

CORPORATE COUNTER INDEMNITY

1. _____
[NAME OF THE COMPANY]

-AND-

2. METICULOUS GENERAL INSURANCE COMPANY LIMITED
(Formerly, Metropolitan Tanzania Insurance Company Limited)
[SURETY]

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CORPORATE COUNTER INDEMNITY

THIS DEED OF INDEMNITY is made on the _____ day of _____ 20_____

BETWEEN

1. _____

[Name of the Company / Indemnitor]

Incorporation Number:

Registered Address of the Company: _____

2. Meticulous General Insurance Company Limited

(Formerly, Metropolitan Tanzania Insurance Company Limited)

Incorporation Number: 56698

6th Floor, Diamond Plaza, Mirambo Street, Dar es Salaam, Tanzania [Surety]

3. _____

[Name of Employer/Principal/Buyer]

Registered Address of the Employer: _____

4. _____

[Bond amount]

5. _____

[In respect of Bid Bond/Performance Bond/Advance Payment Bond, Customs Bond etc]

6. From _____ to _____

[Bond Period]

BACKGROUND

Whereas the Surety has executed, reinsured, or procured another or others to execute or may hereafter execute, reinsure or procure another or others to execute a Bond or Bonds (as defined in this Deed) for securing the obligations of the Principal (as defined in this Deed).

IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 In this Deed, unless inconsistent with the subject or context, the following words shall have the following meanings:

Bond: Any bond, guarantee, indemnity, or other surety obligation in whatever form executed, procured, or reinsured by the Surety for securing the obligations of the Principal including any reinsurance accepted by the Surety and any indemnity or guarantee given by the Surety in respect of any such bond, guarantee, indemnity or other surety obligation.

Group: The Parent and its subsidiaries for the time being and from time to time.

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Indemnitors: The person or persons or company or partnership or any other entity named in the guarantee/bond (including any successors and assigns).

Principals: The person or persons or company or partnership or any other entity named in the guarantee/bond (including any successors and assigns).

Insolvency Event:

- If any of the Indemnitors or the Principals shall cease or threaten to cease to carry on business or shall stop or threaten to stop payments at a time when it is unable to pay its debts generally as they fall due.
- An encumbrancer takes possession, or a receiver, administrative receiver or manager is appointed in respect of the whole or any material part of the Assets of any Principal or Indemnitor.
- An application is made for the appointment of an administrator in respect of any Indemnitor or Principal or a notice of intention to appoint such an administrator is given.
- A meeting is convened, or a petition is presented, or an effective resolution is passed, or an order is made for the winding-up of any Indemnitor or Principal except for the purpose of amalgamation or reconstruction on terms previously approved by the Surety in writing.
- the making in relation to any Indemnitor or Principal of any proposal for a voluntary arrangement or the appointment of an administrator in relation to any Indemnitor or Principal.
- a moratorium taking effect in respect of any Indemnitor or Principal pursuant to the relevant laws.
- any Indemnitor or Principal entering any general arrangement or composition for the benefit of its creditors.
- If the Parent shall suffer a change of control (other than for the purposes of an intra-group re-organisation on a solvent basis) which has not been approved by the Surety; within 14 days.
- If any Indemnitor shall be in breach of its obligations set out in this Deed or shall fail to pay within 5 Business Days any sum due to the Surety pursuant to the provisions of this Deed.

1.2 In this Deed, words importing the singular shall be construed as importing the plural and vice versa

2. INDEMNITY

2.1 In respect of the Bond(s) the Indemnitor(s) shall indemnify and keep indemnified the Surety against all actions, claims, liabilities, costs, expenses, and losses (including interest) incurred by the Surety under or by virtue of any Bond, including those incurred by the Surety where a claim or threatened claim is resisted or disposed of without payment being made in respect of such claim. The obligations of the Indemnitor under this Clause are not to be reduced or qualified in any way by the following provisions of this Deed.

2.2 Upon the Surety becoming aware of or being notified of any claim arising under or by virtue of any Bond or Bonds the Indemnitor shall forthwith on demand pay immediately to the Surety the full amount of such claim, notwithstanding the fact that the validity of such claim has not yet been established and such claim is not yet properly due, together with such sum as the Surety shall require in respect of any costs and expenses which it expects to incur in defending or dealing with such claim. The Surety shall be entitled to use part, or all the sum or sums deposited in accordance with this clause in settlement of any actions, claims, liabilities, losses, damages, costs, expenses, and the like at its sole discretion and without the authority of the Indemnitor. The sum or sums deposited by the Indemnitor shall be held by the Surety in an account designated by the Surety until all and every liability that the Surety has or may have arising out of the issuing of any Bond has been discharged in the sole opinion of the Surety which shall be conclusive. Any surplus remaining after all payments in respect of liabilities arising out of the Bonds (including all costs and expenses incurred by the Surety in relation to any Bonds, or in relation to this Deed of Indemnity) will be returned to the Indemnitors who contributed to the deposit in the proportion of any such contributions.

2.3 If an Insolvency Event takes place in relation to any Indemnitor or Principal, the Indemnitor shall deposit with the Surety a sum equal to the full amount of all outstanding Bonds issued by the Surety plus an allowance for costs and expenses and the like as required by the Surety. The Surety shall be entitled to use part, or all the sum or sums deposited in accordance with this clause in settlement of any actions, claims, liabilities, losses, damages, costs, expenses, and the like at its sole discretion and without the authority of the Indemnitor. The sum or sums deposited by the Indemnitor shall be held by the Surety in an account designated by the Surety until all

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and every liability that the Surety has or may have arising out of the issuing of bonds has been discharged in the sole opinion of the Surety which shall be conclusive. Any surplus remaining after all payments in respect of liabilities arising out of the Bonds (including all costs and expenses incurred by the Surety in relation to any Bonds, or in relation to this Deed of Indemnity) will be returned to the Indemnitors who contributed to the deposit in the proportion of any such contributions.

2.4 The Indemnitor hereby irrevocably authorises the Surety, without prejudice to any other right or remedy the Surety might have, to apply the monies paid under clause 2.1, 2.2 and 2.3 of this Deed to pay the beneficiary of the appropriate Bond or to defend any claim made by the beneficiary or to make payment to a third party to avoid a claim being made by the beneficiary in such sum or sums as may be required to satisfy or limit all loss and expense arising in relation to the bond or as a result of the Surety having issued it, or to pay the funds to themselves to meet their own costs and expenses. This authority and undertaking are unconditional. It is expressly understood that the sole judge for deciding the amount and way payment is made to satisfy or limit the loss and expense, incurred, or potentially to be incurred, shall be the Surety.

2.5 Any demand made by the Surety upon the Indemnitor under this Deed shall be conclusive evidence of the amount of the liability from the Indemnitor to the Surety at the time the demand is made.

2.6 In the event of any payment being made by the Surety in respect of any claim, liability, costs, expenses and/or losses arising under or by virtue of any Bond, the Indemnitor shall repay the full amount thereof to the Surety forthwith upon written request by the Surety and it is expressly agreed that the acknowledgement, certificate, receipt or other vouchers in respect of the payment made by the Surety shall as between the Indemnitor and the Surety be conclusive evidence that the amount of such payment has been made and is accordingly repayable hereunder by the Indemnitor to the Surety.

2.7 The Indemnitor shall procure the payment of or pay on receipt of written demand from the Surety all premiums' taxes and any other expenses payable by any Principal to the Surety in respect of any Bond.

2.8 Where there is more than one Indemnitor, the Indemnitor agrees with the Surety that their obligations under this Deed shall be joint and several and that the Surety shall be permitted to enforce its rights under this Deed in any manner and in any order in which it likes and at its absolute discretion. Moreover, failure to execute this Deed by anyone Indemnitor shall not have any effect whatsoever on the obligations of the other Indemnitors.

2.9 The Indemnitor agrees that no indulgence of time being granted to the Principal nor any delay from whatever cause arising in giving notice to the Indemnitor of any claim or event leading to a claim will affect the liability of the Indemnitor hereunder.

2.10 The Indemnitor agrees that the liability of the Indemnitor shall not be prejudiced nor affected by any variation or modification to any Bond and no changes in any existing laws nor the introduction of any new laws shall have any effect on the Indemnitors liability under this Deed.

2.11 The Surety shall not be obliged or required to take any steps to recover from any other person(s) or party or be required to enforce any of its rights arising hereunder or elsewhere prior to enforcing the terms of this Deed.

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3. GENERAL

3.1 The Surety shall not be obliged to obtain the consent of the Indemnitor before executing or notify the Indemnitor of the execution of, any Bond (including any extension or renewal thereof).

3.2 Insolvency of the Principal shall be conclusive evidence of default despite any provision to the contrary in the contract secured by the Bond or the Bond itself.

3.3 The holding of deposits made by the Indemnitor to the Surety shall not confer any fiduciary duties on the Surety to the Indemnitor.

3.4 The rights and remedies of the Surety under this Deed shall be additional to and not in reduction or in lieu of any other rights and remedies which the Surety may already have or may hereafter acquire against the Indemnitor or any other persons whether by the terms of any other instrument or by operation of law.

3.5 The Indemnitor shall pay Interest at the annual rate of two per cent above the prevailing Barclays Bank Plc base rate at that time which shall accrue seven days after written demand has been made under this Deed in respect of all sums demanded.

3.6 This Deed is continuing security and shall remain in force until all Bonds have expired, or the Surety has been released from liability under all Bonds, and any and all amounts due from the Indemnitor to the Surety have been paid in full.

3.7 The Indemnitor shall not be permitted to assign any of its obligations under this Deed to any other party.

3.8 The Surety shall be permitted to assign any or all its rights under this Deed to any other party and this Deed shall ensure to the benefit of any of the Surety's successors and assigns.

3.9 The Indemnitor agrees to notify the Surety in the event the Indemnitor becomes aware of any circumstances or matters that may affect or be material to the Surety in respect of the Surety providing any Bond.

4. COVENANTS

4.1 Each Indemnitor hereby agrees that it shall not, without the prior written consent of the Surety: create or permit to subsist any encumbrance other than any encumbrance granted at least 30 days prior to the date of this Deed by an Indemnitor incorporated in the United Republic of Tanzania; or sell, transfer, lease, lend or otherwise dispose of, whether by a single transaction or a number of transactions and whether related or not, the whole of its property, assets or undertaking (both present and future from time to time) including, without limitation, any legal or beneficial ownership or control of the issued share capital or voting rights of any other Indemnitor.

4.2 If after the date of this Deed any person or persons or company or partnership or any other entity shall become a subsidiary of any of the Indemnitors the Indemnitors shall forthwith give notice in writing thereof to the Surety and the Indemnitors shall procure that such subsidiary shall forthwith execute a Deed of Accession, in the form set out in Schedule 2 to this Deed. In the event of any subsidiary entering a Deed of Accession in accordance with the provisions of this clause, the Indemnitors and such subsidiary shall indemnify the Surety and otherwise perform all the obligations herein set out and this Deed shall henceforth be read and construed as if such subsidiary had been named as an Indemnitor herein and had executed this Deed as an original party to it.

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4.3 Until the Surety is satisfied that it is no longer under any obligations or potential obligations in respect of any Bond or monetary claim, the Indemnitors shall not: (i) be entitled to claim, rank or vote as a creditor of or in respect of any other Indemnitor or its assets in competition with the Surety; or (ii) receive, claim or have the benefit of any payment, distribution or security from or on account of any other Indemnitor; or (iii) be subrogated to any rights, security, financial collateral or other monies held received or receivable by Surety or be entitled to any right of contribution or indemnity in respect of any payment made or monies received on account of the liability of any Indemnitor hereunder. If any Indemnitor receives any payment, benefit, distribution contrary to this clause, then it shall hold such sum on trust for the Surety and shall immediately transfer or pay the same to the Surety.

5. VALIDITY AND ENFORCEABILITY

5.1 Where there is more than one Indemnitor if any Indemnitor shall fail to execute this Deed or that execution of this Deed by any Indemnitor shall be invalid or unenforceable for any reason whatsoever the provisions hereof shall nevertheless be binding upon and continue in full force and effect in relation to any Indemnitor who has duly executed the same.

5.2 Each of the provisions of this Deed shall be several and distinct from one another and if one or more of such provisions is invalid or unenforceable the remaining provisions shall not in any way be affected.

6. SCOPE OF INDEMNITY

6.1 This Indemnity shall operate for the benefit of the Surety in respect of any Bond executed jointly with another or others and shall apply to all Bonds, either already executed or procured as at the date of this Deed, or as to those executed or procured on or after the date of this Deed.

7. NOTICES

Any communications required to be sent under this Deed shall be sent by registered post or recorded delivery service addressed to the relevant party at its registered office (in the case of a company) or his/her/its address set out in this deed (in the case of an individual or partnership) or via email. Such communications shall be deemed to be received on the second working day after sending or dispatch in the absence of evidence to the contrary.

8. AUTHORITY

The Indemnitor hereby confirms that it is lawfully empowered by its Memorandum of Association or otherwise to enter this Deed and that it is duly authorised to execute the same in the manner appearing below.

9. GOVERNING LAW

This Deed shall be governed by and construed in accordance with the relevant laws and the courts of the United Republic of Tanzania shall have exclusive jurisdiction to hear and determine any dispute arising out of the operation of this Deed.

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IN WITNESS WHEREOF the parties have executed this document as a Deed the day and year first above written.

For and on behalf of:

[Name of Company] [Incorporation Number.....] [**"Indemnitor"**]

[Particulars of Director(s)]

1.
Name: _____
Designation: _____
Address: _____
ID. No.: _____ Type: _____
Tel: _____

2.
Name: _____
Designation: _____
Address: _____
ID. No.: _____ Type: _____
Tel: _____

Signature: _____

Signature: _____

Signed and Sealed on this day of _____

Witnessed by:

1st Witness

Name: _____
Address: _____
Designation: _____
Tel: _____
Email: _____

Signature: _____

2nd Witness (Must be an Advocate/Notary Public)

Name: _____
Address: _____
Designation: _____
Tel: _____
Email: _____

Signature: _____

For and on behalf of:

Meticulous General Insurance Company Limited ["Surety"]

(Formerly, Metropolitan Tanzania Insurance Company Limited)

Signature: _____

Name: _____

Designation: _____

Signature: _____

Name: _____

Designation: _____

Signed and Sealed on this day of _____

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