**MONTESSORI COMMUNITY OF TANZANIA**

**CHALLENGE FUND AGREEMENT**



This agreement is executed this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_2024.

**By and Between:**



**MONTESSORI COMMUNITY OF TANZANIA (MCT)**, a registered organization under the laws of the United Republic of Tanzania with a certificate of registration number ***00NGO/R/1712*** with its head office located ***at House No. 03*** Jogoo Street, Mbezi Beach, Bagamoyo Road and P.O. Box 72475, Dar Es Salaam (**"Fund Manager"**);

**AND**

……………………………… (Name of Child Care Centre and Montessori-trained “**Operator"**).

**RECITALS:**

**WHEREAS** theFund Managerhas solicited for funds from donors to be granted for limited use and purpose set hereunder.

**AND WHEREAS** the Fund Manager is working to promote Montessori pedagogy by supporting children's natural growth and care for the benefit of the community and the country at large.

**AND WHEREAS** the Operator is a Tanzanian Montessori-trained caregiver and an active member of the Fund Manager who has qualified for a Challenge Fund to support children’s natural growth and care.

**AND WHEREAS** the Operator is desirous to receive a financial grant from the Fund Manager for limited use and purposes of establishing and maintaining a day-care centre under the supervision of the Fund Manager subject to the terms and conditions set hereunder.

**IT FOLLOWS THEREFORE** that both parties have reached the following terms and conditions:

1. **Definition and Interpretation**
	1. **Challenge Fund** means a Fund that is allocated for establishing and maintaining Montessori Day-Care Centres under a supervision of the Fund Manager.
	2. **Day-Care Centre** shall mean a premise **(land and buildings together considered as one property)**  for the provision of early childhood education for children between the age of three (3) up to four (4) and eleven months (4.11) years.
	3. **Building Project** shall refer to the construction of a Montessori Day-Care Centre by the architectural patterns of Montessori Architecture as defined in Annexure 1**;** Book “Montessori Architecture: A Design Instrument for Schools.”
	4. **Fund Manager** refers to the Montessori Community of Tanzania (MCT).
	5. **The Operator** is a Tanzanian Montessori-trained caregiver, an active member of the Montessori Community of Tanzania and fulfils the ***Basic Fund Requirements*** **(*see clause 5).***
	6. **Jury Committee** is a committee of the Fund Manager that is set to assess the Basic Fund Requirements ***(see clauses 5 and 15)*** to be fulfilled by the potential Operator.
	7. **Commission** refers to the percentage of the annual turnover paid by the Operator to the Fund Manager**.**
2. **Purpose**

The purpose of the Challenge Fund is to build the capacity of the Operator (Montessori teachers) in building and operating Montessori Day-care Centres under the supervision of the Fund Manager (MCT). It is intended that the land to be acquired under this agreement and all facilities that are to be constructed thereto shall be co-owned by both parties.

1. **Commencement of the agreement**

This Agreement shall enter into force as of the date on which both of the parties have signed this agreement, and in the event the agreement is signed on different days, then the date on which the last party signs this agreement shall be the date on which this Agreement enters into force **(the "Effective Date”).**

1. **Duration of the agreement**

This Agreement shall be binding during the whole period of the land tenure through which a granted right of occupancy of the property where the building project is premised has been issued, and shall continue during the whole period of renewal of the said granted right of occupancy (hereinafter referred to as the **“lifetime of the project**”).

1. **Basic Fund Requirements**
	1. The potential Operator is a Montessori Trained person (for children of 3-6 years).
	2. The potential Operator has been an active member of the Montessori Community of Tanzania for not less than three years. To mitigate potential conflicts of interest, the prospective operator shall not be a member of the Jury Committee have a position within the Montessori Community that has a significant influence over the Jury Committee, or be a leader of the Montessori Community with powers to supervise and make decisions over the challenge fund and the building project.
	3. The potential Operator holds a land title deed in his/her name for education purposes only. The potential Operator delivers a copy of the title deed as part of the application to the Jury Committee. In ensuring that the land has no encumbrances the Fund Manager must conduct an official search with the relevant authority.
	4. The land site where the project is to be implemented is situated at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ street, within \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ district, Tanzania; Plot No.\_\_\_\_\_\_\_\_ Block\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with certificate of title No.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The size approximately measuring \_\_\_\_\_\_\_\_\_\_\_\_ square meters. All that is situated on the site shall form part and parcel of the Day-care Centre project for the purposes of this Agreement.
2. **Funding arrangements and co-ownership**
	1. The total amount of cost of the building project eligible for financing is TSH\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(max. USD 50,000)*. The design of the facilities shall correspond with Montessori architectural patterns.
	2. The Fund Manager will provide a contribution of USD\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(max. of 90 per cent)* towards the total cost of the building project, of which USD\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(a minimum of 10 per cent)* will be co-financed by the Operator.
		1. **Operator’s account details**:

 **Account holder:**

 **Account Number:**

 **SWIFT code:**

 **Bank name:**

 **Bank address:**

**6.3 Co-Ownership**: Upon execution of this agreement, the title deed of the land where the project is situated shall be registered in the joint names of the Fund Manager and the Operator. The parties shall co-own the premises in accordance with the percentage of their monetary contributions to the **Day-Care Centre** **(as defined in clause 1.2).** Future expansions of the Day-Care Centre are subject to the same regulations as the initial project. The shares of co-ownership will be adjusted accordingly.

1. **Duties and responsibilities of the operator**

The Operator has the power and authority to receive the Grant proceeds to execute and deliver the agreement and discharge each of its duties and responsibilities thereunder.

* 1. **Purpose of the Grant**: The Operator shall use the grant to plan, build, and operate a **day-care centre** to promote Montessori pedagogy by supporting children's natural growth and caring for the benefit of the community.
		1. The Operator shall obtain an accurate record of expenditure and shall retain all invoices, receipts, and accounting records and make these available for inspection by the Fund Manager or an independent auditor as designated by the Fund Manager within the lifetime of the project from the date of signing of this agreement.
	2. **Engagement with Local Community**: In collaboration with the Fund Manager the Operator shall engage with the local community and relevant authorities to gain their project operational and structural approval, and the Operator shall address any potential concerns regarding the project. This can help protect the project's long-term stability.
	3. **Construction**: In close collaboration with the assigned architect, the Operator will supervise the construction and repairs of the building and make sure the building aligns with the Montessori Architectural patterns.
	4. **Commitment**: The Operator commits to operating the Day-care Centre for the lifetime of the project and further that for the whole period, the premises shall remain within the purpose of its establishment.
	5. **Abandonment:** The Operator is not going to abandon the project or ignore building and operating the day-care centre. Further, in case of an abandonment of the Day-care Centre during the agreed contractual period, the Day-Care Centre canbe handed over to a successor teacher or colleague subject to a decision of the Jury and Challenge Fund Committee established under clause 15 of this agreement.
	6. **Commission:** The Operator shall pay a commission of 5% of the Day-Care Centre's annual turnover to the Fund Manager for the whole period of subsistence of this agreement.
	7. **Repairs:** The Operator will cover costs of up to USD 1000 per case if deemed necessary and agreed by both the Operator and the Fund Manager. Above the defined amount, the distribution of the repair costs should be according to the ownership of the percentage shares.
	8. **Rights to sell share of ownership:** In the event the Operator expresses the will to sell her/his share of ownership, he shall first inform the Fund Manager, and both agree on principle the modality and distribution of the proceeds. In all events, the primary purpose of the Day Care Centre will be maintained and safeguarded.
	9. **Nomination:** In the event of the demise or abrupt incapacitation of the Operator, and in the absence of the Operator's physical presence to manage and operate the Day-Care Centre, the Operator hereby designates and authorizes the Fund Manager to act as the administrator of the Day-Care Centre. The Fund Manager is granted the authority to take full possession and control of the Day-Care Centre until a suitable successor for the Operator's share is identified and appointed by the Jury Committee within twelve (12) months or upon an extension thereof in the Jury’s discretion.
	10. **Reporting:** The Operator shall provide both financial and narrative reports to the Fund Manager as per the fund instalments and a final report immediately after completion of construction of the day-care centre and all other related activities undertaken during the construction.
	11. **Acknowledgement**: The Operator acknowledges that this Agreement constitutes a legal, valid, and binding obligation, enforceable by its terms.
1. **Duties and responsibilities of the Fund Manager**
	1. The Fund Manager has the power and authority to release the Grant to the Operator to execute and deliver the Agreement and discharge each of its duties and responsibilities thereunder.
	2. **Construction:** The Fund Manager will monitor the construction and repairs of the building and make sure the building aligns with the Montessori Architectural Patterns.
	3. The Fund Manager will periodically (every three months) monitor the project in its entirety and ensure that it abides by the original purpose during the lifetime of the project.
	4. The Fund Manager will provide an administrative role to the project, and remind, and instruct the Operator to operate in accordance with the terms of this agreement.
	5. The Fund manager will conduct a financial audit of the Operator every year to help keep proper records of the income and expenditure.
	6. The Fund Manager will provide funds for necessary renovations of the building above the defined amount (Clause 7.7) and according to ownership percentage.
	7. Rights to sell share of ownership: In the event the Fund Manager express the will to sell its share of ownership, it shall first inform the Operator and both agree on principle the modality and distribution of the proceeds (**which includes the possibility for the Operator to obtain parts or all shares formally held by the Fund Manager**). In all event the primary purpose of the Day Care Centre will be maintained and safeguarded.
2. **Breach of contract**

Except as otherwise stipulated herein, if the Operator or Fund Manager fails to fully perform or suspend the performance of its obligations under this Agreement and fails to correct such breach within thirty (30) days from the date of receipt of a notice from the other party the respective party shall be deemed to have breached this Agreement.

If either of the parties hereto breaches this Agreement or any of its duties and responsibilities, the aggrieved party may notify by writing the breaching party of correcting such breach within thirty (30) days from the date of receipt of a notice, taking appropriate measures to effectively and promptly avoid any damage and continuing to perform this Agreement.

1. **Penalty for failure to comply with contractual obligations**

If the Operator abandons the Day-care Centre, changes the use of the Day-care Centre, fails to complete the construction, or fails to offer teaching Service to the community for a consecutive period of three months (90 days) without good cause and prior approval by the Fund Manager, the Operator shall be charged with a penalty of 5% of the grant amount and upon failure to pay the said penalty within the prescribed timeframe, the Fund Manager shall enter into full possession of the Day-care Centre and operate the Day-care Centre until a successor for the Operator’s share has been found. For these purposes, the contract provides enforceability of the penalty clause.

1. **Force majeure**

In no event shall the Operator be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control/ including, without limitation, strikes, work stoppages/ accidents, acts of war or terrorism, civil or military disturbance s/ natural catastrophes or acts of God; it is being understood that the Operator shall use reasonable efforts which are consistent with accepted practices in the education industry to resume performance as soon as practicable under the circumstances. The Operator shall notify the Fund Manager in writing as soon as reasonably practicable spiffing the cause of the event/ the scope of commitments under the Agreement is not affected by the event and a good faith estimate of the time required to restore full performance. Except for those commitments identified in the Notice of Force Majeure Event, the Operator shall not be relieved of its responsibility to fully perform as to all other commitments in the Agreement. If the Force Majeure event continues for more than 90 days from the date of the Notice of Force Majeure Event, any party may refer the matter to the Jury and Selection Committee for an amicable settlement.

1. **Amendments**

Any amendment of this Agreement shall be decided upon by both parties and will be made in writing and duly signed by both parties.

1. **Severability**

If any part, term, or provision of this agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other part, term, or provision hereof. Any provision of this Agreement held invalid, illegal or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid, illegal or unenforceable.

1. **Termination**

Any of the parties may end its participation in this Agreement by giving one month's written notice to the other party in either of the following circumstances; failure to implement the project according to this Agreement/ a significant failure by either party to meet any of the commitments in this agreement/ or where any changes occur which significantly impair performance of the agreement.

In the event of termination by either party, the Jury Committee shall cause the project to be evaluated in accordance with the prevailing market value and shall proceed to distribute net proceeds in accordance with the ratio of share contribution of the parties under clauses 6.1 and 6.2 of this agreement. Any party who is interested in proceeding with sole ownership and management of the project may compensate the other with the value equal to the prevailing net market share, or in the event of a disagreement, the Jury Committee may order for sale of the project among the members of the Montessori Community of Tanzania in the first place, and upon a failure of a member to purchase, to any other person in an open market. A pre-emption right shall be exercised as a priority by the Jury Committee at any stage where it reaches a verdict for the sale of a project.

1. **Jury committee**
	* 1. Any dispute that may arise as to the implementation or application of this agreement shall in the first instance be referred to the Jury Committee for its determination.
		2. The Jury Committee shall formulate and regulate its procedures for detaining disputes referred to it subject to the rules of natural justice and the right to be heard.
		3. Any party who is aggrieved by the verdict of the Jury Committee may refer the matter to the Fund Manager's Board.
		4. Any party who is not satisfied with the decision of the Fund Manager’s Board may proceed with court litigation for determination.
2. **Arbitration**

Any dispute, controversy or claim arising out of or in relation to or in connection with this Agreement, or the breach or termination or validity thereof shall be resolved between the parties amicably. If the dispute does not get resolved, it shall be referred before the Jury Committee for mediation. Upon a failure of the Jury Committee to mediate the parties, any party may refer the dispute before a court of law for determination.

1. **Confidentiality**

Both parties will prior to and after the closing, keep all non-public information regarding the financial terms of this transaction strictly confidential, except as may be required by applicable law.

1. **General clause**

This agreement shall be binding upon and shall endure to the benefit of the parties and their respective administrators, trustees, successors, receivers and assignees.

1. **Governing law**

This agreement, the note(s) and annexes shall be governed by, construed and enforced in accordance with the laws of the United Republic of Tanzania in force at the time of this Agreement

**IN WITNESS WHEREOF**, the parties hereby execute and agree to the terms and conditions of this Agreement on the date first set out above.

**SEALED** at Dar es Salaam with the common seal of

the said **MONTESSORI COMMUNITY OF TANZANIA**

and witnessed by its representative who is/are

known to me personally/Identified to me by

........................ the latter being known to me Affix Common Seal

personally in my presence this ............day of .........

**In witness:**

Name:............................................................

Signature:......................................................

Address:........................................................

Qualification: .................................................

**Before me:**

Name:.........................................................

Signature:....................................................

Address:......................................................

Qualification: ………………………………..

**SIGNED** and **DELIVERED** at ………………by the

Said ……………………………… who is known to me

personally/Identified to me by..................................... ………………………

the latter being known to me Personally in my presence **Operator**

this ............day of …………… in my presence

**In witness:**

Name:............................................................

Signature:......................................................

Address:........................................................

Qualification: .................................................

**Before me:**

Name:.........................................................

Signature:....................................................

Address:......................................................

Qualification: ………………………………..