

CONTRACT FOR CONSULTANCY SERVICES

LUMP-SUM

FOR

**DESIGN AND SUPERVISION OF THE REHABILITATION AND CONSTRUCTION OF
MNAZI MMOJA REFERAL HOSPITAL IN ZANZIBAR**

**PROJECT NAME: DEVELOPMENT OF NATIONAL SOCIAL WELFARE
UNDER COVID -19**

CONTRACT NUMBER: SMZ/IMF/HO3/CS/SS/2021/2022/01

BETWEEN

MINISTRY OF HEALTH, ZANZIBAR

AND

HABS CONSULT LTD

Dated: 15th NOVEMBER, 2021

Form of Contract

LUMP-SUM

This Agreement (hereinafter called the "Contract") is made this 15th day of November, 2021,

BETWEEN,

THE MINISTRY OF HEALTH, SOCIAL WELFARE, ELDERLY, GENDER AND CHILDREN of P. O. Box 236, ZANZIBAR (hereinafter called the "Client") on one hand,

AND,

HAB CONSULT LTD, a company registered under the law of Zanzibar, with Registration number, and whose address is P.O.BOX 6389 DAR ES SALAAM, TANZANIA (hereinafter called the "**Consultant**") on the other hand,

WHEREAS

- (a) the Client has requested the Consultant to provide certain consulting services of **Design Drawings, Tender Document and Bill of Quantity (BOQ and Construction Supervision of the Regional Hospital at Lumumba Premises, in the Urban District, Urban West Region in Unguja** (hereinafter called the "Services");
- (b) the Consultant, having represented to the Client that they have the required professional skills, expertise and technical resources, to provide the Services upon the terms and conditions as set forth in this Contract.

NOW THEREFORE, the parties hereby agree as follows:

1. The following documents attached hereto shall be deemed to form and be read and construed as part of this Contract:

- (a) This Form of Contract;
- (b) The Notification letter of award from the Employer;
- (c) The Letter of Acceptance from the Consultant;
- (d) The General Conditions of Contract;
- (e) The Special Conditions of Contract;
- (f) **Appendices:**

Appendix A: Terms of Reference (TOR);
Appendix B: Key Experts;
Appendix C: Breakdown of Contract Price;
Appendix D: Form of Advance Payments Guarantee;
Appendix E: Minutes of Negotiation;
Appendix F: Consulting Service Consultant between Hab Consult Ltd and Sub-Consultant;
Appendix G: Power of Attorney.

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In the event of any inconsistency between the documents, the following order of precedence shall prevail: The Form of Contract; The Letter of Acceptance from the Consultant; The Special Conditions of Contract; the General Conditions of Contract, including Attachment 1; Appendix A: Terms of Reference; Appendix B: Key Experts; Appendix C: Breakdown of Contract Price; Appendix D: Form of Advance Payments Guarantee. Any reference to this Contract shall include, where the context permits, a reference to its Appendices.

2. The Client hereby covenants to pay the Consultant in consideration of the execution and completion of the assignment for the sum of **Tanzania Shillings Six Hundred Fifty-Six Million Six Hundred Ninety Thousand Only (TZS. 656,690,000.00)** inclusive of VAT as Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed in this Contract.
3. The mutual rights and obligations of the Client and the Consultant shall be as set forth in the Contract, in particular:
 - (a) the Consultant shall carry out the Services in accordance with the provisions of the Contract; and
 - (b) the Client shall make payments to the Consultant in accordance with the provisions of the Contract.

IN WITNESS WHEREOF, the Parties hereto have caused this Contract to be signed in their respective names as of the day, month and year first above written.

For and on behalf of the Client

Signature *Fatma M. Marsho*

Name **DR. FATMA M. MARSHO**

Title **PS - MHA OF HEALTH**



Witness prepared by the Client

Signature *Shufaa Nassor Ali*

Name **SHUFAA NASSOR ALI**

Title **STATE ATTORNEY**

For and on behalf of the Consultant

Signature *Habib S. Kuru*

Name **Habib S. Kuru**

Title **Managing Director**



Witness prepared by the Consultant

Signature *Mahsen Mahdi*

Name **Mahsen Mahdi**

Title **Director**

GENERAL CONDITIONS OF CONTRACT

General Conditions of Contract

A. GENERAL PROVISIONS

1. Definitions

- 1.1. Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:
- (a) “Affiliate(s)” means an individual or an entity that directly or indirectly controls, is controlled by, or is under common control with the Consultant.
 - (b) “Applicable Law” means the laws and any other instruments having the force of law in Zanzibar.
 - (c) “Authority” means the Public Procurement and Disposal of Public Assets Authority established under section 4 of PPDA Act No.11 of 2016.
 - (d) “Client” means the “Ministry of Health, Social Welfare, Elderly, Gender and Children” that signs the Contract for the Services with the selected Consultant.
 - (e) “Consultant” means a legally-established professional consulting firm or an entity that may provide or provides the Services to the Client under the Contract.
 - (f) “Contract” means a legally binding written agreement signed between the Client and the Consultant and includes all the attached documents listed in its Clause 1 (the General Conditions of Contract (GCC), the Special Conditions of Contract (SCC), and the Appendices).
 - (g) “Data Sheet” means an integral part of the Instructions to Consultant (ITC) that is used to reflect the assignment conditions.
 - (h) “Day” means a calendar day.
 - (i) “Experts” means, collectively, Key Experts, Non-Key Experts, or any other personnel of the Consultant, Sub-consultant or Joint Venture member(s).
 - (j) “Government” means the Revolutionary Government of Zanzibar
 - (k) “Joint Venture (JV)” means an association with or without a legal personality distinct from that of its members, of more than one Consultant where one member has the authority to conduct all business for and on behalf of any and all the members of the JV, and where the members of the JV are jointly and severally liable to the Client for the performance of the Contract.
 - (l) “Key Expert(s)” means an individual professional whose skills, qualifications, knowledge and experience are critical to the performance of the Services under the Contract and whose CV is considered in the technical evaluation of the Consultant’s proposal.
 - (m) “ITC” (this Section 2 of the RFP) mean the Instructions to Consultant that provides the shortlisted Consultant with all information needed to prepare their Proposals.

- (n) “LOI” (this Section 1 of the RFP) means the Letter of Invitation being sent by the Client to the shortlisted Consultant.
- (o) “Non-Key Expert(s)” means an individual professional provided by the Consultant or its Sub-consultant and who is assigned to perform the Services or any part thereof under the Contract and whose CVs are not evaluated individually.
- (p) “Personnel” means professionals and support staff provided by the Consultant or by any Sub-Consultant and assigned to perform the Services or any part thereof; “Foreign Personnel” means such professionals and support staff who at the time of being so provided had their domicile outside Zanzibar; “Local Personnel” means such professionals and support staff who at the time of being so provided had their domicile inside Zanzibar.
- (q) “Proposal” means the Technical Proposal and the Financial Proposal of the Consultant.
- (r) “Regulation” means Public Procurement Regulations 2020 of Zanzibar.
- (s) “RFP” means the Request for Proposals to be prepared by the PDE for the selection of Consultant, based on the SRFP.
- (t) “SRFP” means the Standard Request for Proposals, which must be used by the Client as the basis for the preparation of the RFP.
- (u) “Services” means the work to be performed by the Consultant pursuant to the Contract.
- (v) “Sub-consultant” means an entity to whom the Consultant intends to subcontract any part of the Services while remaining responsible to the Client during the performance of the Contract.
- (w) “Third Party” means any person or entity other than the Government, the Client, the Consultant or a Sub-consultant.
- (x) “TORs” (this Section 7 of the RFP) means the Terms of References that explain the objectives, scope of work, activities, and tasks to be performed, respective responsibilities of the Client and the Consultant, and expected results and deliverables of the assignment.

1. Relationship between the Parties

- 2.1. Nothing contained herein shall be construed as establishing a relationship of master and servant or of principal and agent as between the Client and the Consultant. The Consultant, subject to this Contract, has complete charge of the Experts and Sub-Consultant, if any, performing the Services and shall be fully responsible for the Services performed by them or on their behalf hereunder.
- 2.2. In Joint Venture, each member of which will be jointly and

severally liable to the Client for the entire Consultant's obligations under this Contract.

2. **Law Governing Contract** 3.1. This Contract, its meaning and interpretation, and the relation between the Parties shall be governed by the Applicable Law.
3. **Language** 4.1. This Contract has been executed in the language specified in the **SCC**, which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.
4. **Headings** 5.1. The headings shall not limit, alter or affect the meaning of this Contract.
5. **Communications** 6.1. Any communication required or permitted to be given or made pursuant to this Contract shall be in writing in the language specified in Clause GCC 4. Any such notice, request or consent shall be deemed to have been given or made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent to such Party at the address specified in the **SCC**.
6.2. A Party may change its address for notice hereunder by giving the other Party any communication of such change to the address specified in the **SCC**.
6. **Location** 7.1. The Services shall be performed at such locations as are specified in **Appendix A** hereto and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.
7. **Authority of Member in Charge** 8.1. In case the Consultant is a Joint Venture, the members hereby authorize the member specified in the **SCC** to act on their behalf in exercising all the Consultant's rights and obligations towards the Client under this Contract, including without limitation the receiving of instructions and payments from the Client.
8. **Authorized Representatives** 9.1. Any action required or permitted to be taken, and any document required or permitted to be executed under this Contract by the Client or the Consultant may be taken or executed by the officials specified in the **SCC**.
9. **Corrupt and Fraudulent Practices** 10.1. The Government requires compliance with its policy in regard to corrupt and fraudulent or prohibited practices
- a. **Commissions and Fees** 10.2. The Client requires the Consultant to disclose any commissions, gratuities or fees that may have been paid or are to be paid to agents or any other party with respect to the selection process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee. Failure to disclose such commissions, gratuities or fees may result in termination of the Contract and/or sanctions

by the Government.

B. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION OF CONTRACT

- 10. Effectiveness of Contract** 11.1. This Contract shall come into force and effect on the date (the “Effective Date”) of the Client’s notice to the Consultant instructing the Consultant to begin carrying out the Services. This notice shall confirm that the effectiveness conditions, if any, listed in the **SCC** have been met.
- 11. Termination of Contract for Failure to Become Effective** 12.1. If this Contract has not become effective within such time period after the date of Contract signature as specified in the **SCC**, either Party may, by not less than twenty two (22) days written notice to the other Party, declare this Contract to be null and void, and in the event of such a declaration by either Party, neither Party shall have any claim against the other Party with respect hereto.
- 12. Commencement of Services** 13.1. The Consultant shall confirm availability of Key Experts and begin carrying out the Services not later than the number of days after the Effective Date specified in the **SCC**.
- 13. Expiration of Contract** 14.1. Unless terminated earlier pursuant to Clause GCC 19 hereof, this Contract shall expire at the end of such time period after the Effective Date as specified in the **SCC**.
- 14. Entire Agreement** 15.1. This Contract contains all covenants, stipulations and provisions agreed by the Parties. No agent or representative of either Party has authority to make, and the Parties shall not be bound by or be liable for, any statement, representation, promise or agreement not set forth herein.
- 15. Modifications or Variations** 16.1. Any modification or variation of the terms and conditions of this Contract, including any modification or variation of the scope of the Services, may only be made by written agreement between the Parties. However, each Party shall give due consideration to any proposals for modification or variation made by the other Party.
- 16. Force Majeure**
- a. Définition** 17.1 For the purposes of this Contract, “Force Majeure” means an event which is beyond the reasonable control of a Party, is not foreseeable, is unavoidable, and makes a Party’s performance of its obligations hereunder impossible or so impractical as reasonably to be considered impossible under the circumstances, and subject to those requirements, includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial action confiscation or any other action by Government agencies.
- 17.2. Force Majeure shall not include (i) any event which is caused

by the negligence or intentional action of a Party or such Party's Experts, Sub-Consultant or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both take into account at the time of the conclusion of this Contract, and avoid or overcome in the carrying out of its obligations hereunder.

17.3. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

b. No Breach of Contract

17.4 The failure of a Party to fulfill any of its obligations hereunder shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

c. Measures to be Taken

17.5 A Party affected by an event of Force Majeure shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall take all reasonable measures to minimize the consequences of any event of Force Majeure.

17.6 A Party affected by an event of Force Majeure shall notify the other Party of such event as soon as possible, and in any case not later than fourteen (14) calendar days following the occurrence of such event, providing evidence of the nature and cause of such event, and shall similarly give written notice of the restoration of normal conditions as soon as possible.

17.7 Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

17.8 During the period of their inability to perform the Services as a result of an event of Force Majeure, the Consultant, upon instructions by the Client, shall either:

- (a) demobilize, in which case the Consultant shall be reimbursed for additional costs they reasonably and necessarily incurred, and, if required by the Client, in reactivating the Services; or
- (b) continue with the Services to the extent reasonably possible, in which case the Consultant shall continue to be paid under the terms of this Contract and be reimbursed for additional costs reasonably and necessarily incurred.
- (c) In the case of disagreement between the Parties as to the existence or extent of Force Majeure, the matter shall be

settled according to Clauses GCC 44 & 45.

17. Suspension

18.1. The Client may, by written notice of suspension to the Consultant, suspend all payments to the Consultant hereunder if the Consultant fails to perform any of its obligations under this Contract, including the carrying out of the Services, provided that such notice of suspension (i) shall specify the nature of the failure, and (ii) shall request the Consultant to remedy such failure within a period not exceeding thirty (30) calendar days after receipt by the Consultant of such notice of suspension.

18. Termination

19.1. This Contract may be terminated by either Party as per provisions set up below:

a. By the Client

19.1.1. The Client may terminate this Contract in case of the occurrence of any of the events specified in paragraphs (a) through (f) of this Clause. In such an occurrence the Client shall give at least thirty (30) calendar days' written notice of termination to the Consultant in case of the events referred to in (a) through (d); at least sixty (60) calendar days' written notice in case of the event referred to in (e); and at least five (5) calendar days' written notice in case of the event referred to in (f):

- (a) If the Consultant fails to remedy a failure in the performance of its obligations hereunder, as specified in a notice of suspension pursuant to Clause GCC 18;
- (b) If the Consultant becomes (or, if the Consultant consists of more than one entity, if any of its members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) If the Consultant fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause GCC 45.1;
- (d) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days;
- (e) If the Client, in its sole discretion and for any reason whatsoever, decides to terminate this Contract;
- (f) If the Consultant fails to confirm availability of Key Experts as required in Clause GCC 13.

19.1.2. Furthermore, if the Client determines that the Consultant has engaged in corrupt, fraudulent, collusive, coercive [*or obstructive*] practices, in competing for or in executing the

Contract, then the Client may, after giving fourteen (14) calendar days' written notice to the Consultant, terminate the Consultant's employment under the Contract.

- b. By the Consultant**
- 19.1.3. The Consultant may terminate this Contract, by not less than thirty (30) calendar days' written notice to the Client, in case of the occurrence of any of the events specified in paragraphs (a) through (d) of this Clause.
- (a) If the Client fails to pay any money due to the Consultant pursuant to this Contract and not subject to dispute pursuant to Clause GCC 45.1 within forty-five (45) calendar days after receiving written notice from the Consultant that such payment is overdue.
 - (b) If, as the result of Force Majeure, the Consultant is unable to perform a material portion of the Services for a period of not less than sixty (60) calendar days.
 - (c) If the Client fails to comply with any final decision reached as a result of arbitration pursuant to Clause GCC 45.1.
 - (d) If the Client is in material breach of its obligations pursuant to this Contract and has not remedied the same within forty-five (45) days (or such longer period as the Consultant may have subsequently approved in writing) following the receipt by the Client of the Consultant's notice specifying such breach.
- c. Cessation of Rights and Obligations**
- 19.1.4. Upon termination of this Contract pursuant to Clauses GCC 12 or GCC 19 hereof, or upon expiration of this Contract pursuant to Clause GCC 14, all rights and obligations of the Parties hereunder shall cease, except (i) such rights and obligations as may have accrued on the date of termination or expiration, (ii) the obligation of confidentiality set forth in Clause GCC 22, (iii) the Consultant's obligation to permit inspection, copying and auditing of their accounts and records set forth in Clause GCC 25, and (iv) any right which a Party may have under the Applicable Law.
- d. Cessation of Services**
- 19.1.5. Upon termination of this Contract by notice of either Party to the other pursuant to Clauses GCC 19a or GCC 19b, the Consultant shall, immediately upon dispatch or receipt of such notice, take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultant and equipment and materials furnished by the Client, the Consultant shall proceed as provided, respectively, by Clauses GCC 27 or GCC 28.
- e. Payment upon Termination**
- 19.1.6. Upon termination of this Contract, the Client shall make the following payments to the Consultant:

- (a) payment for Services satisfactorily performed prior to the effective date of termination; and
- (b) in the case of termination pursuant to paragraphs (d) and (e) of Clause GCC 19.1.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of this Contract, including the cost of the return travel of the Experts.

C. OBLIGATIONS OF THE CONSULTANT

19. General

a. Standard of Performance

20.1 The Consultant shall perform the Services and carry out the Services with all due diligence, efficiency and economy, in accordance with generally accepted professional standards and practices, and shall observe sound management practices, and employ appropriate technology and safe and effective equipment, machinery, materials and methods. The Consultant shall always act, in respect of any matter relating to this Contract or to the Services, as a faithful adviser to the Client, and shall at all times support and safeguard the Client's legitimate interests in any dealings with the third parties.

20.2. The Consultant shall employ and provide such qualified and experienced Experts and Sub-Consultant as are required to carry out the Services.

20.3. The Consultant may subcontract part of the Services to an extent and with such Key Experts and Sub-Consultant as may be approved in advance by the Client. Notwithstanding such approval, the Consultant shall retain full responsibility for the Services.

b. Law Applicable to Services

20.4. The Consultant shall perform the Services in accordance with the Contract and the Applicable Law and shall take all practicable steps to ensure that any of its Experts and Sub-Consultant, comply with the Applicable Law.

20.5. Throughout the execution of the Contract, the Consultant shall comply with the import of goods and services prohibitions in Zanzibar when

- (a) as a matter of law or official regulations of Zanzibar prohibits commercial relations with country; or
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Tanzania prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

- 20.6. The Client shall notify the Consultant in writing of relevant local customs, and the Consultant shall, after such notification, respect such customs.
- 20. Conflict of Interests**
- a. Consultant Not to Benefit from Commissions, Discounts, etc.**
- 21.1. The Consultant shall hold the Client's interests paramount, without any consideration for future work, and strictly avoid conflict with other assignments or their own corporate interests.
- 21.1.1 The payment of the Consultant pursuant to GCC F (Clauses GCC 38 through 42) shall constitute the Consultant's only payment in connection with this Contract and, subject to Clause GCC 21.1.3, the Consultant shall not accept for its own benefit any trade commission, discount or similar payment in connection with activities pursuant to this Contract or in the discharge of its obligations hereunder, and the Consultant shall use its best efforts to ensure that any Sub-Consultant, as well as the Experts and agents of either of them, similarly shall not receive any such additional payment.
- 21.1.2 Furthermore, if the Consultant, as part of the Services, has the responsibility of advising the Client on the procurement of goods, works or services, the Consultant shall comply with the Government's Laws and shall at all times exercise such responsibility in the best interest of the Client. Any discounts or commissions obtained by the Consultant in the exercise of such procurement responsibility shall be for the account of the Client.
- b. Consultant and Affiliates Not to Engage in Certain Activities**
- 21.1.3 The Consultant agrees that, during the term of this Contract and after its termination, the Consultant and any entity affiliated with the Consultant, as well as any Sub-Consultant and any entity affiliated with such Sub-Consultant, shall be disqualified from providing goods, works or non-consulting services resulting from or directly related to the Consultant's Services for the preparation or implementation of the project, unless otherwise indicated in the SCC.
- c. Prohibition of Conflicting Activities**
- 21.1.4 The Consultant shall not engage, and shall cause its Experts as well as its Sub-Consultant not to engage, either directly or indirectly, in any business or professional activities that would conflict with the activities assigned to them under this Contract.
- d. Strict Duty to Disclose Conflicting Activities**
- 21.1.5 The Consultant has an obligation and shall ensure that its Experts and Sub-Consultant shall have an obligation to disclose any situation of actual or potential conflict that impacts their capacity to serve the best interest of their Client, or that may reasonably be perceived as having this effect. Failure to disclose said situations may lead to the disqualification of the Consultant or the termination of its

Contract.

- 21. Confidentiality** 22.1 Except with the prior written consent of the Client, the Consultant and the Experts shall not at any time communicate to any person or entity any confidential information acquired in the course of the Services, nor shall the Consultant and the Experts make public the recommendations formulated in the course of, or as a result of, the Services.
- 22. Liability of the Consultant** 23.1 Subject to additional provisions, if any, set forth in the SCC, the Consultant's liability under this Contract shall be as determined under the Applicable Law.
- 23. Insurance to be Taken out by the Consultant** 24.1 The Consultant (i) shall take out and maintain, and shall cause any Sub-Consultant to take out and maintain, at its (or the Sub-Consultant', as the case may be) own cost but on terms and conditions approved by the Client, insurance against the risks, and for the coverage specified in the SCC, and (ii) at the Client's request, shall provide evidence to the Client showing that such insurance has been taken out and maintained and that the current premiums therefore have been paid. The Consultant shall ensure that such insurance is in place prior to commencing the Services as stated in Clause GCC 13.
- 24. Accounting, Inspection and Auditing** 25.1 The Consultant shall keep, and shall make all reasonable efforts to cause its Sub-Consultant to keep, accurate and systematic accounts and records in respect of the Services and in such form and detail as will clearly identify relevant time changes and costs.
- 25.2 The Consultant shall permit and shall cause its Sub-Consultant to permit, the Government and/or persons appointed by the Government to inspect the Site and/or all accounts and records relating to the performance of the Contract and the submission of the Proposal to provide the Services, and to have such accounts and records audited by auditors appointed by the Government. The Consultant's attention is drawn to Clause GCC 10 which provides, inter alia, that acts intended to materially impede the exercise of the Government's inspection and audit rights provided for under this Clause GCC25.2 constitute a prohibited practice subject to contract termination and/or sanction.
- 25. Reporting Obligations** 26.1 The Consultant shall submit to the Client the reports and documents specified in Appendix A, in the form, in the numbers and within the time periods set forth in the said Appendix.
- 26. Proprietary Rights of the Client in Reports and** 27.1 Unless otherwise indicated in the SCC, all reports and relevant data and information such as maps, diagrams, plans, databases, other documents and software, supporting records or material

Records

compiled or prepared by the Consultant for the Client in the course of the Services shall be confidential and become and remain the absolute property of the Client. The Consultant shall, not later than upon termination or expiration of this Contract, deliver all such documents to the Client, together with a detailed inventory thereof. The Consultant may retain a copy of such documents, data and/or software but shall not use the same for purposes unrelated to this Contract without prior written approval of the Client.

27.2 If license agreements are necessary or appropriate between the Consultant and third parties for purposes of development of the plans, drawings, specifications, designs, databases, other documents and software, the Consultant shall obtain the Client's prior written approval to such agreements, and the Client shall be entitled at its discretion to require recovering the expenses related to the development of the program(s) concerned. Other restrictions about the future use of these documents and software, if any, shall be specified in the SCC.

27. Equipment, Vehicles and Materials

28.1 Equipment, vehicles and materials made available to the Consultant by the Client, or purchased by the Consultant wholly or partly with funds provided by the Client, shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of this Contract, the Consultant shall make available to the Client an inventory of such equipment, vehicles and materials and shall dispose of such equipment, vehicles and materials in accordance with the Client's instructions. While in possession of such equipment, vehicles and materials, the Consultant, unless otherwise instructed by the Client in writing, shall insure them at the expense of the Client in an amount equal to their full replacement value.

28.2 Any equipment or materials brought by the Consultant or its Experts into Zanzibar for the use either for the project or personal use shall remain the property of the Consultant or the Experts concerned, as applicable.

D. CONSULTANT'S EXPERTS AND SUB-CONSULTANT

28. Description of Key Experts

29.1 The title, agreed job description, minimum qualification and estimated period of engagement to carry out the Services of each of the Consultant's Key Experts are described in Appendix B.

29. Replacement of Key Experts

30.1 Except as the Client may otherwise agree in writing, no changes shall be made in the Key Experts.

30.2 Notwithstanding the above, the substitution of Key Experts during Contract execution may be considered only based on the Consultant's written request and due to circumstances

outside the reasonable control of the Consultant, including but not limited to death or medical incapacity. In such case, the Consultant shall forthwith provide as a replacement, a person of equivalent or better qualifications and experience, and at the same rate of remuneration.

30. Removal of Experts or Sub-Consultant

- 31.1 If the Client finds that any of the Experts or Sub-consultant has committed serious misconduct or has been charged with having committed a criminal action, or shall the Client determine that Consultant's Expert of Sub-consultant have engaged in corrupt, fraudulent, collusive, coercive [*or obstructive*] practice while performing the Services, the Consultant shall, at the Client's written request, provide a replacement.
- 31.2 In the event that any of Key Experts, Non-Key Experts or Sub-Consultant is found by the Client to be incompetent or incapable in discharging assigned duties, the Client, specifying the grounds therefore, may request the Consultant to provide a replacement.
- 31.3 Any replacement of the removed Experts or Sub-Consultant shall possess better qualifications and experience and shall be acceptable to the Client.
- 31.4 The Consultant shall bear all costs arising out of or incidental to any removal and/or replacement of such Experts.

E. OBLIGATIONS OF THE CLIENT

31. Assistance and Exemptions

- 32.1 Unless otherwise specified in the SCC, the Client shall use its best efforts to:
- (a) Assist the Consultant with obtaining work permits and such other documents as shall be necessary to enable the Consultant to perform the Services.
 - (b) Assist the Consultant with promptly obtaining, for the Experts and, if appropriate, their eligible dependents, all necessary entry and exit visas, residence permits, exchange permits and any other documents required for their stay in the Client's country while carrying out the Services under the Contract.
 - (c) Facilitate prompt clearance through customs of any property required for the Services and of the personal effects of the Experts and their eligible dependents.
 - (d) Issue to officials, agents and representatives of the Government all such instructions and information as may be necessary or appropriate for the prompt and effective

implementation of the Services.

- (e) Assist the Consultant and the Experts and any Sub-Consultant employed by the Consultant for the Services with obtaining exemption from any requirement to register or obtain any permit to practice their profession or to establish themselves either individually or as a corporate entity in Zanzibar according to the applicable law.
- (f) Assist the Consultant, any Sub-Consultant and the Experts of either of them with obtaining the privilege, pursuant to the applicable law in Zanzibar of bringing reasonable amounts of foreign currency for the purposes of the Services or for the personal use of the Experts and of withdrawing any such amounts as may be earned therein by the Experts in the execution of the Services.
- (g) Provide to the Consultant any such other assistance as may be specified in the **SCC**.

32. Access to Project Site

33.1 The Client warrants that the Consultant shall have, free of charge, unimpeded access to the project site in respect of which access is required for the performance of the Services. The Client will be responsible for any damage to the project site or any property thereon resulting from such access and will indemnify the Consultant and each of the experts in respect of liability for any such damage, unless such damage is caused by the willful default or negligence of the Consultant or any Sub-Consultant or the Experts of either of them.

33. Change in the Applicable Law Related to Taxes and Duties

34.1 If, after the date of this Contract, there is any change in the applicable law in Zanzibar with respect to taxes and duties which increases or decreases the cost incurred by the Consultant in performing the Services, then the remuneration and reimbursable expenses otherwise payable to the Consultant under this Contract shall be increased or decreased accordingly by agreement between the Parties hereto, and corresponding adjustments shall be made to the Contract price amount specified in Clause GCC 38.1

34. Services, Facilities and Property of the Client

35.1 The Client shall make available to the Consultant and the Experts, for the purposes of the Services and free of any charge, the services, facilities and property described in the Terms of Reference (Appendix A) at the times and in the manner specified in said Appendix A.

35. Counterpart Personnel

36.1 The Client shall make available to the Consultant free of charge such professional and support counterpart personnel, to be nominated by the Client with the Consultant's advice, if specified in Appendix A.

- 36.2 Professional and support counterpart personnel, excluding Client's liaison personnel, shall work under the exclusive direction of the Consultant. If any member of the counterpart personnel fails to perform adequately any work assigned to such member by the Consultant that is consistent with the position occupied by such member, the Consultant may request the replacement of such member, and the Client shall not unreasonably refuse to act upon such request.
- 36. Payment Obligation** 37.1 In consideration of the Services performed by the Consultant under this Contract, the Client shall make such payments to the Consultant for the deliverables specified in Appendix A and in such manner as is provided by GCC F below.

F. PAYMENTS TO THE CONSULTANT

- 37. Contract Price** 38.1 The Contract price is fixed and is set forth in the SCC. The Contract price breakdown is provided in Appendix C.
- 38.2 Any change to the Contract price specified in Clause 38.1 can be made only if the Parties have agreed to the revised scope of Services pursuant to Clause GCC 16 and have amended in writing the Terms of Reference in Appendix A.
- 38. Taxes and Duties** 39.1 The Consultant, Sub-Consultant and Experts are responsible for meeting any and all tax liabilities arising out of the Contract unless it is stated otherwise in the SCC.
- 39.2 As an exception to the above and as stated in the SCC, all local identifiable indirect taxes (itemized and finalized at Contract negotiations) are reimbursed to the Consultant or are paid by the Client on behalf of the Consultant.
- 39. Currency of Payment** 40.1 Any payment under this Contract shall be made in TZS unless specified in the SCC.
- 40. Mode of Billing and Payment** 41.1 The total payments under this Contract shall not exceed the Contract price set forth in Clause GCC 38.1.
- 41.2 The payments under this Contract shall be made in lump-sum installments against deliverables specified in Appendix A. The payments will be made according to the payment schedule stated in the SCC.
- 41.2.1 Advance payment: Unless otherwise indicated in the SCC, an advance payment shall be made against an advance payment bank guarantee acceptable to the Client in an amount (or amounts) and in a currency (or currencies) specified in the SCC. Such guarantee (i) is to remain effective until the advance payment has been fully set off,

and (ii) is to be in the form set forth in Appendix D, or in such other form as the Client shall have approved in writing. The advance payments will be set off by the Client in equal portions against the lump-sum installments specified in the SCC until said advance payments have been fully set off.

41.2.2 *The Lump-Sum Installment Payments.* The Client shall pay the Consultant within sixty (60) days after the receipt by the Client of the deliverable(s) and the cover invoice for the related lump-sum installment payment. The payment can be withheld if the Client does not approve the submitted deliverable(s) as satisfactory in which case the Client shall provide comments to the Consultant within the same sixty (60) days period. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated.

41.2.3 *The Final Payment:* The final payment under this Clause shall be made only after the final report has been submitted by the Consultant and approved as satisfactory by the Client. The Services shall then be deemed completed and finally accepted by the Client. The last lump-sum installment shall be deemed approved for payment by the Client within ninety (90) calendar days after receipt of the final report by the Client unless the Client, within such ninety (90) calendar day period, gives written notice to the Consultant specifying in detail deficiencies in the Services, the final report. The Consultant shall thereupon promptly make any necessary corrections, and thereafter the foregoing process shall be repeated. 41.2.4 All payments under this Contract shall be made to the accounts of the Consultant specified in the SCC.

41.2.4 With the exception of the final payment under 41.2.3 above, payments do not constitute acceptance of the whole Services nor relieve the Consultant of any obligations hereunder.

41. Interest on Delayed Payments

42.1 If the Client had delayed payments beyond fifteen (15) days after the due date stated in Clause GCC 41.2.2 , interest shall be paid to the Consultant on any amount due by, not paid on, such due date for each day of delay at the annual rate stated in the SCC.

G. FAIRNESS AND GOOD FAITH

42. Good Faith

43.1 The Parties undertake to act in good faith with respect to each other's rights under this Contract and to adopt all reasonable measures to ensure the realization of the

objectives of this Contract.

H. SETTLEMENT OF DISPUTES

43. Amicable Settlement

- 44.1 The Parties shall seek to resolve any dispute amicably by mutual consultation.
- 44.2 If either Party objects to any action or inaction of the other Party, the objecting Party may file a written Notice of Dispute to the other Party providing in detail the basis of the dispute. The Party receiving the Notice of Dispute will consider it and respond in writing within fourteen (14) days after receipt. If that Party fails to respond within fourteen (14) days, or the dispute cannot be amicably settled within fourteen (14) days following the response of that Party, Clause GCC 45.1 shall apply.

44. Dispute Resolution

- 44.1 Any dispute between the Parties arising under or related to this Contract that cannot be settled amicably may be referred to by either Party to the arbitration in accordance with the provisions specified in the SCC.

SPECIAL CONDITIONS OF CONTRACT

Special Conditions of Contract

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
1.1(b) and 3.1	The Contract shall be construed in accordance with the law of ZANZIBAR
4.1	The language is: English
6.1 and 6.2	<p>The addresses are:</p> <p>Client: PRINCIPAL SECRETARY</p> <p>Attention: MINISTRY OF HEALTH, SOCIAL WELFARE, ELDERLY, GENDER AND CHILDREN – ZANZIBAR.</p> <p>Telephone: +255-24-2231614</p> <p>E-mail: info@mohz.go.tz</p> <p>Consultant: MS. HAB CONSULT LTD, P.O BOX 6389, DAR ES SALAAM, TANZANIA</p> <p>Attention : ARCH. HABIB NURU</p> <p>Facsimile: +255 688 778 871</p> <p>E-mail: info@habconsultltd.com / habibnuru@gmail.com</p> <p>Client Representative: ALI SAID BAKAR</p> <p>Mobile: +255 777 468 418</p> <p>E-mail: ali.bakar@fulbrightmail.org</p>
8.1	The Lead Member on behalf of the JV is: MS. HAB CONSULT LTD

9.1	<p>The Authorized Representatives are:</p> <p>For the Client: DR. FATMA H. MRISHO PRINCIPAL SECRETARY</p> <p>Attention: MINISTRY OF HEALTH, SOCIAL WELFARE, ELDERLY, GENDER AND CHILDREN – ZANZIBAR</p> <p>Telephone: +255-24-2231614</p> <p>E-mail: info@mohz.go.tz</p> <p>For the Consultant: ARCH. HABIB SHARIFF NURU MANAGING DIRECTOR</p> <p>Attention: MS. HAB CONSULT LTD, P.O BOX 6389 DAR ES SALAAM, TANZANIA</p> <p>Facsimile: +255 2114411/ 0688 778 871</p> <p>E-mail: info@habconsultltd.com / habibnuru@gmail.com</p>
11.1	The effectiveness conditions are the following:
12.1	<p>Termination of Contract for Failure to Become Effective:</p> <p>The time period shall be: 30 days</p>
13.1	<p>Commencement of Services: shall be within three (3) days after contract signature.</p> <p>Confirmation of Key Experts' availability to start the Assignment shall be submitted to the Client in writing as a written statement signed by each Key Expert.</p>
14.1	<p>Expiration of Contract:</p> <p>The time period shall be: After 22 months</p>
21 b.	<p>The Client reserves the right to determine on a case-by-case basis whether the Consultant should be disqualified from providing goods, works or non-consulting services due to a conflict of a nature described in Clause GCC 21.1.3</p> <p>Yes</p>

<p>23.1</p>	<p>The following limitation of the Consultant’s Liability towards the Client can be subject to the Contract’s negotiations:</p> <p>“Limitation of the Consultant’s Liability towards the Client:</p> <p>(a) Except in the case of gross negligence or willful misconduct on the part of the Consultant or on the part of any person or a firm acting on behalf of the Consultant in carrying out the Services, the Consultant, with respect to damage caused by the Consultant to the Client’s property, shall not be liable to the Client:</p> <p style="padding-left: 40px;">(i) for any indirect or consequential loss or damage; and</p> <p style="padding-left: 40px;">(ii) for any direct loss or damage that exceeds two times the total value of the Contract;</p> <p>(b) This limitation of liability shall not</p> <p style="padding-left: 40px;">(i) affect the Consultant’s liability, if any, for damage to Third Parties caused by the Consultant or any person or firm acting on behalf of the Consultant in carrying out the Services;</p> <p style="padding-left: 40px;">(ii) be construed as providing the Consultant with any limitation or exclusion from liability which is prohibited by the “Laws of Zanzibar”.</p>
<p>24.1</p>	<p>The insurance coverage against the risks shall be as follows:</p> <p>(a) Professional liability insurance, with a minimum coverage of 10%;</p> <p>(b) Third Party motor vehicle liability insurance in respect of motor vehicles operated in Zanzibar by the Consultant or its Experts or Sub-Consultant, with a minimum coverage of TZS 6,000,000/=;</p> <p>(c) Third Party liability insurance, with a minimum coverage of TZS 10,000,000/=;</p> <p>(d) employer’s liability and workers’ compensation insurance in respect of the experts and Sub-Consultant in accordance with the relevant provisions of the applicable law in Zanzibar as well as, with respect to such Experts, any such life, health, accident, travel or other insurance as may be appropriate; and</p> <p>(e) insurance against loss of or damage to (i) equipment purchased in whole or in part with funds provided under this Contract, (ii) the Consultant’s property used in the performance of the Services, and (iii) any documents prepared by the Consultant in the performance of the Services.</p>
<p>27.1</p>	<p>Assist in facilitating prompt clearance through customs of any property</p>

	<p>required for the services and of personnel and their eligible dependents and arrange necessary entry and exit visas, resident permits and any other documents required for their stay in Tanzania as per prevailing rules and procedures.</p> <p>Assist in applying work permits and such other documents as shall be necessary to enable the Consultant, Sub-consultant or personnel to perform the services.</p> <p>Assist in obtaining from Government officials, departments, public officials Agents all such data and information as may be necessary or effective for the effective implementation of the services.</p>
27.2	<p>The Consultant shall not use those <i>documents and software</i> for purposes unrelated to this Contract without the prior written approval of the Client.</p>
38.1	<p>The Contract price is: Tanzania Shillings Six Hundred Fifty-Six Million Six Hundred Ninety Thousand Only (TZS. 656,690,000.00) inclusive of VAT.</p> <p>Any indirect local taxes chargeable in respect of this Contract for the Services provided by the Consultant shall “be paid” by the Consultant.</p>
39.1 and 39.2	<p>The Client warrants that “<i>the Client shall reimburse the Consultant, the Sub-Consultant and the Experts</i>” any indirect taxes, duties, fees, levies and other impositions imposed, under the applicable law in the Client’s country, on the Consultant, the Sub-Consultant and the Experts in respect of:</p> <ul style="list-style-type: none"> (a) any payments whatsoever made to the Consultant, Sub-Consultant and the Experts (other than nationals or permanent residents of the Client’s country), in connection with the carrying out of the Services; (b) any equipment, materials and supplies brought into the Client’s country by the Consultant or Sub-Consultant for the purpose of carrying out the Services and which, after having been brought into such territories, will be subsequently withdrawn by them; (c) any equipment imported for the purpose of carrying out the Services and paid for out of funds provided by the Client and which is treated as property of the Client; (d) any property brought into the Client’s country by the Consultant, any Sub-Consultant or the Experts (other than nationals or permanent residents of the Client’s country), or the eligible dependents of such experts for their personal use and which will subsequently be withdrawn by them upon their respective departure from the Client’s country, provided that: <ul style="list-style-type: none"> i) the Consultant, Sub-Consultant and experts shall follow the usual customs procedures of the Client’s country in importing property into the Client’s country; and

	<p>ii) if the Consultant, Sub-Consultant or Experts do not withdraw but dispose of any property in the Client's country upon which customs duties and taxes have been exempted, the Consultant, Sub-Consultant or Experts, as the case may be, (a) shall bear such customs duties and taxes in conformity with the regulations of the Client's country, or (b) shall reimburse them to the Client if they were paid by the Client at the time the property in question was brought into the Client's country.</p>
<p>40.1</p>	<p>The currency for the payment shall be: <i>Tanzania Shillings (TZS)</i></p>
<p>41.2</p>	<p>The payment schedule:</p> <p>(a) The sum of TZS. 166,500,000.00 of the Contract Price shall be paid after completion of Designs, Bill of Quantities (BoQ) and Tender Documents and satisfaction of the Client of the work done.</p> <p>(i) TZS. 106,400,000.00 shall be paid upon completion of design and review (D-1).</p> <p>(ii) TZS. 60,100,000.00 shall be paid upon completion of Bill of Quantities and Tender Documents (D-2).</p> <p>(b) All amount quoted under Supervision (D-3) of TZS. 222,180,000.00 of the Contract Price shall be paid as per certificates issued by the Contractor.</p> <p>(i) TZS. 19,550,000.00 shall be paid upon completion of Commissioning and Handing Over the Building (D-4).</p> <p>(ii) TZS. 39, 675,000.00 shall be paid upon completion of Defect Liability Period (D-5).</p> <p>(iii) TZS. 31,050,000.00 shall be paid upon completion of Final Account and Project Closure (D-6).</p> <p>(iv) Reimbursable amount TZS. 152,760,000.00 shall be paid as per claims and performance of the milestones.</p>
<p>41.2.1</p>	<p>The following provisions shall apply to the advance payment and the advance bank payment guarantee: <i>N/A</i></p>
<p>41.2.3</p>	<p>The accounts are:</p> <p>The payment shall be done on following Accounts</p> <p>For foreign currency or currencies:</p> <p>Name of the Bank:</p>

	<p>Account number:</p> <p>Account name:</p> <p>Branch name:</p> <p>Swift code:</p> <p>For local currency:</p> <p>Name of the Bank:</p> <p>Account number:</p> <p>Account name:</p> <p>Branch name:</p> <p>Swift code:</p>
<p>42.1</p>	<p>The interest rate is: N/A</p>
<p>45.1</p>	<p>Disputes shall be settled by arbitration in accordance with the following provisions:</p> <p>1. <u>Selection of Arbitrators.</u> Each dispute submitted by a Party to arbitration shall be heard by a sole arbitrator or an arbitration panel composed of three (3) arbitrators, in accordance with the following provisions:</p> <p>(a) Where there is a dispute, the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible. With consultation between the Parties will try to amicably resolve the dispute. Once, an amicable settlement fails, Parties will resolve by Arbitration.</p> <p>(b) Hourly rate of Fees payable to the Arbitrator is: <i>(To be determined).</i></p> <p>(c) Types of reimbursable expenses to be paid to the Adjudicator included: <i>(To be determined).</i></p> <p>(d) Arbitration will take place in Zanzibar, in accordance with Arbitration Decree, Cap. 25 of the Laws of Zanzibar.</p>

	(e) Appointing Authority for the Arbitrator: <i>(To be determined)</i>
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