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15th July, 2021

LIC/1/KFS/VOL.XXIII (14)

Dr. Ibrahim M. Mohamed, CBS
Principal Secretary
Ministry of Defence, Ulinzi House
P. O. Box 40668-00100
NAIROBI



Dear Sir

**RE: SPECIAL USE LICENCES BETWEEN KENYA FOREST SERVICE AND THE
MINISTRY OF DEFENCE OVER VARIOUS FOREST AREAS**

I refer to the above subject matter and the previous discussions over the same.

I am pleased to forward to you a copy of the duly executed Special Use License over a portion of Ontulili Forest Block on Mt. Kenya Forest Reserve, Meru County for your custody.

Yours faithfully,


JULIUS KAMAU
CHIEF CONSERVATOR OF FORESTS

Copy to: DCCF - FCM
Head of Conservancy – Eastern

LY/jw



SPECIAL USE LICENCE

KENYA FOREST SERVICE

TO

MINISTRY OF DEFENCE

ON

PORTION OF ONTULILI FOREST BLOCK, MT KENYA FOREST RESERVE

MERU COUNTY

IN

EASTERN CONSERVANCY

LIC067/21

This Special Use License ("**License**") is made this day of 2021 (the "**Signature Date**")

1. PARTIES

- a) This License is made between the **KENYA FOREST SERVICE** (hereinafter referred to as the "**Service**") of P.O. BOX 30513-00100, **NAIROBI** and **MINISTRY OF DEFENCE** of P.O. Box 40668-00100 **NAIROBI** (hereinafter referred to as the "**Licensee**").
- b) The Service and the Licensee are jointly referred to as the "**Parties**" and "**Party**" shall be construed accordingly.
- c) Reference to the Parties (or any Party) shall include their respective successors in title and assignees.

2. OBJECTIVES AND PURPOSE

- a) This License is issued to the Licensee for the purposes of permitting the Licensee to undertake the activities listed in this Special Use License (including in the First Schedule) in **Ontulili Forest Block, part of Mt Kenya Forest Reserve** located in **Meru County, Eastern Conservancy** (the "**Forest Area**").
- b) This Special Use Licence is issued pursuant to the determination by the Service that the primary purposes of those activities listed in the First Schedule to this Licence are in the public interest.
- c) The Forest Area in which the Permitted Activities will be carried out by the Licensee shall comprise **two hundred and ninety-two (292) hectares** and its boundaries and other particulars are better described in the Second Schedule to this Licence (the "**Licensed Forest Area**").

3. TRANSFERABILITY

- (a) This Licence is not transferable. This License may be assigned only with the written approval of the Service.
- (b) The Service shall not approve an assignment of this License which would depart from the main objectives and purpose set out in this License.
- (c) The Licensee is liable for all the activities, acts and omissions of the assignees of its rights under this Special Use License.

4. DURATION

- a) This License shall be effective from the Signature Date and shall continue in full force and effect for a term of **twenty-five (25) years (the Term)** and may be renewed for a further term upon the agreement of both Parties on such terms and conditions as the Parties may agree.
- b) If the Licensee shall at the expiration of the Term hereby created be desirous of obtaining a further license over the License Area or any other part of the Forest Area, it shall signify such desire by notice in writing delivered to the Service at least three (3) months before the expiration of the Term hereby granted.

5. FEES AND OTHER CHARGES

- (a) The licensee shall make payment of a peppercorn (if demanded).
- (b) The License fees shall be exclusive of any taxes payable and the Licensee shall indemnify the Service against any and all claims whatsoever arising from non-remittance of the taxes.

6. WARRANTIES OF THE SERVICE

The Service represents and warrants to the Licensee that:

- a) the Licensed Forest Area is a public forest;
- b) at the time of granting this Licence, the property rights attached to the Forest Area consist of the easements, rights of way, servitudes, in-holdings, mineral rights, or other claims of record and the National Government's own right of ownership;
- c) for the duration of the term, the Service will not grant a licence in respect of the Licensed Area to any other person;
- d) the Service has the capacity to enter into this Licence and has the necessary authority to grant this Licence on the terms and conditions set out herein;

7. WARRANTIES OF THE LICENSEE

- a) The Licensee is legally, financially and technically competent to enter into this Special Use Licence.
- b) The Licensee shall retain its competence throughout the term of this Licence.

8. RIGHTS OF THE SERVICE

- a) The License is subject to the provisions of the Forest Conservation and Management Act, 2016 and its Subsidiary Regulations made thereunder.
- b) The Service shall have the right to inspect records kept by the Licensee in relation to the use of the License Area as long as the Service gives the Licensee at least five (5) working days' notice of its intention to make such inspection.

9. RIGHTS OF THE LICENSEE

- a) The Licensee has the right to carry out those activities listed in the First Schedule to this Licence.
- b) The Licensee, its servants, employees, agents, the Project Lenders and other authorized persons shall have the right to enter the Forest Area for the purposes of carrying out activities to fulfill the requirements of this Licence.
- c) The Licensee, paying the fees and performing and observing the agreements herein contained or implied and on its part to be performed, shall have the unconditional and irrevocable right to peaceably and quietly possess and enjoy the said License Area during the said Term without any interruption.

10. OBLIGATIONS OF THE SERVICE

- a) The Service shall allow the Licensee full and unrestricted access to the Forest Area together with its servants, employees, agents, the Project Lenders and other authorized persons for the purposes of carrying out activities to fulfill the requirements of this Special Use License and for purposes of carrying out the Permitted Activities.
- b) The Service shall permit the Licensee paying the License Fees hereby reserved and performing and observing the covenants and agreements herein contained or implied and on its part to be performed and observed peaceably and quietly to possess and enjoy the License Area during the Term without any interruption.

11. OBLIGATIONS OF THE LICENSEE

- a) The Licensee shall:
 - i. ensure that its employees, servants and agents take every reasonable precaution and other necessary measures to

protect themselves against naturally arising risks and harm from wildlife, fires, rivers, falling trees and other objects in the forest and in the event of such events occurring shall not hold the Service liable;

- ii. adopt and rehabilitate a forest area of not less than twice the licensed area, amounting to **five hundred and eighty-four (584) hectares**, the location(s) of which shall be agreed upon by mutual consent by the Service and the Licensee;
- iii. facilitate water connection to Ontulili Forest Station and the Ontulili Forest Station tree nursery;
- iv. construct a rangers' camp within Ontulili Forest Station;
- v. undertake repair of the Ontulili Forest Station Manager's office;
- vi. protect sacred groves and protected trees (if any) within the Licensed Area;
- vii. at the request of the Service, and where reasonably possible, assist the Service in enforcing the provisions of the Forest Conservation and Management Act, 2016 and any rules and regulations made pursuant thereto, in particular in relation to illegal harvesting of forest produce and hunting of game;
- viii. keep the Service informed of any developments, changes and occurrences within the Forest Area which the Licensee may be aware of that are critical for the conservation of biodiversity;
- ix. take such reasonable precautions against fire within the License Area, and where it occurs take all reasonable measures in putting out the fire;
- x. take such reasonable precautions against destruction of trees within the License Area and other forest resources and produce and where it occurs report to the Service;
- xi. do any other act that is necessary, without incurring undue expenses or liability, for the efficient conservation and management of the License Area;
- xii. use the License Area in a manner consistent with the approved management plan provided to the Licensee on or before the Signature Date;

- xiii. keep written records of all activities conducted in the License Area and preserve such records in accordance with applicable law;
 - xiv. obtain and maintain at its own cost all necessary consents, licences and approvals from the relevant authorities for the Permitted Activities;
 - xv. pay the Licence Fees in accordance with the terms and conditions of this Special Use Licence;
 - xvi. save where this is directly or indirectly connected to the Permitted Activities, not to do or permit anything whatsoever to be done which may cause interference, nuisance, annoyance, inconvenience, pollution, disturbance, loss or damage to the Service or to the Service's personnel, the land or to the owner and or occupier of any adjoining and neighbouring land;
 - xvii. save where this is directly or indirectly connected to the Permitted Activities, not interfere with the use by the Service or any other person authorized by the Service of the Forest Area provided that such use shall be subject to clauses 10 (b) and (c) above;
 - xviii. upon termination of this Special Use Licence to remove any equipment and construction from the site and the land within twenty four (24) months of such termination;
 - xix. observe all the Service's security, access and other rules, regulations, procedures and reasonable instructions that may from time to time be issued by the Service;
 - xx. maintain public liability or other third Party liability insurance in respect of any injury, loss or damage to any person or property arising out of the exercise of the Licensee's rights and upon written request provide details of such insurance to the Service;
 - xxi. pay all charges and to keep the Service indemnified in respect of the electricity, water and other utilities consumed by the Licensee at the License Area; and
 - xxii. Comply with all environmental laws applicable in Kenya.
- b) This Licence does not give the Licensee the right to mining, quarrying, logging, timber extraction or other activities for which the Licensee would have to apply for authorization separately.

- c) Nothing under this Licence exempts the Licensee from paying such taxes, duties, charges and levies as it may be required under the Laws of Kenya.

12. DISPUTE RESOLUTION

- a) Any dispute, controversy or claim arising out of or relating to this Licence or a termination hereof whether in its interpretation, application or implementation shall be resolved by way of consultation held in good faith between the Parties. Such consultation shall begin immediately after one Party has delivered to the other a written request for such consultation.
- b) If within fifteen (15) Business Days of the date on which such notice is given the dispute cannot be resolved, the dispute, controversy or claim shall be submitted to the National Environment Tribunal pursuant to Section 70 (2) of the Forest Conservation and Management Act, 2016.

13. TERMINATION

- a) This Licence may be terminated by the Service:
 - i. on the request of the Licensee upon completion of the Permitted Activities, or for any other cause, or
 - ii. upon breach of this Special Use Licence by the Licensee, the Service shall give written notice to the Licensee of the breach and give the Licensee sufficient time and in any case not less than ninety (90) days to cure the breach (the "**Breach Notice**"). The Breach Notice shall specify the non-payment or breach and require the Licensee to remedy the default.

14. INTERPRETATION OF THIS SPECIAL USE LICENCE

- a) This Licence is governed by the Laws of Kenya.
- b) All the Schedules to this Licence are and form integral parts of this Special Use Licence.
- c) All written communication and documents shall be in English.
- d) If any term or condition of this Licence shall to any extent be invalid or unenforceable, the remainder of this Licence shall not be affected and the other term and conditions shall be valid and enforceable to the full extent permitted by law.

- e) The entire Licence between the Parties is in writing, and any variations, changes, explanations or additions to this Licence shall also be in writing and signed by the authorized representatives of the Parties.
- f) This Licence does not create any kind of joint venture or partnership between the Parties.
- g) This Licence does not make either Party the agent of the other.

15. AUTHORIZED REPRESENTATIVES AND NOTICES

- a) Any notice or other communication given or made in accordance with this Licence shall be in writing and may (in addition to any other effective mode of service) be served through facsimile, e-mail or registered post to the address and for the attention of the relevant Party as set out in (c) below or as otherwise notified from time to time in accordance with the provisions of this clause.
- b) Any Notice shall be deemed to have been received, if sent by hand or recorded delivery post when delivered, or if sent by fax or email, when received in legible form if the day of receipt in legible form is a Business Day or, if not, the next Business Day. For purposes hereof "**Business Day**" means any day other than Saturday, Sunday or a public holiday or national day in Kenya.
- c) The following authorized representatives shall remain available to receive notices called for under this Special Use Licence, and are authorized to agree to modifications of this Special Use Licence:

For the Service:

Name or official position:	Chief Conservator of Forests, Kenya Forest Service
Physical Address:	KFS Headquarters, Karura, Off Kiambu road, Nairobi.
Postal Address:	P.O. Box 30513-00100 Nairobi, Kenya.
Telephone:	+254-20-2020285/ 2014663
Email:	director@kenyaforestservice.org

For the Licensee:

Name or official position:	The Principal Secretary, Ministry of Defence
Postal Address:	P.O. Box 40668-00100 Nairobi, Kenya
Telephone:	0202737310
Email:	ps@mod.go.ke

IN WITNESS WHEREOF the Parties hereto have caused this Special Use
Licence to be executed and sealed on the..... day
of.....2021

SEALED with the Common Seal of)
KENYA FOREST SERVICE in the)
Presence of :-)

Chief Conservator)
of Forests)

Witnessed by:-)
Corporation Secretary)

SEALED with the common Seal of)
MINISTRY OF DEFENCE in)
the Presence of: -)

Witnessed by:-)

DR IBRAHIM MOHAMMED

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FIRST SCHEDULE

PERMITTED ACTIVITIES TO BE CARRIED OUT

The Permitted Activities shall mean the use of the Licensed Area by the Licensee for the establishment of a Counter Insurgency, Terrorism, and Stability Operations (CITSO) Training School and associated facilities.

The Equipment shall include: All related equipment necessary for the Licensee's Permitted Activities, or such other similar equipment that may be required by the Licensee from time to time.

THE SECOND SCHEDULE
MAP OF THE LICENSED AREA

MTF 001

