

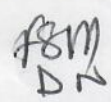
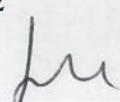
**CONCESSION AGREEMENT TO DESIGN,
BUILD AND OPERATE THE HARARE
POMONA WASTE MANAGEMENT
FACILITY AND WASTE TO ENERGY
POWER PLANT.**

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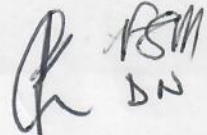
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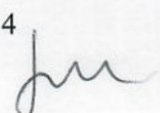
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This Concession Agreement is made and entered into this ----- day of {Year}

Between

CITY OF HARARE, whose Principal Office is at Town House, Julius Nyerere, Harare, Zimbabwe, a local authority established in terms of the Urban Council's Act [Chapter 29:15] (hereinafter referred to as "COH") represented by **Engineer Phakamile Moyo** in his capacity as the Acting Town Clerk and he being duly authorised to do so.

AND

GEOGENIX B.V., whose Principal Office at Keizersgracht 520 H, 1017 EK, Amsterdam, the Netherlands, a limited liability company (hereinafter referred to as Contractor) represented herein by **Mr. Miliad Lopa** in his capacity as the Representative of the Company and being duly authorized thereto.

The COH and the Contractor being referred to collectively as the "**Parties**" and individually as a "**Party**".

WHEREAS:

- A. COH, a Local Authority established in terms of the Urban Councils Act [Chapter 29:15] is responsible for the collection of solid waste throughout the Municipal area of Harare;
- B. COH owns and maintains various landfill and dumpsites including *inter alia* Pomona Landfill and Dumpsite located in Pomona, Harare;
- C. **GEOGENIX B.V** a limited liability company involved in the business of waste recycling, expressed interest to partner with COH in a waste to energy project at Pomona Dumpsite and is desirous of developing a waste to energy plant at the Pomona Dumpsite (hereinafter referred to as the Project);
- D. On 29 June, 2021 the Joint Environmental Management Committee, Finance and Development Committee & Business Committee under item 4, recommended to Council to approve and Council approved the Project concept by signing a Memorandum of Understanding with GEOGENIX B.V wherein GEOGENIX B.V has carried out a feasibility study for the Project and it is annexed to this Agreement;
- E. The Project was approved by the Cabinet of Zimbabwe (details to be inserted), and is awaiting to get National Project Status as provided for in this Agreement (ref to be put).
- F. The COH has considered the viability and bankability of the Project and Implementation is subject to this Agreement being signed;
- G. The Contractor shall incorporate a Special Project Entity ("**PROJECT COMPANY**") to act as the Contractor, in accordance with the requirements of this Agreement.

NOW THEREFORE, The Parties wish to enter into this Agreement in order to regulate the manner in which they shall cooperate with each other for the purposes of implementation of the Project.

IT IS HEREBY AGREED AS FOLLOWS:

I. GENERAL



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1. **DEFINITIONS AND INTERPRETATION**

1.1 Definitions

Words beginning with a capital letter herein shall have the meaning ascribed to them in this Article as following:

"**Actual Commissioning Date**" has the meaning given in Article 11.4.3.

"**Affected Party**" has the meaning given in Article 31.1.

"**Affiliate**" means in relation to any company, any holding company having Control of that company, any company under the Control of that company or any subsidiary of a holding company having Control of that company.

"**Agreement**" means this Agreement and all its Schedules (which shall be deemed to form an integral part thereof).

"**Applicable Law**" means the Laws of the Republic of Zimbabwe, International Commercial Law and International Best Practices and Standards as may be amended from time to time.

"**COH**" has the meaning given in the description of the Parties on the second page of the Agreement.

"**COH Event of Default**" has the meaning given in Article 34.2.

"**Commencement Date**" has the meaning given in Article 4.2.4.

"**Completion Notice**" has the meaning given in Article 11.5.2.

"**Contractor**" has the meaning given in the description of the Parties on the second page of the Agreement.

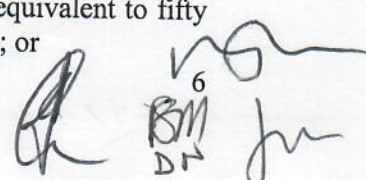
"**Contractor Event of Default**" has the meaning given in Article 34.1.

"**Connected Person**" means, in relation to any Person: (i) an Affiliate; (ii) any director, senior executive or manager either of such Person or of any Person referred to in item (i); (iii) any consultant, agent or representative supporting such Person in connection with the Project; and (iv) any Person with an aggregate ultimate beneficial interest of at least five per cent (5%) of the share capital or ownership interest in such Person (howsoever held).

"**Construction Period**" means the period during which the Works are undertaken by the Contractor, which period shall commence on the Commencement Date and which shall cease on the Actual Commissioning Date of the last Facility to be completed and commissioned pursuant to Schedule 7 (*Project Schedule*).

"**Control**" means the power to direct or cause the direction of the management policies of a Person whether through:

- (a) direct or indirect ownership of at least fifty per cent (50%) plus one share of the outstanding voting shares; or
- (b) direct or indirect ownership of at least twenty per cent (20%) of the outstanding voting shares and:
 - (i) possession of voting rights through voting trusts or voting agreements over a certain number of shares, such that the total number of shares owned together with the number of shares over which it has voting rights is equivalent to fifty per cent (50%) plus one share of the outstanding voting shares; or

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(ii) the ability to elect a majority of that Person's board of directors,
(and "**Controlled**" shall be construed accordingly).

"**Controlled Entity**" means with respect to the Contractor an Affiliate, subcontractor, consultant, and each other Person, agent and representative acting on its or their behalf.

"**Cure Period**" has the meaning given in Article 35.2.

"**Design Documents**" means all drawings, reports, documents, programs calculations and other design documents, including conceptual design, detailed design, and final working drawings to be produced by the Contractor in accordance with this Agreement in order to obtain the Permits and carry out the Works.

"**Effective Date**" means the date of execution of this Agreement by the Parties.

"**Energy Production Facility**" means the waste to energy facility (plant), or the co-incineration plant to be constructed and operated by the Contractor, in compliance with the Feasibility Plan and the technical report.

"**Energy Production Fee**" means the fee to be paid by the off-taker or any other designated entity, to the Contractor for the purchase of the electrical energy produced by the Energy Production Facility.

"**Environmental and Social Management System**" or "**ESMS**" means an environmental, social, health and safety management system, which enables identification, assessment and management of Project risks on an on-going basis, established in compliance with the Applicable Law requirements.

"**Equipment**" means any and all industry and information technology hardware equipment procured by the Contractor and used for the Project, according to the Minimum Technical Requirements, enclosed in Schedule 19.

"**Equity Investors**" means all persons providing equity, subordinated debt and equity support, if any, to the Contractor for purposes of the Project.

"**Existing Equipment**" means equipment which is equivalent in nature to the Equipment procured by the Contractor.

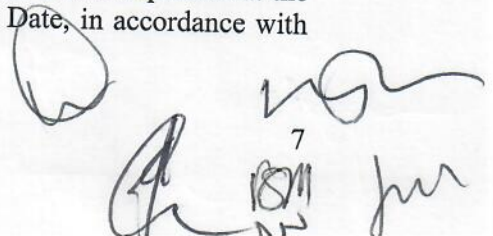
"**USD**" means the currency of the United States of America.

"**Existing Staff**" means the personnel employed at the Effective Date by COH at Site.

"**Facilities**" means the facilities such as encapsulated landfill, biogas plant, waste water treatment plant, material recover facility, new landfills, waste to energy plant as listed in Schedule 12, to be constructed and developed by the Contractor, in which the Contractor will provide the Services according to the Project specifications set out in Schedule 4 (*Minimum Technical Requirements*) including, as relevant, the Premises, the Equipment, and logistics and all FF&E, and "**Facility**" means any one of these facilities.

"**Feasibility Plan**" means the feasibility plan of the Contractor, approved by COH, listed as Schedule 1.

"**Fee**" means the fees payable by the COH to the Contractor for the Waste deposited at the Site, immediately following the Site Handover on Site Handover Date, in accordance with the price list set out in Schedule 3 (*Fee Rate*).

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"Fee per Tonne of Waste" shall be the fee equal to **USD 40 (Forty)**, excluding the applicable value added tax (VAT) per tonne of Waste that is deposited by COH at the Site, immediately following the Site Handover on Site Handover Date, until expiration of the Term, and as set out in Schedule 3.

"FF&E" means all fixtures, furnishings and equipment that shall be located within the Premises for the purposes of executing the Services in accordance with the Minimum Technical Requirements, except for the Equipment.

"Financing Package" means the total capital cost of the Facilities and associated capital costs and the means of financing thereof, which includes debt, equity, subordinated debt and equity support, if any.

"Force Majeure Event" has the meaning given in Article 31.

"Good Industry Practice" means the exercise of that degree of skill, diligence and prudence, and the practices, methods, standards, procedures and recommendations conforming to Applicable Law with respect to the design, construction, operation and maintenance of waste management facilities, which may be reasonably expected from a skilled and experienced engineer or Contractor, as the case may be, under the same or similar circumstances.

"Government Entity" means (i) the Republic of Zimbabwe; (ii) any ministry, department or; (ii) any corporation, public organization or other entity owned or directly or indirectly, or operating for the account or benefit of the Republic of Zimbabwe, or any ministry, agency, department or political or military subdivision thereof; and (iii) any court or tribunal or any other governmental entity, agency or COH under the direct or indirect control of the Republic of Zimbabwe or any ministry, department or political subdivision thereof, and having jurisdiction under the laws of the Republic of Zimbabwe over the Contractor, or any independent regulatory entity, in each case within the Republic of Zimbabwe. For the purposes of this definition, the COH, in its capacity as a Party to this Agreement, shall not be deemed a Government Entity.

"Intellectual Property Rights" means any patent, utility model, registered design, trademark, copyright or other intellectual property right (including any and all licenses), regardless of where or whether it is registered.

"Last Date for the Site Handover" has the meaning given in article 7.1.1.

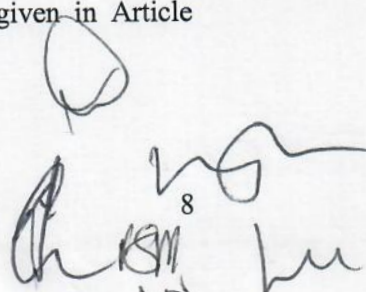
"Lenders" means all persons providing debt financing to the Contractor for purposes of the Project.

"Long-stop Date" means the date occurring 90 (ninety) days from the Effective Date or any other date agreed by the Parties in accordance with Article 4.

"Services" has the meaning given in Article 13.3.1.

"Minimum Annual Guaranteed Fee Amount" means the minimum amount of the Fee payable to the Contractor in a given financial year throughout the Term, by COH, starting from the Site Handover Date for the Waste depositing, as stipulated in Article 22.3.

"Minimum Annual Guaranteed Waste Quantities" has the meaning given in Article 22.3.

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"Minimum Technical Requirements" means the technical requirements listed in Schedule 4 (*Minimum Technical Requirements*) which the Contractor shall comply with for the design and operation of the Facilities.

"Notice of Default" has the meaning given in Article 35.1.

"Notice of Defects" has the meaning given in Article 11.3.4.

"Performance Indicators" means the performance indicators to be met or exceeded by the Contractor and listed in Schedule 14.

"Permits" means all the permits, authorizations and consents, which must be obtained from any Government Entity in order for the Contractor to carry out the Works and perform the Services, an indicative (but not complete) list of which is provided in Schedule 6 (*Permits*) attached hereto.

"Person" means a natural person or a company.

"Premises" means each Site identified in Schedule 11 (*Sites*), to be designed and developed by the Contractor according to the Feasibility Plan and the Minimum Technical Requirements, and the Facilities.

"Project" has the meaning given in Article 3.1.

"PROJECT COMPANY" has the meaning given to it in Recital G.

"Project Schedule" means the schedule setting out the milestones and target dates for the Project, as set out in Schedule 7 (*Project Schedule*), and section 3.2 of the Feasibility Study.

"Prolonged Force Majeure Event" has the meaning given in Article 31.3.

"Remedial Proposal" has the meaning given in Article 33.2.

"Representative" shall mean the person(s) appointed by either Party to perform the functions set out in Article 5.

"Services" has the meaning given in Article 13.

"Services Period" means the period commencing on the Commencement Date and ending on the termination of this Agreement.

"Shareholder" means:

- (a) any person holding an equity interest in the PROJECT COMPANY in accordance with this Agreement, or
- (b) any of their permitted successors or assigns.

"Shares" means all classes of shares issued by the Contractor and any other security, assignable right, existing or future, entitling the holder thereof, immediately or in the future, on a conditional basis or not, by way of conversion, exercise of an option, subscription, reimbursement or any other conceivable means, to a financial interest or a voting right in the Contractor, as well as any bare property or usufruct or any other right attached to the Shares.

"Significant Shareholder" means, with respect to any Person, holding directly at least ten percent (10%) of the Shares of the Project Company.

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"**Sites**" means the grounds, site and premises, as set out in Schedule 11 (*Sites*) and under Feasibility Plan, on which the Contractor shall carry out all the Works and Services; and "**Site**" means any one of them.

"**Sites Handover Date**" has the meaning given in Article 7.1.2.

"**Software**" means all software that may be required or prudent to use in order to deliver the Services in accordance with this Agreement, in accordance with the specifications set out in Schedule 4 (*Minimum Technical Requirements*).

"**Step-In Right**" has the meaning given in Article 36.

"**Subcontract**" means any contract entered into by the Contractor and a third party for the execution by such third party of any part of the Works or Services.

"**Subcontractor**" means any person entering into a Subcontract with the Contractor.

"**Target Commissioning Date**" means, in respect of all the Facilities, the date appearing as such in the Project Schedule and, by which the Contractor shall have done all that is necessary, including the Works and obtaining all Permits, for that Facility to be fully operational and ready.

"**Tax**" means any tax, charge, impost, tariff, assessment, duty, levy or fee of any kind charged, imposed or levied, directly or indirectly, by any Government Entity under Applicable Law, including any goods and services tax, sales tax, stamp duty, import duty, withholding tax (whether on income, dividends, interest payments, fees, equipment rentals or otherwise), tax on foreign currency loans or foreign exchange transactions, excise tax, property tax, registration fee or license, including any interest, penalties or other additions thereon.

"**Term**" has the meaning given in Article 4.1.

"**Termination Notice**" has the meaning given in Article 37.3.

"**Transfer Date**" has the meaning given in Article 3.1.4.

"**Utilities**" means all utility services provided by third party providers (including Government Entities other than the COH), which may be required for the proper performance by the Contractor of its obligations under this Agreement, including (i) hot and cold water, (ii) waste and wastewater, (iii) electrical power (regardless of voltage or amperage), and (iv) telecommunications (voice and data).

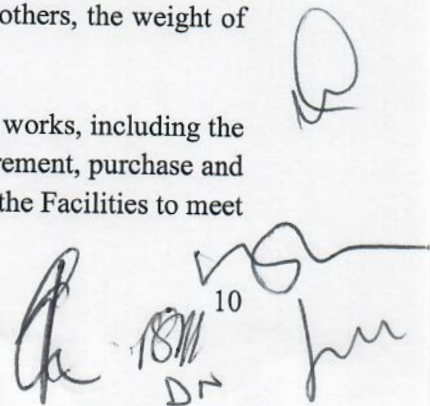
"**Variation**" has the meaning given in Article 30.1.

"**Variation Order**" has the meaning given in Article 30.4.

"**Waste**" shall mean the Solid Waste generated in the Areas that shall be part of the Project.

"**Waste Load Acceptance Protocol**" means the form provided in Schedule 5, which is signed by a designated representative of Contractor, and a designated representative of COH at the delivery at Site of each Waste load, and which specifies among others, the weight of the Waste, the time and date of delivery.

"**Works**" means all necessary development and construction and fit-out works, including the procurement, purchase and installation of the Equipment and the procurement, purchase and installation of all FF&E, required in order to build the Premises and for the Facilities to meet

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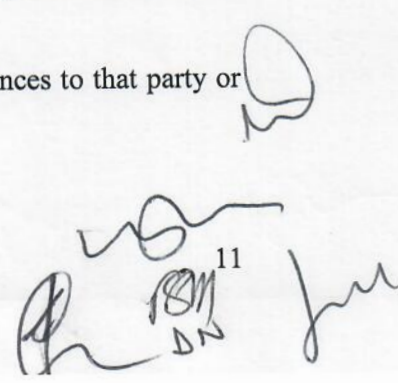
or exceed the Minimum Technical Requirements and for the Contractor to execute the Services in accordance with the Agreement, a list of which is provided in Schedule [4].

1.2 Rules of interpretation

Unless the context of this Agreement otherwise requires:

- (a) words of any gender include each other gender;
- (b) the terms "hereof", "herein", "hereby", "hereto" and similar words refer to this entire Agreement and not to any particular Article, Exhibit, Schedule or Schedule or any other subdivision of this Agreement;
- (c) references to Schedules and Attachments shall be references to Schedules and Attachments to Schedules to this Agreement unless otherwise agreed by the Parties;
- (d) references to any enactment includes any amendment to or re-enactment of that enactment and any rules or regulations made pursuant to that enactment; and reference to a law means reference to such law as may be amended or re-enacted;
- (e) the words "include" or "including" shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases or words of like import;
- (f) references to "this Agreement" or to any other agreement or document shall be construed as a reference to such agreement or document as amended, modified or supplemented and in effect from time to time and shall include a reference to any document which amends, modifies or supplements it, or is entered into, made or given pursuant to or in accordance with its terms;
- (g) whenever this Agreement refers to a number of "days", such number shall refer to calendar days, except where reference is made to "business days", in which case reference shall be made to those days where banks and government offices are open for business in [Zimbabwe];
- (h) any reference to a "month" or a "year" shall be construed as a reference to a period starting on one day in, respectively, a calendar month or a calendar year under the Gregorian calendar and ending on the numerically corresponding day in, respectively, the next calendar month or year under the Gregorian calendar, except that if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last day in that calendar month;
- (i) any capitalized words, terms, phrases and abbreviations used specifically in any Schedule, Schedule or any Attachment to any Schedule or Schedule shall have the meanings set forth in such Schedule or Attachment, as the case may be;
- (j) in the event of any inconsistency between any capitalized word, defined term, phrase or abbreviation set forth in Article 1.1 and any provision, capitalized word, term, phrase or abbreviation set forth elsewhere in this Agreement, any other Schedule, or any Attachment to any Schedule, the meaning set forth in Article 1.1 shall take precedence over the meaning set forth in any other Schedule, or any Attachment to any Schedule unless the context of this Agreement otherwise requires;
- (k) references to a "party" or a "person" shall include references to that party or that person's lawful successors and assignees; and

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(l) the headings of Chapters and Articles in this Agreement and the table of contents are inserted for convenience and reference purposes only and shall not in any way affect the interpretation of this Agreement.

1.3 Contract documentation and order of precedence

1.3.1 This Agreement is made up of:

- (a) the body of this Agreement, including its preamble; and
- (b) the Schedules and Attachments to Schedules, which shall form
an integral part hereof.

1.3.2 In the event of a conflict between the body of this Agreement and the Schedules, the Parties shall endeavour, in the first instance to resolve the conflict by reading this Agreement as a whole and the provision that is more specific shall govern. If the conflict continues to exist notwithstanding the Parties' good faith efforts to resolve it as provided in the preceding sentence, then, for the purposes of resolving such conflict only, the provisions of the body of this Agreement shall prevail over all else and Schedule 4 (*Minimum Technical Requirements*) shall prevail over all other Schedules.

1. THE CONTRACTOR

1.1 Contractor representations and warranties

As at the Effective Date and throughout the Term, the Contractor represents and warrants that:

- (a) it is duly organised, validly existing and in good standing under the laws of Netherlands;
- (b) it has full power and authority to execute, deliver and perform its obligations under this Agreement;
- (c) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (d) the execution and delivery of this Agreement and/or the performance of any of the obligations of the Contractor as set forth under this Agreement violates none of (i) any Applicable Law applicable to it, (ii) its charter, bylaws or other corporate documents binding on it, and/or (iii) any enforceable contract signed by it;
- (e) this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof;
- (f) the PROJECT COMPANY shall be a corporate entity and the business it is allowed to transact shall be primarily for the proper performance of all of its obligations under this Agreement;
- (g) neither it nor any of its Significant Shareholders is in bankruptcy or liquidation proceedings;

1.2 PROJECT COMPANY shareholding

- 1.2.1 The Contractor represents and warrants to the COH that on the Commencement Date, the legal and beneficial ownership of the Shares of the PROJECT COMPANY shall be as represented in Schedule 10 (*Contractor's Shareholding*).
- 1.2.2 The Shareholders of the PROJECT COMPANY may only sell, transfer, assign, or otherwise dispose of all or part of their Shares with the PROJECT COMPANY, with no prior written approval of COH. The Contractor shall submit all particulars of the transaction that may be reasonably requested by the COH.

2. GENERAL RIGHTS AND OBLIGATIONS

2.1 Contractor general obligations

2.1.1 The Contractor shall:

- (a) carry out all the Works, as stipulated under Schedule [7 & 8];
- (b) finance, procure, install and maintain the Equipment;
- (c) set up the related logistics for the delivery of the Services;
- (d) hire personnel;
- (e) develop, construct, manage and operate the Facilities and deliver the Services; and
- (f) hand over the Site the Facilities and Equipment to the COH or to any third party designated by the COH, upon expiry of the Term or upon the date of termination of the Agreement, whichever is earlier,

all in accordance with the Applicable Law and the terms and conditions of the Agreement.

- 2.1.2 The Contractor shall not amend any contract that was required to be approved by the COH under Article 4.2.2 (d) of the Agreement without the prior written consent of the COH. The COH may object in writing within fifteen (15) working days if it has substantiated concerns regarding the proposed amendments otherwise consent shall be deemed to have been given;
- 2.1.3 While the Contractor shall enter into this Agreement with the COH, the Parties acknowledge that pursuant to Article 4.2.2 (a) the Contractor shall establish the PROJECT COMPANY which shall carry out this Agreement in place of the Contractor, and it shall replace the Contractor. To this effect, it shall be deemed that on the date of registration of the PROJECT COMPANY with the local commercial registry ("**Transfer Date**"), all the rights and obligations imposed on the Contractor under this Agreement shall be transferred to the PROJECT COMPANY as a result of which, except as otherwise provided in this Agreement, the PROJECT COMPANY shall be a Party hereto and substituted for the Contractor. The Contractor shall be responsible for ensuring that the requirements under this Agreement shall be incorporated in the constitutional documents of the PROJECT COMPANY.

Following the substitution of the Contractor with the PROJECT COMPANY on the Transfer Date:

- (a) references to the Contractor in this Agreement shall be deemed to be references to the PROJECT COMPANY; with the exception of Articles 2.1, 2.2.1,

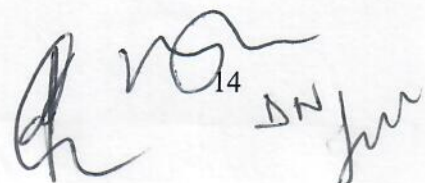
3.1.3, and 4 which shall continue to be binding also on the Contractor, in respect of Articles 2.1 up until the Transfer Date

- (b) the Contractor shall be released from the rights and shall not perform obligations under this Agreement other than any accrued but non-discharged liability, existing breach by the Contractor of this Agreement and the rights and obligations set out in Articles 2.1, 2.2.1, 3.1.3, and 4 in accordance with Article 3.1.3 (a) above;
- (c) Articles 18 (Intellectual Property Rights), 34 (Events of Default) 35 (Cure Period and Termination in connection with an Event of Default) 37 (Early Termination), 38 (Early Termination Payments), 42 (Governing Law), 43 (Dispute Resolution), 49 (Notices), and the given provisions shall apply, as the case may be, to the Contractor or the PROJECT COMPANY, provided that Articles 34 (Events of Default) 35 (Cure Period and Termination in connection with an Event of Default) 37 (Early Termination), 38 (Early Termination Payments), apply to the Contractor and not to the PROJECT COMPANY only if the given event occurred prior to the Commencement Date or the Transfer Date in relation to Articles 2.1.

2.2 Contractor rights

2.2.1 In consideration of the obligations of the Contractor under this Agreement:

- (a) the COH shall grant, and shall cause any Government Entity to grant, to the Contractor, from the Site Handover Date and until expiry of the Term or early termination of the Agreement, those rights over the Sites and the Premises as set forth in Article 8;
- (b) the COH shall grant, and shall cause any Government Entity to grant exclusive rights of use, operation and control of the project site to the Contractor, from the Commencement Date to the termination date,
- (c) the COH shall pay the Fees duly and timely;
- (d) the COH shall assist the Contractor to obtain any and all Permits as required under the Applicable Law;
- (e) the COH shall secure the supply and delivery of Minimum Annual Guaranteed Waste Quantities and the payment of Minimum Annual Guaranteed Fee to the Contractor; and
- (f) the COH and/or any public entity shall not operate (whether (i) directly or (ii) by means of any administrative arrangement with any other Government Entity, or (iii) by means of any contractual agreement or similar arrangement with any person other than the Contractor) any similar facilities for the delivery of the type of services offered by the Contractor.



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2.2.2 The Contractor shall be entitled to serve any other private or public clients and provide for them services similar to the Services to COH especially in connection with Waste depositing, management, treatment and processing, for as long as the Services to COH are not negatively effectuated, and capacities of the Site and Facilities allow for.

2.2.3 The COH represents and warrants that the payment of the Fee to the Contractor is in all material respects in compliance with the Applicable Law and that such Fee shall be paid in a timely manner, and in accordance with this Agreement.

2.3 Terms and Conditions precedent

2.3.1 Entry into force

The Agreement shall enter into force on the Effective Date. The rights and obligations of the Parties are reckoned from the Commencement Date. This Agreement shall remain in full force and effect for a period of **thirty (30) years** starting from the **Commencement Date**, or the end of any renewal or extension thereof (any such extension to be agreed in writing between the Parties up to the 29th anniversary of the Commencement Date) (the "**Term**"), unless terminated earlier in accordance with this Agreement.

2.3.2 Conditions Precedent

2.3.3 The Parties shall ensure that the conditions set out in this Article are met, or waived by the relevant Party no later than the Long-Stop Date.

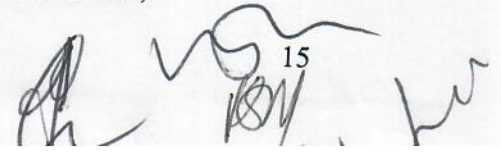
2.3.4 The Contractor shall ensure that the following conditions are met, or waived by the COH, as soon as possible following the Effective Date and, in any event, no later than the Long-stop Date ("**Conditions for the Benefit of the COH**"):

- (a) Contractor shall have established the PROJECT COMPANY and delivered the following documents to the COH:
 - i. true and complete copies of (i) the Articles of Association (in form and in substance approved by the COH before the Effective Date) and registration certificate of the PROJECT COMPANY with the commercial registry and (ii) the resolutions adopted by the shareholders of the PROJECT COMPANY authorizing the performance by the PROJECT COMPANY of this Agreement;
 - ii. names of the Chief Executive Officer, Chief Financial Officer and Technical Director of the Contractor.
- (b) the Contractor shall have delivered general information on the Financing Package intended for purposes of the Project;
- (c) the Contractor shall have appointed its Representative to the Liaison Committee;

The Contractor shall inform the COH as soon as it considers that it is in a position to meet the above conditions (except those that may have been waived by the COH in writing).

2.3.5 The COH shall fulfil or cause to be fulfilled the following conditions (if not already fulfilled on the date of execution of this Agreement) ("**Conditions for the Benefit of the Contractor**"):

- a) The approval by Council of COH,
- b) The Approval by the Cabinet of the Republic of Zimbabwe,
- c) The approval by the Ministry of Local Government and Public Works,



d) The approval by the Procurement Regulatory Authority of Zimbabwe

- 2.3.6 The Parties shall meet thereafter to evidence the fulfilment of said conditions and shall sign a joint statement to that effect. The date of signature of such joint statement shall be the "**Commencement Date**".

2.4 Consequences of Failure to Fulfil the Conditions Precedent by the Long-stop Date

- 2.4.1 In the event the only conditions that have not been satisfied or waived at the Long-stop Date Are Conditions for the Benefit of the COH, the COH may choose to terminate this Agreement by giving thirty (30) days' notice to the Contractor. Upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless all the outstanding conditions have been satisfied at such date or the Parties have both agreed in writing to extend the Long-stop Date, in which case this Agreement shall not terminate until the new Long-stop Date unless all outstanding conditions have been satisfied at such new date.;
- 2.4.2 In the event the only conditions that have not been satisfied or waived at the Long-stop Date Are Conditions for the Benefit of the Contractor, the Contractor may choose to terminate this Agreement by giving thirty (30) days' notice to the COH. Upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice, unless all the outstanding conditions have been satisfied at such date, in which case this Agreement shall not terminate.

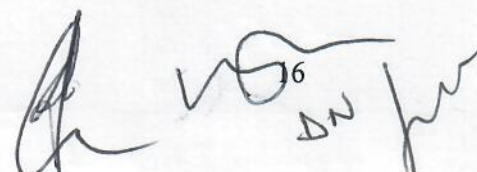
2.5 REPRESENTATIONS OF THE PROJECT IMPLEMENTATION TEAM and liaison

2.5.1 Representative of the COH

2.5.2 The COH's Representative shall be duly appointed by the COH.

2.5.3 The COH's Representative shall exercise such functions and powers of the COH under this Agreement as the COH may notify to the Contractor from time to time, in compliance with this Agreement and within the limits of the rights given to the COH by this Agreement.

The COH's Representative shall be entitled at any time, by notice to the Contractor, to authorise any other person to exercise the functions and powers of the COH delegated to him pursuant to this Article, either generally or specifically. Any act of any such person shall, for the purposes of this Agreement, constitute an act of the COH's Representative and all references to the "COH's Representative" in this Agreement (apart from this Article) shall be taken as references to such person so far as they concern matters within the scope of such person's COH.



- 2.5.4 The COH may, by notice to the Contractor, change the COH's Representative. The COH shall (as far as practicable) consult with the Contractor prior to the appointment of any replacement for the COH's Representative, taking into account of the need for liaison and continuity in respect of the Project. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Contractor in the execution of its obligations under this Agreement).
- 2.5.5 During any period when the COH's Representative has not been appointed (or when the COH's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise his functions under this Agreement) another duly authorized representative of the COH shall carry out the functions which would otherwise be performed by the COH's Representative.
- 2.5.6 No act or omission of the COH, the COH's Representative or any officer, employee or other person engaged by the COH shall, except as otherwise expressly provided in this Agreement:
- (a) in any way relieve or absolve the Contractor from, modify, or act as a waiver or estoppel of, any liability, responsibility, obligation or duty under this Agreement; or
 - (b) constitute or otherwise be a variation or amendment to this Agreement.
- 2.5.7 Except as previously notified in writing before such act by the COH to the Contractor, the Contractor and the Contractor's Representative shall be entitled to treat any act of the COH's Representative which is authorised by this Agreement as being expressly authorised by the COH and the Contractor and the Contractor's Representative shall not be required to determine whether any express authority by COH has in fact been given.
- 2.5.8 **Representative of the Contractor**
- 2.5.9 The Contractor's Representative shall be the Chief Executive Officer of the Contractor (or such other person appointed by him through a proxy).
- 2.5.10 The Contractor's Representative shall have full authority to act on behalf of the Contractor for all purposes of this Agreement. Except as previously notified in writing before such act by the Contractor to the COH, the COH and the COH's Representative shall be entitled to treat any act of the Contractor's Representative in connection with this Agreement as being expressly authorised by the Contractor and the COH and the COH's Representative shall not be required to determine whether any express authority has in fact been given.
- 2.5.11 The Contractor may, by notice to the COH, change the Contractor's Representative. Where the Contractor wishes to do so it shall by written notice to the COH propose a substitute for approval, taking into account of the need for liaison and continuity in respect of the Project. Such appointment shall be subject to the approval of the COH (not to be unreasonably withheld or delayed).

2.6 Liaison

2.6.1 Liaison Committee

- 2.6.2 There shall be established and maintained throughout the Term a joint liaison committee (the "**Liaison Committee**"), consisting of the following members:

- (i) the COH's Representative, who shall be the Chairman of the Liaison Committee;
- (ii) the Contractor's Representative;

[Optional: up to two [independent] experts appointed by consensus of the Parties].

Each Party shall bear its own costs in connection with its representatives in the Liaison Committee. If Parties agree to appoint one or more independent experts, each Party shall pay fifty per cent (50%) of the costs of such independent expert/s,

2.6.3 The functions of the Liaison Committee shall be:

- (a) to provide a means for the joint review of issues relating to all day-to-day aspects of the performance of this Agreement, including monitoring the progress of the Works, level of performance of the Services and compliance of the Contractor;
- (b) to provide a forum for joint strategic discussion, considering actual and anticipated changes in the market and business of the COH, and possible variations of this Agreement to reflect those changes or for the more efficient performance of this Agreement;
- (c) to recommend on the disputes between the Parties; and
- (d) to review all performance and monitoring reports in respect of the Services in accordance with the Performance Indicators.

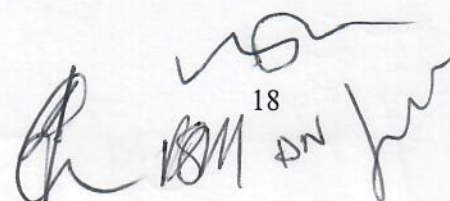
2.6.4 Unless otherwise set out in this Agreement, the role of the Liaison Committee is to make recommendations to the Parties. Neither the Liaison Committee itself, nor its members acting in that capacity, shall have any authority to vary any of the provisions of this Agreement or to make any decision which is binding on the Parties. No Party shall rely on any act or omission of the Liaison Committee, or any member of the Liaison Committee acting in that capacity, so as to give rise to any waiver or personal bar in respect of any right, benefit or obligation of any Party.

2.6.5 The Parties shall notify the appointment and removal of their representatives on the Liaison Committee by written notice delivered to the others at any time. A representative on the Liaison Committee may appoint and remove an alternate (who may be another representative of that party) in the same manner. If a representative is unavailable (and the other party's representatives may rely on the alternate's statement that the representative is unavailable) his alternate shall have the same rights and powers as the representative.

2.7 Procedures and practices

2.7.1 Subject to the provisions of this Agreement, the members of the Liaison Committee may adopt such procedures and practices for the conduct of the activities of the Liaison Committee as they consider appropriate from time to time and:

- (a) may invite to any meeting of the Liaison Committee such other persons as its members may; and



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(b) may receive and review a report from any person agreed by its members.

- 2.7.2 Recommendations and other decisions of the Liaison Committee (including those set out in Article 6.2.1(a) and (b) above) shall have the affirmative vote of all those voting on the matter, which shall include the Chairman appointed by the COH and representative of the Contractor.
- 2.7.3 Each member of the Liaison Committee shall have one (1) vote.
- 2.7.4 The Liaison Committee shall meet at least once each six (6) months (unless otherwise agreed by its members) and from time to time as necessary, at the offices of the COH or in such other place as all attending representatives may agree upon.
- 2.7.5 Any member of the Liaison Committee may convene a meeting of the Liaison Committee at any time.
- 2.7.6 Meetings of the Liaison Committee shall be convened on not less than fifteen (15) days' notice (identifying the agenda items to be discussed at the meeting) provided that in emergencies, a meeting may be called at any time on such notice as may be reasonable in the circumstances.
- 2.7.7 Where the Liaison Committee decides it is appropriate, meetings may also be held by telephone or another form of telecommunication, by which each participant can hear and speak to all other participants at the same time. However, the Liaison Committee shall hold at least one (1) physical meeting each year.
- 2.7.8 Minutes of all meetings (including those made by telephone or other form of telecommunication) of the Liaison Committee shall be kept by the Contractor and copies circulated promptly to the Parties, normally within five (5) days of the meeting. The minutes shall include any recommendations made, as well as recommendations proposed but rejected and any other unresolved points of disagreement between the representatives. A full set of minutes shall be open to inspection by any Party at any time, upon request.

II SITE - OCCUPANCY

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3. **SITE HANDOVER AND COH REPRESENTATIONS AND WARRANTIES**

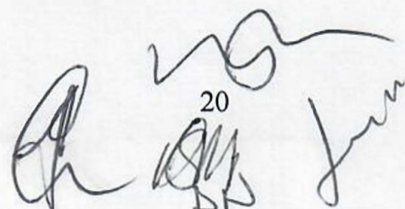
3.1 Handover of the Site

- 3.1.1 The Sites shall be handed over to the Contractor, as specified in Schedule 15 (*Handover of the Sites*) free of charge and against no payment of any fees, tariffs, or taxes whatsoever, on the Site Handover Date, which shall occur not later than the Commencement Date.
- 3.1.2 The Parties shall, on a mutually agreed date and time, inspect the Sites, as the case may be, and prepare a memorandum containing an inventory of the relevant Sites including the structures, and any other immovable property attached to the Sites. The COH shall within the Last Date for the Site Handover, grant full access to the agreed portion of the Site to the Contractor and submit to the Contractor proof of unencumbered ownership thereto in the form of title deed/s copies, and any other documents, as may be necessary and required under the Applicable Law, for the application for and issuance of Permits. (the date of such handover from the COH to the Contractor, shall be deemed as the “**Site Handover Date**”).
- 3.1.3 In the event of delay from the COH for any reason other than a Force Majeure Event or breach of this Agreement by the Contractor, such default shall be governed by the breach clause of this Agreement.

3.2 Representations and warranties of the COH

- 3.2.1 The COH represents and warrants that, as of the Effective Date and throughout the Term, the COH, holds and shall hold good and valid title to the Sites and Premises. In the event another Government Entity or a private party claims to hold, at any time, good and valid title over any Site or Premises, the COH shall guarantee, during the entire duration of the Term, the peaceful and free of charge usage right to the Contractor over the Premises and/or over any such Site necessary for the performance of the Works and Services and shall indemnify and hold the Contractor harmless against any claims raised by any Government Entities or any third parties related to the usage or occupation of the Site or the Premises by the Contractor.
- 7.2.2 In addition, the COH shall guarantee that any defects (or absence thereof) with regard to the ownership documents or their validity over the Site or Premises in accordance with Clause 7.1.2 shall be handled by COH in such manner, that Contractor shall not incur any delays in application for the Permits and Works.
- 7.2.3 Any breach of Article 7.2. by the COH constitutes an COH Event of Default.

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3.3 COH's responsibility

- 3.3.1 In the event the Contractor is restricted from peaceful enjoyment of the usage rights over the Premises and/or any other such parts of the Site necessary for the performance of the Services, the COH shall grant or, cause that, usage rights, in accordance with Article 8 below are granted to the Contractor over equivalent premises within the same area / location and a radius no more than forty (40) km the City of Harare city centre. The COH shall indemnify and hold the Contractor harmless for any cost or loss incurred as a result of relocation of the relevant Facilities of the Contractor.
- 3.3.2 The Contractor shall not be liable for damages to third parties and environment, arising from the existence, prior to the Site Handover Date, of any pollution affecting the Site/s and/or any Premises.
- 3.3.3 The COH shall be liable to the Contractor for losses, costs and damages arising from the existence of any defect in the physical structure of the buildings in which the Premises are located, to the extent that:
- (a) it threatens the integrity of the relevant Premises and/or the safe delivery of the Services, and
 - (b) it does not result from the Works, the Services or any other actions or omissions of the Contractor.

3.4 Consequences of Failure to Handover the Sites to the Contractor

In the event that COH fails to handover the Sites to the Contractor partly or fully in compliance with Schedule 15, or in the event that COH fails to handover the Sites to the Contractor partly or fully until the Last Date for Site Handover, or in the event that such handover makes it impossible for the Contractor to carry out the Works and provide the Services, the Contractor may choose to terminate this Agreement by giving thirty (30) days' notice to the COH. Upon the expiry of such period, this Agreement shall automatically terminate without the need for further notice. In the event of termination in accordance with this paragraph, the COH shall pay to the Contractor damages in an amount not exceeding USD 3.500.000,00, which amount shall be deemed to cover all costs and expenses suffered or incurred by the Contractor in connection with its entry into and performance of this Agreement, and all other activities related to the foregoing.

8. CONTRACTOR RIGHTS OVER THE SITES

- 8.1 In consideration of the obligations of the Contractor under this Agreement, the COH shall grant, exclusive rights of all the services that the Contractor provides, and shall cause for any Government Entity to grant, to the Contractor, from the Site Handover Date and until expiry of the Term or early termination of the Agreement, those rights over the Sites and the Premises as follows:
- (a) the Contractor shall have the exclusive and peaceful right of use (but not the ownership) of the Premises and Sites, free of charge and against no payment of any fees, tariffs, taxes;
 - (b) the Works and, once they are built, the Premises, and Facilities shall become the property of the Contractor, until the end of the Term and any renewal thereof;
 - (c) until expiry of the Term or early termination of this Agreement, the Contractor shall have the same rights and obligations as under this Agreement with regard to the Works and the Premises, such that the Contractor shall bear all risks and costs arising from or in connection with the Works and the Premises, and shall have the rights of use necessary to perform this Agreement.

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- 8.2 The Contractor's rights over the Premises and Sites are regulated by this Agreement, and in particular by this Article 8. Therefore, this Agreement shall be deemed to be the only satisfactory document that shall be required to be submitted by the Contractor, in his own name or for and on behalf of the COH or any other Governmental Entity to the competent Government Entity, in order to seek, obtain or renew any Permit that may be required for any and all Works and Services, such as the construction related permits.

III DESIGN AND WORKS

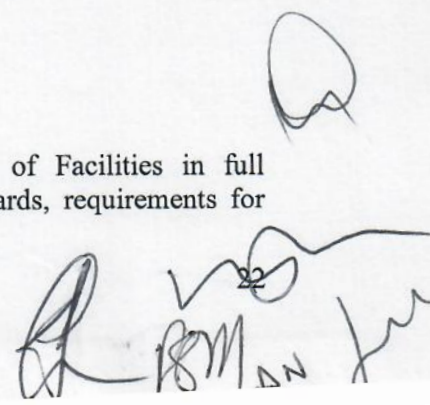
9. PERMITS AND APPROVALS

- 9.1 The Contractor shall seek, obtain and renew, in a timely fashion, all Permits that may be required for the Works and for the Services under Applicable Law and in accordance with Good Industry Practice, including Permits to operate the Site, Premises, Facilities Equipment, and all other certifications and approvals of all Government Entities controlling or affecting their construction and operation.
- 9.2 The COH shall provide, and shall cause any Government Entities to provide, all best efforts and administrative assistance that may be required in expediting the applications for, and issuance of, Permits submitted by the Contractor in his own name or for and on behalf of the COH, or any Government Entities.
- 9.3 For those Permits that are to be submitted in the name of the owner of the Site or Premises, the Contractor shall act for and on behalf of the owner in order to obtain said Permits, and the COH shall procure or cause for any Government Entities to procure, all powers of attorney, and other documentation as may reasonably be required to allow the Contractor to represent the owner;
- 9.4 The Contractor shall keep the COH regularly informed of:
- (a) all applications for the delivery, renewal and/or modification of a Permit; and
 - (b) all decisions by the relevant Government Entity with regard to the Permit applications set forth in paragraph (a) above.
- 9.5 The Contractor shall ensure that all Permits that may be required in order to operate said Site, Premises, Equipment, Facilities or provide any of the Services shall have been obtained no later than on the Actual Commissioning Date applicable to that Facility.

10. DESIGN

10.1 Preparation of design

- 10.1.1 The Contractor shall, under its sole responsibility and at its sole cost, develop and produce the Design Documents for the Facilities, in accordance with:
- (a) the Feasibility Plan,
 - (b) the Minimum Technical Requirements,
 - (c) Applicable Laws and Good Industry Practice, and
 - (d) the Project Schedule,
- 10.1.2 In particular, the Contractor shall design the adaptation works of Facilities in full compliance with the Applicable Law on architectural safety standards, requirements for

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accessibility to people with disabilities, local fire department regulations, and local legal/insurance requirements.

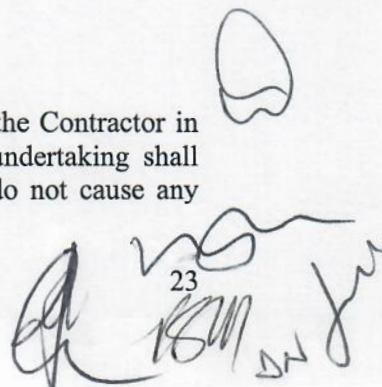
- 10.1.3 The COH shall provide, or shall cause the Government Entities to provide, any and all documents already existing as at the Effective Date regarding the design and physical condition of the Facilities and of the Site within thirty (30) days from the Effective Date.
- 10.1.4 The Contractor shall provide to the COH and to the Liaison Committee copies of all Design Documents within ninety (90) days from the Effective Date. The COH shall be entitled, but shall not have the obligation, to review and comment the Design Documents prepared by the Contractor within thirty (30) days. In the event the COH requests any modifications to such design documents, provided however that such request is reasonable, and it does not cause additional costs for the Contractor, the Contractor shall review such requests and reasonably strive to accommodate such requests but shall have the discretion to decide whether to accept or reject such requests; provided, however, that:
- (a) the Contractor shall have the obligation to justify in writing to the COH any decision to reject a modification request,
 - (b) the Contractor shall have the obligation to modify the said Design Document in the event that the modification request aims to correct a non-compliance with any of the requirements of Article 10.1.1; and
 - (c) acceptance by the Contractor of any request to modify design documents by the COH shall not relieve the Contractor of its responsibility for the Design Documents or the design of the Facilities.
- 10.1.5 The Contractor shall not be obliged to await or consider observations of the COH on the Design after thirty (30) days from their submission and may commence Works.
- 10.1.6 The Contractor shall be obliged to ensure that Factory Acceptance Tests (FATs) in the factory of the country of origin, shall be conducted once a year for the construction period to factory installation site. The FAT shall be conducted at the sole cost of the Contractor and shall be witnessed by COH officials or the authorized representative and government officials.
- 10.1.7 The Contractor shall be obliged to note that the Inspection of delivered equipment may be carried out jointly by the Contractor, COH and government officials upon arrival at the site of which all parties will sign off as to the verified performance thereof.
- 10.1.8 The Contractor shall provide a comprehensive testing and acceptance testing and acceptance procedure for each equipment or facility. Site tests (Functional and Data Analysis) are to be carried out as part of the commissioning jointly by the Contractor, COH or its authorized representatives and government officials.

11. WORKS

11.1 Contractor's responsibility

- 11.1.1 The Contractor shall, under its sole responsibility and at its sole cost, carry out the Works in accordance with:
- (a) the Approved Minimum Technical Requirements;
 - (b) Applicable Laws (including all permits and approvals obtained by the Contractor in accordance with Applicable Laws) and Good Industry Practice, which undertaking shall include maintaining full safety of the Site and ensuring that the Works do not cause any

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safety risk, including by furnishing appropriate Site protection and signposting of the Works; and

(c) the Project Schedule (7).

- 11.1.2 In the event that any part of the Works is found to be deficient, defective and/or not to conform to any of the above, the Contractor shall have the obligation, under its sole responsibility and at its sole costs and expense, to correct such deficiency, defect and/or non-conformity.
- 11.1.3 Subject to Article 11.2.3, for each Facility, no later than the Target Commissioning Date for that Facility, the Contractor shall achieve completion of the Works in accordance with Article 11.4.

11.2 Delays, relief events and liquidated damages

11.2.1 Delays - information and remedial plan

If any event occurs that would result in a delay in the performance of the Works or in achieving the Target Commissioning Date for any Facility, the Contractor shall send a report to the COH within seven (7) days of discovery thereof, outlining the reasons that led or shall lead to such delay, and the measures that shall be followed to avoid or minimize the delay in finalizing the Works by the Target Commissioning Date for said Facility. This Article shall be without prejudice to any extension of the Target Commissioning Date for said Facility afforded to the Contractor in accordance with Article 11.2.3.

11.2.2 Delays - liquidated damages

Except for the events listed under Article 11.2.3 of this Agreement, if the Actual Commissioning Date for any Facility extends beyond the Target Commissioning Date, liquidated damages shall be payable by the Contractor to the COH in accordance with Article 24.

11.2.3 Delays - Causes for extension

The Target Commissioning Date for any given Facility may be extended only upon the occurrence of:

- (a) a Force Majeure Event (as provided for in Article 31.1) directly impairing the commissioning of such Facility;
- (b) a Political Force Majeure Event (as provided for in Article 32.1) directly impairing the commissioning of such Facility;
- (c) a COH Event of Default (as provided in Article 34.2) directly impairing the commissioning of such Facility;

- (d) a COH request for suspension of Works (as provided in Article 11.4.3) on such Facility;
- (e) a COH Notice of Defects (as provided in Article 11.4.4) with respect to such Facility that has been objected by the Contractor and agreed upon by the COH;
- (f) a delay by the COH for the phased handover of the relevant Site in accordance with Article 7.1 and Schedule 15 (*Phased Handover of the Sites*);
- (g) a delay by the COH to comply with its obligation provided in Article 23.2.1;
- (h) a delay by a Governmental Entity or the COH to comply with its obligations in terms of this Agreement; or
- (i) a delay from the Contractor to obtain the Permits for reasons related to lack of ownership or equivalent document over Sites, or bureaucracies or delays of Governmental Entities.

In the event of any of the abovementioned events occurring in respect of one Facility or several Facilities, the Target Commissioning Date for said Facility or Facilities shall be extended for a period equivalent to the duration of the event causing the delay. The Contractor shall get the benefit of extensions of the Target Commissioning Date for said Facility or Facilities. The Contractor shall be entitled to any extension for any other reasonable causes other than the events set out in this Article 11.2.3.

11.3 Monitoring and inspection

11.3.1 In addition to any monitoring and inspection by the relevant Government Entities in accordance with Applicable Law, the COH shall monitor and inspect the Works in the presence of the Contractor upon reasonable prior notice to the Contractor; provided, however, that such monitoring and inspection does not cause any unreasonable impediment or interfere with the construction progress or unduly disrupt the construction. Monitoring and inspection results shall be summarized in writing and shall be signed by both Parties shortly thereafter.

11.3.2 The COH shall bear the costs of monitoring and inspection of the Works.

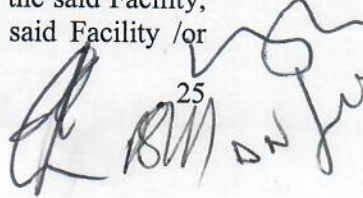
11.4 Commissioning and acceptance

11.4.1 The Contractor shall conduct the commissioning and performance testing of each Facility in accordance with the procedures set forth in Schedule 13 (*Commissioning*)

11.4.2 For each Facility, upon successful completion of all commissioning and performance tests and upon obtaining all Permits required for the delivery of the Services in said Facility, the Contractor shall give notice to the COH, and the Parties shall thereafter arrange for a joint inspection of said Facility no later than ten (10) days following the Contractor's notice. If the COH is satisfied that said Facility complies with the Minimum Technical Requirements, the Design Documents and all other requirements under this Agreement, it shall immediately issue a notice of contractual completion ("**Completion Notice**") for that Facility to the Contractor.

11.4.3 The "**Actual Commissioning Date**" applicable to any given Facility shall be the earlier of the following dates:

- (a) The date of the Completion Notice in respect of said Facility; or,
- (b) The expiry of the ten (10) day period set out above in respect of the said Facility, in the event that the COH fails to conduct any inspection of said Facility /or



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conducts an inspection but fails to issue written notice informing the Contractor of the failure of contractual completion for said Facility within the said ten (10) day period.

In the course of the joint inspection, the COH and the Contractor shall draw up a list of minor defects and the schedule in which such minor defects shall be remedied by the Contractor, it being agreed that all such minor defects shall have been remedied within three (3) months of the Actual Commissioning Date for said Facility, or such later date as may be mutually agreed between the Parties. Failure to have remedied all defects within the agreed schedule shall constitute a Contractor Event of Default.

- 11.4.4 In the event that, following the joint inspection, the COH observes material defects, it shall issue a notice of such defects to the Contractor ("**Notice of Defects**") within the period set out in Article 11.4.2. The Contractor and the COH shall consult within ten (10) days with the purpose of reaching agreement on the measures that are required from the Contractor to rectify the defects. If an agreement between the Parties is not reached within ten (10) days after the service of the Notice of Defects, then either Party may serve a Dispute Notice or the provisions of Article 43 shall apply.
- 11.4.5 If the Parties reach an agreement in accordance with Article 11.4.4 above, the Contractor shall carry out the measures so determined. The Contractor may then reconvene the joint inspection procedure in accordance with Article 11.4.2.

11.5 Post Completion Obligations

No more than four (4) months after the Actual Commissioning Date for any given Facility, the Contractor must deliver to the COH the following materials in respect of said Facility:

- (a) all technical data (including design report, calculation and design documents, both in hard copy and software format, including all necessary software instructions) related to the design and construction of said Facility (two (2) copies);
- (b) technical materials and drawings of equipment, including the original drawings (including the "as built" drawings), documents, instructions and quality certificates, installation records and inspection record (two (2) copies); and
- (c) any other technical documents or materials related to said Facility as reasonably requested by the COH (two (2) copies).

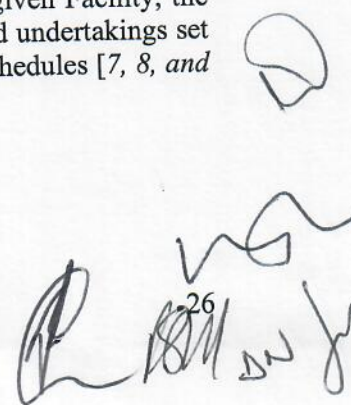
12. OVERALL LIABILITY OF THE CONTRACTOR

The Contractor shall be solely responsible for any deficiency or non-conformity in the design of each and all the Facilities (whenever discovered) and the realization of the Works.

IV OPERATIONS PHASE – SERVICES

13. SCOPE OF SERVICES

As of the Site Handover Date and Actual Commissioning Date for any given Facility, the Contractor shall provide, the services in accordance with the standards and undertakings set out in Article 14 (collectively the "**Services**"), as listed in details in the Schedules [7, 8, and 9] of this Agreement.



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14.

LEVEL OF SERVICE

14.1 The Contractor shall:

- (a) perform and complete all Services, including all Facilities management, regularly and diligently, in accordance with (i) the Minimum Technical Requirements, (ii) the Performance Indicators, (iii) Good Industry Practice (iv) the Service standards, and all other standards, requirements and undertakings set out in the body of this Agreement and its Schedules;
- (b) timely seek and obtain, maintain in effect and renew all Permits that may be required for the provision of any of the Services; and
- (c) provide the Services in accordance with all Applicable Laws and with the Permits.

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15. **STAFFING AND EMPLOYMENT**

- 15.1** The Contractor shall in its sole discretion and at its sole cost make all appropriate arrangements to employ and remunerate, in accordance with Applicable Law, staff and personnel in suitable numbers and with the required qualifications, accreditation and experience in order to provide the Services in accordance with this Agreement.
- 15.2** Existing Staff at Site under employment of COH or any Government Entity shall not be transferred to the Contractor, however, the Contractor at its discretion may give priority to Existing Staff before hiring personnel in accordance with its own staffing plan, and at its sole discretion, may decide to hire members of the Existing Staff. Subject to the foregoing paragraph, the Contractor shall evaluate and select at its discretion, the personnel from the Existing Staff expressing an interest for a job position who, in its reasonable opinion, and using documented objective criteria of assessment, to be based on job descriptions, and non-discrimination and equal opportunity principles, have the appropriate qualification and experience to work for the relevant job position.

For the avoidance of doubt, the Contractor has no liability towards the Existing Staff regarding the employment relationship (and its termination) of the Existing Staff with any Governmental Entity and/ or the COH. The COH shall indemnify and hold the Contractor harmless against any claim raised by the Existing Staff in relation to their employment or its termination with any Governmental Entity and/or the COH.

- 15.3** The Key Personnel must be permanent staff of the Contractor or of its Affiliates and must be fully skilled, competent, qualified and experienced in the field and position, in line with the Applicable Law requirements.
- 15.4** The Contractor shall adopt and implement human resources policies and procedures appropriate to its size and workforce that set out its approach to managing workers consistent with the requirements of the Applicable Law. The Contractor shall provide workers with documented information that is clear and understandable, regarding their rights under employment Applicable Law and any applicable collective agreements, including their rights related to hours of work, wages, overtime, compensation, and benefits upon beginning the working relationship and when any material changes occur.
- 15.5** The Contractor shall develop and maintain occupational health and safety management practices compliant with Applicable Law and ensure that workers are appropriately trained for assigned task and are provided with the appropriate personal protection equipment.

16. **INTERFACE**

[N/A]

V ASSETS AND IP RIGHTS

17. **PROJECT ASSETS - SECURITY**

- 17.1** Throughout the Term, and without prejudice to Article 38, the Contractor shall hold good and valid title over (i) the Premises and Facilities it shall develop / construct, (ii) Equipment and (iii) FF&E that are not affixed to the Premises.
- 17.2** The Contractor shall be entitled however to create any security (other than security automatically created by law) over the Premises it owns, the Facilities, the Project

agreements or insurance policies taken by it in favour of any third persons, without the prior written consent of the COH.

18. **INTELLECTUAL PROPERTY RIGHTS**

- 18.1 The Contractor shall acquire for itself from all relevant third parties such rights, including Intellectual Property Rights, as are necessary in order for it to fulfil its obligations under this Agreement, including the obligation under Article 18.2 below.
- 18.2 The Contractor hereby grants to the COH a non-exclusive, irrevocable and perpetual royalty-free license to use, and to copy for its own use, all Intellectual Property Rights (i) to which the Contractor has title and/or (ii) in relation to which the Contractor has a right of use, but only to the extent such Intellectual Property Rights are required for any of the Services.
- 18.3 The Contractor shall indemnify and hold harmless the COH and its employees, officers, directors, advisors and agents from and against any and all suits, actions or administrative proceedings, claims, demands, losses, direct damages and costs and expenses of whatsoever nature, including attorney's fees and expenses, which the COH may suffer as a result of any infringement or alleged infringement of any Intellectual Property Right arising out of and in connection with any design, engineering, materials or any other work or Services furnished, supplied or executed by, or on behalf of, the Contractor.

VI REPORTING AND CONTROL

19. **CONTRACTOR REPORTING OBLIGATIONS**

- 19.1 The Contractor shall submit to the COH, the reports specified in Schedule 2 (*Reporting Mechanism*) as provided therein, on annual basis. Any reports required to be provided by the Contractor in respect of a time period pursuant to Schedule 2 as aforesaid shall be provided within thirty (30) days of the end of such period.

20. **AUDIT RIGHTS**

- 20.1 [N/A]

21. **N/A**

- 21.1 N/A

VII FINANCIAL MATTERS

22. **FEES**

- 22.1 **Fees**

As from the Commencement Date, COH shall pay the Fee to the Contractor, which shall be equal to the rate of USD 40 (Forty) (excluding applicable value added tax [VAT]) per each tonne of Waste deposited by COH at the Site, operated by the Contractor, from the Sites Handover Date. COH will pay the Fee to the Contractor within thirty (30) days from the date of the invoice receipt by the Contractor.

In case the COH delays in making the payments sixty (60) days from the date of submission of their invoice from the Contractor then the Contractor has the right, reckoned from lapse

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of sixty (60) days aforesaid, to extend the term of the construction period for the same period of the payment delay and also to stop providing services to the COH

The rate for the Fee is set for the Term of this Agreement. It is subject to adjustments for inflation, in accordance with the following formulas:

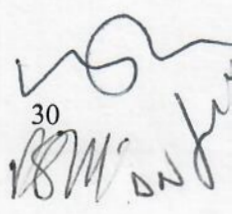
[To be added by the Ministry of Finance – Rep of Zimbabwe, referring to USD Currency]

22.2 Energy Production Fee

In addition to the Fees, at the operation of the Energy production Facility until the end of Term, the Contractor, shall be entitled to sell the produced energy Zimbabwe Electricity Transmission and Distribution Company (ZETDC) and receive the Energy Production Fee from ZETDC pursuant to the Applicable Law and regulatory framework governing the energy sector.

22.2.1 Inflation Adjustment

[To be provided by the MoF]



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22.2.2 **Currency risk adjustment**

22.2.3 [N/A]

22.3 Minimum Guaranteed Waste Quantities

22.3.1 The Contractor has based its Business Plan and Feasibility Study, on minimum guaranteed Waste quantities to be supplied by COH, which quantities throughout the term should be:

- a) For the first year not less than 550 tonnes/day and in any case not less than 200 750 tonnes/year;
- b) For the second year not less than 650 tonnes/day and in any case not less than 237 250 tonnes/year
- c) For the third year not less than 750 tonnes/day and in any case not less than 273 750 tonnes/year
- d) For the fourth year not less than 850 tonnes/day and in any case not less than 310 250 tonnes/year
- e) From the fifth year until the end of the contract not less than 1000 tonnes/day and in any case not less than 365 000 tonnes/year.

If, in a given calendar year, the actual Annual Waste Quantities deposited by COH to the Contractor is less than the Minimum Annual Guaranteed Waste Quantity, the Contractor shall invoice and shall be entitled to receive an annual Fee, which is the amount equal and not less than an amount equal to Minimum Annual Guaranteed Waste Quantity (in tonnes), multiplied the Fee per Tonne of Waste ("**Minimum Annual Guaranteed Service Amount**").

22.3.2 The Payment of the Annual Minimum Guaranteed Amount shall not be contested or disputed by COH throughout the Term.

23. TERMS OF PAYMENT

23.1 Funding

23.1.1 The COH warrants, and the Contractor acknowledges, that in respect of the operating years an amount not less than the Annual Minimum Guaranteed Amount is secured and allocated by COH with the treasury exclusively for the payment of the Fee to the Contractor as it falls due.

23.2 Invoices - time for payment

23.2.1 The Contractor shall issue its invoices within the last day of each month, following the Commencement Date for the Waste Quantities deposited at Site and accepted by the Contractor for that calendar month which invoices shall include the (i) Quantity of the Waste measured in tonnes of that month deposited by COH to the Contractor, expressed in tonnes and the (ii) Fee per Tonne of Waste. The amount shall be the result of the multiplication of (i) Quantity of the Waste measured in tonnes; and (ii) Fee per Tonne of Waste. Applicable VAT shall be added to the amount. The Contractor shall ensure the delivery of the invoice to COH within 5 (five) working days of the date of the issuance.

23.2.2 The monthly invoice shall be accompanied by an authentic copy of all the Waste Load Acceptance Protocols for the month that the invoice is issued, signed by both Parties designated representatives.

23.2.3 For the sake of clarity, the total Quantity of Waste of the month expressed in tonnes in the invoice shall be the sum of the Waste quantities expressed in tonnes of all Waste Load Acceptance Protocols for the month, duly signed, and such quantities, and subsequently the invoice amount cannot be contested or disputed by either Party, for as long as Waste Load Acceptance Protocols have been signed by both Parties designated representatives, as specified in the form of the Waste Load Acceptance Protocol.

23.2.4 COH shall pay the invoiced Service Fee within thirty (30) days of receipt of the invoice and the full set of accompanying documents required under Article 23.2.3.

23.3 Late payments

23.4 In the event the Fee, has not been paid within the periods specified in Article 22, the COH shall be liable to pay to the Contractor the late payment interest calculated under the Applicable Law, on the outstanding Service Fee amounts. Such interest shall be due thirty (30) days after the invoice becoming due and payable.

24. INDIRECT DAMAGES

To the extent permitted under the Applicable Law, neither the COH nor the Contractor shall be liable to the other Party under this Agreement for any indirect or consequential damages that may be suffered by the other Party.

25. N/A

26. INSURANCE

26.1 The Contractor shall at its own expense subscribe to and maintain in effect throughout the Term of this Agreement all insurances that may be required on mandatory basis by Applicable Laws covering the Works and the Services.

27. N/A

VIII VARIATION

28. [NOT USED]

29. VARIATION

29.1 The Contractor may from time to time during its performance of this Agreement propose to the COH any variation of services ("Variation") which the Contractor considers necessary or desirable to improve the quality, efficiency or safety of the Services or for economic reasons. The COH may at its discretion approve or reject any Variation proposed by the Contractor. The Contractor shall not proceed with any Variation unless and until the COH agrees in written on such Variation.

IX FORCE MAJEURE, POLITICAL FORCE MAJEURE AND CHANGE IN LAW

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30. **FORCE MAJEURE**

30.1 A "**Force Majeure Event**" means any circumstance not within the reasonable control, directly or indirectly, of the Party affected ("**Affected Party**") resulting in or causing a total or partial failure of the Affected Party in the fulfilment of any of its obligations under this Agreement (other than the payment of money), but only if and to the extent that:

- (i) such circumstance, despite the exercise of reasonable diligence, cannot be or could not have been prevented, avoided or removed by the Affected Party;
- (ii) the Affected Party took or has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of such event on the Affected Party's ability to perform its obligations under this Agreement and to mitigate the consequences thereof;
- (iii) the event is not, or was not, the direct or indirect result of the breach by the Affected Party of any of its obligations under this Agreement; and
- (iv) the Affected Party has given the other Party notice within seven (7) days of the Affected Party's discovery of such event, together with a report outlining the nature of such event and the measures it has taken and plans to take in order to avoid or mitigate the effects of such event.

Force Majeure Events include the following circumstances, provided that they meet the criteria spelled out in the definition of Force Majeure Event above:

- (i) acts of war, invasion or act of foreign enemy, or acts of terrorism, blockade, embargo, rationing, in each case occurring within or involving the Republic of Zimbabwe;
- (ii) acts or rebellion, riot, civil commotion, strikes of a political nature, act or campaign of terrorism, or sabotage of a political nature in each case occurring within the Republic of Zimbabwe;
- (iii) lightning, fire, earthquake, storm, cyclone, typhoon, tornado or other natural calamity; epidemics, pandemics, and
- (iv) strikes, works to rule or go-slows (other than by employees of the Party claiming the same as an Force Majeure Event or of any shareholders of such Party, or by employees of any direct or indirect affiliate, parent or subsidiary of any shareholder of such Party).

30.2 The Affected Party shall be excused from performance and shall not be construed to be in default in respect of the Agreement for so long as, and to the extent that, such failure to perform is due to an Force Majeure Event. The Affected Party shall have the duty to mitigate the effects of the Force Majeure Event.

30.3 The Affected Party shall have the right to terminate this Agreement, in accordance with Article 37, in the following circumstances:

- (a) the completion of the Works or the performance of the Services is substantially prevented, hindered or delayed for more than ninety (90) consecutive days on account of one or more Force Majeure Events; or
- (b) any Force Majeure Event occurs, the effects of which clearly and unambiguously shall substantially prevent or delay the completion of the Works or the performance of the Services for a continuous period of at least ninety (90) days.

(each a "**Prolonged Force Majeure Event**").

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31.

POLITICAL FORCE MAJEURE

- 31.1** **Political Force Majeure Events**" shall mean the acts or omissions by any Government Entity set forth in Article 32, which occur after, and which were not reasonably foreseeable on, the date of signature of this Agreement, which have a material adverse effect on (i) the ability of the Contractor to observe and perform any of its rights and obligations under the Agreement, and/or (ii) the cost or the profits of such performance.
- 31.2** The following circumstances shall be Political Force Majeure Event, provided that such circumstances meet the criteria set out in Article 32:
- (a) failure to grant to the Contractor any Permit that is required for the purposes of the Contractor's proper performance of its obligations and enforcement of its rights under this Agreement following and subject to the submission by the Contractor of a duly completed application for the same and completion by the Contractor of all steps necessary or desirable to obtain such Permit by its own efforts, except where such failure is demonstrated to result directly and exclusively from the Contractor's non-compliance with Applicable Laws;
 - (b) expropriation, requisition, confiscation or nationalization of the Facilities or any part thereof;
 - (c) prohibition or restriction on (i) the distribution of dividends to the shareholders of the Contractor or other means of repatriation or transferability of Contractor's profits or gains and/or (ii) senior debt service by the Contractor (including foreign exchange prohibition and restrictions);
 - (d) order to close down any one or several or all Sites or Facilities, for a duration exceeding seven (7) days for any reason other than as set out in Article 31.1; and
 - (e) any act affecting the legality, validity, binding nature or enforceability of the Agreement.
- 31.3** Within thirty (30) days of notice to the COH of a Political Force Majeure Event, the COH shall procure the remedy of the Political Force Majeure Event in question.
- 31.4** Should COH fail to procure the remedy of the Political Force Majeure Event prior to the expiry of the thirty (30) day period, the Parties shall discuss forthwith in order to reach a mutually satisfactory solution to restore the Contractor to the position it would have been in had such Political Force Majeure Event not occurred (including compensation for costs and loss of profits). Should the COH fail to remedy or restore within sixty (60) days of the start of such consultation (or if the COH has failed or refused to discuss), the Contractor shall have the right to terminate this Agreement in accordance with Article 37.2.

32.

CHANGE IN LAW

- 32.1** **"Change in Law"** shall mean the enactment and entry into force, after the date of signature of this Agreement, of any law, statute, regulation, order, instruction, mandatory standard or other legal instrument, or the handing down of any interpretation or any judgment having binding effect, by any Government Entity, which (i) was not reasonably foreseeable at the date of execution of this Agreement; and (ii) varies the overall yearly cost for the Contractor, including the overall tax payable by the Contractor on its turnover (whether as a result of new taxes, increase in taxation rates, changes to tax base or calculation method, modifications to rules regarding exemptions, deductions or caps, or otherwise, but

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excluding any modification of profit taxation) to observe and perform any of its rights and obligations under the Agreement.

32.2 Contractor shall notify the COH of the occurrence of a Change in Law. Within thirty (30) days of notice, the said Party shall submit a proposal to amend the Agreement so as to restore the Parties to the position they would have been in had such Change in Law not occurred (the "**Remedial Proposal**").

32.3 In the event the Party notifying the Change in Law is not satisfied by the Remedial Proposal, or in the event no Remedial Proposal is formulated within the time period stated above, the Parties shall discuss forthwith in order to reach a mutually satisfactory solution to restore the Parties to the position it would have been in had such Change in Law not occurred. Should the Parties fail to agree within sixty (60) days of the start of such consultation, the Contractor (where the Change of Law results in increased costs or lower profits) shall have the right to terminate this Agreement in accordance with Article 37.

X EVENTS OF DEFAULT - COH'S STEP-IN

33. EVENTS OF DEFAULT

33.1 A "Contractor Event of Default" shall mean any of:

- (a) Contractor's failure to pay Liquidated Damages within the time periods specified hereunder or to maintain the Performance Security as set out in the Agreement;
- (b) Contractor's failure to comply with any of the Minimum Technical Requirements in at least one of the Facilities for more than one hundred and twenty (120) continuous days;
- (c) bankruptcy event affecting the Contractor;
- (d) any misrepresentation untrue or misleading statement or breach of warranty by the Contractor, that adversely affects this Agreement, the Project and/or the performance of Services by the Contractor;
- (e) any other material breach of this Agreement by the Contractor;

33.2 An "COH Event of Default" shall mean any of:

- (a) breach of the undertakings in Article 3.3.1, 8, 22 and 23;
- (b) failure to pay invoices for a period of more than thirty (30) days from the moment that they become due and payable;
- (c) failure to guarantee the Contractor the peaceful use of the Site and Premises;
- (d) to guarantee the Contractor the peaceful use of the Site and Premises free of charge;
- (e) any other event that is expressly identified as an COH Event of Default by a specific provision of this Agreement; and/or
- (f) any misrepresentation, untrue or misleading statement or breach of warranty by the COH that adversely affects this Agreement.

34. **CURE PERIOD AND TERMINATION IN CONNECTION WITH AN EVENT OF DEFAULT**

34.1 Notification

In the event that a Contractor Event of Default or an COH Event of Default occurs, the non-defaulting Party shall give notice of said event of default to the defaulting Party (a "**Notice of Default**").

34.2 Cure Period

Subject to Article 36 below, the Party in default shall remedy the event giving rise to the Notice of Default within ninety (90) days (or such longer period as may be set forth in the Notice of Default, or as the Parties may otherwise agree) following the Notice of Default (the "**Cure Period**").

At the expiry of the Cure Period, if:

- (i) the Event of Default has not been cured; and
- (ii) the Parties have not agreed to extend the Cure Period,

the non-defaulting Party shall be entitled to serve a Termination Notice to the defaulting Party.

35. **COH'S STEP-IN**

35.1 Cause for step-in

In the event of a Contractor Event of Default that (i) is so material that it amounts to an abandonment of the Project or if no substantial Services are available, whether because of absence of staff, failure of Equipment or any other reason and (ii) has not been remedied within thirty (30) days from the date of the Notice of Default issued by the COH in connection with such Contractor's Event of Default, the COH may (but shall have no obligation to) immediately action in accordance with Article 36.2 below.

35.2 Step-In Right

35.2.1 COH may notify in writing the Contractor of the following:

- (a) a description of the emergency remedial action it intends to take, which may include the taking over of all or part of the Facilities;
- (b) the reason for such action;
- (c) the date it wishes to commence such action (which date may be the date of the notice itself);
- (d) the time period which it believes shall be necessary for such action; and
- (e) to the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken

(the "**Step-In Right**").

35.2.2 The COH may exercise the Step-In Right directly or may instruct any third party of its choice to act on its behalf. In any event, at all times during the exercise of the Step-In Right, the COH shall exercise, and shall procure any third party acting on its behalf to exercise, due care and diligence with regard to the Facilities; provided however, that the COH shall not be liable for any damage to the Contractor's property (including the Equipment and FF&E)

sustained during the exercise of the Step-In Right, except where the damage is the result of gross negligence or wilful default on the part of the COH or the third party acting on the COH's behalf.

35.3 Procedure and duration

- 35.3.1 The COH and the Contractor shall meet immediately upon the exercise of the Step-In Right with a view to agreeing on a plan of action to remedy the situation and restore the Parties to the normal performance of their rights and obligations under the Agreement. In the event (i) no agreement is found, or (ii) an agreement is found but the Contractor has not performed or implemented such agreement, within sixty (60) days of the time when the COH begins to exercise the Step-In Right, the COH shall issue a Termination Notice to the Contractor in accordance with Article 37 for Contractor Event of Default, and Articles 38 and 39.2 shall apply. The Step-In Right shall survive throughout the period of notice set out under Article 37.
- 35.3.2 In the event the COH does not issue a Termination Notice in accordance with Article 37, the Contractor shall be reinstated in his rights and obligations under this Agreement.

35.4 Rights and obligations of the Contractor

The Contractor shall be relieved from its obligations to provide the Services, but only to the extent and for the period of time where the Services have been taken over by the COH in the exercise of its Step-In Right. The Contractor shall, in addition to taking all appropriate action to remedy the Contractor Event of Default that initially gave rise to the Step-In Right, provide all assistance to the COH for the exercise of its Step-In Right. Any undue impediment to COH's exercise of its rights under this Article by the Contractor, shall entitle the COH to immediately give a Termination Notice to the Contractor in accordance with Article 37 for Contractor Event of Default, except that such Termination shall be immediately effective (notwithstanding the provisions of Article 37.3) and Articles 38 and 39.2 shall apply.

XI TERMINATION

36. EARLY TERMINATION

36.1 Termination by the COH

Without prejudice to Article 4.3, the COH shall have the right to terminate this Agreement based on:

- (i) a Contractor Event of Default that has not been cured within the Cure Period;
- (ii) a Prolonged Force Majeure Event; or

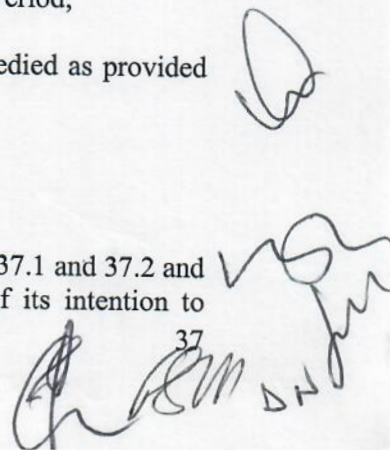
36.2 Termination by the Contractor

The Contractor shall have the right to terminate this Agreement based on:

- (i) a COH Event of Default that has not been cured within the Cure Period;
- (ii) a Prolonged Force Majeure Event;
- (iii) a Political Force Majeure Event that has not been cured or remedied as provided under Article 32; or
- (iv) a Change in Law, in the circumstances set out in Article 33.

36.3 Termination procedure

Any Party entitled to terminate the Agreement in accordance with Articles 37.1 and 37.2 and wishing to do so shall issue a notice to the other Party informing it of its intention to



terminate the Agreement and stating the grounds for termination (the "Termination Notice").

The Agreement shall be effectively and automatically terminated upon expiry of a period of ninety (90) days following the Termination Notice.

37. **EARLY TERMINATION PAYMENTS**

37.1 Compensation amounts

[To be inserted]

37.2 Appraisal by Independent Auditor

(a) [To be inserted]

37.3 Termination payments

Termination payments shall be made within [] ([]) days of (i) [], (ii) [].

[To be inserted]

38. **HANDOVER**

38.1 Handover preparation

38.1.1 In the last twelve (12) months of the Term, the Contractor shall co-operate with, and provide all access and information to the COH (or any third party designated thereby), as may be required or useful to take over operation of the Facilities and the Project.

38.1.2 During this period, the COH shall be entitled to elect to offer to retain any employee (excluding Key Personnel unless explicitly authorised by the Contractor) as it considers useful for the continuous delivery of the Services, or to transfer the same to a new provider. The Contractor shall be solely liable for any termination-related costs and liabilities.

38.2 Process

On the date of expiry of the Term or of early termination of the Agreement:

- (a) the access to or the right of usage in respect of the Site and Premises granted to the Contractor shall forthwith terminate, and the Contractor shall immediately cease to have access to the Site and Premises. The Contractor shall remove itself from the Site, without any demur or delay, absolutely and fully free and clear from any encumbrances and along with all easement rights, irrespective of any outstanding claims between the Parties or any third party;
- (b) the Contractor shall no longer have (i) the right to use, operate and/or enjoy the Facilities; and
- (c) the Contractor shall immediately transfer to the COH (or the relevant Government Authority, if the COH so instructs), free and clear of all liens and encumbrances, all of the Contractor's rights, titles and interests in and to the Project, including (insofar as they are part of or used in the Project), the following:
 - (i) the Premises, Facilities;
 - (ii) all tangible personal property, including the Equipment, in a state of good repair (ordinary wear and tear excepted); the Equipment shall have,

in accordance with the Minimum Technical Requirements and the useful life of equipment stated in the Equipment List, an average remaining useful life of eight (8) years;

- (iii) the Software and Intellectual Property Rights, if required and only to the extent required to enable the COH to continue using the Equipment;
- (iv) all FF&E;
- (v) computerized and non-computerized records, reports, data, files, and information, drawings, documents (including design documents for the Premises);
- (vi) all warranties of equipment, materials and works;
- (vii) all insurance policies and (if assignable in accordance with their terms) all other contract rights, including leases;
- (viii) all works in progress under contracts with vendors, suppliers, contractors and subcontractors; and

XII RELATIONS WITH THIRD PARTIES

39. SOVEREIGN GUARANTEE

- a) The Republic of Zimbabwe unconditionally undertakes and agrees to provide a Sovereign Guarantee to the Contractor for the entire Concession Period of thirty (30) years
- b) The terms and conditions of the Sovereign Guarantee shall be as set out in SCHEDULE 16

TAXES AND DUTIES

Republic of Zimbabwe undertakes to grant

40. SUBCONTRACTORS

40.1 General

- 40.1.1 The Contractor shall, through its own personnel, undertake the operation of core activities. The Contractor shall not assign, transfer, sub-contract or franchise the core activities.
- 40.1.2 The Contractor shall ensure that any and all Subcontracts contain the following provisions:
 - (a) provisions enabling the rights and obligations of the Contractor under that contract to be novated or assigned to the COH in the event this Agreement is terminated; and
 - (b) provisions undertaking a confidentiality obligation similar to the one set out in Article 44.

(c) the Contractor shall in no way be relieved of any of its obligations under this Agreement due to the existence or performance of any Subcontract by any Subcontractor, and

XIII LAW AND RESOLUTION

41. GOVERNING LAW

This Agreement shall be construed and interpreted in accordance with and governed by the National Laws of the Republic of Zimbabwe, International Commercial Law and International Best Practices and Standards, excluding conflict of law provisions.

42. DISPUTE RESOLUTION

42.1 Notice of Dispute

In the event of any dispute arising from any matter or in connection with this Agreement (a "Dispute"), either Party shall be entitled to give notice thereof to the other Party (a "Dispute Notice").

42.2 Mediation and conciliation

42.2.1 The Parties shall attempt to resolve such Dispute through mediation and conciliation. Such attempts shall be underpinned by good faith and honesty.

42.2.2 The effectiveness of any amicable resolution to a Dispute shall be subject to the written agreement of the Parties.

42.3 Arbitration

42.3.1 In the event the COH and the Contractor have not signed a written agreement resolving the Dispute within sixty (60) days of the Dispute Notice, the Dispute shall be referred to arbitration under the Singapore International Arbitration Centre. The head of the said centre shall choose the arbitrator to preside over the dispute and his or her decision shall be final.

42.3.2 The said arbitrator shall make his or her decision within six (6) months of his or her appointment.

42.3.3 The Parties shall bear the costs of arbitration on an equal basis (50/50).

42.3.4 The arbitration proceedings shall be held in Singapore and shall be in English language.

42.3.5 When any Dispute is referred to arbitration, except for the matter under dispute the Parties shall be entitled to exercise their remaining respective rights and shall perform their remaining respective obligations under this Agreement.

42.4 Waiver of immunities

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

42.5 Survival

The provisions of this Article 43 shall survive the termination of this Agreement for any reason whatsoever.

XIV MISCELLANEOUS

43. ASSIGNMENT

43.1 The Parties shall not, without the prior written consent of either Party be entitled to cede, assign any of their rights (whether accrued or not in terms of this Agreement). Such consent shall not be unreasonably be withheld.

44. CONFIDENTIALITY

The Parties shall keep the provisions of this Agreement including its Schedules as well as any documents disclosed or provided to the other Party pursuant to this Agreement strictly confidential. This obligation shall not apply to the disclosure of information:

- (a) by either Party to its advisers or consultants and, on the part of the Contractor, in its dealings with the Lenders or Equity Investors, whether potential or actual, provided that all such advisors, consultants, Lenders and Equity Investors are bound by equivalent confidentiality undertakings;
- (b) to such parties and in such extent as is necessary to discharge obligations under this Agreement;
- (c) that is generally available to the public unless the initial public disclosure was made by such Party in breach of this Article;
- (d) if and to the extent required by Applicable Law; and
- (e) to comply with a court order or a regulatory order of an authorized public body.

45. LANGUAGE

This Agreement shall be executed in English language.

Any communications and notices between the Parties in relation thereto shall be in English language.

46. N/A TO BE DELETED

47. NOTICES

47.1 Any notice or other communication from one Party to the other Party which is required or permitted to be made under the provisions of this Agreement shall be: (i) made in writing; (ii) delivered personally (by hand delivery) or sent by pre-paid registered mail or by courier to the address of the other Party which is provided below or to such other address as the other Party shall by notice require, or sent by facsimile transmission (with receipt of transmission confirmation) to the facsimile number of the other Party which is shown below or to such other facsimile number as the other Party shall by notice require; and (iii) marked for the attention of the person(s) designated below or to such other person(s) as the other Party shall by notice require:

The COH: [•]

The Contractor:

[•]

with a copy to:

[•]

And to

[•]

- 47.2 Any notice or other communication made by one Party to the other Party in accordance with the foregoing provisions of this Article shall be deemed to be received by the other Party: (i) if delivered by hand delivery on the day that it is left at that Party's address, (ii) if sent by pre-paid registered mail or by courier, seventy-two (72) hours from the date of posting, or (iii) if sent by facsimile transmission, on the date set out on the receipt of transmission confirmation.

48. **SEVERABILITY**

If any term or provision of this Agreement is held invalid or unlawful or unenforceable, the remaining provisions of the Agreement shall not be affected.

49. **FURTHER ASSURANCE**

The Parties shall at all times do all such further acts and execute and deliver such further deeds and documents as shall be reasonably required in order to perform and carry out the provisions of this Agreement.

50. **ENTIRE AGREEMENT**

This Agreement, including the Preamble and the Appendices attached hereto, represents the entire agreement entered into between the Parties in relation to the Project and supersedes any or all previous agreements or arrangements, whether oral or written, between the same Parties in respect of the Project and/or in respect of the contents of this Agreement (including any dealings or exchanges of information in connection with the tendering of the Project, such as the request for expressions of interest and request for proposals referred to in the preamble or the expressions of interest and/or bids submitted in response to said documents).

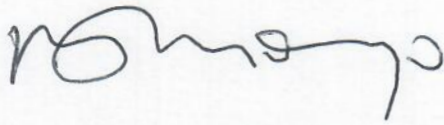
51. **NON-WAIVER**

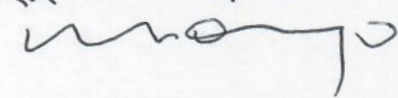
No provision of this Agreement shall be deemed waived by either Party except when such waiver is expressly given in writing. The failure by either Party to insist upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights under this Agreement shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future.

Parties

Handwritten signatures and initials are present at the bottom right of the page. There are several distinct marks, including what appears to be a large 'Q' or 'D' shape, and some illegible cursive signatures. A date '18/11' and the number '42' are also visible near the bottom right corner.

Signatories



Phakamile Mabhe


MILIAD LOPA



DILEASA LAUMAGA

FUNGAI SAMUEL MBETSA

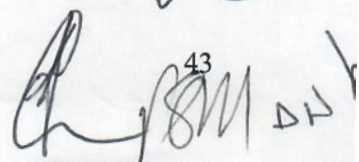
AR. LIXON CHIKUMBIRIKI

Warren Chikumbiri









LIST OF SCHEDULES

SCHEDULE 1. FEASIBILITY PLAN

SCHEDULE 2. REPORTING MECHANISM

SCHEDULE 3. FEE RATES

SCHEDULE 4. MINIMUM TECHNICAL REQUIREMENTS, TE CITOHEN STANDARD E EU

SCHEDULE 5. WASTE LOAD ACCEPTANCE PROTOCOL

SCHEDULE 6. PERMITS

SCHEDULE 7. PROJECT SCHEDULE

SCHEDULE 8. WORKS

SCHEDULE 9: SERVICES

SCHEDULE 10. PROJECT COMPANY SHAREHOLDING

SCHEDULE 11. SITES

SCHEDULE 12. FACILITIES

SCHEDULE 13. COMMISSIONING

SCHEDULE 14. PERFORMANCE INDICATORS

SCHEDULE 15. HANDOVER OF THE SITES

SCHEDULE 16. SOVEREIGN GUARANTEE