

# COUNTY GOVERNMENT OF KISII



## Construction of modern pit latrine at Sugunana primary

NEGOTIATION NO. ....-2024/2025

### **TENDER DOCUMENT**

**FEBRUARY, 2025.**

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## PREFACE

1. This Standard Tender Document (STD) document has been prepared by the Public Procurement Regulatory Authority (PPRA) for use by Procuring Entities (PEs) for procurement of large contracts for building works under Open, Restricted Competitive Tendering Methods, including international competition, as defined in the Public Procurement and Asset Disposal Act, 2015 (the Act).
2. On Joint Ventures (JVs), the Procuring Entity should allow not too high a number of JV members, a number above 5 is considered an unmanageable crowd, perhaps a crowd of small tenderers gathered to meet the qualification criteria; two or three JV Members are considered reasonable numbers.
3. Regarding cases being considered for abnormally low or high tenders, the benchmark should be the Procuring Entity's estimate in the Procurement Plan or other estimate based on commercial rates. It is expected that a Procuring Entity should call for Tenders with a clear idea of what to expect as a reasonable tender price. In case of abnormally low or high tenders, the Procurement Entity should (a) review the specifications, and conditions of tender, or correctness of the estimate or (b) possibility of a collusion, formation of cartels, or other form of fraudulent and corrupt activity in the tendering process or (c) perception of the firms on the credibility of the Procuring Entity. The Procuring Entity shall treat abnormally low and high tenders in accordance with procedures provided for in this tender document.
4. The procedures and practices presented in this STD reflect the requirements in the Act and its Regulations and best practices. This STD will be used by Procuring Entities on a mandatory basis. Lack of its use could be a basis for challenging a decision on contract award. Procuring Entities and other Users should ensure that they are using the latest version of the STD, which can be verified with PPRA.
5. The STD is comprised of the parts indicated on the Table of Contents. Before using this STD, the User is advised to or should be familiar with the Act and its Regulations and any manuals prepared and issued by PPRA to guide Public Entities in the conduct of the public procurement process.
6. This document will be customized to suit the needs of the Procuring Entity. No changes should be made to Instructions to Tenderers (ITT) and to the General Conditions of Contract (GCC). These two sections will be modified to suit the Procuring Entity's requirement in the Tender Data Sheets (TDS) and in the Special Conditions of Contract (SCC), respectively. The Cover Page of this document, the Preface, Guidelines or notes to users and the Invitation to Tenders should not be part of the tender Document to be issued to Tenderers. Refer to Appendix to the Preface for more details.
7. During preparation of the tender document, the Procuring Entity should specify whether to allow the following:
  - i) International Tender,
  - ii) Margin of Preference,
  - iii) Reservations
  - iv) Pre-qualification
  - v) Alternative tenders
  - vi) requirement on Foreign tenderers to source at least 40% of their supplies from citizen contractors
8. This STD is to be used for the procurement of large works of a measurement (unit price or rate) type with or without a pre-qualification process having taken place.
9. The Public Procurement Regulatory Authority welcomes any comments from the Users of this STD which will assist in revising (if need be) and improving the structure and contents of the STD.

## **APPENDIX TO THE PREFACE:**

### **GUIDELINES FOR PREPARATION OF TENDER DOCUMENTS**

#### **GENERAL**

Page 1 (The Heading of the Document), the Preface and this Appendix shall not be included in the Document to be issued to Tenderers. The Document to be issued to Tenderers shall start with the page titled "This Page, NAME, LOGO AND ADDRESS OF THE PROCURING ENTITY, NAME AND IDENTIFICATION OF TENDER", including all the other material on the page completed appropriately.

If in the course of preparing a Tender Document or evaluating a tender/tenders following the criteria in the standard tender document, a Procuring Entity finds a provision it does not understand, it shall contact PPRA for clarifications before it changes anything, otherwise it will be considered as violating procurement rules.

The Procuring Entity should confirm that the works to be procured is in its approved Procurement Plan and budgeted for. It should also confirm the estimated cost of the contract(s), including the estimated time for executing the contract. The cost estimate helps the Procuring Entity determine the applicable procurement method to be used and the determination if the lowest evaluated cost is unrealistically too low or too high. Prior to finalizing the Tender Document, it is advisable for the Procuring Entity to recheck these estimates.

The estimates must be prepared by an expert in the field of the subject contract i.e. by Engineers, Quantity Surveyors, and architects. The Estimates should be based on current market prices or on data collected by the Procuring Entity based on past (*but not historic*) contracts.

The purpose of the estimates is to enable the Procuring Entity to determine amounts of money to be inserted in the Tender Document for:

- i) The Tender Security to be inserted in the Tender Documents *should be expressed in absolute value which should not be more than 2% of the tender as valued by the Procuring Entity. It is advisable that the larger the estimated contract value, the smaller the required percentage of the tender security.*
- ii) The minimum amount of money required for the tenderer to demonstrate that the tenderer has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the contract execution cash flow requirements, net of the Tenderer's other commitments. *Usually the assets should be about 2-3 months cash flow requirements based on the estimated completion time.*
- iii) The minimum amount of money required as an average annual turnover for the tenderer to demonstrate that the tenderer is a prime contractor. *Usually the minimum amount of money is about 2.50 times the estimated cost of the contract(s).*
- iv) The amount of money required to determine specific experience of the tenderer based on the minimum size of contract(s) substantially completed and that are similar to the proposed contract. *Normally the minimum amount of money required is about 80% of the estimated cost of the contract.*

#### **PART I – TENDERING PROCEDURES**

##### **i) Section I – Instruction to Tenderers (ITT)**

This Section provides relevant information to help tenderers prepare their tenders. Information is also provided on the submission, opening, and evaluation of tenders and on the award of Contracts. Section I contains provisions that are to be used without modification by the Procuring Entity or by a Tenderer.

##### **ii) Section II – Tender Data Sheet (TDS)**

This Section includes provisions that are specific to each procurement and that supplement Section I, Instruction to Tenderers. This section shall be completed appropriately by the Procuring Entity and not by

A Tenderer. In any case, the Procuring Entity shall not add any item in the TDS not included in the Standard Tender Document.

**iii) Section III–Evaluation and Qualification Criteria**

This Section specifies the criteria to determine the Lowest Evaluated Tender that would be considered for contract award; that is the tenderer that meets the qualification criteria and whose tender has been determined to be:

- a) Substantially responsive to the bidding document, and
- b) The lowest evaluated cost.

No other criteria shall be added by the Procuring Entity. Some part of this section may be omitted by the Procuring Entity (and not by a Tenderer) to suit the subject procurement. For example, in some cases evaluation may not include Margin of Preference, so any reference to considerations for Margin of Preference will be omitted. The Procuring Entity will complete the part of the Criterion only as guided and allowed in this section. For example, if the criterion provides “Post qualification and Contract award” and lists an item that says “Other conditions . . . . .”, the Entity shall only include the conditions that are allowed in the Standard Tender Document.

**iv) Section IV–Tendering Forms**

This Section includes the Form of Tender and other forms to be submitted; e.g. priced Schedules of Requirements, Bills of Quantities, Schedules of technical proposal, including technical and financial qualifications, personnel, financial resources, equipment, Tender Security and other to be completed and submitted by the Tenderer as part of its Tender.

**3. PART 2–PROCUREMENT ENTITY'S REQUIREMENTS**

This Section contains the Procuring Entity's Schedules of Requirements, Specifications, Drawings, and supplementary information that describe the items to be procured. The Requirements shall also include (if so required) the environmental, social, health and safety requirements to be satisfied by the Tenderer in executing the contract.

**4. PART 3–CONDITIONS OF CONTRACT AND CONTRACT FORMS**

**i) Section VIII–General Conditions of Contract (GCC)**

This Section contains the general clauses to be applied in all contracts. This Section contains provisions that are to be used without modification by the Procuring Entity or by a Tenderer.

**iii) Section IX–Special Conditions of Contract (SCC)**

The contents of this Section supplement the General Conditions of Contract and shall be prepared by the Procuring Entity.

**iv) Section X–Contract Forms**

This Section contains forms, which, once completed, will form part of the Contract. The forms, when required, shall only be completed by the successful Tenderer after Contract award.

# COUNTYGOVERNMENTOFKISII



## Construction of modern pit latrine at Sugunana primary

### COUNTY NAME AND CONTACT ADDRESSES OF PROCURING ENTITY

KISII

|              |   |
|--------------|---|
| Name         | COUNTYGOVERNMENT OF KISII   |
| Address      | P.OBOX4550-40200KISII   |
| Emailaddress | <u><a href="mailto:procurement@kisii.go.ke">procurement@kisii.go.ke</a></u> |

**Budget Estimate:Ksh. 500,000**



# **INVITATIONTOTENDER**

**PROCURINGENTITY:**County Government of Kisii

**CONTRACTNAMEANDDESCRIPTION: AS HEREIN INDICATED ABOVE**

1. TheCountyGovernment ofKisiiinvitessealedtenders **as herein indicated above**
2. Tendering will be conducted under open competitive method(National)usinga standardized tender document. Tendering is open to all qualified and interested Tenderers.  
  
*IncasethistenderissubjecttoaReservation,specifytheGroupthatiseligibletotender,i.e.tenderingisopento  
\_\_\_\_\_e.g.allSmallandMediumEnterprisesregisteredappropriatelywith..... ”.*  
  
*IncasethistenderissubjecttoMultiplecontracts/lots,insert“Tendererswillbeallowedtotenderforoneor more  
Lots”.*
3. Qualifiedandinterestedtenderersmayobtainfurther informationandinspect theTender Documents during office hours at the Kisii procurementofficesBlockATreasuryBuildingsoppositeHudumacentre Kisii town atthe address given below.  
P.OBox4550-40200  
KISII
4. TenderdocumentsmaybeobtainedelectronicallyfromtheWebsite[www.kisiicounty.go.ke](http://www.kisiicounty.go.ke). Tenderdocuments obtained electronically will be free of charge.
5. Tenderdocumentsmaybeviewedanddownloadedforfreefromthewebsite[www.kisiicounty.go.ke](http://www.kisiicounty.go.ke).
6. TendersshallbequotedbeinKenyaShillingsandshallincludealltaxes.Tendersshallremainvalidfor(150)daysfrom the Date of opening of tenders.
7. AllTendersmustbeaccompaniedbyatenderSecurityof **2% of the Tender Sum**
8. TheTenderersshallchronologicallyserializeallpages ofthetenderdocumentssubmitted.
9. Completedtendersmustbesubmittedelectronicallyonorbefore **Date and Time indicated on IFMIS**.
10. Tenderswillbeopenedimmediatelyafterthedeadlinedateandtimespecifiedaboveor anydeadlinedateand timespecifiedlater.TenderswillbepubliclyopenedinthepresenceoftheTenderers'designatedrepresentatives who chooseto attend at theaddress below; **Kisii County Treasury Offices, Procurement Pool, RoomNo. 2**
11. Latetenderswillberejected.
12. Theaddressesreferredtoaboveare:

## **A. Addressforobtainingfurtherinformationandforpurchasingtenderdocuments**

- (1) NameofProcuringEntity-KisiiCountyGovernment

Tenderscanbedownloadedfreeofchargefromthecountywebsite([www.kisii.go.ke](http://www.kisii.go.ke))

**B. AddressforSubmissionofTenders.**

- 1) NameofProcuringEntity-KisiiCounty Government
- 2) PostalAddress–P.OBox4550-40200Kisii
- 3) TreasuryBuildingBlockAOppositeKisiiHudumacentre

**C. AddressforOpeningofTenders.**

- 1) NameofProcuringEntity.KisiiCountyGovernment  
TreasuryBuildingBlockAOppositeKisiiHudumacentre,**ProcurementPool,RoomNo.2**

**[*AuthorizedOfficial(name,designation,Signatureanddate)*]**

Name\_\_\_\_\_

*(Official of the Procuring Entity issuing the invitation)*

Designation \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

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## **PART1:TENDERINGPROCEDURES**

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## SECTION I-INSTRUCTIONS TO TENDERERS A

### **GENERAL PROVISIONS**

#### **Scope of tender**

The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are specified in the TDS.

Throughout this tendering document:

- a) The term “in writing” means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
- b) if the context so requires, “singular” means “plural” and vice versa;
- c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

#### **Fraud and corruption**

The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.

The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practice in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenderers shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.

Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.

Unfair Competitive Advantage-Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

#### **Eligible tenderers**

A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.8, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.

Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brother or Sister, Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer;
- b) Receives or has received any direct or indirect subsidy from another tenderer;
- c) Has the same legal representative as another tenderer;
- d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process;
- e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;
- f) Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as a consultant for Contract implementation;
- g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;
- h) Has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and:
  - i) Are directly or indirectly involved in the preparation of the Tender documents or specifications of the Contract, and/or the Tender evaluation process of such contract; or
  - ii) May be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

A tenderer shall not be involved in corrupt, coercive, obstructive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified.

A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. Members of a joint venture may not also make an individual tender, be a sub-contractor in a separate tender or be part of another joint venture for the purposes of the same Tender. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender.

A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT 3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the law of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.

A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke).

A Tenderer that is a state-owned enterprise or a public institution in Kenya may be eligible to tender and be awarded Contract(s) only if it is determined by the Procuring Entity to meet the following conditions, i.e. if it is:

- i) A legal public entity of Government and/or public administration,
- ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and;
- (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it to compete with firms in the private sector on an equal basis.

Firms and individuals shall be ineligible if their countries of origin are:

- (a) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;
- (b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payment to any country, person, or entity in that country.

Atenderers shall provide such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, local sub-contracts and labor) from citizen suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity to determine if this condition is met shall be provided for this purpose in “*SECTION III-EVALUATION AND QUALIFICATION CRITERIA, Item 9*”.

Pursuant to the eligibility requirements of ITT 3.10, a tenderer is considered a foreign tenderer. If it is registered in Kenya and has less than 51 percent ownership by nationals of Kenya and if it does not subcontract to foreign firms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms registered in Kenya have less than 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registrations shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from the website [www.nca.go.ke](http://www.nca.go.ke).

The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemptions shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).

- 4.14 A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

#### **Eligible goods, equipment, and services**

Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.

Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

#### **Tenderer's responsibilities**

The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and the Procuring Entity will in no case be responsible or liable for those costs.

The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.

The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity against all liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the examination and inspection.

The tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

## **B. CONTENTS OF TENDER DOCUMENTS**

### **Section of Tender Document**

The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITT 10.

#### **PART 1: Tendering Procedures**

Section I – Instructions to Tenderers

Section II – Tender Data Sheet (TDS)

Section III – Evaluation and Qualification Criteria

Section IV – Tendering Forms

#### **PART 2: Works' Requirements**

Section V – Bills of Materials

Section VI – Specifications

Section VII – Drawings

#### **PART 3: Conditions of Contract and Contract Forms**

##### **Section VIII – General Conditions (GCC)**

Section IX – Special Conditions of Contract

Section X – Contract Forms

The Invitation to Tender Notice issued by the Procuring Entity is not part of the Contract documents. Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

### **Clarification of Tender Document, Site Visit, Pre-tender Meeting**

A Tenderer requiring any clarification of the Tender Documents shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the TDS or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the TDS prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the inquiry but without identifying its source. If so specified in the TDS, the Procuring Entity shall also promptly publish its response at the web page identified in the TDS. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 8 and ITT 22.2.

The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Sites shall be at the Tenderer's own expense. The Procuring Entity shall specify in the TDS if a pre-arranged Site visit and/or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the periods specified in the TDS before the meeting.

Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the

questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.

The Procuring Entity shall also promptly publish an anonymized (*nonames*) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the webpage identified in the TDS. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meetings shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

### **Amendment of Tender Documents**

At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documents by issuing addenda.

Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's website in accordance with ITT 7.5.

To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity should extend the deadline for the submission of Tenders, pursuant to ITT 22.2.

## **C. PREPARATION OF TENDERS**

### **9. Cost of Tendering**

The Tenderers shall bear all costs associated with the preparation and submission of their Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

### **10.0 Language of Tender**

The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the Procuring Entity, shall be written in the English Language. Supporting documents and printed literature that are part of the Tender may be in another language provided they are accompanied by an accurate and notarized translation of the relevant passages into the English Language, in which case, for purposes of interpretation of the Tender, such translations shall govern.

### **11.0 Documents Comprising the Tender**

The Tenders shall comprise the following:

- a) Form of Tender prepared in accordance with ITT 12;
- b) Schedules including priced Bill of Materials, completed in accordance with ITT 12 and ITT 14;
- c) Tender Security or Tender-Securing Declaration, in accordance with ITT 19.1;
- d) Alternative Tender, if permissible, in accordance with ITT 13;
- e) **Authorization**: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT 20.3;
- f) **Qualifications**: documentary evidence in accordance with ITT 17 establishing the Tenderer's qualifications to perform the Contract if the Tender is accepted;
- g) **Conformity**: a technical proposal in accordance with ITT 16;
- h) Any other document required in the TDS.

In addition to the requirements under ITT 11.1, Tenders submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed JV Agreement. Change of membership and conditions of the JV prior to contract signature will render the tender liable for disqualification.



## **Form of Tender and Schedules**

The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alteration to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in with the information requested. The Tenderers shall chronologically serialize all pages of the tender documents submitted.

The Tenderers shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

### **13. Alternative Tenders**

Unless otherwise specified in the TDS, alternative Tenders shall not be considered.

When alternative times for completion are explicitly invited, a statement to that effect will be included in the TDS, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.

Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

When specified in the TDS, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the TDS, as will the method for their revaluation, and described in Section VII, Works' Requirements.

### **Tender Prices and Discounts**

The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.

The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tenders so determined will be used for price comparison.

The price to be quoted in the Form of Tender, in accordance with ITT 12.1, shall be the total price of the Tender, including any discounts offered.

The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 12.1.

It will be specified in the TDS if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.

Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time.

All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Prices submitted by the Tenderer.

### **Currencies of Tender and Payment**

The currency(ies) of the Tender and the currency(ies) of payment shall be the same.

Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings.

- a) A Tenderer expecting to incur expenditures in other currencies for inputs to the Work supplied from outside Kenya (referred to as "the foreign currency requirements") shall (if so allowed in the TDS) indicate in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), needed by the Tenderer for the payment of such foreign currency requirements, limited to no more than two foreign currencies.
- b) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Tenderer in the Appendix to Tender and shall be based on the exchange rate provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening. Such exchange rates shall apply for all foreign payments under the Contract.

Tenderers may be required by the Procuring Entity to justify, to the Procuring Entity's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Tender are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Tenderers.

## **16.0 Documents Comprising the Technical Proposal**

The Tenderers shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender Forms, in sufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

## **17.0 Documents Establishing the Eligibility and Qualification of the Tenderer**

Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.

In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualification to perform the Contract the Tenderers shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.

If a margin of preference applies as specified in accordance with ITT 33.1, national tenderers, individually or in joint ventures, applying for eligibility for national preferences shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.

Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity to identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.

The purpose of the information described in ITT 17.4 above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.

The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any change to the information which was provided by the tenderer under ITT 6.4. The obligation to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.

All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderers shall warrant that the information submitted is complete, current and accurate as at

the date of submission to the Procuring Entity.

If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.

If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:

- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
- ii) if the contract has been awarded to that tenderer, the contract award will be set aside depending on the outcome of (iii),
- iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other persons have committed any criminal offence.

If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 17.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tenderer.

### **Period of Validity of Tenders**

18.1. Tenders shall remain invalid for the Tender Validity period specified in the TDS. The Tender Validity period starts from the date fixed for the Tenders submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22). A tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

### **Tender Security**

The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the TDS, in original form and, in the case of a Tender Security, in the amount and currency specified in the TDS. A Tender-Securing Declaration shall use the form included in Section IV, Tender Forms.

If a Tender Security is specified pursuant to ITT 19.1, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:

- i) cash;
- ii) a bank guarantee;
- iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority;
- (iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.

If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested under ITT 18.2.

If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the Procuring Entity as non-responsive.

If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the TDS. The Procuring Entity shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.

The Tender Security of the successful Tenderers shall be returned as promptly as possible once the successful

Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the TDS.

The Tender Security may be forfeited or the Tender-Securing Declaration executed:

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or
- b) if the successful Tenderer fails to:-
  - i) sign the Contract in accordance with ITT 47; or
  - ii) furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.

Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA to debar the Tenderer from participating in public procurement as provided in the law.

The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.

A tenderer shall not issue a tender security to guarantee itself.

### **Format and Signing of Tender**

The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the numbers specified in the TDS and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.

The original and all copies of the Tenders shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the TDS and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.

In case the Tenderer is a JV, the Tenders shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.

Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

## **D. SUBMISSION AND OPENING OF TENDERS**

### **Sealing and Marking of Tenders**

The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:

- a) in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as described in ITT 11; and
- b) in an envelope or package or container marked "COPIES", all required copies of the Tender; and
- c) if alternative Tenders are permitted in accordance with ITT 13, and if relevant:
  - i) in an envelope or package or container marked "ORIGINAL-ALTERNATIVE TENDER", the alternative Tender; and
  - ii) in the envelope or package or container marked "COPIES-ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity,
- b) bear the name and address of the Tenderer; and
- c) bear the name and Reference number of the Tender.

If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

### **Deadline for Submission of Tenders**

Tenders must be received by the Procuring Entity at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedure specified in the **TDS**.

The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

### **23.0 Late Tenders**

The Procuring Entity shall not consider any Tender that arrives after the deadline for submission of tenders, in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

### **24.0 Withdrawal, Substitution, and Modification of Tenders**

A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITT

20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective written notice. All notices must be:

- a) prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
- b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to the Tenderers.

No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

### **25. Tender Opening**

Except in the cases specified in ITT 23 and ITT 24.2, the Procuring Entity shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the **TDS**, in the presence of Tenderers' designated representatives who choose to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted in accordance with ITT 22.1, shall be as specified in the **TDS**.

First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the corresponding Tenders shall not be opened but returned to the Tenderer. No Tender withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at Tender opening.

Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modifications shall be permitted unless the corresponding modification notice contains a valid

authorization to request the modification and is read out at Tender opening.

Next, all remaining envelopes shall be opened one at a time, reading out: the name of the Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the Procuring Entity may consider appropriate.

Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bill of Quantities (to be decided on by the tender opening committee) are to be initialed by the members of the tender opening committee attending the opening.

At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).

The Procuring Entity shall prepare minutes of the Tender Opening that shall include, as a minimum: -

- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) the Tender Price, per lot (contract) if applicable, including any discounts;
- c) any alternative Tenders;
- d) the presence or absence of a Tender Security, if new was required;
- e) number of pages of each tender document submitted.

The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening registers shall be distributed to all Tenderers.

## **E. EVALUATION AND COMPARISON OF TENDERS**

### **26. Confidentiality**

Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intent to Award the Contract is transmitted to all Tenderers in accordance with ITT 43.

Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.

Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

#### **Clarification of Tenders**

To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarifications submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the responses shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tenders shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 31.

If a tenderer does not provide clarifications of its tender by the date and time set in the Procuring Entity's request for clarification, its Tender may be rejected.

#### **Deviations, Reservations, and Omissions**

During the evaluation of tenders, the following definitions apply:-

- a) "*Deviation*" is a departure from the requirements specified in the tender document;
- b) "*Reservation*" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the tender document; and
- c) "*Omission*" is the failure to submit part or all of the information or documentation required in the Tender document.



## **Determination of Responsiveness**

The Procuring Entity's determination of a Tender's responsiveness is to be based on the content of the tender itself, as defined in ITT 11.

A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:

- a) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract;
- b) Limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer's obligations under the proposed contract;
- c) If rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.

The Procuring Entity shall examine the technical aspects of the tenders submitted in accordance with ITT 16, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

## **Non-material Non-conformities**

Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in the tender.

Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderers submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.

Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable non-material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the TDS.

## **Arithmetical Errors**

The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.

Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis: -

- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
- b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid prices shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
- c) If there is a discrepancy between words and figures, the amount in words shall prevail

Tenderers shall be notified of any error detected in their bid during the notification of award.

## **32.0 Conversion to Single Currency**

For evaluation and comparison purposes, the currency(ies) of the Tenders shall be converted into a single currency as specified in the TDS.

## **33.0 Margin of Preference and Reservations**

A margin of preference may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

A margin of preference shall not be allowed unless it is specified in the **TDS**.

Contracts procured on basis of international competitive tendering shall not be subject to reservation exclusive to specific groups as provided in ITT 33.4.

Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entity shall ensure that the invitation to tenders specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. Not tenders shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

### **34.0 Nominated Subcontractors**

Unless otherwise stated in the **TDS**, the Procuring Entity does not intend to execute any specific element of the Works by subcontractors selected/nominated by the Procuring Entity. In case the Procuring Entity nominates a subcontractor, the subcontract agreement shall be signed by the Subcontractor and the Procuring Entity. The main contract shall specify the working arrangements between the main contractor and the nominated subcontractor.

Tenderers may propose sub-contracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderers shall be fully qualified for their part of the Works.

Domestic subcontractor's qualification shall not be used by the Tenderer to qualify for the Works unless their specialized part of the Works were previously designated so by the Procuring Entity in the **TDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualification of the Tenderer.

### **35. Evaluation of Tenders**

The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Lowest Evaluated Tender in accordance with ITT 40.

To evaluate a Tender, the Procuring Entity shall consider the following:

- a) price adjustment in accordance with ITT 31.1(iii); excluding provisionals sums and contingencies, if any, but including Daywork items, where priced competitively;
- b) price adjustment due to discount offered in accordance with ITT 14.4;
- c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 32;
- d) price adjustment due to quantifiable non-material non-conformities in accordance with ITT 30.3; and
- e) any additional evaluation factors specified in the **TDS** and Section III, Evaluation and Qualification Criteria.

The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.

Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers based on one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

### **36.0 Comparison of tenders**

The Procuring Entity shall compare the evaluated costs of all substantially responsive Tenders established in accordance with ITT 35.2 to determine the Tender that has the lowest evaluated cost.

### **37.0 Abnormally low tenders and abnormally high tenders**

#### **Abnormally Low Tenders**



An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.

In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.

After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

### **Abnormally high tenders**

An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

In case of an abnormally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

### **Unbalanced and/or front-loaded tenders**

If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:

- a) accept the Tender;
- b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price;
- c) agree on a payment model that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works;
- d) reject the Tender,

### **Qualification of the tenderer**

The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualification submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Sub-contractors if permitted in the Tender document), or any other firm(s) different from

theTenderer.

Anaffirmativedeterminationshallbe aprerequisiteforawardofthe Contracttothe Tenderer. A negative determinationshallresultindisqualificationoftheTender,inwhicheventtheProcuringEntityshallproceedto theTendererwhooffersasubstantiallyresponsiveTenderwiththenextlowestevaluatedpricetomakeasimilar determinationofthatTenderer'squalificationstoperformsatisfactorily.

### **Lowestevaluatedtender**

Having comparedthe evaluatedprices of Tenders, theProcuring Entity shall determinetheLowest Evaluated Tender. TheLowest EvaluatedTender is theTender of theTenderer that meets theQualificationCriteria and whose Tender has been determined to be:

- a) MostresponsivetotheTenderdocument;and
- b) thelowestevaluatedprice.

### **Procuringentity'srighttoacceptanytender,andtorejectanyoralltenders.**

TheProcuringEntityreservestherighttoacceptorrejectanyTenderandtoannultheTenderprocessandreject allTendersatanytimepriortoContractAward,withouttherebyincurringanyliabilitytoTenderers.Incaseof annulment,allTenderssubmittedandspecifically,Tendersecurities,shallbepromptlyreturnedtotheTenderers.

## **F. AWARDOFCONTRACT**

### **42.0 Awardcriteria**

TheProcuringEntityshallawardtheContracttothesuccessfultendererwhosetenderhasbeendeterminedtobetheLow estEvaluatedTender.

### **43.0 NoticeofIntentiontoEnterintoaContract/NotificationofAward**

UponawardofthecontractandPriortotheexpiryoftheTenderValidityPeriodtheProcuringEntityshallissuea NotificationofIntentiontoEnterintoaContract/Notificationofawardtoalltendererswhichshallcontain,ata minimum,thefollowinginformation:

- a) thenameandaddressoftheTendererssubmittingthesuccessfultender;
- b) theContractpriceofthesuccessfultender;
- c) astatement ofthereason(s)thetender oftheunsuccessfultenderertowhomtheletterisaddressedwas unsuccessful,unlesshepriceinformationin(c)abovealreadyrevealsthereason;
- d) theexpirydateoftheStandstillPeriod;and
- e) instructionsonhowtorequestadebriefingand/orsubmitacomplaintduringthestandstillperiod;

### **44.0 StandstillPeriod**

TheContractshallnotbesignedearlierthantheexpiryofaStandstillPeriodof14daystoallowanydissatisfied tendertolaunchacomplaint.WhereonlyoneTenderissubmitted,theStandstillPeriodshallnotapply.

WhereaStandstillPeriodapplies,itshallcommencewhentheProcuringEntityhastransmittedtoeachTenderertheNo tificationofIntentiontoEnterintoaContractwiththesuccessfulTenderer.

### **45.0 DebriefingbyTheProcuringEntity**

Onreceipt oftheProcuringEntity'sNotificationofIntentiontoEnterintoaContractreferredtoinITT 43,an unsuccessfultenderermaymakeawrittenrequesttotheProcuringEntityforadebriefingonspecificissuesor concernsregardingtheirtender.TheProcuringEntityshallprovidethedebriefingwithinfivedaysofreceiptof therequest.

DebriefingsofunsuccessfulTenderersmaybedoneinwritingorverbally.TheTenderersshallbearitsowncosts ofattendingsuchadebriefingmeeting.

#### **46.0 Letter of Award**

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period specified in ITT 42.1, upon addressing a complaint that has been filed within the Standstill Period, the Procuring Entity shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

#### **47.0 Signing of Contract**

Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return to the Procuring Entity.

The written contracts shall be entered into within the periods specified in the notification of award and before expiry of the tender validity period.

#### **48.0 Performance Security**

Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the TDS, in accordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.

Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the TDS or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.

Performance security shall not be required for contracts estimated to cost less than the amounts specified in the Regulations.

#### **49.0 Publication of Procurement Contract**

Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notices shall contain the following information:

- a) name and address of the Procuring Entity;
- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration;
- d) dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted Tenders, and their Tender prices as read out at Tender opening.

#### **50.0 Procurement related Complaints and Administrative Review**

The procedures for making Procurement-related Complaints are as specified in the TDS.

A request for administrative review shall be made in the form provided under contract forms.

## Section II - Tender Data Sheet (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

| Reference to ITC Clause              | PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS   |
|--------------------------------------|--|
| <b>A. General</b>                    |  |
| <b>ITT 1.1</b>                       | <p>The name of the contract is <b>AS HEREIN INDICATED ABOVE</b></p> <p>The reference number of the Contract is <b>AS INDICATED ON ADVERT NOTICE</b></p> <p>The number and identification of lots (contracts) comprising this Tender are<br/>[insert number and identification of lots (contracts)]</p> <p>NA</p>   |
| <b>ITT 2.4</b>                       | The Information made available on competing firms is as follows: N/A   |
| <b>ITT 2.4</b>                       | The firms that provided consulting services for the contract being tendered for are: N/A   |
|                                      |  |
| <b>ITT 3.1</b>                       | Maximum number of members in the Joint Venture (JV) shall be: N/A  |
| <b>B. Content of Tender Document</b> |  |
| <b>ITT 7.1</b>                       | <p>(i) The Tenderer will submit any request for clarifications in writing at the Address Head of Procurement Kisii County, P.O Box 4550-40200 Kisii to reach the Procuring Entity not later than <b>Date and Time indicated on IFMIS</b>.</p> <p>(ii) The Procuring Entity shall publish its response at the website <b>www.kisii.go.ke</b></p>              |
| <b>ITT 7.2</b>                       | <p>(A) A pre-arranged pretender site visit <i>shall be met on request - tenderers can make arrangement with the project manager by visiting Public Works offices for guidance.</i></p> <p>(B) Pre-Tender meetings <i>shall be met on request - tenderers can make arrangement with the project manager by visiting Public Works offices for guidance</i></p> |
| <b>ITT 7.3</b>                       | The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than <b>7 days before tender closing date.</b>  |
| <b>ITT 7.5</b>                       | The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is <b>www.kisii.go.ke</b>  |
| <b>ITT 9.1</b>                       | For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's address is:  |

| Referenceto ITC Clause                     | PARTICULARSOFAPPENDIXTOINSTRUCTIONSTOTENDERS  |
|--|---|
|  | <p>(1) NameofProcuringEntity<b>KisiiCountyGovernment</b></p> <p>(2) Physicaladdress<b>TreasuryBuildingBlockA</b></p> <p>(3) PostalAddress<b>P.OBox4550-40200Kisii</b></p> <p>(4) Insert name, telephone number and e-mail address of the officer to be contacted (<i>where applicable</i>).<br/> <b>- Send email to <a href="mailto:procurement@kisii.go.ke">procurement@kisii.go.ke</a> / <a href="mailto:procurementsecretariat@kisii.go.ke">procurementsecretariat@kisii.go.ke</a></b></p> |
| <b>C.PreparationofTenders</b>              |   |
| ITT11.1(h)                                 | TheTenderershallsubmitthefollowingadditionaldocumentsinitstender:N/A  |
| ITT13.1                                    | AlternativeTendersN/A   |
| ITT13.2                                    | Alternativetimesforcompletion <b>shallnot</b> permitted.  |
| ITT13.4                                    | AlternativetechnicalsolutionsshallbepermittedforthefollowingpartsoftheWorks: N/A  |
| ITT14.5                                    | ThepricesquotedbytheTenderershallbe: FIXED  |
| ITT15.2(a)                                 | Foreigncurrencyrequirements <b>notallowed</b> .   |
| ITT18.1                                    | TheTendervalidityperiodshallbe <b>140</b> days.   |
| ITT19.1                                    | Tenderersshallprovide <b>aTenderSecurityof 2% of the Tender Sum</b>   |
| ITT20.1                                    | InadditiontotheoriginaloftheTender,thenumberofcopiesis: <u>N/A</u>  |
| ITT20.3                                    | ThewrittenconfirmationofauthorizationtosignonbehalfoftheTenderershallconsistof: <u>N/A</u>  |
| <b>D.SubmissionandOpeningofTenders</b>     |   |
| ITT22.1                                    | <p>DateandtimeforsubmissionofTenders: <b>Date and Time indicated on IFMIS</b></p> <p>Tendersshallbesubmittedelectronically.</p>   |
| ITT25.1                                    | <p>TheTender openingshalltakeplaceatthe</p> <p><b>The Treasury Offices BlockA</b></p> <p><b>ProcurementPool,RoomNo.2</b></p>  |
| <b>E.Evaluation,andComparisonofTenders</b> |   |
| ITT30.3                                    | The adjustment shall be based on the _____[insert“average”or“highest”]priceofthe itemor component as quotedinother substantiallyresponsiveTenders. Ifthepriceoftheitemor component cannotbederivedfromthepriceofothersubstantiallyresponsiveTenders,the Procuring Entity shall use its best estimate.   |

| Referenceto ITC Clause | PARTICULARSOFAPPENDIXTOINSTRUCTIONSTOTENDERS   |
|------------------------|--|
| ITT33.2                | A margin of preferences <i>shall not</i> apply.  |
| ITT33.4                | The invitation to tender is extended to the following group that qualify for Reservations; N/A   |
| ITT34.1                | At this time, the Procuring Entity <i>does not intend</i> to execute certain specific parts of the Works by subcontractors selected in advance.  |
| ITT34.2                | Contractor's may propose subcontracting: Permissible but under express authority of the Procuring Entity   |
| ITT34.3                | The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows: N/A   |
| ITT35.2(e)             | Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.  |
| ITT48.1                | Other documents required in addition to the Performance Security are N/A   |
| ITT50.1                | <p>The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> |

## **SECTION III-EVALUATION AND QUALIFICATION CRITERIA**

### **GENERAL PROVISIONS**

This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderers shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity shall use the Standard Tender Evaluation Document for Goods and Works for evaluating Tenders.

Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

- a) For construction turnover or financial data required for each year-Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
- b) Value of single contract-Exchange rate prevailing on the date of the contract signature.
- (c) Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

### **EVALUATION AND CONTRACT AWARD CRITERIA**

The Procuring Entity shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender prices shall be selected for award of contract.

## **2.0 PRELIMINARY EXAMINATION FOR DETERMINATION OF RESPONSIVENESS**

### **Preliminary examination for Determination of Responsiveness**

The Procuring Entity will start by examining all tendersto ensure they meet in all respects the eligibility criteria and other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non-responsive and will not be considered further.

*[The Procuring Entity will provide the preliminary evaluation criteria. To facilitate, a template may be attached or clearly described all information and list of documentation to be submitted by Tenderers to enable preliminary evaluation of the Tender]*

## **3.0 TENDER EVALUATION (ITT 35)**

Price evaluation: in addition to the criteria listed in ITT 35.2(a)–(d) the following criteria shall apply:

- (i) Alternative Completion Times, if permitted under ITT 13.2, will be evaluated as follows:  
.....
- (ii) Alternative Technical Solutions for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as follows:.....
- (iii) Other Criteria; if permitted under ITT 35.2(j):  
.....

## **4.0 MULTIPLE CONTRACTS**

Multiple contracts will be permitted in accordance with ITT 35.4. Tenderers are evaluated on basis of Lots and a lowest evaluated tenderer identified for each Lot. The Procuring Entity will select one Option of the two Options listed below for award of Contracts.

### **OPTION 1**

- (i) If a tenderer wins only one Lot, the tenderer will be awarded a contract for that Lot, provided the tenderer meets the Eligibility and Qualification Criteria for that Lot.

- (ii) If a tenderer wins more than one Lot, the tender will be awarded a contract for all won Lots, provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots. The tenderer will be awarded only the combinations for which the tenderer qualifies and the others will be considered for award to second lowest tenderers.

## **OPTION 2**

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combination with the lowest evaluated price. Tenders will then be awarded to the Tenderer or Tenderers in the combination provided the tenderer meets the aggregate Eligibility and Qualification Criteria for all the won Lots.

### **5.0 ALTERNATIVE TENDERS (ITT 13.1)**

#### **Alternative Tenders (ITT 13.1)**

*An alternative if permitted under ITT 3.1, will be evaluated as follows:*

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2- Works requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

#### **MARGIN OF PREFERENCE**

If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of the foreign tenderers, where the percentage of shareholding of Kenyan citizens is less than fifty-one percent (51%).

Contractors shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference.

After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:

- i) *Group A:* tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty-one percent (51%).
- ii) *Group B:* tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty-one percent (51%).

All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award of contract. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 6.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the first evaluation prices shall be selected.

### **7. Postqualification and Contract award (ITT 39), more specifically,**

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
  - i) The Tenderers shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings \_\_\_\_\_
  - ii) Minimum average annual construction turnover of Kenya Shillings \_\_\_\_\_ [insert amount], equivalent calculated as total certified payments received for contracts in progress and/or completed within the last \_\_\_\_\_ [insert to year] years.



- iii) At least \_\_\_\_\_ (*insert number*) of contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings \_\_\_\_\_ equivalent.
- iv) Contractor's Representative and Key Personnel, which are specified as \_\_\_\_\_
- v) Contractors key equipment listed on the table "Contractor's Equipment" below and more specifically listed as *[specify requirements for each lot as applicable]* \_\_\_\_\_
- iv) Other conditions depending on their seriousness.

a) **History of non-performing contracts:**

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last \_\_\_\_\_ (*specify years*). The required information shall be furnished in the appropriate form.

b) **Pending Litigation**

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) **Litigation History**

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last \_\_\_\_\_ (*specify years*). All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

## QUALIFICATION FORM\*

| 1        | 2   | 3   | 4  | 5  |
|----------|---|---|--|--|
| Item No. | Qualification Subject   | Qualification Requirement   | Document to be Completed by Tenderer           | For Procuring Entity's Use<br>(Qualification met or Not Met) |
| 1        | Nationality   | Nationality in accordance with ITT 3.6  | Forms ELI-1.1 and 1.2, with attachments        |  |
| 2        | Tax Obligations for Kenyan Tenderers  | Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority in accordance with ITT 3.14.  | Attachment                                     |  |
| 3        | Conflict of Interest  | No conflict of interest in accordance with ITT 3.3  | Form of Tender                                 |  |
| 4        | PPRA Eligibility  | Not having been declared ineligible by the PPRA as described in ITT 3.7   | Form of Tender                                 |  |
| 5        | State-owned Enterprise  | Meets conditions of ITT 3.8   | Forms ELI-1.1 and 1.2, with attachments        |  |
| 6        | Goods, equipment and services to be supplied under the contract                               | To have their origin in any country that is not determined ineligible under ITT 4.1   | Forms ELI-1.1 and 1.2, with attachments        |  |
| 7        | History of Non-Performing Contracts   | Non-performance of a contract did not occur as a result of contractor defaults since 1 <sup>st</sup> January [.....].   | Form CON-2                                     |  |
| 8        | Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity | Not under suspension based on execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9  | Form of Tender                                 |  |
| 9        | Pending Litigation  | Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.  | Form CON-2                                     |  |
| 10       | Litigation History  | No consistent history of court/arbitral award decisions against the Tenderer since 1 <sup>st</sup> January [insert year].   | Form CON-2                                     |  |
| 11       | Financial Capabilities  | <p>(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings [insert amount] equivalent for the subject contract(s) net of the Tenderer's other commitments.</p> <p>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on work currently in progress and for</p> | <p>Form FIN</p> <p>– 3.1, with attachments</p> |  |

| 1       | 2  | 3  | 4                                  | 5  |
|---------|--|--|------------------------------------|--|
| ItemNo. | QualificationSubject                                 | QualificationRequirement   | DocumentToBeCompletedbyTenderer    | For Procuring Entity's Use<br>(QualificationmetorNotMet) |
|         |  | <p>futurecontractcommitments.</p> <p>(iii)Theauditedbalancesheetsor,ifnotrequiredby the laws of the Tenderer's country, other financial statementsacceptabletotheProcuringEntity,forthe last/<i>insertnumberofyears</i>/yearsshallbesubmitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.</p>  |                                    |  |
| 12      | AverageAnnual ConstructionTurnover                   | Minimumaverageannualconstructionturnoverof Kenya Shillings <i>[insert amount]</i> , equivalent calculated as total certified payments received for contracts in progress and/or completed within the last/ <i>insertofyear</i> /years,dividedby <i>[insertnumber of years]</i> years   | FormFIN–3.2                        |  |
| 13      | GeneralConstruction Experience                       | Experienceunderconstructioncontractsintherole ofprimecontractor,JVmember,sub-contractor,or management contractor for at least the last <i>[insert numberofyears]</i> years, starting1 <sup>st</sup> January <i>[insert year]</i> .   | 4.FormEXP–4.1<br><b>Experience</b> |  |
| 14      | SpecificConstruction& Contract Management Experience | <p>A minimum number of <i>[state the number]</i> similar contracts specified below that have been satisfactorilyandsubstantiallycompletedasaprime contractor, joint venture member, management contractor or sub-contractor between 1st January <i>[insertyear]</i>andtendersubmissiondeadlinei.e..... (number)contracts, each ofminimum valueKenya shillings.....equivalent.</p> <p><i>[In case the Works are to be tender as individual contracts under multiple contract procedure, the minimumnumberofcontractsrequiredforpurposes ofevaluatingqualificationshallbeselectedfromthe options mentioned in ITT 35.4]</i></p> <p>Thesimilarityofthecontractsshallbebasedonthe following:<i>[BasedonSectionVII,ScopeofWorks, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITT 34.3]</i></p> | FormEXP4.2(a)                      |  |

## **Evaluation Criteria**

### **1. Mandatory Requirements**

Bidders must demonstrate that he has statutory and legal documents to enable him trade in the republic of Kenya – must meet the following requirements

- i) Submit a copy of certificate of registration/incorporation
- ii) Submit a copy of valid tax compliance certificate
- iii) Submit a copy of NCA8 and above registration certificate for building works
- iv) Submit a copy of CR12 of not more than twelve months commencing the date of opening
- v) Submit a Valid Business Permit
- vi) Dully filled Ethics and Integrity Declaration form
- vii) Dully filled Self-declaration form that the person / tenderer will not engage in any corrupt or fraudulent practice (declare conflict of interest)
- viii) Submit a copy of Power of Attorney
- ix) Submit a copy of a 2% of the tender sum bid bond from a recognized financial institution.
- x) Ensure that all tender forms are duly filled as instructed in the tender document and in the format prescribed.
- xi) Bidders(s) should not mutilate the bid document issued by the procuring entity and shall ensure serialization of pages for each bid submitted.

### **2. Technical evaluation**

#### **(1) Previous experience of the bidder in construction related Activities;**

Bidder to demonstrate by attaching relevant supportive documents such as practical completion certificates, certificate of making good defects for completed works for the last 3 years i.e. of works of similar nature magnitude and complexity.

Reference letters from previous clients' awards and contracts signed with clients.

#### **(2) Technical staff to handle the works**

A bidder must demonstrate that he has a suitably qualified contractor's representative and suitably (and in adequate numbers) key personnel together with their academic qualifications and work experience.

#### **(3) Equipment schedule owned or lease agreement in the format provided in the tender forms**

#### **(4) Comprehensive works program (elaborate taking into account the following)**

- (i) Contract duration of the duration should be in weeks i.e 1-24 weeks from the commencement date, in addition, the WBS should be detailed to identify key activities and particularly the activities on critical path
- (ii) Project scope and all activities.

The award of points considered in this section shall be as shown below:

| Parameter  | Maximum points |
|--|----------------|
| (i) Presentation of Bid document -----                   | 2              |
| (ii) Key personnel -----                                 | 20             |
| (iii) Work program and work methodology.....             | 20             |
| (iv) Past relevant work experience -----                 | 20             |
| (v) Equipment holding -----                              | 10             |
| (vi) Organization structure.....                         | 10             |
| (vii) Audited Financial Report for the last 3 years----- | 10             |
| (viii) Evidence of Financial Resources-----              | 8              |
| (ix) Litigation History -----                            | 2              |

| Item | Description  | Weighting score   | Max Score |
|------|--|---|-----------|
| 1    | Presentation of Bid document   | Includes binding the documents, neat presentation, separation and arrangement of requested information and general response to all requirements   | 2         |
| 2    | Past relevant work experience  | Attach at least four (2) certificates of completion of building works in the previous five (5) years  | 20        |
| 3    | Technical staff with relevant training in diploma or degree in Civil Engineering of at least 2 years specific experience for degree holder and 5 years for Diploma holders | Attach academic certificates and their curriculum vitae<br>Relevant degrees with relevant 2 years experience 10 marks @ Or<br>Diploma with relevant 5 years' experience 10 marks @  | 20        |
| 4    | Attach the organization structure of your firm signed, dated and stamped by company director   | <ul style="list-style-type: none"> <li>✓ 10 marks for the attached certified organization structure</li> <li>✓ Zero mark if the structure is not certified or attached</li> </ul>   | 10        |
| 5    | Equipment holding  | Indicate a minimum of 5 (five) core plant and equipment considered by the company to be required for undertaking the project together with proof of owner (Log book) or authorized letter of hiring from ministry of transport  | 10        |
| 6    | Audited Financial Report for the last 3 years  | <ul style="list-style-type: none"> <li>✓ Audited financial report (last three (3) years) i.e., 2020-2021, 2021-2022 and 2022-2023 (6 marks)</li> <li>✓ Average Annual Turn-over equal to or greater than the annual Expected Turnover of the project (2 mks)</li> </ul> | 8         |
| 7    | Work programme and projected cash flow   | Submit a signed work programme chart and cash flow estimate   | 10        |
| 8    | Work methodology and safety management   | Provide detailed method statement on how to carry out the intended works and safety methodology   | 10        |
| 9    | Evidence of Financial Resources  | <ul style="list-style-type: none"> <li>✓ Has attached certified current bank statement for the last six months ... 5</li> <li>✓ Has attached a letter from bank showing creditworthiness ..... 3</li> </ul>   | 8         |
| 10   | Litigation History   | Submit a signed, stamped and dated affidavit that the company has not had or the company has had or its in construction-related litigation or   | 2         |

|  |               |   |     |
|--|---------------|---|-----|
|  |               | arbitrationcaseinthelastfiveyears<br>Duly Filled..... 2<br>Notfilled..... 0 |     |
|  | <b>TOTALS</b> |   | 100 |

**(Attachclearlegiblecopiesforeaseofreference).Marksshallbeawardedasindicatedagainsteach requirement. Notethatabiddermustscoreatleast70%totalmarkstoqualifyforfinanciaevaluation Stage III:**

### **Financial Stage**

Theevaluationshallbeinthreestagesasfollows;

- i. DeterminationofArithmeticerrors
- ii. ComparisonofRates;and
- iii. CheckingofConsistencyoftheRates.

### **DeterminationofArithmeticErrors**

Tenders willbecheckedtodetermineifthereareanyarithmetic errors.Iftherewillbeadiscrepancybetween the amount in figures and the amount in words, the amount in words shall prevail.

IftherewillbeadiscrepancybetweentheamountintheFormofTenderandtheAmountintheBillof Quantities, the amount in the Form of Tender Shall Prevail.

Subject to Section 79 (2)(b) the Public Procurement and Asset Disposal Act 2015, and in line with Regulation 74(2)ofthePublicprocurement andAsset DisposalRegulations2020,anyerrorsinthesubmittedtender arising from a miscalculation of unit price, quantity, and subtotal and total bid price shall be considered as a major deviationthataffectsthesubstanceofthetender andshallleadtodisqualificationofthetender asnon-responsive.

### **Comparison of rates**

Itemsthatareunder-pricedoroverpricedmayindicatepotentialfornon-deliveryandfront-loading respectively.Theevaluationcommitteeshallpromptlywritetothetendereraskingfordetailedbreakdownofcosts for any of the quoted items, relationship between those prices, proposed construction/installation methods and schedules.

### **ConsistencyoftheRates**

The evaluation committee will compare the consistency of rates for similar items and note all inconsistencies of the rates for similar items. Tenders with inconsistent rates for similar items, particularly where the higher rate is used in the first elements of the works (front loading) risks non-completion of the project.

### **Notes**

1. Thebidder withlowest evaluatedpricewillbeawardedthetender inline with Section86(a)ofthePublic **Procurement** andAsset Disposal Act,2015(Revised Edition,2022)
2. The Procuring Entity may inspect the premises to seek further clarification/confirmation if necessary, to confirmauthenticity/complianceofanyconditionofthetender /qualificationsofthetenderer inlinewithSection 83 of the Public Procurement and Asset Disposal Act, 2015(Revised Edition,2022)

## SECTION IV - TENDERING FORMS

### QUALIFICATION FORMS

#### 1. FOREIGN TENDERERS 40% RULE

Pursuant to ITT 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

| ITEM | Description of Work Item         | Describe location of Source | COST in K.shillings | Comments, if any |
|------|----------------------------------|-----------------------------|---------------------|------------------|
| A    | Local Labor                      |                             |                     |                  |
| 1    |                                  |                             |                     |                  |
| 2    |                                  |                             |                     |                  |
| 3    |                                  |                             |                     |                  |
| 4    |                                  |                             |                     |                  |
| 5    |                                  |                             |                     |                  |
| B    | Subcontracts from Local sources  |                             |                     |                  |
| 1    |                                  |                             |                     |                  |
| 2    |                                  |                             |                     |                  |
| 3    |                                  |                             |                     |                  |
| 4    |                                  |                             |                     |                  |
| 5    |                                  |                             |                     |                  |
| C    | Local materials                  |                             |                     |                  |
| 1    |                                  |                             |                     |                  |
| 2    |                                  |                             |                     |                  |
| 3    |                                  |                             |                     |                  |
| 4    |                                  |                             |                     |                  |
| 5    |                                  |                             |                     |                  |
| D    | Use of Local Plant and Equipment |                             |                     |                  |
| 1    |                                  |                             |                     |                  |
| 2    |                                  |                             |                     |                  |
| 3    |                                  |                             |                     |                  |
| 4    |                                  |                             |                     |                  |
| 5    |                                  |                             |                     |                  |
| E    | Add any other items              |                             |                     |                  |
| 1    |                                  |                             |                     |                  |
| 2    |                                  |                             |                     |                  |
| 3    |                                  |                             |                     |                  |
| 4    |                                  |                             |                     |                  |
| 5    |                                  |                             |                     |                  |
| 6    |                                  |                             |                     |                  |
|      | TOTAL COST LOCAL CONTENT         |                             | XXXXX               |                  |
|      | PERCENTAGE OF CONTRACT PRICE     |                             |                     |                  |

## 2. **FORMEQU:EQUIPMENT**

The Tenderers shall provide adequate information to demonstrate clearly that it has the capability to meet the requirements for the key equipment listed in Section III, Evaluation and Qualification Criteria. A separate Form shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

|                       |   |                        |
|-----------------------|---|------------------------|
| Item of equipment     |   |                        |
| Equipment information | Name of manufacturer  | Model and power rating |
|                       | Capacity  | Year of manufacture    |
| Current status        | Current location  |                        |
|                       | Details of current commitments  |                        |
| Source                | Indicates source of the equipment<br><input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured |                        |

On the following information for equipment owned by the Tenderer.

|            |  |                        |
|------------|--|------------------------|
| Owner      | Name of owner  |                        |
|            | Address of owner   |                        |
|            | Telephone  | Contact name and title |
|            | Fax  | Telex                  |
| Agreements | Details of rental/lease/manufacture agreements specific to the project |                        |
|            |  |                        |
|            |  |                        |



### 3. FORMPER-1

#### Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

#### Contractor's Representative and Key Personnel

|    |  |  |
|----|--|--|
| 1. | Title of position: Contractor's Representative |  |
|    | Name of candidate:                             |  |
|    | Duration of appointment:                       | [insert the whole period (start and end dates) for which this position will be engaged]    |
|    | Time commitment: for this position:            | [insert the number of days/week/months that has been scheduled for this position]          |
|    | Expected time schedule for this position:      | [insert the expected time schedule for this position (e.g. attach high level Gantt chart)] |
| 2. | Title of position: [_____]                     |  |
|    | Name of candidate:                             |  |
|    | Duration of appointment:                       | [insert the whole period (start and end dates) for which this position will be engaged]    |
|    | Time commitment: for this position:            | [insert the number of days/week/months that has been scheduled for this position]          |
|    | Expected time schedule for this position:      | [insert the expected time schedule for this position (e.g. attach high level Gantt chart)] |
| 3. | Title of position: [_____]                     |  |
|    | Name of candidate:                             |  |
|    | Duration of appointment:                       | [insert the whole period (start and end dates) for which this position will be engaged]    |
|    | Time commitment: for this position:            | [insert the number of days/week/months that has been scheduled for this position]          |
|    | Expected time schedule for this position:      | [insert the expected time schedule for this position (e.g. attach high level Gantt chart)] |
| 4. | Title of position: [_____]                     |  |
|    | Name of candidate:                             |  |
|    | Duration of appointment:                       | [insert the whole period (start and end dates) for which this position will be engaged]    |
|    | Time commitment: for this position:            | [insert the number of days/week/months that has been scheduled for this position]          |
|    | Expected time schedule for this position:      | [insert the expected time schedule for this position (e.g. attach high level Gantt chart)] |
| 5. | Title of position: [insert title]              |  |
|    | Name of candidate:                             |  |
|    | Duration of appointment:                       | [insert the whole period (start and end dates) for which this position will be engaged]    |
|    | Time commitment: for this position:            | [insert the number of days/week/months that has been scheduled for this position]          |
|    | Expected time schedule for this position:      | [insert the expected time schedule for this position (e.g. attach high level Gantt chart)] |

#### 4. **FORMPER-2:**

ResumeandDeclaration-Contractor'sRepresentativeandKeyPersonnel.

|                |
|----------------|
| NameofTenderer |
|----------------|

|  |   |                                    |
|--|---|------------------------------------|
| Position[#1]:[title ofpositionfromFormPER-1] |   |                                    |
| Personnel information                        | Name:   | Dateofbirth:                       |
|  | Address:  | E-mail:                            |
|  |   |                                    |
|  | Professionalqualifications:   |                                    |
|  | Academicqualifications:   |                                    |
|  | Languageproficiency:[languageandlevelsofspeaking,readingandwritingskills] |                                    |
| Details                                      |   |                                    |
|  | AddressofProcuringEntity:   |                                    |
|  | Telephone:  | Contact(manager/personnelofficer): |
|  | Fax:  |                                    |
|  | Jobtitle:   | YearswithpresentProcuringEntity:   |

Summarizeprofessionalexperienceinreversechronologicalorder.Indicateparticulartechnicalandmanagerialexperience relevant to the project.

| Project                | Role                                     | Durationof involvement | Relevantexperience                             |
|------------------------|--|------------------------|--|
| [main project details] | [role and responsibilitiesonthe project] | [timeinrole]           | [describetheexperiencerelevanttothis position] |
|                        |  |                        |  |
|                        |  |                        |  |
|                        |  |                        |  |

## Declaration

I, the undersigned *[insert either "Contractor's Representative" or "Key Personnel" as applicable]*, certify that to the best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time schedule for this position as provided in the Tender:

| Commitment                          | Details  |
|-------------------------------------|--|
| Commitment to duration of contract: | <i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i> |
| Time commitment:                    | <i>[insert period (start and end dates) for which this Contractor's Representative or Key Personnel is available to work on this contract]</i> |

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during Tender evaluation;
- (b) result in my disqualification from participating in the Tender;
- (c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: *[insert name]*

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

Countersignature of authorized representative of the Tenderer:

Signature: \_\_\_\_\_

Date: (day month year): \_\_\_\_\_

## 5. TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

To establish its qualifications to perform the contract in accordance with Section III, Evaluation and Qualification Criteria the Tenderer shall provide the information requested in the corresponding Information Sheets included hereunder.

### FORM ELI-1.1

#### Tenderer Information Form

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

|  |
|--|
| Tenderer's name  |
| In case of Joint Venture (JV), name of each member:  |
| Tenderer's actual or intended country of registration:<br><i>[indicate country of Constitution]</i>  |
| Tenderer's actual or intended year of incorporation:   |
| Tenderer's legal address [in country of registration]:   |
| Tenderer's authorized representative information Name:   |
| Address: _____   |
| Telephone/Fax numbers: _____   |
| E-mail address: _____  |
| 1. Attached are copies of original documents of<br><input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6<br><input type="checkbox"/> In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5<br><input type="checkbox"/> In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing: <ul style="list-style-type: none"><li>• Legal and financial autonomy</li><li>• Operation under commercial law</li><li>1. Establishing that the Tenderer is not under the supervision of the Procuring Entity</li><li>2. Included are the organizational chart and a list of Board of Directors</li></ul> |

## FORMELI-1.2

### **Tenderer's JV Information Form** **(to be completed for each member of Tenderer's JV)**

Date: \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

|   |
|---|
| Tenderer's JV name:   |
| JV member's name:   |
| JV member's country of registration:  |
| JV member's year of constitution:   |
| JV member's legal address in country of constitution:   |
| JV member's authorized representative information<br>Name: _____<br>Address: _____<br>Telephone/Fax numbers: _____<br>E-mail address: _____   |
| 1. Attached are copies of original documents of<br><input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6.<br><input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.5.<br><br>2. Included are the organizational chart and a list of Board of Directors. |

**FORMCON-2****Historical Contract Non-Performance, Pending Litigation and Litigation History**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

**Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria**

☐ Contract non-performance did not occur since 1<sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.

☐ Contract(s) not performed since 1<sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

☐ Contract(s) withdrawn since 1<sup>st</sup> January [insert year] specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

| Year          | Non-performed portion of contract | Contract Identification   | Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent) |
|---------------|-----------------------------------|---|--|
| [insert year] | [insert amount and percentage]    | Contract Identification: [indicate complete contract name/ number, and any other identification]<br>Name of Procuring Entity: [insert full name]<br>Address of Procuring Entity: [insert street/city/country]<br>Reason(s) for non-performance: [indicate main reason(s)] | [insert amount]  |

**Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria**

☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.

☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.

| Year of dispute | Amount in dispute (currency) | Contract Identification   | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |
|-----------------|------------------------------|---|---|
|                 |                              | Contract Identification: _____<br>Name of Procuring Entity: _____<br>Address of Procuring Entity: _____<br>Matter in dispute: _____<br>Party who initiated the dispute: _____<br>Status of dispute: _____ |   |
|                 |                              | Contract Identification: _____<br>Name of Procuring Entity: _____<br>Address of Procuring Entity: _____<br>Matter in dispute: _____<br>Party who initiated the dispute: _____<br>Status of dispute: _____ |   |

**Litigation History in accordance with Section III, Evaluation and Qualification Criteria**

☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.

☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.

| Year of dispute      | Amount in dispute (currency) | Contract Identification  | Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate) |
|----------------------|------------------------------|--|---|
| <i>[insert year]</i> | <i>[insert percentage]</i>   | Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i><br>Name of Procuring Entity: <i>[insert full name]</i><br>Address of Procuring Entity: <i>[insert street/city/country]</i><br>Matter in dispute: <i>[indicate main issues in dispute]</i><br>Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i><br>Reason(s) for litigation and award decision <i>[indicate main reason(s)]</i> | <i>[insert amount]</i>  |

Included details relating to potential bid-rigging practices such as previous occasions where tenders were withdrawn, joint bids with competitors, subcontracting work to unsuccessful tenderers, etc.



### **FORMFIN-3.1:**

#### **Financial Situation and Performance**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name

ITT No. and title: \_\_\_\_\_

#### **Financial Data**

| Type of Financial information in _____ (currency)                | Historic information for previous _____ years,<br>(amount in currency, currency, exchange rate*, US Dequivalent) |       |       |       |       |
|--|--|-------|-------|-------|-------|
|  | Year1  | Year2 | Year3 | Year4 | Year5 |
| Statement of Financial Position (Information from Balance Sheet) |  |       |       |       |       |
| Total Assets (TA)  |  |       |       |       |       |
| Total Liabilities (TL)   |  |       |       |       |       |
| Total Equity/Net Worth (NW)                                      |  |       |       |       |       |
| Current Assets (CA)  |  |       |       |       |       |
| Current Liabilities (CL)   |  |       |       |       |       |
| Working Capital (WC)   |  |       |       |       |       |
| Information from Income Statement                                |  |       |       |       |       |
| Total Revenue (TR)   |  |       |       |       |       |
| Profits Before Taxes (PBT)                                       |  |       |       |       |       |
| Cash Flow Information  |  |       |       |       |       |
| Cash Flow from Operating Activities                              |  |       |       |       |       |

\*Refer to ITT 15 for the exchange rate

### Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

| No. | Source of finance | Amount (Kenya Shilling equivalent) |
|-----|-------------------|------------------------------------|
| 1   |                   |                                    |
| 2   |                   |                                    |
| 3   |                   |                                    |

### Financial documents

The Tenderer and its parties shall provide copies of financial statements for \_\_\_\_\_ years pursuant to Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements<sup>1</sup> for the \_\_\_\_\_ years required above; and complying with the requirements

---

**FORMFIN-3.2:**

**Average Annual Construction Turnover**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name

ITT No. and title: \_\_\_\_\_

|   |  | Annual turnover data (construction only) |                           |
|---|--|--|---------------------------|
| Year  | Amount<br>Currency                           | Exchange rate                            | Kenya Shilling equivalent |
| <i>[indicate year]</i>                          | <i>[insert amount and indicate currency]</i> |  |                           |
|   |  |  |                           |
|   |  |  |                           |
|   |  |  |                           |
|   |  |  |                           |
| Average<br>Annual<br>Construction<br>Turnover * |  |  |                           |

\* See Section III, Evaluation and Qualification Criteria, Sub-Factor 3.2.

**FORMFIN-3.3:****FinancialResources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria

| <b>FinancialResources</b> |                          |   |
|---------------------------|--------------------------|---|
| <b>No.</b>                | <b>Sourceoffinancing</b> | <b>Amount(KenyaShilling equivalent)</b> |
| 1                         |                          |   |
| 2                         |                          |   |
| 3                         |                          |   |
|                           |                          |   |

**FORMFIN-3.4:****CurrentContractCommitments/Works in Progress**

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

| <b>CurrentContractCommitments</b> |                         |   |  |                                  |   |
|-----------------------------------|-------------------------|---|--|----------------------------------|---|
| <b>No.</b>                        | <b>Name of Contract</b> | <b>Procuring Entity's Contact Address, Tel,</b> | <b>Value of Outstanding Work [Current Kenya Shilling/month Equivalent]</b> | <b>Estimated Completion Date</b> | <b>Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]</b> |
| 1                                 |                         |   |  |                                  |   |
| 2                                 |                         |   |  |                                  |   |
| 3                                 |                         |   |  |                                  |   |
| 4                                 |                         |   |  |                                  |   |
| 5                                 |                         |   |  |                                  |   |
|                                   |                         |   |  |                                  |   |

## **FORMEXP-4.1**

### **General Construction Experience**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name

ITT No. and title: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

| Starting Year | Ending Year | Contract Identification  | Role of Tenderer |
|---------------|-------------|--|------------------|
|               |             | Contract name: _____<br>Brief Description of the Work performed by the Tenderer: _____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ |                  |
|               |             | Contract name: _____<br>Brief Description of the Work performed by the Tenderer: _____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ |                  |
|               |             | Contract name: _____<br>Brief Description of the Work performed by the Tenderer: _____<br>Amount of contract: _____<br>Name of Procuring Entity: _____<br>Address: _____ |                  |

**FORM EXP-4.2(a)****Specific Construction and Contract Management Experience**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name

ITT No. and title: \_\_\_\_\_

|   |   |                                       |  |   |
|---|---|---------------------------------------|--|---|
| <b>Similar Contract No.</b>   | <b>Information</b>                        |                                       |  |   |
| Contract Identification   |   |                                       |  |   |
| Award date  |   |                                       |  |   |
| Completion date   |   |                                       |  |   |
| Role in Contract  | Prime Contractor <input type="checkbox"/> | Member in JV <input type="checkbox"/> | Management Contractor <input type="checkbox"/> | Sub-contractor <input type="checkbox"/> |
| Total Contract Amount   | <b>Kenya Shilling</b>                     |                                       |  |   |
| If member in a JV or sub-contractor, specify participation in total Contract amount |   |                                       |  |   |
| Procuring Entity's Name:  |   |                                       |  |   |
| Address:<br>Telephone/fax number<br>E-mail:   |   |                                       |  |   |

**5.9 FORM EXP-4.2(a)****Specific Construction and Contract Management Experience**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

JV Member's Name

ITT No. and title: \_\_\_\_\_

|   |   |                                       |  |   |
|---|---|---------------------------------------|--|---|
| <b>Similar Contract No.</b>   | <b>Information</b>                        |                                       |  |   |
| Contract Identification   |   |                                       |  |   |
| Award date  |   |                                       |  |   |
| Completion date   |   |                                       |  |   |
| Role in Contract  | Prime Contractor <input type="checkbox"/> | Member in JV <input type="checkbox"/> | Management Contractor <input type="checkbox"/> | Sub-contractor <input type="checkbox"/> |
| Total Contract Amount   | <b>Kenya Shilling</b>                     |                                       |  |   |
| If member in a JV or sub-contractor, specify participation in total Contract amount |   |                                       |  |   |
| Procuring Entity's Name:  |   |                                       |  |   |
| Address:<br>Telephone/fax number<br>E-mail:   |   |                                       |  |   |



**FORMEXP-4.2(a)(cont.)**

**Specific Construction and Contract Management Experience (cont.)**

| <b>Similar Contract No.</b>  | <b>Information</b> |
|--|--------------------|
| Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III: |                    |
| 1. Amount  |                    |
| 2. Physical size of required work items  |                    |
| 3. Complexity  |                    |
| 4. Methods/Technology  |                    |
| 5. Construction rate for key activities  |                    |
| 6. Other Characteristics   |                    |

## **FORMEXP-4.2(b)**

### **Construction Experience in Key Activities**

Tenderer's Name: \_\_\_\_\_

Date: \_\_\_\_\_

Tenderer's JV Member Name: \_\_\_\_\_

Sub-contractor's Name<sup>2</sup> (as per ITT 34): \_\_\_\_\_

ITT No. and title: \_\_\_\_\_

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: \_

| <b>Information</b>   |  |  |   |  |
|--|--|--|---|--|
| Contract Identification  |  |  |   |  |
| Award date   |  |  |   |  |
| Completion date  |  |  |   |  |
| Role in Contract   | Prime Contractor<br><input type="checkbox"/> | Member in JV<br><input type="checkbox"/> | Management Contractor<br><input type="checkbox"/> | Sub-contractor<br><input type="checkbox"/> |
| Total Contract Amount  | <b>Kenya Shilling</b>                        |  |   |  |
| Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year | Total quantity in the contract<br>(i)        | Percentage participation<br>(ii)         | Actual Quantity Performed<br>(i)x(ii)             |  |
| Year 1   |  |  |   |  |
| Year 2   |  |  |   |  |
| Year 3   |  |  |   |  |
| Year 4   |  |  |   |  |
| Procuring Entity's Name:   |  |  |   |  |
| Address:<br>Telephone/fax number<br>E-mail:  |  |  |   |  |



|  |                    |
|--|--------------------|
|  | <b>Information</b> |
| Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III: |                    |
|  |                    |
|  |                    |
|  |                    |
|  |                    |
|  |                    |

- 2. Activity No. Two
- 3. ....

## **OTHER FORMS**

### **6. FORM OF TENDER**

**(Amended and issued pursuant to PPRACIRCULAR No.02/2022)**

#### ***INSTRUCTIONS TO TENDERERS***

- i) *All italicized text is to help the Tenderer in preparing this form.*
- ii) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address. Tenderers are reminded that this is a mandatory requirement.*
- iii) *Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION and the SELF DECLARATION FORMS OF THE TENDERER as listed under (xxii) below.*

**Date of this Tender submission:**.....[insert date (as day, month and year) of Tender submission] **Tender Name and**

**Identification:**.....[insert identification] **Alternative**

**No.:**.....[insert identification No if this is a Tender for an alternative]

**To:**.....[Insert complete name of Procuring Entity]

**Date of this Tender submission:** [insert date (as day, month and year) of Tender submission] **Request for Tender No.:** [insert identification] **Name and description of Tender** [Insert as per ITT] **Alternative No.:** [insert identification No if this is a Tender for an alternative]

**To:** [insert complete name of Procuring Entity]

Dear Sirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Materials for the execution of the above named Works, we, the undersigned offer to construct and complete the Works and remedy any defects therein for the sum<sup>3</sup> of Kenya Shillings [[Amount in figures] \_\_\_\_\_ Kenya Shillings [amount in words] \_\_\_\_\_]

The above amount includes foreign currency<sup>4</sup> amount (s) of [state figure or a percentage and currency] [figures] \_\_\_\_\_ [words] \_\_\_\_\_

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Architect's notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Special Conditions of Contract.
3. We agree to adhere by this tender until \_\_\_\_\_ [Insert date], and it shall remain binding upon us and may be accepted at any time before that date.
4. We understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the undersigned, further declare that:
  - i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;

- ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
- iii) Tender-Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;
- iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completions specified in the construction schedule, the following Works: *[insert a brief description of the Works]*;
- v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*
- vi) Option 1, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*; or
- Option 2, in case of multiple lots:
- (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and
- (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;
- vii) Discounts: The discount offered and the methodology for their application are:
- viii) The discount offered are: *[Specify in detail each discount offered.]*
- ix) The exact method of calculation to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts]*;
- x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- xi) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
- xii) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a sub-contractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;
- xiii) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Engineer, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
- xiv) State-owned enterprise or institution: *[select the appropriate option and delete the other]* *[We are not a state-owned enterprise or institution]* *[We are a state-owned enterprise or institution but meet the requirements of ITT 3.8]*;
- xv) Commissions, gratuities, fees: We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: *[insert complete name of each Recipient, its full address, the reason for which each commission or gratuity was paid and the amount and currency of each such commission or gratuity]*.

| Name of Recipient | Address | Reason | Amount |
|-------------------|---------|--------|--------|
|                   |         |        |        |
|                   |         |        |        |
|                   |         |        |        |

*(If none has been paid or is to be paid, indicate "none.")*

- xvi) **Binding Contract:** We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- xvii) **Not Bound to Accept:** We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;
- xviii) **Fraud and Corruption:** We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption; and
- xix) **Collusive practices:** We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.
- xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from \_\_\_\_\_ (*specify website*) during the procurement process and the execution of any resulting contract.
- xxi) **Beneficial Ownership Information:** We commit \_\_\_\_\_ to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.
- xxii) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:
- a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are not in any conflict of interest.
  - (b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.
  - (a) Self-Declaration of the Tenderer - to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
  - (d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Further, we confirm that we have read and understood the full content and scope of fraud and corruption as informed in "**Appendix 1 - Fraud and Corruption**" attached to the Form of Tender.

**Name of the Tenderer:** \**[insert complete name of person signing the Tender]*

**Name of the person duly authorized to sign the Tender on behalf of the Tenderer:** \*\**[insert complete name of person duly authorized to sign the Tender]*

**Title of the person signing the Tender:** *[insert complete title of the person signing the Tender]*

**Signature of the person named above:** *[insert signature of person whose name and capacity are shown above]*

**Dates signed** *[insert date of signing]* day of *[insert month]*, *[insert year]*

Dates signed \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

**(a) TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE**

**Instruction to Tenderer**

Tenderer is instructed to complete the particulars required in this Form, *one form for each entity if Tenderer is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

**(a) Tenderer's details**

|    | ITEM   | DESCRIPTION  |
|----|--|--|
| 1  | Name of the Procuring Entity   |  |
| 2  | Reference Number of the Tender   |  |
| 3  | Date and Time of Tender Opening  |  |
| 4  | Name of the Tenderer   |  |
| 5  | Full Address and Contact Details of the Tenderer.  | 1. Country<br>2. City<br>3. Location<br>4. Building<br>5. Floor<br>6. Postal Address<br>7. Name and email of contact person. |
| 6  | Current Trade License Registration Number and Expiring date  |  |
| 7  | Name, country and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency  |  |
| 8  | Description of Nature of Business  |  |
| 9  | Maximum value of business which the Tenderer handles.  |  |
| 10 | State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange |  |

**General and Specific Details**

**(b) Sole Proprietor**, provide the following details.

Name in full \_\_\_\_\_ Age \_\_\_\_\_  
\_\_\_\_\_  
Nationality \_\_\_\_\_  
\_\_\_\_\_  
Country \_\_\_\_\_ of \_\_\_\_\_ Origin \_\_\_\_\_  
\_\_\_\_\_  
Citizenship \_\_\_\_\_  
\_\_\_\_\_

**(c) Partnership**, provide the following details.

|   | Names of Partners | Nationality | Citizenship | % Shares owned |
|---|-------------------|-------------|-------------|----------------|
| 1 |                   |             |             |                |
| 2 |                   |             |             |                |
| 3 |                   |             |             |                |

**(d) Registered Company**, provide the following details.

I) Private or public Company \_\_\_\_\_

ii) StatethenominalandissuedcapitaloftheCompany\_\_\_\_\_

NominalKenyaShillings(Equivalent).....

IssuedKenyaShillings(Equivalent).....

iii) GivedetailsofDirectorsasfollows.

|   | <b>NamesofDirector</b> | <b>Nationality</b> | <b>Citizenship</b> | <b>%Sharesowned</b> |
|---|------------------------|--------------------|--------------------|---------------------|
| 1 |                        |                    |                    |                     |
| 2 |                        |                    |                    |                     |
| 3 |                        |                    |                    |                     |

**(e) DISCLOSUREOFINTEREST-InterestoftheFirmintheProcuringEntity.**

i) Arethereanyperson/personsin.....(*NameofProcuringEntity*)whohas/haveaninterest orrelationshipinthisfirm?Yes/No.....

If yes, provide details as follows.

|   | <b>NamesofPerson</b> | <b>Designationinthe Procuring Entity</b> | <b>InterestorRelationshipwith Tenderer</b> |
|---|----------------------|--|--|
| 1 |                      |  |  |
| 2 |                      |  |  |
| 3 |                      |  |  |

**(iii) Conflictofinterestdisclosure**

|   | <b>TypeofConflict</b>   | <b>Disclosure YESORNO</b> | <b>IfYESprovidedetailsoftherelationshipwith Tenderer</b> |
|---|---|---------------------------|--|
| 1 | Tenderer is directly or indirectly controls,iscontrolledbyorisunder commoncontrolwithanother tenderer.  |                           |  |
| 2 | Tendererreceivesorhasreceived anydirectorindirectsubsidyfrom another tenderer.  |                           |  |
| 3 | Tenderer has the same legal representativeasanother tenderer  |                           |  |
| 4 | Tender has a relationship with another tenderer,directlyorthrough commonthirdparties,thatputsitina position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process. |                           |  |
| 5 | Any of the Tenderer's affiliates participated as a consultant in the preparationofthedesignortechnical specifications of the works that are the subject of the tender.  |                           |  |
| 6 | Tenderer wouldbeprovidinggoods, works, non-consulting services or consulting services during implementation of the contract specifiedinthisTenderDocument.  |                           |  |
| 7 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entitywhoaredirectlyorindirectly involved in the preparation of the   |                           |  |

|   | Type of Conflict   | Disclosure<br>YES OR NO | If YES provided detail of the relationship with<br>Tenderer |
|---|--|-------------------------|---|
|   | Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.  |                         |   |
| 8 | Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.                    |                         |   |
| 9 | Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract. |                         |   |

**Certification** On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of

submission. Full Name

\_\_\_\_\_ Title

or Designation \_\_\_\_\_

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Date)

**b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION**

I, the undersigned, in submitting the accompanying Letter of Tender to the \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ [Name of Procuring Entity] for:  
\_\_\_\_\_ [Name and number of tender] in  
response to the request for tenders made by: \_\_\_\_\_ [Name of Tenderer] do hereby  
make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of \_\_\_\_\_ [Name of Tenderer] that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
  - a) Has been requested to submit a Tender in response to this request for tenders;
  - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
  - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;
  - b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
  - a) prices;
  - b) methods, factors or formulas used to calculate prices;
  - c) the intention or decision to submit, or not to submit, a tender; or
  - d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph (5)(b) above;
7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
8. The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

[Name, title and signature of authorized agent of Tenderer and Date]



(c) **SELF-DECLARATION FORMS**

**FORMSD1**

**SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE  
MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.**

I, ....., of Post Office Box ..... being a resident  
of..... in the Republic of ..... do hereby make a statement as  
follows: -

1. THAT I am the Company Secretary/Chief Executive/Managing Director/Principal Officer/Director of  
..... *(insert name of the Company)* who is a Bidder in respect of **Tender No.**  
..... for..... *(insert tender title/description)* for..... *(insert name  
of the Procuring entity)* and duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement  
proceeding under Part IV of the Act.
3. THAT what is deponed to herein above is true to the best of my knowledge, information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder Official Stamp

## FORMSD2

### SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, ..... of P.O.Box ..... being a resident of  
..... in the Republic of ..... do hereby make a statement as follows:-

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of .....  
(insert name of the Company) who is a Bidder in respect of **Tender No. ....** for  
..... (insert tender title/description) for ..... (insert name of the Procuring entity) and  
duly authorized and competent to make this statement.
2. THAT the aforesaid Bidder, its servants and/or agents/subcontractors will not engage in any corrupt or fraudulent  
practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or  
employees and/or agents of ..... (insert name of the Procuring entity) which is the procuring  
entity.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any  
member of the Board, Management, Staff and/or employees and/or agents of ..... (name of the  
procuring entity).
4. THAT the aforesaid Bidder will not engage/has not engaged in any corrosive practice with other bidders  
participating in the subject tender
5. THAT what is deponed to herein above is true to the best of my knowledge in information and belief.

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder's Official Stamp

## DECLARATIONANDCOMMITMENTTOTHECODEOFETHICS

I.....(person)onbehalfof(*NameoftheBusiness/Company/Firm*).....  
.....declarethatIhavereadandfullyunderstoodthecontentsofthe  
PublicProcurement&AssetDisposalAct,2015,RegulationsandtheCodeofEthicsforpersonsparticipatinginPublic  
ProcurementandAssetDisposalandmyresponsibilitiesundertheCode.

IdoherebycommittoabidebytheprovisionsoftheCodeofEthicsforpersonsparticipatinginPublicProcurementand  
AssetDisposal.

NameofAuthorizedsignatory.....

Sign.....

Position.....

Office address..... Telephone.....E-  
mail.....

Nameof theFirm/Company.....

Date.....

**(CompanySeal/RubberStampwhereapplicable)**

Witness

Name.....

Sign.....

Date.....

**(d) APPENDIX 1- FRAUD AND CORRUPTION**

*(Appendix 1 shall not be modified)*

**1. Purpose**

The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

**2. Requirements**

The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.

Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:

- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflict of interest in any procurement or asset disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the persons shall be:-
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
  - a) Shall not take part in the procurement proceedings;
  - b) shall not, after a procurement contract has been entered into, take part in any decision relating to the procurement or contract; and
  - c) shall not be a subcontractor for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

**3. In compliance with Kenya's laws, regulations and policies mentioned above, the Procuring Entity:**

a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:

- i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the action of another party;
- ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
- iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the action of another party; "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the action of a party;
- iv) "obstructive practice" is:
  - Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
  - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3e. below.

b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at an artificial non-competitive level and to deprive the procuring entity of the benefits of free and open competition.

- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring (i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect<sup>2</sup> all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

**FORM OF TENDER SECURITY - [Option 1 – Demand Bank Guarantee]**

**Beneficiary:** \_\_\_\_\_

**Request for Tenders No:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**TENDER GUARANTEE No.:** \_\_\_\_\_

**Guarantor:** \_\_\_\_\_

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (\_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension thereto provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

\_\_\_\_\_  
[signature(s)]

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

**FORMAT OF TENDER SECURITY [Option 2 – Insurance Guarantee]**

**TENDER GUARANTEE No.:** \_\_\_\_\_

1. Whereas ..... [Name of the tenderer] (hereinafter called “the tenderer”) has submitted its tender dated ..... [Date of submission of tender] for the ..... [Name and/or description of the tender] (hereinafter called “the Tender”) for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ (“the ITT”).
2. KNOW ALL PEOPLE by these presents that WE ..... of ..... [Name of Insurance Company] having our registered office at ..... (hereinafter called “the Guarantor”), are bound unto ..... [Name of Procuring Entity] (hereinafter called “the Procuring Entity”) in the sum of ..... (Currency and guarantee amount) for which payment well and truly to be made to the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.  
  
Sealed with the Common Seal of the said Guarantor this day of \_\_\_\_\_ 20.
3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
  - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
  - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the Procuring Entity's Tendering document.

then the guarantee undertake to immediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreements signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the notification to the Applicant of the result of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period. Beneficiary's  
days after the
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

\_\_\_\_\_  
[Date]  
\_\_\_\_\_  
[Witness]

\_\_\_\_\_  
[Signature of the Guarantor]  
\_\_\_\_\_  
[Seal]

***Note: All italicized text is for use in preparing this form and shall be deleted from the final product.***

## FORM OF TENDER-SECURING DECLARATION

*[The Bidders shall complete this Form in accordance with the instructions indicated]*

Date..... *[insert date (as day, month and year) of Tender Submission]*

Tender No..... *[insert number of tendering process]*

To:..... *[insert complete name of Purchaser]* I/We, the undersigned, declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.
2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaser for the period of time of *[insert number of months or years]* starting on *[insert date]*, if we are in breach of our obligation(s) under the bid conditions, because we – (a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.
3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
  - a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
  - b) thirty days after the expiration of our Tender.
4. I/We understand that if I am/we are/in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constituted at the time of bidding, the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:.....

Capacity/title (director or partner or sole proprietor, etc.).....

Name:.....

Duly authorized to sign the bid for and on behalf of: *[insert complete name of Tenderer]*

Dated on..... day of.....,..... *[Insert date of signing]* Seal or stamp



## Appendix to Tender

### Schedule of Currency requirements

Summary of currencies of the Tender for \_\_\_\_\_ *[insert name of Section of the Works]*

| <i>Name of currency</i>                              | <i>Amounts payable</i>                         |
|--|--|
| Local currency: _____                                |  |
| Foreign currency #1: _____                           |  |
| Foreign currency #2: _____                           |  |
| Foreign currency #3: _____                           |  |
| Provisional sum expressed in local currency<br>_____ | <i>[To be entered by the Procuring Entity]</i> |

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## **PARTII -WORKSREQUIREMENTS**

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## SECTION V-BILLS OF QUANTITIES

### A. Notes and Sample Items for Preparing a Bill of Quantities

1. These Notes for Preparing a Bill of Quantities are intended only as information for the Procuring Entity or the person drafting the Tender Documents. Priced Bills of Quantities shall be part and parcel of the Contract Documents.
2. The objectives and purpose of the Bills of Quantities are to provide sufficient information on the specifications, descriptions and quantities of Work to be performed to enable tenderers to prepare efficiently and accurately and when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Work executed. In order to attain these objectives, Work should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in different locations or in other circumstances which may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and clear as possible.
3. The Bill of Quantities should be divided generally into the following sections:
  - a) Preambles
  - b) Preliminary items
  - c) Work Items
  - c) Daywork Schedule; and
  - d) Provisional items
  - e) Summary.

### 4. NOTES ON PREPARING PREAMBLES

The Preambles should include only those items that constitute the cost of the works but would not be priced separately as they are expected to be included in the unit prices. Care should be taken to ensure that these items are not a repetition of the conditions of contract. The Preamble should indicate the inclusiveness of the unit prices and should state the methods of measurement that have been adopted in the preparation of the Bill of Quantities, that are to be used for the measurement of any part of the Works. The units of measurement and abbreviations should be defined and any mandatory national units defined and described. The methods of and procedure for re-measurements should be described in the Preambles.

**Units of Measurement**-The following units of measurement and abbreviations shall be used, unless other national units are mandatory in Kenya.

| Unit        | Abbreviation          | Unit              | Abbreviation             |
|-------------|-----------------------|-------------------|--------------------------|
| cubic meter | m <sup>3</sup> or cum | millimetre        | mm                       |
| hectare     | ha                    | month             | mon                      |
| hour        | hr                    | number            | nr                       |
| kilogram    | kg                    | square meter      | m <sup>2</sup> or sq m   |
| lump sum    | ls                    | square millimeter | mm <sup>2</sup> or sq mm |
| meter       | m                     | week              | wk                       |
| metric ton  | t                     |                   |                          |

The Bill of Quantities shall be read in conjunction with the Instructions to Tenderers, General and Special Conditions of Contract, Technical Specifications, and Drawings.

The quantities given in the Bills of Quantities are estimated and partly provisional and are given to provide a common basis for tendering. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Architect and valued at the rates and prices tendered in the priced

Bills of Quantities, where applicable, and otherwise at such rates and prices as the Architect may fix within the terms of the Contract.

The rates and prices tendered in the priced Bill of Quantities shall, except insofar as it is otherwise provided under the Contract, include all Constructional Plant, labour, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.

A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.

The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.

General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bills of Quantities. Reference to the relevant sections of the Contract documents shall be made before entering prices against each item in the priced Bills of Quantities.

Provisional Sums and contingency sums included and so designated in the Bills of Quantities shall be expended in whole or in part at the direction and discretion of the Architect in accordance with Sub-Clause 13.5 and Clause 13.6 of the General Conditions of contract.

In preparing the Bills of Quantities, notes should be removed as they are intended to guide the person preparing the Tender Documents. The Contractor must allow in his rates for any costs associated with and complying with the requirements in the Preambles.

Should a tenderer/contractor not price any item in any section of the Bills of Quantities including Preliminary items, it will be assumed that he/she has spread its cost in other areas that he/she will have priced. Therefore, the item or items will be executed without any additional costs or without being treated like variations.

## **5. NOTES ON PREPARING BILLS OF QUANTITIES**

The Preliminary Items should be limited to tangible items that should be priced by the tenderer, are identifiable and can be priced separately and included in the interim valuations precisely. Such items may include such items as site office, notice boards, and other temporary works, otherwise items such as security for the Works which are primarily part of the Contractor's obligation should be included in the Contractor's rates.

The work items in the Bills of Quantities should be grouped into sections to distinguish between those parts of the Works which by nature, location, access, timing, or any other special characteristics may give rise to different methods of construction, or phasing of the Works, or considerations of cost. Such groups could be ground excavations, structures, external works, services, etc. General items common to all parts of the Works may be grouped as a separate section in the Bill of Quantities.

Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowances should be made for bulking, shrinkage or waste. Quantities should be rounded up where appropriate. Where the measured items are deemed not to be exact because of the likelihood that the scope can change during the execution of the works, such items could be subject to re-measurement, the word “**provisional**” should be used to identify such cases. Where whole sections of the work items fall in this class, for example foundations, they should be labelled “Provisional Quantities” or “Provisional Items” so that the Tenderer/Contractor is advised up front that such items are subject to re-measurement to be done before such work is covered-up. All items that have not been measured and therefore not subject to tender pricing should be listed in the Bill of Quantities as **Provisional Sums** for particular item or class of Work, which may be subject to a nominated subcontractor or separate measurements at a later date during the execution of the works. For example, if it is deemed not possible to measure electrical works before going to tender because detail designs are not ready, a provisional sum can be allowed in the Bill of Quantities for “Installation of Electrical Works” to be executed later when actual design details are completed. To the extent not covered above, there should be in the Bill of Quantities a general provision for physical and financial contingencies made as a “Provisional Sum for

Contingencies” and “Provisional Sum for Fluctuations”. The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

Provisional sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialized Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name(s) of the specialized firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only provisional sum to cover specialized Works by statutory authorities should be included in the Bills of Quantities.

A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Procuring Entity of the realism of rates quoted by the tenderers, the Daywork Schedule should normally comprise:

- i) A list of the various classes of labor, and materials for which basic.
- ii) Daywork rates and prices for various categories of labor are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Daywork basis.
- iii) A percentage to be entered by the tenderer against each basic Daywork item.
- iv) Subtotal amount for labor, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

The Summary should contain a tabulation of these separate parts of the Bill of Quantities carried forward, with provisional sums for Daywork, Provisional sums and Contingencies, and provision for Total Costing. The last lines should allow for tenderer to indicate any discounts before arriving at a total cost carried forward to the Form of Tender.

## **BILLS OF QUANTITIES**

### **(a) Preambles**

1. The method of measurement of completed work for payment shall be in accordance with *[insert the name of a standard reference guide, or full details of the methods to be used]*.
2. The Site is situated in *(provide full description where the site is situated, coordinates from the nearest known landmark like a town and its size)* \_\_\_\_\_ It is approximately \_\_\_\_\_ Kilometers from Nairobi. Access to the site shall be through \_\_\_\_\_,  
  
Which is an existing public road. Any damage caused to the surfaces of this road shall be made good at the Contractor's expense. The Contractor shall visit the site and acquaint itself with its nature and position, the nature of the ground, substrata and other local conditions, positions of existing power, water and other services, access roads or any other limitations that might affect his cost or progress. No claim for extras shall be considered on account of lack of knowledge in this respect.
3. The Contractor shall obtain the Architect's approval on the siting of all temporary buildings, spoil heaps, temporary access path, and storage of materials. The Contractor shall also obtain the Architect approval and direction regarding the use of any materials found on the Site.
4. The drawings used in the preparation of these Bills of Quantities can be inspected at the offices of the Procuring Entity or Procuring Entity's Representative during normal working hours. Two sets of the Working Drawings shall be provided to the contractor but additional copies shall be provided at a cost to be determined by the Engineer.
5. The Contractor shall allow for the payment of all bank charges in connection with the procurement of Bank Guarantees and stamp charges in connection with this contract Agreement.
6. The Contractor shall carry out the various sections of the Works in such an order as the Architect may direct. The Procuring Entity reserves the right to occupy the Works by sections on completion provided that such occupation is considered to be both practical and reasonable and will not interfere with the Works. The Contractor shall allow any costs associated with such occupation.
7. The main Contractor will be fully responsible for paying his Sub-Contractor but the Procuring Entity reserves the right in very exceptional circumstances to make such payments direct in the interests of the project where the completion thereof might be jeopardized by any dispute or vicariousness between the Contractor and the Sub-Contractor involve.
8. The Contractor shall complete and deliver the Works in the period inserted in the Form of Tender as his time for completion of the Works from the date for Possession, to be agreed with the Engineer. The Contract Period is presumed to have been calculated making due allowance for seasonal inclement weather conditions. No claim for extension of time due to the normal inclement weather for this area shall be entertained.
9. The Contractor shall, upon receiving instruction to proceed with the Works, draw up a Programme and Progress Chart setting out the order in which the Works are to be carried out, with the appropriated dates thereof. This Chart shall be agreed with the Architect and no deviation from the orders set out in it will be permitted without the written consent of the Engineer. The Contractor will be responsible for arranging the above programme with all his sub-Contractors and Specialties. The Contractor shall allow in his rates for carrying out this exercise, and for updating it as required.
10. The Contractor shall submit to the Architect on the first day of each week or such longer period as the Architect from time to time direct, a Progress Report and any information for the proceeding period, showing the progress during the period and the up-to-date cumulative progress on all important items of each section or portion of the Works.
11. The Contractor shall arrange for photographs of the Site to be taken by a professional photographer approved by the Engineer. The Photographer shall provide a record of the Site and adjacent areas prior to the commencement of the Works and shall cover such portion of the works in progress and completion as the Architect shall direct. All prints shall be full plate size, unmounted, and marked on the reverse side with the date of exposure, identification reference and brief description. The copyright of all photographs shall be vested in the Procuring Entity. The negatives and four prints from each negative shall be delivered to the Architect within two weeks of exposure.

12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but whenever possible dimensions are to be taken on the Site or from the buildings. Before any work is commenced by Sub-Contractors or Specialist Firms, dimensions must be checked on the site comparable dimensions shown on the drawings. The Contractor shall be responsible for the accuracy of such dimensions.
13. Prior to commencement of any work the Contractor is to ascertain from the relevant Authorities the exact position, depth and level of all existing electric cables, water pipes or other services in the area and he shall make whatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Architect and the relevant Authority and shall be made good to their satisfaction at the Contractor's expense. Where appropriate the Contractor shall open up the ground in advance of the main work by hand digging if necessary, to locate precisely the position and detail of the services which are likely to affect his operations.
14. The Contractor shall include in his prices for the transport of materials, workmen, etc., to and from the site of the proposed works, at such hours and by such route as are permitted by the Authorities.
15. The Contractor will be required to make good, at his own expense and damage he may cause to the present road surface and pavements within or beyond the boundary of the Site, during the period of the works. All existing paths, storm water channels, etc., that may be destroyed or damaged during the progress of the Works shall be reinstated by the Contractor to the satisfaction of the Engineer.
16. The Contractor is to allow for complying with all instructions and regulations of the Police Authorities.
17. All water shall be fresh, clean and pure, free from earthly, vegetable or organic matter, acid or alkaline substance in solution. The Contractor shall provide at his own risk and cost all water for use in connection with the Works, (including works of sub-contractors). If need be, he shall make arrangements with the Local Water Authority for the installation of a separate meter for all water used by him throughout the Contract and pay all cost and fees in connection therewith. He shall also provide temporary storage tanks and tubing, etc., as may be necessary, and clear away at completion.
18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub – Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion. The Contractor shall pay all fees and obtain all permits in connection therewith.
19. The Contractor shall constantly keep on the Works a Literate English-speaking Agent or Representative, competent and experienced in the kind of work involved, who shall give his whole time to the superintendence of the works. (Including works of sub-contractors). Such Agent or Representative shall receive on behalf of the Contractor directions and instruction from the Engineer, and such directions and instructions shall be deemed to be given to the contractor in accordance with the Conditions of Contract. The Agent shall not be replaced without the specific approval of the Engineer. the
20. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site are protected at all times. In particular, there shall be the proper provision of guard-rails to scaffolding, protection against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of dangerous rubbish. The Architect shall be empowered to suspend work on site should it be considered this condition is not being observed and no claim arising from such suspension will be allowed. The
21. The areas available to the Contractor for work yards, offices and other facilities shall be directed by the Architect and any existing features to remain shall be protected from damage throughout the Contract Period and handed back in good condition when they are vacated at the end of the Contract. If additional areas are required, the contractor shall source them at own cost.
22. The Contractor shall give the Architect reasonable notice of the intention to set out or take levels for any part of the Works so that arrangements may be made for checking the work. The accuracy of setting out and leveling shall be within the tolerances specified in the Specifications or on the Drawings. The checking of setting out or leveling by the Architect shall not relieve the Contractor of his duties or responsibilities under the Contract.
23. The Contractor must take steps necessary to safeguard and shall be held fully responsible for any damage caused to existing and adjacent property, including buildings that are not a subject of demolition. He shall make good at his own cost damage to persons and property caused thereon, and he shall indemnify the Procuring Entity against any loss or claim that may arise.

24. The Contractor shall take such steps and exercise such care and diligence as to minimize nuisance arising from dust, noise or any other cause to the occupiers of the existing and adjacent property. He must provide such temporary and special screens and tarpaulins or gummy bags, hoarding, barriers, warning signs etc. as he considers necessary and sufficient for the protection of the existing and adjacent property and or prevention of nuisance etc. as directed by Engineer.
25. The Contractor's attention is drawn to the standards levy order which was amended on 15<sup>th</sup> October 1998. Legal notice No.154 of 1998. The Contractor is required to pay a monthly level of 0.2% of his factory price of construction works with effect from January 1999. Tenderers shall allow for this in the build-up of his rates.
26. The Contractor shall provide temporary sheds, offices, mess rooms, sanitary, accommodation and other temporary buildings for the use of the contractor and sub-contractors, including lighting, furniture, equipment and attendance.
27. Contractor shall provide/build labor camps as are to be agreed with the Engineer. Labor camps shall be complete with sanitary accommodation and fencing gates.
28. The Contractor must provide the necessary toilet facilities to the requirement and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees during the period of the Works and remove when no longer required.
29. The Contractor shall provide at his own risk and cost all watching and lighting as necessary to safeguard the Works, Plant and materials against damage and theft.
30. The Contractor shall provide all necessary hoists, tackle, plant, equipment, vehicles, tools and appliances of every description for the due and satisfactory completion of the Works and shall remove the same on completion. All such plant, tools and equipment shall comply with all regulations in force throughout the period of the Contract and shall be altered or adopted during the Contract period as may be necessary to comply with any amendments in or addition to such regulations.
31. Provide, erect and maintain all necessary scaffolding, sufficiently strong and efficient for the due performance of the works, including Sub-Contract Works, provide special scaffolding as required by Sub-Contractors, alter and adopt all scaffolding as and when required during the Works, and remove on completion. No scaffolding is measured hereinafter and the Contractor must allow in his rates for this.
32. The Contractor shall take all necessary precautions such as temporary fencing, hoarding, fans, planked footways, guard-rails, gantries, screen, etc., for the safe custody of the Works, materials and public protection and adjacent properties.
33. Cover up and protect from damage, including damage from inclement weather, all finished work and unfixed materials, including that of Sub-Contractors, etc., to the satisfaction of the Architect until the completion of the Contract.
34. The Contractor shall, after completion of the works, at his own expense, remove and clear away all surplus excavated demolition materials, plant, rubbish and unused materials and shall leave the whole of the Site and Works in a clean and tidy state to the satisfaction of the Engineer, sheds, camps, etc. Particular care shall be taken to leave clean all floors and windows and to remove all paint and cement, all rubbish and dirt as it accumulates. The Contractor is to find his own dump and shall pay all charges in connection therewith.
35. Concrete test cubes shall be prepared in a set of three, as described including testing fees, labor and materials, making molds, transport, handling, etc. Allow in your rates for making at least four cubes on each occasion, from different batches; the concrete being taken from the point of deposit.
36. The Contractor shall furnish at the earliest possible opportunity before work commences, and at his own cost, any samples of materials and workmanship that may be called for by the Architect for the approval or rejection, and any further samples in the case of rejection, until such samples are approved by the Engineer. Such samples, when approved, shall be the minimum standard for the work to which they apply. The procedure for submitting samples of materials for testing or approval and the method of marking for identification shall be as laid down by the Engineer. The Contractor shall allow in his Tender for such samples and tests, including those in connection with his Sub-Contractors work.
37. The Contractor's attention is drawn to the Finance Bill of the year 2000/2001 on withholding tax on contractual payment section 35(7)(i)(ii) which became effective on 1<sup>st</sup> July 2000. A 3% withholding tax will be applicable to all interim payments exceeding Kshs... for work done in respect of building or civil works. The



contractors shall allow for any costs arising resulting therefrom in the build-up of rates.

38. Blasting will only be allowed with the express permission of the Architect in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost, in accordance with any Government regulations in force for the time being, and any special regulations laid down by the Architect governing the use and storage of explosives.
39. The National Construction Authority is a state corporation established under the national construction authority Act No. 14 of 2011. The broad Mandate of the Authority is to oversee the construction industry and coordinate its development. The National Construction Authority Regulations 2014 with an effective date of 6<sup>th</sup> June 2014, regulation 25, - Allow 0.5% of the tender sum/contract sum for construction levy.
40. The Contractor's attention is drawn to Finance Bill of 1993 where VAT was introduced in all contracts for construction services. The tenderer is also drawn to VAT Act Cap 476 clause 19(9). The tenderer must allow for VAT 1.19 as instructed elsewhere.
41. The contractor shall allow and pay for all insurance to cover risks and indemnities required in Items 17 and 18 of the Conditions of contract and also specified in the Special Conditions of Contract.

**BILL NO.1-PRELIMINARY ITEMS**

| ITEM<br>No. | DESCRIPTION  | AMOUNT |
|-------------|--|--------|
| 1.          | <p>The Contractor shall provide, or erect and maintain an approved lock-up office for the sole use of the Architect and his own site staff. The office, which will have a total floor area of not less than----- square metres, will be divided into two separate interconnected offices. Services to be provided shall include a telephone, water sanitary and electrical supply and drainage. The offices shall be supplied with furniture and equipment that shall include:</p> <p>4 No. desks with chairs; 1 No. large table with sufficient number of chairs; drawing table along the full length of one side with plan drawers and drawing stools; 4 No. waste paper baskets; sufficient number of pinboards; and any additional furniture and fittings as may reasonably be required during the Contract period. The Contractor shall provide the Architect and site staff with computer sets or laptops, printers and telephones all that are necessary for project use.</p> <p>The office furniture and equipment shall all be to the approval of the Engineer. The Contractor shall also provide all labor, equipment and consumable stores equipment throughout the currency of the contract.</p> |        |
| 2           | [OPTIONAL] Contractor shall provide a house for Engineers site agent, which shall be one bedroomed temporary house with a sitting room, toilet, bathroom and a kitchen complete with electrical and sanitary installations and provide maintenance and paying of bills of water and electricity up to and including end of the contract period.  |        |
| 3           | Provide a signboard not less than _____ square meters in size of a design type, and with lettering and coloring and in a position approved by the Engineer. The signboard shall be for the display of the Main Contractor's name and the names of all his Sub-Contractors, with the Procuring Entity's name painted thereon. All Consultants' names be printed in letters not exceeding 50 mm high. No other signboard or advertising shall be allowed. The signboard shall be fully maintained during the Contract Period and shall be pulled down and removed at the end of the contract.  |        |
| 4           | Add others (if any)  |        |
| 5           |  |        |
| 6           |  |        |
|             | <b>TOTAL CARRIED TO GRAND SUMMARY</b>  |        |

**BILLNO.2:WORKITEMS**

(organizedappropriatelyintoworksections,suchasfoundations,walls/structure,finishes,doorsandwindows, mechanical installations. etc.

**BillNo2**-(NameofSectione.g. Foundations).

| <i>Itemno.</i>                                    | <i>Description</i> | <i>Unit</i> | <i>Quantity</i> | <i>Rate</i> | <i>Amount</i> |
|---|--------------------|-------------|-----------------|-------------|---------------|
|   |                    |             |                 |             |               |
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|   |                    |             |                 |             |               |
| TotalforBillNo.2(carriedforwardtoSummary,p._____) |                    |             |                 |             |               |

**Bill No. 3: Schedule of Daywork Rates-Labor**

| Item no. | Description  | Unit | Nominal quantity | Rate | Amount |
|----------|--|------|------------------|------|--------|
|          |  |      |                  |      |        |
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|          |  |      |                  |      |        |
|          |  |      |                  |      |        |
|          | Subtotal   |      |                  |      |        |
|          | Allow ____ percent <sup>a</sup> of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 3 (b) above. |      |                  |      |        |
|          | Total for Daywork (carried forward to Daywork Summary, p. ____)  |      |                  |      |        |

a. To be entered by the Tenderer.

**BillNo.4:ScheduleofDayworkRates-Materials**

| Itemno. | Description   | Unit | Nominal quantity | Rate | Extended amount |
|---------|---|------|------------------|------|-----------------|
|         |   |      |                  |      |                 |
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|         |   |      |                  |      |                 |
|         |   |      |                  |      |                 |
|         | Subtotal  |      |                  |      |                 |
|         | Allow ____percenta.ofSubtotalforContractor'soverhead, profit, etc., in accordance with paragraph 4 (b) above. |      |                  |      |                 |
|         | TotalforDaywork:Materials(carriedforwardtoDayworkSummary,p. _____)  |      |                  |      |                 |

a. To be entered by the Tenderer.

**BillNo.5:ScheduleofDayworkRates-Contractor'sEquipment**

| <i>Item no.</i>   | <i>Description</i>   | <i>Nominalquantity<br/>(hours)</i> | <i>Basichourly<br/>rental rate</i> | <i>Extended<br/>amount</i> |
|---|--|------------------------------------|------------------------------------|----------------------------|
|   |  |                                    |                                    |                            |
|   |  |                                    |                                    |                            |
|   |  |                                    |                                    |                            |
|   |  |                                    |                                    |                            |
|   |  |                                    |                                    |                            |
|   |  |                                    |                                    |                            |
|   |  |                                    |                                    |                            |
|   | Allow _ percent <sup>a</sup> ofSubtotalfor Contractor'soverhead,profit,etc.,in accordance withparagraph5above. |                                    |                                    |                            |
| TotalforDaywork:Contractor'sEquipment(carriedforwardtoDayworkSummary,p. __) |  |                                    |                                    |                            |

a. To be entered by the Tenderer.

**BillNo.6:Daywork Summary**

|   | <i>Amount<sup>a</sup></i> | <i>%<br/>Foreign</i> | <i>Currency</i> |
|---|---------------------------|----------------------|-----------------|
| 1.TotalforDaywork:Labor   |                           |                      |                 |
| 2.TotalforDaywork:Materials   |                           |                      |                 |
| 3.TotalforDaywork:Contractor'sEquipment   |                           |                      |                 |
| TotalforDaywork(ProvisionalSum)(carriedforwardto Summary of Bills of Quantities, p. ____) |                           |                      |                 |

**BillNo.7:ProvisionalSums**

| <i>Billno.</i>  | <i>Itemno.</i> | <i>Description</i> | <i>Amount</i> |
|---|----------------|--------------------|---------------|
| 1   |                |                    |               |
| 2   |                |                    |               |
| 3   |                |                    |               |
| 4   |                |                    |               |
| etc.  |                |                    |               |
| TotalforSpecifiedProvisionalSums(carriedforwardtoGrandSummary |                |                    |               |

**GRANDSUMMARY**

| <b>SUMMARYITEMS</b>                                  | <i>Page</i> | <i>Amount</i> |
|--|-------------|---------------|
| BillNo.1:PreliminaryItems                            |             |               |
| BillNo.2:WorkItems                                   |             |               |
| BillNo3:DayworkSummary                               |             |               |
| BillNo4:ProvisionalSums                              |             |               |
| SubtotalofBillsNo1-4                                 |             |               |
| AllowforanyDiscounts <sup>i</sup>                    |             |               |
| <b>TOTALTENDERPRICE</b> CarriedforwardtoFormofTender |             |               |

(i) If a percentage used, it should be indicated on which Bill No. items but on Bill No. 4—Provisional Sums.

## SECTION VI-SPECIFICATIONS

### Notes for preparing Specifications

1. Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the Procuring Entity and ensure responsiveness of tenderers. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.
2. Specifications from previous similar projects are useful and may not be necessary to re-write specifications for every Works Contract.
3. There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as highways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or additions should then adapt the General Specifications to the particular Works.
4. Care must be taken in drafting Specifications to ensure they are not restrictive. In the Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also be used.
5. The Procuring Entity should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.
6. The Procuring Entity should provide a description of these selected parts of the Works with appropriate reference to Drawings, Specifications, Bills of Materials, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.
7. Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Procuring Entity on its own merits and independently of whether the tenderer has priced the item as described in the Procuring Entity's design included with the tender documents.

## SECTION VII-DRAWINGS

**Note** A list of drawings should be inserted here. The actual drawings including Site plans should be annexed in a separate booklet.

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## **PARTIII-THECONDITIONSOF CONTRACT AND CONTRACT**

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## SECTION VIII-GENERAL CONDITIONS OF CONTRACT (GCC)

### General Conditions of Contract

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#### 1. GENERAL PROVISIONS

##### Definitions

In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated below. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

**“Accepted Contract Amount”** means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.

**“Base Date”** means a date 30 day prior to the submission of tenders.

**“Bill of Quantities”** means the priced and completed Bill of Quantities forming part of the tender.

**“Completion Date”** means the date of completion of the Works as certified by the Engineer.

**“Contract Price”** means the price defined in the contract and thereafter as adjusted in accordance with the provisions of the Contract.

**“Contract”** means the agreement entered into between the Procuring Entity and the Contractor as recorded in the Agreement Form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute, complete, and maintain the Works.

**“Contractor's Documents”** means the calculations, computer programs and other software, progress reports, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.

**“Contractor's Equipment”** means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Procuring Entity's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

**“Contractor's Personnel”** means the Contractor's Representative and all personnel whom the Contractor utilizes on Site, whom may include the staff, labor and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

**“Contractor's Representative”** means the person named by the Contractor in the Contractor appointed from time to time by the Contractor who acts on behalf of the Contractor.

**“Contractor”** means the person(s) named as contractor in the Form of Tender accepted by the Procuring Entity.

**“Cost”** means expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.

**“Day”** means a calendar day and **“year”** means 365 days.

**“Dayworks”** means Work in put subject to payment on a time basis for labour and the associated materials and plant.

**“Defect”** means any part of the Works not completed in accordance with the Contract.

**“Defects Liability Certificate”** means the certificate issued by Architect upon correction of defects by the Contractor.

**“Defects Liability Period”** means the period named in the Special Conditions of Contract and calculated from the Completion Date, within which the contractor is liable for any defects that may develop in the handed over works.

**“Defects Notification Period”** means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over the days stated in the Special Conditions of Contract.

**“Drawings”** means the drawings of the Works, as included in the Contract, and any additional and modified drawings issued by (or on behalf of) the Procuring Entity in accordance with the Contract.

**“Final Payment Certificate”** means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].

**“Final Statement”** means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].

**“Force Majeure”** is defined in Clause 19 [Force Majeure].

**“Foreign Currency”** means a currency of another country (not Kenya) in which part (or all) of the Contract Price is payable, but not the Local Currency.

**“Goods”** means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

**“Interim Payment Certificate”** means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.

**“Laws”** means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted public authority.

**“Letter of Acceptance”** means the letter of formal acceptance of a tender, signed by Procuring Entity, including any annexed memoranda comprising agreements between and signed by both Parties.

**“Local Currency”** means the currency of Kenya.

**“Materials”** means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.

**“Notice of Dissatisfaction”** means the notice given by either Party to the other under Sub-Clause 20.3 indicating its dissatisfaction and intention to commence arbitration.

**“Special Conditions of Contract”** means the pages completed by the Procuring Entity entitled Special Conditions of Contract which constitute Part A of the Special Conditions.

**“Party”** means the Procuring Entity or the Contractor, as the context requires.

**“Payment Certificate”** means a payment certificate issued under Clause 14 [Contract Price and Payment].

**“Performance Certificate”** means the certificate issued under Sub-Clause 11.9 [Performance Certificate].

**“Performance Security”** means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].

**“Permanent Works”** means the permanent works to be executed by the Contractor under the Contract.

**“Plant”** means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Procuring Entity and relating to the construction or operation of the Works.

**“Procuring Entity's Equipment”** means the apparatus, machinery and vehicles (if any) made available by the

Procuring Entity for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Procuring Entity.

**“Procuring Entity's Personnel”** means the Engineer, the Engineer, the assistants and all other staff, labor and other employees of the Architect and of the Procuring Entity; and any other personnel notified to the Contractor, by the Procuring Entity or the Engineer, as Procuring Entity's Personnel.

**“Procuring Entity”** means the Entity named in the Special Conditions of Contract.

**“Engineer”** is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Registration Act Cap 530.

**“Engineer”** means the person appointed by the Procuring Entity to act as the Architect for the purposes of the Contract and named in the Special Conditions of Contract, or other person appointed from time to time by the Procuring Entity and notified to the Contractor

**“Provisional Sum”** means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].

**“Retention Money”** means the accumulated retention moneys which the Procuring Entity retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].

**“Schedules”** means the document(s) entitled schedules, completed by the Contractor and submitted with the Form of Tender, as included in the Contract.

**“Section”** means a part of the Works specified in the Special Conditions of Contract as a Section (if any)

**“Site Investigation Reports”** are those reports that may be included in the tendering documents which are factual and interpretative about the surface and sub-surface conditions at the Site.

**“Site”** means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

**“Specification”** means the document entitled specification, as included in the Contract, and any additions and modifications to the specification in accordance with the Contract. Such document specifies the Works.

**“Start Date” or “Commencement Date”** is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with the Site possession date(s).

**“Statement”** means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.

**“Subcontractor”** means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works.

**“Taking-Over Certificate”** means a certificate issued under Clause 10 [Procuring Entity's Taking Over].

**“Temporary Works”** means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

**“Temporary works”** means works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.

**“Tender”** means the Form of Tender and all other documents which the Contractor submitted with the Form of Tender, as included in the Contract.

**“Tests after Completion”** means the tests (if any) which are specified in the Contract and which are carried out in

accordance with the Specification after the Works or a Section (as the case may be) are taken over by the Procuring Entity.

**“Test on Completion”** means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Test on Completion] before the Works or a Section (as the case may be) are taken over by the Procuring Entity.

**“Time for Completion”** means the time for completing the Works or a Section (as the case may be) as stated in the Special Conditions of Contract (with any extension calculated from the Commencement Date).

**“Unforeseeable”** means not reasonably foreseeable by an experienced contractor by the Base Date.

**“Variation”** means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].

**“Works”** means the items the Procuring Entity requires the Contractor to undertake as defined in the Appendix to Conditions of Contract. **“Works”** may also mean the Permanent Works and the Temporary Works, or either of them as appropriate.

### **Interpretation**

In the Contract, except where the context requires otherwise:

- a) Words indicating one gender include all genders;
- b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

### **Communications**

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:

- a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Special Conditions of Contract; and
- b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Special Conditions of Contract. However:
  - i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
  - ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party or the Engineer, a copy shall be sent to the Architect or the other Party, as the case may be.

### **Law and Language**

The Contract shall be governed by the law of **Kenya**.

The ruling language of the Contract shall be **English**.

### **Priority of Documents**

The documents forming the Contract are to be taken as mutually explanatory of one another. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) TheContractAgreement,
- b) TheLetterofAcceptance,
- c) TheSpecialConditions–PartA,
- d) theSpecialConditions–PartB
- e) theGeneralConditionsofContract
- f) theFormofTender,
- g) theSpecificationsandBillsofQuantities
- h) theDrawings,and
- i) theSchedulesandanyotherdocumentsformingpartoftheContract.

Ifanambiguityordiscrepancyisfoundinthedocuments,theArchitectshallissueanynecessaryclarificationor instruction.

### **ContractAgreement**

ThePartiesshallenter intoaContractAgreementwithin14daysafter theContractorreceivestheContract Agreement,unlesstheSpecialConditionsestablishotherwise.TheContractAgreementshallbebaseduponthe formannexedtotheSpecialConditions.Thecostsofstampdutiesandsimilarcharges(ifany)imposedbylawin connectionwithentryintotheContractAgreementshallbebornebytheProcuringEntity.

### **Assignment**

TheContractorshallnotassignthewholeoranypartoftheContractoranybenefitorinterestinorunderthe Contract. However, the contractor:

- a) MayassignthewholeoranypartwiththepriorconsentoftheProcuringEntity,and
- b) may,assecurityinfavorofabankorfinancialinstitution,assignitsrighttomoneysdue,ortobecomedue, undertheContract.

### **CareandSupplyofDocuments**

TheSpecificationsandDrawingsshallbeinthecustodyandcareoftheProcuringEntity.Unlessotherwise stated in the Contract, two copies of the Contract and of each subsequent Drawings and Bills of Quantities shall be suppliedtotheContractor,whomaymakeorrequestfurthercopiesatthecostoftheContractor.

EachoftheContractor'sDocumentsshallbeinthecustodyandcareoftheContractor,unlessanduntiltakenover bytheProcuringEntity.Unlessotherwise statedintheContract,theContractorshallsupplytotheArchitecttwo copiesofeachoftheContractor'sDocuments.

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract.TheProcuringEntity'sPersonnelshallhavetherighttoaccessallthesedocumentsatallreasonable times.

IfaPartybecomesawareofanerrorordefectinadocumentwhichwaspreparedforuseinexecutingtheWorks, thePartyshallpromptlygiventothetheotherPartyofsucherrorordefect.

### **TimelyprovisionofDrawingsorInstructions**

TheContractorshallgiventothetheArchitectwhenevertheWorksarelikelytobedelayedordisruptedifany necessary drawingorinstructionisnotissuedtotheContractorwithinaparticulartime,whichshallbe reasonable.Thenoticeshallincludedetailsofthenecessarydrawingorinstruction,detailsofwhyandbywhen itshouldbeissued, and the natureandamountofthedelayordisruptionlikelytobesufferedifitislate.

IftheContractor suffers delay and/or incurs Costas a result of a failureoftheArchitect toissuethenotified drawingorinstructionwithinatimewhichisreasonableandisspecifiedinthenoticewithsupportingdetails,the ContractorshallgiveafurthernoticetotheArchitectandshallbeentitledsubjecttoSub-Clause20.1 [Contractor'sClaims]to:

- a) anextensionoftimeforanysuchdelay,ifcompletionisorwillbedelayed,underSub-Clause8.4 [ExtensionofTimeforCompletion],and

b) payment of any other associated costs accrued, which shall be included in the Contract Price.

After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Architect failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, or costs accrued.

### **Procuring Entity's Use of Contractor's Documents**

As agreed between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.

The Contractor shall be deemed (by signing the Contract) to give to the Procuring Entity a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modification of them. This license shall:

- a) apply throughout the actual or intended working life (whichever is longer) of the relevant part of the Works,
- b) entitle any person in proper possession of the relevant part of the Work to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
- c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacement of any computers supplied by the Contractor.

The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the Procuring Entity for purposes other than those permitted under Sub-Clause 1.10.2.

### **Contractor's Use of Procuring Entity's Documents**

As agreed between the Parties, the Procuring Entity shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Procuring Entity. The Contractor may, at this cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Procuring Entity's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

### **Confidential Details**

The Contractor's and the Procuring Entity's Personnel shall ensure confidentiality at all times. The confidentiality shall survive termination or completion of the contract. They shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.

The Contractor's and the Procuring Entity's Personnel shall also treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any particular of the Works prepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualification to compete for other projects.

### **Compliance with Laws**

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Special Conditions of Contract:

- a) The Procuring Entity shall have obtained (or shall obtain) the planning, zoning, building permits or similar permission for the Permanent Works, and any other permissions described in the Specifications as having been (or to be) obtained by the Procuring Entity; and the Procuring Entity shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and

- b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Procuring Entity harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and show evidence of its diligence.

### **Joint and Several Liability**

If the Contractor constitutes (under applicable Laws) a joint venture, consortium or other unincorporated grouping of two or more persons:

- a) These persons shall be deemed to be jointly and severally liable to the Procuring Entity for the performance of the Contract;
- b) these persons shall notify the Procuring Entity of their leader who shall have authority to bind the Contractor and each of these persons; and
- c) the Contractor shall not alter its composition or legal status without the prior consent of the Procuring Entity.

### **Inspections and Audit by the Procuring Entity**

Pursuant to paragraph 2.2(e) of Appendix B to the General Conditions, the Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Public Procurement Regulatory Authority, Procuring Entity and/or persons appointed or designated by the Government of Kenya to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the Procuring Entity if requested by the Procuring Entity. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 15.6 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the Procuring Entity's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the Procuring Entity's prevailing sanctions procedures).

## **2 THE PROCURING ENTITY**

### **Right of Access to the Site**

The Procuring Entity shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the **Special Conditions of Contract**. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Procuring Entity is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Procuring Entity shall do so in the time and manner stated in the Specification. However, the Procuring Entity may withhold any such right or possession until the Performance Security has been received.

If no such time is stated in the Special Conditions of Contract, the Procuring Entity shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption in accordance with the programmes submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Procuring Entity to give any such right or possession within such time, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such Cost-plus profit, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Procuring Entity's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.



## **Permits, Licenses or Approvals**

The Procuring Entity shall provide, at the request of the Contractor, such reasonable assistance as to allow the Contractor to obtain properly:

- a) Copies of the Laws of Kenya which are relevant to the Contract but are not readily available, and
- b) any permits, licenses or approvals required by the Laws of Kenya:
  - i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
  - ii) for the delivery of Goods, including clearance through customs, and
  - iii) for the export of Contractor's Equipment when it is removed from the Site.

## **Procuring Entity's Personnel**

The Procuring Entity shall be responsible for ensuring that the Procuring Entity's Personnel and the Procuring Entity's other contractors on the Site:

- a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- b) take actionss similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

## **Procuring Entity's Financial Arrangements**

The Procuring Entity shall make and maintain all necessary financial arrangements which will enable the Procuring Entity to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment].

# **3 THE ENGINEER**

## **Architect Duties and Authority**

The Procuring Entity shall appoint the Architect who shall carry out the duties assigned to him in the Contract. The Architect staff shall include suitably qualified Assistants and other professionals who are competent to carry out these duties. The Architect Name and Address shall be provided in the **Special Conditions of Contract**.

The Architect shall have no authority to amend the Contract.

The Architect may exercise the authority attributable to the Architect as specified in or necessarily to be implied from the Contract. If the Architect is required to obtain the approval of the Procuring Entity before exercising a specified authority, the requirements shall be as stated in the **Special Conditions of Contract**. The Procuring Entity shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

However, whenever the Architect exercises a specified authority for which the Procuring Entity's approval is required, then (for the purposes of the Contract) the Contractor shall require the Architect to provide evidence of such approval before complying with the instruction.

Except as otherwise stated in these Conditions:

- a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Architect shall be deemed to act for the Procuring Entity;
- b) the Architect has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;
- c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Architect (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and
- d) any act by the Architect in response to a Contractor's request shall be notified in writing to the Contractor within 14 days of receipt.



The following provisions shall apply:

The Architect shall obtain the specific approval of the Procuring Entity before taking action under the following Sub-Clauses of these Conditions:

- a) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.
- b) Sub-Clause 13.1: instructing a Variation, except;
  - i) In an emergency situation as determined by the Engineer, or
  - ii) If such a Variation would increase the Accepted Contract Amount by less than the percentages specified in the **Special Conditions of Contract**.
- c) Sub-Clause 13.3: Approving a proposal for Variations submitted by the Contractor in accordance with Sub-Clause 13.1 or 13.2.
- d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable three currencies.

Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forthwith comply, despite the absence of approval of the Procuring Entity, with any such instruction of the Engineer. The Architect shall determine an addition to the Contract Price, in respect of such instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the Procuring Entity.

### **Delegation by the Engineer**

The Architect may from time to time assign duties and delegate authority to assistants and may also revoke such assignment or delegation. These assistants may include a resident Engineer, and/or independent inspectors appointed to inspect and/or test items of Plant and/or Materials. The assignment, delegation or revocation shall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Architect shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

- a) Any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Architect to reject the work, Plant or Materials;
- b) If the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

### **Instructions of the Engineer**

The Architect may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under Clause 3.2.1.

The Contractor shall comply with the instructions given by the Architect or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Architect or delegated assistant:

- a) Gives an oral instruction,
- b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and

- c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

Then the confirmation shall constitute the written instruction of the Architect or delegated assistant (as the case may be).

### **Replacement of the Engineer**

If the Procuring Entity intends to replace the Engineer, the Procuring Entity shall, in not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended person to replace the Engineer.

### **Determinations**

Whenever these Conditions provide that the Architect shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Architect shall consult with each Party in an endeavor to reach an agreement. If an agreement is not achieved, the Architect shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Architect shall give notice to both Parties of each agreement or determination, with supporting particulars, within 30 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

## **4 THE CONTRACTOR**

### **Contractor's General Obligations**

The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Architect's instructions, and shall remedy any defects in the Works.

The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.

All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country.

The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.

The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Special Conditions:

- a) The Contractor shall submit to the Architect the Contractor's Documents for this part in accordance with the procedure specified in the Contract;
- b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Architect to add to the Drawings for co-ordination of each Party's designs;
- c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
- d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Architect the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Procuring Entity to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

## Performance Security

The Contractor shall obtain (at this cost) a Performance Security for proper performance, in the amount stated in the **Special Conditions of Contract** and denominated in the currency(ies) of the Contractor in a freely convertible currency acceptable to the Procuring Entity. If an amount is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

The Contractor shall deliver the Performance Security to the Procuring Entity within 30 days after receiving the Notification of Award and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to the Special Conditions, as stipulated by the Procuring Entity in the Special Conditions of Contract, or in another form approved by the Procuring Entity.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

The Procuring Entity shall not make a claim under the Performance Security, except for amounts to which the Procuring Entity is entitled under the Contract.

The Procuring Entity shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Procuring Entity was not entitled to make the claim.

The Procuring Entity shall return the Performance Security to the Contractor within 14 days after receiving a copy of the Taking-Over Certificate.

Without limitation to the provisions of the rest of this Sub-Clause, whenever the Architect determines an addition or a reduction to the Contract Price as a result of a change in cost and/or legislation, or as a result of a Variation, amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Architect's request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

## Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be provided in the **Special Conditions of Contract**.

Unless the Contractor's Representative **is named in the Contract**, the Contractor shall, prior to the Commencement Date, submit to the Architect for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked in terms of Sub-Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Architect's prior consent, and the Architect shall be notified accordingly.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [Instructions of the Engineer].

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Architect has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the

Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

### **Sub-contractors**

The Contractor shall not subcontract the whole of the Works. The contractor may however subcontract the works as provided in Clause 34.2.

The Contractor shall be responsible for the acts or default of any Subcontractor, his agents or employees, as if they were the acts or default of the Contractor. Unless otherwise stated in the Special Conditions:

- a) The Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
- b) The prior consent of the Procuring Entity shall be obtained to other proposed Subcontractors;
- c) the Contractor shall give the Procuring Entity not less than 14 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
- d) each subcontract shall include provisions which would entitle the Procuring Entity to require the subcontract to be assigned to the Procuring Entity under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Procuring Entity].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.

Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from Kenya to be appointed as Subcontractors.

### **Assignment of Benefit of Subcontract**

If a Subcontractor's obligation extends beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligation to the Procuring Entity, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Procuring Entity for the work carried out by the Subcontractor after the assignment takes effect.

### **Co-operation**

The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:

- a) The Procuring Entity's Personnel,
- b) Any other contractor employed by the Procuring Entity, and
- c) The personnel of any legally constituted public authorities, who may be employed in the execution or near the Site of any work not included in the Contract.

Any such instructions shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

If, under the Contract, the Procuring Entity is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Architect in the time and manner stated in the Specification.

### **Setting Out of the Works**

The Contractor shall set out the Works in relation to original points, lines and levels of references specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Procuring Entity shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable effort to verify their accuracy before they are used.

- 4.73 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-

Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such costs accrued, which shall be included in the Contract Price.

4.7.4 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this.

### **Safety Procedures**

The Contractor shall:

- a) Comply with all applicable safety regulations,
- b) Take care for the safety of all persons entitled to be on the Site,
- c) Use reasonable effort to keep the Site and Works clear of unnecessary obstructions so as to avoid danger to these persons,
- d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Procuring Entity's Taking Over], and
- e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.

### **Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Architect shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Architect for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor itself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

### **Site Data**

The Procuring Entity shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Procuring Entity's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Procuring Entity shall similarly make available to the Contractor all such data which come into the Procuring Entity's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

- a) The form and nature of the Site, including sub-surface conditions,
- b) the hydrological and climatic conditions,
- c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- d) the Laws, procedures and labour practices of Kenya, and
- e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

### **Sufficiency of the Accepted Contract Amount**

The Contractor shall be deemed to:

- a) Have satisfied itself as to the correctness and sufficiency of the Accepted Contract Amount, and
- b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

### **Unforeseeable Physical Conditions**

In this Sub-Clause, "physical conditions" means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including surface and hydrological conditions but excluding climatic conditions. sub-

If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Architect as soon as practicable.

This notice shall describe the physical conditions, so that they can be inspected by the Architect and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Architect may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, give such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such Cost, which shall be included in the Contract Price.

Upon receiving such notice and inspecting and/or investigating these physical conditions, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect may also review whether other physical conditions in similar parts of the Works (if any) were more favorable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favorable conditions were encountered, the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

The Architect shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor's interpretation of any such evidence.

### **Right of Way and Facilities**

Unless otherwise specified in the Contract the Procuring Entity shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

### **Avoidance of Interference**



- a) The convenience of the public, or
- b) The access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Procuring Entity or of others.

4.14.2 The Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

### **Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable effort to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- a) The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
- b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
- c) the Procuring Entity shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- d) the Procuring Entity does not guarantee the suitability or availability of particular access routes; and
- e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

### **Transport of Goods**

Unless otherwise stated in the Special Conditions:

- a) the Contractor shall give the Architect not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
- c) the Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods and shall negotiate and pay all claims arising from their transport.

### **Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought onto the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the Engineer. However, consent shall not be required for vehicle transporting Goods or Contractor's Personnel off Site.

### **Protection of the Environment**

The contractor shall comply with the applicable environmental laws, regulations and policies.

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.

The Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

### **Electricity, Water and Gas**

The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, for the tests.

The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specifications. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Architect in accordance with Sub-Clause 2.5 [Procuring Entity's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Procuring Entity.

### **Procuring Entity's Equipment and Free-Issue Materials**

The Procuring Entity shall make the Procuring Entity's Equipment (if any) available for the use of the Contractor in the execution of the Works in accordance with the details, arrangements and prices stated in the Specification. Unless otherwise stated in the Specification:

- a) The Procuring Entity shall be responsible for the Procuring Entity's Equipment, except that
- b) the Contractor shall be responsible for each item of Procuring Entity's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Procuring Entity's Equipment shall be agreed or determined by the Architect in accordance with Sub-Clause 2.5 [Procuring Entity's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Procuring Entity.

The Procuring Entity shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Procuring Entity shall, at his risk and cost, provide these materials at the time and places specified in the Contract. The Contractor shall then visually inspect them and shall promptly give notice to the Architect of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Procuring Entity shall immediately rectify the notified shortage, defect or default.

After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligation of inspection, care, custody and control shall not relieve the Procuring Entity of liability for any shortage, defect or default not apparent from a visual inspection.

### **Progress Reports**

Unless otherwise stated in the Special Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Architect in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works. Each report shall include:

- a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- b) photographs showing the status of manufacture and of progress on the Site;
- c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - i) commencement of manufacture,
  - ii) Contractor's inspections,
  - iii) tests, and
  - iv) shipment and arrival at the Site;
- d) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
- e) copies of quality assurance documents, test results and certificates of Materials;
- f) list of notices given under Sub-Clause 2.5 [Procuring Entity's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
- g) safety statistics, including details of any hazardous incidents and activities relating to



environmental aspects and public relations; and

- h) comparison of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

### **Security of the Site**

Unless otherwise stated in the Special Conditions:

- a) The Contractor shall be responsible for keeping unauthorized persons off the Site, and
- b) authorized persons shall be limited to the Contractor's Personnel and the Procuring Entity's Personnel; and to any other personnel notified to the Contractor, by the Procuring Entity or the Engineer, as authorized personnel of the Procuring Entity's other contractors on the Site.

### **Contractor's Operations on Site**

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Architect as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

### **Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Procuring Entity. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such Cost, which shall be included in the Contract Price.  
After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

## **5 NOMINATED SUBCONTRACTORS**

### **Definition of "nominated Subcontractor"**

In this Contract, "nominated Subcontractor" means a Subcontractor:

- a) Who is nominated by the Procuring Entity, or
- b) Contractor has nominated as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

### **Objection to Nomination**

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractor raises reasonable objection by notice to the Procuring Entity as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Procuring Entity agrees in writing to indemnify the Contractor against and from the consequences of the matter:

- a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or

financial strength;

- b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or
- c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
  - i) undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;
  - ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and
  - iii) be paid only if and when the Contractor has received from the Procuring Entity payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

#### **Payments to nominated Subcontractors**

The Contractor shall pay to the nominated Subcontractor the amount shown on the nominated Subcontractor's invoices approved by the Contractor which the Architect certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

#### **Evidence of Payments**

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Architect may request the Contractor to supply reasonable evidence that the nominated Subcontractor has received all amounts due in accordance with previous Payment Certificates, less applicable deductions for retention or otherwise. Unless the Contractor:

- (a) Submit this reasonable evidence to the Engineer, or
- (b)
  - i) Satisfies the Architect in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and
  - ii) Submits to the Architect reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement, then the Procuring Entity may (at its sole discretion) pay, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above. The Contractor shall then repay, to the Procuring Entity, the amount which the nominated Subcontractor was directly paid by the Procuring Entity.

## **6 STAFF AND LABOR**

#### **Engagement of Staff and Labor**

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labor, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing. The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriate qualifications and experience from sources within Kenya.

#### **Rates of Wages and Conditions of Labor**

The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by Procuring Entity's whose trade or industry is similar to that of the Contractor.

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in Kenya in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of Kenya for the time being in force, and the Contractor shall perform such duties in regard to such deduction thereof as may be imposed on him by such Laws.

#### **Persons in the Service of Procuring Entity**

The Contractor shall not recruit, or attempt to recruit, staff and labour from among the Procuring Entity's Personnel.

## **Labor Laws**

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, employment of children, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights. The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

## **Working Hours**

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the **Special Conditions of Contract**, unless:

- a) Otherwise stated in the Contract,
- b) The Architect gives consent, or
- c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer, provided that work done outside the normal working hours shall be considered and paid for as overtime.

## **Facilities for Staff and Labor**

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities on site for the Contractor's Personnel. The Contractor shall also provide facilities for the Procuring Entity's Personnel as stated in the Specifications. The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

## **Health and Safety**

The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Procuring Entity's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Architect may reasonably require.

The Contractor shall conduct an awareness programme on HIV and other sexually transmitted diseases via an approved service provider and shall undertake such other measures taken to reduce the risk of the transfer of these diseases between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

## **Contractor's Superintendence**

Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

## **Contractor's Personnel**

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Contractor's Key personnel shall be named in the Special Conditions of Contract. The Architect may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- a) Persists in any misconduct or lack of care,
- b) Carries out duties incompetently or negligently,
- c) fails to conform with any provision of the Contract,
- d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment, or
- e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution of the Works.

If appropriate, the Contractor shall then appoint (or cause to be appointed) as suitable replacement person.

### **Records of Contractor's Personnel and Equipment**

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

### **Disorderly Conduct**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or among the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.

### **Foreign Personnel**

The Contractor shall not employ foreign personnel unless the contractor demonstrates that there are no Kenyans with the required skills.

The Contractor shall be responsible for the return of any foreign personnel to the place where they were recruited or to their domicile. In the event of the death in Kenya of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

### **Supply of Water**

The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.

### **Measures against Insect and Pest Nuisance**

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.

### **Alcoholic Liquor or Drugs**

The Contractor shall not, other than in accordance with the Law of Kenya, on site, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.

### **Prohibition of Forced or Compulsory Labour**

The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

### **Prohibition of Harmful Child Labor**

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of Kenya have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

### **Employment Records of Workers**

The Contractor shall keep complete and accurate records of the employment of labour at the Site. These records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

### **Workers' Organizations**

The Contractor shall comply with the relevant labor laws that recognize workers' rights to form and to join workers' organizations of their choosing without interference.

### **Non-Discrimination and Equal Opportunity**

The Contractor shall base the labour employment on the principle of equal opportunity and fair treatment and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline.

## **7. PLANT, MATERIALS AND WORKMANSHIP**

### **Manner of Execution**

The Contractor shall carry out the manufacture/assembly of plant, the production and manufacture of Materials, and all other execution of the Works:

- a) In the manner (if any) specified in the Contract,
- b) in a proper workmanlike and careful manner, in accordance with recognized good practice, and
- c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

### **Samples**

The Contractor shall submit the following samples of Materials, and relevant information, to the Architect for consent prior to using the Materials in or for the Works:

- a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and
- b) additional samples instructed by the Architect as a Variation.

Each sample shall be labeled as to origin and intended use in the Works.

### **Inspection**

The Procuring Entity's Personnel shall at all reasonable times:

- a) Have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
- b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Procuring Entity's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Architect whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Architect shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Architect does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

### **Testing**

This Sub-Clause shall apply to all tests specified in the Contract.

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and

other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Architect may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Architect shall give the Contractor not less than 24 hours' notice of the Architect's intention to attend the tests. If the Architect does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Architect's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Procuring Entity is responsible, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such Cost plus profit, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall promptly forward to the Architect duly certified reports of the tests. When the specified tests have been passed, the Architect shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Architect has not attended the tests, he shall be deemed to have accepted the readings as accurate.

## **Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Architect may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Architect requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting causes the Procuring Entity to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs to the Procuring Entity.

## **Remedial Work**

Notwithstanding any previous test or certification, the Architect may instruct the Contractor to:

- a) Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
- b) remove and re-execute any other work which is not in accordance with the Contract, and
- c) execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseen able event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

If the Contractor fails to comply with the instruction, the Procuring Entity shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the Procuring Entity all costs arising from this failure.

If the contractor repeatedly delivers defective work, the Procuring Entity may consider termination in accordance with Clause 15.

## **Ownership of Plant and Materials**

Except as otherwise provided in the Contract, each item of Plant and Materials shall become the property of the Procuring Entity at whichever is the earlier of the following times, free from liens and other encumbrances:

- a) When it is incorporated in the Works;



- b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

## **Royalties**

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

- a) Natural materials obtained from outside the Site, and
- b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

## **8 COMMENCEMENT, DELAYS AND SUSPENSION**

### **Commencement of Works**

Except as otherwise specified in the Special Conditions of Contract, the Commencement Dates shall be the date at which the following precedent conditions have all been fulfilled and the Architect notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:

- a) Signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of Kenya;
- b) except if otherwise specified in the Special Conditions of Contract, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works.
- c) Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

If the said Architect instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay.

### **Time for Completion**

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

- a) Achieving the passing of the Tests on Completion, and
- b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

### **Programme**

The Contractor shall submit a detailed time programme to the Architect within 14 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- a) The order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- c) the sequence and timing of inspections and tests specified in the Contract, and
- d) a supporting report which includes:
  - i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
  - ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 14 days after receiving a programme, gives notice to the Contractor stating the

extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Procuring Entity's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Architect of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works.

If, at anytime, the Architect gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contractor to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Architect in accordance with this Sub-Clause.

### **Extension of Time for Completion**

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,
- b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- c) exceptionally adverse climatic conditions,
- d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- e) any delay, impediment or prevention caused by or attributable to the Procuring Entity, the Procuring Entity's Personnel, or the Procuring Entity's other contractors.

If the Contractor considers itself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Architect in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Architect shall review previous determinations and may increase, but shall not decrease, the total extension of time.

### **Delays Caused by Authorities**

If the following conditions apply, namely:

- a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in Kenya,
- b) These authorities delay or disrupt the Contractor's work, and
- c) the delay or disruption was Unforeseeable, then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].



## **Rate of Progress**

If, at any time:

- a) Actual progress is too slow to complete within the Time for Completion, and/or
- b) Progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme], other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Architect may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Architect notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Procuring Entity to incur additional costs, the Contractor shall, subject to notice under Sub-Clause 2.5 [Procuring Entity's Claims], pay these costs to the Procuring Entity, in addition to delay damages (if any) under Sub-Clause 8.7 below.

Additional costs of revised methods including acceleration measures, instructed by the Architect to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Procuring Entity, without generating, however, any other additional payment benefit to the Contractor.

## **Delay Damages**

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall, subject to notice under Sub-Clause 2.5 [Procuring Entity's Claims], pay delay damages to the Procuring Entity for this default. These delay damages shall be the sum stated in the **Special Conditions of Contract**, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Special Conditions of Contract.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Procuring Entity] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

## **Suspension of Work**

The Architect may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part of the Works against any deterioration, loss or damage.

The Architect may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

## **Consequences of Suspension**

If the Contractor suffers delay and/or incurs Cost from complying with the Architect instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Architect and shall be entitled, subject to Sub-Clause 20.1 [Contractor's Claims], to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) Payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8 [Suspension of Work].

## **Payment for Plant and Materials in Event of Suspension**

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials

which have not been delivered to Site, if:

- a) The work on Plant or delivery of Plant and/or Materials has been suspended for more than 30 days, and
- b) the Contractor has marked the Plant and/or Materials as the Procuring Entity's property in accordance with the Architect's instructions.

### **Prolonged Suspension**

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Architect's permission to proceed. If the Architect does not give permission within 30 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as a nomination under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

### **Resumption of Work**

After the permission or instruction to proceed is given, the Contractor and the Architect shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Architect an instruction to this effect under Clause 13 [Variations and Adjustments].

## **9 TESTS ON COMPLETION**

### **Contractor's Obligations**

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].

The Contractor shall give to the Architect not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Architect shall instruct.

In considering the results of the Tests on Completion, the Architect shall make allowances for the effect of any use of the Works by the Procuring Entity on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

### **Delayed Tests**

If the Tests on Completion are being unduly delayed by the Procuring Entity, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Architect may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Procuring Entity's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

### **Retesting of related works**

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Architect or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

### **Failure to Pass Tests on Completion**

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Architect shall be entitled to:

- a) Order further repetition of Tests on Completion under Sub-Clause 9.3; or

- b) if the failure deprives the Procuring Entity of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Procuring Entity shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects].

## **10. PROCURING ENTITY'S TAKING OVER**

### **Taking Over of the Works and Sections**

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Procuring Entity when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Architect for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Architect shall, within 30 days after receiving the Contractor's application:

- a) Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Architect fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 30 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

### **Taking Over of Part of the Works**

The Architect may, at the sole discretion of the Procuring Entity, issue a Taking-Over Certificate for any part of the Permanent Works.

The Procuring Entity shall not use any part of the Works (other than as a temporary measure which is either specified in the Contractor agreed by both Parties) unless and until the Architect has issued a Taking-Over Certificate for this part. However, if the Procuring Entity does use any part of the Works before the Taking-Over Certificate is issued:

- a) The part which is used shall be deemed to have been taken over as from the date on which it is used,
- b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Procuring Entity, and
- c) if requested by the Contractor, the Architect shall issue a Taking-Over Certificate for this part.

After the Architect has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Procuring Entity taking over and/or using a part of the Works, other than such use as is specified in the Contractor agreed by the Contractor, the Contractor shall (i) give notice to the Architect and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such accrued costs, which shall be included in the Contract Price. After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this accrued cost.

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in the delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages] and shall not affect the maximum amount of the delay damages.

## **Interference with Tests on Completion**

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Procuring Entity is responsible, the Procuring Entity shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Architect shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Architect shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such accrued costs, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

## **Surfaces Requiring Reinstatement**

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

## **11. DEFECTS LIABILITY**

### **Completion of Outstanding Work and Remedying Defects**

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Procuring Entity on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly by the Engineer.

### **Cost of Remedying Defects**

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- a) Any design for which the Contractor is responsible,
- b) Plant, Materials or workmanship not being in accordance with the Contract, or
- c) Failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Procuring Entity, and Sub-Clause 13.3 [Variation Procedure] shall apply.

### **Extension of Defects Notification Period**

The Procuring Entity shall be entitled subject to Sub-Clause 2.5 [Procuring Entity's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

### **Failure to Remedy Defects**

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by the Engineer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Procuring Entity may (at this option):

- (a) Carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall be subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the Procuring Entity the costs reasonably incurred by the Procuring Entity in remedying the defect or damage;
- (b) Require the Architect to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or
- (c) If the defect or damage deprives the Procuring Entity of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Procuring Entity shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

### **Removal of Defective Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Procuring Entity gives consent, the Contractor may remove from the Site for the purposes of repairs such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

### **Further Tests**

If the work of remedying any defect or damage may affect the performance of the Works, the Architect may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 14 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

### **Right of Access**

Until the Completion Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Procuring Entity's reasonable security restrictions.

### **Contractor to Search**

The Contractor shall, if required by the Engineer, search for the cause of any defect on part of the works that have already accepted, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus profit shall be agreed or determined by the Architect in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.

### **Completion Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Architect has issued the Completion Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Architect shall issue the Completion Certificate within 30 days after the latest of the expiry dates of the



Defects Liability Period, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Completion Certificate shall be issued to the Procuring Entity.

Only the Completion Certificate shall be deemed to constitute acceptance of the Works.

### **Unfulfilled Obligations**

After the Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

### **Clearance of Site**

Upon receiving the Completion Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 30 days after receipt by the Contractor of the Completion Certificate, the Procuring Entity may sell or otherwise dispose of any remaining items. The Procuring Entity shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sales shall be paid to the Contractor. If these moneys are less than the Procuring Entity's costs, the Contractor shall pay the outstanding balance to the Procuring Entity.

## **12 MEASUREMENT AND EVALUATION**

### **Work to be Measured**

The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

Whenever the Architect requires any part of the Work to be measured, reasonable notices shall be given to the Contractor's Representative, who shall:

- a) promptly either attend or send another qualified representative to assist the Architect in making the measurement, and
- b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by the Architect shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Architect of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Architect shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Architect within 14 days after being requested to examine the records, they shall be accepted as accurate.

### **Method of Measurement**

Except as otherwise stated in the Contract:

- a) Measurements shall be made of the net actual quantity of each item of the Permanent Works, and
- b) the method of measurements shall be in accordance with the Bill of Quantities or other applicable Schedules.

### **Evaluation**

Except as otherwise stated in the Contract, the Architect shall proceed in accordance with Sub-Clause 3.5

[Determinations] to agree or determine the value of work done by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or prices specified for such item in the Contract, if there is no such item, specified for similar work.

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, for a new item of work, a new rate or prices shall be appropriate for such item of work if:

- a) The work is instructed under Clause 13 [Variations and Adjustments],
- b) no rate or price is specified in the Contract for this item, and
- c) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or prices shall be derived from any relevant rates or prices in the Contract. If no rates or prices are relevant for the new item of work, it shall be derived from the reasonable Cost of executing such work, prevailing market rates, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Architect shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.

Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows:  $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$ .

### Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- a) The Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- c) this cost is not deemed to be included in the evaluation of any substituted work; then the Contractor shall give notice to the Architect accordingly, with supporting particulars. Upon receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

## 13 VARIATIONS AND ADJUSTMENTS

### Right to Vary

Variations may be initiated by the Architect at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. No Variation instructed by the Architect under this Clause shall in any way vitiate or invalidate the Contract.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Architect stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works.

Upon receiving this notice, the Architect shall cancel, confirm or vary the instruction.

Each Variation may include:

- a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- b) changes to the quality and other characteristics of any item of work,
- c) changes to the levels, positions and/or dimensions of any part of the Works,
- d) omission of any work unless it is to be carried out by others,
- e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Test on Completion, boreholes and other testing and exploratory work, or
- f) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Architect instructs after obtaining approval of the Procuring Entity.

### **Variation Order Procedure**

Prior to any Variation Order under Sub-Clause 13.1.4 the Architect shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Engineer:

- a) A description of work, if any, to be performed and a programme for its execution, and
- b) the Contractor's proposals for any necessary modification to the Programme according to Sub-Clause 8.3 or to any of the Contractor's obligations under the Contract, and
- c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Architect shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variations shall be carried out. If the Architect decides that the variations shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement.

If the Architect and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause 13.2.2 shall apply.

### **Disagreement on Adjustment of the Contract Price**

If the Contractor and the Architect are unable to agree on the adjustment of the Contract Price, the adjustments shall be determined in accordance with the rates specified in the Bills of Materials or Schedule of Daywork Prices. If the rates contained in the Bills of Materials or Daywork Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing in the Daywork Prices. Where rates are not contained in the said Prices, the amount shall be such as is in all the circumstances reasonable, reflecting a market price. Due account shall be taken of any over- or under-recovery of overheads by the Contractor in consequence of the variation. The Contractor shall also be entitled to be paid:

- a) The cost of any partial execution of the Works rendered useless by any such variation,
- b) The cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such variation,
- c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and
- d) the net effect of the Contractor's finance costs, including interest, caused by the variation.

The Architect shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

### **Contractor to Proceed**

On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 31.3.

### **Value Engineering**

The Contractor may, at any time, submit to the Architect written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Procuring Entity of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Procuring Entity of the completed Works, or (iv) otherwise be of benefit to the Procuring Entity.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- a) The Contractor shall design this part,
- b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and
- c) if this change results in a reduction in the contract value of this part, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:



- i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and
- ii) the reduction (if any) in the value to the Procuring Entity of the varied works, taking account of any improvement in quality, anticipated life or operational efficiencies.

13.3.4 However, if the amount established in item 13.2.3 (c) (i) is less than amount established in item 13.2.3 (c) (ii), there shall not be a fee. However, if the amount established in item 13.2.3 (c) (i) is more than amount established in item 13.2.3 (c) (ii), it shall result in a price variation to the Procuring Entity.

### **Variation Procedure for Value Engineering proposal**

If the Architect requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- a) A description of the proposed work to be performed and a programme for its execution,
- b) the Contractor's proposal for any necessary modification to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
- c) the Contractor's proposal for evaluation of the Variation.

The Architect shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Architect to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Architect instructs or approves otherwise in accordance with this Clause.

### **Payment in Applicable Currencies**

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

### **Provisional Sums**

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Architect's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Architect shall have instructed. For each Provisional Sum, the Architect may instruct:

- a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or
- b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
  - i) The actual amounts paid (or due to be paid) by the Contractor, and
  - ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the **Special Conditions of Contract** shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

## Dayworks

For work of a minor or incidental nature, the Architect may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedures shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Architect accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- a) The names, occupations and time of Contractor's Personnel,
- b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- c) the quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Architect and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

## Adjustments for Changes in Legislation

The Contract Prices shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any input to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

## Adjustments for Changes in Cost

In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included an amount to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

## Price Adjustment Formula

Prices shall be adjusted for fluctuations in the cost of input only if **provided for in the SCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

$$P = A + BIm/Io$$

where:

**P** is the adjustment factor for the portion of the Contract Price payable.

**A** and **B** are coefficients **specified in the SCC**, representing the nonadjustable and adjustable portions, respectively, of the Contract Price payable and

**Im** is the index prevailing at the end of the month being invoiced and **Io** is the index prevailing 30 days before Bid opening for inputs payable.

**NOTE:** The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the nonadjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, references shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the “currency of index” is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the Central Bank of Kenya, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Architect shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favorable to the Procuring Entity.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

## 14 CONTRACT PRICE AND PAYMENT

### The Contract Price

Unless otherwise stated in the Special Conditions:

- The value of the payment certificates shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- any quantities which may be set out in the Bill of Materials or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities;

- i) of the Works which the Contractor is required to execute, or
  - ii) for the purposes of Clause 12 [Measurement and Evaluation]; and
- d) the Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Architect may take account of the breakdown when preparing Payment Certificates but shall not be bound by it.

Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall not be exempt from the payment of import duties and taxes upon importation.

### **Advance Payment**

The Procuring Entity shall make an advance payment, as an interest-free loan for mobilization and cash flow support, when the Contractor submits a guarantee in accordance with this Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the **Special Conditions of Contract**.

Unless and until the Procuring Entity receives this guarantee, or if the total advance payment is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

The Architect shall deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Procuring Entity receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Special Conditions or in another form approved by the Procuring Entity.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in the **Special Conditions of Contract**, the advance payments shall be repaid through percentage deductions from the interim payments determined by the Architect in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:

- a) Deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
- b) deductions shall be made at the amortization rate stated in the **Special Conditions of Contract** of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payments shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Procuring Entity], except for Sub-Clause 14.2.7 [Procuring Entity's Entitlement to Termination for Convenience], payable by the Contractor to the Procuring Entity.

### **Application for Interim Payment Certificates**

The Contractor shall submit a Statement (in number of copies indicated in the **Special Conditions of Contract**) to the Architect after the end of each month, in a form approved by the Engineer, showing in detail the amounts

to which the Contractor considers itself to be entitled, together with supporting documents which shall include thereon the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- a) the estimated contract value of the Work executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- b) any amount to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
- c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the **Special Conditions of Contract** to the total of the above amounts, until the amount so retained by the Procuring Entity reaches the limit of Retention Money (if any) stated in the **Special Conditions of Contract**;
- d) any amount to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];
- e) any amount to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
- f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- g) the deduction of amounts certified in all previous Payment Certificates.

### **Schedule of Payments**

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- a) The instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];
- b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and
- c) If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimates shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

### **Plant and Materials intended for the Works**

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

If the lists referred to in sub-paragraphs (b) (i) or (c) (i) below are not included in the Schedules, this Sub-Clause shall not apply.

The Architect shall determine and certify each addition if the following conditions are satisfied:

- a) The Contractor has:
  - i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
  - (ii) submitted statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;and either:
- b) the relevant Plant and Materials:
  - i) are those listed in the Schedules for payment when shipped,



- ii) have been shipped to Kenya, en route to the Site, in accordance with the Contract; and
- iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Architect together with the evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Procuring Entity in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration; or
- c) the relevant Plant and Materials:
  - i) are those listed in the Schedules for payment when delivered to the Site, and
  - ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Architect determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

### **Issue of Interim Payment Certificates**

No amount will be certified or paid until the Procuring Entity has received and approved the Performance Security. Thereafter, the Architect shall, within 30 days after receiving a Statement and supporting documents, deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate which shall state the amount which the Architect fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Architect on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Architect shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the **Special Conditions of Contract**. In this event, the Architect shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

- a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
- b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

- 4.6.4 The Architect may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Architect acceptance, approval, consent or satisfaction.

### **Payment**

The Procuring Entity shall pay to the Contractor:

- a) The advance payments shall be paid within 60 days after signing of the contract by both parties or within 60 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- b) The amount certified in each Interim Payment Certificate within 60 days after the Architect issues Interim Payment Certificate; and
- c) the amount certified in the Final Payment Certificate within 60 days after the Procuring Entity issues Interim Payment Certificate; or after determination of any disputed amounts shown in the Final Statement in accordance with Sub-Clause 16.2 [Termination by Contractor].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

### **Delayed Payment**

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges (simple interest) monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate is issued.

These financing charges shall be calculated at the annual rate of three percentage points above the mean rate of the Central Bank in Kenya of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice and certification, and without prejudice to any other right or remedy.

### **Payment of Retention Money**

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Architect shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Special Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a Retention Money Security guarantee, in the form annexed to the Special Conditions or in another form approved by the Procuring Entity and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money.

The Procuring Entity shall return the Retention Money Security guarantee to the Contractor within 14 days after receiving a copy of the Completion Certificate.

### **Statement at Completion**

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Architect three copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:

- a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
- b) any further sums which the Contractor considers to be due, and
- c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Architect shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

## **Application for Final Payment Certificate**

Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

- a) The value of all work done in accordance with the Contract, and
- b) Any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Architect disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Architect may reasonably require within 30 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Architect the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However, if, following discussions between the Architect and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Architect shall deliver to the Procuring Entity (with a copy to the Contractor) an Interim Payment Certificate for the agreed part of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Procuring Entity (with a copy to the Engineer) a Final Statement.

## **Discharge**

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

## **Issue of Final Payment Certificate**

Within 30 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall deliver, to the Procuring Entity and to the Contractor, the Final Payment Certificate which shall state:

- a) The amount which he fairly determines is finally due, and
- b) After giving credit to the Procuring Entity for all amounts previously paid by the Procuring Entity and for all sums to which the Procuring Entity is entitled, the balance (if any) due from the Procuring Entity to the Contractor or from the Contractor to the Procuring Entity, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 30 days, the Architect shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

## **Cessation of Procuring Entity's Liability**

The Procuring Entity shall not be liable to the Contractor for any matter or thing under or in connection with the Contractor execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

- a) in the Final Statement and also,
- b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

However, this Sub-Clause shall not limit the Procuring Entity's liability under his indemnification obligations, or the Procuring Entity's liability in any case of fraud, deliberate default or reckless misconduct by the Procuring Entity.

## **Currencies of Payment**



The Contract Prices shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is named, payments shall be made as follows:

- a) If the Accepted Contract Amount was expressed in Local Currency only:
  - i) the proportions or amount of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
  - ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
  - iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- b) payment of the damages specified in the Special Conditions of Contract, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- c) other payments to the Procuring Entity by the Contractor shall be made in the currency in which the sum was expended by the Procuring Entity, or in such currency as may be agreed by both Parties;
- d) if any amount payable by the Contractor to the Procuring Entity in a particular currency exceeds the sum payable by the Procuring Entity to the Contractor in that currency, the Procuring Entity may recover the balance of this amount from the sum so otherwise payable to the Contractor in other currencies; and
- e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the Central Bank of Kenya.

## **15 TERMINATION BY PROCURING ENTITY**

### **Notice to correct any defects or failures**

If the Contractor fails to carry out any obligation under the Contract, the Architect may by notice require the Contractor to make good the failure and to remedy it within 30 days.

### **Termination by Procuring Entity**

The Procuring Entity shall be entitled to terminate the Contract if the Contractor breaches the contract based on following circumstances which shall include but not limited to:

- a) fail to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
- b) abandon the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
- c) without reasonable excuse fails:
  - i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
  - ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 30 days after receiving it,
- d) subcontract the major part or whole of the Works or assign the Contract without the consent of the Procuring Entity,
- e) becomes bankrupt or insolvent, goes into liquidation, has a receiving order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
- f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
  - i) for doing or for bearing to do any action in relation to the Contract, or
  - ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract, or
  - iii) if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or
- g) If the contractor repeatedly fails to remedy defective work,
- h) based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Appendix B to these General Conditions, in competing for or in executing the Contract.

In any of these events or circumstances, the Procuring Entity may, upon giving 14 days' notice to the

Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f) or (g) or (h), the Procuring Entity may by notice terminate the Contract immediately.

The Procuring Entity's selection to terminate the Contract shall not prejudice any other rights of the Procuring Entity, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Procuring Entity may complete the Works and/or arrange for any other entities to do so. The Procuring Entity and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Procuring Entity shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Procuring Entity, these items may be sold by the Procuring Entity in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **Valuation at Date of Termination**

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Procuring Entity] has taken effect, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

### **Payment after Termination**

After a notice of termination under Sub-Clause 15.2 [Termination by Procuring Entity] has taken effect, the Procuring Entity may:

- a) Proceed in accordance with Sub-Clause 2.5 [Procuring Entity's Claims],
- b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Procuring Entity, have been established, and/or
- c) recover from the Contractor any losses and damages incurred by the Procuring Entity and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Procuring Entity shall pay any balance to the Contractor.

### **Procuring Entity's Entitlement to Termination for Convenience**

The Procuring Entity shall be entitled to terminate the Contract, at any time at the Procuring Entity's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 30 days after the later of the dates on which the Contractor receives this notice or the Procuring Entity returns the Performance Security. The Procuring Entity shall not terminate the Contract under this Sub-Clause in order to execute the Works itself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor]. After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

### **Fraud and Corruption**

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and its prevailing sanctions.

### **Corrupt gifts and payments of commission**

The Contractor shall not;

- a) Offer or give or agree to give to any person in the service of the Procuring Entity any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or for born to do any act in relation to the obtaining or execution of this or any other Contract for the Procuring Entity or for showing or for bearing to show favor or disfavor to any person in relation to this or any other contract for the Procuring Entity.
- b) Enter into this or any other contract with the Procuring Entity in connection with which commission has been paid or agreed to be paid by him or on his behalf to his knowledge, unless before the Contract is made particular of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Procuring Entity.

Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement and Asset Disposal Act (2015) and the Anti-Corruption and Economic Crimes Act (2003) of the Laws of Kenya.

## **16 SUSPENSION AND TERMINATION BY CONTRACTOR**

### **Contractor's Entitlement to Suspend Work**

If the Architect fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or Sub-Clause 14.7 [Payment], or not receiving instructions that would enable the contractor to proceed with the works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to the Procuring Entity, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence of payment, as the case may be and as described in the notice.

The Contractor's actions shall not prejudice his entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence of payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such Cost-plus profit, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **Termination by Contractor**

The Contractor shall be entitled to terminate the Contract if:

- a) the Architect fails, within 60 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- b) the Contractor does not receive the amount due under an Interim Payment Certificate within 90 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Procuring Entity's Claims]),
- c) the Procuring Entity substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- d) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- e) the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- f) the Contractor does not receive the Architect's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Procuring Entity, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

The Contractor's selection to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

### **Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Sub-Clause 15.5 [Procuring Entity's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- a) cease all further work, except for such work as may have been instructed by the Architect for the protection of life or property or for the safety of the Works,
- b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
- c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

### **Payment on Termination**

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Procuring Entity shall promptly:

- a) Return the Performance Security to the Contractor,
- b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
- c) pay to the Contractor the amount of any loss or damages sustained by the Contractor as a result of this termination.

## **17. RISK AND RESPONSIBILITY**

### **Indemnities**

The Contractor shall indemnify and hold harmless the Procuring Entity, the Procuring Entity's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- a) Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and
- b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Procuring Entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property], unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

### **Contractor's Care of the Works**

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Procuring Entity. If a Taking-Over Certificate is issued (or is deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Procuring Entity.

After responsibility has accordingly passed to the Procuring Entity, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

### **Procuring Entity's Risks**

The risks referred to in Sub-Clause 17.4 [Consequences of Procuring Entity's Risks] below, insofar as they directly affect the execution of the Works in Kenya, are:

- a) War or hostilities (whether war be declared or not),
- b) rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's Personnel,
- c) explosives, materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such explosives, radiation or radio-activity,
- d) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,
- e) use or occupation by the Procuring Entity of any part of the Permanent Works, except as may be specified in the Contract,
- f) design of any part of the Works by the Procuring Entity's Personnel or by others for whom the Procuring Entity is responsible, and
- g) any operation of the forces of nature which is unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

### **Consequences of Procuring Entity's Risks**

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Architect and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- (b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (e) and (g) of Sub-Clause 17.3 [Procuring Entity's Risks], Accrued Costs shall be payable.

After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **Intellectual and Industrial Property Rights**

In this Sub-Clause, "infringement" shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Procuring Entity shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- a) An unavoidable result of the Contractor's compliance with the Contract, or
- b) A result of any Works being used by the Procuring Entity:
  - i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or



- ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Procuring Entity harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

Party

For operation and maintenance of any plant or equipment installed, the contractor shall grant a non-exclusive and non-transferable license to the Procuring Entity under the patent, utility models, or other intellectual rights owned by the contractor or a third party from whom the contractor has received the right to grant sub-licenses and shall also grant to the Procuring Entity a non-exclusive and non-transferable right (without the right to license) to use the know-how and other technical information disclosed to the contractor under the contract. Nothing contained here-in shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual rights from the contractor or any other third party to the Procuring Entity.

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### **Limitation of Liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contractor for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Procuring Entity's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Procuring Entity, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Procuring Entity's Equipment and Free-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the **Special Conditions of Contract**, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

### **Use of Procuring Entity's Accommodation/Facilities**

The Contractor shall take full responsibility for the care of the Procuring Entity provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Procuring Entity is liable, the Contractor shall, at its own cost, rectify the loss or damage to the satisfaction of the Engineer.

## **18 INSURANCE**

### **General Requirements for Insurances**

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Procuring Entity. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Procuring Entity is the insuring Party, each insurance shall be effected with insurers and in terms

acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insureds specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Procuring Entity shall act for Procuring Entity's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damages shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the **Special Conditions of Contract** (calculated from the Commencement Date), submit to the other Party:

- a) Evidence that the insurances described in this Clause have been affected, and
- b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurers shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Prices shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring Entity, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Procuring Entity.

Procuring Entity in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Procuring Entity's Claims] or Sub-Clause 20.1 [Contractor's Claims], as applicable.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to in Clause 18) with insurers from any eligible source country.

### **Insurance for Works and Contractor's Equipment**

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Special Conditions, insurance under this Sub-Clause:

- a) Shall be effected and maintained by the Contractor as insuring Party,
- b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,
- c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks],
- d) shall also cover, to the extent specifically required in the tendering documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Procuring Entity of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Procuring Entity's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in **the Special Conditions** of Contract (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- e) may however exclude loss of, damage to, and reinstatement of:
  - i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but covers shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),
  - ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
  - iii) a part of the Works which has been taken over by the Procuring Entity, except to the extent that the Contractor is liable for the loss or damage, and
  - iv) Goods while they are not in Kenya, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Procuring Entity, with supporting particulars. The Procuring Entity shall then (i) be entitled subject to Sub-Clause 2.5 [Procuring Entity's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless she obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

### **Insurance against Injury to Persons and Damage to Property**

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in **the Special Conditions of Contract**, with no limit on the number of occurrences. If an amount is not stated in **the Special Conditions of Contract**, this Sub-Clause shall not apply.

Unless otherwise stated in the Special Conditions, the insurance specified in this Sub-Clause:

- a) Shall be effected and maintained by the Contractor as insuring Party,
- b) shall be in the joint names of the Parties,
- c) shall be extended to cover liability for all loss and damage to the Procuring Entity's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and
- d) may however exclude liability to the extent that it arises from:
  - i) the Procuring Entity's right to have the Permanent Works executed on, over, under, in or
  - ii) through any land, and to occupy this land for the Permanent Works,
  - iii) damage which is an unavoidable result of the Contractor's obligation to execute the
  - iv) Works and remedy any defects, and



- v) a cause listed in Sub-Clause 17.3 [Procuring Entity's Risks], except to the extent that cover is available at commercially reasonable terms.

### **Insurance for Contractor's Personnel**

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The insurance shall cover the Procuring Entity and the Architect against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Procuring Entity or of the Procuring Entity's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

## **19. FORCE MAJEURE**

### **Definition of Force Majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- a) Which is beyond a Party's control,
- b) Which such Party could not reasonably have provided against before entering into the Contract,
- c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
- c) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel,
- d) munition of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
- e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

### **Notice of Force Majeure**

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notices shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

### **Duty to Minimize Delay**

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

### **Consequences of Force Majeure**

If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4

[Extension of Time for Completion], and

- b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in Kenya, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

### **Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

### **Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Upon such termination, the Architect shall determine the value of the work done and issue a Payment Certificate which shall include:

- a) the amount payable for any work carried out for which a price is stated in the Contract;
- b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and bear the risk of) the Procuring Entity when paid for by the Procuring Entity, and the Contractor shall place the same at the Procuring Entity's disposal;
- c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- e) the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

### **Release from Performance**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- b) The sum payable by the Procuring Entity to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

**Contractor's Claims**

If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Procuring Entity's liability, the Architect may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Architect to inspect all these records and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Architect fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- a) This fully detailed claim shall be considered as interim;
- b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Architect may reasonably require; and
- c) The Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Architect and approved by the Contractor, the Architect shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Architect does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordance with Clause 20.3.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payments shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 20.3.

## **Procuring Entity's Claims**

If the Procuring Entity considers itself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Procuring Entity or the Architect shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Procuring Entity's Equipment and Free-Issue Materials], or for other services requested by the Contractor.

The notice shall be given as soon as practicable and no longer than 30 days after the Procuring Entity became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim and shall include substantiation of the amount and/or extension to which the Procuring Entity considers itself to be entitled in connection with the Contract. The Architect shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Procuring Entity is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Procuring Entity shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

## **Amicable Settlement**

Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 20.1 above should move to commence arbitration after 60 days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

## **Matters that may be referred to arbitration**

Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

- a) Whether or not the issue of an instruction by the Architect is empowered by these Conditions.
- b) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- c) Any dispute arising in respect of risks arising from matters referred to in Clause 17.3 and Clause 19.
- e) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

## **Arbitration**

Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.3 shall be finally settled by arbitration.

No arbitration proceedings shall be commenced on any claim or dispute where a notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

The Arbitrator shall, without prejudice to the generality of his powers, have power to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

The arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Architect from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Architect shall not be altered by reason of any arbitration being conducted during the progress of the Works.

The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

### **Arbitration with National Contractors**

If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The disputes shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing an agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;

- i) Architectural Association of Kenya
- ii) Institute of Quantity Surveyors of Kenya
- iii) Association of Consulting Engineers of Kenya
- iv) Chartered Institute of Arbitrators (Kenya Branch)
- v) Institution of Engineers of Kenya

The institution written to first by the aggrieved party shall take precedence over all other institutions.

### **Arbitration with Foreign Contractors**

Arbitration with foreign contractors shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

The place of arbitrations shall be a location specified in the SCC; and the arbitrations shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

### **Alternative Arbitration Proceedings**

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

### **Failure to Comply with Arbitrator's Decision**

The award of such Arbitrator shall be final and binding upon the parties.

In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

**Contract operations to continue**

Notwithstanding any reference to arbitration herein,

the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

the Procuring Entity shall pay the Contractor any monies due the Contractor.

## Section IX-Special Conditions of Contract

The following Special Conditions shall supplement the GCC. Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

| Conditions  | Sub-Clause        | Data  |
|---|-------------------|---|
| <b>Part A-Contract Data</b>                             |                   |   |
| Procuring Entity's name and address                     | Heading           | Kisii County Government   |
| Name and Reference No. of the Contract                  | Heading and 1.1   | <i>Negotiation No. AS INDICATED ON ADVERT NOTICE</i>  |
| Engineers Name and address                              | Heading and 3.1.1 | <i>QS.Reuben Nyakundi P.O Box 4550-Kisii</i>  |
| Contractor's Representative's name                      | 4.3.1             |   |
| Key Personnel names                                     | 16.9.1            |   |
| Time for Completion                                     | 1.1.              | <u>8 WEEKS</u>  |
| Defects Notification Period                             | 1.1               | <u>6 months</u>   |
| Sections  | 1.1               | <i>If Sections are to be used, refer to Table: Summary of Sections below</i>  |
| Electronic transmissions systems                        | 1.3               |   |
| Time for the Parties entering into a Contract Agreement | 1.6               | Within 30 days  |
| Commencement Date                                       | 8.1.1             |   |
| Time for access to the Site                             | 2.1.1             | Not later than the Commencement Date, and not later than _____ days after Commencement Date   |
| Architect Duties and Authority                          | 3.1.6 (b) (ii)    | Variations resulting in an increase of the Accepted Contract Amount in excess of % shall require approval of the Procuring Entity.  |
| Performance Security                                    | 4.2.1             | The performance security will be in the form of a _____ <i>[insert either one of "demand guarantee" or "performance bond"]</i> in the amount(s) of <i>[insert related figure(s)]</i> percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount. |
| Normal working hours                                    | 6.5               | Specify   |
| Delay damages for the Works                             | 8.7 & 14.15(b)    | _____ % of the Contract Price per day.<br><i>If Sections are to be used, refer to Table: Summary of Sections below</i>  |
| Maximum amount of delay damages                         | 8.7.1             | _____ % of the final Contract Price.  |
| Provisional Sums  | 13.6.(b)(ii)      | <i>[If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]</i><br>_____ %   |
| Adjustments for Changes in Cost                         | 13.9              | Period "n" applicable to the adjustment multiplier "P <sub>n</sub> ": _____ <i>[Insert the period if different from one (1) month; if period "n" is one (1) month, insert "not applicable"]</i>   |

| Conditions  | Sub-Clause   | Data   |
|---|--------------|--|
| Total advance payment   | 14.2.1       | % Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable<br><i>[Insert number and timing of installments if applicable]</i>   |
| Repayment amortization rate of advance payment  | 14.2.5(b)    | _____ %  |
| Percentage of Retention   | 14.3.2(c)    | 10%  |
| Limit of Retention Money  | 14.3.2(c)    | 10% of the Accepted Contract Amount  |
| Plant and Materials   | 14.5.3(b)(i) | If Sub-Clause 14.5 applies:<br>Plant and Materials for payment Free on Board<br>_____ <i>[list]</i> .  |
|   | 14.5.3(c)(i) | Plant and Materials for payment when delivered to the Site _____ <i>[list]</i> .   |
| Minimum Amount of Interim Payment Certificates  | 14.6.2       | 2,000,000% of the Accepted Contract Amount.  |
| Publishing source of commercial interest rates for financial charges in case of delayed payment | 14.8         | Specify _____ % rate per month of delayed payment.   |
| Maximum total liability of the Contractor to the Procuring Entity                               | 17.6.2       | <i>[Select one of the two options below as appropriate]</i><br>The product of _____ <i>[insert a multiplier less or greater than one]</i> times the Accepted Contract Amount,<br>or<br>_____ <i>[insert amount of the maximum total liability]</i> |
| Periods for submission of insurance:<br><br>a. evidence of insurance.<br>b. relevant policies   | 18.1.6       | <i>[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 30 days.]</i><br>_____ days<br>_____ days  |
| Maximum amount of deductibles for insurance of the Procuring Entity's risks                     | 18.2.4(d)    |  |
| Minimum amount of third-party insurance   | 18.3.2       |  |
| The place of arbitration  | 20.7.2       |  |



## **SECTION X-CONTRACT FORMS**

FORM No. 1-NOTIFICATION OF INTENTION TO AWARD

FORM NO. 2 – REQUEST FOR REVIEW

FORM No. 3-LETTER OF AWARD

FORM No. 4-CONTRACT AGREEMENT

FORM No. 5-PERFORMANCE SECURITY [Option 1-Unconditional Demand Bank Guarantee] FORM No.

6- PERFORMANCE SECURITY [Option 2– Performance Bond]

FORM No. 7-ADVANCE PAYMENT SECURITY

FORM No. 8 -RETENTION MONEY SECURITY

## **FORM No 1: NOTIFICATION OF INTENTION TO AWARD OF CONTRACT**

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

### **FORMAT**

1. For the attention of Tenderer's Authorized Representative

- i) Name: *[insert Authorized Representative's name]*
- ii) Address: *[insert Authorized Representative's Address]*
- iii) Telephone: *[insert Authorized Representative's telephone/fax numbers]*
- iv) Email Address: *[insert Authorized Representative's email address]*

*[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*

2. Date of transmission: *[email]* on *[date]* (local time)

This Notification is sent by (Name and designation) \_\_\_\_\_

3. Notification of Award

- i) Procuring Entity: *[insert the name of the Procuring Entity]*
- ii) Project: *[insert name of project]*
- iii) Contract title: *[insert the name of the contract]*
- iv) ITT No: *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related Complaint in relation to the decision to award the contracts.

a) The successful tenderers

i) Name of successful Tender \_\_\_\_\_

ii) Address of the successful Tender \_\_\_\_\_

iii) Contract price of the successful Tender Kenya Shillings \_\_\_\_\_ (in words \_\_\_\_\_)

b) The reasons for your tender being unsuccessful are as follows:

c) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.

| SNo | NameofTender | TenderPrice<br>as read out | Tender'sevaluated<br>price (Note a) | OneReasonWhyNotEvaluated |
|-----|--------------|----------------------------|-------------------------------------|--------------------------|
| 1   |              |                            |                                     |                          |
| 2   |              |                            |                                     |                          |
| 3   |              |                            |                                     |                          |
| 4   |              |                            |                                     |                          |
| 5   |              |                            |                                     |                          |
|     |              |                            |                                     |                          |

(Note a) State NE if not evaluated

#### 5. How to request a debriefing

- a) DEADLINE: The deadline to request a debriefing expires at midnight on [insert date] (local time).
- b) You may request a debriefing in relation to the result of the evaluation of your Tender. If you decide to request a debriefing, your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: [insert full name of person, if applicable]
  - ii) Title/position: [insert title/position]
  - iii) Agency: [insert name of Procuring Entity]
  - iv) Email address: [insert email address]
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

#### 6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [insert date] (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: [insert full name of person, if applicable]
  - ii) Title/position: [insert title/position]
  - iii) Agency: [insert name of Procuring Entity]
  - iv) Email address: [insert email address]
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [www.ppra.go.ke](http://www.ppra.go.ke).

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
  - i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process and is the recipient of a Notification of Intention to Award.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period stated above.
  - iv) You must include, in your complaint, all of the information required to support your complaint.

**7. Standstill Period**

- i) DEADLINE: The Standstill Period is due to end at midnight on *[insert date]* (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate to contact us.  
On behalf of the Procuring Entity:

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## FORM NO.2-REQUEST FOR REVIEW

### FORM FOR REVIEW (r.203(1))

#### PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO..... OF ..... 20.....

BETWEEN

..... APPLICANT

AND

..... RESPONDENT (Procuring Entity)

Request for review of the decision of the ..... (Name of the Procuring Entity of ..... dated the ... day of ..... 20..... in the matter of Tender No. .... of ..... 20..... for ..... (Tender description).

#### REQUEST FOR REVIEW

I/We....., the abovenamed Applicant(s), of address: Physical address..... P.O. Box No..... Tel. No..... Email....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the abovementioned decision on the following grounds, namely:

- 1.
- 2.

By this memorandum, the Applicant requests the Board for an order/order that:

- 1.
- 2.

SIGNED..... (Applicant) Dated on ..... day of ..... / ... 20.....

---

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on ..... day of ..... 20.....

SIGNED

Board Secretary

**FORM NO 3: LETTER OF AWARD**

*[letterhead paper of the Procuring Entity]*

*[date]*

To: *[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words]* *[name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by ..... *(name of Procuring Entity)*.

You are requested to furnish the Performance Security within in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity: .....

Attachment: *Contract Agreement*: .....

## FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the day of ..... 20....., between .....  
..... of ..... (hereinafter "the Procuring  
Entity"), of the one part, and ..... of ..... (hereinafter  
"the Contractor"), of the other part:

WHEREAS the Procuring Entity desires that the Works known as ..... should be  
executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these  
Works and the remedy of any defects therein,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the  
Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This  
Agreement shall prevail over all other Contract documents.
  - a) the Notification of Award
  - b) the Form of Tender
  - c) the addenda Nos ..... (if any)
  - d) the Special Conditions of Contract
  - e) the General Conditions of Contract;
  - f) the Specifications
  - g) the Drawings; and
  - h) the completed Schedules and any other documents forming part of the contract.
3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this  
Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Works and to remedy defects  
therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of  
the Works and the remedy of defects therein, the Contract Price or such other sum as may become payable under  
the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws  
of Kenya on the day, month and years specified above.

Signed and sealed by ..... (for the Procuring Entity)

Signed and sealed by ..... (for the Contractor).

## FORM NO. 5-PERFORMANCE SECURITY

### [Option 1-Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

**Beneficiary:** [insert name and Address of Procuring Entity]

**Date:** \_\_\_\_\_ [Insert date of issue]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with (name of Procuring Entity) \_\_\_\_\_ (the Procuring Entity as the Beneficiary), for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words ),<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demands supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sums specified therein.
4. This guarantee shall expire, not later than the ..... Day of ....., 2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee." .....

[Name of Authorized Official, signature(s) and seals/stamps]

**Note:** All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.



## **FORM No. 6-PERFORMANCE SECURITY**

### **[Option 2-Performance Bond]**

*[Note: Procuring Entities are advised to use Performance Security- Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bondholder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**PERFORMANCE BOND No.:** \_\_\_\_\_

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called "the Contractor") and \_\_\_\_\_] as Surety (hereinafter called "the Surety"), are held and firmly bound unto \_\_\_\_\_ as Oblige (hereinafter called "the Procuring Entity") in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent therein provided for, are by reference made a part hereof and are hereinafter referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:
  - a) Complete the Contract in accordance with its terms and conditions; or
  - b) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contractor Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
  - c) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, \_\_\_\_\_ and the Surety has caused these present to be sealed with his corporate seal duly attested by the signature of his legal representative, this day \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_\_.  
\_\_\_\_\_.

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

## FORM NO. 7-ADVANCE PAYMENT SECURITY

### [Demand Bank Guarantee]

[Guarantor letterhead]

**Beneficiary:** \_\_\_\_\_ [Insert name and Address of Procuring Entity]

**Date:** \_\_\_\_\_ [Insert date of issue]

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_ [Insert guarantee reference number]

**Guarantor:** [Insert name and address of place of issue, unless indicated in the letterhead]

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (in words \_\_\_\_\_) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (in words \_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
  - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
  - b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_.
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months] [one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

---

[Name of Authorized Official, signature(s) and seals/stamps]

**Note:** All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

## **FORM NO.8–RETENTION MONEY SECURITY**

### **[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[Insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**Advance payment guarantee no.** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that \_\_\_\_\_ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ *[insert reference number of the contract]* dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains money up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[insert the second half of the Retention Money]* is to be made against a Retention Money guarantee.
3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* \_\_\_\_\_ *([insert amount in words])* upon receipt by us of the Beneficiary's complying demands supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sums specified therein.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number \_\_\_\_\_ at \_\_\_\_\_ *[insert name and address of Applicant's bank]*.
5. This guarantee shall expire no later than the ..... Day of ..... 20.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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*[Name of Authorized Official, signature(s) and seals/stamps]*

**Note:** *All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.*

**FORM NO.9 BENEFICIAL OWNERSHIP DISCLOSURE FORM****(Amended and issued pursuant to PPRACIRCULAR No.02/2022)****INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM**

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13(2A) and 13(6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.*

Tender Reference No.: \_\_\_\_\_ [insert identification no]

 Name of the Tender Title/Description: \_\_\_\_\_ [insert name of the assignment] to:  
 \_\_\_\_\_ [insert complete name of Procuring Entity]

In response to the requirement in your notification of award dated \_\_\_\_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: \_\_\_\_\_ [select one option as applicable and delete the options that are not applicable]

I) We hereby provide the following beneficial ownership information.

**Details of Beneficial Ownership**

|           | Details of all Beneficial Owners                  |  | % of shares a person holds in the company<br>Directly or indirectly | % of voting rights a person holds in the company | Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)   | Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)  |
|-----------|---|--|---|--|---|--|
| <b>1.</b> | Full Name   |  | Directly-----<br>----- % of shares                                  | Directly.....<br>.....% of voting rights         | 1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ---- No ----<br>2. Is this right held directly or indirectly?:<br><br>Direct.....<br>...<br><br>Indirect.....<br>... | 1. Exercises significant influence or control over the Company body of the Company (tenderer)<br><br>Yes ---- No ----<br><br>2. Is this influence or control exercised directly or indirectly?<br><br>Direct.....<br><br>Indirect..... |
|           | National identity card number or Passport number  |  |   |  |   |  |
|           | Personal Identification Number (where applicable) |  | Indirectly-----<br>----- % of shares                                | Indirectly-----<br>-----% of voting rights       |   |  |
|           | Nationality                                       |  |   |  |   |  |
|           | Date of birth [dd/mm/yyyy]                        |  |   |  |   |  |
|           | Postal address                                    |  |   |  |   |  |
|           | Residential address                               |  |   |  |   |  |
|           | Telephone number                                  |  |   |  |   |  |
|           | Email address                                     |  |   |  |   |  |
|           | Occupation or profession                          |  |   |  |   |  |

| Details of all Beneficial Owners |   | % of shares a person holds in the company<br>Directly or indirectly | % of voting rights a person holds in the company | Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes/No)   | Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)   |
|----------------------------------|---|---|--|---|---|
| 2.                               | Full Name   | Directly-----<br>----- %o<br>f shares                               | Directly.....<br>.....% of voting rights         | 1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer:<br>Yes -----No----<br>2. Is this right held directly or indirectly?:<br><br>Direct.....<br>...<br><br>Indirect.....<br>... | 1. Exercises significant influence or control over the Company body of the Company (tenderer)<br>Yes -----No----<br>2. Is this influence or control exercised directly or indirectly?<br><br>Direct.....<br><br>Indirect..... |
|                                  | National identity card number or Passport number  |   |  |   |   |
|                                  | Personal Identification Number (where applicable) | Indirectly-----<br>----- %o<br>f shares                             | Indirectly-----<br>----- %o<br>f shares          |   |   |
|                                  | Nationality(ies)                                  |   |  |   |   |
|                                  | Date of birth [dd/mm/yyyy]                        |   |  |   |   |
|                                  | Postal address                                    |   |  |   |   |
|                                  | Residential address                               |   |  |   |   |
|                                  | Telephone number                                  |   |  |   |   |
|                                  | Email address                                     |   |  |   |   |
|                                  | Occupation or profession                          |   |  |   |   |
| 3.<br><br>e.t<br>.c              |   |   |  |   |   |
|                                  |   |   |  |   |   |
|                                  |   |   |  |   |   |
|                                  |   |   |  |   |   |

II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020. (Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to de-anonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*

III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
- (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

*Name of the Tenderer..... \*[insert complete name of the Tenderer]\_\_\_\_\_*

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: \*\* [insert complete name of person duly authorized to sign the Tender]*

*Designation of the person signing the Tender:.....[insert complete title of the person signing the Tender]*

*Signature of the person named above: ..... [insert signature of person whose name and capacity are shown above]*

*Date this.....[insert date of signing] day of.....[Insert month],[insert year]*

Bidder Official S

# KISII COUNTY GOVERNMENT



## PROPOSED CONSTRUCTION OF MODERN ECDE PIT LATRINE AT SUGUNANA RIANA WARD IN BONCHARI SUB- COUNTY

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### BILLS OF QUANTITIES

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NEGOTIATION NUMBER:

**ISSUED BY**

COUNTY WORKS OFFICER  
PUBLIC WORKS  
P.O BOX 4550 - 40200 KISII

**QUANTITY SURVEYOR**

COUNTY QUANTITY SURVEYOR  
PUBLIC WORKS  
P.O BOX 4550 - 40200 KISII

**ARCHITECTS**

COUNTY ARCHITECT  
PUBLIC WORKS  
P.O BOX 4550 - 40200 KISII

**SERVICE ENGINEERS**

COUNTY ELEC & MECH.  
PUBLIC WORKS  
P.O BOX 4550 - 40200 KISII

**CIVIL & STRUCTURAL ENGINEER**

COUNTY STRUCTURAL ENG.  
PUBLIC WORKS  
P.O BOX 4550 - 40200 KISII

**CHIEF OFFICER**

INFRASTRUCTURE, ROADS AND  
PUBLIC WORKS  
P.O BOX 4550 - 40200 KISII

**AUGUST, 2024** \_\_\_\_\_



PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
|      | <b>PRELIMINARIES AND CONDITIONS</b>  |        |
|      | <b><u>PRELIMINARIES PARTICULARS</u></b>  |        |
|      | In this contract (as hereinafter defined) the following word(s) and expressions shall have the meaning hereby assigned to them except where the content otherwise requires:-                                   |        |
| A    | <b><u>The "Employer":</u></b><br><b>Kisii County Government</b><br><b>P. O. Box 4550 40200</b><br><b>KISII</b>   |        |
| B    | <b><u>Architect</u></b><br>County Architect Department of Public works<br>P. O. Box 4550 40200<br><b>Kisii</b>   |        |
| C    | <b><u>Quantity Surveyor</u></b><br>County Quantity Surveyor Department of Public works<br>P. O. Box 4550 40200<br><b>Kisii</b>   |        |
| D    | <b><u>Structural Engineer</u></b><br>County Structural Engineer Department of Public works<br>P. O. Box 4550 40200<br><b>Kisii</b>   |        |
| E    | <b><u>Electrical/Mechanical Engineers</u></b><br>County Electrical and mechanical engineer Department of Public works<br>P. O. Box 4550 40200<br><b>Kisii</b>  |        |
| F    | <b><u>Project Manger</u></b><br><b>Director public Works Officer Kisii County Government</b><br>P. O. Box 4550 40200<br><b>Kisii</b>   |        |
| G    | <b><u>Department Representative</u></b><br><b>The chief Officer Department of Education, Technical training, Innovation and Manpower development Kisii County</b><br><b>P.O Box 4550-40200</b><br><b>Kisii</b> |        |
|      | <b>Carried to Collection</b>   | -      |

PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
|      | <u>Description of site</u>   |        |
| A    | The site is located in Kisii county  |        |
|      | <u>Materials excavated from the site</u>   |        |
| B    | These will be the property of the Employer and may be incorporated in the works with the permission of the Architect. Disposal of surplus excavated material has been measured in the Bills and should the Project Manager permit the incorporation of such materials in the works or otherwise direct as to their disposal then an adjustment will be made to the Contract sum. |        |
|      | <u>Visiting the site</u>   |        |
| C    | The Contractor is advised to visit the site to establish accessibility, in the nature of the ground and the circumstances in which the works will be executed as no claims on the grounds of want of knowledge will be entertained.  |        |
|      | <u>Working Space</u>   |        |
| D    | The extent of working space available to the contractor will be the entire site boundaries as shown on the site layout plan or otherwise directed, plant, temporary buildings, spoil heaps, etc shall not be erected or placed beyond this area. The Contractor shall be solely responsible should there be any defaults in this respect.  |        |
|      | <u>General description of the works</u>  |        |
| E    | The works comprise Construction of an ECDE Pit Latrine   |        |
|      | <u>Drawings</u>  |        |
| F    | The drawings used in the preparation of these Specifications are as listed in Appendices at the end hereof. The said drawings and other documents which form part of this contract are enclosed together with these Bills of Quantities.   |        |
|      | <b>Carried to Collection</b>   | -      |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
|      | <b>Form of Contract</b>   |        |
| A    | The Form of Contract shall be the Standard tender document for procurement of works and conditions of contract for Building and Associated Civil Engineering works prepared by the Public Procurement Regulatory Authority issued on 22/04/2021 and updated on 21/04/2022   |        |
|      | <b>Performance Bond</b>   |        |
| B    | The Contractor shall find and submit on the Form of Tender an approved bank and who will be willing to be bound to the Employer, in an amount equal to <b>not more than 10%</b> of the Contract amount for the due performances of the Contract. Reference to section 142 PPDA 2015 shall apply   |        |
|      | <b>Sufficiency of Tender</b>  |        |
| C    | The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the works and of the rates and prices stated in the priced Bills of Quantities, which rates and prices shall cover all his obligations under the contract and all his obligations under the contract and all matters that are necessary for the proper completion and maintenance of the works.   |        |
|      | <b>Stamp Charges</b>  |        |
| D    | The Contractor shall allow for the payment of all stamp charges in connection with the Contract Agreement   |        |
|      | <b>Definitions and Abbreviations</b>  |        |
| E    | <p>Terms used in these Bills of Quantities shall be interpreted as follows:-</p> <p>"Approved" shall mean <i>approved by the Architect.</i></p> <p>"As directed" shall mean <i>as directed by the Architect.</i></p> <p>"B.S." shall mean the <i>Current British Standard Specification</i> published by the British Standards Institution, 2 PaAP Street, London, and W.I., England.</p> <p>"C.M." shall mean <i>Cubic Metre</i></p> <p>"S.M." shall mean <i>Square Metre</i></p> <p>"L.M." shall mean <i>Linear Metre</i></p> <p>"mm" shall mean <i>millimetre</i></p> <p>"No." shall mean <i>Number</i></p> <p>"Kg." shall mean <i>Kilogramme</i></p> <p>"Do" or "Ditto" shall mean <i>the whole of the preceding description except as qualified in the description in which it occurs.</i></p> |        |
|      | <b>Carried to Collection</b>  | -      |

PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
| A    | <p>"As described" shall mean <i>as described previously in a foregoing Bills, Preambles, l or in the Public Works, General Specification for Building Works 1976 Edition or any subsequent revision thereof.</i></p> <p><b><u>Progress Schedule</u></b></p>  |        |
| B    | <p>The Contractor shall, upon receiving instructions to proceed with eth works, draw up a Time and Progress Schedule to which the works are to be carried out and stating the appropriate dates. This Time and Progress Schedule is to be agreed with the Architect and no deviation from the order set out in this Schedule will be permitted without the written consent of the Architect. The Main Contractor will be responsible for agreeing the above programme with all Sub-Contractors including the Nominated Sub-Contractors and Nominated Suppliers.</p> <p><b><u>Figured Dimensions:</u></b></p> |        |
| C    | <p>Figured dimensions are to be followed in preference to dimensions scaled from drawings, but whenever possible dimensions are to be taken on the site or from the buildings. Before Sub-Contractors or specialist firms commence any works, dimensions must be checked on the site and/or building and agreed with the Contractor, irrespective of the comparable dimensions shown on the drawings. The Contractor shall be responsible for the accuracy of such dimensions.</p> <p><b><u>Provisional Works</u></b></p>  |        |
| D    | <p>All "Provisional" and other works liable to adjustment under this contract shall be left uncovered for a reasonable time to allow all measurements needed for such adjustment to be taken by the Quantity Surveyor. Immediately the works is ready for measurement the Contractor shall give notice to the Quantity Surveyor.</p>   |        |
| E    | <p>If the Contractor makes default in this respect he shall, if the Architect so directs, uncover the works at his own expense to enable measurements to be taken.</p> <p><b><u>Lighting and Power</u></b></p>   |        |
| F    | <p>The Contractor shall provide all artificial lighting and power for use on the works, including all temporary supply and connections, wiring, fittings, etc., and clear away on completion. The Contractor shall pay all fees and obtain all permits in connection therewith. For lighting and power for Nominated Sub-Contractors and Specialist, see Item ...</p>  |        |
|      | <b>Carried to Collection</b>   |        |

PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
| A    | <p><b><u>Water</u></b></p> <p>The Contractor shall provide at his own risk and cost all water for use in connection with the works, make arrangements with the Local Authority for the installation of a separate meter for all water used by him throughout the contract and pay all costs and fees in connection therewith. He shall also provide temporary storage tanks and tubing, etc, as he may consider necessary and clear away at completion.</p> <p>All water shall be fresh, clean and pure, free from earthly, vegetable or organic matter, acid or alkaline substance in solution or suspension.</p> |        |
|      | <p><b><u>Existing Services</u></b></p> <p>Prior to commencement of any works the Contractor is to ascertain from the relevant authorities the exact position, depth and level of existing electric cables, water pipes or other services in the area and he shall make whatever provisions may be required by the authorities concerned for the support and protection of such services. Any damage or disturbance caused to any service shall be reported immediately to the Architect and the relevant authority and shall be made good to their satisfaction at the Contractor's expense.</p>                   |        |
|      | <p>C The Contractor must make himself fully acquainted with current Acts and Regulations, including Police Regulations regarding all such regulations and/or restrictions which may affect the organization of the works, supply and control of labour, etc., and allow accordingly in his tender. No claim in respect of want of knowledge in this connection will be entertained.</p> <p><u>Particular attention is drawn to the Rules published in Legal Notice 179, dated 2<sup>nd</sup> June ,1978 (Building Operations and Works of Engineering Construction)</u></p>  |        |
|      | <p><b><u>Security of Works, etc.</u></b></p> <p>D The Contractor shall be entirely responsible for the security of all the works, stores, materials, plant, personnel, etc., both his own and Sub-Contractor's and must provide all necessary watching, lighting and other precautions as necessary to ensure security against theft, loss or damage and the protection of the public. Hoarding may be required on site.</p>   |        |
|      | <b>Carried to Collection</b>   | -      |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
|      | <b><u>Working Hours</u></b>   |        |
| A    | The working hours shall be those generally works by good employers in the Building and Civil Engineering trades in Kenya. No works shall be carried out at night or on <b>gazetted holidays</b> unless the Contractor shall so direct.  |        |
|      | <b><u>Firm Price Contract</u></b>   |        |
| B    | Unless otherwise specifically stated, this is a fixed rate contract and that no claim for increased costs will be entertained except only increased costs arising from fluctuation clause as defined in Clause 34.0 of the Condition of Contract.   |        |
|      | <b><u>Operation of Fluctuations Clauses</u></b>   |        |
| C    | The operation of the fluctuations clauses shall be generally in accordance with the practice Notes issued by the joint Building Council, except that the Tender Documents will not include the list of basic prices but only a reference thereto, and where clause numbers are quoted, they will be deemed to be the relevant clauses in the <b>Agreement and Schedule of Contracts for Building Works</b> applicable where quantities form part of the Contract. |        |
|      | <b><u>Materials and Workmanship</u></b>   |        |
| D    | All materials shall be new unless otherwise directed or permitted by the Architect and in all cases where the quality of goods or materials is not described or otherwise specified is to be the best quality obtainable in the ordinary meaning of the word "best" and not merely a trade signification of that word.  |        |
| E    | The Contractor shall order all materials to be obtained from overseas immediately after the Contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that such materials are on site when required for use in the works.   |        |
| F    | The Contractor shall be responsible for and shall replace or make good at his own expense any materials lost or damaged.  |        |
|      | The works throughout shall be executed by skilled workmen well versed in their respective trades.   |        |
|      | The Bills of Quantities shall not be used for the purpose of ordering materials.  |        |
|      | <b>Carried to Collection</b>  | -      |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
|      | <b><u>Rejected Workmanship or Materials</u></b>   |        |
| A    | Any workmanship or materials not complying with the specific requirements or approved samples or which have been damaged, contaminated or have deteriorated, must be immediately removed from the Site and replaced at the Contractor's expense, as required.   |        |
|      | <b><u>Proprietary Materials</u></b>   |        |
| B    | Where proprietary materials are specified hereinafter the Contractor may propose the use of materials of other manufacture but of equal quality for approval by the Architect.  |        |
| C    | All materials and goods, where specified to be obtained from a particular manufacturer or supplier, are to be used or fixed strictly in accordance with their instructions.   |        |
|      | <b><u>Regulations and Standards</u></b>   |        |
| D    | The Contract equipment, materials and works shall comply with the current editions or the following:-   |        |
|      | (a) The Kenya Bureau of Standards and Government Regulations.   | -      |
|      | (b) British Standards and Codes of Practices, DIN Standards or equivalent.  |        |
|      | (c) Kenya Ministry of Public Works General Specification for Building Works (1976 Edition) together with any amendments thereto, copies can be purchased from Kenya Ministry of Public Works - KBRC   |        |
|      | (d) Local council By-Laws   |        |
|      | (e) The Electricity Supply Authority By-Laws (KP&LC.)   | -      |
|      | <b><u>Materials and Workmanship</u></b>   |        |
| E    | All materials and workmanship used in the execution of the works shall be of the best quality and description unless otherwise described.   |        |
| F    | The contractor shall order all materials to be from overseas immediately after the contract is signed and shall order materials to be obtained from local sources as early as necessary to ensure that they are on sit when required for use in the works. The bills of Quantities shall not be used for the purpose of ordering materials. |        |
|      | <b>Carried to Collection</b>  | -      |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
| A    | <p><b><u>Sign for Materials Supplied</u></b></p> <p>The contractor will be required to sign a receipt for all articles and materials supplied by the Employer at the time of taking delivery thereof, as having received them in good order and condition, and will thereafter be responsible for any loss or damage and for replacements of any such loss or damage with article and /or materials which will be supplied by the Employer at current market prices including Customs Duty, all at the Contractors own cost and expense, to the satisfaction of the Architect and Employer.</p> |        |
| B    | <p><b><u>Storage of Materials</u></b></p> <p>The contractor shall provide at his own where on the site weather pool lock-up sheds for the safe storage and custody of materials for the works and for the use of works engaged thereon and shall remove such sheds and make good damaged or disturbed surface upon completion to the satisfaction of the Architect.</p>   |        |
| C    | <p>The Contractor shall also provide at his own cost lockable facilities for the sole use of nominated sub-contractors.</p>   |        |
| D    | <p>No materials shall be stored or stacked on suspended slabs without the prior approval of Architect.</p>  |        |
| E    | <p><b><u>Government Acts Regarding Workpeople, etc</u></b></p> <p>Allow for complying with all Government Acts, orders and Regulations in connection with employment of labour and other matters related to the execution of the works in particular the Contractors attention is drawn to the Factory Act 1950 and his tender must include for all the cost arising or resulting from compliance with any act, order or Regulation relating from compliance, pensions and Holidays for works people or to the safety, health or welfare of works people.</p>                                   |        |
|      | <b>Carried to Collection</b>  | -      |



PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
| A    | <p><b><u>Government Act Regarding Works people</u></b></p> <p>The Contractor must make himself fully acquired with current Acts and Regulations, including Police Regulations regarding the movement, housing security and control of labour camps passed for transport, etc. It is most important that the Contractor, before tendering shall obtain from relevant authority the fullest information regarding all such regulations and/or restrictions which may affect the organization of the works, supply and control of labour, and allow according in his tender. No claim in respect of want of knowledge in this connection will be entertained.</p> |        |
|      | <p><b><u>Security of Works</u></b></p> <p>The Contractors shall be entirely responsible for the security of all the works, stores, materials, plant personnel etc. both his own and Sub-Contractors and shall provide all necessary watching, lighting, boarding and other precautions as necessary to ensure the security and the protection of the public.</p>   |        |
|      | <b>Carried to Collection</b>   | -      |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
|      | <b><u>Samples and Test Cubes</u></b>  |        |
| A    | The Contractor shall furnish at his own cost any samples of materials or workmanship including concrete test cubes required for the works that may be called for by Structural Engineer and Architect for his approval or rejection and any further samples in case of rejection until such samples are approved by the Architect and other Architect may reject any materials or workmanship not in this opinion up to the approved samples. The Architect shall arrange for the testing of such material as he may at his discretion deem desirable, but the testing shall be made at the expense of the Architect not at the expense of the contractor unless the materials fail to pass the test or are in the opinion not in accordance with the specification, in either case the contractor shall pay for testing accordance with the current scales of testing charges laid down by the Ministry of Public Works. |        |
| B    | The procedure for submitting samples of materials for testing and the method of making for identification shall be as laid down by the Architect.   |        |
|      | <b><u>Materials, Tools, Plant etc</u></b>   |        |
| C    | All materials workmanship used in the execution of the works shall be the best quality and description unless otherwise described. Any materials for the works condemned by the Architect shall immediately be removed from the sit at the contractor's expense.  |        |
| D    | The contractor shall be responsible for the provision of all materials scaffolding, tools, plant, transport and workmen required for the works except as may be stated otherwise herein and he shall allow for the provision of the fore going except for such items specially and only requires for the use of Nominated Sub-Contractor as described herein.   |        |
|      | No timber for scaffolding, formwork or similar purposes shall be used afterwards in the permanent work.   |        |
|      | <b>Carried to Collection</b>  | -      |

## PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
| A    | <p><b><u>Contractors Superintendence</u></b></p> <p>The contractors shall constantly keep on the works a literate English speaking agent or representative competent and experienced in the kind of works involved, who shall give his whole time to the superintendence of the works. Such agent or representative shall receive on behalf of the contractor directions and instructions from the Architect and such directions shall be deemed to the given to the contractors in accordance with the conditions of contract.</p>   |        |
| B    | <p><b><u>Method of Measurement</u></b></p> <p>Special attention is directed to the fact that “METRIC UNITS” have been used in these Bills of Quantities.</p>  |        |
| C    | <p>However the principle of measurement adopted for these Bills of Quantities is that advocated by the Standard Method of Measurement of Building Works (<b>SMM</b>) for East Africa Edition metric, April, 1991 published by the Architectural Association of Kenya Chapter of Quantity Surveyors which is available for inspection at the offices of the Quantity Surveyors for all the Building and related Civil Works.</p> <p>The rates set down by the contractor against each item in these Specification of works shall, unless otherwise expressly provided to the contrary, or unless there is a separate item for extra labour, cutting or waste be held to include for waste on materials, carriage and cartage, carrying in and return of empties, hoisting, setting, fitting and fixing in position, making and all the other labour an everything else necessary for the proper completion of each items and for shall include for consequent waste.</p> |        |
|      | <b>Carried to Collection</b>  |        |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
| A    | <p><b><u>Exceptions to the Standard method or Measurement</u></b></p> <p>The exceptions to the standards method of measurement are as follows:</p> <p>(a) <u>Clause B 19 (b) of the standard method measurement is deleted and the following clause is substituted:-</u></p> <p>Attendance on nominated Sub-Contractors shall be given as an item in each case and shall be deemed to include allowing use of standing scaffolding, mass rooms, sanitary accommodation and welfare facilities; providing space for office accommodation and for storage of plant and materials, providing light and water for facilities for storage (as specified under "storage of materials") hoisting providing water and power (as specified under "water and electricity supply for the works") and removing and replacing duct covers casings and the like necessary for the execution and testing of sub contractors works, providing templates dimensions and supervision for the proper carrying out of the Sub-Contractors works and being responsible for the accuracy of the same.</p> <p>b) <u>Clause D 18 (a) and (b) of the standard method of measurement are deleted and the following is substituted:-</u></p> <p>Keeping excavations free from all water including spring and running water shall be given as an item, or alternatively shall be given in the description of excavation.</p> <p>c) <u>Clause D 19 of the standard method of measurement.</u> The last sentence which reads "and shall be given as an item or shall be included in the description of excavation: shall be deleted and the following substituted; " and shall be included in the description of all items of excavations".</p> <p><b><u>Keep Site Clean</u></b></p> <p>B Great care must be taken to keep the site free from debris and in a clean condition.</p> <p><b><u>Provisional Sums</u></b></p> <p><b><u>Adjustment of P.C. Sums</u></b></p> <p>C In the final account all P.C sums shall be deducted and the amount properly expanded upon the architects order in respect of each of them to the contract sum.</p> |        |
|      | <b>Carried to Collection</b>  | -      |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
| A    | The Contractor shall produce to the Architect such quotations, invoices or bills properly receipted, as may be necessary to show the actual details of the sum paid by the contractor.  |        |
| B    | Items of profit upon P.C Sums shall be adjusted in final accounts prorate to the amount paid.   |        |
| C    | Items of "attendance" and "special attendance" following P.C Sums shall be adjusted prorate to the physical extent of the works executed (not pro rata to the amount paid) and this shall apply even though the contractors priced Bills show a percentage in the rate column in respect of them.   |        |
| D    | Should the contractor be permitted to tender and his tender be accepted for any works for which a P.C Sums is included in these Bills of Quantities, profit and attendance will be allowed at the same rate as it would be if works were executed by a Nominated Sub-Contractor.  |        |
|      | <b><u>Adjust of provisional Sums</u></b>  |        |
| E    | In final account all provisional sums shall deducted and the value of the works properly executed in respect of them upon the Architects order added to the contract sum. Such works shall be valued as described for variations in Clause II of the conditions of contracts, but should any part of the works be executed by a Nominated Sub-Contractor, or any articles for the work be supplied by a Nominated Sub-Contractor, or any articles for the work be supplied by a Nominated Supplier, the value of such work or articles shall be treated as P.C Sums and profit and attendance comparable to that contained in the Bills for Quantities for similar items added. |        |
|      | <b><u>Nominated Sub-Contractors</u></b>   |        |
| F    | When any work is ordered by the Architect to be executed by nominated Sub-Contractors, the contractor shall enter into Sub- contracts as described in Clause 27 of the conditions of contract an shall thereafter be responsible for such sub-contractors in every respect.   |        |
| G    | Unless otherwise described the contractor is to provide for such sub-contractors any or all of the facilities described in these preliminaries.   |        |
| H    | The contractor should price for these with the nominated sub-contractors work concerned in the P.C Sums under the description "Add for attendance".   |        |
|      | <b>Carried to Collection</b>  | -      |

PRELIMINARIES

| Item | Description   | Amount |
|------|---|--------|
|      | <b><u>Attendance Upon Other tradesmen etc</u></b>   |        |
| A    | The contractor shall allow for the attendance of trade upon trade upon trade and shall afford any tradesmen or other persons employed for the execution for any work not included in this contract facility for carrying out their work and also for the use of his ordinary scaffolding. The contractor, however, shall not be required to erect any special scaffolding for them.                           |        |
| B    | The contractor shall perform such cutting away for and making good after the work of such tradesman or persons as may be ordered by the Architect and the work will be measured and paid for to the extent at rates provided in these Bills.  |        |
|      | <b><u>Hoarding</u></b>  |        |
| C    | The contractor shall provide and erect a temporary hoarding, with gate, access doors and fastenings, for the proper execution of the works for the protection of the public and occupants of the adjoining premise for meeting the requirements of any local or other authority.  |        |
|      | <b><u>Insurance</u></b>   |        |
| D    | <b>The contractor shall insure as required in Clauses 11.0, 12.0, 13.0,14.0, and 15.0 of the conditions of contract.</b> No payment on account of the week executed will be made to the contractor until he has satisfied the Architect either by production of an Insurance Policy or an Insurance Certificate that the provisions of the foregoing Insurance clause have been compiled within all respects. |        |
|      | <b><u>Alterations to Specifications rates and , pricing etc</u></b>   |        |
| E    | Any unauthorized alteration or qualification made to the next of the Bills of quantities may cause the tender to be disqualified and will in any case in be ignored.<br><br>The contractor shall be deemed to have made allowance in his priced generally to cover any against which no price has been inserted in the schedule of rates or any item within these specifications.                             |        |
| F    | All items of measurement works shall be prices in detail and tenders containing lump sums to cover trades or groups of works must be broken down to show the price of each item before they will be accepted. Lump sums to cover any item of preliminaries shall be likewise broken if so required.   |        |
|      | <b>Carried to Collection</b>  | -      |

## PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
| A    | <p><b>Blasting Operations</b></p> <p>Blasting will only be allowed with the express permission of the Architect in writing.</p>  |        |
| B    | All blustering operations shall be carried out at the contractors sole risk and cost in accordance with any government regulations in force for the time being and any special regulations laid down by the architect governing the use and storage of explosive.  |        |
| C    | <p><b>Noise</b></p> <p>The use of noisy mechanical equipment shall be kept to a minimum and all possible steps shall be taken to suppress or baffle the noise from such equipment. The use of portable radios on site shall be prohibited. The contractor shall deal with any complaints which may arise from occupants of nearby building by making such arrangements as may be necessary including suspending the works in whole or part and bearing all costs arising there from.</p>   |        |
| D    | <p><b>Materials Arising from Excavations</b></p> <p>Materials of any kind obtained from the excavations shall be the property of the Employer. Unless the Architect directs otherwise such materials shall be dealt with has provided in the Contract Such materials shall only be used in the works, on substitution of materials which the Contractor would otherwise have had to supply with the written permission of the Architect. Should such permission be given the contractor shall make due allowance for the value of the materials so used at a price to be agreed.</p> |        |
|      | <b>Carried to Collection</b>   |        |

PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
|      | <b><u>Protection of the Works</u></b>  |        |
| A    | Provide protection for the whole of the works contained in the Bills of Quantities including casing up, covering or such other means as may be necessary to avoid damage to the satisfaction of the Architect and remove such protection when no longer required and make good any such may nevertheless have been done at completion free of cost to the Employer.  |        |
|      | <b><u>Training Levy</u></b>  |        |
| B    | The Contractor's attention is drawn to Legal Notice No. 237 of October 1971, which requires payment by the contractor of Training Levy on all contracts of more than Kshs. 50,000/= in value and his tender must include for all costs arising or resulting therefrom.   |        |
|      | Payment of Training levy shall be pegged to proof of actual payment of the amount  |        |
|      | <b><u>Standard Levy</u></b>  |        |
| C    | The Contractor's attention is drawn to the Standards Levy Order, which was amended on 15th October 1998 vide Legal Notice 154 of 1998. The Contractor is required to pay a monthly levy of 0.2% of his ex-factory price of construction works with effect from January 1999. The tenderer shall allow for this in the build up of his rates.   |        |
|      | <b><u>Removal of Rubbish, etc</u></b>  |        |
| D    | Removal all the rubbish and debris from the site as it accumulate and at completion of works and remove all plant, scaffolding and unused materials at completion.   |        |
|      | <b><u>Works to be Delivered Up Clean</u></b>   |        |
| E    | Clean and flush all gutters, rainwater and waste pipes, manholes and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary, glass inside and outside, and any other parts of the works which may require it, remove all marks, blemishes, stains and defects from joinery, fittings and surfaces generally, polish door furniture and bright parts of metalwork and leave the whole of the buildings watertight clean, perfect and fit for occupation to the approval of the Architect. |        |
|      | <b>Carried to Collection</b>   | -      |



## PRELIMINARIES

| Item | Description  | Amount |
|------|--|--------|
|      | <b><u>COLLECTION</u></b>                               |        |
|      | Brought forward from Page 1                            | -      |
|      | Brought forward from Page 2                            | -      |
|      | Brought forward from Page 3                            | -      |
|      | Brought forward from Page 4                            | -      |
|      | Brought forward from Page 5                            | -      |
|      | Brought forward from Page 6                            | -      |
|      | Brought forward from Page 7                            | -      |
|      | Brought forward from Page 8                            | -      |
|      | Brought forward from Page 9                            | -      |
|      | Brought forward from Page 10                           | -      |
|      | Brought forward from Page 11                           | -      |
|      | Brought forward from Page 12                           | -      |
|      | Brought forward from Page 13                           | -      |
|      | Brought forward from Page 14                           | -      |
|      | Brought forward from Page 15                           | -      |
|      | Brought forward from Page 16                           | -      |
|      | <b><u>TOTAL FOR BILL NO. 1 -<br/>PRELIMINARIES</u></b> | -      |

## PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM | DESCRIPTION  | QTY | UNIT | RATE | AMOUNT |
|------|--|-----|------|------|--------|
|      | <b>ELEMENT NO. 1</b>   |     |      |      |        |
|      | <b>SUBSTRUCTURES</b>   |     |      |      |        |
|      | <b>(' All provisional')</b>  |     |      |      |        |
| A    | Clear site of all grass and cart away or burn arisings.  | 26  | SM   |      |        |
| B    | Excavate oversite to remove top vegetable soil average 250mm deep and spread as directed on site.        | 26  | SM   |      |        |
| C    | Excavate for foundation strip footing in normal soil not exceeding 1.5m deep from reduced level          | 5   | CM   |      |        |
| D    | Ditto; depth over 1.5m but n.e 3.0m  | 5   | CM   |      |        |
| E    | Ditto; depth over 3.0m but n.e 4.5m  | 5   | CM   |      |        |
| F    | Ditto; depth over 4.5m but n.e 6.0m  | 5   | CM   |      |        |
| G    | Ditto; depth over 6.0m but n.e 7.5m  | 5   | CM   |      |        |
| H    | Ditto; depth over 7.5m but n.e 9.0m  | 5   | CM   |      |        |
| J    | Return fill and ram selected excavated material around foundations.                                      | 5   | CM   |      |        |
| K    | Load, wheel and cart away from site surplus excavated material and deposit in approved dumping area.     | 30  | CM   |      |        |
|      | <b>Hardcore filling</b>  |     |      |      |        |
| L    | 300 mm thick (average) approved broken quarry stone hardcore filling in two equal layers well compacted. | 8   | SM   |      |        |
| M    | 50mm thick quarry dust blinding to hardcore surfaces   | 8   | SM   |      |        |
|      | Total Carried to Collection  |     |      |      |        |

PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM | DESCRIPTION   | QTY | UNIT | RATE | AMOUNT |
|------|---|-----|------|------|--------|
|      | <b><u>Concrete Works</u></b>  |     |      |      |        |
|      | <b>50 mm plain concrete (1:3:6 - class 15/20mm) blinding</b>  |     |      |      |        |
| A    | Strip footing.  | 10  | SM   |      |        |
|      | <b>Vibrated Reinforced Concrete mix (1:2:4) class 20/20mm</b>   |     |      |      |        |
| B    | Strip footing and ground beam   | 1   | CM   |      |        |
| C    | 150mm thick floor bed   | 15  | SM   |      |        |
| D    | Steel fabric mesh reinforcement type A98 weighing not less than 2.22Kg/M <sup>2</sup> to BS 4483 with 150 mm side laps (measured net - no allowance for laps) | 15  | SM   |      |        |
|      | <b><u>Reinforcement</u></b>   |     |      |      |        |
|      | <b><u>High Tensile square twisted bars to BS 4461 including bends, hooks and tying wire(provisional)</u></b>  |     |      |      |        |
| E    | Y 10  | 212 | KG   |      |        |
|      | <b><u>Sawn formwork to :</u></b>  |     |      |      |        |
| F    | Sides of strip footing  | 11  | LM   |      |        |
| G    | Soffits of ground floor slab  | 15  | SM   |      |        |
| H    | Edges of ground floor bed exceeding 75mm but not exceeding 150mm wide.  | 16  | LM   |      |        |
|      | <b><u>Masonry works</u></b>   |     |      |      |        |
| J    | 150mm thick fired clay bricks bedded and jointed in cement sand (1:3) mortar; reinforced with hoop iron at alternate courses                                  | 13  | SM   |      |        |
|      | <b>Total Carried to Collection</b>  |     |      |      |        |

PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM                       | DESCRIPTION  | QTY | UNIT | RATE | AMOUNT |
|----------------------------|--|-----|------|------|--------|
| A                          | <u>Hessian based Bituminous Damp Proof Course bedded and jointed in cement sand mortar 1:3.</u>  | 16  | LM   |      |        |
|                            | 200 mm wide.   |     |      |      |        |
|                            | <u>SURFACE TREATMENT</u>   |     |      |      |        |
|                            | B "Dragnet" or other equal and approved antitermite insecticide treatment to blinded hardcore surfaces applied in accordance with manufacturer's instructions. |     |      |      |        |
|                            | C 1000 gauge polythene sheeting laid under concrete floor bed.   |     |      |      |        |
|                            | <b>Cement sand (1:4) screed backing:-</b>  |     |      |      |        |
| D                          | 12mm thick to plinth surfaces wood floated   | 4   | SM   |      |        |
| E                          | Prepare and apply three coats of bitumastic paint to rendered surfaces.  | 4   | SM   |      |        |
| Total to Collection Below  |  |     |      |      |        |
| <u>Collection</u>          |  |     |      |      |        |
| Brought forward from BW/1  |  |     |      |      |        |
| Brought forward from BW/ 2 |  |     |      |      |        |
| Brought forward from above |  |     |      |      |        |
| Total Element 1 to Summary |  |     |      |      |        |

## PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM | DESCRIPTION   | QTY | UNIT | RATE | AMOUNT |
|------|---|-----|------|------|--------|
|      | ELEMENT 02 RC SUPERSTRUCTURE  |     |      |      |        |
| A    | Vibrated Reinforced Concrete mix (1:2:4) class 20/20mm<br>in;<br><br>300x200mm ring beams                         | 1   | CM   |      |        |
| B    | High Tensile square twisted bars to BS 4461 including<br>bends,hooks and tying wire<br><br>Assorted bars in ditto | 87  | KG   |      |        |
| C    | Sawn formwork to :<br><br>Sides of beams  | 10  | SM   |      |        |
|      | Total Element 2 to Summary  |     |      |      |        |

## PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

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## PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM | DESCRIPTION   | QTY | UNIT | RATE | AMOUNT |
|------|---|-----|------|------|--------|
|      | <p><b><u>ELEMENT NO. 4 ROOFING</u></b></p> <p>Roof construction</p> <p>All the following structural timber shall be Sawn second grade treated cypress with 9-15%M.C. The prices shall include the hoisting of all materials to roof level approx. 3000mm above ground level</p> |     |      |      |        |
| A    | 100 x 50 mm wall plate.   | 10  | LM   |      |        |
| B    | 75 x 50mm purlins   | 20  | LM   |      |        |
|      | <p><b>Trusses</b></p> <p>The following in Trusses at 1200mm centres with nailed connections including templates, fillets, straps, splices and hoisting approx.3000mm above ground level</p>   |     |      |      |        |
| C    | 100 x 50 mm rafters and tie beam  | 30  | LM   |      |        |
|      | <b>Wrot Cypress Grade 2; Pressure Impregnated,celcured,</b>   |     |      |      |        |
| D    | 225 x 25 mm wrot cypress fascia and barge board.  | 15  | LM   |      |        |
|      | <b><u>Roof covering</u></b>   |     |      |      |        |
|      | <b>Resincoat Box profiled Cover</b>   |     |      |      |        |
| E    | Gauge 30 Ordinary roofing sheets including 150mm laps nailed onto timber purlins  | 20  | SM   |      |        |
|      | <b>Total Element 4 to Summary</b>   |     |      |      |        |

PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM | DESCRIPTION  | QTY | UNIT | RATE | AMOUNT |
|------|--|-----|------|------|--------|
|      | <b><u>ELEMENT 05</u></b>   |     |      |      |        |
|      | <b><u>DOORS.</u></b>   |     |      |      |        |
|      | <b>45 mm thick hardwood panelled door</b>  |     |      |      |        |
| A    | Size 900x2100mm high braced styled battened<br><br>In wrot hardwood.   | 3   | NO   |      |        |
| B    | 100x50mm frame<br><br>Ironmongery.<br><br>Supply and fix the following Ironmongery as "Union" or other equal and approved to wood with matching screws.  | 16  | LM   |      |        |
| C    | Welder's door handle and lock latches  | 3   | NO   |      |        |
| D    | 100 mm stainless steel bearing butt hinges.  | 4.5 | PRS  |      |        |
|      | <b><u>WINDOWS</u></b>  |     |      |      |        |
|      | <b><u>Steel windows</u></b><br>Supply and Fix the following purpose-made Mild Steel casement finished with one coat red oxide primer complete with opening accessories including cutting and fixing lugs and pointing all round in cement mortar with horizontally pivoted sashes as in the architect details; |     |      |      |        |
| E    | 600 by 600mm high  | 4   | NO   |      |        |
|      | <b><u>Glazing</u></b><br>4mm thick clear sheet glass to :-   |     |      |      |        |
| F    | Panel 0.1 to 0.50 square metres  | 1   | SM   |      |        |
|      | <b>Total Element 5 to Summary</b>  |     |      |      |        |



PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM                       | DESCRIPTION   | QTY | UNIT | RATE | AMOUNT |
|----------------------------|---|-----|------|------|--------|
| A                          | <u>ELEMENT 06</u>                                   | 34  | SM   |      |        |
|                            | <u>EXTERNAL FINISHES</u><br><u>WALL</u>             |     |      |      |        |
|                            | Horizontal key pointing in cement sand (1:4) mortar |     |      |      |        |
| Total Element 6 to Summary |   |     |      |      |        |

## PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM | DESCRIPTION   | QTY | UNIT | RATE | AMOUNT |
|------|---|-----|------|------|--------|
|      | <b>ELEMENT 07</b>   |     |      |      |        |
|      | <b>INTERNAL FINISHES</b>  |     |      |      |        |
|      | <b>FLOOR</b>  |     |      |      |        |
|      | Cement and sand (1:4) screed  |     |      |      |        |
| A    | 25mm thick wood floated smooth  | 13  | SM   |      |        |
|      | Nonslip ceramic floor tiles   |     |      |      |        |
| B    | 250 by 250 by 6mm non-slip ceramic floor tiles as SAJ ceramic tiles in cement sand(1:4) mortar including pvc quadrants edging to tiles and single line borders      | 13  | SM   |      |        |
| C    | 25x 100mm high skirting   | 23  | LM   |      |        |
|      | <b>WALL FINISHES</b>  |     |      |      |        |
|      | Lime plaster; 20mm thick (1:2:9)  |     |      |      |        |
| D    | Plaster to walls  | 48  | SM   |      |        |
|      | Cement and sand (1:4) screed  |     |      |      |        |
| E    | 25mm thick wood floated smooth  | 5   | SM   |      |        |
|      | Ceramic wall tiles  |     |      |      |        |
| F    | 400 by 400 by 8mm ceramic wall tiles as SAJ ceramic tiles in cement sand(1:4) mortar including pvc quadrants edging to tiles and single line borders to urinal area | 5   | SM   |      |        |
|      | Total Element 7 to Summary  |     |      |      | -      |

## PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

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### PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| ITEM | DESCRIPTION                    | AMOUNT |
|------|--------------------------------|--------|
|      | <u>SUMMARY</u>                 |        |
| 1    | Substructures                  |        |
| 2    | RC Superstructure              |        |
| 3    | Walling                        |        |
| 4    | Roof Construction and Covering |        |
| 5    | Doors and windows              |        |
| 6    | External Finishes              |        |
| 7    | Internal Finishes              |        |
| 8    | Painting and Decorating        |        |
|      | TOTAL TO GRAND SUMMARY         |        |

| ITEM | DESCRIPTION  | QTY | UNIT | RATE | AMOUNT |
|------|--|-----|------|------|--------|
|      | <b><u>PROVISIONAL SUMS</u></b>   |     |      |      |        |
| A    | Provide a provisional sum of Kshs. Twenty five thousand (Kshs. 25,000) only for rainwater goods and disposal including supply and installation of a water tank (1,000 litres) as Roto or any other equal approved, including all necessary fittings and hoisting of tank to 1.2 meters above ground level to collect rainwater from roof structure   |     | Item |      |        |
| B    | Provide a provisional sum of Kshs. Fifteen thousand (Kshs. 15,000) only for construction of a platform next to structure to hoist the tank 1.2 meters above ground level to engineer's approval  |     | Item |      |        |
| C    | Allow for a provisional sum of Kshs. Twelve thousand (Kshs. 12,000) only for contingencies to be spent as per the Project Manager's instructions   |     | Item |      |        |
|      | Allow a provisional sum of ten thousand (Kshs 10,000) to cover costs associated with compliance to professional standards, CPD training, professional affiliations, and attendance at industry summits, as required by the Architects and Quantity Surveyors Bylaws (2020), Legal Notice No. 202 of 6th November 2020, Engineers Act 2011, and EBK CPD Policy (EBK/CBA/POL/O1) of April 2024 |     | SUM  |      |        |
|      | <b>Total Provisional Sums to Grand Summary</b>   |     |      |      |        |

# PROPOSED CONSTRUCTION OF 3 DOOR PIT LATRINE

| DESCRIPTION             | Tenderer`s<br>Amount<br>Kshs. | Official UseOnly<br>Kshs. |
|-------------------------|-------------------------------|---------------------------|
| <u>GRAND SUMMARY</u>    |                               |                           |
| PRELIMINARIES           |                               |                           |
| BUILDER'S WORK          |                               |                           |
| PROVISIONAL SUMS        |                               |                           |
|                         |                               |                           |
| SUB-TOTAL(@UNIT)        |                               |                           |
| <i>1 NUMBER LATRINE</i> |                               | × 1                       |
| GRAND TOTAL             |                               |                           |

Amount in words : .....

.....

Tenderer`s signature and stamp.....

.....

Address .....

.....

Date : .....

Witness`s name : .....

Signature.....

Address.....

Date : .....