

AGREEMENT

BETWEEN

THE MINISTRY OF COMMUNICATION, SCIENCE AND TECHNOLOGY

AND

VIETTEL GLOBAL INVESTMENT JOINT STOCK COMPANY

FOR

**COOPERATION IN THE TELECOMMUNICATIONS SECTOR IN THE
UNITED REPUBLIC OF TANZANIA**



THIS AGREEMENT is made this 16th day of July 2014

BETWEEN

THE MINISTRY OF COMMUNICATION, SCIENCE AND TECHNOLOGY of the **UNITED REPUBLIC OF TANZANIA** of 14 Jamhuri Street, P.O. Box 2645, 11470 Dar es Salaam (hereinafter referred to as "**Ministry**") of the one Party

AND

VIETTEL GLOBAL INVESTMENT JOINT STOCK COMPANY, a company duly established under the laws of Vietnam, having its registered office at 20th – 21st Floor, Viettel Building, No. 1 Tran Huu Duc Street, My Dinh 2 ward, Nam Tu Liem District, Hanoi, Vietnam (hereafter referred to as "**VIETTEL**") of the other Party.

Collectively: The Ministry and VIETTEL are referred to as "**PARTIES**" in this Agreement.

WHEREAS

- A. The Ministry on behalf of the Government of the United Republic of Tanzania ("Government") in this Agreement as in-charge of the development of both the public and private telecommunication infrastructure and services;
- B. It is Government Policy to encourage Public-Private-Partnerships (PPP) in investments in the building of the ICT infrastructure;
- C. The Laws of Tanzania require free competition where everyone is willing to give people of Tanzania the best services in the Telecom area.

WHEREAS

- A. VIETTEL has sustainable financial capacity to carry its telecommunication investment project on deployment of VIETTEL's Optic Fibre Infrastructure and other necessary telecom infrastructure for providing its telecom services nationwide in the United Republic of Tanzania, including but not limited to: backbone, distribution, last mile, metro and all necessary infrastructure, constructions, civil works in connection with its telecom network infrastructure in



the United Republic of Tanzania during the term of the Agreement (hereinafter referred to "**VIETTEL's Network**");

- B. VIETTEL has identified needs for nationwide optic fibre infrastructure in Tanzania, especially in rural areas, to support its operations as a mobile and telecommunications operator in all parts of Tanzania;
- C. VIETTEL has hereby to put forward an invitation to the Ministry to obtain Rights of Way to support the implementation;
- D. VIETTEL shall obtain Network Facility License to operate in Tanzania ("**VIETTEL's License**") and other relevant licences from competent authorities.

SUBSEQUENTLY

A. The PARTIES joint efforts will entitle participants as follows:

- i. VIETTEL will be fully in-charge of sourcing the funds and construction to realize the Project and will be the OWNER of the VIETTEL's Network.
- ii. VIETTEL shall lease capacity at IRU terms on the existing NICTBB at discounted rates subject to fulfilment of terms stipulated under Clause 4.
- iii. The Ministry will be fully in-charge of the Right of Way acquisition to realize the Project and will be ALLOCATED with 6 cores of optic fibres (out of 24 cores) for the life of the cable on all the links, which shall be used for Government only and non-commercial purposes.
- iv. NOW, THEREFORE, the PARTIES, in consideration of the mutual covenants herein expressed, agree with each other as follows:

1. DEFINITIONS

'**IRU**'- shall mean an Indefeasible Right to Use of NICTBB capacity and facilities for the purposes of producing telecommunication services defined inside this Agreement.

'**Agreement**' - shall mean this Agreement

'**NICTBB**' – shall mean National ICT Broadband Backbone

'**Party or Parties**' – shall mean all the undersigned of this document

'**Right of Way Permit**' – shall mean the land rights of an utility in Mainland Tanzania to allow the construction and operation of the infrastructure.



"VIETTEL's Optic Fibre Infrastructure" shall mean VIETTEL's optic fibre infrastructure which shall be deployed and operated including but not limited to backbone, distribution, last mile, metro and necessary facilities in connection with VIETTEL's optic fibre infrastructure in the United Republic of Tanzania.

"VIETTEL PoP" shall mean point of presence at which Head quarter office, Branch office, Showroom, Central equipment room (HLR, Mobile Switching Centre-MSC, Base Station Controller-BSC...) and Base Transceiver Station (BTS) sites

'CWDM/DWDM' – shall mean Course or Dense Wavelength Division Multiplexing. High bandwidth / capacity transmission express in Lambdas.

2. TERM

2.1 This binding Agreement comes into force after it has been duly signed by all parties subject to availability of Right of Way Permits in specific segments as stipulated under Clause 10.1.

2.2 The duration of this Agreement is 25 years and renewable depending on mutual agreement between the parties ("**Agreement Term**").

3. SCOPE

3.1 During implementation of this project and whenever the need for its renewal may arise, the Government through the Ministry shall allow VIETTEL to build its own Optic Fibre network in the whole country; its network shall consist of all four components of a fibre optic network - backbone, distribution, metro network and last mile connection. Where NICTBB network already exists, Viettel shall be allowed to build distribution, metro, last mile network for connection to its Base Transceiver Stations (BTSS) to NICTBB Points of Presence (PoPs) and interconnection between VIETTEL PoPs.

3.2 The infrastructure of Viettel' Network to be implemented shall have the following, but not limited to, features:

- a. Overhead optical fibre cable(s) of 24 cores and its wooden Poles with minimum length and diameter as specified under **Annex A**;
- b. Civil works related to the ICT infrastructure construction in the form of bridge crossings, Poles and towers erection, ODF and shelters;



8.2 VIETTEL shall, at its own discretion, engage any qualified contractor to undertake construction of VIETTEL's Network; however, the specifications for Poles, Fibre Optic Cables and Accessories as described in **Annex A**.

9. OBLIGATIONS OF VIETTEL

Subject to the satisfaction of the Ministry's Commitments as described in Article 10, VIETTEL shall have the following Obligations:

9.1 VIETTEL shall within one year complete construction of Overhead Optic Fibre Infrastructure to cover 150 District Councils in Tanzania.

9.2 VIETTEL shall provide mobile service to 4000 villages with schedule of each phase as follows:

- (i) **Phase I:** VIETTEL shall provide mobile service to 1800 villages no later than November 2015 (at least 1500 villages shall be covered no later than July 2015 where 750 villages shall be priority villages, detailed as in **Annex B**);
- (ii) **Phase II:** VIETTEL shall provide mobile service to 1200 villages from November 2015 to November 2016;
- (iii) **Phase III:** VIETTEL shall provide mobile service to 1000 villages from November 2016 to November 2017.

9.3 Within one (01) year of implementation of the Project, VIETTEL shall:

- (i) Provide optic fibre termination and internet services to 150 District Council Offices, 150 District Public Hospitals and 150 District Police Stations through VIETTEL's Optic Fibre Infrastructure.
- (ii) Provide optic fibre termination at 65 Department Post Offices in District centres in Tanzania which are detailed in the **Annex C**.

9.4 Within the first three (03) years of implementation of the Project, VIETTEL shall provide free internet services to at least three (03) public schools in each District of Tanzania where electricity is available.

9.5 Maintenance of the VIETTEL's Network shall be done by VIETTEL at no cost to the Ministry.

9.6 VIETTEL shall prepare and submit to the Ministry written quarterly progress reports on implementation of the project.



- c. VIETTEL will allocate for the Ministry 6 cores of Optic fibres of type G.652D after completion of each complete segment for developmental only and non-commercial purposes;

3.3 All the necessary Right of Way Permits required will be secured by the Ministry at no cost to VIETTEL.

3.4 VIETTEL shall be granted permission for development, optimization to VIETTEL's Network in all infrastructure routes.

4. IRU FOR NICTBB CAPACITY

An IRU Agreement will be entered between the NICTBB Manager and VIETTEL on the usage of the NICTBB capacity at 5% discount in the first year on the current IRU tariffs subject to fulfilment of the terms stipulated under Clause 8.1 of this Agreement. After which a 7.5% discount shall be offered in the next year subject to fulfilment of the Clause 9.2(i) of this Agreement.

5. RECOVERY OF CONSTRUCTION COST

VIETTEL shall recover all construction costs from the VIETTEL's Network and no payments of any form shall be made by the Ministry in connection with such construction.

6. OWNERSHIP OF THE VIETTEL'S NETWORK

6.1 VIETTEL shall be only the OWNER of the VIETTEL's Network during the term of this Agreement.

6.2 VIETTEL shall not transfer the said Ownership in any way, without the prior written consent of the Ministry.

7. COMMENCEMENT

Commencement of this Project implementation shall begin within a period of six (6) months after the date of signing of this Agreement. Failure to adhere to the commencement period, renders this Agreement null and void.

8. IMPLEMENTATION PRIORITIZATION

8.1 Timeline of execution of the prioritized project items as described in Clause 9 shall be thirty six months (36) from the day of signing of this Agreement as stipulated under Clause 9.



- 9.7** For avoidance of doubt, the period for VIETTEL to complete its obligations as specified in this Clause will be extended corresponding to the time delay of the Ministry to obtain required permits as specified in Clause 10 upon written notification to VIETTEL on specific items. The cause of delays for each segment shall be determined case by case.
- 9.8** VIETTEL shall be responsible to mend any damage that it may cause in VIETTEL's Network infrastructure routes and shall indemnify the government for such destruction caused by VIETTEL, if any.

10. OBLIGATIONS OF THE MINISTRY

- 10.1** The Ministry shall provide to VIETTEL at no cost Right of Way Permits required from Government Authorities such as TANROADS, RAHCO, Municipalities, National Parks, Reserved areas and any other Government areas for the purpose of implementation of this Project.
- 10.2** In case of any delay of the Ministry to implement its obligations outlined in this Clause which may affect the Project and/or VIETTEL's obligations in Clause 9 of this Agreement, the time-frame for VIETTEL to complete its obligations shall be reasonably reviewed and be extended corresponding to the time delay of the Ministry in the implementation of the Government's Commitments prior notification of VIETTEL.
- 10.3** The Ministry shall only use the 06 cores of optic fibres for governmental non-commercial purpose(s) and shall not transfer or sublease a part or the whole of such use to any other third party without prior written consent of VIETTEL.
- 10.4** The Ministry shall be obligated to provide equipments to ensure such 6 cores capable of handling CWDM/DWDM traffic bandwidths.
- 10.5** Without prejudice to national laws, the Ministry shall neither nationalize VIETTEL's Network nor through any act or omission, cause VIETTEL to breach any requirements of any existing Law in the United Republic of Tanzania.
- 10.6** The Ministry may at its best efforts create a Conducive environment to assist VIETTEL in obtaining other relevant permits regarding the deployment and operation of VIETTEL's Network. The Ministry shall review the quarterly progress reports submitted under Clause 9.6 to ascertain project progress



and shall from time to time make site visits for the purpose of verifying actual progress and quality of works.

11. FORCE MAJEURE

11.1 For the purposes of this Agreement, "Force Majeure" means an event, circumstance or cause which is beyond the reasonable control of a Party, and which prevents a Party to perform its obligations, or part of its obligations under this Agreement, and includes, but is not limited to, Acts of God, government act, war, acts of terrorism, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes or lockouts.

11.2 Force Majeure shall not include:

- (a) an event, which is caused by a negligent act or omission, wilful action, breach or fault of a Party or its subcontractor;
- (b) an event which a diligent Party could reasonably have been expected to:
 - i. have taken into account as at the Effective Date, or
 - ii. have avoided or overcome in the course of carrying out its obligations under this Agreement; and
 - iii. Insufficiency of funds or circumstances arising from a failure to make any payment required by this Agreement.

11.3 The failure of a Party to fulfil any of its obligations under this Agreement shall not be considered to be a breach of, or a default under, this Agreement insofar as the inability arises from an event of Force Majeure, provided that the Party affected by that event has taken reasonable precautions, due care and attempted to put in place reasonable alternative arrangement all with the objective of carrying out the terms of this Agreement without delay.

11.4 Measures to be taken:

A Party affected by an event of Force Majeure shall take all reasonable measures to remove its inability to fulfil its obligations under this Agreement with a minimum of delay and shall notify the other Parties in writing of the event concerned and of the estimated extent and duration of its inability to perform its obligations as soon as possible with valid evidence and in any event not later than ten (10) days following the occurrence of the event concerned, and shall similarly give notice of the cessation of the event of Force Majeure as soon as possible. The Parties shall take all reasonable measures to minimize the consequences of any event of the Force Majeure.

11.5 Extension of time:



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

11.6 Consultation:

Not later than twenty (20) days after a Party has become unable to perform any of its obligations under this Agreement as the result of an event of Force Majeure, the Parties shall agree on appropriate measures to be taken in the circumstance.

12. AMENDMENTS TO THE AGREEMENT

This Agreement may be modified, amended and or varied upon written approval by all the parties to this Agreement provided that a thirty days (30) notice is given.

13. GOVERNING LAW

13.1 This Agreement shall be governed by and construed in accordance with the laws of Tanzania.

13.2 Nothing in this Agreement shall purport to override any applicable mandatory legislation, enactment, or regulation in place from time to time. For the avoidance of doubt, this Agreement shall govern except where mandatory requirements of national law or regulation expressly conflict with the terms of this Agreement. Where national law and regulation are silent, this Agreement shall take precedence.

14. ARBITRATION

14.1 Any dispute relating to this Agreement or its subject matter, including disputes as to validity, performance, breach, or termination, which, cannot be settled by mutual agreement between the Parties, shall be submitted to arbitration in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC), by a sole arbitrator who is mutually appointed by the disputing Parties. If the disputing Parties cannot agree on the choice of an arbitrator, then, an arbitrator shall be appointed by ICC. The arbitration shall take place in London, England or any third country as may be agreed by the parties and the proceedings shall be conducted in the English language. The award shall be final and binding on both parties. Judgment on the award may be entered in any court of competent jurisdiction.



14.2 The non-prevailing party shall indemnify the prevailing party for such costs and expenses of the arbitration and such fees of the arbitrator unless the arbitration award decides otherwise but shall not include the respective lawyers' fees and other expenses of the parties.

15. TERMINATION

15.1 This Agreement may be terminated by either party upon breach by the other party on any provision of the Agreement, provided that the aggrieved party shall have given the defaulting party a written notice of the said breach or default and the defaulting party shall be bound to rectify the said default or breach within 60 days of the date of such notice, of which failing, this Agreement may be terminated by the aggrieved party by delivering a second notification to that effect to the defaulting party. The effective date of such termination shall be the date of receipt of the second notice by the defaulting party.

15.2 Either party may terminate this Agreement by written notice if the other party shall become insolvent or bankrupt or shall go into liquidation.

15.3 No termination of this Agreement shall affect the rights or obligations of either party that may have accrued prior to any such terminations.

15.4 If the Agreement is terminated due to a default of a party ("Defaulting Party"), the Defaulting Party shall indemnify the Non-defaulting Party of any loss, damage caused by such termination. In case of early termination, VIETTEL and the Ministry shall cooperate in good faith to discuss and decide on consequences of such early termination.

16. CONFIDENTIALITY OF INFORMATION

The Parties shall not divulge to any third party any information relating to the terms and conditions of this Agreement without prior written consent of the other Party.

17. NOTICES

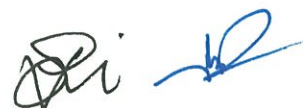
17.1 All notices and communications required to be made or made under this Agreement shall serve as otherwise provided herein, be given and served in writing at the respective addresses hereunder:



Permanent Secretary
Ministry of Communication, Science and Technology
14 Jamhuri Street
P.O Box 2645
11470 Dar es Salaam, Tanzania

General Director
Viettel Global Investment Joint Stock Company
Viettel Building, No. 1 Tran Huu Duc Street, My Dinh 2 ward, Nam Tu Liem
District, Hanoi, Vietnam

- 17.2** Nothing contained herein shall justify or excuse failure to give verbal notice for the purpose of informing the other party thereof when prompt notification is appropriate, but such verbal notification shall within the same day be followed by written notice to satisfy the requirement of Clause 17.1 hereinabove.



IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

SIGNED AND DELIVERED for and on behalf]
Of **Ministry of Communication, Science and Technology]**



Acting Permanent Secretary

In the Presence of

Name: *PETER PHILLIP NAWASALYANDA*



SIGNED AND DELIVERED for and on behalf]
Of **Viettel Global Investment Joint Stock Company]**



General Director

Name: *Tao Duc Thang*

