority that may relate to the Developer's provision of the Project when the Developer becomes aware or reasonably should have been aware of such relevant changes.
- 11.4. The Developer and the Ministry shall co-operate to identify the impact of such changes on how the Developer provides the Project.
- 11.5. The Developer shall be responsible for any fines and penalties arising from any non-compliance with any law, legislative enactment or regulatory requirements or rulings of any competent authority relating to the delivery or use of the Project.
- 11.6. Without prejudice to the Ministry's other rights in terms of this Agreement, when an objection is raised against the development or any circumstance arises which in the opinion of the Ministry may have the effect of substantially delaying the Project the Ministry:
- 11.6.1. may cancel the Project or any part thereof;
  - 11.6.2. the Ministry may further recover payments already made to the Developer for services which have not been rendered; and
  - 11.6.3. shall, as far as is reasonable and practicable, consult with the Developer so as not to prejudice the Developer or the development.

## 12 FUNDING

- 12.1. Firstly, Government in liaison with project line Ministries needs to share key priority projects which requires funding.
- 12.2. The above information should be accompanied by the mineral rights (Oil, Gold and Diamond), which Government is willing to put forward as collateral for the project funding which is to be advanced. These mineral rights should be accompanied by relevant reports, studied, or feasibility studies already done on the projects.
- 12.3. Upon the funders receiving the above, then the funders will write to the Minister of Finance the letter of intent to fund the projects and also they will provide the detailed offer of the project finance to be advanced.
- 12.4. Then the funding modalities will be established and this process is accompanied by the funding team visit to South Sudan where they would prefer to meet the President, Minister of Finance and Ministers related to the projects which are to be funded.
- 12.5. After the above, then it will just be the contracts/MOU to be signed and then the funding procedures agreed will be implemented.



### 13 SHOW HOUSES

- 13.1. The Developer shall construct one show house that it intends to build for the Project.
- 13.2. The quality of houses to be built should be of a standard equal to or higher than the approved show house.
- 13.3. The show houses shall be completed and approved by the Ministry before actual construction can commence.
- 13.4. All house plans shall be in accordance with the approved designs and specifications as required by the approving authority and approved by the Ministry.

### 14 DELAYS AND EXTENSIONS

- 14.1. Should circumstances arise which could cause any delay in, failure or deviation from, the performance by the Developer of his obligations in terms of the development programme, the Developer shall:
  - 14.1.1. take all reasonable practical steps to avoid or reduce the delay or non-performance and shall arrange for such additional resources as are necessary and shall take all necessary remedial action to correct such failure as soon as practicable thereafter at no additional cost to the Ministry;
  - 14.1.2. give the Ministry timeous notice of such circumstance and request an extension or condonation. Such request shall set out fully the reasons for the anticipated delay or non-performance; and
  - 14.1.3. submit a revised Development Programme, taking into account the anticipated delay or non-performance.
- 14.2. The Ministry shall consider the request for extension or condonation, but will be under no obligation to grant the request, save where it would otherwise be unreasonable for the Ministry to refuse the request, particularly where the request is founded on circumstances or facts beyond the control of the Developer and which cannot reasonably have been rectified without loss or damage being suffered.
- 14.3. Should the Ministry grant the request and approve the revised Development Programme, the Agreement shall be varied to that extent, save that the Ministry shall be entitled to grant the request on such other terms and conditions as it may deem fit under the circumstances.

### 15 PHASED DEVELOPMENT

- 15.1. If the Project is to be implemented and completed in terms of the Phasing Schedule, then each Phase shall be clearly defined pertaining to its location, in terms of the Project Detailed Schedule.
- 15.2. Phased payments pertaining to each such Project Phase shall be specifically defined and the terms of payment pertaining thereto agreed upon before the signature of this Agreement.



- 15.3. The Ministry shall issue a Phase completion certificate within fourteen ("14") days of completion, which certificate shall be signed by the Ministry and be counter-signed by the Developer and wherein shall be certified the completion of the particular phase.
- 15.4. The Developer shall not proceed with a subsequent phase as per the delivery programme without the prior written approval of the Ministry, which approval shall not be unreasonably withheld.
- 15.5. If the Developer fails to obtain the required approval as set out in clause 15.3 above, the Ministry shall not be responsible to pay any claims relating to that particular Phase of development, which the Developer has constructed without the prior approval of the Ministry.

## 16 PROJECT REPRESENTATIVES

- 16.1. Each Party shall designate a Project Representative in writing who shall be the sole point of contact for each Party to manage the relationship between the Parties.
  - 16.1.1. The Ministry's Project Representative shall be TBA
  - 16.1.2. The Project Representative of the Developer shall be Mr Mpumi Papiyana
- 16.2. The Project Representatives of both Parties shall meet as often as is necessary but in any event, no less frequently than monthly in order to discuss:
  - 16.2.1. progress of the Project and steps to be taken to remedy any delays in the achievement of deadlines, if applicable;
  - 16.2.2. progress of the Project and steps to be taken to remedy any delays in the achievement of deadlines, if applicable;
  - 16.2.3. any defects, errors or deficiencies in the Project;
  - 16.2.4. additional recommendations by either Party;
  - 16.2.5. performance of quality assurance checks;
  - 16.2.6. any Personnel-related issues; and
  - 16.2.7. any other matters of relevance to the performance of the Project.
- 16.3. The meetings of the Project Representatives shall also be attended by any such other persons as the Ministry, acting reasonably, requires.

## 17 PERFORMANCE ASSESSMENT

The Ministry's assessment of the Developer's performance:

- 17.1. shall be conducted at the end of every 4 (four) months period (hereinafter referred to as the "review period").
- 17.2. shall be assessed, inter alia, in terms of the information provided in the Development Programme

- 17.3. notwithstanding the provisions of clauses 17.1 and 17.2 above, the Ministry shall be entitled, wherever it deems it necessary, to deviate from the review period and conduct performance assessments on a monthly basis. The Ministry shall however communicate in writing with the Developer before deviating from the review period performance assessment.
- 17.4. The Ministry shall determine the percentage deviation, if any, between the Developer's actual performance and the Developer's projected performance as per the Development Programme by comparing:
- 17.4.1. the aggregate of progress payment milestones planned as stated in the Development Programme; and
  - 17.4.2. the aggregate progress milestones reached by the Developer in the corresponding monthly returns and agreed to by the Ministry; for the review period.
- 17.5. The Ministry's assessment of the Developer's performance for the review period under consideration will be classified in terms of the following performance criteria:
- 17.5.1. "Satisfactory performance" - Signifies a percentage deviation of not more than 20% (twenty per centum);
  - 17.5.2. "Under Performance" - Signifies a percentage deviation of between 21% (twenty-one per centum) to 50% (fifty per centum); and
  - 17.5.3. "Non-Performance" - Signifies a percentage deviation of between 51% (fifty-one per centum) to 100% (one hundred per centum).

## 18 CONSEQUENCES OF PERFORMANCE ASSESSMENT

### 18.1. Under-performance

Where the Developer's performance for any review period is classified as "under-performance" in terms of clause 17.5.2 above then the Ministry may extend the Development Programme proportionate to the period of time represented by the period of delay.

### 18.2. Non-performance

Where the Developer's performance for any review period is classified as "non-performance" as stated herein above, then the Ministry may:

- 18.2.1. extend the Development Programme proportionately to the period of time represented by the period of delay;
- 18.2.2. reduce the extent of the Project, or
- 18.2.3. cancel this Agreement in terms of the provision of clause 20 below after having given the Developer 30 (thirty) days' notice wherein the Developer is requested to remedy the deviation, which constitutes a breach of this Agreement.



## 19 ANNUAL ASSESSMENT OF PERFORMANCE

- 19.1. At the end of each financial year, the Ministry shall compile a report reflecting the performance of the Project
- 19.2. The budget allocation and development programme for the next financial year will be based on the previous year's performance
- 19.3. Upon the Ministry's compilation of the report referred to in clause 19.1 above, the Ministry shall:
- 19.3.1. submit such report or any extract therefrom or other information, as the Ministry may decide, to the Developer; and
  - 19.3.2. require the Developer (within a stipulated period as determined by the Ministry) to submit a new cash flow forecast and projected completion programme (which must comply mutatis mutandis with Schedule 3 attached) for the next financial year which revised Development Programme the Ministry shall have the right either to accept, amend or reject.
- 19.4. Once a new Development Programme (as envisaged under clause above) has been approved by the Ministry, the Developer will amend the Development Programme to the extent of the amendment in the revised Development Programme.
- 19.5. Should the Parties fail to agree on a revised Development Programme, the Ministry shall then proceed to give notice to the Developer in terms of clause 20 below.

## 20 BREACH AND LIABILITY

- 20.1. In the event of either of the Parties committing a material breach of any of the terms and conditions of this Agreement, and remaining in default for a period of fourteen (14) days after receipt by it of a written notice from the other Party calling for such breach to be remedied, the Party delivering the notice shall be entitled to, without prejudice to any other rights it may have in terms of this Agreement or in law, and after exhausting internal remedies set out herein, terminate this Agreement by written notice to that effect given to the defaulting Party.
- 20.2. The Developer shall be deemed to have committed an act of default in terms of this Agreement if it:
- 20.2.1. passes a resolution or an order is made for the winding up of the Developer (except for the purpose of reconstruction, amalgamation not involving the realisation of assets in which the interest of the Ministry or other creditors are protected) or;
  - 20.2.2. is sequestrated or placed in liquidation, whether provisional or final and whether voluntary or compulsory or under business rescue proceedings or attempt to effect a compromise with its creditors; or
  - 20.2.3. makes arrangements with its creditors or does any act which materially jeopardises its ability to fulfil its obligation under this Agreement, then the Ministry may give the Developer a default notice specifying the default and require it to remedy same within fourteen (14) days of such notice; or



- 20.2.4. has any judgment entered against it which will materially impact on the services it renders to the Ministry and has failed within fourteen (14) days after such judgment coming to its knowledge to take steps to appeal against or apply for rescission of such judgment; or
  - 20.2.5. causes any event to occur or circumstance to arise, due to an act or omission of the Developer, which makes, or will make, it impossible for the Developer to comply with any of its obligations in terms of this Agreement; or
  - 20.2.6. fails, without good cause, to pay any amount in respect of professional fees, costs or disbursements in connection with the Project when the same falls due.
- 20.3. If the Ministry has issued a default notice pursuant to Clause 20.2.3 above and the Developer fails to remedy the default specified in such notice within the stipulated time therein, the Ministry shall be entitled to claim:
- 20.3.1. cancellation of the Agreement; and/or
  - 20.3.2. damages and/or
  - 20.3.3. any other relief(s) or remedies available under this Agreement or by any statute or any other law.
- 20.4. Upon cancellation, as aforesaid, the Ministry will have no further obligation towards the Developer, save for payment of any charges, fees or expenses due to Developer at the time of termination in accordance with the provisions of this Agreement, in respect of the provision of the services, any other responsibility accrued by Developer in terms of the Agreement
- 20.5. Any termination of this Agreement shall not absolve the Parties from the obligation to observe the confidentiality measures as set out in this Agreement
- 20.6. In the event of the Developer being deemed to have committed a breach of this Agreement as contemplated herein-above, the Ministry may give notice (without prejudice to any other right or remedy it shall have in law) calling upon the Developer within a period of not less than 14 (fourteen) days after the date of such notice, to rectify the said breach.
- 20.7. The aforesaid notice shall not be necessary where the breach is of such a nature as would, in terms of the other express provisions of this Agreement, justify summary cancellation of the Agreement.
- 20.8. In the instance referred to in clause 20.7 above the Ministry shall be entitled, but not obliged (and without prejudice to any other rights it may have in law):
- 20.8.1. to immediately and without any notice cancel this Agreement; or
  - 20.8.2. may assume and take over control of the Project, in which event the Developer agrees to give access to and to make available to the Ministry all information, and reports collected, furnished and/or compiled by the Developer to enable the Ministry to assume responsibility for the Project.

- 20.9. If the Agreement is cancelled as envisaged in clause 20.7 above, or the scope of work is reduced, the Developer shall on demand refund to the Ministry the amounts paid to the Developer by the Ministry.
- 20.10. Notwithstanding anything to the contrary contained in this Agreement, should the Developer commit, or be deemed to have committed, any breach of this Agreement, the Ministry shall be entitled to withhold payment of any monies which might be, or become, due by it to the Developer, until such time as the breach has been fully remedied.

## **21 PENALTIES**

- 21.1. The Parties hereby agree that where the Developer fails to bring the works to practical completion on the date agreed to by the parties in terms of this Agreement, the Developer shall be liable to the Ministry for a penalty per calendar day for non-completion at the rate of 3% of the contract amount up to a maximum of 10%, calculated from the first day of the Developer's failure to bring the works to completion.
- 21.2. Subject to the provisions of clause 21.1 above should the Developer fail to bring the works to practical completion on the date agreed to by the parties as a direct result of the Ministry's late payments then the right of the Ministry to claim penalties will be waived.

## **22 STEPPING IN RIGHTS**

- 22.1. Notwithstanding anything contained in this Agreement, the Ministry shall retain stepping-in rights in respect of the Project in an instance where this Agreement is cancelled for any reasons whatsoever.
- 22.2. The Developer shall be paid reasonable and quantifiable compensation in lieu of the investments already committed by the Developer in respect of the Project.

## **23 LIABILITY**

Under no circumstances shall the Ministry be liable to the Developer in any way for any direct, indirect or consequential loss or damages, including but not limited to, loss of profits or anticipated savings.

## **24 INDEMNITY**

The Developer hereby indemnifies the Ministry against all loss or damage, and/or any claims that may be made by any employee or a third party against the Ministry arising out of or in connection with the provision of the Project Development by the Developer.

## **25 CREDIT**

Nothing in this Agreement shall authorise any of the Parties to pledge the credit of or incur liabilities or obligations binding upon the other except insofar as this may have been authorised by the other Party in writing.





## 26 INFRINGEMENT OF INTELLECTUAL PROPERTY

In the event of any third party alleging that any intellectual property used or employed by the Developer during or as part of the Project belongs to such third party, the Developer shall indemnify and hold harmless the Ministry from all claims, damages, losses, fees, costs (including, without limitation, legal costs on an attorney and client basis) and expenses arising from such allegation.

## 27 ARBITRATION

27.1. A dispute concerning this Agreement exists once a Party notifies the others in writing of the nature of the dispute and requires it to be resolved under this clause. The Parties must refer any dispute to be resolved by:

27.1.1. negotiation; failing which

27.1.2. mediation; failing which

27.1.3. arbitration.

27.2. Within ten days of notification, the parties must seek an amicable resolution to the dispute by referring it to designated and authorised representatives of each of the parties to negotiate and resolve it by the parties signing an agreement resolving it within 15 (fifteen) days.

27.3. If negotiation fails, the parties must refer the dispute for resolution by mediation under the rules of the ....(Arbitration body).

27.4. If mediation fails, the parties must refer the dispute within 15 (fifteen) days for resolution by arbitration

27.5. Save for a Party's right to review, the Arbitrator's finding shall be final and binding on the Parties.

27.6. Clause 27 shall not preclude any Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

27.7. Arbitration as contemplated in clause 27.4 above shall proceed once a party to this Agreement has given written notice to the other party notifying that party of the dispute and intention to proceed with arbitration.

27.8. The arbitration shall be held (Location):

27.9. The arbitrator shall be, if the matter in dispute is principally:

27.9.1. a legal matter, a practising advocate or attorney of (Location) of at least 15 (fifteen) years standing;

27.9.2. an accounting matter, a practising chartered accountant of (location) of a least 15 (fifteen) years standing; and

27.9.3. in any other matter, an independent person who is suitably qualified, agreed upon between the Parties to the dispute.

- 27.10. Should the Parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter shall be deemed to be a legal matter.
- 27.11. Should the Parties fail to agree on an arbitrator within 14 (fourteen) days after giving notice in terms of the above clause, the arbitrator shall be appointed at the request of either party to the dispute
- 27.12. The arbitrator shall have the power to fix all procedural rules for the holding of the arbitration, including discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, discovery, inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration. Unless the arbitrator otherwise expressly directs, the arbitration shall be conducted according to the procedures laid down by the Rules of the High Court of South Sudan.
- 27.13. The award of the arbitrator shall save for a party's right to review, be final and binding upon the Parties to the dispute who hereby agree to carry out the award.
- 27.14. The arbitrator's award may be made an order of any court of competent jurisdiction.

## 28 CESSION

### 28.1. Cession to Investors

Should the Developer require external funding for the performance of its duties herein, the Developer shall have the right, on written notice to the Ministry, to cede or assign this Agreement to a special purpose vehicle specifically incorporated for the purposes of funding the Developer and/or the Project (which cession specifically relates to the cession in securitatem debiti), or cession of such rights as the funding financial institution may require from the Developer, provided that the Developer shall at all times remain severally accountable for the performance of its obligations in terms of this Agreement.

### 28.2. Cession to Third Parties

- 28.2.1. The Developer shall not be entitled to cede or assign any of its rights and obligations under and in terms of this Agreement to any other third party, save than expressly provided for herein, without the specific written consent of the Ministry.
- 28.2.2. When seeking consent to cede its rights in terms of clause 28.2.1 above, the Developer shall truthfully and fully disclose all information relating to the pending cession transaction to the Ministry enabling the Ministry to make an informed decision within a period of 7 (seven) days after the date of such notice.
- 28.2.3. The Ministry shall not unreasonably withhold approval of the application for the cession provided for in clause 28.1.
- 28.2.4. Notwithstanding the provisions of clause 20 the Ministry shall have the right to cancel this Agreement should there be non-disclosure of material facts that the Developer knew or ought to reasonably have known at the time of requesting consent to cede any of its rights.



## 29 SUB-CONTRACTORS

- 29.1. The Developer shall obtain the prior written consent of the Ministry should it wish to sub-contract any part of the Project. The Developer shall be responsible for the acts, defaults, or negligence of its sub-contractors and their agents or employees as if they were the acts, defaults or negligence of the Developer, the Developer's agents or employees.
- 29.2. Approval by the Ministry of the sub-contractors to perform any part of the Project shall not relieve the Developer of any obligations under this Agreement.
- 29.3. The Parties hereby agree that the provisions of clauses 29.1 and 29.2 above shall be read in conjunction with clause 7.3.

## 30 INSURANCE

- 30.1. The Developer will be responsible, at its own expense, for taking out and maintaining third party liability, employer's liability and workers' compensation, professional indemnity insurance and loss or damage to equipment and property cover against all losses and damage arising out of negligence, malpractice or unprofessional conduct during the provision of the Project to the Ministry. The Developer shall, prior to the commencement of the Project provide proof to the Ministry that the said insurance coverage is in place.
- 30.2. The Developer shall indemnify and keep indemnified the Ministry against all damages, losses, compensation or expenses arising from the death or injury of any person and against all loss of or damage to any physical property caused by any act, default or negligence of the Developer, its sub-contractors and/or agents and against all actions, claims, damages or proceedings in respect thereof or in relation thereto.

## 31 RIGHT TO INSPECT

Notwithstanding the provisions of clause 17, the Ministry shall have the right, upon reasonable prior notice to the Developer, from time to time to inspect the Project site and to check, test, and appraise the work and progress thereon.

## 32 DOMICILIA AND NOTICES

- 32.1. The Parties hereby select their addresses as follows:

32.1.1. The Ministry at:

32.1.2. The Developer at: Pinmill Farm Office Park, Block G, 164 Katherine Drive, Sandton, South Africa, 2191

- 32.2. in each case as its domicilium citandi et executandi for the purpose of this Agreement, including the service of all notices and processes in connection herewith.

- 32.3. Every notice to be given by one party to the other in terms of this Agreement shall be in writing and shall be:

- 32.3.1. delivered by hand, in which case it shall be deemed to have been given and such other party shall be deemed to have been informed of the contents of the notice when the notice is so delivered; or
- 32.3.2. posted by prepaid registered post, in which case it shall be deemed to have been given and such other party shall be deemed to have been informed of the contents of the notice on the fifth (5th) business day (excluding Saturdays) after posting; or
- 32.3.3. sent by telefacsimile transmission to a receiving station with the facsimile number stipulated in clause 30 above of the other party, in which case it shall be deemed to have been given and such other party shall be deemed to have been informed of the contents of the notice upon completion of the relevant transmission if:
- 32.3.3.1. during or upon completion of the transmission an electronic acknowledgement of receipt is recorded by the sending station; and
- 32.3.3.2. the relevant notices thereafter are also given to the receiving party in any of the ways contemplated in 32.1 and 32.3.2 above within 7 (seven) days of the date of the relevant transmission.

### 33 SCHEDULES

The schedules hereto, all of which form part of this Agreement comprises the following:

- Schedule 1 - Detailed Schedule
- Schedule 2 - Phasing Schedule
- Schedule 3 - Development Programme
- Schedule 4 - Funding Schedule

### 34 ENTIRE AGREEMENT

This document contains the entire Agreement between the Parties. Any amendment, addition or addendum shall only be of force and effect between the Parties if reduced to writing and agreed to by both Parties. **The duration of this agreement shall be 3-6 months subject to renewal upon mutual agreement by the Parties.**

### 35 FORCE MAJEURE

- 35.1. If either party is rendered unable, wholly or in part, by force majeure to carry out any obligation under this Agreement, such party shall give immediate notice in writing to the other party of such force majeure with full particulars thereof and insofar as known, the probable extent to which it will be unable to perform or be delayed in performing such obligation arising out of the terms and conditions of this Agreement, whereupon such obligation of the party giving the notice shall be suspended for the duration of such force majeure.
- 35.2. The party giving the notice shall use all possible diligence to remedy such force majeure.
- 35.3. The requirements that any force majeure shall be remedied with all possible diligence shall not require the settlement of strikes, lockouts or other labour difficulties by the



party concerned on terms contrary to its legal requirements. The handling of all such difficulties shall be entirely within the discretion of the party concerned.

- 35.4. If the force majeure event continues for more than 180 (one hundred and eighty) days, then either party shall be entitled to terminate this Agreement. No party will have any liability to the other in respect of the termination of this Agreement as a result of a force majeure event.

### 36 RESOLUTIVE CONDITIONS

- 36.1. This Agreement is subject to compliance with the following conditions:

36.1.1. adequate financing being made available, on terms acceptable to the Ministry, from external sources for the funding of the External Services;

36.1.2. that the provider of external services is in a position or able to provide external services to the Project area within 12 (twelve) months, or on a date as agreed upon by the Parties to this Agreement.

- 36.2. Should the conditions in clauses 36.1.1 and 36.1.2 above, not be satisfied within 12 (twelve) months of the date of signing of this Agreement, or such longer period as may reasonably be required to comply with the conditions in 36.1.1 to 36.1.2 and as the Parties may agree to in writing, then this Agreement shall be void.

- 36.3. The party to whose benefit a condition operates shall be entitled (but not obliged) to waive such condition as contained in clause 36.1 above for its benefit, by means of written notice to the other Parties of the waiver of the relevant condition(s).

- 36.4. The Parties specifically agree that extensions will, as a rule, and subject specifically to any applicable legislation, be granted if one party requests the other party to extend the period recorded in clause 36.2 above, except where the party requested to consent to such extension will be unreasonably prejudiced and such extensions will, as a rule, be granted under circumstances which have occurred and which have caused delays beyond the control of any of the Parties.

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THUS DONE AND SIGNED AT Juba on this 24 day  
of June 2022 in the presence of the undersigned witnesses.

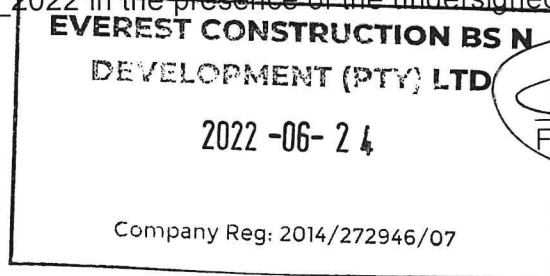


For and on behalf of the Ministry

As Witnesses:

1. Name: JOHNSON KENYI Signature: [Signature]  
2. Name: PASQUALE MORIS Signature: [Signature]

THUS DONE AND SIGNED AT JUBA on this 24<sup>TH</sup> day  
of JUNE 2022 in the presence of the undersigned witnesses.



For and on behalf of the Developer

As Witnesses:

1. Name: PICKIE MLANDANE Signature: [Signature]  
2. Name: BONGI GUMEDE Signature: [Signature]