

**FORM OF AGREEMENT
BETWEEN CLIENT AND INDEPENDENT CONSULTING ENGINEER
FOR
ENGINEERING SERVICES**

THIS AGREEMENT is made this day of 20.....

BETWEEN.....

of (hereinafter called "The Client") of the one part

AND.....

..... of(hereinafter called "The Independent Consulting Engineer") of the other part.

WHEREAS; the Client has considered and approved the appointment of the Independent Consulting Engineer to provide professional services in connection with
.....
.....
.....
..... (referred to in this Agreement as the Engineering Services)

AND WHEREAS; the Independent Consulting Engineer has proven to possess the required expertise for the engineering services;

NOW IT IS HEREBY AGREED BY THE PARTIES as follows:

1. CONDITIONS OF ENGAGEMENT OF INDEPENDENT CONSULTING ENGINEER FOR ENGINEERING SERVICES

(1) DEFINITIONS

In this Agreement the following terms shall have the meanings hereby assigned to them except where the context otherwise requires:

- (a) "The Client" means the person, firm or organization named in **the Agreement**, who has engaged the services of the Independent Consulting Engineer.
- (b) "The Independent Consulting Engineer" means the person registered with the Board as per Engineers Registration Board Act, Chapter 63 named in **the Agreement** and Rules for Registration of Independent Consulting Engineers
- (c) "The Services" means the professional services performed by the Independent Consulting Engineer as prescribed in Appendix A

Words importing the singular include the plural and vice versa where the context requires.

2. The Client agrees to engage the Independent Consulting Engineer to provide the professional services as described in this Agreement and the Independent Consulting Engineer agrees to provide **the Engineering Services**.

3. This Agreement comprises this Form of Agreement together with the following documents which shall be deemed to form and be read and construed as part of this Agreement.
 - (a) Conditions of Engagement for Professional Engineering Services
 - (b) Appendix A: Services of the Independent Consulting Engineer
 - (c) Appendix B: Remuneration and Payment of the Independent Consulting Engineer

4. In consideration of the payment to be made by the Client to the Independent Consulting Engineer as hereinafter mentioned the Independent Consulting Engineer hereby agrees to perform the Services in conformity with the provisions of this Agreement.

5. The Client hereby agrees to pay a fee of TSHS/USD
(TSHS/USD.....)
 and the reimbursable expenses of TSHS/USD
 (TSHS/USD.....)
 to the Independent Consulting Engineer in consideration of the performance of the **Engineering Services** under the provisions of this Agreement at the **time** and in the manner prescribed by the Agreement, Appendix B.

6. OBLIGATIONS OF THE INDEPENDENT CONSULTING ENGINEER

6(1) Performance of Services

The Independent Consulting Engineer shall perform Normal Services as so prescribed in Appendix A,

6(2) Skill and Care

The Independent Consulting Engineer shall exercise reasonable skill, care and diligence in the performance of the **Engineering Services**.

6(3) Assignment

The Independent Consulting Engineer shall not assign or transfer any benefit or obligation under this Agreement **unless there is written consent of the Client**.

7 OBLIGATIONS OF THE CLIENT

7(1) Payment for Services

The Client shall pay the Independent Consulting Engineer fees and disbursements for the performance of the **Engineering Services** as set out in **Clause 5 of this agreement**.

7(2) Provision of Information

The Client shall supply to the Independent Consulting Engineer, without charge and in such time so as not to delay or disrupt the performance by the Independent Consulting Engineer of the Services, all necessary and relevant data and information (including details of the **engineering services** to be performed by any Other Consultants) in the possession of the Client, his agents, servants, **or other** Consultants.

7(3) Providing Assistance

The Client shall give assistance, and shall ensure that his agents, servants, or any other parties give such assistance as shall reasonably be required by the Independent Consulting Engineer in the performance of the **Engineering Services**.

7(4) Making Decisions

The Client shall ensure that his decisions, instructions, consents or approvals on or to all matters properly referred to him shall be given in such reasonable time so as not to delay or disrupt the performance of the **Engineering Services** by the Independent Consulting Engineer.

7(5) Assignment

The Client shall not, without the written consent of the Independent Consulting Engineer which consent shall not unreasonably be delayed or withheld, assign or transfer any benefit or obligation under this Agreement.

7(6) Appointing Client's Representative

The Client shall designate a Client's Representative who shall be deemed to have authority to make decisions on behalf of the Client under this Agreement. The Client shall notify the Independent Consulting Engineer immediately if the Client's Representative is replaced.

8 COMMENCEMENT, DETERMINATION, POSTPONEMENT, DISRUPTION AND DELAY

8(1) Duration of Appointment

Notwithstanding the date stated in the Form of Agreement, the effective date of the appointment of the Independent Consulting Engineer shall be the date upon which **the Agreement** was executed by the parties or the date when the Independent Consulting Engineer shall have first commenced performance of the **Engineering** Services, whichever is the earlier.

Further that, unless terminated, the appointment of the Independent Consulting Engineer shall be concluded when the Independent Consulting Engineer has performed the **Engineering** Services required under this Agreement.

8(2) Determination by the Client

The Client may determine the appointment of the Independent Consulting Engineer at any time by Notice in respect of all or any part of the **Engineering** Services.

8(3) Postponement by the Client

The Client may at any time by Notice require the Independent Consulting Engineer to postpone the performance of all or any part of the **Engineering** Services.

Further, on Notice of postponement of all or any part of the Services, the Independent Consulting Engineer shall cease such postponed Services in an orderly and economical manner compatible with a possible order to restart.

8(4) Determination by the Client following Breach of this Agreement by the Independent Consulting Engineer

In the event of a breach of this Agreement by the Independent Consulting Engineer the Client may give two week's Notice of his intention to determine the appointment of the Independent Consulting Engineer setting out the acts or omissions of the Independent Consulting Engineer relied upon as evidence of such breach. If the Independent Consulting Engineer does not, to the reasonable satisfaction of the Client, take expeditious steps to repair the breach during the notice period the Client may forthwith on the expiry of the notice period determine the appointment of the Independent Consulting Engineer.

8(5) Suspension or Determination by the Independent Consulting Engineer

Upon the occurrence of any circumstance beyond the control of the Independent Consulting Engineer which is such as to prevent or significantly impede the performance by the Independent Consulting Engineer of the Services under this Agreement, the Independent Consulting Engineer may without prejudice to any other remedy and upon not less than four week's Notice suspend for a period of up to four weeks the performance of the Services under this Agreement in respect of all or such part or parts of the services as are affected and at the expiry of the said period of suspension either continue with the performance of the Services under this Agreement or if he is still prevented from performing such Services for reasons beyond his control determine his appointment forthwith by a further Notice of four weeks in respect of all or any part of the Services affected.

In the event of a breach of this Agreement by the Client the Independent Consulting Engineer may give a **two** week Notice of his intention to determine the appointment of the Independent Consulting Engineer setting out the acts or omissions of the Client relied upon as evidence of such breach. If the Client does not, to the reasonable satisfaction of the Independent Consulting Engineer, take expeditious steps to repair the breach during the notice period the Independent Consulting Engineer may forthwith on the expiry of the notice period determine the appointment of the Independent Consulting Engineer by a further **two week Notice**.

Notwithstanding the foregoing, in the event of the failure of the Client to make any payment properly due to the Independent Consulting Engineer in accordance with the provisions of Clause **6 of these Conditions**, the Independent Consulting Engineer may, upon not less than a **two week Notice**, determine his appointment.

8(6) Insolvency

The appointment of the Independent Consulting Engineer may be determined in the event of the Insolvency of either party. Notice of determination must be given to the party which **has become** insolvent by the other party.

8(7) Accrued Rights

Termination of the Independent Consulting Engineer's appointment under this Agreement shall not prejudice or affect the accrued rights or claims of either party to this Agreement.

8(8) Delay caused by Client or his appointed agents

In the event of delays caused by the client so as to increase the amount of services, then:

- (a) The Independent Consulting Engineer shall inform the Client of the circumstances and probable effects
- (b) The increase shall be regarded as Additional **Engineering** Services and charged accordingly
- (c) The time for completion of the **Engineering** Services shall be increased accordingly and charged either in man-hours or lump sum rate.

9. PAYMENTS

9(1) Alternative Methods of Payment

In respect of **Engineering** Services provided by the Independent Consulting Engineer under Clause 2.1 of **this Agreement**, the Client shall pay the Independent Consulting Engineer according to one or more of the following methods as specified in Appendix B.

- (a) Time based fees
- (b) Lump Sum fees

9(2) Time Charges

When the **Engineering** Services cost cannot be estimated in advance, the Client shall remunerate the Independent Consulting Engineer on the basis of time charge agreed between the Client and Independent Consulting Engineer. The applicable rates are those given in the scale of charges set by the Engineers Registration Board.

9(3) Lump Sum Fees

The sum payable by the Client to the Independent Consulting Engineer shall be the Lump Sum to be decided and confirmed in advance by negotiation between the two parties, depending on the nature of the **Engineering** Service.

9(4) Reimbursable Expenses

The Client shall in all cases reimburse the Independent Consulting Engineer in respect of all the Independent Consulting Engineer's disbursements properly made in connection with:-

- a) Printing, reproduction and purchase of all documents, drawings, maps, records and photographs or any other information required for the service under agreement.
- b) Communication (fax, phone calls, e-mails, etc)
- c) Postage and similar delivery charges
- d) Traveling, hotel expenses and other similar disbursements.

Further, the Client, by agreement with the Independent Consulting Engineer and in satisfaction of his liability to the Independent Consulting Engineer in respect of these disbursements, may make to the Independent Consulting Engineer a lump sum payment or a sum calculated as a percentage of the fees and charges under Clause 5.1 and 5.2 to be specified in Appendix B.

9(5) Effect of Determination or Postponement

In the event of any determination by the Client in accordance with Clause 4.2 of these Conditions or any postponement or determination by the Client in accordance with Clause 4.3 or Clause 4.4 of these Conditions or any suspension by the Independent Consulting Engineer in accordance with Clause 4.5 of these Conditions or any determination by the Independent Consulting Engineer in accordance with Clause 4.5 or 4.6 of these Conditions, the Client shall pay the Independent Consulting Engineer a fair and reasonable amount on account of the fees due under Clause 5.1 of these Conditions commensurate with the Services performed to the date of such determination, postponement or suspension and any outstanding disbursements together with a sum for loss and costs of disruption (calculated on the basis of the loss to the Independent Consulting Engineer and costs to which the Independent Consulting Engineer is committed in respect of planned service).

Further, in the event of any determination by the Client in accordance with Clause 4.4 or 4.6 of these Conditions the Client shall pay the Independent Consulting Engineer a fair and reasonable amount on account of the fees due under Clause 5.1 of these Conditions commensurate with the Services performed to the date of determination and any outstanding disbursements.

9(6) Contested Invoices

If any part of any invoice submitted by the Consulting Engineer is contested, payment shall be made in full of all that is not contested.

9(7) Time for Payment

All amounts due to the Independent Consulting Engineer in accordance with this Agreement shall be paid within 28 days of the date of the Independent Consulting Engineer's invoice. Interest **shall accrue** to all amounts remaining unpaid thereafter (including any amounts of any contested invoices remaining unpaid under Clause 5.5 of these Conditions to the extent that they or it shall subsequently be agreed or determined to have been due to the Independent Consulting Engineer). Interest shall be charged at the prevailing mean annual commercial rate of lending plus one percent on all overdue payments.

10. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

10(1) Copyright

The copyright in all documents prepared by the Independent Consulting Engineer in connection with the services for delivery to the Client shall remain vested in Independent Consulting Engineer but, subject to the Independent Consulting Engineer having received payment of all fees and disbursements agreed as due under this Agreement, the Client shall have a license to copy and use such documents and information for any purpose as they Client deems fit for the purpose as foreseen in the request for service from the Independent Consulting Engineer. Save as above, the Client shall not make copies of such documents and use the same in connection with any other undertakings without the prior written approval of the Independent Consulting Engineer, which shall not unreasonably be withheld, and upon such terms as may be agreed between the Client and the Independent Consulting Engineer.

The Independent Consulting Engineer shall not be liable for use by any person of **documents**, reports, specifications, or information for any purpose other than that for which the same were prepared by the Independent Consulting Engineer.

10(2) Publication by the Independent Consulting Engineer

The Independent Consulting Engineer shall not, without the written consent of the Client, publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Services rendered under this **Agreement**.

Further, the Independent Consulting Engineer shall not disclose to any person any information provided by the Client unless so authorized by the Client.

11. PROFESSIONAL INDEMNITY INSURANCE

The Independent Consulting Engineer shall maintain professional indemnity insurance. The same shall be in Tanzania Shillings equivalent to US \$ 10,000 or any other value determined by the Engineers Registration Board from time to time.

12. DISPUTES AND DIFFERENCES

Mediation or Conciliation

All matters related to disputes and differences between the Independent Consulting Engineer and the Client shall resolve any difference between them amicably but if this appears impossible the parties shall seek the assistance of a Mediator or Conciliator **in** attempt to resolve such difference as quickly and amicably as possible.

13. NOTICES

Any Notice to be given by the Client under this Agreement shall be deemed to be duly given if it is in writing and delivered by hand at or sent by courier to the Independent Consulting Engineer at the address of the Independent Consulting Engineer as shown on the **Agreement**. Any Notice to be given by the Independent Consulting Engineer shall be deemed to be duly given if it is in writing and delivered by hand at or sent by courier to the Client at the address of the Client as shown on the **Agreement**.

IN WITNESS, whereof the parties hereto have caused this Agreement to be executed on the day, month and year first before written in accordance with the laws of the United Republic of Tanzania.

FOR AND ON BEHALF OF THE CLIENT

Signature _____

Name _____

Designation _____

In the presence of

Name _____

Designation _____

Signature _____

Address _____

FOR AND ON BEHALF OF THE INDEPENDENT CONSULTING ENGINEER

Signature _____

Name _____

Designation _____

In the presence of

Name _____

Designation _____

Signature _____

Address _____

APPENDICES

APPENDIX A

SERVICES OF THE INDEPENDENT CONSULTING ENGINEER

This Appendix describes broadly the services to be performed by the Independent Consulting Engineer.

The **types** of services to be undertaken by the Independent Consulting Engineer are those for which:

- (a) Teams of personnel are not required
- (b) Other than personal knowledge and skills of the individual, additional outside professional support is not required
- (c) The experience and qualifications of the individual are the paramount requirement

THE SERVICES FOR WHICH INDEPENDENT CONSULTING ENGINEER IS ELIGIBLE

The types of services for which the Independent Consulting Engineer shall operate are as outlined hereunder:-

1. **Preparation of terms of reference;**
2. **Opening and evaluation of tenders for works contracts and supplier and consultants proposals;**
3. **Preparation of brief where Engineering services are to be procured;**
4. **Revision and updating of feasibility studies;**
5. **Preliminary project or engineering design;**
6. **Technical assistance for the planning of development, economic or sector planning, organization and management;**
7. **Application of the recommendations formulated in a study;**
8. **Training;**
9. **Assistance for the procuring entity with project implementation and in particular for the monitoring and supervision of the project implementation as well as investigations and technical advice;**
10. **Preparation of project completion reports;**
11. **Arbitration; and**
12. **All other necessary assistance in the form of services decided upon by the procuring entity.**

APPENDIX B

ERB SCALE OF FEES FOR INDEPENDENT CONSULTING ENGINEERS

1. BASIS OF FEE CALCULATIONS

1.1 Time Charges

When the Services cost cannot be estimated in advance, a suitable charging mechanism is a time charge for Independent Consulting Engineer. The standardized rates are tabulated in Table 1 titled **Rates for Payment on Time Basis**. This table shall be subject to revision from time to time subject to changes in consumer price index, inflation and currency devaluation.

When calculating amount chargeable on a time basis, an Independent Consulting Engineer is entitled to include recoverable expenses plus 10% top up for all expenses incurred by him/her, on behalf of the Client, in rendering their **engineering** services in connection with the performance of the services. The Independent Consulting Engineer shall also recover the following expenses:

- a. Traveling expenses for the conveyance of the Independent Consulting Engineer
- b. Traveling time on the basis of rate set out in Table 1 for all hours spent on traveling. The maximum chargeable time shall be 8 hours a day.
- c. Accommodation and subsistence allowance incurred by the Independent Consulting Engineer
- d. Agreed cost of lithography when preparing the project documents such as drawings, contract documents, reports tender documents and manuals, excluding general correspondences and contractual reports

The Board recommends the use of time-based charges for Services described in Appendix A of the Conditions of Engagement.

Table 1 – Rates for Payment on Time-Basis

POSITION	RATES IN (US \$)		
	HOURLY	DAILY	MONTHLY
Independent Consulting Engineer	120-150	600-750	12,000-15,000

Notes for Table 1:

- i) These rates shall be reviewed from time to time depending on the behavior of the consumer index, inflation rate and currency devaluation.
- ii) The daily rates are based on hourly rates multiplied by 5 Working Hours, while the monthly rates are based on the daily rate multiplied by 20 Working Days.
- iii) The rates are exclusive of Value Added Tax.

1.2 Lump Sum Fees

Lump sums, which may be broken down into components applicable to particular duties or stages of services, have the advantage that they are decided in advance by negotiation and are then firm. It is not possible to provide guidance for Clients on likely lump sums. Lump sums will inevitably incorporate an allowance for the additional risk involved in making such arrangements.

Notes for Table 1

- i) These rates have been set on the basis of current practices in other countries, as depicted in Table 1 herein.
- ii) The traveling time charge is exclusive of this fee.
- iii) The rates are applicable for all services as per Appendix A.
- iv) The rates are exclusive of Value Added Tax and Withholding Tax.

2. STAGES OF PAYMENT OF FEES

The stages of payment of fees shall be as negotiated and agreed upon between the Independent Consulting Engineer and the Client.