



THE KISUMU NATIONAL POLYTECHNIC

LETTER OF INVITATION FOR BIDDERS

Country: KENYA

Project: BLUE SKILLS TRAINING FOR EMPLOYMENT PROJECT

REF: AUDA-NEPAD/KfW 201569 052/FW1/KEN/005

Date: 20/08/2026

NCB No: TKNP/SIFA/RFB/CW/26/1

The *Kisumu National Polytechnic* has received a Grant from AUDA-NEPAD SIFA Project, financed by KfW toward the cost of the *Blue Skills Training for Employment Project*, and intends to apply part of the proceeds toward payments under the contract for *Proposed Construction of Blue Skills Training for Employment Centre*.

The Kisumu National Polytechnic now invites sealed Bids from eligible Bidders for *Proposed Construction Works of Blue skills Training for Employment Centre*.

The works consist of 4,377 m² Aquaculture and Education facility and includes an Aqua Centre supported by labs, offices, processing, and retail, teaching block (auditorium, classrooms, IT labs), workshops, administration offices, restaurant, wild fishpond, support facilities, and landscaped courtyards.

The currency of the Bid is Euros and the Execution Period is 18 Months.

Bidding will be conducted by means of the National Competitive Bidding procedure with qualification as specified in the SIFA Guidelines for the Procurement of Goods, Works and associated Services.

Interested eligible Bidders may obtain further information from principal@kisumumupoly.ac.ke or supplychain@kisumupoly.ac.ke

A complete set of bidding documents is available to interested Bidders at www.kisumupoly.ac.ke or www.tenders.go.ke

In accordance with Section II -QBDS ITB 7.2 and ITB 7.4, a Site Visit will take place on **Friday 28/08/2026 at 10:00 a.m.** at the Kisumu National Polytechnic, Technology Road Kisumu, , and will be followed by a Pre-Bid meeting, during which

Bidders may ask questions by means of a formal written request. **Attendance to the Site Visit and Pre-Bid meeting is mandatory.**

Qualification Documents and Bids must be delivered to the address indicated in the clause ITB 22.1 of the bidding document on or before **11:00 AM Tuesday 06/10/2026. Late Qualification Documents and Bids will be rejected.**

In the first public session, only the Qualification Documents will be opened in the presence of the Bidders' designated representatives. In the second public session only the Bids of those Bidders who have fulfilled the qualification criteria will be opened.

All Bids must be accompanied by a Bid Security issued by a bank

Bidders should note that AUDA-NEPAD SIFA Project Procurement office collects and uses your personal information for "Procurement Process" and publishes same on the AUDA-NEPAD SIFA Project website when contract is awarded. The collection and use of Personal Data of Consultant(s) intending to compete and deliver services or goods to the AUDA-NEPAD SIFA Project either individually or as a firm will only be used after consent has been granted by the Consultant(s). The protection of the personal data provided will be the responsibility of the AUDA-NEPAD SIFA Project and same shall be kept for a period strictly necessary for the purpose set out. This privacy notice supplements the AUDA-NEPAD SIFA Project standard privacy notice and should be read in conjunction with the same available on AUDA-NEPAD SIFA Project website <https://www.nepad.org>.



THE KISUMU NATIONAL POLYTECHNIC (TKNP)
AUDA-NEPAD with German Financial Cooperation
(KfW)

Project: BLUE SKILLS TRAINING FOR EMPLOYMENT PROJECT
(B-STEP)

Bidding Documents (Parts 1 & 3)

for

Procurement of Construction Works of Blue Skills for
Employment Centre

National Competitive Bidding No: TKNP/SIFA/RFB/CW/26/1

Employer: The Kisumu National Polytechnic

August 2026

AUDA-NEPAD/KfW 201569 052/FW1/KEN/005

Table of Contents

PART 1 – Bidding Procedures.....	5
Section I. Instructions to Bidders	8
Section II. Qualification and Bid Data Sheet.....	36
Section III. Qualification and Evaluation Criteria.....	44
Section IV. Qualification and Bidding Forms	55
Section V. Eligibility Criteria.....	105
Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility.....	107
PART 2 – Works Requirements.....	110
Section VII. Works Requirements.....	111
PART 3 – Conditions of Contract (CC) and Contract Forms	122
Section VIII. General Conditions (GC).....	128
Section IX. Particular Conditions (PC).....	200
Section X. Contract Forms.....	212

PART 1 – BIDDING PROCEDURES

Section I. Instructions to Bidders

Table of Contents

A. General.....	8
1. Scope of Bid	8
2. Source of Funds	8
3. Corrupt and Fraudulent Practices.....	8
4. Eligible Bidders.....	9
5. Eligible Materials, Equipment, and Services.....	10
B. Contents of Qualification and Bidding Documents.....	11
6. Sections of Qualification and Bidding Documents	11
7. Clarification of Qualification and Bidding Documents, Site Visit, Pre-Bid Meeting	12
8. Amendment of Qualification and Bidding Documents	13
C. Preparation of Qualification Documents and Bids	13
9. Cost of Bidding	13
10. Language of Qualification Document and Bid	13
11. Documents Comprising the Qualification Document and the Bid	14
12. Letter of Qualification, Declaration of Undertaking, Qualification Forms, Letter of Bid, Bidding Forms and Schedules.....	16
13. Alternative Bids.....	17
14. Bid Prices and Discounts.....	17
15. Currencies of Bid and Payment.....	19
16. Documents Establishing the Qualifications of the Bidder	19
17. Documents Comprising the Technical Proposal.....	19
18. Period of Validity of Bids.....	19
19. Bid Security.....	20
20. Format and Signing of Bid	21
D. Submission and Opening of Qualification Documents and Bids...22	
21. Sealing and Marking of Qualification Documents and Bids.....	22
22. Deadline for Submission of Qualification Documents and Bids.....	23
23. Late Submissions	23
24. Withdrawal, Substitution, and Modification of Bids	23
25. Opening of Qualification Documents and Bids	24
E. Evaluation of Qualification Documents	26
26. Qualification Responsiveness, Evaluation of Qualification	26
F. Evaluation and Comparison of Bids.....	28
27. Confidentiality	28
28. Clarification of Bids	29
29. Deviations, Reservations, and Omissions	29
30. Determination of Responsiveness.....	29

31. <i>Nonmaterial Nonconformities</i>	30
32. <i>Correction of Arithmetical Errors</i>	30
33. <i>Conversion to Single Currency</i>	31
34. <i>Margin of Preference</i>	31
35. <i>Subcontractors</i>	31
36. <i>Evaluation of Bids</i>	31
37. <i>Comparison of Bids</i>	33
38. <i>Employer's Right to Reject All Bids</i>	33
G. Award of Contract	33
39. <i>Award Criteria</i>	33
40. <i>Notification of Award</i>	33
41. <i>Signing of Contract</i>	34
42. <i>Performance Security</i>	34

Section I. Instructions to Bidders

A. GENERAL

- 1. Scope of Bid**
- 1.1 In connection with the Invitation for Bids specified in the Qualification and Bid Data Sheet (QBDS), the Employer, as specified in the **QBDS**, issues these Bidding Documents ("Bidding Documents") to Bidders ("Bidders") interested in submitting bids ("Bids") for the Works described in Section VII, Works Requirements. In case the Works are to be bid as individual contracts (i.e. the slice and package procedure), these are listed in the **QBDS**. The National Competitive Bidding ("NCB") number corresponding to this bidding process is also provided in the **QBDS**.
- 1.2 Throughout these Bidding Documents:
- (a) The term "in writing" means communicated in written form and delivered against receipt;
 - (b) Except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
 - (c) "Day" means calendar day.
- 2. Source of Funds**
- 2.1 The Employer as indicated in the **QBDS** has applied or received financing (hereinafter called "funds") from AUDA-NEPAD with financing from KfW Development Bank (hereinafter called "KfW") towards the cost of the project named in the **QBDS**. The Employer intends to apply a portion of the funds to eligible payments under the contract(s) resulting from this bidding process.
- 3. Corrupt and Fraudulent Practices**
- 3.1 AUDA-NEPAD requires compliance with KfW policy in regard to corrupt and fraudulent practices as set forth in Section VI.
- 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents to provide information and permit AUDA-NEPAD and KfW or an agent appointed by AUDA-NEPAD and KfW to inspect on site all accounts, records and other documents relating to bid submission and contract performance (in the case of award), and to have

them audited by auditors or agents appointed by AUDA-NEPAD and KfW.

4. Eligible Bidders

- 4.1 A Bidder may be a firm that is a private entity, a government-owned entity — subject to ITB 4.3 — or a combination of such entities in the form of a joint venture (“JV”) under an existing JV Agreement or with the intent to enter into such an agreement supported by a Letter of Intent to execute a JV Agreement, in accordance with ITB 11.2. In the case of a JV, all members shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The Bidder shall nominate an authorized representative who shall have the authority to conduct all business for and on behalf of the Bidder and any and all its members, if the Bidder is a JV, during bidding and contract execution (in the event the Bidder is awarded the Contract). Unless specified in the **QBDS**, there is no limit on the number of members in a JV.
- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this procurement process, if the Bidder:
- (a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or
 - (b) Receives or has received any direct or indirect subsidy from another Bidder; or
 - (c) Has the same legal representative as another Bidder; or
 - (d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
 - (e) Participates in more than one bid in this bidding process, both as an individual firm and as a JV member. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the

inclusion of the same subcontractor in more than one Bid; or

- (f) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
- (g) Any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract implementation; or
- (h) Has a close business or family relationship with a professional staff of the Employer (or of the project implementing agency, or of a recipient of a part of the funds) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would 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 AUDA-NEPAD throughout the procurement process and execution of the contract.

4.3 The KfW's eligibility criteria to bid are described in Section V, Eligibility Criteria.

4.4 A Bidder shall not be under suspension from bidding by the Employer as the result of the execution of a Bid-Securing Declaration.

4.5 This bidding is open only to eligible Bidders, who will be subject to qualification.

4.6 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as specified in ITB 17.1 or as the Employer shall reasonably request.

5. Eligible Materials, Equipment, and Services

5.1 The materials, equipment and services to be supplied under the Contract and financed by AUDA-NEPAD with funding from KfW, may have their origin in any country subject to the restrictions specified in Section V, Eligibility Criteria, and all expenditures under the Contract will not contravene such restrictions. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

B. CONTENTS OF QUALIFICATION AND BIDDING DOCUMENTS

6. Sections of Qualification and Bidding Documents

- 6.1 The Qualification and Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.

PART 1 Qualification and Bidding Procedures

- (a) Section I. Instructions to Bidders (ITB);
- (b) Section II. Qualification and Bid Data Sheet (QBDS);
- (c) Section III. Qualification and Evaluation Criteria;
- (d) Section IV. Qualification and Bidding Forms;
- (e) Section V. Eligibility Criteria;
- (f) Section VI. KfW Policy - Corrupt and Fraudulent Practices - Social and Environmental Responsibility;

PART 2 Works Requirements

- (g) Section VII. Works Requirements;

PART 3 Conditions of Contract and Contract Forms

- (h) Section VIII. General Conditions (GC);
- (i) Section IX. Particular Conditions (PC);
- (j) Section X. Contract Forms.

- 6.2 The Invitation for Bids issued by the Employer is not part of the Qualification and Bidding Documents.
- 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Qualification and Bidding Documents, responses to requests for clarification, minutes of the pre-Bid meeting (if any), or Addenda in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Qualification and Bidding Documents and to furnish with its Bid

all information and documentation as is required by the Qualification and Bidding Documents.

7. Clarification of Qualification and Bidding Documents, Site Visit, Pre-Bid Meeting

- 7.1 A Bidder requiring any clarification of the Qualification and Bidding Documents shall contact the Employer in writing at the Employer's address specified in the **QBDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Qualification Documents and Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Qualification and Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so indicated in the **QBDS**, the Employer shall also promptly publish its response at the web page identified in the **QBDS**. Should the Employer deem it necessary to amend the Qualification and Bidding Documents as a result of a clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.
- 7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the Qualification Document and Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If so specified in the **QBDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.5 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Qualification and Bidding Documents in accordance with ITB 6.3. Any modification to the Qualification and Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Unless otherwise specified in the **QBDS** nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Qualification and Bidding Documents

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Qualification and Bidding Documents by issuing an Addendum.
- 8.2 Any Addendum issued shall be part of the Qualification and Bidding Documents and shall be communicated in writing to all who have obtained the Qualification and Bidding Documents from the Employer in accordance with ITB 6.3. The Employer shall also promptly publish the Addendum on the Employer's web page in accordance with ITB 7.1.
- 8.3 To give Bidders reasonable time in which to take an Addendum into account in preparing their Qualification Documents and Bids, the Employer may, at its discretion, extend the deadline for the submission of Qualification Documents and Bids in accordance with ITB 22.2

C. PREPARATION OF QUALIFICATION DOCUMENTS AND BIDS

9. Cost of Bidding

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Qualification Document and Bid, and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

10. Language of Qualification Document and Bid

- 10.1 The Qualification Document and the Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language specified in the **QBDS**. Supporting documents and printed literature

that are part of the Qualification Document and the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified in the **QBDS**, in which case, for purposes of interpretation of the Qualification Document and the Bid, such translation shall govern.

**11. Documents
Comprising the
Qualification
Document and the
Bid**

11.1 The Qualification Document and the Bid shall comprise the following:

(a) QUALIFICATION DOCUMENT

- (i) Letter of Qualification, indicating the Bidder's name, address, telephone, fax and email. If the Bidder is an association, the Letter of Qualification shall also describe the form of association and list the association members;
- (ii) Written confirmation authorizing the signatory of the Qualification Document and the Bid to commit the Bidder, in accordance with ITB 20.2 and authorizing the representative of the Bidder, designated in accordance with ITB 4.1 to submit the Qualification Document and Bid on behalf of the Bidder. If the Bidder is a JV, the authorization shall be provided by the Lead Member nominated in the JV Agreement or in the Declarations of Association, submitted in accordance with ITB 4.1. If the representative of the Bidder is the owner, member or director of the Bidder or the Bidder's Lead Member, if so nominated in accordance with ITB 4.1, an authorization shall not be necessary.
- (iii) Presentation of the Bidder (maximum 10 pages, no brochures). If the Bidder is a single entity, the Presentation shall describe the Bidder's type of entity, ownership structure and organization chart, as well as its main business areas as they apply to the project. If the Bidder is a JV, the Presentation shall provide this information about each JV member as well as a description of the intended form of collaboration of the members within the JV. Where the Bidder's qualifications to carry out the assignment have been acquired as a result of a merger or acquisition, the presentation must include a detailed business history of the Bidder.

- (iv) Statements and Declarations: False information provided in the following Statements and Declarations by the Bidder or in the case of a JV by any of the JV members shall lead to the exclusion of the Bidder from the tender process:
- (I) If the Bidder is an existing JV, the Bidder shall submit a proof of the existing Association Agreement, indicating the Lead Member. If the Bidder is a JV, which the members intend to form for the purpose of executing the contract, each member of the association shall submit a Declaration of Association, indicating the Lead Member, in the format provided in Section IV, Qualification and Bidding Forms.
 - (II) Declaration of Undertaking in the format provided in Section IV, Qualification and Bidding Forms.
 - (III) Financial Capacity Statement in the format provided in Section IV, Qualification and Bidding Forms and supported by the Bidder's Balance Sheets and Profit and Loss Statements. If the Bidder is a JV, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each member of the JV. All Balance Sheets and Profit and Loss Statements shall be certified by a reputable auditor.
 - (IV) List of project references in the format provided in Section IV, Qualification and Bidding Forms. Unless otherwise stated in the **QBDS** the references shall be limited to a maximum of 10 projects carried out during the 5 years preceding the publication of these Bidding Documents. The Employer reserves the right to contact the clients indicated in the references to ascertain the information provided by the Bidder.
 - (V) List of Available Expertise and Human Resource Capacity in the format provided

in Section IV, Qualification and Bidding Forms.

- (v) All Qualification forms and required attachments, provided in Section IV, Qualification Forms. If the Bidder is a single entity, in accordance with ITB 4.1, it should not include form ELI 1.2 in its Application.

- (vi) Any other document required in the **QBDS**.

(b) **BID**

- (i) Letter of Bid and the Bidding Forms in accordance with ITB 12;
- (ii) Completed schedules as required, including Price Schedules, in accordance with ITB 12 and ITB 14 and as indicated in the **QBDS**;
- (iii) Bid Security, in accordance with ITB 19.1;
- (iv) Alternative Bids, if permissible in accordance with ITB 13;
- (v) Technical Proposal in accordance with ITB 16;
- (vi) Any other document required in the **QBDS**.

11.2 In addition to the requirements under ITB 11.1(a), Bids 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 Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

12. Letter of Qualification, Declaration of Undertaking, Qualification Forms, Letter of Bid, Bidding Forms and Schedules

12.1 The Letter of Qualification, the Declaration of Undertaking and the Qualification Forms shall be prepared using the relevant forms furnished in Section IV, Qualification and Bidding Forms. The Letter of Qualification and the Declaration of Undertaking must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.

12.2 The Letter of Bid, the Bidding Forms and Schedules, including the Bill of Quantities for unit price contracts or the Schedule of Prices in case of lump sum contracts, shall be prepared using the relevant forms furnished in Section IV, Qualification and Bidding Forms. The Letter of Bid must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 Unless otherwise specified in the **QBDS**, alternative Bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **QBDS**, and the method of evaluation shall be included in Section III, Qualification and Evaluation Criteria.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Qualification and Bidding Documents must first price the Employer's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, 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 lowest evaluated Bidder conforming to the Employer's design of the Bidding Documents shall be considered by the Employer.

13.4 When specified in the **QBDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in Section VII, Works Requirements. The methods for their evaluation shall be described in Section III, Qualification and Evaluation Criteria.

14. Bid Prices and Discounts

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below.

14.2 The Bidder shall submit a Bid for the whole of the Works described in ITB 1.1, by filling in price(s) for all items of the Works, as identified in Section IV, Bidding Forms. The Bidder 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 Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the highest price of the item quoted by substantially responsive Bidders will be added to the Bid price and the equivalent total cost of the Bid so determined will be used for price comparison.

- 14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid.
- 14.5 Unless otherwise specified in the **QBDS** and the Contract, the rate(s) and price(s) quoted by the Bidder are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.6 If so specified in ITB 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots (contracts) are opened at the same time.
- 14.7 Unless otherwise specified in the **QBDS**, the Bid price shall estimate, as separate amounts, (a) import duties and (b) taxes, fees, levies and other charges, which shall apply, in terms of the Applicable Law, to the Contractor and its sub-Contractors, including their personnel, other than nationals or permanent residents in the Employer's country as of the date 28 days prior to the deadline for submission of Bids. Unless otherwise stated in the **QBDS**, the Contractor and its sub-Contractors

are responsible for meeting all tax liabilities arising out of the Contract.

15. Currencies of Bid and Payment

15.1 The currency(ies) of the Bid and the currency(ies) of payments shall be as specified in the **QBDS**.

15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

16. Documents Establishing the Qualifications of the Bidder

16.1 In accordance with Section III, Qualification and Evaluation Criteria, qualification applies as specified in ITB 4.5 and the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Qualification and Bidding Forms.

17. Documents Comprising the Technical Proposal

17.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, Schedules and any other information as stipulated in Section IV, Qualification and Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the Work requirements and the completion time.

18. Period of Validity of Bids

18.1 Bids shall remain valid for the period specified in the **QBDS** after the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 19, it shall also be extended for forty-two (42) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its Bid Security. A Bidder granting the request shall not be required or permitted to modify its Bid.

19. Bid Security

19.1 The Bidder shall furnish as part of its Bid a Bid Security as specified in the **QBDS**, in original form and in the amount and currency specified in the **QBDS**.

19.2 Reserved.

19.3 The Bid Security shall be a demand guarantee in the form of an unconditional guarantee issued by a bank from a reputable source from an eligible country as specified in Section V, Eligibility Criteria. If the unconditional guarantee is issued by a Bank located outside the Employer's Country, the issuing Bank shall have a correspondent Bank located in the Employer's Country to make it enforceable. The Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Employer prior to bid submission. The Bid Security shall be valid for forty-two (42) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 18.2.

19.4 Any Bid not accompanied by a substantially responsive Bid Security shall be rejected by the Employer as non-responsive.

19.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security pursuant to ITB 42.

19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.

19.7 The Bid Security may be forfeited:

- (a) If a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or
- (b) If the successful Bidder fails to:
 - (i) Sign the Contract in accordance with ITB 41; or
 - (ii) Furnish a Performance Security in accordance with ITB 42.

**20. Format and
Signing of Bid**

19.8 The Bid Security of a JV shall be in the name of the JV that submits the Bid. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, the Bid Security shall be in the names of all future members as named in the letter of intent referred to in ITB 4.1 and ITB 11.2.

20.1 The Bidder shall prepare one original each of the Qualification Document and the Bid comprising the documents as described in ITB 11 and clearly mark them "Original." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "Alternative." In addition, the Bidder shall submit copies of the Qualification Document and the Bid, in the number specified in the **QBDS** and clearly mark them "Copy." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the Qualification Document and the Bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation as specified in the **QBDS** and shall be attached to the Qualification Document. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Qualification Document and the Bid where entries or amendments have been made shall be signed or initialled by the person signing the Qualification Document and the Bid. If the person signing on behalf of the Bidder is the owner, member, or director of the Bidder, if the Bidder is a single entity, or of the Bidder's Lead Member, if the Bidder is a JV, as demonstrated in the Bidder's Application, then no authorization shall be required.

20.3 In case the Bidder is a JV, the Qualification Document and Bid 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. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, then the Qualification Document and Bid shall be signed by every member of the proposed JV.

20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialled by the

person signing the Qualification Document and the Bid.

D. SUBMISSION AND OPENING OF QUALIFICATION DOCUMENTS AND BIDS

21. Sealing and Marking of Qualification Documents and Bids

21.1 The Qualification Document and the actual Bid are **to be submitted simultaneously in two separate envelopes (two-envelope procedure)**.

(a) QUALIFICATION

The Bidder shall enclose the original and all copies of the Qualification Document in separate sealed envelopes, duly marking the envelopes as “Qualification - Original” and “Qualification - Copy.”

These envelopes containing the original and the copies shall then be enclosed in one single envelope marked “Qualification”.

(b) BID

The Bidder shall enclose the original and all copies of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as “Bid - Original”, “Bid - Alternative” and “Bid - Copy.”

These envelopes containing the original and the copies shall then be enclosed in one single envelope marked “Bid”.

21.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Bidder;
- (b) Be addressed to the Employer in accordance with ITB 22.1;
- (c) Bear the specific identification of this bidding process specified in the **QBDS** 1.1; and

- (d) Bear a warning not to open before the time and date for Qualification Document and Bid opening.

21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the Qualification Document and Bid.

22. Deadline for Submission of Qualification Documents and Bids

22.1 Qualification Documents and Bids must be received by the Employer in accordance with the instructions, including the address and deadline, specified in the **QBDS**.

22.2 The Employer may, at its discretion, extend the deadline for the submission of Qualification Documents and Bids by amending the Qualification and Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Submissions

23.1 The Employer shall not consider any Qualification Document and Bid that arrives after the deadline for submission of Qualification Documents and Bids, in accordance with ITB 22. Any Qualification Document and Bid received by the Employer after the deadline for submission of Qualification Documents and Bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

24.1 A Bidder may withdraw, substitute, or modify its Qualification Document and Bid 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 ITB 20.2. The corresponding substitution or modification of the Qualification Document and Bid must accompany the respective written notice. All notices must be:

- (a) Prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal", "Substitution", "Modification"; and

- (b) Received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22.

24.2 Qualification Documents and Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

24.3 No Qualification Document and Bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of Bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

**25. Opening of
Qualification
Documents and Bids**

25.1 First Public Session

In the first public session, only the Bidders' Qualification Documents will be opened. Bids of qualified Bidders will be opened at the second public session as specified in ITB 25.7. Except in the cases specified in ITB 23 and 24, the Employer shall publicly open and read out in accordance with ITB 25 all Qualification Documents received by the deadline (regardless of the number of Bids received), at the date, time and place specified in the **QBDS**, in public and in the presence of Bidders' designated representatives.

25.2 First, envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding Qualification Documents and envelope with the corresponding Bid shall not be opened but returned to the Bidder. No Qualification document and/or Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the Qualification Document opening. Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Qualification Documents and/or Bid being substituted, and the substituted Qualification Document and/or Bid shall not be opened but returned to the Bidder. No Qualification Document and/or Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the Qualification Document opening. Envelopes marked "Modification" shall be opened and read out with the corresponding Qualification Document and/or Bid.

No Qualification Document and/or Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the Qualification Document opening. Only Qualification Documents that are opened and read out at Qualification Document opening shall be considered further.

25.3 In the first public session only the Qualification Documents will be opened and examined for completeness and fulfilment of the responsiveness criteria specified in ITB 26.1. The qualification will be evaluated according to the criteria specified under ITB 26.

25.4 The Employer shall prepare a record of the qualification opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; Power of Attorney, nominating the Bidder's authorized representative, and Declaration of Undertaking. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

25.5 The Employer shall notify all Bidders in writing of the names of those Bidders who have been qualified. In addition, those Bidders who have been disqualified will be informed separately.

25.6 Those Bidders who have been qualified will be informed by the Employer of the date, time and place of the second public session for the opening of the qualified Bids.

25.7 Second Public Session

Only the Bids of those Bidders who have fulfilled the qualification criteria will be opened in the second public session. The envelopes of the qualified Bidders shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids; the presence or absence of a signed Letter of Bid and any other details as the Employer may consider appropriate. Only discounts and

alternative Bids read out at Bid opening shall be considered for evaluation. The Letter of Bid and the Schedules are to be initialled by a minimum of three representatives of the Employer attending bid opening. At Bid opening, the Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 23.1).

- 25.8 The Employer shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids; the presence or absence of a Bid Security, signed Letter of Bid, Power of Attorney, nominating the Bidder's authorized representative, and Declaration of Undertaking. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. EVALUATION OF QUALIFICATION DOCUMENTS

26. Qualification Responsiveness, Evaluation of Qualification

26.1 Qualification Responsiveness

The Employer shall reject a Bidder's qualification document that is not substantially responsive to the requirements of this bidding document. A Bidder's qualification document shall be considered as responsive if the following documents are submitted:

<i>Responsiveness Criteria</i>	
1.	<i>Declaration of Undertaking (ITB 11.1 (a) (ii))</i>
2.	<i>Financial Capability Statements and supporting documentation (ITB 11.1 (a) (iii); Section IV, Form FIN-3.1)</i>
3.	<i>Letter of Qualification (ITB 11.1 (a)(i))</i>
4.	<i>Power(s) of Attorney authorizing the representative of the Bidder (ITB 11.1 (a)(i))</i>

5. *If the Bidder is an association, either proof of the existing Association Agreement or a Declaration of Association (ITB 11.1 (a) (iii))*

26.2 Evaluation of Qualification

The Employer shall evaluate the qualifications of the responsive Bidders using the factors, methods, criteria, and requirements defined in Section III, Qualification and Evaluation Criteria, to evaluate the qualifications of the Bidders, and no other methods, criteria, or requirements shall be used.

- 26.3 Only the qualifications of the Bidder shall be considered. In particular, the qualifications of a parent or other affiliated company that is not party to the Bidder under a JV in accordance with ITB 4.1 shall not be considered.
- 26.4 In case of multiple contracts, Bidders should indicate in their Qualification Document the individual contracts in which they are interested. The Employer shall qualify each Bidder for the maximum combination of contracts for which the Bidder has thereby indicated its interest and for which the Bidder meets the appropriate aggregate requirements. The Qualification and Evaluation Criteria are mentioned in Section III.
- 26.5 The Employer shall assess the qualifications of the responsive Bidders in terms of the Eligibility and Qualification Criteria and methods set out in Section III, Qualification and Evaluation Criteria.
- 26.6 The Employer shall determine the fulfilment of minimum requirements on a pass/fail basis as per Section III, Qualification and Evaluation Criteria.
- 26.7 The Employer shall assign a numeric score to each of the sub-criteria, for which a maximum score is provided in accordance with ITB 26.5. All Sub-criteria Scores shall be summed to determine the Bidder's Qualification Score.
- 26.8 For the purposes of scoring individual Qualification Criteria in accordance with 26.6 the Employer shall apply the following qualitative approach:

- (a) 100% of the max. score: Outstanding, if the Qualification substantially exceeds the requirement in accordance with the respective sub-criterion. No errors or omissions are noted.
- (b) 70% of the max. score: Above average, if the Qualification meets or marginally exceeds the requirement in accordance with the respective sub-criterion. Minor errors or omissions noted;
- (c) 50% of the max. score: Average, if the Qualification marginally falls short of the requirement in accordance with the respective sub-criterion. Major errors or omissions noted;
- (d) 30% of the max. score: Below average, if the Qualification substantially deviates from or indicates misunderstanding of the requirement in accordance with the respective sub-criterion. Major errors or omissions are noted comprising the fulfilment of the sub-criterion;
- (e) 0 % of the max. score: Insufficient / Fail, if the Qualification does not meet the requirement at all in accordance with the respective sub-criterion, or does not provide any information regarding the requirement

26.9 A Bidder shall be considered qualified if:

- (a) its Qualification is considered responsive in accordance with ITB 26.1 and;
- (b) its Qualification has met the pass/fail requirements in accordance with ITB 26.6.

F. EVALUATION AND COMPARISON OF BIDS

27. Confidentiality

- 27.1 Information relating to the examination, evaluation, and comparison of the Bids, and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 40.
- 27.2 Any attempt by a Bidder to influence the Employer in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, or

Contract award decisions may result in the rejection of its Bid.

27.3 Notwithstanding ITB 27.2, from the time of Bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.

28. Clarification of Bids

28.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 32.

28.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.

29. Deviations, Reservations, and Omissions

29.1 During the evaluation of Bids, the following definitions apply:

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

30. Determination of Responsiveness

30.1 The Employer's determination of a Bid's responsiveness is to be based on the contents of the Bid itself, as defined in ITB11.

30.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) If accepted, would:

- (i) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
- (ii) Limit in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Contract; or

(b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

30.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 17, in particular, to confirm that all requirements of Section VII, Works Requirements have been met without any material deviation, reservation or omission.

30.4 If a Bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

31. Nonmaterial Nonconformities

31.1 Provided that a Bid is substantially responsive, the Employer may waive any nonmaterial nonconformities in the Bid.

31.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

31.3 Provided that a Bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

32. Correction of Arithmetical Errors

32.1 Provided that the Bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

- (a) If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;
- (b) If there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
- (c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless, only for admeasurement contracts, the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

32.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 32.1 shall result in the rejection of the Bid.

33. Conversion to Single Currency

33.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the **QBDS**.

34. Margin of Preference

34.1 Unless otherwise specified in the **QBDS**, a margin of preference for domestic Bidders shall not apply.

35. Subcontractors

35.1 Unless otherwise stated in the **QBDS**, the Employer does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the Employer (nominated sub-contractors).

36. Evaluation of Bids

36.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

36.2 To evaluate a Bid, the Employer shall consider the following:

- (a) The Bid price, excluding Provisional Sums unless priced competitively and the provision, if any, for contingencies in the Schedules, but

including Daywork items, where priced competitively;

- (b) Price adjustment for correction of arithmetic errors in accordance with ITB 32.1;
- (c) Price adjustment due to missing items, missing rates, or discounts offered in accordance with ITB 14.2 and 14.4;
- (d) Price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;
- (e) Converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 33;
- (f) The additional evaluation factors as specified in Section III, Qualification and Evaluation Criteria.

36.3 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 taken into account in Bid evaluation.

36.4 If these Bidding Documents allow Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Qualification and Evaluation Criteria.

36.5 If the Bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Employer's estimate, the Employer shall require the Bidder to produce detailed price analyses for any or all items of the Schedules, to demonstrate the internal consistency of those prices with the construction methods, resources and schedule proposed. Notwithstanding the provisions of ITB 14.2 which shall not be applicable, if one or several inconsistencies are evidenced, the Bid shall be declared non-compliant and rejected. If the Bid is seriously unbalanced or front loaded in the opinion of the Employer and after evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security

be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

- 37. Comparison of Bids** 37.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 36.2 to determine the lowest evaluated Bid.
- 38. Employer's Right to Reject All Bids** 38.1 The Employer reserves the right to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

G. AWARD OF CONTRACT

- 39. Award Criteria** 39.1 Subject to ITB 38.1, the Employer shall award the Contract to the Bidder whose Bid has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.
- 40. Notification of Award** 40.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works and the requirement for the Contractor to remedy any defects therein (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). Subsequently, the Employer shall also notify all other Bidders of the results of the bidding.
- 40.2 Until a formal contract is prepared and executed, the Letter of Acceptance shall constitute a binding Contract.
- 40.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in

writing the grounds on which its Bid was not selected.

40.4 In exceptional circumstances, the Employer may need to communicate with the successful Bidder, established in terms of ITB 39.1, certain aspects of Contract performance prior to sending the Letter of Acceptance. Should such a need arise, this communication shall be limited to the following topics, as identified in the evaluation report,

- (a) coordination of mobilization timing;
- (b) coordination of actions or inputs involving the Employer and the Engineer;
- (c) technical alternatives offered by the successful Bidder.

Any such discussions and agreements as there shall occur between the Employer and the successful Bidder, (1) may not be interpreted as having the same legal effect as the Letter of Acceptance, (2) shall be summarized in Minutes, which shall be attached to the Letter of Acceptance.

41. Signing of Contract

41.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.

41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

42. Performance Security

42.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions of Contract, subject to ITB 36.5, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form acceptable to the Employer. The performance security furnished by the successful Bidder shall be issued by a bank that has been determined by the successful Bidder to be acceptable to the Employer. A foreign bank providing a performance security shall have a correspondent bank located in the Employer's Country.

42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the

Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Bid Security. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

Section II. Qualification and Bid Data Sheet

A. Introduction	
ITB 1.1	The Employer is: THE KISUMU NATIONAL POLYTECHNIC
ITB 1.1	The name of the NCB is: <i>Construction Works for Blue Skills Training for Employment Centre (B-STEP)</i> Ref: AUDA-NEPAD/KfW 201569 052/FW1/KEN/005 The identification number of the NCB is: <i>TKNP/SIFA/RFB/CW/26/1</i> The number and identification of lots (contracts) comprising this NCB is: N/A
ITB 2.1	The name of the Project is: Blue Skills Training for Employment Project
ITB 4.1	Maximum number of members in the JV shall be: 2
B. Qualification and Bidding Documents	
ITB 7.1	For <u>clarification purposes</u> only, the Employer's address is: Attention: <i>Chief Principal</i> Address: <i>P.O.BOX 143- 40100, Kisumu, Kenya</i> Fax: Not Applicable Email address: principal@kisumupoly.ac.ke Additionally, for information only, a soft copy of the request for clarification shall be sent to the FMT at the following email address: procurement@skillsinitiative-for-africa.com.
ITB 7.1	Web page: www.kisumupoly.ac.ke
ITB 7.2	A mandatory Site Visit conducted by the Employer, shall take place at: The Kisumu National Polytechnic Technology Road, Kisumu: on Date: 28/08/2026 Time: 10:00 am Bidders' attendance to the Site Visit is <u>mandatory</u> and Bidders must ensure that they sign the Pre-Bid Meeting attendance record on site. Failure to attend may result in the rejection of the Bid Bidders shall visit the site at their own expense.
ITB 7.4	A mandatory Pre-Bid meeting shall take place immediately following the Site Visit.

	Place: at the same address stated in ITB 7.2: Bidders' attendance at the Pre-Bid Meeting is mandatory to ensure that Bidders obtain a full appreciation of the scope of the Works.
ITB 8.2	Web page: www.kisumupoly.ac.ke

C. Preparation of Qualification Documents and Bids	
ITB 10.1	The language of the Qualification Document and the Bid is English. All correspondence exchange shall be in the English language. Language for translation of supporting documents and printed literature is English.
ITB 11.1 (a) (vi)	The Bidder shall submit with its Qualification Document the following additional documents: 1. Certificate of incorporation in Kenya. 2. Company CR12 Form in Kenya. If the applicant is a JV, Company CR12 Form must be provided for each JV member. 3. Tax clearance certificate in Kenya. If the Applicant is a JV, a tax clearance certificate must be provided for each JV member. 4. KRA PIN certificate. If the Applicant is a JV, a KRA PIN must be provided for each JV member. 5. Certificate of registration by the Construction Authority of Kenya NCA 4 and above (building works) 6. Certificate of registration by the National Construction Authority of Kenya NCA 5 and above (electrical works) EPRA Certificate C1 and above (electrical works); EPRA Certificate A1/A2 (lift works) EPRA Certificate T2 and above (Solar Works) 7. Certificate of registration by the National Construction Authority of Kenya NCA 5 and above (mechanical works) 8. Declaration of Undertaking (ITB 11.1 (a) (ii)) 9. Financial Capability Statements and supporting documentation (ITB 11.1 (a) iv (iii); Section IV, Form FIN-3.1) 10. Letter of Qualification (ITB 11.1 (a)(i)) 11. Power(s) of Attorney authorizing the representative of the Bidder (ITB 11.1 (a)(i)) 12. If the Bidder is an association, either proof of the existing Association Agreement or a Declaration of Association (ITB 11.1 (a) (iii)) 13. List of project references in the format provided in Section IV, Qualification and Bidding Forms. Unless otherwise stated in the QBDS the references shall be limited to a maximum of 10 projects carried out during the 5 years preceding the publication of these Bidding Documents. The Employer reserves the right to contact the clients indicated in the references to ascertain the information provided by the Bidder. 14. List of Available Expertise and Human Resource Capacity in the format provided in Section IV, Qualification and Bidding Forms. All Qualification forms and required attachments, provided in Section IV, Qualification Forms. If the Bidder is a single entity, in

	accordance with ITB 4.1, it should not include form ELI 1.2 in its application. Any other document required in the QBDS
ITB11.1 (b) (ii)	The following schedules shall be submitted with the Bid: Completed schedules as required, including Price Schedules, in accordance with ITB 12 and ITB 14 including: - Bill of Quantities
ITB 11.1 (b) (vi)	The Bidder shall submit with its Bid the following additional documents: - Environmental, Social, Management Plan (ESMP) Methodology - Site Organization and Method Statement - Construction Schedule - Personnel proposed (forms PER-1 and PER-2) - Equipment proposed (form EQU)
ITB 13.1	Alternative Bids shall not be permitted under ITB 13.2 / ITB 13.3 / ITB 13.4
ITB 14.5	The prices quoted by the Bidder shall be: fixed .
ITB 14.7	In accordance with the funding agreement, articles 3d and 3e, the Contractor and its sub-Contractors shall be exempt from the following duties, taxes, fees, levies and other charges, not limited to; import duties, value added taxes, railway development levy, fees, levies and other charges for which exemption is granted, including any limitations of the exemption and the procedure through which the tax exemption will be put into effect
ITB 15.1	The currency of the Bid and the payment currency is: Bidders to quote entirely in Euros

ITB 17	The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, Schedules, and any other information as stipulated in Section IV, Qualification and Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the Work requirements and the completion time. Additionally, the technical proposal shall respond to the Environmental & Social Management Plan (ESMP) methodology with regards to contractor obligations mentioned there and meet the requirements of the ESHS Specifications in Section VII - Works Requirements. Bidder shall use the ESMP Methodology Form provided for this purpose in Section IV – Technical Proposal. A Bid not comprising an ESMP Methodology shall be rejected.
ITB 18.1	The bid validity period shall be One Hundred and Twenty (120) calendar days
ITB 19.1	The amount and currency of the Bid Security shall be: 42,500.00 EUROS The Bid Security shall be valid for a minimum of Forty-two (42) calendar days longer than the validity of the Bid.
ITB 20.1	In addition to one original of the Qualification Document and one original of the Bid, the number of copies required for the Qualification Document and the Bid is: five (5) paper copies and one (1) digital copy (CD or flash drive) of each.
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of: A duly notarised power of attorney established in the name of the signatory of the Bid. If the Bidder is a JV, the power of attorney shall be issued by the Lead Member of the JV

D. Submission and Opening of Qualification Documents and Bids	
ITB 22.1	The Original Qualification document and Bid shall be submitted not later than Date: 06/10/2026 Time: 11.00 AM EAT <i>The Bid shall consist of:</i> 1 OUTER ENVELOPE BEARING THE WORDING: REF:AUDA-NEPAD/KfW 201569 052/FW1/KEN/005 N.C.B. No: TKNP/SIFA/RFB/CW/26/1 Construction Works for the Blue Skills Training for Employment Centre “DO NOT OPEN” <i>INSIDE THE OUTER ENVELOPE ARE TWO (2) ENVELOPES</i> ENVELOPE 1: which contains the Qualification documents in One (1) original and five (5) copies, plus a USB key/cd and which bears the following mention: “QUALIFICATION DOCUMENTS” ENVELOPE 2: which includes the Bid including one (1) original and five (5) paper copies plus a USB key/cd) and which bears the following mention: “BID” The address for the submission of Bids, which shall be the controlling address for the purposes of the timely submission of the Bid, is: Attention: CHIEF PRINCIPAL Address: P.O.BOX 143-40100 KISUMU <i>Administration Block</i> City: KISUMU Country: KENYA All bids should be submitted at reception, where Bids shall be received in the tender box and a timed receipt of acceptance issued.

	<i>In additional to the original of the Qualification documents and Bid mentioned above, five (5) paper copies and one (1) digital copy (CD or flash drive) of the Qualification and the Bid shall be submitted simultaneously to the same address, <u>in separate envelopes (Please refer to Section I, ITB21.1 a) & b)).</u></i> <i>LATE BIDS SHALL BE REJECTED.</i>
ITB 25.1	The Qualification Document opening (first public session) shall take place at: the Multipurpose Hall of the The Kisumu National Polytechnic Address: Technology Road City: Kisumu Country: Kenya Date: 06/10/2026 Time: 11:00 AM No minimum number of Bids is required in order to proceed to bid opening.
E. Evaluation of Qualification Documents	
ITB 26.1	The Employer shall reject a Bidder's qualification document that is not substantially responsive to the requirements of this bidding document (as specified in ITB 26.1)
ITB 26.2	The Employer shall evaluate the qualifications of the responsive Bidders using the factors, methods, criteria, and requirements defined in Section III, Evaluation and Qualification Criteria, to evaluate the qualifications of the Bidders, and no other methods, criteria, or requirements shall be used.
ITB 26.7	Not applicable
ITB 26.8	Not applicable

F. Evaluation and Comparison of Bids	
ITB 30	Inclusion of a response to the Environmental & Social Management Plan (ESMP) (as specified in QBDS 17) with the ESHS Specifications (Section VII - Works Requirements) shall be determined by using the method specified in Section III. A Bid for which the ESMP Methodology is not substantially responsive (i.e. without material deviation, reservation or omission) shall be rejected.
ITB 33.1	Not Applicable. Bidders to quote entirely in EUROS.
ITB 34.1	A margin of preference <i>shall not apply.</i>
ITB 35.1	At this time the Employer <i>does not intend</i> to execute certain specific parts of the Works by sub-contractors selected in advance (nominated subcontractors).
ITB 36.3	Not Applicable
ITB 36.4	Not Applicable
ITB 42.1	The Performance Security shall be furnished by a Bank in the Employers country, acceptable to the Employer and AUDA-NEPAD. A Performance Security issued by any other type of Financial Institution (i.e. an Insurance Company), is NOT acceptable

Section III. Qualification and Evaluation Criteria

This Section contains all the criteria that the Employer shall use to determine the qualification of Bidders and to evaluate the Bids. In accordance with ITB 26 and ITB 36, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Qualification and Bidding Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the EUR 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;
- (b) Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 33.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer.

1. Evaluation of Eligibility and Qualification

A)

Qualification Responsiveness (ITB 26.1)

The Employer shall reject a Bidder's qualification document that is not substantially responsive to the requirements of this bidding document. A Bidder's qualification document shall be considered as responsive if the following documents are submitted:

Responsiveness Criteria

- Declaration of Undertaking – **signed** (ITB 11.1 (a) (ii))
- Financial Capability Statements and supporting documentation (ITB 11.1 (a) (iii); Section IV, Form FIN-3.1)
- Letter of Qualification (ITB 11.1 (a)(i))
- Power(s) of Attorney authorizing the representative of the Bidder (ITB 11.1 (a)(i))

B)

The following table contains all criteria and requirements the Bidders shall meet to be considered as eligible and qualified for the execution of the works:

Criteria			Requirements				Documentation Requirements / Forms
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member	One Member	
1. Eligibility							
1.1	Nationality	Nationality in accordance with ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI-1.1, 1.2(a) and 1.2(b), with attachments
1.2	Conflict of Interest	No conflicts of interest in accordance with ITB 4.4	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Application Submission Form
1.3	KfW Eligibility	Not being ineligible for KfW financing, as described in ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Declaration of Undertaking
1.4	Government-Owned Entity	Meet conditions of ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI-1.1, 1.2(a) and 1.2(b), with attachments
2. Historical Contract Non-Performance							
2.1	History of Non-Performing Contracts	Termination of a contract did not occur as a result of contractor's default in the past five (5) years	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON-2
2.2	Suspension Based on Execution of Bid Securing Declaration by the Employer	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Application Submission Form
2.3	Pending Litigation	All pending litigation shall in total not represent more than one hundred percent (100%) of the Bidder's net worth and shall be treated as resolved against the Bidder	Must meet requirement	N/A	Must meet requirement	N/A	Form CON-2

Criteria			Requirements				Documentation Requirements / Forms
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member	One Member	
3. Financial Situation and Performance							
3.1	Financial Capabilities: Liquidity	(i) The Bidder 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 EUR 230,000	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN–3.1 with attachments and FIN-3.3
3.2	Financial Capabilities: Other Sources of Finance	(ii) The Bidder shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.	Must meet requirement	Must meet requirement	N/A	N/A	Forms FIN–3.1 and FIN-3.4
3.3	Financial Capabilities: Financial Position	(iii) The audited balance sheets or, if not required by the laws of the Bidder’s country, other financial statements acceptable to the Employer, for the last <i>Five (5)</i> years shall be submitted and must demonstrate the current soundness of the Bidder’s financial position.	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN–3.1 with attachments
3.4	Average Annual Construction Turnover	Minimum annual construction turnover of Two million one hundred thousand Euros (EUR 2,100,000, for the last <i>Five (5)</i> years, calculated as an annual average of total certified	Must meet requirement	Must meet requirement	Must meet <i>[twenty-five]</i> <i>[25]</i> % of the requirement	Must meet <i>[forty]</i> <i>[40]</i> % of the requirement	Form FIN–3.2

Criteria			Requirements				Documentation Requirements / Forms
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member	One Member	
		annual payments received for contracts in progress and/or completed					
4. Construction Experience							
4.1	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, subcontractor, or management contractor for at least the last <i>Five (5)</i> years, starting 1 st January 2021.	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP–4.1
4.2 (a)	Specific Construction & Contract Management Experience	Similar ¹ contracts, satisfactorily and substantially ² completed as a prime contractor, joint venture member ³ , management contractor or subcontractor ³ between 1st January 2021 and 1 st January 2026 – on an annual average over the five (5) years that meets the minimum value required of 75% of the estimated value of the works.	Must meet requirement	Must meet requirements	N/A	N/A	Form EXP-4.2
4.2 (b)	Construction Experience in key activities	For the above or any other contracts completed and under implementation as prime contractor, joint venture member, management	Must meet requirements	Must meet requirements	N/A	Must meet the following requirements for the key activities	Form EXP–4.2 (b)

¹ The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VII, Scope of Works. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

² Substantial completion shall be based on 80% or more works completed under the contract.

³ For contracts under which the Applicant participated as a joint venture member or sub-contractor, only the Applicant's share, by value, shall be considered to meet this requirement.

Criteria			Requirements			Documentation Requirements / Forms	
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member		One Member
		contractor or subcontractor⁸ on or after the first day of the calendar year during the period stipulated in 4.2(a) above, a minimum construction experience in the following key activities successfully completed⁴: - Setting out of buildings, - Foundation works, - Structural elevation works, - Masonry works, - Roof structure - All works, - o Reinforced concrete, - o Steel, - o Timber, - Roof covering (sheeting), - Doors & windows, - MEPS - o Mechanical Installations - o Electrical works, - o Photovoltaic installations, - o Plumbing works, - Finishing works - Landscaping				listed below <i>[list key activities and the corresponding minimum requirements]</i>	

⁴ Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities).

Criteria			Requirements				Documentation Requirements / Forms
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member	One Member	
5. Environmental and Social and Health and Safety (ESHS) Experience and Capacity							
5.1	Certificates	Not Applicable	Not Applicable		Not Applicable	Not Applicable	Not Applicable
5.2	Experience in Projects with significant ESHS Impact	For the above and any other contracts completed and under implementation as prime contractor, joint venture member, management contractor or subcontractor⁸ on or after the first day of the calendar year during the period stipulated in 4.2(a) above, a minimum specific experience relating to the following ESHS requirements⁵: The existence of an Environmental Policy and its application and enforcement in project implementation by a) own workforce and b) subcontractors The existence of an Environmental Management System, incl. an adequate organizational set-up for definition, enforcement and monitoring. That all members of a JV, suppliers, subcontractors and temporary workforce a) are aware of and b) comply with the Environmental Management System	Must meet the specification	Must meet the specification	N/A	Must have executed at least one contract demonstrating experience with the key ESHS requirements as listed in the Requirements column.	Form EXP–5.2

⁵ Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities).

Criteria			Requirements				Documentation Requirements / Forms
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member	One Member	
		The bidders must have executed at least one project with ESHS Plan.					
5.3	Environmental Capacity	The Bidder must demonstrate that its business setup and operations meet the minimum requirements towards an effective environmental management system:	Must meet the specification	Must meet the specification	N/A	N/A	Form ENV-5.3
5.4	Occupational Health and Safety Capacity	The Bidder must demonstrate that its business setup and operations meet the minimum requirements towards an effective health and safety management system.	Must meet the specification	Must meet the specification	N/A	N/A	Form OHSAS-5.4
5.5	Socially Responsible Work Implementation	The Bidder must demonstrate a comprehensive understanding of the requirements regarding work site implementation and operation.	Must meet the specification	Must meet the specification	N/A	N/A	Form LOC-5.5

Criteria			Requirements				Documentation Requirements / Forms
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member	One Member	
5.6 a)	ILO Core Labour Standards	Undertaking to fully respect the ILO Core Labour Standards in the Bidder's business practice	Must meet the specification	Must meet the specification	N/A	N/A	Application Submission Form (f) and form COC-5.6
5.6 b)	Ethical business principles	The Bidder must demonstrate that its business setup and operations meet the minimum requirements towards ethical Business principles.	Must meet the specification	N/A	Must meet the specification	N/A	Form COC-5.6
5.7	ESHS and Construction Personnel	The Bidder must demonstrate that it has access to adequate candidates for the ESHS personnel profiles, listed in Section VII, Scope of Works. The candidates must fulfil the minimum specific profile requirements and the general requirements (if any). Combining several candidates to fulfil one candidate profile is not allowed. Providing multiple candidates for a single profile is allowed.	Must meet the specification	Must meet the specification	N/A	N/A	PER-5.7

Note : [For multiple contracts, specify financial and experience criteria for each contract]

2. Domestic Preference

Not Applicable

3. Evaluation of Bids

In addition to the criteria listed in ITB 36.2 (a) – (e) the following criteria shall apply:

3.1 Assessment of adequacy of Technical Proposal with Requirements

The assessment of the Technical Proposal submitted by a Bidder shall comprise (a) evaluation of the Bidder's plan to mobilize key equipment and key personnel to carry out the works, (b) construction method, (c) construction schedule and (d) sufficiently detailed supply sources, in accordance with requirements specified in Section VII, Works Requirements. A Bid not comprising Technical Proposal or a Bid for which the Technical Proposal is not substantially responsive (i.e., with material deviation, reservation or omission) shall be rejected.

3.2 Assessment of adequacy of the Environmental, Social, Management Plan

The ESMP Methodology submitted by the Bidder shall be evaluated to determine whether it is substantially responsive (i.e., without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements – ESMP Specifications. The Bidder shall use the ESMP Methodology Form provided for this purpose in Section IV, Bidding Forms – Technical Proposal. A Bid not comprising an ESMP Methodology or a Bid for which the ESMP Methodology is not substantially responsive (i.e., with material deviation, reservation or omission) shall be rejected.

3.3 Multiple Contracts, if permitted under ITB 36.4, will be evaluated as follows: Not Applicable

3.4 Alternative Completion Times, if permitted under ITB 13.2, will be evaluated as follows: Not Applicable

3.5 Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows: Not Applicable

3.6 Personnel

The Bidder's personnel shall be evaluated to determine whether it is substantially responsive (i.e., without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements – Personnel Requirements. The Bidder shall use the Forms PER-1 and PER-2 provided for this purpose in Section IV, Bidding Forms - Technical Proposal. A Bid not including proposed personnel or a Bid for which the proposed personnel is not

substantially responsive (i.e., with material deviation, reservation or omission) shall be rejected.

3.7 Equipment

The Bidder's equipment shall be evaluated to determine whether it is substantially responsive (i.e., without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements – Equipment Requirements. The Bidder shall use the Form EQU provided for this purpose in Section IV, Bidding Forms - Technical Proposal. A Bid not including proposed equipment or a Bid for which the proposed equipment is not substantially responsive (i.e., with material deviation, reservation or omission) shall be rejected.

Section IV. Qualification and Bidding Forms

Table of Forms

QUALIFICATION FORMS

Letter of Qualification	57
Declaration of Undertaking.....	59
Form ELI-1.1 Bidder Information Form.....	63
Form ELI-1.2 (a) Bidder's JV Information Form.....	64
Form ELI-1.2 (b) Declaration of Association.....	65
Form CON-2 Historical Contract Non-Performance, Pending Litigation and Litigation History.....	66
Form FIN-3.1 Financial Situation and Performance	68
Form FIN-3.2 Average Annual Construction Turnover	70
Form FIN-3.3 Sources of Finance.....	71
Form FIN-3.4 Current Contract Commitments / Works in Progress	72
Form EXP-4.1 General Construction Experience	73
Form EXP-4.2 (a) Specific Construction and Contract Management Experience.....	74
Form EXP-4.2 (b) Construction Experience in Key Activities	76
Optional: Form EQP-4.3 Specific Construction Equipment	78
Form CER-5.1 Certification	79
Form ESHS EXP-5.2 Experience in Projects with significant ESHS Impact	80
Form ENV-5.3 Environmental Management Capacity	81
Form OHSAS-5.4 Occupational Health and Safety Capacity.....	82
Form LOC-5.5 Socially Responsible Works Implementation	83
Form COC-5.6 Ethical Business Principles.....	84
Form PR-5.7 List of Available ESHS and Construction Personnel	86

BIDDING FORMS

Letter of Bid	87
Appendix to Bid	89
<i>Summary of Payment Currencies.....</i>	<i>90</i>
Schedules.....	93
Environmental, Social, Health and Safety (ESHS) Cost Schedule.....	95
<i>Bill No. 1: General Items – ESHS Cost Schedule.....</i>	<i>95</i>
Technical Proposal.....	97
<i>Environmental, Social, Management Plan (ESMP) Methodology.....</i>	<i>98</i>
<i>Site Organization and Method Statement</i>	<i>99</i>
<i>Construction Schedule</i>	<i>100</i>
Personnel	101
<i>Form PER-1: Proposed Personnel.....</i>	<i>101</i>
<i>Form PER-2: Resume of Proposed Personnel</i>	<i>102</i>
<i>Form EQU: Equipment.....</i>	<i>103</i>
Bid Security.....	104

QUALIFICATION FORMS

Letter of Qualification

Date: *[insert day, month, year]*
NCB No.: *[insert NCB number]*

To: *[insert full name of Employer]*

We, the undersigned, apply to be qualified for the referenced NCB and declare that:

- (a) we have examined and have no reservations to the qualification documents, including Addenda No., issued in accordance with ITB Clause 8: *[insert the number and issuing date of each addenda]*;
- (b) we, including any subcontractors or suppliers for any part of the contract resulting from this qualification process, have nationalities from eligible countries, in accordance with ITB Sub-Clause 4.3: *[insert the nationality of the Bidder, including that of all parties in case of a JV, and the nationality of each already identified subcontractor and supplier of related services, if applicable]*;
- (c) we, including any subcontractors or suppliers for any part of the contract resulting from this qualification do not have any conflict of interest, in accordance with ITB Sub-Clause 4.2;
- (d) we, including any subcontractors or suppliers for any part of the contract resulting from this qualification, have not been declared ineligible by AUDA-NEPAD or KfW, and/or we are not subject to sanction from either Germany, the European Union or the United Nations in accordance with the lists of exclusion established by these institutions regarding fight against terrorism in accordance with ITB Sub-Clause 4.3;
- (e) [we are not a government owned entity, **or**, we meet the requirements of ITB Sub-Clause 4.1];
- (f) we, including any major subcontractors and suppliers declare that we fully respect ILO Core Labour Standards in our business practice in accordance with ITB Sub-Clause 4.3 and Form COC-5.6;
- (g) we, in accordance with ITB Sub-Clause 35.1, plan to subcontract the following key activities and/or parts of the works: *[insert any of the key activities identified in Section III- 4.2 which the Bidder intends to subcontract]*;
- (h) We acknowledge and agree that the Employer reserves the right to annul the bidding process and reject all Bids at any time prior to contract award without thereby incurring any liability to us;

Signed *[insert signature of the Bidder's representative, authorized in accordance with ITB 4.1, whose name and capacity are shown below]*

Name *[insert full name of person signing the application]*

In the Capacity of *[insert legal capacity of person signing the application]*

Duly authorized to sign the application for and on behalf of:

Bidder's Name *[insert full name of Bidder]*

Address *[insert street number/town or city/country address]*

Dated on *[insert day number]* day of *[insert month]*, *[insert year]*.

Attachments:

Power of attorney, (duly Notarised), authorizing the Bidder's representative to act for and on behalf of the Bidder, in accordance with ITB 4.1.

Note: AUDA-NEPAD SIFA Project Procurement office collects and uses your personal information for "Procurement Process" and publishes same on the AUDA-NEPAD SIFA Project website when contract is awarded. The collection and use of Personal Data of Consultant(s) intending to compete and deliver services or goods to the AUDA-NEPAD SIFA Project either individually or as a firm will only be used after consent has been granted by the Consultant(s). The protection of the personal data provided will be the responsibility of the AUDA-NEPAD SIFA Project and same shall be kept for a period strictly necessary for the purpose set out. This privacy notice supplements the AUDA-NEPAD SIFA Project standard privacy notice and should be read in conjunction with the same available on AUDA-NEPAD SIFA Project website <https://www.nepad.org>

AUDA-NEPAD SIFA FC Declaration of Undertaking

[Location, Date]

To:

[GRANTEE] ('Employer')

[Grantee's address]

[City], [Country]

Re: [Procurement number]

We, the undersigned, offer to provide the [services / goods / works] [select as appropriate] for [title and number of the procurement] in accordance with your [Request for Pre-qualification / Request for Expression of Interest / Request for Proposal / Invitation to Bid] [select as appropriate] dated [date], and we declare that:

1. All information and statements provided by us in this [Application for Pre-qualification / Expression of Interest / Proposal / Bid] [select as appropriate] are true and correct and we accept that any misinterpretation or misrepresentation in our [Application for Pre-qualification / Expression of Interest / Proposal / Bid] [select as appropriate] may lead to our disqualification and/or may be sanctioned by the Employer and/or The African Union Development Agency – NEPAD ('AUDA-NEPAD') and/or KfW Development Bank ('KfW')
2. We recognise and accept that AUDA-NEPAD and KfW only finance projects of the Employer subject to its own conditions which are set out in the Implementation Agreement the Employer has entered into with AUDA-NEPAD and the Funding Agreement KfW has entered into with AUDA-NEPAD. As a matter of consequence, no legal relationship exists between AUDA-NEPAD and/or KfW and our company, our Joint Venture or our Subcontractors and Subconsultants under the Contract. The Employer retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
3. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors and Subconsultants under the Contract are in any of the following situations:
 - 3.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation,
 - 3.2) being a shell company or company created specifically for this [Application / Bid] but we are legally registered to operate a business under the Laws of [Country] since [year of registration] and comply with our national tax and social security laws,
 - 3.3) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the African Union, United Nations, the European Union or specific Country for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions,
 - 3.4) having been convicted by a final court decision or a final administrative decision by a court, the African Union, the European Union, national authorities in the Partner Country or in a specific Country for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*Note: in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that*

- adequate compliance measures have been taken in reaction; this note is to be deleted in the final and signed version),*
- 3.5) having been subject, within the past five years to a Contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us,
 - 3.6) not having fulfilled applicable fiscal obligations regarding payments of taxes either in the country where we are constituted or the Employer's country,
 - 3.7) being subject to an exclusion decision of the World Bank or any other multilateral development bank or African Union or KfW and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*Note: in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction; this note is to be deleted in the final and signed version), or*
 - 3.8) being guilty of misrepresentation in supplying the information required as a condition of participation in the Tender.
4. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors, Subconsultants, Suppliers or Service Providers under the Contract are in any of the following situations of conflict of interest:
 - 4.1) being an Affiliate controlled by the Employer or a shareholder controlling the Employer, unless the stemming conflict of interest has been brought to the attention of AUDA-NEPAD and resolved to its satisfaction,
 - 4.2) having a business or family relationship with an Employer's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of AUDA-NEPAD and resolved to its satisfaction,
 - 4.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the Employer,
 - 4.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Employer,
 - 4.5) in the case of procurement of Works, Plant or Goods:
 - (i) having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract,
 - (ii) having been recruited (or being proposed to be recruited) ourselves or any of our Affiliates, to carry out works supervision or inspection for this Contract.
 5. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

6. We undertake to bring to the attention of the Employer, which will inform AUDA-NEPAD, any change in situation as declared in this Declaration of Undertaking.
7. In the context of the Tender Process and performance of the corresponding Contract:
 - 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract; in addition we confirm our understanding of our obligations to abide by the African Union (AU) Ethics Policy regarding corrupt and fraudulent practices,
 - 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the African Union, the United Nations, the European Union, Germany or another specific Country, and
 - 6.3) we commit ourselves to complying with and ensuring that our Subcontractors, Subconsultants and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation⁶ (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the Employer and, in any case, implement measures to prevent sexual exploitation and abuse and gender-based violence.
8. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners, Subcontractors and Subconsultants under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit AUDA-NEPAD and KfW or an agent appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
9. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors or Subconsultants under the Contract undertake to preserve above mentioned records and documents in accordance with Applicable Law but in any case for at least six years from the date of fulfilment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with Applicable Law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the Applicable Law by AUDA-NEPAD and KfW.

Name: _____ In the capacity of: _____

⁶ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

Duly empowered to sign in the name and on behalf of⁷: _____

Signature:

Dated:

Note: The AUDA-NEPAD Procurement Office collects and uses your personal information for the “procurement process” and publishes it on the AUDA-NEPAD website when the contract is awarded. The collection and use of personal data of the consultant(s) intending to compete and provide services or goods to AUDA-NEPAD, either individually or as a company, will only be used after the consent of the consultant(s). The protection of the personal data provided will be the responsibility of AUDA-NEPAD and it will be retained for a period strictly necessary for the purpose pursued. This privacy notice supplements the AUDA-NEPAD standard privacy notice and should be read in conjunction with the one available on the AUDA-NEPAD website <https://www.nepad.org>

⁷ In the case of a JV, insert the name of the JV. The person who will sign the Application, Bid or Proposal on behalf of the Applicant/Bidder shall attach a power of attorney from the Applicant/Bidder.

Form ELI-1.1

Bidder Information Form

Date: _____
 NCB No. and title: _____
 Page _____ of _____ pages

Bidder's name <i>[insert full name]</i>
In case of Joint Venture (JV), name of each member: <i>[insert full name of each member in JV]</i>
Bidder's actual or intended country of registration: <i>[indicate country of Constitution]</i>
Bidder's actual or intended year of constitution: <i>[indicate year of Constitution]</i>
Bidder's legal address [in country of registration]: <i>[insert street/ number/ town or city/ country]</i>
Bidder's legal structure and ownership structure Legal structure: <i>[provide details]</i> Ownership structure: <i>[provide details of direct and indirect ownership]</i>
Bidder's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
1. General Presentation of the Bidder (name, legal structure, business areas, subsidiaries and shareholdings, number of staff, etc.) 2. Attached are copies of original documents of ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.1. ☐ In case of JV, JV agreement, in accordance with ITB 4.1 or Declaration of Association as per ELI 1.2(b). ☐ In case of Government-owned enterprise or institution, in accordance with ITB 4.3 documents establishing: - Legal and financial autonomy - Operation under commercial law - Establishing that the Bidder is not a dependent agency of the Employer. 3. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI-1.2 (a)

Bidder's JV Information Form

[The following table shall be filled by each member of a JV and, if applicable, by any specialized subcontractor]

Date: _____
 NCB No. and title: _____
 Page _____ of _____ pages

Each Bidder that is a JV Party and each nominated subcontractor in accordance with ITB 35 must submit this information.

Bidder name: <i>[insert full name]</i>
Bidder's JV Member's name: <i>[insert full name of Bidder's JV Member]</i>
Bidder's JV Member's country of registration: <i>[indicate country of registration]</i>
Bidder JV Member's year of constitution: <i>[indicate year of constitution]</i>
Bidder JV Member's legal address in country of constitution: <i>[insert street/ number/ town or city/ country]</i>
Bidder JV Member's legal structure and ownership structure: Legal structure: <i>[provide details]</i> Ownership structure: <i>[provide details of direct and indirect ownership]</i>
Bidder JV Member's authorized representative information Name: <i>[insert full name]</i> Address: <i>[insert street/ number/ town or city/ country]</i> Telephone/Fax numbers: <i>[insert telephone/fax numbers, including country and city codes]</i> E-mail address: <i>[indicate e-mail address]</i>
1. General Presentation of the Bidder JV Member (name, legal structure, business areas, subsidiaries and shareholdings, number of staff, etc.) 2. Attached are copies of original documents of ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.1. ☐ In case of JV, JV agreement, in accordance with ITB 4.1 or Declaration of Association as per ELI 1.2(b). ☐ In case of Government-owned enterprise or institution, in accordance with ITB 4.3 documents establishing: - Legal and financial autonomy - Operation under commercial law - Establishing that the Bidder is not a dependent agency of the Employer. 3. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI-1.2 (b)

Declaration of Association

[The following form shall be provided by each member of a Joint Venture and, if applicable, by any specialized subcontractor, nominated in accordance with ITB 35]

Date: _____
NCB No. and title: _____
Page _____ of _____ pages

We hereby declare our intent to associate with the following firms for the purpose of forming a *[insert here "joint venture"]*:

[Insert the names of the other JV Members here]

[Insert the name of the Lead Member] shall be the Lead Member.

We hereby confirm that we have not associated with any other firms for the purposes of this assignment and that we will not submit an Application separately from the firms listed above. Further, we understand that if one of the above JV Members appears as a member in more than one Application, all Applications in which the Member appears shall be disqualified.

In the event that this JV is awarded a Contract, we shall perform the works in the composition and in the form of cooperation described above.

[Signature of the authorised representative of the Member]

Form CON-2

Historical Contract Non-Performance, Pending Litigation and Litigation History

[The following table shall be filled in for the Bidder and for each member of a Joint Venture]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

NCB No. and title: *[insert NCB number and title]*

Page *[insert page number]* of *[insert total number]* pages

Non-Performed Contracts in accordance with Section III, Qualification Criteria and Requirements			
☐ Contract non-performance did not occur since 1 st January <i>[insert current year number less 5]</i> specified in Section III, Qualification Criteria and Requirements, Sub-Factor 2.1.			
☐ Contract(s) not performed since 1 st January <i>[insert current year number less 5]</i> specified in Section III, Qualification Criteria and Requirements, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and EUR equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Reason(s) for non-performance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
☐ No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.3. ☐ Pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-Factor 2.3 as indicated below.			
Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), EUR Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert amount]</i>	Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	<i>[insert amount]</i>

Form FIN-3.1

Financial Situation and Performance

[The following table shall be filled in for the Bidder and for each JV Member]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

NCB No. and title: *[insert NCB number and title]*

Page *[insert page number]* of *[insert total number]* pages

1. Financial data

Type of Financial information in (currency)	Historic information for previous <i>[insert number]</i> years, <i>[insert in words]</i> (amount in currency, currency, exchange rate, EUR equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
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					

2. Financial documents

The Bidder and its parties shall provide copies of financial statements for *[number]* years pursuant Section III, Qualifications Criteria and Requirements, Sub-factor 3.3 and 3.4. The financial statements shall:

- (a) reflect the financial situation of the Bidder or JV member, and not an affiliated entity (such as parent company or subsidiary).
 - (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 statements⁸ for the *Five (5)* years required above; and complying with the requirements

⁸ If the most recent set of financial statements is for a period earlier than 12 months from the date of application, the reason for this should be justified.

Form FIN-3.2

Average Annual Construction Turnover

[The following table shall be filled in for the Bidder and for each member of a Joint Venture]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

NCB No. and title: *[insert NCB number and title]*

Page *[insert page number]* of *[insert total number]* pages

Annual turnover data (construction only)			
Year	Amount Currency: EURO	Exchange rate 1/1	EUR
<i>[indicate calendar year]</i>	<i>[insert amount and indicate currency]</i>		
		Average Annual Construction Turnover *	

* Total EUR equivalent for all years divided by the total number of years. See Section III, Qualification Criteria and Requirements, Clause 3.2.

Form FIN–3.3 Sources of Finance

[The following table shall be filled in for the Bidder and all members combined in case of a Joint Venture]

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.

Financial Resources		
No.	Source of financing	Amount (EUR equivalent)
1		
2		
3		

Form FIN–3.4

Current Contract Commitments / Works in Progress

[The following table shall be filled in for the Bidder and all members combined in case of a Joint Venture]

Bidders 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.

Current Contract Commitments					
No.	Name of Contract	Employer's Contact Address, Tel, Fax	Value of Outstanding Work [Current EUR Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [EUR / month]
1					
2					
3					
4					
5					

Form EXP-4.1

General Construction Experience

[The following table shall be filled in for the Bidder and in the case of a JV Bidder, each Member]

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member Name: *[insert full name]*

NCB No. and title: *[insert NCB number and title]*

Page *[insert page number]* of *[insert total number]* pages

[Identify contracts that demonstrate continuous construction work over the past [number] years pursuant to Section III, Qualification Criteria and Requirements, Sub-Factor 4.1. List contracts chronologically, according to their commencement (starting) dates.]

Starting Year	Ending Year	Contract Identification	Role of Bidder
<i>[indicate year]</i>	<i>[indicate year]</i>	Contract name: <i>[insert full name]</i> Brief Description of the Works performed by the Bidder: <i>[describe works performed briefly]</i> Amount of contract: <i>[insert amount in currency, mention currency used, exchange rate and EUR equivalent]</i> Name of Employer: <i>[indicate full name]</i> Address: <i>[indicate street/number/city/country]</i>	<i>[insert "Prime Contractor" or "JV Member" or "Subcontractor" or "Management Contractor"]</i>
		Contract name: <i>[insert full name]</i> Brief Description of the Works performed by the Bidder: <i>[describe works performed briefly]</i> Amount of contract: <i>[insert amount in currency, mention currency used, exchange rate and EUR equivalent]</i> Name of Employer: <i>[indicate full name]</i> Address: <i>[indicate street/number/city/country]</i>	<i>[insert "Prime Contractor" or "JV Member" or "Subcontractor" or "Management Contractor"]</i>
		Contract name: <i>[insert full name]</i> Brief Description of the Works performed by the Bidder: <i>[describe works performed briefly]</i> Amount of contract: <i>[insert amount in currency, mention currency used, exchange rate and EUR equivalent]</i> Name of Employer: <i>[indicate full name]</i> Address: <i>[indicate street/number/city/country]</i>	<i>[insert "Prime Contractor" or "JV Member" or "Subcontractor" or "Management Contractor"]</i>

Form EXP-4.2 (a)

Specific Construction and Contract Management Experience

The following table shall be filled in separately for contracts performed by the Bidder or each member of a Joint Venture, during the past Five (5) years

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Joint Venture Member's Name: *[insert full name]*

NCB No. and title: *[insert NCB number and title]*

Page *[insert page number]* of *[insert total number]* pages

Similar Contract No. <i>[insert number] of [insert number of similar contracts required]</i>	Information			
Contract Identification	<i>[insert contract name and number, if applicable]</i>			
Award date	<i>[insert day, month, year, i.e., 15 June, 2015]</i>			
Completion date	<i>[insert day, month, year, i.e., 03 October, 2017]</i>			
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount	<i>[insert total contract amount in local currency]</i>		EUR <i>[insert Exchange rate and total contract amount in EUR equivalent]</i>	
If member in a JV or subcontractor, specify participation in total Contract amount	<i>[insert a percentage amount]</i>	<i>[insert total contract amount in local currency]</i>	<i>[insert exchange rate and total contract amount in EUR equivalent]</i>	
Employer's Name:	<i>[insert full name]</i>			
Address:	<i>[indicate street / number / town or city / country]</i>			
Telephone/fax number	<i>[insert telephone/fax numbers, incl. country/city area codes]</i>			
E-mail:	<i>[insert e-mail address, if available]</i>			

Similar Contract No. <i>[insert number] of [insert number of similar contracts required]</i>	Information
Description of the similarity in accordance with Sub-Criterion 4.2 of Section III:	
1. Physical size of required works items	<i>[insert physical size of items]</i>
2. Complexity	<i>[insert description of complexity]</i>
3. Methods/Technology	<i>[insert specific aspects of the methods/technology involved in the contract]</i>
4. Construction rate for key activities	<i>[insert yearly rates and items]</i>
5. Other Characteristics	<i>[insert other characteristics as described in Section VII, Scope of Works]</i>

Form EXP-4.2 (b)

Construction Experience in Key Activities

Bidder's Name: *[insert full name]*

Date: *[insert day, month, year]*

Bidder's JV Member's Name: *[insert full name]*

Subcontractor's Name⁹ (as per ITB 35): *[insert full name]*

NCB No. and title: *[insert NCB number and title]*

Page *[insert page number]* of *[insert total number]* pages

1. Key Activity No. One: *[insert brief description of the Activity, emphasizing its specificity]*

	Information			
Contract Identification	<i>[insert contract name and number, if applicable]</i>			
Award date	<i>[insert day, month, year, i.e., 15 June, 2015]</i>			
Completion date	<i>[insert day, month, year, i.e., 03 October, 2017]</i>			
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount	<i>[insert total contract amount in contract currency(ies)]</i>		EUR <i>[insert exchange rate and total contract amount in EUR equivalent]</i>	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year <i>[Insert extent of participation indicating actual quantity of key activity successfully completed in the role performed]</i>	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Employer's Name:	<i>[insert full name]</i>			

⁹ If applicable

	Information
Address:	<i>[indicate street / number / town or city / country]</i>
Telephone/fax number	<i>[insert telephone/fax numbers, including country and city area codes]</i>
E-mail:	<i>[insert e-mail address, if available]</i>
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:	
	<i>[insert response to inquiry indicated in left column]</i>

2. Key Activity No. Two

3. Key Activity No. Three

**Optional: Form EQP–4.3
Specific Construction Equipment**

Not Applicable

**Form CER-5.1
Certification**

NOT APPLICABLE

Form ESHS EXP-5.2

[The following table shall be filled by the Applicant or each member of a Joint Venture, whose part in the JV is substantial (more than 40 (forty) % of the works)]

Applicant's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

NCB No.: *[insert International competitive bidding number]*

	The Applicant shall demonstrate:	Information and Documentation	ESHS level
1	- the existence of an Environmental Policy and its application and enforcement in project implementation by a) own workforce and b) subcontractors.	<i>__[Provide relevant details of the Corporate Values or similar policy documents and declarations]__</i>	2 3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
2	- the existence of an Environmental Management System, incl. an adequate organizational set-up for definition, enforcement and monitoring.	<i>__[Provide details of the organizational set-up and procedures for relevant issues within your company, for qualification details of relevant key staff see Form 5.6]__</i>	2 3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
3	- that all members of a JV, suppliers, subcontractors and temporary workforce a) are aware of and b) comply with the Environmental Management System.	<i>__[Provide information on</i> <i>a) how awareness, know how transfer and enforcement is implemented to external partners</i> <i>b) nature, content and frequency of internal trainings to employees.]__</i>	2 3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
4	-	NOT APPLICABLE	3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			

Form ENV–5.3

Environmental Management Capacity

[The following table shall be filled by the Applicant or each member of a Joint Venture, whose part in the JV is substantial (more than 40 (forty) % of the works)]

Applicant's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

NCB No.: *[insert International competitive bidding number]*

	The Applicant shall demonstrate:	Information and Documentation	ESHS level
1	- the existence of an Environmental Policy and its application and enforcement in project implementation by a) own workforce and b) subcontractors.	<i>___[Provide relevant details of the Corporate Values or similar policy documents and declarations]___</i>	② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
2	- the existence of an Environmental Management System, incl. an adequate organizational set-up for definition, enforcement and monitoring.	<i>___[Provide details of the organizational set-up and procedures for relevant issues within your company, for qualification details of relevant key staff see Form 5.6]___</i>	② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
3	- that all members of a JV, suppliers, subcontractors and temporary workforce a) are aware of and b) comply with the Environmental Management System.	<i>___[Provide information on a) how awareness, know how transfer and enforcement is implemented to external partners b) nature, content and frequency of internal trainings to employees.]___</i>	② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
4	-	NOT APPLICABLE	③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			

Form OHSAS–5.4

Occupational Health and Safety Capacity

[The following table shall be filled by the Applicant or each member of a Joint Venture, whose part in the JV is substantial (more than 40 (forty) % of the works)]

Applicant's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

NCB No.: *[International competitive bidding number]*

	The Applicant shall demonstrate:	Information	ESHS level
1	- the existence of an Occupational Health & Safety Policy	<i>__[Provide a policy document and the index of the Occupational Health & Safety manual or other relevant documents and declarations]__</i>	② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
2	- the existence of management system, incl. an adequate organizational set-up for definition, enforcement and monitoring.	<i>__[Provide details of the organizational set-up and procedures for health and safety issues within your company, for qualification details of relevant key staff see Form 5.6]__</i>	② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			

Form LOC–5.5

Socially Responsible Works Implementation

[The following table shall be filled by the Applicant or each member of a Joint Venture, whose part in the JV is substantial (more than 40 (forty) % of the works)]

Applicant's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

NCB No.: *[insert International competitive bidding number]*

	The Applicant shall demonstrate:	Documentation	ESHS level
1	- a strategy for staff and labour incl. recruitment of temporary workforce and local labour, worker grievance mechanism, etc.	<i>__[Provide information and relevant documents, if any]__</i>	2 3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
2	- a comprehensive strategy for ensuring public health and safety, including programs and procedures to combat the spread of communicable diseases (incl. HIV/AIDS).	<i>__[Please provide supporting evidence]</i>	1 2 3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
3	- a comprehensive strategy for staff accommodation, e.g. worksite camps, house rental, security, etc.	<i>__[Provide information and relevant documents, if any]__</i>	2 3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
4	- a comprehensive training strategy for transfer of ESHS knowhow to temporary workforce and subcontractors	<i>__[Provide information and relevant documents, if any]__</i>	2 3
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			

Form COC–5.6

Ethical Business Principles

[The following table shall be filled by the Applicant or each member of a Joint Venture, whose part in the JV is substantial (more than 40 (forty) % of the works)]

Applicant's Legal Name: *[insert full name]*

Date: *[insert day, month, year]*

NCB No.: *[insert International competitive bidding number]*

	The Applicant shall demonstrate:	Documentation	ESHS level
1	- that ILO core labour standards ¹⁰ are fully respected in business operations by explicitly ticking the boxes.	Our business operations respect the core labour standards on: ☐ Freedom of Association ☐ Elimination of Forced Labour ☐ Non-Discrimination ☐ Abolishment of Child Labour	Pass/fail ② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
2	- the existence of a declaration on ethical business principles or similar declaration.	<i>__[Provide written information and evidence on business principles (code of conduct, conflict of interest, bribery, corruption, bid-rigging, unfair competition, insider rules, confidentiality, money-laundering, etc.)]__</i>	② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
3	- the existence of an adequate organizational set-up to define, enforce and monitor the ethical business principles.	<i>__[Provide details of the organizational set-up and staffing of the relevant department, for qualification details of relevant key staff see Form 5.6]__</i>	② ③
<i>[insert brief description or, if applicable, short abstract of the documentation annexed]</i>			
4	- that all members of a JV, suppliers (in particular those for major supply items), subcontractors and temporary workforce a) are aware of and b) comply with these principles.	<i>__[Provide information on a) how awareness, know how transfer and enforcement is implemented to external partners b) nature, content and frequency of internal trainings to employees.]__</i>	② ③

¹⁰ See relevant ILO conventions C087, C098, C029, C105, C100, C111, C138, C182. In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and AUDA-NEPAD SIFA Project/KfW, propose and implement appropriate measures in the spirit of the said ILO conventions.

[insert brief description or, if applicable, short abstract of the documentation annexed]

	-		

Form PR–5.7

List of Available ESHS and Construction Personnel

Complete the list below to demonstrate the extent to which you have access (internally / externally) to ESHS and Construction expertise required for personnel profiles described in Section VII; Scope of Works. Do not attach CVs as no personnel evaluation is carried out at the qualification stage. It is understood that qualified Bidders are not required to include staff named below into the proposal.

Name	Designation, in accordance with Section VII, Scope of Works	Education/ Degree	Years of Professional Experience	Relationship with / Years within the Bidder ¹¹	Country / Regional Experience	Relevant Project References (Description of project-related experience)	Languages

¹¹ For freelance experts (e.g. with retainer contracts or formal agreements) indicate “FE” and how long the expert has been associated with the Applicant. For sub-consultant staff indicate “Sub”. Staff from affiliated firms of the Applicant shall be considered as sub-consultant staff.

BIDDING FORMS

LETTER OF BID

[The Bidder shall prepare his Letter of Bid on a Letterhead paper specifying his name and address]

Date: _____
NCB No.: _____

To: _____

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8) _____;
- (b) We have no conflict of interest in accordance with ITB 4;
- (c) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer's country in accordance with ITB 4.4;
- (d) We offer to execute in conformity with the Bidding Documents the following Works: _____;
- (e) The total price of our Bid, excluding taxes and excluding any discounts offered in item (f) below is:
 - i) In case of only one lot, total price (excluding taxes) of the Bid _____
 - ii) In case of multiple lots, total price (excluding taxes) of each lot _____
 - iii) In case of multiple lots, total price (excluding taxes) of all lots (sum of all lots) _____
 - iv) In case of acceptance of [indicate any technical alternatives offered in accordance with ITB 13], total price (excluding taxes) _____
- (f) The discounts offered and the methodology for their application are:
 - i) The discounts offered are: _____
 - ii) The exact method of calculations to determine the net price after application of discounts is shown below: _____
- (g) Our Bid shall be valid for a period of _____ days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) If our Bid is accepted, we commit to obtain a performance security in accordance with ITB 42 of the Bidding Documents;

- (i) We are not participating, as a Bidder, in more than one Bid in this bidding process in accordance with ITB 4.2(e), other than alternative Bids submitted in accordance with ITB 13;
- (j) We understand that this Bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and
- (k) We acknowledge and agree that the Employer reserves the right to annul the bidding process and reject all Bids at any time prior to contract award without thereby incurring any liability to us;
- (l) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder* _____

Name of the person duly authorized to sign the Bid on behalf of the Bidder** _____

Title of the person signing the Bid _____

Signature of the person named above _____

Date signed _____ **day of** _____

Note: AUDA-NEPAD SIFA Project Procurement office collects and uses your personal information for "Procurement Process" and publishes same on the AUDA-NEPAD SIFA Project website when contract is awarded. The collection and use of Personal Data of Consultant(s) intending to compete and deliver services or goods to the either individually or as a firm will only be used after consent has been granted by the Consultant(s). The protection of the personal data provided will be the responsibility of the and same shall be kept for a period strictly necessary for the purpose set out. This privacy notice supplements the AUDA-NEPAD SIFA Project standard privacy notice and should be read in conjunction with the same available on AUDA-NEPAD SIFA Project website <https://www.nepad.org>

*: In the case of the Bid submitted by a JV specify the name of the JV as Bidder

**.: Person signing the Bid shall have the power of attorney, duly notarised given by the Bidder to be attached with the Bid

APPENDIX TO BID

Summary of Payment Currencies

Table C1: Option A – Foreign Currency (Euro)

To be used only with Option A

“Bidders to quote entirely Euros ” (Sub-clause QBDS 15.1)

For [Insert name of Section of the Works]

Name of payment currency	A Amount of currency	B Rate of exchange	C Foreign currency equivalent $C = A \times B$	D Percentage of Total Bid Price (TBP) $\frac{100 \times C}{TBP}$
Local currency: _____	N/A	N/A	N/A	N/A
Foreign currency: EUR				
Total Bid Price in: EUR _____				
Provisional sums expressed in EUROS	30,997.00			
TOTAL BID PRICE (including provisional sum) EUR				

Table C2: Option A – Local Currency*To be used only with Option A**“Bidders to quote entirely in either foreign (preferably Euros) or in local currency” (Sub-clause QBDS 15.1)***Not Applicable**

Table C3: Option B**NOT APPLICABLE***To be used only with Option B**“Bidders allowed to quote in local and foreign currencies” (Sub-Clause BDS 15.1)*

SCHEDULES

Bill of Quantities in Annex

Comply with the Price Schedules and Estimated Details attached in the annexes

Rates and prices shall exclude taxes and the Schedules shall identify the (a) import duties and (b) taxes, fees, levies and other charges estimated in accordance with ITB 14.7, as separate amounts. Information on applicable tax exemptions is provided in Sub-Clause 14.1 (b) of the Particular Conditions of Contract.

The Schedules must be prepared in accordance with the currency alternative retained in QBDS – ITB 15.1.

[Insert the text below, modified to reflect the particulars of the project, as preamble to the Bill of Quantities]

Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Special Conditions of Contract, Technical Specifications, and Drawings.
2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.
3. The rates and prices bid 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.
4. 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.
5. 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.
6. General directions and descriptions of work and materials are not necessarily repeated nor summarised in the Bill of Quantities. References to the relevant sections

of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.

7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 13.5 and Clause 13.6 of the General Conditions.
8. 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]*.¹²
9. Any arithmetic errors in computation or summation will be corrected by the Employer as follows:
 - (a) where there is a discrepancy between amounts in figures and in words, the amount in words will govern; and
 - (b) where there is a discrepancy between the unit rate and the total amount derived from the multiplication of the unit price and the quantity, the unit rate as quoted will govern, unless in the opinion of the Employer, there is an obviously gross misplacement of the decimal point in the unit price, in which event the total amount as quoted will govern and the unit rate will be corrected.
10. Rock is defined as all materials that, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and that cannot be extracted by ripping with a tractor of at least 150 brake hp with a single, rear-mounted, heavy-duty ripper.

¹² The method of measurement should be spelled out precisely in the Preamble to the Bill of Quantities, describing for example the allowances (if any) for timbering in excavation, etc. Many national standard reference guides have been prepared on the subject, and one such guide is the *Standard Method of Measurement* of the U.K. Institution of Civil Engineers.

ENVIRONMENTAL, SOCIAL, HEALTH AND SAFETY (ESHS) COST SCHEDULE

BILL OF QUANTITIES

[Before preparing and adapting the requirements or specifications listed hereafter the explanations to Section VII, 1 b) - Specifications for Environmental, Social, Health and Safety Management (ESHS) of the Works should be duly considered.]

[This Cost Schedule should be inserted into the Bill of Quantities under the Bill "General Items". Amendments to the ESHS Specifications, if any, may require adjustment of the ESHS Cost Schedule]

Bill No. 1: General Items – ESHS Cost Schedule

Item N°	Description	ESHS Specifi- cations Clause N°	Unit	Amount [EURO]
ESHS 1	Resources allocated to ESHS management	Clause 4	Lump sum	
ESHS 2	Drafting and updating the ESHS documentation, reporting, inspections	Clauses 1, 2, 3, 5, 6, 7, 9	Lump sum	<i>[Cost ESHS 1 should exclude all or part of the costs of those tasks]</i>
ESHS 3	Implementation of the Health and Safety Plan: Meetings, health care centre, medical check-ups, emergencies and evacuations, safety protective equipment, hygiene	Clauses 1, 9, 21 to 25, 27 to 35, 37, 38	Lump sum	<i>[Cost ESHS 1 should exclude all or part of the costs of those tasks]</i>
ESHS 4	Accommodation, drinking water, meals and transportation of staff (*) (*) : The Bidder shall detail the financial conditions of the supply of accommodation, meals and transport to its staff: – Accommodation – Meals – Transport	Clauses 36, 40, 41	Lump sum Lump sum Lump sum	<i>[The cost for "site mobilization" should exclude all or part of the costs of those tasks]</i>
ESHS 5	Training and local recruitment management costs	Clauses 8, 39	Lump sum	<i>[Cost ESHS 1 should exclude all or part of the</i>

Item N°	Description	ESHS Specifications Clause N°	Unit	Amount [EURO]
				<i>costs associated to those tasks]</i>
ESHS 6	Protection of adjacent areas, biodiversity, prevention of erosion and wastewater management	Clauses 10, 11, 12, 17, 18	Lump sum	
ESHS 7	Traffic, noise and atmospheric emissions management, land take	Clauses 13, 14, 42, 43, 44	Lump sum	
ESHS 8	Waste and hazardous products management	Clauses 15, 26	Lump sum	
ESHS 9	Vegetation clearing and site rehabilitation	Clauses 16, 19, 20	Lump sum	<i>[The cost for “site mobilization” should exclude all or part of the costs associated to those tasks]</i>
Total for Bill ESHS				_____

ESHS costs are deemed to cover operations on all Sites (as defined in Clause 1.3 of ESHS Specifications) Interim payment certificates shall include the portion of each ESHS cost amounting to the percentage of the actual progress achieved in executing the ESHS measures in compliance with the ESHS Specifications and approved by the Engineer.				

TECHNICAL PROPOSAL

- Environmental, Social, Management Plan (ESMP) Methodology
- Site Organization and Method Statement
- Construction Schedule
- Personnel proposed (forms PER-1 and PER-2)
- Equipment proposed (form EQU)

Environmental, Social, Management Plan (ESMP) Methodology

[Before preparing and adapting the requirements or specifications listed hereafter the explanations to Section VII, 1 b) - Specifications for Environmental, Social, Health and Safety Management (ESHS) of the Works should be duly considered.]

The Bidder shall provide an Environmental and Social Management Plan (ESMP) Methodology providing information on how the Bidder shall meet those requirements and objectives, which are specified in Section VII, Works Requirements - ESHS Specifications.

The ESMP Methodology submitted shall be in the form of a preliminary draft of the Environmental and Social Management Plan (ESMP), the content of which is detailed in Appendix 1 to ESHS Specifications.

Information should be provided on all items of the above mentioned table of contents.

In order to address the highly sensitive ESHS issues highlighted during the project's environmental and social impact assessment, the ESMP Methodology shall provide detailed information on the management of the following items:

- (a) ESHS resources and facilities and ESHS monitoring organization;
- (b) Project Areas description (base camps, quarries, borrow pits, storage areas);
- (c) Health & Safety on Project Areas;
- (d) Local recruitment and ESHS trainings of local staff (capacity building), ESHS trainings of subcontractors and local partners (transfer of knowledge);
- (e) Relations with stakeholders, information and consultation of local communities and authorities;
- (f) Traffic management;
- (g) Hazardous products;
- (h) Wastewater (effluents);
- (i) Protection of water resources;
- (j) Atmospheric emissions, noise and vibrations;
- (k) Waste management;
- (l) Biodiversity: protection of fauna and flora;
- (m) Site rehabilitation and revegetation;
- (n) Erosion and sedimentation;
- (o) Control of infectious and communicable diseases (HIV/AIDS, malaria...).

A Bid for which the ESMP Methodology is evaluated as non-substantially responsive (i.e. with material deviation, reservation or omission) to the ESHS Specifications shall be rejected.

Site Organization and Method Statement

Each Bidder shall set out details of the Site Organization and Method Statement for the Works to demonstrate how it will meet the Employer's objective and requirements. As a minimum, the Method Statement shall address the following:

- (a) Details of the arrangements and methods which the Bidder proposes to implement for the construction of the Works, in sufficient detail to demonstrate their adequacy to achieve the requirements of the Contract including completion within the Time for Completion stated in the Particular Conditions of Contract;
- (b) Outline of the arrangements of the Bidder to manage coordination of Site access;
- (c) Comments on the geotechnical and subsurface aspects of the Works including materials, material sources and any constraints;
- (d) Comments on any offshore or waterfront aspects of the Works (if relevant);
- (e) Comments on logistics and traffic management *[as may be appropriate]*;
- (f) Outline of the arrangements and organisation of the Bidder to ensure compliance with the Works Requirements;
- (g) Outline of the arrangements of the Bidder to carry out testing upon completion as specified in the Works Requirements;
- (h) *[Insert other information, as may be appropriate]*.

Construction Schedule

Each Bidder shall set out a detailed Program and Schedule for mobilisation and construction of the Works to be performed, including estimated starting and finishing dates for individual components and identification of major milestones and critical path. The proposed Program and Schedule shall be developed according to Works Requirements and shall address the following:

- (a) Details of the proposed schedule for obtaining permits that may be necessary in order to commence the Works, including the preparation of required studies, supporting information, and applications;
- (b) Details of the proposed timeline for carrying out the Works within the Time for Completion, in the form of a bar chart showing notably the critical path;
- (c) Details of the proposed timeline for the testing, commissioning and handing over of the completed Works;
- (d) Other proposed measures as may be appropriate.

PERSONNEL

Form PER-1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III, Evaluation and Qualification Criteria. The data on their experience should be supplied using the Form below for each candidate.

1.	Title of position*
	Name
2.	Title of position*
	Name
3.	Title of position*
	Name
4.	Title of position*
	Name

*As listed in Section III, Evaluation and Qualification Criteria.

Form PER-2: Resume of Proposed Personnel

Name of Bidder

Position		
Personnel information	Name	Date of birth
	Professional qualifications	
Present employment	Name of employer	
	Address of employer	
	Telephone	Contact (manager / personnel officer)
	Fax	E-mail
	Job title	Years with present employer

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	To	Company / Project / Position / Relevant technical and management experience

Form EQU: Equipment

The Bidder 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 Bidder.

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	Indicate source of the equipment ☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured	

Omit the following information for equipment owned by the Bidder.

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	

BID SECURITY

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

BID GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of the bidder, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of *[Insert project, object of the contract/brief description of the works]* under Invitation for Bids No. *[Insert tender number]* ("the IFB").

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first 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 Bid during the period of bid validity set forth in the Applicant's Bid Submission Form (the Bid Validity Period); or
- (b) Having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's bidding document.

This guarantee shall expire not later than *[Insert expiry date]*¹³.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert¹⁴: This guarantee is subject to the Uniform Rule for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.]

Place, date

Guarantor's authorized
signature(s)

¹³Pursuant to ITB Clause 19.3 the guarantee must be valid for at least 42 days beyond the bid validity.

¹⁴ In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Section V. Eligibility Criteria

Eligibility in KfW-Financed Procurement

1. Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.
2. Applicants/Bidders (including all members of a Joint Venture and proposed or engaged Subcontractors) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application/Offer or on the intended date of Award of a Contract, they:
 - 2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
 - 2.2 have been
 - (a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or the German Government for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
 - (b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practice during any Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application/Offer which shows that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction;
 - 2.3 have been subject within the past five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless this termination was challenged and the dispute resolution is still pending or has not confirmed a full settlement against them;
 - 2.4 have not fulfilled applicable fiscal obligations regarding payments of taxes either in the country where they are constituted or the PEA's country;
 - 2.5 are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individual available on the World Bank's website <https://www.worldbank.org/en/projects->

[operations/procurement/debarred-firms](#) or any other multilateral development bank unless they provide supporting information together with their Declaration of Undertaking which shows that this exclusion is not relevant in the context of this Contract or

2.6 have given misrepresentation in documentation requested by the PEA as part of the Tender Process of the relevant Contract.

3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW's satisfaction, through all relevant documents, including its charter and other information KfW may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

1. Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the Employers detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, AUDA-NEPAD and KfW requires to include in the Contracts a provision pursuant to which Contractors must permit AUDA-NEPAD and KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by AUDA-NEPAD and/or KfW.

AUDA-NEPAD and KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.

Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.
Fraudulent Practice	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
Obstructive Practice	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
Sanctionable Practice	Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

2. Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation¹⁵ (ILO) and international environmental treaties and;

¹⁵ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

PART 2 – WORKS REQUIREMENTS

Section VII. Works Requirements

Contents

1. Specifications

- a) Technical Specifications
- b) Specifications for Environmental, Social, Health and Safety Management (ESHS)
- c) Personnel Requirements
- d) Equipment Requirements

2. Drawings

1. Specifications

a) Technical Specifications

Attached in Annex

ENVIRONMENTAL & SOCIAL MANAGEMENT PLAN (ESMP) TEMPLATE

Instructions

The Grantee will include an Environmental and Social Management Plan (ESMP) as an annex in the implementation agreement between the Grantee and the contractor as his obligation to implement the ESMP during the works.

This document serves as ESMP template, capturing the typical environmental and social (E&S) impacts and associated mitigation measures that need to be considered for SIFA Projects that include construction activities. The Grantee - together with the contractor, if applicable - shall use this ESMP template and adapt it to the specifications of the construction activities, characteristics and risks as part of the terms of reference and contract. The ESMP template summarises the key mitigation measures for construction activities per Project phase (planning, construction/implementation, operation) with the objective for the Grantee to mitigate negative E&S impacts.

*As a minimum, for any construction Project, this ESMP can be used as it is. Ideally, the measures in the ESMP table below (Chapter **Error! Reference source not found.** of this ESMP template) should be adapted to become specific to the construction activity, especially for larger Projects (e.g. Category B or B+). Measures that are not applicable can be deleted and additional measures are added.*

1. PURPOSE OF THE ESMP

Construction activities can have potential negative E&S impacts, which depend on the Project type and scale, sensitivity of site, the nature, significance, magnitude and duration of its potential E&S impacts, complexity of issues raised and reliability of mitigation. The potential E&S impacts have to be managed and mitigated through an Environmental and Social Management Plan (ESMP).

In the context of the SIFA, construction activities are likely to include workshops and training centres and are assumed to have low (Category C) or moderate (Category B) with few substantial (Category B+) risks. The ESMP should include chapters on the following topics:

- Description of construction activities,
- Roles and responsibilities,
- Training requirements,
- Monitoring and reporting.

The main part of the ESMP comprises the mitigation measures with the according means of verification (indicators), responsibilities and the means of monitoring.

Not listed in this ESMP are the measures that are valid for all Project types as described in the main text of the SIFA ESMS; these are:

- Stakeholder Engagement, including the Grievance Mechanism (see also ESMS Annex K - Grievance Mechanism Template),
- Workers' Health & Safety, including Incident Reporting,
- Minimum Labour Standards.

The Grantee will typically engage a construction contractor to undertake the works.

The ESMP is typically divided into the following three phases:

Preparation phase (conception, planning),

Implementation/ construction phase, and

Operation phase.

Each phase is further divided into Project relevant topics (e.g. Occupational Health & Safety or Waste Management. Each topic should provide specific measures, along with means of verification, the provision of responsibilities and a short description of appropriate monitoring procedures.

2. WHO NEEDS TO FOLLOW THE ESMP?

The overall responsibility for the ESMP lies with the Grantee (Employer). The contractor will be obliged to support the preparation and ensure the implementation of the ESMP and the respective reporting. The mitigation measures, responsibilities and monitoring requirements need to be further conveyed to any sub-contractors engaged by the contractor and/or any suppliers associated with his operations. It is the responsibility of the contractor that every worker and subcontractor on the ground needs to be aware of the content of the ESMP and the specific responsibilities under it.

3. ESMP TEMPLATE FOR CONSTRUCTION ACTIVITIES

The ESMP for the contractor should follow the same format as the overall ESMP made available in connection to the bid. The table below serves as a template and should be adapted to make it more specific to a particular Project. This is the minimum of measures that need to be considered for construction activities. Adjust this ESMP to the specific Project, define the frequency of the monitoring procedure and identify if further management plans have to be prepared.

Phase	Topic	Measure	Means of Verification	Responsibility	Monitoring Procedure
Implementation / Construction	Grievance Mechanism	■ Ensure that all direct and indirect workers have access to and are aware of the Grievance Mechanism where they can raise workplace relevant complaints anonymously ■ Document all grievances from workers, communities and other stakeholders formulated on a register along with the responses given.	Grievance Mechanism	Grantee Contractor	• Review of grievance register
	Labour Conditions	■ Ensure minimum legal labour standards as per ILO regulations (child/forced labour, sexual assault, no discrimination, equal opportunities, working hours, minimum wages) are met. ■ Contribution from community in the form labour is allowed, provided that contribution is voluntary and does not negatively affect livelihoods.	Grievance Mechanism	Contractor	• Inspection reports (also from labour authorities) • Review of grievance register and training records
	Labour Conditions	■ Ensure the workforce has access to primary healthcare on site, providing prescriptions. • As a minimum, first aid kits need to be available on every construction site. ■ Emergency services (next hospital, health centre or doctor) need to be identified and made available to workers in case of need. ■ Ensure provision of H&S and hygienic and sanitary facilities at the site, including shaded welfare areas, bathrooms, changing rooms and potable water. • Ensure toilets and changing rooms are separated between male and female employees.	Observations Grievance Mechanism	Contractor	• Random site inspection
	Occupational Health & Safety	■ Provide H&S training to contractors and workers on the main risks on workers' health and safety related to work place, the safe work practices, the emergency procedures and the requirement of incident reporting. ■ Ensure the use of Personal Protective Equipment (PPE) tailored to the conditions workers are exposed to.	Minutes of Meetings, Observations, Appropriate H&S and sanitary facilities provided at site	Contractor Grantee	• Check training records • Check incidents reports • Regular inspection

Phase	Topic	Measure	Means of Verification	Responsibility	Monitoring Procedure
		As a minimum foot plus head, hand, ear, eyes protection, depending on working position.			Review of grievance records
	Occupational Health & Safety	- Record accidents and near misses continuously. - Implement incentive programme for incident recording.	Trainings record. Incident documentation. Project reporting.	Contractor Grantee	- Check training records - Check incidents reports
	Biodiversity and Natural Habitats	- Limit vegetation clearing to areas within the site boundary where it is absolutely necessary to reduce habitat disturbance - Ensure revegetation of cleared areas (with recovered plants and other appropriate local flora) where possible after construction using native species	Vegetation clearing minimal, Check pre-construction survey to make sure that site is not in wetland areas	Contractor	Random site inspection
	Emissions (Dust, Noise, Gases)	- Reduce source of dust emissions at construction sites by watering of transportation roads during dry and windy conditions. - Generally keep roads in good condition. - Cover truck loads with canvas to avoid dust blow. - Using equipment and vehicles in appropriate technical conditions. - Ensure vehicles and equipment are switched off when not in use.	Observations	Contractor	- Random site inspection - Inspection of roads
	Noise and Vibration Impacts	- Reduce noise and vibration impacts during construction. - Limit the hours of operation for specific pieces of equipment or operations, especially mobile sources operating through community areas or close to residential houses. - Avoid vehicle movements at night.	No work conducted at night (between 10pm and 7am), Grievance Mechanism	Contractor	- Random site inspection - Review of filed grievances - Review of timesheets of workers

Phase	Topic	Measure	Means of Verification	Responsibility	Monitoring Procedure
		■ Use of modern, state-of-the-art technology and limit the number of machines operated simultaneously.			
	Soil and Groundwater Contamination	■ Maintain high standards in general housekeeping on site. ■ Identify and store appropriately all material or hazardous substances like fuel or chemicals and provide solutions to remediate unforeseen leakage and spills. ■ Enforce appropriate waste management practices • Give priority to reuse of waste material upon disposal. • Collect and segregate wastes and ensure safe storage and in line with legal requirements.	Dedicated storage areas in place Waste Manifests	Contractor	• Random site inspection • Review of waste inventories
	Soil Management	■ Implement best practices for soil management • Ensure appropriate storing of topsoil removed. After construction, topsoil will be used as backfill for restoration of the area. • Limit stockpile height to 2 m maximum to avoid soil compensation. • If construction takes place on inclined surfaces/slopes, ensure preventive erosion control measures are applied (e.g. plan to retain trees and other vegetation) ■ Reinstatement of the construction working area to the best possible after construction activities are completed	Topsoil stored and re-used	Contractor	• Random site inspection
	Water Resources Protection	■ Implement best practices for water management • Prioritise the use of rainwater/storm water over surface water/groundwater abstraction by using harvesting equipment and systems on site. • Reuse wastewater wherever feasible. • Restrict excavation activities during periods of intense rainfall.	Water harvesting conducted, No excavation during intense rainfall, Project application / Project concept	Contractor	• Random site inspection • Project planning documents

Phase	Topic	Measure	Means of Verification	Responsibility	Monitoring Procedure
	Community Health & Safety	■ Implement good practices for traffic safety • Schedule traffic activities to avoid peak hours on local roads if feasible. • Ensure safe driving by Project personnel, e.g. through training/induction/incentives (best driver awards). ■ Ensure all H&S related incidents (e.g. observations, accidents) on site are recorded and followed up properly.	Observations Training attendance lists Grievance Mechanism Incident recording process in place	Contractor	• Random site inspection • Check incident/accident records
	Community Health & Safety	■ Restrict access to construction sites to non-authorized persons • Prevent physical access to the site fencing and/or guarding • Use appropriate signage	Access controlled	Grantee / Contractor	• Random site inspection
	Cultural Heritage	■ Ensure all chance finds of cultural heritage (e.g. graves, old ceramic, old building fragments) are reported immediately to the relevant authority. ■ If possible, avoid excavation in the ultimate neighbourhood of a chance find, fence the chance find and await instructions from the competent authority	Contractual documentation Chance finds records	Contractor Grantee	• Random site inspection

c) Personnel Requirements

The Bidder must demonstrate that it has the personnel for the key positions that meet the following requirements:

No. / Quantity	Position	Minimum Qualification *	Total Work Experience (years)	In Similar Works Experience (years)
1	ESHSE Manager	MBA or Engineering degree in the field of Environmental Health and Safety or a closely related field	5 years in designing and monitoring the implementation of ESHS management plans for construction works	5
1	Project Manager	MBA or Engineering degree in a related building field	10 years in project management position	10
2	Civil/Structural Engineer	Engineering degree in Civil/Structural Engineering	10 years in Civil/Structural Engineering design and construction of buildings.	7
1	Site Construction Supervisor	Engineering degree in any building related field	7 years in site construction supervision.	7
1	Mechanical Engineer	Mechanical Engineering degree in Mechanical engineering related field	7 years in site construction supervision.	5
1	Electrical Engineer	Electrical Engineering degree in Electrical engineering related field	5 years in Electrical Engineering design and construction	5
1	QAQC Engineer	Engineering degree in any engineering related field	7 years working on construction sites as Quality Assurance and Quality Control Engineer	5
1	Storekeeper / Inventory supervisor	Diploma in supply chain management / Storekeeping	5 years working on construction sites as storekeeper and inventory supervisor	5

- ***Bidders must include copies of diplomas for all Degrees and Certificates – Failure to include may lead to the rejection of the Bid.**
- ***Bidders must include the CV for all Key Experts – Failure to include may lead to the rejection of the Bid.**

The Bidder shall provide details of the proposed personnel and their experience records using Forms PER-1 and PER-2 included in Section IV, Bidding Forms.

d) Equipment Requirements

The Bidder must demonstrate that it can obtain (purchase, lease or rent) the key equipment listed hereafter:

No.	Equipment Type and Characteristics	Minimum Number required
1	Concrete mixers (250 litres to 500 litres)	2
2	Concrete vibrators	<u>2</u>
3	Double or extended cab vehicles	<u>2</u>
4	Dump trucks	<u>2</u>
5	Tipper trucks	<u>2</u>
6	Soil compactors	<u>2</u>
7	Handler	<u>1</u>
8	Loader	<u>1</u>
9	Excavator	<u>1</u>
10	Mobile crane	N/A
11	Soil compactor	<u>1</u>
12	Welding post	<u>1</u>
13	Generators	<u>2</u>

Note: Proof of ownership or confirmed rental/leasing agreement, of each item of equipment must be presented as part of the BID

The Bidder shall provide further details of proposed items of equipment using Form EQU in Section IV, Bidding Forms.

2. Drawings

Attached in Annex

PART 3 – CONDITIONS OF CONTRACT (CC) AND CONTRACT FORMS

Section VIII. General Conditions (GC)

1.	General Provisions	129
1.1	Definitions	129
1.2	Interpretation	133
1.4	Law and Language	134
1.5	Priority of Documents	134
1.6	Contract Agreement	134
1.7	Assignment	134
1.8	Care and Supply of Documents	135
1.9	Delayed Drawings or Instructions	135
1.10	Employer's Use of Contractor's Documents	136
1.11	Contractor's Use of Employer's Documents	136
1.12	Confidential Details	136
1.13	Compliance with Laws	137
1.14	Joint and Several Liability	137
1.15	Inspections and Audit by the Bank	137
2.	The Employer	137
2.1	Right of Access to the Site	137
2.2	Permits, Licences or Approvals	138
2.3	Employer's Personnel	138
2.4	Employer's Financial Arrangements	138
2.5	Employer's Claims	139
3.	The Engineer	139
3.1	Engineer's Duties and Authority	139
3.2	Delegation by the Engineer	140
3.3	Instructions of the Engineer	141
3.4	Replacement of the Engineer	141
3.5	Determinations	141
4.	The Contractor	142
4.1	Contractor's General Obligations	142
4.2	Performance Security	143
4.3	Contractor's Representative	143
4.4	Subcontractors	144
4.5	Assignment of Benefit of Subcontract	144
4.6	Co-operation	145
4.7	Setting Out	145
4.8	Safety Procedures	145
4.9	Quality Assurance	146
4.10	Site Data	146
4.11	Sufficiency of the Accepted Contract Amount	147
4.12	Unforeseeable Physical Conditions	147
4.13	Rights of Way and Facilities	148
4.14	Avoidance of Interference	148
4.15	Access Route	148

4.16	Transport of Goods	148
4.18	Protection of the Environment.....	149
4.19	Electricity, Water and Gas	149
4.22	Security of the Site	151
4.23	Contractor's Operations on Site.....	151
4.24	Fossils.....	151
5.	Nominated Subcontractors.....	152
5.1	Definition of "nominated Subcontractor"	152
5.2	Objection to Nomination.....	152
5.3	Payments to nominated Subcontractors	152
5.4	Evidence of Payments	153
6.	Staff and Labour	153
6.1	Engagement of Staff and Labour	153
6.2	Rates of Wages and Conditions of Labour	153
6.3	Persons in the Service of Employer.....	153
6.4	Labour Laws	154
6.5	Working Hours	154
6.6	Facilities for Staff and Labour	154
6.7	Health and Safety	154
6.8	Contractor's Superintendence	155
6.9	Contractor's Personnel	155
6.10	Records of Contractor's Personnel and Equipment.....	155
6.11	Disorderly Conduct	156
6.12	Foreign Personnel.....	156
6.13	Supply of Foodstuffs	156
6.14	Supply of Water	156
6.15	Measures against Insect and Pest Nuisance.....	156
6.16	Alcoholic Liquor or Drugs.....	156
6.17	Arms and Ammunition.....	156
6.18	Festivals and Religious Customs.....	156
6.19	Funeral Arrangements	156
6.20	Prohibition of Forced or Compulsory Labour	157
6.21	Prohibition of Harmful Child Labour	157
6.22	Employment Records of Workers	157
6.23	Workers' Organi-sations	157
6.24	Non-Discrimination and Equal Opportunity.....	157
7.	Plant, Materials and Workmanship	157
7.1	Manner of Execution	157
7.2	Samples	158
7.3	Inspection.....	158
7.4	Testing	158
7.5	Rejection	159
7.6	Remedial Work	159
7.7	Ownership of Plant and Materials	160
7.8	Royalties	160
8.	Commencement, Delays and Suspension	160
8.1	Commencement of Works	160

8.2	Time for Completion.....	161
8.3	Programme	161
8.4	Extension of Time for Completion.....	162
8.5	Delays Caused by Authorities.....	162
8.6	Rate of Progress	162
8.7	Delay Damages	163
8.8	Suspension of Work.....	163
8.9	Consequences of Suspension	163
8.10	Payment for Plant and Materials in Event of Suspension	164
8.11	Prolonged Suspension.....	164
8.12	Resumption of Work	164
9.	Tests on Completion	164
9.1	Contractor's Obligations.....	164
9.2	Delayed Tests	164
9.3	Retesting.....	165
9.4	Failure to Pass Tests on Completion	165
10.	Employer's Taking Over.....	165
10.1	Taking Over of the Works and Sections	165
10.2	Taking Over of Parts of the Works.....	166
10.3	Interference with Tests on Completion	167
11.	Defects Liability	167
11.1	Completion of Outstanding Work and Remedying Defects.....	167
11.2	Cost of Remedying Defects	167
11.3	Extension of Defects Notification Period.....	168
11.4	Failure to Remedy Defects	168
11.5	Removal of Defective Work	168
11.6	Further Tests.....	169
11.7	Right of Access	169
11.8	Contractor to Search.....	169
11.9	Performance Certificate	169
11.10	Unfulfilled Obligations	169
11.11	Clearance of Site	169
12.	Measurement and Evaluation	169
12.1	Works to be Measured.....	169
12.2	Method of Measurement.....	170
12.3	Evaluation	170
12.4	Omissions	171
13.	Variations and Adjustments	172
13.1	Right to Vary	172
13.2	Value Engineering.....	172
13.3	Variation Procedure	173
13.4	Payment in Applicable Currencies	173
13.5	Provisional Sums	173
13.6	Daywork	174
13.7	Adjustments for Changes in Legislation.....	174
13.8	Adjustments for Changes in Cost	175

14.	Contract Price and Payment.....	176
14.1	The Contract Price	176
14.2	Advance Payment.....	177
14.3	Application for Interim Payment Certificates	178
14.4	Schedule of Payments	178
14.5	Plant and Materials intended for the Works	179
14.6	Issue of Interim Payment Certificates	180
14.7	Payment.....	180
14.8	Delayed Payment.....	181
14.9	Payment of Retention Money.....	181
14.10	Statement at Completion	182
14.11	Application for Final Payment Certificate	182
14.12	Discharge	183
14.13	Issue of Final Payment Certificate	183
14.14	Cessation of Employer's Liability	183
14.15	Currencies of Payment	183
15.	Termination by Employer.....	184
15.1	Notice to Correct.....	184
15.2	Termination by Employer	184
15.3	Valuation at Date of Termination	185
15.4	Payment after Termination.....	185
15.5	Employer's Entitlement to Termination for Convenience	186
15.6	Corrupt or Fraudulent Practices.....	186
16.	Suspension and Termination by Contractor.....	187
16.1	Contractor's Entitlement to Suspend Work.....	187
16.2	Termination by Contractor	187
16.3	Cessation of Work and Removal of Contractor's Equipment.....	188
16.4	Payment on Termination.....	189
17.	Risk and Responsibility	189
17.1	Indemnities.....	189
17.2	Contractor's Care of the Works.....	189
17.3	Employer's Risks	190
17.4	Consequences of Employer's Risks	190
17.5	Intellectual and Industrial Property Rights	191
17.6	Limitation of Liability.....	191
17.7	Use of Employer's Accommodation / Facilities.....	192
18.	Insurance.....	192
18.1	General Requirements for Insurances	192
18.2	Insurance for Works and Contractor's Equipment	193
18.3	Insurance against Injury to Persons and Damage to Property	195
18.4	Insurance for Contractor's Personnel	195
19.	Force Majeure	196
19.1	Definition of Force Majeure.....	196
19.3	Duty to Minimise Delay	196
19.4	Consequences of Force Majeure.....	196
19.5	Force Majeure Affecting Subcontractor	197

19.6	Optional Termination, Payment and Release	197
19.7	Release from Performance	198
20.	Settlement of Disputes	198
20.1	Engineers Decision.....	201
20.2	Amicable Settlement.....	201
20.3	Arbitration	202
20.4	Failure to Comply	202

Section VIII. General Conditions (GC)

[Name of Employer]

[Name of Contract]

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[This section should not be modified and any modification on the General Conditions should be specified in Section IX, Particular Conditions]

General Conditions

1. General Provisions

1.1 Definitions

In the Conditions of Contract ("these Conditions"), which include Particular Conditions, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 "Contract" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 "Contract Agreement" means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement].

1.1.1.3 "Letter of Acceptance" means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

1.1.1.4 "Letter of Tender" means the document entitled letter of tender or letter of Bid, which was completed by the Contractor and includes the signed offer to the Employer for the Works.

1.1.1.5 "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.

1.1.1.6 "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 Employer in accordance with the Contract.

1.1.1.7 "Schedules" means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 "Tender" means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.1.1.9 "Bill of Quantities", "Daywork Schedule" and "Schedule of Payment Currencies" mean the documents so named (if any) which are comprised in the Schedules.

1.1.1.10 "Contract Data" means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions.

- | | | |
|---|----------|---|
| 1.1.2 Parties and Persons | 1.1.2.1 | “Party” means the Employer or the Contractor, as the context requires. |
| | 1.1.2.2 | “Employer” means the person named as employer in the Contract Data and the legal successors in title to this person. |
| | 1.1.2.3 | “Contractor” means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s). |
| | 1.1.2.4 | “Engineer” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer]. |
| | 1.1.2.5 | “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor. |
| | 1.1.2.6 | “Employer’s Personnel” means the Engineer, the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel. |
| | 1.1.2.7 | “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works. |
| | 1.1.2.8 | “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons. |
| | 1.1.2.9 | Not applicable |
| | 1.1.2.10 | “FIDIC” means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers. |
| | 1.1.2.11 | “Bank” means the financing institution (if any) named in the Contract Data. |
| | 1.1.2.12 | “Borrower” means the person (if any) named as the borrower in the Contract Data. |
| 1.1.3 Dates, Tests, Periods and Completion | 1.1.3.1 | “Base Date” means the date 28 days prior to the latest date for submission of the Tender. |
| | 1.1.3.2 | “Commencement Date” means the date notified under Sub-Clause 8.1 [Commencement of Works]. |
| | 1.1.3.3 | “Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Contract Data (with |

any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

1.1.3.4 “Tests 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 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Employer.

1.1.3.5 “Taking-Over Certificate” means a certificate issued under Clause 10 [Employer’s Taking Over].

1.1.3.6 “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 Employer.

1.1.3.7 “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 365 days except if otherwise stated in the Contract Data (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections]..

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

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

1.1.4 Money and Payments

1.1.4.1 “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.

1.1.4.2 “Contract Price” means the price defined in Sub-Clause 14.1 [The Contract Price], and includes adjustments in accordance with the Contract.

1.1.4.3 “Cost” means all 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.

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

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

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

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

1.1.4.8 “Local Currency” means the currency of the Country.

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

- 1.1.4.10 "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].
- 1.1.4.11 "Retention Money" means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].
- 1.1.4.12 "Statement" means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.
- 1.1.5 Works and Goods**
- 1.1.5.1 "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, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
- 1.1.5.2 "Goods" means Contractor's Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.1.5.3 "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.
- 1.1.5.4 "Permanent Works" means the permanent works to be executed by the Contractor under the Contract.
- 1.1.5.5 "Plant" means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction or operation of the Works.
- 1.1.5.6 "Section" means a part of the Works specified in the Contract Data as a Section (if any).
- 1.1.5.7 "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.
- 1.1.5.8 "Works" mean the Permanent Works and the Temporary Works, or either of them as appropriate.
- 1.1.6 Other Definitions**
- 1.1.6.1 "Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- 1.1.6.2 "Country" means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.
- 1.1.6.3 "Employer's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Employer 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 Employer.

- 1.1.6.4 "Force Majeure" is defined in Clause 19 [Force Majeure].
- 1.1.6.5 "Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 "Performance Security" means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].
- 1.1.6.7 "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.
- 1.1.6.8 "Unforeseeable" means not reasonably foreseeable by an experienced contractor by the Base Date.
- 1.1.6.9 "Variation" means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].
- 1.1.6.10 "Notice of Dissatisfaction" means the notice given by either Party to the other indicating its dissatisfaction and intention to commence arbitration.

1.2 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
- (e) The word "tender" is synonymous with "Bid" and "tenderer" with "Bidder" and the words "tender documents" with "bidding documents".

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

In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Contract Data.

1.3 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 Contract Data; and
- (b) Delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. 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 Engineer or the other Party, as the case may be.

1.4 Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the Contract Data.

The ruling language of the Contract shall be that stated in the Contract Data.

The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.5 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) The Contract Agreement (if any);
- (b) The Letter of Acceptance;
- (c) The Letter of Tender;
- (d) The Particular Conditions – Part A;
- (e) The Particular Conditions – Part B;
- (f) These General Conditions;
- (g) The Specification;
- (h) The Drawings; and
- (i) The Schedules and any other documents forming part of the Contract.

If an ambiguity or discrepancy is found in the documents, the Engineer shall issue any necessary clarification or instruction.

1.6 Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- (a) May assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and
- (b) May, as security in favour of a bank, assign its right to any moneys due, or to become due, under the Contract.

1.8 Care and Supply of Documents

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Engineer six copies of each of the Contractor's Documents.

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. The Employer's Personnel shall have the right of access to all these documents at all reasonable times.

If a Party becomes aware of an error or defect in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9 Delayed Drawings or Instructions

The Contractor shall give notice to the Engineer whenever the Works are likely to be delayed or disrupted if any necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable. The notice shall include details of the necessary drawing or instruction, details of why and by when it should be issued, and the nature and amount of the delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Engineer to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Engineer 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 further notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Engineer'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.

- 1.10 Employer's Use of Contractor's Documents**
- As 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 Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:
- (a) Apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;
 - (b) Entitle any person in proper possession of the relevant part of the Works 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 replacements 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 Employer for purposes other than those permitted under this Sub-Clause.
- 1.11 Contractor's Use of Employer's Documents**
- As between the Parties, the Employer shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the Employer. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract. They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.
- 1.12 Confidential Details**
- The Contractor's and the Employer's Personnel 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.
- Each of them shall 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 particulars 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 qualifications to compete for other projects.

1.13 Compliance with Laws

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

- (a) The Employer shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specification as having been (or to be) obtained by the Employer; and the Employer 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, licences 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 Employer harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

1.14 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 Employer for the performance of the Contract;
- (b) These persons shall notify the Employer 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 Employer.

1.15 Inspections and Audit by the Bank

The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

2. The Employer**2.1 Right of Access to the Site**

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

If no such time is stated in the Contract Data, the Employer 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 programme submitted under Sub-Clause 8.3 [Programme].

If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Employer to give any such right or possession within such time, the Contractor shall give notice to the Engineer 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 Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

However, if and to the extent that the Employer'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.

2.2 Permits, Licences or Approvals

The Employer 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 the Country which are relevant to the Contract but are not readily available, and
- (b) Any permits, licences or approvals required by the Laws of the Country:
 - (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.

2.3 Employer's Personnel

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

- (a) Co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation]; and
- (b) Take actions 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].

2.4 Employer's Financial Arrangements

The Employer shall submit, before the Commencement Date and thereafter within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the

Employer shall provide reasonable evidence in his notice of the extent to which such funds will be available.

2.5 Employer's Claims

If the Employer considers himself 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 Employer or the Engineer 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 [Employer'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 42 days after the Employer 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 Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Employer 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 Employer 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.

3. The Engineer

3.1 Engineer's Duties and Authority

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

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

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

- (a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;

- (b) The Engineer 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 Engineer (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 Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer 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 percentage specified in the Contract Data;
- (c) Sub-Clause 13.3: Approving a proposal for Variation 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 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 Employer, with any such instruction of the Engineer. The Engineer 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 Employer.

3.2 Delegation by the Engineer

The Engineer 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 Engineer 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 authorised 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 Engineer 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.

3.3 Instructions of the Engineer

The Engineer 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 this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a 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 Engineer or delegated assistant (as the case may be).

3.4 Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, 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 replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

3.5 Determinations

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

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars, within 28 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

4.1 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 Engineer'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 as defined by the Bank.

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 Particular Conditions:

- (a) The Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures 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 Engineer 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 Engineer the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer 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.

4.2 Performance Security

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

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, 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 Particular Conditions, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer.

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 28 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 Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract.

The Employer 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 Employer was not entitled to make the claim.

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

Without limitation to the provisions of the rest of this Sub-Clause, whenever the Engineer 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 Engineer'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.

4.3 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.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Engineer 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 Engineer's prior consent, and the Engineer 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 Engineer 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.

4.4 Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular 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 Engineer shall be obtained to other proposed Subcontractors;
- (c) The Contractor shall give the Engineer not less than 28 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 Employer to require the subcontract to be assigned to the Employer 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 Employer].

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 the Country to be appointed as Subcontractors.

4.5 Assignment of Benefit of Subcontract

If a Subcontractor's obligations extend 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 obligations to the

Employer, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the Employer for the work carried out by the Subcontractor after the assignment takes effect.

4.6 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 Employer's Personnel;
- (b) Any other contractors employed by the Employer; and
- (c) The personnel of any legally constituted public authorities;

who may be employed in the execution on or near the Site of any work not included in the Contract.

Any such instruction 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 Employer 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 Engineer in the time and manner stated in the Specification.

4.7 Setting Out

The Contractor shall set out the Works in relation to original points, lines and levels of reference 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 Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

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 Engineer 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 Engineer 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 extent.

4.8 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 efforts to keep the Site and Works clear of unnecessary obstruction 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 [Employer'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.

4.9 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 Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer 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 himself 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.

4.10 Site Data

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer'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 the Country; and
- (e) The Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11 Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

- (a) Have satisfied himself 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.

4.12 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 sub-surface and hydrological conditions but excluding climatic conditions.

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

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, 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 Engineer 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, gives 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 Engineer 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 Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer 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 Engineer 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.

4.13 Rights of Way and Facilities

Unless otherwise specified in the Contract the Employer 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.

4.14 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

- (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 Employer or of others.

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

4.15 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 efforts 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 Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- (d) The Employer 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.

4.16 Transport of Goods

Unless otherwise stated in the Particular Conditions:

- (a) The Contractor shall give the Engineer 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 Employer 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.
- 4.17 Contractor's Equipment**

The Contractor shall be responsible for all Contractor's Equipment. When brought on to 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 vehicles transporting Goods or Contractor's Personnel off Site.
- 4.18 Protection of the Environment**

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.
- 4.19 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 Specification. 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 Engineer in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.
- 4.20 Employer's Equipment and Free-Issue Materials**

The Employer shall make the Employer'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 Employer shall be responsible for the Employer's Equipment; except that
 - (b) The Contractor shall be responsible for each item of Employer'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 Employer's Equipment shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.

The Employer shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Employer shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them, and shall promptly give notice to the Engineer of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Employer 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 obligations of inspection, care, custody and control shall not relieve the Employer of liability for any shortage, defect or default not apparent from a visual inspection.

4.21 Progress Reports

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer 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 [Employer'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) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

4.22 Security of the Site

Unless otherwise stated in the Particular Conditions:

- (a) The Contractor shall be responsible for keeping unauthorised persons off the Site, and
- (b) Authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

4.23 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 Engineer 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.

4.24 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 Employer. 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 Engineer 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 Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

5. Nominated Subcontractors

5.1 Definition of “nominated Subcontractor”

In the Contract, “nominated Subcontractor” means a Subcontractor:

- (a) Who is stated in the Contract as being a nominated Subcontractor; or
- (b) Whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

5.2 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 Engineer 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 Employer 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 Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

5.3 Payments to nominated Subcontractors

The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor's invoices approved by the Contractor which the Engineer 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].

5.4 Evidence of Payments

Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the Engineer 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) Submits this reasonable evidence to the Engineer, or
- (b)
 - (i) Satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts; and
 - (ii) Submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

then the Employer may (at his 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 Employer, the amount which the nominated Subcontractor was directly paid by the Employer.

6. Staff and Labour

6.1 Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, 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 labour with appropriate qualifications and experience from sources within the Country.

6.2 Rates of Wages and Conditions of Labour

The Contractor shall pay rates of wages, and observe conditions of labour, 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 employers 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 the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

6.3 Persons in the Service of Employer

The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.

- 6.4 Labour Laws** The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, 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.
- 6.5 Working Hours** No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, unless:
- (a) Otherwise stated in the Contract;
 - (b) The Engineer 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.
- 6.6 Facilities for Staff and Labour** Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.
- 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.
- 6.7 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 Employer'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 Engineer may reasonably require.
- HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.
- The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and

Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and any other Contractor's or Employer's personnel employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.

The Contractor shall include in the programme to be submitted for the execution of the Works under Sub-Clause 8.3 an alleviation programme for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the programme shall detail the resources to be provided or utilised and any related sub-contracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this programme shall not exceed the Provisional Sum dedicated for this purpose.

6.8 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.

6.9 Contractor's Personnel

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer 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 provisions of the Contract; or
- (d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

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

6.10 Records of Contractor's Personnel

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,

	and Equipment	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.
6.11	Disorderly Conduct	The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.
6.12	Foreign Personnel	The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel. The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country 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.
6.13	Supply of Foodstuffs	The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.
6.14	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.
6.15	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.
6.16	Alcoholic Liquor or Drugs	The Contractor shall not, otherwise than in accordance with the Laws of the Country, 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.
6.17	Arms and Ammunition	The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
6.18	Festivals and Religious Customs	The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.
6.19	Funeral Arrangements	The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.

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| 6.20 Prohibition of Forced or Compulsory Labour | The Contractor shall not employ forced labour, 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 labour, such as indentured labour, bonded labour or similar labour-contracting arrangements. |
| 6.21 Prohibition of Harmful Child Labour | 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 the Country 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. |
| 6.22 Employment Records of Workers | The Contractor shall keep complete and accurate records of the employment of labour at the Site. The 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]. |
| 6.23 Workers' Organisations | In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce. |
| 6.24 Non-Discrimination and Equal Opportunity | The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship 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. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination. |

7. Plant, Materials and Workmanship

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| 7.1 Manner of Execution | The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works: |
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- (a) In the manner (if any) specified in the Contract;
- (b) In a proper workmanlike and careful manner, in accordance with recognised good practice; and
- (c) With properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer 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 Engineer as a Variation.

Each sample shall be labelled as to origin and intended use in the Works.

7.3 Inspection

The Employer'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 Employer'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 Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer 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.

7.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, 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 Engineer 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 Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer 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 Engineer'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 Employer is responsible, the Contractor shall give notice to the Engineer 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 Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5 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 Engineer 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 Engineer 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 cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer.

7.6 Remedial Work

Notwithstanding any previous test or certification, the Engineer 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, unforeseeable 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 Employer 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 [Employer's Claims] pay to the Employer all costs arising from this failure.

7.7 Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer 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].

7.8 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

8.1 Commencement of Works

Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's 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 the Country;
- (b) Delivery to the Contractor of reasonable evidence of the Employer's financial arrangements (under Sub-Clause 2.4 [Employer's Financial Arrangements]);
- (c) Except if otherwise specified in the Contract Data, 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,
- (d) 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 Engineer's 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.

8.2 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].

8.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 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 21 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 Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

8.4 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 Employer, the Employer's Personnel, or the Employer's other contractors.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 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 the Country;
- (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].

8.6 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 Engineer 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 Engineer 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 Employer to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

Additional costs of revised methods including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.

8.7 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 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, 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 Contract Data.

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 Employer] 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.

8.8 Suspension of Work

The Engineer 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 or the Works against any deterioration, loss or damage.

The Engineer 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.

8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer 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 Engineer 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].
- 8.10 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 28 days; and
 - (b) The Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.
- 8.11 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 Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission 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].
- 8.12 Resumption of Work**
- After the permission or instruction to proceed is given, the Contractor and the Engineer 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 Engineer an instruction to this effect under Clause 13 [Variations and Adjustments].

9. Tests on Completion

- 9.1 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 Engineer 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 Engineer shall instruct.
- In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer 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.
- 9.2 Delayed Tests**
- If the Tests on Completion are being unduly delayed by the Employer, 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 Engineer 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 Employer'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.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer 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.

9.4 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 Engineer shall be entitled to:

- (a) Order further repetition of Tests on Completion under Sub-Clause 9.3 [Retesting];
- (b) If the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects]; or
- (c) Issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations].

10. Employer's Taking Over

10.1 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 Employer 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 Engineer 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 Engineer shall, within 28 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 Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 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.

10.2 Taking Over of Parts of the Works

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer 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 Employer, and
- (c) If requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer 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 Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such Cost plus profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

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 these 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 Engineer 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 these damages.

10.3 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 Employer is responsible, the Employer 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 Engineer 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 Engineer 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 Engineer 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 Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

10.4 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**11.1 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 Employer 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 (or on behalf of) the Employer.

11.2 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 Employer, and Sub-Clause 13.3 [Variation Procedure] shall apply.

11.3 Extension of Defects Notification Period

The Employer shall be entitled subject to Sub-Clause 2.5 [Employer'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.

11.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, 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 Employer may (at his option):

- (a) Carry out the work himself 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 subject to Sub-Clause 2.5 [Employer's Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;
- (b) Require the Engineer 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 Employer 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 Employer 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.

11.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair 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.

- 11.6 Further Tests** If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 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.
- 11.7 Right of Access** Until the Performance 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 Employer's reasonable security restrictions.
- 11.8 Contractor to Search** The Contractor shall, if required by the Engineer, search for the cause of any defect, 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 Engineer in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.
- 11.9 Performance Certificate** Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.
- The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, 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 Performance Certificate shall be issued to the Employer.
- Only the Performance Certificate shall be deemed to constitute acceptance of the Works.
- 11.10 Unfulfilled Obligations** After the Performance 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.
- 11.11 Clearance of Site** Upon receiving the Performance 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 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer 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 sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

12. Measurement and Evaluation

- 12.1 Works 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 Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- (a) Promptly either attend or send another qualified representative to assist the Engineer 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 (or on behalf of) the Engineer 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 Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer 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 Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2 Method of Measurement

Except as otherwise stated in the Contract and notwithstanding local practice:

- (a) Measurement shall be made of the net actual quantity of each item of the Permanent Works; and
- (b) The method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

12.3 Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price 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 price specified for such item in the Contract or, 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, a new rate or price shall be appropriate for an item of work if:

(a)

- (i) The measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule;
- (ii) This change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount;
- (iii) This change in quantity directly changes the Cost per unit quantity of this item by more than 1%; and
- (iv) This item is not specified in the Contract as a “fixed rate item”;

or

(b)

- (i) The work is instructed under Clause 13 [Variations and Adjustments];
- (ii) No rate or price is specified in the Contract for this item; and
- (iii) 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 price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.

12.4 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 Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer 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

13.1 Right to Vary

Variations may be initiated by the Engineer 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.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer 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 Engineer 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 Tests 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 Engineer instructs or approves a Variation.

13.2 Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

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 Engineer 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 13.7 [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 Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

13.3 Variation Procedure

If the Engineer 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 modifications 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 Engineer 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 Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4 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.

13.5 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer'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 Engineer shall have instructed. For each Provisional Sum, the Engineer 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 Contract Data shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6 Daywork

For work of a minor or incidental nature, the Engineer 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 procedure 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 Engineer 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 Engineer 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].

13.7 Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (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 Engineer 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 Engineer 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 inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

13.8 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 labour, 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 amounts 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:

$P_n = a + b \frac{L_n}{L_o} + c \frac{E_n}{E_o} + d \frac{M_n}{M_o} + \dots$ where:

" P_n " is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period "n", this period being a month unless otherwise stated in the Contract Data ;

"a" is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

"b", "c", "d", ... are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

" L_n ", " E_n ", " M_n ", ... are the current cost indices or reference prices for period "n", expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

" L_o ", " E_o ", " M_o ", ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

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, reference shall be made to the values of the

AUDA-NEPAD/Kfw/201569052/FW1/KEN/005

indices at stated dates 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 the Country, 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 Engineer 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 favourable to the Employer.

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

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

- (a) The Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- (b) 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];
- (c) Any quantities which may be set out in the Bill of Quantities 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 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.
- (e) 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 be exempt from the payment of import duties and taxes upon importation.

14.2 Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilisation and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-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 Contract Data.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Contract Data, this Sub-Clause shall not apply.

The Engineer shall deliver to the Employer 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 Employer 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 selected by the Contractor and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

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 28 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 Contract Data, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer 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 amortisation rate stated in the Contract Data 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 payment 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 Employer], 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 Employer], except for Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on 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 Works 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 amounts 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 Contract Data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;
- (d) Any amounts 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 amounts 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.

14.4 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 Engineer 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 estimate 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.

14.5 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 Engineer 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 a 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 the Country, 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 Engineer together with 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 Employer 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 Engineer's 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.

14.6 Issue of Interim Payment Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer 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 Contract Data. In this event, the Engineer 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.

The Engineer 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 Engineer's acceptance, approval, consent or satisfaction.

14.7 Payment

The Employer shall pay to the Contractor:

- (a) The first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 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 56 days after the Engineer receives the Statement and supporting

documents; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and

- (c) The amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].
- (d) 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.

14.8 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 compounded 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.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country 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 or certification, and without prejudice to any other right or remedy.

14.9 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 Engineer 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 Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer 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 Engineer 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 Particular 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 guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

**14.10 Statement
at
Completion**

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six 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 Engineer shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

**14.11 Application
for Final
Payment
Certificate**

Within 56 days after receiving the Performance 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 Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 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 Engineer the

final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under or Sub-Clause 20.2 [Amicable Settlement], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.12 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.

14.13 Issue of Final Payment Certificate

Within 28 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 Engineer shall deliver, to the Employer 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 Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, 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 Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14 Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or 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 Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- (a) If the Accepted Contract Amount was expressed in Local Currency only:

- (i) The proportions or amounts 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 Contract Data, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- (c) Other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) If any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums 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 the Country.

15. Termination by Employer

15.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2 Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) Fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct];
- (b) Abandons 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 28 days after receiving it;
- (d) Subcontracts the whole of the Works or assigns the Contract without the required agreement;

- (e) 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; 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 forbearing to do any action in relation to the Contract; or
 - (ii) For showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or 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.

In any of these events or circumstances, the Employer 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), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, 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 Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at 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 Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Engineer 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.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Employer may:

- (a) Proceed in accordance with Sub-Clause 2.5 [Employer'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 Employer, have been established; and/or
- (c) Recover from the Contractor any losses and damages incurred by the Employer 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 Employer shall pay any balance to the Contractor.

15.5 Employer's Entitlement to Termination for Convenience

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself 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].

15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [Termination by Employer].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor's Personnel].

For the purposes of this Sub-Clause:

- (i) "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "Fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a 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 actions of another party;
- (iv) "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 actions of a party;
- (v) "Obstructive practice" is

- (i) Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation 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
- (ii) Acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 1.15 [Inspections and Audits by the Bank].

16. Suspension and Termination by Contractor

16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements 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 or 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 Engineer 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 Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) The Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's

Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements];

- (b) The Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
- (c) The Contractor does not receive the amount due under an Interim Payment Certificate within 42 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 [Employer's Claims]);
- (d) The Employer 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;
- (e) The Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment];
- (f) A prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension]; or
- (g) The Employer 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;
- (h) The Contractor does not receive the Engineer'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 Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.3 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Employer'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 Engineer 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.

16.4 Payment on Termination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Employer 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 damage sustained by the Contractor as a result of this termination.

17. Risk and Responsibility

17.1 Indemnities

The Contractor shall indemnify and hold harmless the Employer, the Employer'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, wilful act or breach of the Contract by the Employer, the Employer'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, wilful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer 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, wilful act or breach of the Contract by the Employer, the Employer'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].

17.2 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 Employer. If a Taking-Over Certificate is issued (or is so 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 Employer.

After responsibility has accordingly passed to the Employer, 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 [Employer'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 to 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.

17.3 Employer's Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Employer's Risks] below, insofar as they directly affect the execution of the Works in the Country, are:

- (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, within the Country;
- (c) Riot, commotion or disorder within the Country by persons other than the Contractor's Personnel;
- (d) Munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity;
- (e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (f) Use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract;
- (g) Design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible; and
- (h) 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.

17.4 Consequences of Employer'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 Engineer 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 Engineer 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 (f) and (g) of Sub-Clause 17.3 [Employer's Risks], Cost plus profit shall be payable.

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

17.5 Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means 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" means 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 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer 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 Employer:
 - (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 Employer 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.

17.6 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 contract or 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 Employer's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer'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 Contract Data, 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.

**17.7 Use of
Employer's
Accommo-
dation /
Facilities**

The Contractor shall take full responsibility for the care of the Employer 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 Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

18. Insurance

**18.1 General
Require-
ments 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 Employer. 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 Employer 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 insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer'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 damage 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 Contract Data (calculated from the Commencement Date), submit to the other Party:

- (a) Evidence that the insurances described in this Clause have been effected; 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 insurer 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 Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, 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 Employer 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 [Employer'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 Clause 18) with insurers from any eligible source country.

18.2 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 Sub-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 Particular Conditions, insurances 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 [Employer's Risks];
- (d) Shall also cover, to the extent specifically required in the bidding documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Employer 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 [Employer'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 Contract Data (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 cover 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 Employer, except to the extent that the Contractor is liable for the loss or damage; and
 - (iv) Goods while they are not in the Country, 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 Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [Employer'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 he obtains the cover at commercially reasonable terms, to have

approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 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 Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances 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 Employer'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 Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works;
 - (ii) Damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects; and
 - (iii) A cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 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 Employer and the Engineer 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 Employer or of the Employer'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

- 19.1 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:
- (i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;
 - (ii) Rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war;
 - (iii) Riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;
 - (iv) Munitions of war, explosive materials, ionising 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
 - (v) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.
- 19.2 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 notice 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.
- 19.3 Duty to Minimise Delay**
- Each Party shall at all times use all reasonable endeavours to minimise 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.
- 19.4 Consequences of**
- 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

Force Majeure	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 the Country, 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 Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
19.5 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.
19.6 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 Engineer shall determine the value of the work done and issue a Payment Certificate which shall include: (a) The amounts 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 be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer'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.

**19.7 Release
from Perfor-
mance**

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 Employer 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.

20. Settlement of Disputes

**20.1 Engineer's
Decision**

If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with, or arising out of, the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after repudiation or other termination of the Contract, including any dispute as to any opinion, instruction, determination, certificate or valuation of the Engineer, the matter in dispute shall, in the first place, be referred in writing to the Engineer, with a copy to the other party. Such reference shall state that it is made pursuant to this Clause. No later than the eighty-fourth day after the day on which he received such reference the Engineer shall give notice of his decision to the Employer and the Contractor. Such decision shall state that it is made pursuant to this Clause. Unless the Contract has already been repudiated or terminated, the Contractor shall, in every case, continue to proceed with the Works with all due diligence and the Contractor and the Employer shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised, as hereinafter provided, in an amicable settlement or an arbitral award. If either the Employer or the Contractor be dissatisfied with any decision of the Engineer, or if the Engineer fails to give notice of his decision on or before the Eighty-fourth day after the day on which he received the reference, then either the Employer or the Contractor may, on or before the seventieth day after the day on which he received notice of such decision, or on or before the seventieth day after the day on which the said period of 84 days expired, as the case may be, give notice to the other party, with a copy for information to the Engineer, of his intention to commence arbitration, as hereinafter provided, as to the matter in dispute. Such notice shall establish the entitlement of the party giving the same to commence arbitration, as hereinafter provided, as to such dispute and, subject to Sub-Clause 20.4, no arbitration in respect thereof may be commenced unless such notice is given. If the Engineer has given notice of his decision as to a matter in dispute to the Employer and the Contractor and no notice of intention to commence arbitration as to such dispute has been given by either the Employer or the Contractor on or before the seventieth day after the day on which the parties received notice as to such decision from the Engineer, the said decision shall become final and binding upon the Employer and the Contractor.

**20.2 Amicable
Settlement**

Where notice of intention to commence arbitration as to a dispute has been given in accordance with Sub-Clause 20.1, the parties shall attempt to settle such dispute amicably before the commencement of arbitration.

Provided that, unless the parties otherwise agree, arbitration may be commenced on or after the fifty-sixth day after the day on which notice of intention to commence arbitration of such dispute was given, even if no attempt at amicable settlement thereof has been made.

20.3 Arbitration

Any dispute in respect of which: (a) the decision, if any, of the Engineer has not become final and binding pursuant to Sub-Clause 20.1, and (b) amicable settlement has not been reached within the period stated in Sub-Clause 20.2, shall be finally settled, unless otherwise specified in the Contract, under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under such Rules. The said arbitrator/s shall have full power to open up, review and revise any decision, opinion, instruction, determination, certificate or valuation of the Engineer related to the dispute. Neither party shall be limited in the proceedings before such arbitrator/s to the evidence or arguments put before the Engineer for the purpose of obtaining his said decision pursuant to Sub-Clause 20.1. No such decision shall disqualify the Engineer from being called as a witness and giving evidence before the arbitrator/s on any matter whatsoever relevant to the dispute. Arbitration may be commenced prior to or after completion of the Works, provided that the obligations of the Employer, the Engineer and the Contractor shall not be altered by reason of the arbitration being conducted during the progress of the Works.

20.4 Failure to Comply

Where neither the Employer nor the Contractor has given notice of intention to with Engineer's commence arbitration of a dispute within the period stated in Sub-Clause 20.1 Decision and the related decision has become final and binding, either party may, if the other party fails to comply with such decision, and without prejudice to any other rights it may have, refer the failure to arbitration in accordance with Sub-Clause 20.3. The provisions of Sub-Clauses 20.1 and 20.2 shall not apply to any such reference

Section IX. Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A - Contract Data

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	The Kisumu National Polytechnic P.O.BOX 143-40100 Kisumu, Kenya
Engineer's name and address	1.1.2.4 & 1.3	Otto Mruttu and Partners Architect P.O Box 76382 – 00508 Nairobi. Kenya
Bank's name	1.1.2.11	AUDA-NEPAD - KfW Development Bank ("KfW")
Grantee's name	1.1.2.12	The Kisumu National Polytechnic
Time for Completion of the Works	1.1.3.3	<u>18 Months</u>
Defects Notification Period	1.1.3.7	365 days.
Sections	1.1.5.6	<i>Not Applicable</i>
Profit	1.2	10% of cost
Electronic transmission systems	1.3	MS OFFICE, WORD/MS EXCEL. AUTOCAD ARCHICAD & BIM or similar
Contractor's name and address	1.3	_____
Governing Law	1.4	Law of the Country in which the contract is executed Kenya
Ruling language	1.4	English
Language for communications	1.4	English _____
Time for the Parties entering into a Contract Agreement	1.6	<u>28</u> days
Care and Supply of Documents No. of copies of Contractor's Documents	1.8	Two (<u>2</u>) soft (digital) copy(ies) and Six (<u>6</u>) hard (paper) copy(ies)
Time for Access to the Site	2.1	14 Days after Commencement Date
Engineer's Duties and Authority	3.1 (B)(ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of 0% shall require approval of the Employer.
Performance Security	4.2	The Performance Security will be in the form of an unconditional bank guarantee in the amount(s) of Ten (10) percent of the Contract Price ("Performance Bond"). Bonds issued by any other Financial Institution are not acceptable

Conditions	Sub-Clause	Data
Progress reports	4.21	<i>Monthly</i>
Normal working hours	6.5	Monday-Friday 8 am - 5 pm and Saturday 8 am – 1.00pm
Effective access to the Site	8.1(c)	<i>To be determined</i>
Delay damages for the Works	8.7 & 14.15(b)	0.10 % of the Contract Price per day.
Maximum amount of delay damages	8.7	<i>Ten (10)%</i> of the final Contract Price.
Provisional Sums	13.5.(b) (ii)	5%
Adjustments for Changes in Cost	13.8	Not Applicable
Contract Price	14.1 a) 14.1(b) 14.1(e)	<insert agreed contract price> Contractor and its sub-Contractors shall be exempt from the following duties, taxes, fees, levies and other charges: <i>in accordance with QBDS 14.7]</i> Item (e) of Sub-Clause 14.1 - Part B of the PC regarding the exemption of import duties and taxes on Contractor's equipment is applicable: No
Total advance payment	14.2	Ten (10) % Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable.
Repayment amortization rate of advance payment	14.2(b)	Twenty (20) %. The repayment amortization rate (%) shall be twice the percentage specified as Advance Payment in PC 14.2.
Application for Interim Payment Certificates Copies of Statement	14.3	Three (3) soft (digital) copy(ies) and Six (6) hard (paper) copy(ies)
Percentage of Retention	14.3(c)	Ten10 %
Limit of Retention Money	14.3(c)	Ten (10) % of the Accepted Contract Amount
Payment schedule	14.4 (a)	Payments shall be made in accordance with the Schedule of Payments attached as an integral part of this Contract (See Annex - 1)

Conditions	Sub-Clause	Data
Plant and Materials	14.5(b)(i) 14.5 (b) (iii) 14.5(c)(i)	Not applicable Not applicable Not applicable
Minimum Amount of Interim Payment Certificates	14.6	Five (5) %
Time for Payment of Interim Payment Certificates	14.7 (b)	56 days
Contractor's Bank Account	14.7 (d)	[insert bank account details at the time of contract signing]
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	[Insert name of Central Bank for local currency] Central Bank of Kenya
Delayed Payment	14.8	The interest rate for payments in foreign currency is LIBOR + 200 bp.
Statement at Completion No. of Copies	14.10	Three (3) soft (digital) copy(ies) and Six (6) hard (paper) copy(ies)
Application for Final Payment Certificate No. of Copies	14.11	Three (3) soft (digital) copy(ies) and Six (6) hard (paper) copy(ies)
Maximum total liability of the Contractor to the Employer	17.6	One and a half times the Accepted Contract Amount
Periods for submission of insurance: a. evidence of insurance b. relevant policies	18.1	[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.] 14 days 28 days
Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	Euros 1,200 for each and every occurrence

Conditions	Sub-Clause	Data
Minimum amount of third-party insurance per occurrence	18.3	<i>Seventy (70) Thousand Euros with unlimited occurrences</i>
Arbitration institution	20.3	Chartered Institute of Arbitrators Kenya
Arbitration rules	20.3	<u>Rules of Chartered Institute of Arbitrators</u>
Place of arbitration	20.3	Republic of Kenya, Nairobi.

Table: Summary of Sections - NOT APPLICABLE

Section Name/Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Damages for Delay (Sub-Clause 8.7)

Part B - Specific Provisions

Conditions	Sub-Clause	Specific Provisions
Contract	1.1.1	<i>Add under 1.1.1.1 "Contract" the sentence:</i> "The Contract requires the non-objection by the Bank for becoming eligible for any disbursement under the Bank's loan."
Defects Notification Period	1.1.3.7	Add, at the end of the Sub-Clause "or taken over under Sub-Clause 10.2 [Taking Over of Parts of the Works]"
Exceptionally Adverse Climatic Conditions	1.1.6.11	At The Kisumu National Polytechnic in Kisumu County, Kenya, within the Lake Victoria Basin. The area experiences a tropical climate with bimodal rainfall, consisting of the long rains from March to May and the short rains from October to December. These rainy seasons are occasionally characterized by heavy rainfall, localized flooding, thunderstorms, strong winds, and soil erosion, which may disrupt project activities and affect the establishment of newly planted vegetation. During the dry seasons, particularly from December to February and June to September, the area experiences prolonged dry spells and elevated temperatures. <i>Source: https://meteo.go.ke/our-products/seasonal-forecast/</i>
Communications	1.3	<i>Add the following at the end of item (a), after "Contract Data" and before ",":</i> "In case of electronic transmission, these communications shall be in the form of an un-editable record attached to an electronic mail, such as a PDF document for instance, and any other communication transmitted in a different manner, such as the email body text, shall not be construed as communication under the Contract".
Inspections and Audit by KfW	1.15	<i>This Sub-Clause is deleted in its entirety and replaced by:</i> "The Contractor shall permit, and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit, AUDA-NEPAD/KfW and/or persons appointed by AUDA/NEPAD/KfW to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by auditors appointed by AUDA-NEPAD or KfW if. The Contractor's attention is drawn to Sub-Clause 15.6 [Corrupt or Fraudulent Practices] which provides,

Conditions	Sub-Clause	Specific Provisions
		inter alia, that acts intended to materially impede the exercise of AUDA-NEPAD or KfW's inspection and audit rights provided for under Sub-Clause 1.15 constitute a prohibited practice subject to contract termination."
The Employer's Claims	2.5	<i>In the first line of the second paragraph delete the words: "28 days" and replace with the words "42 days".</i>
Replacement of the Engineer	3.4	Not applicable
Contractor's General Obligations	4.1	<i>Insert the following at the end of the 2nd paragraph:</i> "Goods and services from countries under embargo from Germany the European Union or the United Nations are not eligible and shall not be used by the Contractor."
Performance Security	4.2	<i>Delete last sentence of second paragraph and replace by the sentence:</i> "The Performance Security shall be issued by a reputable bank selected by the Contractor and requiring the Bank's non-objection, and shall be in the form annexed to the Particular Conditions."
Subcontractors	4.4	Add the following at the end of the Sub-Clause: "Unless explicitly agreed to by the Engineer, the ESHS Specifications apply to all Subcontractors and Suppliers used for the execution of the Works. The Contractor is fully liable for all actions, non-compliance and negligence by Subcontractors and Suppliers their representatives, employees and workers, to the same degree as it would be held liable for its own actions, non-compliance or negligence or that of its own representatives, employees or workers."
Safety Procedures	4.8	<i>Add the following at the end of the Sub-Clause:</i> f) The Contractor shall ensure compliance with the ESMP.
Protection of the Environment	4.18	<i>Add the following after the last paragraph:</i> "These provisions are complemented by those listed under the ESMP Specifications which the Contractor must ensure compliance with."
Progress reports	4.21	<i>Add the following new item at the end of the Sub-Clause:</i> "(i) matters requested under the ESHS Specifications."

Conditions	Sub-Clause	Specific Provisions
Facilities for Staff and Labour	6.6	<i>The last paragraph is deleted in its entirety and replaced by the following:</i> “The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the Site, except with the prior and express Engineer's consent after consultation with the Employer. The Employer and/or the Engineer may inspect the living quarters from time to time in order to verify their compliance with the Laws and the Contract. The Contractor shall accordingly grant the Employer and/or the Engineer full access to the living quarters as and when they require.”
Health and Safety	6.7	<i>Add the following at the end of the Sub-Clause:</i> “These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure compliance with.”
Commencement of Works	8.1	<i>Add the following at the end of the Sub-Clause:</i> “As defined in the ESHS Specifications, no physical work may commence on any Project Area until such time the Contractor has prepared and submitted to the Engineer the ESMP and the Engineer has approved this.”
Suspension of Work	8.8	<i>Add the following after the last sentence of the Sub-Clause:</i> “As an example, and without limitation to other possible causes, any suspension of work caused by any failure from the Contractor to comply with the obligations stated : (a) Under the ESHS Specifications (if any), in the event of a level 3 non-compliance; (b) Under Sub-Clause 4.8 as to safety procedures; (c) Under Sub-Clause 4.9 as to the quality assurance; (d) Under Sub-Clause 4.18 as to the protection of the environment; or (e) Under Sub-Clause 6.7 as to health and safety; shall be considered as cause of suspension which is the responsibility of the Contractor”.
Contract Price	14.1 (b)	<i>If the QBDS foresees exemptions then add the following new sentence:</i> “In terms of Grant Financing Agreement dated 28th June 2024 the Contractor and its sub-Contractors shall be exempt from the duties, taxes, fees, levies and other charges, stated in the Contract Data, including any limitations of the exemption and the procedure through which the tax exemption will be put into effect.”

Conditions	Sub-Clause	Specific Provisions
Advance Payment	14.2	<i>Delete last sentence of third paragraph and replace by the sentence: "This guarantee shall be issued by a reputable bank selected by the Contractor and requiring the Bank's non-objection, and shall be in the form annexed to the Particular Conditions."</i> <i>At the end of the third paragraph add the sentence "Guarantees are to be made payable to the Employer's account at the Bank as listed in the annexed form."</i>
Application for Interim Payment Certificates	14.3	<i>In the 1st sentence of the 1st paragraph, replace "six copies" by "in the number of copies specified in the Contract Data"</i>
Issue of Interim Payment Certificates	14.6 (c)	<i>After paragraph (b) add paragraph (c) as follows:</i> In the event of an unresolved level 3 non-compliance specified in the ESHS Specifications, the Engineer shall reduce the value of the Interim Payment Certificates as follows: (i) If Level 3 Non-conformity not resolved after the first occurrence: 33,3% for the first Interim Payment Certificate (ii) If Level 3 Non-conformity still not resolved: 66,6% for the second Interim Payment Certificate (iii) If Level 3 Non-conformity still not resolved: 100% for the third Interim Payment Certificate If the Level 3 Non-conformity is still not resolved after the last Interim Payment Certificate in (iii) above then payments will be suspended indefinitely until such time as the Level 3 Non-conformity has been resolved. Following the resolution of the Level 3 Non-Conformity the reduction(s) will be included in the next Interim Payment Certificate for payment. No interest will be paid on any reductions or suspended payment amounts.
Time for Payment of Interim Payment Certificates	14.7	<i>In (b) after "56 days" insert:</i> <i>"or such time as may be stated in the Contract Data"</i>
Contractor's Bank Account	14.7	<i>In the last sentence after "Contractor" insert:</i> <i>"and as stated in the Contract Data"</i>
Delayed Payment Interest – local currency	14.8	<i>In the second paragraph after "Conditions," add:</i> <i>"for local currency payments only"</i>

Conditions	Sub-Clause	Specific Provisions
Delayed Payment Interest – foreign currency	14.8	<i>After the second paragraph insert a new paragraph as follows:</i> The interest rate for payments in foreign currency is as stated in the Contract Data.
Payment of Retention Money	14.9	<i>In the fifth paragraph, delete first sentence and replace by the sentence "Unless otherwise stated in the Particular 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 may substitute a guarantee issued by a reputable bank selected by the Contractor and requiring the Bank's non-objection, for the second half of the Retention Money. The guarantee for the release of the Retention Money has to be acceptable in form and substance to the Bank."</i>
Statement at Completion	14.10	<i>In the 1st paragraph, replace "six copies" by "the number of copies stated in the Contract Data"</i>
Application for Final Payment Certificate	14.11	<i>In the 1st paragraph, replace "six copies" by "the number of copies stated in the Contract Data"</i>
Currencies of Payment	14.15	<i>In the first sentence replace "Schedule of Payment Currencies" by "Summary of Payment Currencies of the Contract"</i>
Corrupt or Fraudulent Practices	15.6	<i>Add the following at the end of the Sub-Clause:</i> "In addition to the provisions of this Sub-Clause, the Contractor is also bound by the provisions found under Appendix 1 to the Particular Conditions of Contract, named "Corrupt and Fraudulent Practices Policy – Social and Environmental Responsibility"."

Appendix 1 to Particular Conditions of Contract KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

1. Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

KfW reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

KfW defines, for the purposes of this provision, the terms set forth below as follows:

Coercive Practice	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
Collusive Practice	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
Corrupt Practice	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

Fraudulent Practice	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
Obstructive Practice	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
Sanctionable Practice	Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

2. Social and Environmental Responsibility

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation¹⁶ (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental and social impact assessment (ESIA) and further detailed in the environmental and social management plan (ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

¹⁶ In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant/Bidder/Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

Section X. Contract Forms

Table of Forms

Notification of Award	213
Contract Agreement.....	214
Performance Security	215
Advance Payment Security	217
Retention Money Security	219
Payment Schedule Form (provisional).....	225

Notification of Award

Letter of Acceptance

[Letterhead paper of the Employer]

[Date]

To: *[name and address of the Contractor]*

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Contract Price *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our institution.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms, of the Bidding Documents.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of institution: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____ of _____ (hereinafter "the Employer"), of the one part, and _____ of _____ (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer desires that the Works known as _____ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, in the sum of [*insert Contract Price or Ceiling in words and figures, expressed in the Contract currency(ies)*] (hereafter called "the Contract Price").

The Employer 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.

- (i) The Letter of Acceptance;
- (ii) The Letter of Bid and Appendix to Bid (including the signed Declaration of Undertaking);
- (iii) The addenda Nos _____ (if any);
- (iv) The Particular Conditions including Appendix 1;
- (v) The General Conditions;
- (vi) The Specifications;
- (vii) The Drawings;
- (viii) The completed Schedules; and
- (ix) The Contractor's Bid and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying 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 _____ on the day, month and year specified above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

Performance Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”). Furthermore we understand that, according to the conditions of the Contract, a performance guarantee is required for *[Insert percentage in words and figures]* % of the contract price.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the beneficiary AUDA-NEPAD, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]*¹⁷ upon receipt by us of the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or 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 the demand or the sum specified therein.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]* KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

[For guarantees issued in local currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

This guarantee shall expire not later than *[Insert expiry date]*¹⁸.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

¹⁷ This guarantee shall be issued in the contract currency only.

¹⁸ The guarantee shall be valid for at least 28 days from the date of contractual contract completion (including warranty obligations).

[As preferred option regarding guarantee rules insert¹⁹: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

Place, date

Guarantor's authorized signature(s)

¹⁹ In the case the issuing bank will not add the preferred option, the following must be added instead:
This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Advance Payment Security

Beneficiary: *[Insert name and Address of Purchaser]*

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]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”). Furthermore we understand that, according to the conditions of the Contract, an advance payment in the sum of *[Insert amount and currency in words and figures]*²⁰, representing *[Insert percentage in words and figures]* % of the contract price, is to be made against an advance payment guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary AUDA-NEPAD, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or 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 the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Applicant on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

[For guarantees issued in foreign currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to *[Either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:]* KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400 3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

[For guarantees issued in local currency insert the following:]

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser’s country]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall

²⁰ This guarantee must be issued in the contract currency only.

expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) per cent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[Insert date]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date, by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

[As preferred option regarding guarantee rules insert²¹: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]

Place, date

Guarantor's authorized signature(s)

²¹In the case the issuing bank will not add the preferred option, the following must be added instead:
This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

Retention Money Security

Beneficiary: *[Insert name and Address of Purchaser]*

Date: *[Insert date of issue]*

RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called “the Contract”).

Furthermore we understand that, according to the conditions of the Contract, the Beneficiary retains moneys 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, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert guarantee amount and currency in words and figures]*²² upon receipt by us of the Beneficiary’s first demand 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 show grounds for the demand or the sum specified therein.

The retention money guarantee shall come into force and effect as soon as the second half of the Retention Money has been credited to the Applicant on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

[For guarantees issued in foreign currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to [either insert the account on which payments are to be made with prior approval from KfW or, if no particular account is provided, insert instead:] KfW, Frankfurt am Main (BIC: KFWIDEFF, BLZ 500 204 00), account no. 38 000 000 00 (IBAN: DE53 5002 0400

²²The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the contract currency(ies) only.

3800 0000 00), for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

[For guarantees issued in local currency insert the following:

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

This guarantee shall expire not later than *[Insert expiry date]*²³.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert*²⁴*: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]*

Place, date

Guarantor's authorized signature(s)

²³Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Appendix to Bid. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "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."

²⁴In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.



AUDA-NEPAD (KfW) Environmental, Social, Health and Safety (for reference)

ANNEX 1 – Payment Schedule (14.4 (a))

Project: Construction of **Construction Works for the Proposed Blue Skills Training for Employment Centre for the Kisumu National Polytechnic**

Implementation Agreement No: AUDA-NEPAD/KfW 2015 69 052/FW1/KEN/005

Contract type: FIDIC Red Book - Lump Sum - Fixed Price)

Contractor: [Contractor's name]

Commencement date: [DD/MM/YYYY]

Time for completion: [XXX calendar days]

Contract Price: EUROS XXXXXX

Schedule of Payments (GCC 14.4)

No	Instalments	Milestone	Estimated Completion Date	Payment % from the Contract Price	Payment amount (USD)
1	Advance payment	Reception and approval of the: • Performance Security • Advance payment guarantee	[XX/XX/YY]	10%	XXXXX
2	Completion of civil works 01 Including: Excavation and foundation work Structural work 1 st floor Structural work 2 nd floor Structural work Nth floor... Masonry work and lintels	Reception of the Certification of Completion issued by the Engineer	[XX/XX/YY]	25%	XXXXX
3	Completion of civil works 02 Including:		[XX/XX/YY]	25%	

	Roofing Plastering & rendering Floor screeding all floors Windows & doors subframe Reservation for MEPF sleeves				
4	Completion of civil works 03 Including: Painting internal & external Tiling floors & walls Fixing doors & windows		[XX/XX/YY]	15%	
5	Completion of mechanical, electrical, & plumbing plant Including: Wiring Piping Fixing of ACs Fixing of fire prevention fixtures Fixing of light fixtures Fixing of wet areas fixtures	Reception of the Certification of Completion issued by the Engineer	[XX/XX/YY]	15%	XXXXX
6	Provisional acceptance of the works	Promptly after the latest date of the Defects Notification Periods	[XX/XX/YY]	5%	

		(GCC 14.9)			
7	Final acceptance of the works & payment certificate	Issuance by the Engineer to the Employer of the Final Payment Certificate (GCC 14.13) (12 months after the provisional acceptance)	[XX/XX/YY]	5%	
				Total (EUR)	

NB This Payment Schedule is an example template. The final version will be agreed upon after the selection of the building contractor, prior to submitting to FMT/AUDA NEPAD for approval.