NG-CDF BOARD

BUTULA NG-CDF

PROPOSED RENOVATIONS TO COMPLETION OF 4

CLASSROOMS AT EMAGOMBE PRIMARY SCHOOL IN

BUTULA IN BUTULA

TENDER NO. **NG-CDF/BTL/01/R4NOCL/EPS/2026-2027**

PROJECT MANAGER

THE DIRECTOR
PUBLIC WORKS-BUSIA COUNTY
P.O. BOX 470-50400BUSIA.

ARCHITECT COUNTY ARCHITECT PUBLIC WORKS – BUSIA COUNTY P.O.BOX 470 - 50400 BUSIA.	QUANTITY SURVEYOR COUNTY QUANTITY SURVEYOR PUBLIC WORKS – BUSIA COUNTY P.O. P.O. BOX 470 - 50400 BUSIA
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ELECTRICAL ENGINEER COUNTY ENGINEER ELECTRICAL PUBLIC WORKS – BUSIA COUNTY P. O. BOX 470 - 50400 BUSIA.	

SEPTEMBER, 2026

CLOSING DATE 14TH OCTOBER 2026

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INVITATION TO TENDER

NATIONAL GOVERNMENTCONSTITUENCIES DEVELOPMENT
FUND BUTULA CONSTITUENCY

TENDER INVITATION NOTICE

BUTULA NG-CDF invites sealed bids from eligible contractors to tender for the provision of the following works:

S.No.	Tender No	Name of the Project	Category	Date
1.	NG-CDF/BTL/01/R4NOCL/EPS/2026-2027	PROPOSED RENOVATIONS TO COMPLETION OF 4 CLASSROOMS AT EMAGOMBE PRIMARY SCHOOL IN BUTULA IN BUTULA	Open	30th September 2026

Bidders MUST meet the following requirements (supported by copies of requisite documents) alongside otherrequirements contained in the tender documents.

1. Copy of certificate of incorporation/Registration.
2. Copy of Valid Single Business Permit from any Kenya County Government Authority (To be verified online).
3. Copy of valid Tax Compliance Certificate issued by KRA (To be verified online).
4. Copy of valid National Construction Authority Certificate (Building Works) NCA 8 or above for Building Works(To be verified online).
5. Copy of valid NCA practicing license NCA 8(To be verified online).
6. Dully filled confidential Business Questionnaire.
7. Dully filled and signed form of tender in the format described in ITT 12.1.
8. Copy of current CR 12/CR 13 Certificate not older than 6 months and certified copies of IDs/Passports of directors
9. All pages MUST be Paginated/ serialized/ numbered in a sequential manner.
10. Submission of valid Bid Security of Kshs 56,000 from a reputable bank or by an insurance company registered and licensed by the Insurance Regulatory Authority or an issued by a financial institution approved and licensed by the Central Bank
11. Dully filled FORM CON –2 (litigation history).
12. Power Attorney

Interested eligible bidders may obtain a complete set of tender documents free of charge from NG-CDF PortalWebsite (www.ngcdf.go.ke) or Public Procurement Information Portal (PPIP) Website (www.tenders.go.ke). Tenders in plain sealed envelopes, marked tender number and bearing no indication of the tenderer should beaddressed to; -

The Chairman
Project Management Committee.
P.O BOX.106 -50404.Bumala

and placed in the Tender Box at **Emagombe Primary School** on or before 14TH OCTOBER 2026 at 2.00 pm

Tenders will be closed on 14TH OCTOBER 2026 at 2.00 pm and immediately opened thereafter at the **Emagombe Primary School** Boardroom in the presence of tenderers or the representatives who choose to attend.

PART1: TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

AGENERAL PROVISIONS

1.0 Scope of tender

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

1.2 Throughout this tendering document:

a) The term "inwriting" means communicated in written form (e.g. by mail, e-mail, fax, including ifspecified in the TDS, distributed or received through the electronic-procurement system used bytheProcuring Entity) with proof of receipt;

b) if the context so requires, "singular" means "plural" and vice versa;

c) "Day" means calendar day, unless otherwise specified as "Business Day". A Business Day is anyday that is an official working day of the Procuring Entity. It excludes official public holidays.

2.0 Fraud and corruption

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

2.2 The Procuring entity requires compliance with the provisions of the Competition Act 2010, regardingcollusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the "Certificate of Independent Tender Determination" annexed to theForm of Tender.

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

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

3.0 Eligible tenderers

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

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

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

a) Directly or indirectly controls, is controlled by or is under common control with an other tenderer;

b) Receives or has received any director indirect subsidy from another tenderer;

c) Has the same legal representative as another tenderer.

d) Has a relationship with another tenderer, directly or through common third parties, that puts itina position to influence the tender of another tenderer, or influence the decisions of the ProcuringEntity regarding this tendering process.

e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;

f) Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as aconsultant for Contract implementation;

g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;

h) Has a close business or personal relationship with senior management or professional staff oftheProcuring Entity who has the ability to influence the bidding process and:

i) Are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or

ii) May be involved in the implementation or supervision of such Contract unless the conflicts temming from such relationship has been resolved in a manner acceptable to the ProcuringEntity throughout the tendering process and execution of the Contract.

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

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

36 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. ATenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.

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

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

i) A legal public entity of Government and/or public administration,

ii) financially autonomous and not receiving any significant subsidies or budget support from anypublic entity or Government, and;

(iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprisetoenableitcompetewithfirmsintheprivatesectoronanequalbasis.

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

(a) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;

(b) byanactofcompliancewith a decision of the United Nations Security Council taken under ChapterVII of theCharterof the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country.

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

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

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

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

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

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

4.0 Eligible goods, equipment, and services

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

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

5.0 Tenderer's responsibilities

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

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

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

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

B. CONTENTS OF TENDER DOCUMENTS

6.0 Sections of Tender Document

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

PART 1: Tendering Procedures SectionI –
Instructions toTenderers Section II –
Tender Data Sheet (TDS)
Section III- Evaluation and QualificationCriteria
Section IV – Tendering Forms

PART 2: Works' Requirements
Section V - Bills of Quantities
Section VI - Specifications
Section VII - Drawings

PART 3: Conditions of Contract and Contract FormsSection
VIII - General Conditions (GCC)
Section IX - Special Conditions of Contract
Section X- Contract Forms

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

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

7.0 Clari**fi**cation of Tender Document, Site Visit, Pre-tender Meeting

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

7.2 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Site shall be at the Tenderer's own expense. The ProcuringEntity shall specify in the TDS if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site

visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

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

7.4 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.

7.5 ThePrucuring Entity shall al so promptly publish anonymized (*no names*) Minutes of the pre-arranged sitevisit and those of the pre-tender meeting at the web page identified in the TDS. Any modificationto theTender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non- attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

8.0 Amendment of Tender Documents

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

8.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writingtoall who have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shallalsopromptly publish the addendum on the Procuring Entity's website in accordance with ITT 7.5.

8.3 To give Tenderers reasonable time in which to take an addendum into account in preparing theirTenders, the Procuring Entity should extend the dead line for the submission of Tenders, pursuant toITT 22.2.

C. PREPARATION OF TENDERS

9. Cost of Tendering

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

10.0 Language of Tender

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

11.0 Documents Comprising the Tender

11.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT 12;
b) Schedules including priced Bill of Quantities, completed in accordance with ITT 12 and ITT 14;
c) Tender Security or Tender-Securing Declaration, in accordance with ITT 19.1;
d) Alternative Tender, if permissible, in accordance with ITT 13;
e) *Authorization:* written confirmation authorizing the signatory of the Tender to commit theTenderer, in accordancewithITT20.3;

f) *Qualifications:* documentary evidence in accordance with ITT 17 establishing the Tenderer's qualifications to per form the Contract if its Tender is accepted;

g) *Conformity:* a technical proposal in accordance with ITT 16;

h) Any other document required in the TDS.

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

12.0 Form of Tender and Schedules

12.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevantforms furnished in Section IV, Tendering Forms. The forms must be completed with out any alterations to the text, and no substitutes shall be accepted except as provided under ITT 20.3. All blank spacesshallbe filled in with the information requested. The Tenderer shall chronologically serialize all pagesof thetender documents submitted.

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

13. Alternative Tenders

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

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

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

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

14.0 Tender Prices and Discounts

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

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

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

14.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of

Tender, in accordance with ITT 12.1.

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

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

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

150 Currencies of Tender and Payment

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

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

a) A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Kenya (referred to as "the foreign currency requirements") shall (if so allowed in theTDS) indicate in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), needed by the Tenderer for the payment of such foreign currency requirements,limited to no more than two foreign currencies.

b) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent andthe percentage(s) mentioned in (a) above shall be specified by the Tenderer in the Appendix toTender and shall be based on the exchange rate provided by the Central Bank of Kenya on the date 30 days prior to the actual date of tender opening. Such exchange rate shall apply for all foreign payments under the Contract.

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

16.0 Documents Comprising the Technical Proposal

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

17.0 Documents Establishing the Eligibility and Quali**fi**cations of the Tenderer

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

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

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

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

of preference. Further the information will enable the Procuring Entity identify any actual or potentialconflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relationto the procurement process or contract management.

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

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

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

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

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

i) If the procurement process is still ongoing, the tenderer will bed is qualified from the procurementprocess,

ii) if the contract has been awarded to that tenderer, the contract award will be set as idependingthe outcome of (iii),

iii) the tenderer will be referred to the relevant law enforcement authorities for investigation ofwhether the tenderer or any other person shave committed any criminal offence.

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

18.0 Period of Validity of Tenders

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

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may requestTendererstoextendtheperiodofvalidityoftheirTenders.Therequestandtheresponsesshallbemadei n writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tendersecurity.ATenderergrantingtherequestshallnotberequiredorpermittedtomodifyitsTender.

19.0 Tender Security

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

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

I) cash;

ii) a bank guarantee;

iii) a guarantee by an insurance company registered and licensed by the Insurance RegulatoryAuthority listed by the Authority;

(iv) a guarantee issued by a financial institution approved and licensed by the Central Bank ofKenya, from a reputable source, and an eligible country.

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

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

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

19.6 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any otherdocuments required in the TDS.

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

a) if a Tenderer withdraws its Tender during the period of Tender validity specified by theTenderer on the Form of Tender, or any extension there to provided by the Tenderer; or

b) if the successful Tenderer fails to: -

i) signthe Contract in accordance with ITT47; or

ii) furnish a Performance Security and if required in the TDS, and any other documentsrequired in the TDS.

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

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

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

20.0 Format and Signing of Tender

20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 andclearly mark it “ORIGINAL.” Alternative Tenders, if permitted in accordance with ITT 13, shallbeclearly marked “ALTERNATIVE.” In addition, the Tenderer shall submit copies of the Tender, in

the number specified in the TDS and clearly mark them "COPY." In the event of any discrepancybetweenthe origin a landthe copies, the original shall prevail.

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

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

20.4 Incase the Tenderer is a JV, the Tender 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.

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

D. SUBMISSION AND OPENING OF TENDERS

21.0 Sealingand Marking of Tenders

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

a) in an envelope or package or container marked "ORIGINAL", all documents comprising theTender, as described in ITT 11; and

b) in a nenvelope or package or container marked "COPIES", all required copies of the Tender; and

c) if alternative Tenders are permitted in accordance with ITT 13, and if relevant:

   i) in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", thealternative Tender; and

   ii) in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

a) bear the name and address of the Procuring Entity,

b) bear the name and address of the Tenderer; and

c) bear the name and Reference number of the Tender.

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

22.0 Deadline for Submission of Tenders

22.1 Tenders must be received by the Procuring Entity at the address specified in the TDS and no later than the date andtimealsospecifiedinthe TDS. When so specified in the TDS, tenderers shall have the option ofsubmitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submission procedures specified in the TDS.

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

23.0 Late Tenders

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

24.0 Withdrawal, Substitution, and Modi**fi**cation of Tenders

24.1 A Tenderer may withdraw, substitute, or modify its Tenderafterith as been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of theauthorization in accordance with ITT 20.3, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the Tender must accompany the respective writtennotice. All notices must be:

a) prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawals noticesdonot require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and

b) received by the Procuring Entity prior to the deadline prescribed for submission of Tenders, in accordance with ITT 22.

24.2 Tenders requested to be withdrawn in accordance with ITT 24.1 shall be returned unopened to theTenderers.

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

25. Tender Opening

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

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

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

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

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

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

25.7 At the Tender Opening, the Procuring Entitys hall neither discuss the merits of any Tender nor rejectanyTender (except for late Tenders, in accordance with ITT 23.1).

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

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

25.9 The Tenderers' representatives who are present shall be requested to sign the minutes. The omissionof aTenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers.

E. EVALUATION AND COMPARISON OF TENDERS

26. Con**fi**dentiality

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

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

26.3 Not withstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

27.0 Clari**fi**cation of Tenders

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

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

28.0 Deviations, Reservations, and Omissions

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

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

29.0 Determination of Responsiveness

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

29.2 A substantially responsive Tender is one that meets the requirements of the Tender document withoutmaterial deviation, reservation, or omission. A material deviation, reservation, or omission isone that, if accepted, would:

a) Affec tin any substantial way the scope, quality, or performance of the Works specified in the Contract;
b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights

or the tenderer's obligations under the proposed contract;

c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsivetenders.

29.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance withITT16, to confirm that all requirements of Section VII, Works' Requirements have been met withoutany material deviation, reservation or omission.

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

30.0 Non-material Non-conformities

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

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

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

31.0 Arithmetical Errors

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

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

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualificationofthetenderasnon-responsive.

b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bidpriceshallbe considered as a major deviation that affects the substance of the tenderand shall lead to disqualification of the tender as non-responsive. and

c) if there is a discrepancy between words and figures, the amount in words shall prevail

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

32.0 Conversion to Single Currency

For evaluation and comparison purposes, the currency(ies) of the Tender shall be converted in to asingle currency asspecified in the TDS.

33.0 Margin of Preference and Reservations

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

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

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

33.4 Where it is intended to reserve a contract to as pecific group of businesses (these groups are Small andMedium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the TDS, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

34.0 Nominated Subcontractors

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

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

34.3 Domestic subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated so by the Procuring Entity in the TDS a scan be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in whichcase, thequalifications of the Specialized Subcontractorsproposed by the Tenderer may be added to the qualifications of the Tenderer.

35. Evaluation of Tenders

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

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

a) priceadjustment in accordance with ITT 31.1 (iii); excluding provisional sums and contingencies, if any, but including Daywork items, where priced competitively;

b) price adjustment due to discounts offered in accordance with ITT 14.4;

c) converting the amount resulting from applying (a) and (b) above, if relevant, to a singlecurrency in accordance with ITT 32;

d) pricea djustment due to quantifiable non materialnon-conformities in accordance with ITT 30.3; and

e) any additional evaluation factors specified in the TDS and Section III, Evaluation and Qualification Criteria.

35.3 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 consideredin Tender evaluation.

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

36.0 Comparison of tenders

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

37.0 Abnormally low tenders and abnormally high tenders

Abnormally LowTenders

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

37.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seekwritten clarifications from the Tenderer, including detailed price analyses of its Tender price in relationtothe subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any otherrequirements of the Tender document.

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

Abnormally high tenders

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

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

i) If the tender price is abnormally high based on wrong estimated cost of the contract, the ProcuringEntity may accept or not a ccept the tender depending on the Procuring Entity's budget considerations.

ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormallyhigh tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the casemaybe.

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

38.0 Unbalanced and/ or front-loaded tenders

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

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

a) accept theTender;

b) require that the total amount of the Performance Security be increased at the expense of theTenderer to a level not exceeding a 30% of the Contract Price;

c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying toomuch for undelivered works;

d) reject the Tender,

39.0 Qualifications of the tenderer

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

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

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the ProcuringEntityshallproceedto the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40.0 Lowest evaluated tender

Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Lowest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:

a) Mostresponsive to the Tender document; and
b) the lowest evaluated price.

41.0 Procuring entity's right to accept any tender, and to reject any or all tenders.

The Procuring Entity reserves the right to accept or reject any Tender and to annul the Tender process andreject all Tenders at any time prior to Contract Award, without there by incurring any liability to Tenderers. Incase of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. AWARD OF CONTRACT

42.0 Award criteria

The Procuring Entity shall award the Contract to the successful tenderer whose tender has beendetermined to be the Lowest Evaluated Tender.

43.0 Notice of Intention to Enter into a Contract/Notification of Award

Uponaward of the contract and Prior to the expiry of the Tender Validity Period the Procuring Entityshall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

a) the name and address of the Tenderer submitting the successful tender;
b) the Contract price of the successful tender;
c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter isaddressed was unsuccessful, unless the price information in (c) above already reveals the reason;
d) the expiry date of the Standstill Period; and
e) instruction son how to request a debriefing and/ or submit a complaint during the stand still period;

44.0 Stand still Period

44.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow anydissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

44.2 Where a Standstill Period applies, it shall commence when the Procuring Entity has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

45.0 Debrie**fi**ng by The Procuring Entity

45.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessful tenderer may make a written request to the Procuring Entity for a debriefingonspecific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefingwithinfive days of receipt of the request.

45.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear itsown costs of attending such a debriefing meeting.

46.0 Letter of Award

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

47.0 Signing of Contract

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

47.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign,date, and returnittotheProcuringEntity.

47.3 The written contract shall be entered into within the period specified in the notification of awardand before expiry of the tender validity period.

48.0 Performance Security

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

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

48.3 Performance security shall not be required for contracts estimated to cost less than the amountspecified inthe Regulations.

49.0 Publication of Procurement Contract

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

a) name and address of the Procuring Entity;
b) name and reference number of the contract being awarded, a summary of its scope and theselection method used;
c) the name of the successful Tenderer, the final total contract price, the contract duration;
d) dates of signature, commencement and completion of contract;

e) names of all Tenderers that submitted Tenders, and their Tender prices as readout at Tender opening.

50.0 Procurement related Complaints and Administrative Review

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

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

Section II - Tender Data Sheet (TDS)

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

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The name of the contract is PROPOSED RENOVATIONS TO COMPLETION OF 4 CLASSROOMS AT EMAGOMBE PRIMARY SCHOOL IN BUTULA IN BUTULA The reference number of the Contract is TENDER NO: …… NG-CDF/BTL/01/R4NOCL/EPS/2026-2027
ITT 2.4	The Information made available on competing firms is as follows: NONE
ITT 2.4	The firms that provided consulting services for the contract being tendered for are:PUBLIC WORKS-BUSIA COUNTY P. O. BOX 470-50400, BUSIA The firm shall provide the following consultants:
	Project Manager: Busia County. Project Architect: County Architect. . Project Quantity Surveyor: County Quantity Surveyor. Project Mechanical Engineer: County Engineer Mechanical, (BS).Project Electrical Engineer: County Engineer Electrical, (BS). Project Structural/Civil engineer: County Engineer Structural/Civil.Project
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be *N/A*
B. Contents of Tender Document	
ITT 7.1	The Tenderer will submit any request for clarifications in writing at the Address THE FUND ACCOUNT MANAGER BUTULA NG-CDF P.O.BOX 53 -50405.ButulaA EMAIL.cdfbutula@ngcdf.go.ke to reach the Procuring Entity not later than t*hree Working Days* after the tenderissuance day. (ii) The Procuring Entity shall publish its response at the website: www.ngcdf.go.ke
ITT 7.2	(A) A per-arranged pretender site visit *shall* not take place , however the Contractoris encouraged to visit and familiarize with site at their convenience time

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	(B) Pre-Tender meeting SHALL NOT TAKE PLACE however the Contractor is encouraged to vi sitand familiarize with site at their convenience time
ITT 7.3	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than ……*N/A* after the tender issuance day.
ITT 9.1	For Clarification of Tender purposes, for obtaining further information on tender documents, the Procuring Entity's address is: THE FUND ACCOUNT MANAGER BUTULA NG-CDF P.O.BOX 53 -50405.Butula, Phone: 0721 956 390 EMAIL cdfbutula@ngcdf.go.ke
C. Preparation of Tenders	
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: NONE
ITT 13.1	Alternative *SHALL NOT BE* considered.
ITT 13.2	Alternative times for completion *SHALL NOT BE* permitted.
ITT 13.4	Alternative technical solutions for the following parts of the Works: SHALL NOT BE PERMITTED
ITT 14.5	The prices quoted by the Tenderer shall be: FIXED
ITT 15.2 (a)	Foreign currency requirements NOT ALLOWED.
ITT 18.1	The Tender validity period shall be 150 DAYS
ITT 18.3	(a) The Number of days beyond the expiry of the initial tender validity period will be 30days. (b) The Tender price shall be adjusted by the following percentages of the tender price: *(i)* By *Not Applicable* % of t*he local currency portion of the Contract price adjusted to reflect local inflation during the period of extension.* *and* *(ii) By Not Applicable % the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.*
ITT 19.1	Bid Security of Kshs 56,000 from a reputable bank or by an insurance company registered and licensed by the Insurance Regulatory Authority or an issued by a financial institution approved and licensed by the Central Bank
ITT 20.1	In addition to the original of the Tender, the number of copies is: NONE
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of a Written Power of Attorney
D. Submission and Opening of Tenders	
ITT 22.1	(A) For <u>Tender submission purposes</u> only, the Procuring Entity's address is: (1) Name of Procuring Entity: BUTULA NG-CDF (2) Postal Address P.O BOX 53 -50405.Butula (3) Physical address for hand Courier Delivery to an office or Tender Box : Emagombe Primary School Boardroom (4) Date and time for submission of Tenders: 14TH OCTOBER 2026 at 2.00 pm (5) Tenders SHALL NOT SUBMIT tenders electronically.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 25.1	(1) Name of Procuring Entity: BUTULA NG-CDF (2) Postal Address P.O BOX 53 -50405.Butula (1) Physical address for hand Courier Delivery to an office or Tender Box : Emagombe Primary School Boardroom (2) Date and time for submission of Tenders: 14TH OCTOBER 2026 at 2.00 pm. (3) Tenders shall NOT SUBMIT tenders electronically.
ITT 25.1	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronictender submission procedures NA
E. Evaluation, and Comparison of Tenders	
ITT 30.3	The adjustment shall be based on the *average* price of the item or component as quoted inother substantially responsive Tenders. If the price of the item or component cannot be Derived from the price of other substantially responsive Tenders, The Procuring Entityshall use its best estimate.
ITT 33.4	The invitation to tender is extended to the following group that qualify for Reservations''NONE
ITT 34.1	At this time, The Procuring Entity DOES NOT INTEND to execute certain specific parts of theWorks by subcontractors selected in advance.
ITT 34.2	Contractors may propose subcontracting: Maximum percentage of subcontracting permitted is*TEN PERCENT (10%) of the total contract amount.* Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) orparts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience.
ITT 34.3	The parts of the Works for which the Procuring Entity permits Tenderers to proposeSpecialized Subcontractors are designated as follows: 1. Electrical & Structured Cabling works 3. Plumbing and Drainage Works 4. Mechanical Ventilation Works For the above-designated parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Tenderer for the purpose of evaluation.
ITT 35.2 (e)	Additional requirements apply. These are detailed in the evaluation criteria in Section III,Evaluation and Qualification Criteria.
ITT 48.1	
ITT 50.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer shouldsubmit its complaint following these procedures, in writing (by the quickest meansavailable, that is either by hand delivery or email to: For the attention: …… Title/position: HEAD SUPPLY CHAIN Procuring Entity: BUTULA NG-CDF Email address:cdfbutula@ngcdf.go.ke

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	In summary, a Procurement-related Complaint may challenge any of the following(among others): (i) the terms of the Tender Documents; and (ii) Procuring Entity's decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

10 GENERAL PROVISIONS

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

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

a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

b) Value of single contract - Exchange rate prevailing on the date of the contract signature.

(c) Exchange rates shall be taken from the publicly available source identified in theITT 14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

13 EVALUATION AND CONTRACT AWARD CRITERIA

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

2.0 PRELIMINARY EXAMINATION FOR DETERMINATION OF

RESPONSIVENESS Preliminary examination for Determination of

Responsiveness

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

EVALUATION AND QUALIFICATION CRITERIA

After tender opening, the tenders will be evaluated in 4 stages, namely:

1. Preliminary examination
2. Detailed Technical Examination.
3. Financial Evaluation.
4. Recommendation for award

1. STAGE 1: PRELIMINARY EXAMINATION FOR MAIN CONTRACTOR

No.	Requirement	Requirement Met/Not Met
1	Copy of Certificate of Incorporation/Business Registration Certificate	
2	Copy of VALID Single Business Permit- (TO BE VERIFIED ONLINE)	
3	Copy of VALID Tender Security shall be **Kenya Shillings Fifty Six Thousand (Kshs.56, 000) issued by a Reputable Financial Institution Valid for a period of 180 days from the tender opening date. The format to match the provided Form;**	
4	Valid copy of Tax Compliance Certificate or exemption certificate from Kenya Revenue Authority (TO BE VERIFIED ONLINE)	
5	Valid Copy of National Construction Authority Certificate and practicing license **NCA 8** and above for Building works (TO BE VERIFIED ONLINE)	
6	Dully filled, serialized Tender document including attachments, all pages of the Tender document MUST be submitted without omitting any page as per ITT 12.1	
7	Dully filled, signed and stamped form of tender in the format provided in Section IV, ITT 12.1 (MUST BE ON THE COMPANY LETTER HEAD)	
8	Valid Copy of CR12/CR13 certificate not older than 6 months and copies of Director(s)ID (s)	
9	Dully filled, signed and stamped Code of Ethics in the Format Provided as per ITT 17, Self-Declaration Debarment Form in the format provided (Form SD1), Self-Declaration and Anti-Corruption Form (Form SD2), Tenderers Qualification Without Prequalification; Forms ELI – 1.1 and 1.2 with attachments, Certificate of independent tender determination and confidential business questionnaire in the format provided Must be in the Company Letterhead (Any Missing Form Will Lead To Non-Responsiveness)	
10	Dully filled, signed and stamped all pages of priced bill of quantity	
11	Litigation History-Dully filled, signed and stamped FORM CON –2	
12	Provide Written Form of Power Attorney for authorizing signatory of the bidder, signed by Commissioner for Oaths.	

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NOTE: - The employer may seek further clarification/confirmation, if necessary, to confirm authenticity/compliance of any condition of the tender.

-The tenderers who do not satisfy any of the above requirements shall be considered Non- Responsive andtheir tenders including those of their subcontractors will not be evaluated further.

STAGE 2: TECHNICAL EVALUATION

Evaluation of the Main Contractor and Domestic Sub- Contractors

Notes:

- Assessment for eligibility: The tender document shall be examined based on ITT 16 and 17 of the Instruction to Tenderers.
- The tenderers will be required to provide evidence for eligibility of the award of the tender by satisfying theemployer of their eligibility and their capability and adequacy of resources to effectively carry out the subjectcontract.
- The tenderers shall be required to fill the Standard Forms provided in the bid document for the purposes ofproviding the required information. The tenderers must also attach evidence where necessary.

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

The detailed scoring plan shall be as shown in Table 1 below: -

TABLE 1: Assessment for Eligibility

ITEM	DESCRIPTION				Point scored	Max-Point
(i)	**Key Personnel (Attachevidence)**					**20**
	The Data on their experience should be supplied using the FORM PER-2 in the format provided. Bidders MUST SUBMIT COPIES OF CERTIFICATES (DEGREE, DIPLOMA OR CERTIFICATE IN THE RELEVANT FIELD), dully signed CVs, FORM PER-1 AND FORM PER 2 for the following listed key staff Each proposed Staff must be accompanied by a separate Form PER 1 AND 2; **Bidders who donot fill the forms willnot be scored**					
	Project Manage **Max 7 Marks) Must be a Kenyan citizen (0 marks if requirement is not met)**	Registration	Registered Engineer by EBK/BORAQS (Engineer/Architect /Quantity Surveyor) with a valid practicing licence	**2 marks**		
			Not Registered	**0 marks**		
		Qualification Architecture Quantity Survey, Building, Construction Management, Civil Engineering or equivalent	Degree)	**2 mark**		
		Experience	Above 5 years	**3 marks**		
			Less than 5 years	**1 mark**		
	Site Agent **(Max 5 Marks)**	Qualification Civil or any other Engineer-Related course	Diploma	**2 marks**		
		Experience	Above 5 years	**3 marks**		
			Less than 5 years	**1 mark**		
	2 No. Foreman (5 Marks per Foreman) (Max 10 Marks)	Qualification Diploma in Civil Engineering or Equivalent	Diploma Others	**3 marks**		
		Experience	Above 5 years	**2 Marks**		
			Less than 5 years	**1 Mark**		
(ii)	**General experience** Experience under construction contract in the role of contractor for the more than 5 years. Attach copies of completion certificates and LPOs/LSOs/Contract Agreements of the project(s.) The project(s) to be accompanied by dully filled FORMEXP- 4.1 in the format provided (***Must be dully filled, signed and stamped and all information provided-a separate form must be filled for each requirement***) **others will be prorated as No. of Corresponding years of experience** ***Note: If it's*** **a public entity, the tender will be confirmed if it's on the Public Information Procurement Portal (PPIP)**					10
(iii)	Specific Experience Specific Experience **A) Contracts completed in the last five (5) years**- Has a Minimum of 5No. Projects, Works of Similar Nature, complexity & Magnitude • with a cumulative total amount of greater than or equal to the cost of the proposed project……**25mrks** • with a cumulative total amount between 50% and 100% of the cost of the proposed project……**15mrks** Below 50% of the cost of the proposed project…….**5 marks**					25

(iv)	Scheduleofcontractor'sequipment and transport (proof or evidence of ownership/Lease–If Lease have agreement signed and addressed to the project)) (A SEPARATE FORM EQUI MUST BE PREPARED FOR EACH ITEM OF EQUIPMENT LISTED) **(attach proof or evidence of ownership-log books, lease agreements, receipts)** • Any relevant 5 no machine @ 2 marks each i. Excavator ii. Backhoe iii. Roller iv. Concrete Mixer v. Tipper		10
(v)	**Annual Turnover** Annual Turnover (Payment on Contracts Received for the last 3years (2023,2024,2025) is equal to or greater than the cost of the project reports must be signed by a registered Accountant or Auditor who is a registered member of **ICPAK (to be verified online)** • Annual turn-over for the last three years above, greater than or equal to 3 times the cost of the project @ 5 marks per year. • Annual turn-over for the last three years above, greater than or equal to 2 times the cost of the project @ 3 marks per year. • Annual turn-over for the last three years less than 2 times the cost of the project @ 1 mark per year. **Bidders MUST Dully fill, sign and stamp FORM FIN 3.1, 3.2 AND 3.3; No marks will be awarded without dully filled, signed and stamped Forms**		15
(vi)	Evidence of Financial Resources (cash in hand, lines of credit, over draft facility etc.)-Bank/Creditors/Letters to be dated not earlier than June 2026), Addressed specifically to the project and financial resources able to finance the projected monthly Cash flow*for three months • Has demonstrated access to or availability to liquid cash/asset, lines of credit and other financial means sufficient to the construction equal to or above the cost of the project. **10 marks** • Has provided evidence of financial resources below the cost of the project. **5 marks** • Has not indicated sources of financial resources **0 mark**		10
(vii)	**Detailed works program and Methodology** (The bidder shall be required to provide a summary outlining the scheduling and methodology of implementing the project to completion including the defects liability period). **Adequacy of the works program** • Has attached a clear and legible Works Program **(1 mark)** • Program captures all elements specific to the proposed works **(2 marks)** • Program covers the required timeline and all elements are reasonably scheduled. **(2 marks)** **Adequacy of the proposed methodology:** • Captures the Contractor's Organization structure. (**1 mark**) • Captures all elements specific to the proposed works. (**2 marks**) • Captures the inclusion of all statutory requirements specific to the works (OSHA, NCA, NEMA, Stakeholder engagement, e.t.c.) (**2 marks**)		10
TOTAL			**100**

Only those bidders who score 70 points and above shall be considered for further evaluation

*Monthly Cash Flow =Tender Sum/Contract Period

Note: Technical evaluation for domestic sub-contracts will be done for each sub-contract as per the evaluation criteria for each subcontract.

C. FINANCIAL EVALUATION:

Financial Evaluation shall comprise of the following:

Completeness of the Bills of Quantities: The Bills of Quantities section of the submitted Tender Document must be complete as issued, with no alteration, addition or qualification of any kind whatsoever made by the Tenderer to the text of the document. Any alterations, additions or qualifications shall be considered as material deviations as per ITT 31 and shall lead to Disqualification.

Examination of unit rates: Each bid shall be subjected to an evaluation of unit rates. Bids shall be assessed to confirm uniformity and consistency in rates of similar individual line items. Bids not meeting this criterion shall be disqualified and error checks shall not be undertaken.

Error checks: Successful bids from the examination of unit rates shall be evaluated for arithmetic errors. All arbitrary additions to the tender document shall be considered as arithmetic errors. An assessment of the bids taking into consideration the Tender Sum, corrections relating to arithmetic errors and any discounts offered shall be done to determine the bids' Evaluated Tender Sum.

Ranking of the bids: Ranking of the bids using their Evaluated Tender Sums shall be undertaken. The ranking shall be used to determine the bid with the Lowest Evaluated Tender sum, which shall be considered for award.

MULTIPLE CONTRACTS

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

OPTION 1

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

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

OPTION 2

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

5.0 ALTERNATIVE TENDERS (ITT 13.1) N/A

Alternative Tenders (ITT 13.1)

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

The Procuring Entity shall consider Tenders offered for alternatives as specified in Part 2 -

Works requirements. Only the technical alternatives, if any, of the Tenderer with the Best Evaluated Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

MARGIN OF PREFERENCE – NOT APPLICABLE

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

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

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

Group A: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).

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

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

Post qualification and Contract ward (ITT 39), more specifically,

In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.

In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.

The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow

Minimum annual construction turnover of three times the contract sum equivalent calculated as total certified payments received for contracts in progress and/or completed within the last three (3) years.

At least Five (5) no. of contract(s) of a similar nature executed within Kenya, that have been satisfactorily and substantially completed as a prime contractor, of Minimum value of

Kshs. 1,000,000.

Other Conditions depending on their seriousness

History of non-performing contracts:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV. The required information shall be furnished in the appropriate form.

Pending Litigation

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

Litigation History

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

Letter of Authority

The bidder shall provide letter of Authority to seek references from bidder's bank (letter addressed to the specific bank(s) and account(s) giving authority to Client to verify the bank statements for the Main Contractor).

Current Engagement/Commitments

The procuring entity shall make enquiries or shall require the bidders to provide contact persons to their current commitments/projects for verification of the project details as well as their performance.

DUE DILIGENCE

Pursuant to Section 83 of the Public Procurement and Assets Disposal Act, 2015 and the attendant regulations, due diligence may be conducted on the lowest recommended bidder before award. The due diligence may be conducted on the following basis inter alia:

The bidder shall be assessed on the financial and the technical capacity to carry out the project.

Bidders will be required to demonstrate availability and provide evidence of Equipment's, Machinery, and Personnel dedicated to the specific project they MAY be considered for award.

Note that:

Bidders with ongoing projects with THE PROCURING ENTITY MUST disclose all the projects in FORM FIN – 3.4 - Current Contract Commitments / Works in Progress also indicating

- Percentage of work done
- Percentage of certified amount vis a viz the contract amount
- Attach the contract agreement for all the projects indicated
- Most-current Interim Payment Certificate issued by the Department for all the projects indicated.

Tenderers to note that an awarded tender SHALL be terminated if the winning bidder fails to submit a Performance Guarantee within the specified timeliness as indicated in the letters of award.

SECTION IV - TENDERING FORMS

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE

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

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

2. FORM EQU: EQUIPMENT

The Tenderer 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 shallbe prepared for each item of equipment listed, or fo ralternative equipment proposed by the Tenderer.

Item of equipment		
Equipment informatio n	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 Tenderer.

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

3. FORM PER -1

Contractor's Representative and Key Personnel Schedule

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

Contractor' Representative and Key Personnel

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

4. FORM PER - 2:

Resume and Declaration - Contractor's Representative and Key Personnel.

Name of Tenderer

Position [*#1*]: [*title of position from Form PER-1*]		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: *[language and levels of speaking, reading and writingskills]*	
Details		
	Address of Procuring Entity:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present Procuring Entity:

Summarize professional experience in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

Project	Role	Duration of involvement	Relevant experience
[main project details]	*[role and responsibilities on the project]*	*[time in role]*	*[describe the experience relevant to thisposition]*

Declaration

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

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

Commitment	Details
Commitment to duration ofcontract:	*[insert period (start and end dates) for which this Contractor's Representative or Key Personnel isavailable towork on this contract]*
Time commitment:	*[insert period (start and end dates) for which this Contractor's Representative or Key Personnel isavailable towork on this contract]*

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

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

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

Date: (day month year): _____

Countersignature of authorized representative of the Tenderer:

Signature:_____

Date: (day month year): _____

5. TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

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

51 FORM ELI -1.1

Tenderer InformationForm

Date:_____

ITT No. and title:_____

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration: *[indicate country of Constitution]*
Tenderer'sactualorintendedyearofincorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name:__ Address:_____ Telephone/Fax numbers: _____ E-mail address:
1. Attached are copies of original documents of ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITT 3.6 ☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 ☐In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing: • Legal and financial autonomy • Operation under commercial law 1. Establishing that the Tenderer is not under the supervision of the Procuring Entity 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

52 FORM ELI -1.2

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

Date:_____

ITT No. andtitle:_____

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

3 FORM CON –2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
☐ Contract non-performance did not occur since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1. ☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1 ☐ Contract(s) withdrawn since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
[insert year]	*[insert amount and percentage]*	Contract Identification: *[indicate complete contract name/ number, and any other identification]* Nameof Procuring Entity: *[insert full name]* Address of Procuring Entity: *[insert street/city/country]* Reason(s) for nonperformance: *[indicate mainreason(s)]*	*[insert amount]*
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor2.3. ☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: _____ Name of Procuring Entity: _____ Address of Procuring Entity: _____ Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute:	
		Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute:Status of dispute:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. ☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
2.4 as indicated below.			
[insert year]	*[insert percentage]*	Contract Identification: [indicate complete contract name, number, andany other identification] Name of Procuring Entity: *[insert full name]* Address of Procuring Entity: *[insert street/city/country]* Matter in dispute: *[indicate main issues in dispute]* Party who initiated the dispute: *[indicate "Procuring Entity" or "Contractor"]* Reason(s) for Litigation and award decision *[indicate main reason(s)]*	*[insert amount]*

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

54 FORM FIN – 3.1:

Financial Situation and Performance

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

5.4.1. Financial Data

Type of Financial informationin_____ (currency)	Historic information for previous_____*years,* (amount in currency, currency, exchange rate*, USD 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 OperatingActivities					

*Refer to ITT 15 for the exchange rate

5.4.2 Sources of Finance

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

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

5.4.3 Financial documents

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

(a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliatedentity (such as parent company or group member).

(b) be independently audited or certified in accordance with local legislation.

(c) be complete, including all notes to the financial statements.

(d) correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements[1] for the_____years required above; and complying with the requirements

[1] If the most recent set of financial statements is for a period earlier than 12 months from the date of Tender, the reason for thisshould be justified.

5 FORM FIN – 3.2:

Average Annual Construction Turnover

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

	Annual turnover data (construction only)		
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
[indicate year]	*[insert amount and indicate currency]*		
Average Annual Construction Turnover *			

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

56 FORM FIN – 3.3:

Financial Resources

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 ofthe subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria

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

57 FORM FIN – 3.4:

Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contractsthat 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	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completio nDate	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]
1					
2					
3					
4					
5					

58 FORM EXP - 4. 1

General Construction Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Page_____of_____pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contractname: _____ Brief Description of the Works performed by the Tenderer:_____ Amount of contract: _____ Name of Procuring Entity: _____ Address:	
		Contract name: _____ Brief Description of the Works performed by the Tenderer:_____ Amount of contract: _____ Name of Procuring Entity: _____ Address:	
		Contract name: _____ Brief Description of the Works performed by the Tenderer:_____ Amount of contract: _____ Name of Procuring Entity: _____ Address:	

59 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

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

5.9 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____
Date: _____
JV Member's Name_____
ITT No. and title: _____

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount			Kenya Shilling	
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax numberE-mail:				

5.9 FORM EXP - 4.2 (a) (cont.)

Specific Construction and Contract Management Experience (cont.)

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

5.10 FORM EXP - 4. 2(b) Construction

Experience in Key Activities

Tenderer's Name: _____
Date: _____
Tenderer's JV Member Name: _____
Sub-contractor's Name[2] (as per ITT 34): _____
ITT No. and title: _____

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

1. Key Activity No One: _

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

[2] If applicable

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

2. Activity No. Two
3. ……

OTHER FORMS

6. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

i) The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.

ii) Allitalicized text is to help Tenderer in preparing this form.

iii) Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATION andthe SELF DECLARATION OF THE TENDERER attached to this Form of Tender.

iv) The Form of Tender shall include the following Forms duly completed and signed by the Tenderer.

- *Tenderer's Eligibility- Confidential Business Questionnaire*
- *Certificate of Independent Tender Determination*
- *Self-Declaration of the Tenderer*

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

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

Dear Sirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for theexecution of the above named Works, we, the undersigned offer to construct and complete the Worksand remedy any defects therein for the sum[3] of Kenya Shillings [*[Amount in figures]* _____Kenya Shillings *words]*_____

The above amount includes foreign currency[4] amount (s) of [*state figure or a percentage and currency*] [figures]_____[words] _____

_____

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible afterthereceipt of the Architect notice to commence, and to complete the whole of the Works comprised inthe Contract within the time stated in the Special Conditions of Contract.

3. We agree to adhereby this tender until_____*[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.

4. We understand that you are not bound to accept the lowest or any tender you may receive.

5. We, the under signed, further declare that:

i) No reservations: We have examined and have no reservations to the tender document, includingAddenda issuedinaccordance with ITT 28;

ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with

[3] *This sum should be carried forward from the Summary of the Bills of Quantities.*

[4] *The percentage quoted above should not include provisional sums, and notmore thantwo foreign currencies are allowed.*

ITT 3 and 4;

iii) Tender - Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;

iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: *[insert a brief description of the Works];*

v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*

vi Option 1, incase of one lot: Total priceis: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies*]; or

Option2, in case of multiple lots:

(a) Total price of each lot [*insert the total price of each lot in words and figures, indicating thevarious amounts and the respective currencies*]; and

(b) Total price of all lots (sum of all lots) [*insert the total price of all lots in words and figures,indicating the various amounts and the respective currencies*];

vii) Discounts: The discounts offered and the methodology for their application are:

viii) The discounts offered are: [*Specify in detail each discount offered.*]

ix) The exact method of calculations to determine the net price after application of discounts is shownbelow: [*Specify in detail the method that shall be used to apply the discounts*];

x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

xi) Performance Security: If our Tender is accepted, we commit to obtaina Performance Security in accordance with the Tendering document;

xii) One Tender Per Tender: Weare not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a sub-contractor, andmeet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;

xiii) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Engineer, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Governmentof Kenya, or any international organization.

xiv) State-owned enterprise or institution: [*select the appropriate option and delete the other*] [*We arenota state-owned enterprise or institution*]/[*We are a state-owned enterprise or institution butmeet the requirements of ITT3.8*];

xv) Commissions, gratuities, fees: We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: *[insert complete name ofeachRecipient, its full address, the reason for which each commission or gratuity was paid and theamount andcurrency of each such commission or gratuity].*

Name of Recipient	Address	Reason	Amount

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

xvi) Binding Contract: We understand that this Tender, together with your written acceptance there of included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;

xvii) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated costTender, the Most Advantageous Tender or any other Tender that you may receive;

xviii) Fraud and Corruption: We here by certify that we have taken steps to ensure that no personacting forus or on our behalf engages in any type of Fraud and Corruption; and

xix) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.

xx) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement andAsset Disposal, copy available from (*specify website*) during the procurement process and the execution of any resulting contract.

xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:

a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are no tin any conflict to interest.

(b) Certificate of Independent Tender Determination - to declare that we completed the tenderwithout colluding with other tenderers.

(a) Self-Declaration o f the Tenderer - to declare that we will, if awarded a contract, not engagein any form of fraud and corruption.

(d) Declaration and commitment to the Code of Ethics for Persons Participating in PublicProcurement and Asset Disposal.

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

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

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

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

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

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

Datesigned_____dayof_____,_____

Notes

** In the case of the Tender submitted by joint venture specify the name of the Joint Venture asTenderer.*

***Person signing the Tender shall have the power of attorney given by the Tenderer to beattachedwith the Tender.*

(a) TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIREInstruction to Tenderer

Tender is in structed to complete the particulars required in this Form, *one form for each entity if Tender isaJV.* Tenderer isfurtherreminded that it is an offence to give false information on this Form.

(a) Tenderer'sdetails

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

General and Specific Details

(b) Sole Proprietor, provide the following details.

Name in full_____Age_____
Nationality_____Country of Origin_____
Citizenship_____

(c) Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) Registered Company, provide the following details.

I) Private or public Company _____

ii) State the nominal and issued capital of the Company_____

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) DISCLOSURE OF INTEREST - Interest of the Firm in the Procuring Entity.

i) Are there any person/persons in .....(*Name of Procuring Entity)* who has/have an interest or relationship in this firm? Yes/No……

If yes, provide details as follows.

	Names of Person	Designation in the Procuring Entity	Interest or Relationship with Tenderer
1			
2			
3			

(i) Con**fl**ict of interest disclosure

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services		

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certi**fi**cation

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as atthedate of submission.

Full Name_____

Titleor Designation_____

_____ _____

(Signature) *(Date)*

b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

Icertify, on behalf of _____ *[NameofTenderer]* that:

1. I have read and I understand the contents of this Certificate;

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and completeinevery respect;

3. Iamthe authorized representative of the Tenderer with authority to sign this Certificate, and to submitthe Tender on behalf of the Tenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shallinclude any individual or organization, other than the Tenderer, whether or not affiliated with theTenderer, who:

   a) Has been requested to submit a Tender in response to this request for tenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

5. TheTenderer discloses that [check one of the following, as applicable]:

   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement or arrangement with, any competitor;

   b) theTenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;

6. Inparticular, without limiting the generality of paragraphs (5)(a) or(5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

   a) prices;
   b) methods, factors or formulas used to calculate prices;
   c) the intentiono r decision to submit, or not to submit, a tender; or
   d) the submission of a tender which does not meet the specifications of the request for Tenders;except as specifically disclosed pursuan tto paragraph (5)(b) above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or servicestowhich this request for tenders relates, except as specifically authorized by the procuring authority oras specifically disclosed pursuant toparagraph(5)(b) above;

8. Thetermsofthe Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly orindirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichevercomesfirst, unless otherwise required byl aw or as specifically disclosed pursuant to paragraph (5)(b) above.

Name _____
Title _____
Date _____

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

(c) SELF- DECLARATION FORMS

FORM SD1

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

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

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Direct or of … ..... *(insert name of the Company)* who is a Bidder in respect of TenderNo. …….. for ……. *(insert tender title/description)* for .....*(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.

3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

…… …… ……
(Title) (Signature) (Date)

Bidder Official Stamp

FORM SD2

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

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ….....(insert name of the Company) who is a Bidder in respect of TenderNo..... for …… *(insert tender title/description)* for..... *(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

2. THAT theafore said ..... Bidder, its servants and/oragents/subcontractorswillnotengageinanycorruptorfraudulent practice and has not beenrequestedto pay any inducement to any member of the Board, Management, Staff and/or employeesand/or agents of ..... *(insert name of the Procuring entity)* which is the procuring entity.

3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement toany member of the Board, Management, Staff and/or employees and/or agents of ……. *(name of the procuring entity).*

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with otherbidders participating in the subject tender

5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

…… ……

……..……. (Title) (Signature)

(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I .....(person) on behalf of *(Name of the Business/ Company/Firm*) .....
… ..... declare that I have read and fully understood the contentsof the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurementand Asset Disposal and my responsibilities under the Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons participating in PublicProcurement and Asset Disposal.

Name of Authorized signatory.....

Sign…….....
...

Position.....
.....

Office address.....

Telephone .....E-

mail…….....

.....

Name of the Firm/Company…….....

Date…….....

(Company Seal/ Rubber Stamp where applicable)Witness

Name…….....

..... Sign…….....

Date…….....

(d) APPENDIX 1 - FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

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

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

1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or as set disposal proceeding;

2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commits an offence;

3) Without limiting the generality of the subsection (1) and (2), the person shall be: -

   a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or

   b) if a contract has already been entered into with the person, the contract shall be voidable;

4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;

5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity whohas a conflict of interest with respect to a procurement: -

   a) Shall not take part in the procurement proceedings;

   b) shall not, after a procurement contract has been entered in to, take part in any decisionrelating to the procurement or contract; and

   c) shall not be a subcontract or for the tender to whom was awarded contract, or a member ofthe group of tenderers to whom the contract was awarded, but the subcontractor appointedshall meet all the requirements of this Act.

6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her dutiesshall disclose the conflictofinteresttotheprocuringentity;

7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a)and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all

costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

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

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 is representation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or toavoid 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; "coercive practice" is impairing or harming, or threatening to impair or harm, directly orindirectly, any party or the property of the party to influence improperly the actions of aparty;
iv) "obstructive practice" is:

- Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or

- acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.

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

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

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors,service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt,fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

d) Pursuant to the Kenya's above stated Acts and Regulations, may recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Actsand Regulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring(i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2] all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriateauthority appointed by Government of Kenya; and

f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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[1] *For the avoidance of doubt, a party's in eligibility to be awarded a contract shall includee, without limitation, (i) applying for pre-qualification, expressing interest in a consultancy, and tendering, either directly or as a nominated sub-contractor, nominated consultant, nominated manufacturer or supplier, or nominated service provider, in respect of such contract, and (ii) entering into an addendum or amendment introducing a material modification to any existing contract.*

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or persons appointed by the Procuring Entity to address specific matters related to investigations/audits, suc has evaluating the veracity of an allegation of possible Fraud and Corruption, through the appropriate mechanisms. Such activity includes but is not limited to: accessing andexamining a firm's or individual's financial records and information, and making copies thereof as relevant; accessing and examining any otherdocuments, data and information (whether in hard copyor electronic format) deemed relevant for th einvestigation/audit, and making copies there of as relevant; interviewing staff and other relevant individuals; performing physical inspections and site visits; and obtaining third party verification of information.*

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

Bene**fi**ciary:_____

Request forTenders No:

_____

Date:_____

TENDER GUARANTEE No.:_____

Guarantor: _____

1. We have been informed that_____(here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called" the Tender") for the executionof under Request for Tenders No.
(“the ITT”).

2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supportedby a Tender guarantee.

3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiaryany sum or sums not exceeding in total an amount of_____(__) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:

(a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Applicant; or

b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Periodorany extension there to provided by the Applicant, (i) has failed to execute the contract agreement,or
(ii) has failed to furnish the Performance.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies ofthecontract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to theApplicant of the results of the Tendering process; or (ii) thirty days after the end of the TenderValidity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above onor before that date.

_____

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2–InsuranceGuarantee]

TENDER GUARANTEE No.: _____

1. Whereas …… [*Name of the tenderer]* (hereinafter called "the tenderer") has submitted its tender dated …… [*Date of submission of tender]* for the .....*[Name and/or description of the tender]* (hereinafter called "the Tender") for the execution of_____under Request for Tenders No._____ ("the ITT").

2. KNOW ALL PEOPLE by these presents that WE …… of …… [Name of Insurance Company] having our registered office at..... (hereinafter called "the Guarantor"), are bound unto …….. [*Name of Procuring Entity*] (hereinafter called "the Procuring Entity") in the sumof (Currency and guarantee amount) for which payment well and truly to be made to
the said Procuring Entity, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this___day of_____20__.

3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:

   a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letterof Tender ("the Tender Validity Period"), or any extension thereto provided by the Principal;or

   b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contractagreement; or (ii) has failed to furnish the Performance Security, in accordance with theInstructionsto tenderers ("ITT") of the Procuring Entity's Tendering document.then the guaranteeundertakes toimmediately pay to the Procuring Entity up to the above amount upon receipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiate its demand, provided that in its demand the Procuring Entity shall state that the demand arisesfrom the occurrence of any of the above events, specifying which event(s) has occurred.

4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copiesofthe contract agreement signed by the Applicant and the Performance Security and, or
(b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copyof the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii)twenty-eight days after the end of the Tender Validity Period.

5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

_____	_____
[Date]	*[Signature of the Guarantor]*
_____	_____
[Witness]	*[Seal]*

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

FORM OF TENDER - SECURING DECLARATION

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

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

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

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

declare that:

1. I/We understand that, according to your conditions, bids must be supported by a Tender-Securing Declaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contractwith the Purchaser for the period of time of [insert number of months or years] starting on [insert date], ifwe are in breach of ourobligation(s) under the bid conditions, because we–(a) have withdrawn our tender during the period of tender validity specified by us in the Tendering Data Sheet; or (b) having been notified of the acceptance of our Bid by the Purchaser during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with the instructions to tenders.

3. I/We understand that this Tender Securing Declaration shall expire if we are not the successful Tenderer(s), upon the earlier of:
   a) Our receipt of a copy of your notification of the name of the successful Tenderer; or
   b) thirty days after the expiration of our Tender.

4. I/We understand that if Iam /we are/ in a Joint Venture, the Tender Securing Declaration must be in the name of the Joint Venture that submits the bid, and the Joint Venture has not been legally constitutedat the time of bidding, the Tender Securing Declaration shall be in the names of all future partners asnamed inthe letter of intent.

Signed .....Capacity/title (director or partner

or sole proprietor, etc.) …….....…….

Name.....Duly authorized to sign

the bid for and on behalf of: *[insert complete name of Tenderer]*

Dated on …… day of ……,.....*[Insert date of signing]* Seal orstamp

Appendix toTender

Schedule of Currency requirements

Summary of currencies of theTender for_____*[insert name of Section of the Works]*

Name of currency	*Amounts payable*
Local currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	
Provisional sums expressed in local currency	[*To be entered by the Procuring Entity*]

PART II - WORKS REQUIREMENTS

SECTION V - BILLS OF QUANTITIES

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

1. These Notes for Preparing a Bill of Quantities are intended only as information for the Procuring Entityor the person drafting the Tender Documents. Priced Bills of Quantities shall be part and parcel of the Contract Documents.

2. The objectives and purpose of the Bills of Quantities are to provide sufficient information on the specifications, descriptions and quantities of Works to be performed to enable tenders to be prepared efficiently and accurately and when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed. Inorder to attain these objectives, Worksshould be itemized in the Bill of Quantities insufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried outin different locations or in other circumstanceswhich may give rise to different considerations of cost. Consistent with these requirements, the layout and content of the Bill of Quantities should be as simple and clear as possible.

3. The Bills of Quantities should be divided generally into thef ollowing sections:

   a) Preambles
   b) Preliminary items
   c) Work Items
   c) Daywork Schedule; and
   d) Provisionalitems
   e) Summary.

4. NOTES TO PREPARING PREAMBLES

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

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

Unit	Abbreviation	Unit	Abbreviation
cubic meter	m^3 *or* cu m	millimetre	mm
hectare	ha	month	mon
hour	h	number	nr
kilogram	kg	square meter	m^2 *or* sq m
lump sum	ls	square millimeter	mm^2 *or* sq mm
meter	m	week	wk
metric ton	t		

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

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

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

4.5. The rates and prices tender in the priced Bills of Quantities shall, except in so far 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.

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

4.7. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bills of Quantities, and where no Items are provided, the cost shall be deemedtobe distributed among the ratesand prices entered for the related Items of Work.

4.8. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bills of Quantities. References to the relevant sections of the Contract documents shall be made beforeentering prices agains teach item in the priced Bills of Quantities.

4.9 Provisional Sums and contingency sums included and so designated in the Bills of Quantities shall be expended in whole or in part at the direction and discretion of the Architect in accordance with Sub-Clause13.5 and Clause 13.6 of the General Conditions of contract.

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

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

5. NOTES ON PREPARING BILLS OF QUANTITIES

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

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

5.3 Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, andnoallowance should be made for bulking, shrinkage or waste. Quantitiesshouldberoundedupwhereappropriate.

5.4 Where the measured items a redeemed not to be exact because of the likelihood that the scope can change during the execution of the works, such items could be subject to re-measurement, the word “provisional” should be used to identify such cases. Where whole sections of the work items fall in thisclass, for example foundations, they should be labelled “Provisional Quantities” or “Provisional Items” so that the Tenderer/Contractor is advised up front that such items are subject to re- measurement todone before such work is cover-up.

5.5 All items that have not been measured and therefore not subject tot enders pricing should be listed intheBills of Quantities as Provisional Sums for particular item or class of Work, which may be subjectto a nominated subcontract or separate measurements at a later date during the execution of the works. For example, if it is deemed not possible to measure electrical works before going to tender

because detail designs are not ready, a provisional sum can be allowed in the Bills of Quantities for "Installation of Electrical Works" to be executed later when actual design details are completed. To the extent not covered above, there should be in the Bills of Quantities a general provision for physicaland financial contingencies made as a "Provisional Sum for Contingencies" and "Provisional Sum for Fluctuations". The inclusion of such provisional sums often facilitates budgetary approval by avoidingthe need to request periodic supplementary approvals as the future need arises.

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

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

i) A list of the various classes of labor, and materials for which basic.

ii) Daywork rates and prices for various categories of labor are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Workexecuted on a Daywork basis.

iii) A percent a get o be entered by the tenderer agains teach basic Day work item.

iv) Subtotal amount for labor, materials and plant representing the Contractor's profit, overheads, supervision and other charges.

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

BILLS OF QUANTITIES

(a) Preambles

1. The method of measurement of completed work for payment shall be in accordance with *[insert thename of a standard reference guide, or full details of the methods to be used].*

2. The Site is situated in (*provide full description where the site is situated, coordinates from the nearest known landmark like a town and its size*)_____It is approximately_____Kilometers from Nairobi. Access to the site shall be through_____,

   Which is an existing public road. Any damage caused to the surfaces of this road shall be made good atthe Contractor's expense. The Contractor shall visit the site and acquaint itself with its nature and position, the nature of the ground, substrata and other local conditions, positions of existing power, water and other services, access roads or any other limitations that might affect his cost or progress. No claim for extras shall be considered on account of lack of knowledge in this respect.

3. The Contractor shall obtain the Architect's approval on the siting of all temporary buildings, spoil heaps,temporary access path, and storage of materials. The Contractor shall also obtain the Architect approval anddirection regarding the use of any materials found on the Site.

4. The drawings used in the preparation of these Bills of Quantities can be inspected at the offices of the Procuring Entityor Procuring Entity's Representative during normal working hours. Two sets of the Working Drawings shall be provided to the contractor but additional copies shall be provided at a costto be determined by the Engineer.

5. The Contractor shall allow for the payment of all bank charges in connection with the procurement ofBank Guarantees and stamp charges in connection with this contract Agreement.

6. The Contractor shall carry out the various sections of the Works in such an order as the Architect May direct. The Procuring Entity reserves the right to occupy the Works by sections on completion providedthat such occupation is considered to be both practical and reasonable and will not interfere with the Works. The Contractor shall allow any costs associated with such occupation.
7. The main Contractor will be fully responsible for paying his Sub-Contractor but the Procuring Entity reserves the right in very exceptional circumstances to make such payments direct in the interests of theproject where the completion thereof might be jeopardized by any dispute or vicariousness between the Contractor and the Sub-Contractor involve.
8. The Contractor shall complete and deliver the Works in the period inserted in the Form of Tender as his time for completion of the Works from the date for Possession, to be agreed with the Engineer. TheContract Period is presumed to have been calculated making due allowance for seasonal inclement weather conditions. Noclaimfor extension of time due to the normal in clement weather for this area shall be entertained.

9. The Contractor shall, upon receiving instructions to proceed with the Works, draw up a Programme and Progress Chart setting out the order in which the Works are to be carried out, with the appropriatedates there of. This Chart shall be agreed with the Architect and no deviation from the order set out initwill be permitted without the written consent of the Engineer. The Contractor will be responsible for arranging the above programme with all his sub-Contractors and Specialties. The Contractor shall allow in his rates for carrying out this exercise, and for updating it as required.

10. The Contractor shall submit to the Architect on the first day of each week or such longer period as theArchitect from time to time direct, a Progress Report and any information for the proceeding period, showing the progress during the period and the up-to-date cumulative progresson all important itemsofeach section or portion of the Works.

11. The Contractor shall arrange for photographs of the Site to be taken by a professional photographer approved by the Engineer.The Photographs shall provide a record of the Site and adjacent are as priortothe commencement of the Works and shall cover such portion of the works in progress and completionas the Architect shall direct. All prints shall be full plate size, unmounted, and marked onthe reverse sidewith the date of exposure, identification reference and brief description. The copyrightof all photographsshall be vested in the Procuring Entity. The negatives and four prints from each

negative shall be delivered to the Architect within two weeks of exposure.

12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but whenever possible dimensions are to be taken on the Site or from the buildings. Before any work is commenced by Sub-Contractors or Specialist Firms, dimensions must be checked on the site comparabledimensions shown on the drawings. The Contractor shall be responsible for the accuracy of such dimensions.

13. Prior to commencement of any work the Contractor is to ascertain from the relevant Authorities the exact position, depth and level of all existing electric cables, waterpipes or other services in the are aand he shall make whatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Architect and the relevant Authority and shall be made good to their satisfaction atthe Contractor's expense. Where appropriate the Contractor shall open up the ground in advance of the main work by hand digging if necessary, to locate precisely the position and details of the services which are likely to affect his operations.

14. The Contractor shall include in his prices for the transport of materials, workmen, etc./, to and from the site of the proposed works, at such hours and by such route as are permitted by the Authorities.

15. The Contractor will be required to make good, at his own expense and damage he may cause to the present road surface and pavements within or beyond the boundary of the Site, during the period of the works. All existing paths, storm water channels, etc., that may be destroyed or damaged during theprogress of the Works shall be reinstated by the Contractor to the satisfaction of the Engineer.

16. The Contractor is to allow for complying with all instructions and regulations of the Police Authorities.

17. All water shall be fresh, clean and pure, free from earthly, vegetable or organic matter, acid or alkalinesubstance in solution. The Contractor shall provide at his own risk and cost all water for use in connection with the Works, (including works of sub–contractors). If need be, he shall makearrangementswith the Local Water Authority for the installation of a separate meter for all water used by him throughout the Contract and pay all cost and fees in connection therewith. He shall also provide temporary storage tanks and tubing, etc., as may be necessary, and clear away at completion.

18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub – Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion. The Contractor shall pay all fees and obtain all permits in connection there with.

19. The Contractor shall constantly keep on the Works a Literate English-speaking Agent or Representative, competent and experienced in the kind of work involved, who shall giveh is whole time to the superintendence of the works. (Including works of sub – contractors). Such Agent or Representativeshallreceive on behalf of the Contractordirections and instruction from the Engineer, and such directions andinstructions shall be deemed to be given to the contractor in accordance with the Conditions of Contract. The Agent shall not be replaced without the specific approval of the Engineer.

20. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site areprotected at all times. In particular, there shall be the proper provision of guard–rails to scaffolding, protection against falling materials, tools on site, dust, nail and other sharp objects. The site shall be kept tidy and clear of dangerous rubbish. The Architect shall be empowered to suspend work on site should it be considered this condition is not being observed and no claim arising from such suspensionwillbe allowed.

21. The are as available to the Contractor for workyards, offices and other facilities shall be directed by theArchitect and any existing features to remain shall be protected from damage throughout the ContractPeriod and handed back in good condition when they are vacated at the end of the Contract. If additional areas are required, the contractorshallsourcethenatowncost.

22. The Contractor shall give the Architect reasonable notice of the intention to set out or take levels for any part of the Works so that arrangements may be made for checking the work. The accuracy of setting outand leveling shall be within the tolerances specified in the Specifications or on the Drawings. The checking of setting out or leveling by the Architect shall not relieve the Contractor of his duties or responsibilities under the Contract.

23. The Contractor must take steps necessary to safe guard and shall beheld fully responsible for any damagecaused to existingand adjacent property, including buildings that are not a subject of demolition. He shall make good at his own cost damage to persons and property caused there on, and he shall indemnify the Procuring Entity against any loss or claim that may arise.

24. The Contractor shall take such steps and exercise such care and diligence as to minimize nuisance arising fromdust, noise or any other cause to the occupiers of the existing and adjacent property. He must providesuch temporary and special screens and tarpaulins or gummy bags, hoarding, barriers, warning signs etc. as he considers necessary and sufficient for the protection of the existing and adjacent property and or prevention of nuisance etc. as directed by Engineer.

25. The Contractors attention is drawn to the standards levy order which was amended on 15th October 1998.Legal notice No.154 of 1998. The Contractor is required to pay a monthly level of 0.2% of his factory price of construction works with effect from January 1999. Tenderer shall allow for this in the build-upo f his rates.

26. The Contractor shall provide temporary sheds, offices meshrooms, sanitary, accommodation and othertemporary buildings for the use of the contractor and sub-contractors, including lighting furniture equipment and attendance.

27. Contractor shall provide/build labor camp sat areas to be agreed with the Engineer. Labor camps shallbecomplete with sanitary accommodation and fencing gates.

28. The Contractor must provide the necessary toilet facilities to the requirement and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees during the period of the Works and remove when no longer required.

29. The Contractor shall provide at his own risk and cost all watching and lighting as necessary to safeguard theWorks, Plant and materials against damage and theft.

30. The Contractor shall provide all necessary hoists, tackle, plant, equipment, vehicles, tools and appliances of every description for the due and satisfactory completion of the Works and shall remove the sameon completion. All such plant, tools and equipment shall comply with all regulations in force throughout the period of the Contract and shall be altered or adopted during the Contract period as may be necessary to comply with any amendments in or additions to such regulations.

31. Provide, erect and maintain all necessary scaffolding, sufficiently strong and efficient for the due performance of the works, including Sub-Contract Works, provide special scaffolding as required by Sub-Contractors, alter and adopt all scaffolding as and when required during the Works, and remove on completion. No scaffolding is measured here in after and the Contractor must allow in his rates forthis.

32. The Contractor shall take all necessary precautions such as temporaryf encing, hoarding fans, planked footways, guard–rails gantries screen, etc., for the safe custody of the Works, materials and public protection and adjacent properties.

33. Cover up all and protect from damage, including damage from in clement weather, all finished work and unfixed materials, including that of Sub-Contractors, etc., to the satisfaction of the Architect untilthecompletion ofthe Contract.

34. The Contractor shall, after completion of the works, at his own expense, remove and clear away all surplus excavated demolition materials, plant, rubbish and unused materials and shall leave the wholeofthe Site and Works in a clean and tidy state to the satisfaction of the Engineer, sheds, camps, etc.Particular care shall be taken toleavecleanallfloors and windows and tore move all paint and cement all rubbis hand dirt as it accumulates. The Contractor is to find his own dump and shall pay all chargesin connectionthere with.

35. Concrete test cubes shall be prepared in a set of three, as described including testing fees, labor and materials, making molds, transport, handling, etc. Allow in your rates for making at least four cubes oneach occasion, from different batches; the concrete being taken from the point of deposit.

36. The Contractor shall furnish at the earliest possible opportunity before work commences, and at his

own cost, any samples of materials and workmanship that may be called for by the Architect for the approval or rejection, and any further samples in the case of rejection, until such samples are approved by the Engineer. Such samples, when approved, shall be the minimum standard for the work to whichtheyapply. The proceduref or submitting samples of materials for testing or approval and the methodof marking for identification shall be as laid down by the Engineer.The Contractor shall allow in his Tenderfor such samples and tests, including those in connection with his Sub-Contractors work.

37. The Contractors attention is drawn to the Finance Bill of the year 2000/2001 on withholding tax on contractual payment section 35(7)(i)(ii) which became effective on 1st July 2000. A 3% withholding taxwill be applicable to all in terim payments exceeding Kshs .....for work done in respect of building or civil works. The contractor shall allow for any costs arising resulting there from in the build-up of rates.

38. Blasting will only be allowed with the express permission of the Architect in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost, in accordance with any Governmentregulations in force for the time being, and any special regulations laid down by the Architect governingthe use and storage of explosives.

39. The National Construction Authority is a state corporation established under the national constructionauthority Act No.14 of 2011. The broad Mandate of the Authority is to over see the construction industry and coordinate its development. The National Construction Authority Regulations 2014 withan effective date of 6th June 2014, regulation 25, - Allow 0.5% of the tender sum/contract sum for construction levy.

40. The Contractor attention is drawn to Finance Bill of 1993 where VAT was introduced in all contracts for construction services. The tenderer is also drawn to VAT Act Cap 476 clause 19(9). The tenderer must allowfor VAT 1.19 as instructed elsewhere.

41. The contractor shall allow and pay for all insurance to cover risks and indemnities required Items 17 and 18 of the Conditions of contract and also specified in the Special Conditions of Contract.

BILL NO. 1 - PRELIMINARY ITEMS

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

BILL NO. 2: WORK ITEMS

(organized appropriately into work sections, such as foundations, walls/structure, finishes, doors andwindows, mechanical installations. etc.

Bill No 2 - *(Name of Section e.g. Foundations).*

Item no.	*Description*	*Unit*	*Quantity*	*Rate*	*Amount*
Total for Bill No. 2 (carried forward to Summary, p._____)					_____

Bill No. 3: Schedule of Daywork Rates - Labor

Item no.	Description	Unit	Nominal quantity	Rate	Amount
	Subtotal				
	Allow_____percent[a] of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 3 (b) above.				
	Total for Daywork (carried forward to Daywork Summary, p._____)				

a. To be entered by the Tenderer.

Bill No. 4: Schedule of Daywork Rates - Materials

Item no.	Description	Unit	Nominal quantity	Rate	Extended amount
	Subtotal				
	Allow_____percent a. of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 4 (b)above.				
	Total for Daywork: Materials (carried forward to DayworkSummary, p._____)				

a. To be entered by theTenderer.

Bill No. 5: Schedule of Daywork Rates - Contractor's Equipment

Item no.	*Description*	*Nominal quantity (hours)*	*Basic hourlyrental rate*	*Extended amount*
	Allow _ percent [a] of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 5 above.			
Total for Daywork: Contractor's Equipment (carried forward to Daywork Summary,p.__)				

a. To be entered by theTenderer.

Bill No. 6: Daywork Summary

	Amount[a]	*% Foreign*	*Currency*
1. Total for Daywork: Labor			
2. Total for Daywork: Materials			
3. Total for Daywork: Contractor's Equipment			
Total for Daywork (Provisional Sum) (carried forwardtoSummary of Bills of Quantities, p.) _			

Bill No. 7: Provisional Sums

Bill no.	*Item no.*	*Description*	*Amount*
1			
2			
3			
4			
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary			

GRAND SUMMARY

SUMMARY ITEMS	*Page*	*Amount*
Bill No. 1: Preliminary Items		
Bill No. 2: Work Items		
Bill No 3: Daywork Summary		
Bill No 4: Provisional Sums		
Subtotal of Bills No 1-4		
Allow for any Discounts [i]		
TOTAL TENDER PRICE Carried forward to Form of Tender		

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

SECTION VI - SPECIFICATIONS

Notes for preparing Specifications

1. Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanshipfor tenderers to respond realistically and competitively to the requirements of the Procuring Entity and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsibleforthe design of any part of the permanent Works, the extent of his obligations must be stated.

2. Specifications from previous similar projects are useful and may not be necessary to re-write specifications for every Works Contract.

3. There are considerable advantages in standardizing General Speci**fi**cations for repetitive Works in recognized public sectors, such as high ways, urban housing, irrigation and water supply. The GeneralSpecifications should cover all classes of workmanship, materials and equipment commonly involvedinconstructions, although not necessarily to be used in a particular works contract. Deletions or addendashould then adapt the General Specifications to the particular Works.

4. Caremust be taken in drafting Specifications to ensure they are not restrictive. In the Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also be used.

5. The Procuring Entity should decide whether technical solutions to specified parts of the Works are tobepermitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternativesare possibleto the technical solutions indicated in tender documents for certain elementsof the Works,taking into consideration the comparative specialized advantage of potential tenderers.

6. The Procuring Entity should provide a description of the selected parts of the Works with appropriatereference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, statingthatthe alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.

7. Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternativespermitted in this manner shall be considered by the Procuring Entity each on its own merits and independently of whether the tenderer has priced the item as described in the Procuring Entity's design included with thetender documents.

SECTION VII - DRAWINGS

Note A list of drawings should be inserted here. The actual drawings including Site plans should be annexedina separate booklet.

PART III - THE CONDITIONS OF CONTRACT AND CONTRACT

[Name of Procuring Entity]

[Name of Contract] [Architect

Name and Address]

General Conditions of Contract

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1. GENERALPROVISIONS

1.1 Definitions

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

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

"Base Date" means a date 30 day prior to the submission of tenders.

"Bill of Quantities" means the priced and completed Bill of Quantities forming part of the tender."Completion

Date" meansthedateofcompletionoftheWorksascertifiedbytheEngineer.

"Contract Price" means the price defined in the contract and there after as adjusted in accordance with theprovisions of the Contract.

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

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

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

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

"Contractor's Representative" means the person named by the Contractor in the Contractor appointed fromtime to timeby the Contractor who acts on behalf of the Contractor.

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

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

"Day" means a calendar day and "year" means 365 days.

"Dayworks" means Work inputs subject to payment on a time basis for labour and the associated materials andplant.

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

“Defects Liability Certi**fi**cate” means the certificate issued by Architect upon correction of defects by theContractor.

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

“Defects Noti**fi**cation Period” means the period for notifying defects in the Works oraSection(asthecasemaybe) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], whichextendsoverthedaysstated intheSpecialConditionsofContract.

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

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

“Final Statement” means the statement defined in Sub-Clause 14.11 [ApplicationforFinalPaymentCertificate].

“Force Majeure” is defined in Clause19 [Force Majeure].

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

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

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

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

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

“Local Currency” means the currency of Kenya.

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

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

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

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

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

“Performance Certi**fi**cate” means the certificate issued under Sub-Clause 11.9 [Performance Certificate]. “Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].“Permanent Works” means the permanent works to be executed by the Contractor under the Contract. “Plant” means the apparatus, machinery and other equipment intended to form or forming part of the

Permanent Works, including vehicles purchased for the Procuring Entity and relating to the construction oroperation of the Works.

“Procuring Entity's Equipment” means the apparatus, machinery and vehicles (if any) made available by theProcuring Entity for the use of the Contract or in the execution of the Works, as stated in the Specification; butdoes not include Plant which has not been taken over by the Procuring Entity.

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

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

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

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

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

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

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

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

“Site Investigation Reports” are those reports that may be included in the tendering documents which a refactual and interpretative about the surface and sub-surface condition sat the Site.

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

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

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

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

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

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

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

“Temporary works” means works designed, constructed, installed, and removed by the Contractor which

are needed for construction or installation of the Works.

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

"Tests after Completion" means the tests (if any) which are specified in the Contract and which are carried outinaccordance with the Specification after the Works or a Section (as the case may be) are taken over by the Procuring Entity.

"Testson Completion" means the tests which are specified in the Contractor agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Worksora Section (as the case may be) are taken over by the Procuring Entity.

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

"Unforeseeable" means not reasonably foreseeable by an experienced contractor by the Base Date.

"Variation" means any change to the Works, which is instructed or approved as a variation under Clause13[Variations and Adjustments].

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

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 includethe singular;
c) provisions including the word "agree", "agreed" or "agreement" require the agreement to berecorded in writing;
d) "written" or "in writing" means hand-written, type-written, printed or electronically made, andresulting in a permanent record; and

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

1.3 Communications

1.3.1 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 usingany of the agreed systems of electronic transmission as stated in the Special Conditions of Contract; and
b) delivered, sentor transmitted to the addressf or the recipient's communications as stated in theSpecial Conditions of Contract. However:

   i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
   ii) if the recipient has not stated otherwise when requesting an approval or consent, it may besent to the addressfromwhichtherequestwasissued.

1.3.2 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 noticeisissued to a Party, by the other Party or the Engineer, a copy shall be sent to the Architect or the otherParty, as the case may be.

1.4 Law and Language

1.4.1 The Contract shall be governed by the laws of Kenya.

1.4.2 The ruling language ofthe Contract shall be English.

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,
b) The Letter of Acceptance,
c) The Special Conditions – Part A,
d) the Special Conditions – Part B
e) the General Conditions of Contract
f) the Form of Tender,
g) the Specifications and Bills of Quantities
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 Architect shall issue any necessaryclarification or instruction.

1.6 Contract Agreement

The Parties shall enter into a Contract Agreement within 14 days after the Contractor receives the Contract Agreement, unless the Special Conditions establish otherwise. The Contract Agreement shallbebased upon the formannexed to the Special Conditions. The costs of stamp duties and similar charges(if any) imposed by law in connection with entry into the Contract Agreement shall be borneby the Procuring Entity.

1.7 Assignment

The Contractor shall not assign the whole or any part of the Contract or any benefit or interest in orunder the Contract. However, the contractor:

a) May as sign the whole or any part with the prior consent of the Procuring Entity, and
b) may, as security in favor of a bank or financial institution, assign its right to moneys due, or tobecome due, under the Contract.

1.8 Care and Supply of Documents

1.8.1 The Specifications and Drawings shall be in the custody and care of the Procuring Entity.Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawings and Bills of Quantities shall be supplied to the Contractor, who may make or request further copies at thecost of the Contractor.

1.8.2 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and untiltaken over bythe Procuring Entity. Unless otherwise stated in the Contract, the Contractor shallsupplyto the Architect two copies of each of the Contractor's Documents.

1.8.3 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 underthe Contract.The Procuring Entity's Personnel shall have the right of access to all these documents at all reasonable times.

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

1.9 Timely provision of Drawings or Instructions

1.9.1 The Contractor shall give notice to the Architect 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 delayordisruption likely to be suffered if it is late.

1.9.2 If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Architect 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 Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

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

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

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

1.10 Procuring Entity's Use of Contractor's Documents

1.10.1 Asagreed 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.

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

a) apply throughout the actual or intended working life (whichever is longer) of the relevant partsof 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 othersoftware, 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.

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

1.11 Contractor's Use of Procuring Entity's Documents

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

1.12 Con**fi**dential Details

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

1.12.2 The Contractor's and the Procuring Entity's Personnel shall also treat the details of the Contract as private and confidential, except to the extent necessary to carry out their respective obligations under the Contract or to comply with applicable Laws. Each of them shall not publish or disclose any 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 Special Conditions of Contract:

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

b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licensesand approvals, as required by the Laws in relation to the execution and completion ofthe Worksand the remedying of any defects; and the Contractor shall indemnify and hold theProcuring Entity 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 Procuring Entity for the performance of the Contract;
b) these persons shall notify the Procuring Entity of their leader who shall have authority to bindthe Contractor and each of these persons; and
c) the Contractor shall not alter its composition or legal status without the prior consent of theProcuring Entity.

1.15 Inspections and Audit by the Procuring Entity

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

2. THE PROCURING ENTITY

2.1 Right of Access to the Site

2.1.1 The Procuring Entity shall give the Contractor right of access to, and possession of, all parts of theSite within thetime (or times) stated in the Special Conditions of Contract. The right and possessionmay not be exclusive to the Contractor. If, under the Contract, the Procuring Entity is required to give (tothe Contractor) possession ofanyfoundation, structure, plant or means of access, the Procuring Entityshall do so in the time and manner stated in the Specification. However, the Procuring Entity may withhold any such right or possession until the Performance Security has beenreceived.

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

2.1.3 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Procuring Entity to

give any such right or possession within such time, the Contractor shall give notice to the Architectand 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.

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

2.1.5 However, if and to the extent that the Procuring Entity's failure was caused by any error or delay bythe 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, Licenses or Approvals

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

a) Copies of the Laws of Kenya which are relevant to the Contract but are not readily available,and
b) any permits, licenses or approvals required by the Laws of Kenya:

i) which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws],
ii) for the delivery of Goods, including clearance through customs,and
iii) for the export of Contractor's Equipment when it is removed from the Site.

2.3 Procuring Entity'sPersonnel

The Procuring Entity shall be responsible for ensuring that the Procuring Entity's Personnel and theProcuring Entity's other contractor son the Site:

a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and

b) take action ssimilar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) ofSub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection oftheEnvironment].

2.4 Procuring Entity's Financial Arrangements

The Procuring Entity shall make and maintain all necessary financial arrangements which will enablethe Procuring Entity to pay the Contract Price punctually (as estimated at that time) in accordancewith Clause14 [Contract Price and Payment].

3. THE ENGINEER

3.1 Architect Duties and Authority

3.1.1 The Procuring Entity shall appoint the Architect who shall carry out the duties as signed to him in theContract. The Architect staff shall include suitably qualified Assistants and other professionals who arecompetent to carry out these duties. The Architect Name and Address shall be provided in the SpecialConditions of Contract.

3.1.2 The Architect shall have no authority to amend the Contract.

3.1.3 The Architect May exercise the authority attributable to the Architect as specified in or necessarily tobeimplied from the Contract. If the Architectis required to obtain the approval of the Procuring Entity before exercising a specified authority, the requirements shall be as stated in the Special Conditions of Contract. The Procuring Entity shall promptly inform the Contractor of any change tothe authorityattributed to the Engineer.

3.1.4 However, whenever the Architect exercises a specified authority for which the Procuring Entity's approvalis required, then (for the purposes of the Contract) the contractor shall require the Architect

toprovideevidence of such approval before complying with the instruction.

3.1.5 Except as otherwise stated in these Conditions:

a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract,the Architect shallbedeemedtoactfortheProcuring Entity;

b) the Architect has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;

c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal,request, test, or similar act by the Architect (including absence of disapproval) shall not relievetheContractor from any responsibility he has under the Contract, including responsibility for errors,omissions, discrepancies and non-compliances; and

d) anyact by the Architect in response to a Contractor's request shall be notified in writing to theContractor within 14 days of receipt.

3.1.6 The following provisions shall apply:

The Architect shall obtain the specific approval of the Procuring Entity before taking action underthe-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 Special Conditions of Contract.

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-Clause13.4: Specifying the amount payable in each of the applicable three currencies.

3.1.7 Not withstanding 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,hemay, 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 theEngineer, be necessary to abate or reduce the risk. The Contractor shall forth with comply, despitetheabsence of approval of the Procuring Entity, with any such instruction of the Engineer. The Architectshall 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 ProcuringEntity.

3.2 Delegation by the Engineer

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

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

a) Any failure to disapprove any work, Plant or Materials shall not constitute approval, and shalltherefore not prejudice the right of the Architect to reject the work, Plant or Materials;

b) If the Contractor questions any determination or instruction of an assistant, the Contractormay refer the matter to the Engineer, who shall promptly confirm, reverse or vary the

determination or instruction.

3.3 Instructions of the Engineer

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

3.3.2 The Contractor shall comply with the instructions given by the Architect or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing.Ifthe Architec tor 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 afterreceiving the confirmation,

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

3.4 Replacement of the Engineer

IftheProcuring Entity intends to replace the Engineer, the Procuring Entity shall, in not less than 21daysbefore theintendeddateofreplacement, give notice to the Contractor of the name, address andrelevantexperience of the intended person to replace the Engineer.

3.5 Determinations

3.5.1 Whenever these Conditions provide that the Architect shall proceed in accordance with this Sub- Clause3.5 to agreeor determine any matter, the Architect shall consult with each Party in an endeavor toreach agreement. If agreement is not achieved, the Architect shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

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

4 THE CONTRACTOR

4.1 Contractor's General Obligations

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

4.1.2 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 temporaryorpermanent nature, required in and for this design, execution, completion and remedying of defects.

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

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

4.1.5 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.

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

a) The Contractor shall submit to the Architect 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, shallbewritten in the language for communications defined in Sub-Clause 1.4 [Law and Language],andshall include additional information required by the Architect to add to the Drawings for co- ordination of each Party's designs;

c) the Contractor shall be responsible for this part and it shall, when the Works are completed, befit 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 Architectthe "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Procuring Entity to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not beconsidered 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

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

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

4.2.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractorhas executedand 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 receivethe PerformanceCertificate by the date 30 days prior to the expiry date, the Contractor shall extendthe validity of the Performance Security until the Works have been completed and any defects havebeen remedied.

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

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

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

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

4.3 Contractor's Representative

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

4.3.2 Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the Architect for consent the name and particulars of the person theContractor proposes to appoint as Contractor's Representative. If consent is with held or subsequentlyrevoked in terms of Sub-Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act asContractor's Representative, the Contractor shall similarly submit the name and particulars of an other suitable person for such appointment.

4.3.3 The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of theContractor's Representative or appoint are placement.

4.3.4 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 theSite during the execution of the Works, a suitable replacement person shall be appointed, subject totheArchitect prior consent, and the Architect shall be notified accordingly.

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

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

4.3.7 The Contractor's Representative shall be fluent in the language for communications defined in Sub- Clause1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the saidlanguage, the Contractor shall make competent interpreter savailable during all working hours in a number deemed sufficient by the Engineer.

4.4 Sub-contractors

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

4.4.2 The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if theyweret heacts or defaults of the Contractor. Unless otherwise stated in the SpecialConditions:

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

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

4.4.4 Wher epracticable, the Contractor shall give fair and reasonable opportunity for contractors from Kenya to be appointed as Subcontractors.

4.5 Assignment of Bene**fi**t of Subcontract

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects NotificationPeriod and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such

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

4.6 Co-operation

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

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

4.6.2 Any such instruction shall constitute a Variation if and to the extent that it cause sthe Contractor to suffer delays and/ortoincur Unforeseeable Cost. Services for these personnel and other contractorsmayinclude the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

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

4.7 Setting Out of the Works

4.7.1 The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contractor 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.

4.7.2 The Procuring Entity 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.

4.73 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an errorin these items of reference, and an experienced contractor could not reasonably have discovered such errorand avoided this delay and/ or Cost, the Contractor shall give notice to the Architect andshall beentitledsubject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

4.8 Safety Procedures The

Contractor shall:

a) Comply with all applicable safety regulations,
b) Takec are 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 avoiddanger to these persons,
d) provide fencing, lighting, guarding and watching of the Works until completion and takingover under Clause 10 [Procuring Entity's Taking Over], and
e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the publicandof owners and occupiers of adjacent land.

4.9 Quality Assurance

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

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

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

4.10 Site Data

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

4.10.2 To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed tohave obtained all necessary information as to risks, contingencies and other circumstances whichmayinfluence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to haveinspected 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 (withoutlimitation):

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 ofthe Works and the remedying of any defects,
d) the Laws, procedures and labour practices of Kenya, and
e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11 Suf**fi**ciency of the Accepted Contract Amount

4.11.1 TheContractor shall be deemed to:

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

4.11.2 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

4.12.1 In this Sub-Clause, “physical conditions” means natural physical conditions and man-made and otherphysical obstructions and pollutants, which the Contractor encounters at the Site when executing theWorks, including sub-surface and hydrological conditions but excluding climatic conditions.

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

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

4.12.4 If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, givessuch a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitledsubject 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.

4.12.5 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Architectshall 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.

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

4.12.7 The Architect shall take account of any evidence of the physical conditions foreseen by the Contractorwhen submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor'sinterpretationofanysuchevidence.

4.13 Rights of Way and Facilities

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

4.14 Avoidance of Interference

4.14.1 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 foot paths, irrespective of whether theyare public or in the possession of the Procuring Entity or of others.

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

4.15 Access Route

4.15.1 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 shallinclude the proper use of appropriate vehicles and routes.

4.15.2 Except as otherwise stated in these Conditions:

a) The Contractor shall (as be tween the Parties) be responsible for any maintenance which maybe required for his use of access routes;

b) the Contractor shall provide all necessary signs or directions along access routes, and shallobtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;

c) the Procuring Entity shall not be responsible for any claims which may arise from the use or otherwise of any access route;

d) the Procuring Entity does not guarantee the suitability or a vailability of particular access routes;and

e) Costs due to non-suitability or non-availability, for the use required by the Contractor, ofaccess routes shall be borne by the Contractor.

4.16 Transport of Goods

Unless otherwise stated in the Special Conditions:

a) the Contractor shall give the Architect not less than 21 days' notice of the date on which anyPlant or a major item of other Goods will be delivered to the Site;

b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading,storing and protecting all Goods and other things required for the Works; and

c) the Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from thetransport ofGoods 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 GoodsorContractor's Personnel off Site.

4.18 Protection of the Environment

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

4.18.2 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 otherresults of his operations.

4.18.3 The Contractors hall ensure that emissions, surfaced is charges 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

4.19.1 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.

4.19.2 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 givenin the Specifications.The Contractor shall, at his risk and cost, provide any apparatus necessary for his use ofthese services and for measuring the quantities consumed.

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

4.20 Procuring Entity's Equipment and Free-Issue Materials

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

a) The Procuring Entitys hall be responsible for the Procuring Entity's Equipment, except that

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

4.20.1 The appropriate quantities and the amounts due (at such stated prices) for the use of Procuring Entity'sEquipment shall be agreed or determined by the Architect in accordance with Sub-Clause 2.5 [Procuring Entity's Claims] and Sub-Clause3.5 [Determinations]. The Contractor shall pay these amounts to the Procuring Entity.

4.20.2 The Procuring Entity shall supply, free of charge, the "free-issue materials" (if any) in accordance with thedetails stated in the Specification. The Procuring Entity shall, at his risk and cost, provide thesematerialsat the time and place specified in the Contract. The Contractor shall then visually inspectthem and shall promptly give notice to the Architect of any shortage, defect or default in these materials. Unlessotherwise agreed by both Parties, the Procuring Entity shall immediately rectify thenotified shortage,defector default.

4.20.3 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 relievetheProcuring Entity of liability for any shortage, defect or default not apparent from a visual inspection.

4.21 Progress Reports

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

4.21.2 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 andtesting; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [NominatedSubcontractors]),

b) photographs showing the status of manufacture and of progress on the Site;

c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:

   i) commencement of manufacture,

   ii) Contractor's inspections,

   iii) tests, and

   iv) shipment and arrival at the Site;

d) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];

e) copies of quality assurance documents, test results and certificates of Materials;

f) list of notices given under Sub-Clause 2.5 [Procuring Entity's Claims] and notices givenunder Sub- Clause 20.1 [Contractor's Claims];

g) safety statistics, including details of any hazardous incidents and activities relating to

environmental aspects and public relations; and

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

4.22 Security of the Site

Unless otherwise stated in the Special Conditions:

a) The Contractor shall be responsible for keeping unauthorized persons off the Site, and

b) authorized persons shall be limited to the Contractor's Personnel and the Procuring Entity's Personnel; and to any other personnel notified to the Contractor, by the Procuring Entityor the Engineer, as authorized personnel of the Procuring Entity's other contractors on theSite.

4.23 Contractor's Operations on Site

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

4.23.2 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.

4.23.3 Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, fromthat 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 Contractormay 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

4.24.1 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 ProcuringEntity. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

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

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

b) payment of any such Cost, which shall be included in the Contract Price.

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

5. NOMINATED SUBCONTRACTORS

5.1 Definition of "nominated Subcontractor"

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

a) Who is nominated by the Procuring Entity, or

b) Contractor has nominated as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

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 Procuring Entity as soon as practicable, with supporting particulars. An objection shall be deemed reasonable if it arises from (among other things) any of the following matters, unless the Procuring Entity agrees in writing to indemnify the Contractor against and from the consequences of the matter:

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

b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or

c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that,for the subcontracted work (including design, if any), the nominated Subcontractor shall:

i) undertake to the Contractor such obligations and liabilities as will enable the Contractor todischarge hisobligations and liabilities under the Contract;

ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities, and

iii) be paid only if and when the Contractor has received from the Procuring Entity paymentsfor 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 Architect certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Pricein 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

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

(a) Submits this reasonable evidence to the Engineer, or

(b) i) Satisfies the Architect in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts, and

ii) Submits to the Architect reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement, then the Procuring Entity may (at his sole discretion) pay, directto the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor andfor which the Contractor has failed to submit the evidence described in sub-paragraphs (a) or (b) above.The Contractor shall then repay, to the Procuring Entity, the amount which the nominated Subcontractor was directly paid by the Procuring Entity.

6. STAFF AND LABOR

6.1 Engagement of Staff and Labor

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

6.2 Rates of Wages and Conditions of Labor

6.2.1 The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than

those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which arenot lower than the general level of wages and conditions observed locally by Procuring Entity's whosetrade or industry is similar to that of theContractor.

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

6.3 Persons in the Service of Procuring Entity

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

6.4 Lab or Laws

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

6.5 Working Hours

Nowork shall be carried out on the Site on locally recognized days of rest, or outside the normalworking hours stated in the Special Conditions of Contract, unless:

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

6.6 Facilities for Staff and Labor

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

6.7 Health and Safety

6.7.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety ofthe Contractor's Personnel. In collaboration with loca lhealth authorities, the Contractor shall ensurethatmedical staff, first aid facilities, sick bay and ambulance service are available at all times at theSite and at any accommodation for Contractor's and Procuring Entity's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the preventionofepidemics.

6.7.2 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 shallhave the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide what ever is required by this person to exercise this responsibility and authority.

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

6.7.4 The Contractor shall conduct an awareness programme on HIV and other sexually transmitted diseases via an approved service provider and shall undertake such other measures taken to reduce therisk of the transfer of these diseases between and among the Contractor's Personnel and the local

community, to promote early diagnosis and to assist affected individuals.

6.8 Contractor's Superintendence

6.8.1 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 super intendence to plan, arrange, direct, manage, inspect and test the work.

6.8.2 Superintendence shall be given by a sufficient number of persons having adequate knowledge of thelanguage for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operationstobe 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

6.9.1 The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respectivetrades or occupations. The Contractors Key personnel shall be named in the Special Conditions of Contract. The Architect may require the Contractor to remove (or cause to be removed) any personemployed 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 in competently or negligently,
c) fails to conform with any provisions of the Contract,
d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment,or
e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the execution ofthe Works.

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

6.10 Records of Contractor's Personnel and Equipment

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

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 protectionofpersons and property on and near the Site.

6.12 Foreign Personnel

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

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

6.13 Supply of Water

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

6.14 Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnelemployed 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.

6.15 Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of Kenya, onsite, import, sell,give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal there of by Contractor's Personnel.

6.16 Prohibition of Forced or Compulsory Labour

The Contractor shall not employ forced labor, which consists of any work or service, not voluntarilyperformed, that is exacted from an individual under threat of force or penalty, and includes any kindof involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor- contracting arrangements.

6.17 Prohibition of Harmful Child Labor

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of Kenya have provisions for employment of minors, the Contractor shall follow those laws applicable to theContractor. Children below the age of 18 years shall not be employed in dangerous work.

6.18 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 shallbe included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].

6.19 Workers' Organizations

The Contractor shall comply with the relevant labor laws that recognize workers' rights to form andto join workers' organizations of their choosing without interference.

6.20 Non-Discrimination and Equal Opportunity

The Contractor shall base the labour employment on the principle of equal opportunity and fair treatment and shall not discriminate with respect to aspects of the employment relationship, includingrecruitment and hiring, compensation (including wages and benefits), working conditions and termsofemployment, access to training, promotion, termination of employ mentor retirement, and discipline.

7. PLANT, MATERIALS AND WORKMANSHIP

7.1 Manner of Execution

The Contractor shall carry out the manufacture/assemble of plant, the production and manufactureof Materials, and all other execution of the Works:

a) In the manner (if any) specified in the Contract,
b) in a proper workman like and careful manner, in accordance with recognized good practice, and
c) with properly equipped facilities and non-hazardous Materials, except as otherwise specifiedin the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to theArchitect for consent prior to using the Material sin or for the Works:

a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and

b) additional samples instructed by the Architect as a Variation.

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

7.3 Inspection

7.3.1 The Procuring Entity's Personnel shall at all reasonable times:

a) Have full access to all parts of the Site and to all places from which natural Materials are beingobtained, 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 progressofmanufacture of Plant and production and manufacture of Materials.

7.3.2 The Contractor shall give the Procuring Entity's Personnel full opportunity to carry out these activities,including providing access, facilities, permissions and safety equipment. No such activity shall relievetheContractor from any obligation or responsibility.

7.3.3 The Contractor shall give notice to the Architect whenever any work is ready and before it is coveredup, put out of sight, or packaged for storage or transport. The Architect shall then either carry outthe examination, inspection, measurement or testing without unreasonable delay, or promptly givenoticeto the Contractor that the Architect does not require to do so. If the Contractor fails to givethe notice, he shall, if and when required by the Engineer, uncover the work and there after reinstate and make good, all at the Contractor's cost.

7.4 Testing

7.4.1 This Sub-Clause shall apply to all tests specified in the Contract.

7.4.2 Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified testsefficiently. The Contractor shall agree, with the Engineer, the time and placef ort he specified testingofany Plant, Materials and other parts of the Works.

7.4.3 The Architect may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, not withstanding other provisions of the Contract.

7.4.4 The Architect shall give the Contractor not less than 24 hours' notice of the Architect intention to attend the tests. If the Architect does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed tohave been made in the Architect presence.

7.4.5 If the Contractor suffers delay and/ or incurs Cost from complying with these instructions or as a result of a delay for which the Procuring Entity is responsible, the Contractor shall give notice to theArchitect 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.

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

7.4.7 The Contractor shall promptly forward to the Architect duly certified reports of the tests. When

thespecified tests have be enpassed, the Architect shall endorse the Contractor's test certificate, orissue a certificate to him, to that effect. If the Architect has not attended the tests, he shall be deemedto haveaccepted the readings as accurate.

7.5 Rejection

7.5.1 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 Architectmay reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. TheContractor shall then promptly make good the defect and ensure that the rejected item complies with theContract.

7.5.2 If the Architect requires this Plant, Materials or workmanship to be retested, the tests shall be repeatedunder the same terms and conditions. If the rejection and retesting cause the Procuring Entity to incuradditional costs, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs to the Procuring Entity.

7.6 Remedial Work

7.6.1 Not withstanding any previous test or certification, the Architect may instruct the Contractorto:

a) Remove from the Site and replace any Plant or Materials which is not in accordance with theContract,
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 ofan accident, unforeseen able event or otherwise.

7.6.2 The Contractor shall comply with the instruction within a reasonable time, which shall be the time(ifany) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

7.6.3 If the Contractor fails to comply with the instruction, the Procuring Entity shall be entitled to employand pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the Procuring Entity all costs arising from this failure.

7.6.4 If the contractor repeatedly delivers defective work, the Procuring Entity may consider terminationin accordance with Clause 15.

7.7 Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall become the property of the Procuring Entity at whichever is the earlier of the following times, free from liens andother encumbrances:

a) When it is in corporated 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 otherpayments for:

a) Natural materials obtained from outside the Site, and
b) thedisposal of material from demolitions and excavations and of other surplus material (whether natural orman-made), except to the extent that disposal are as within the Site arespecified in the Contract.

8 COMMENCEMENT, DELAYS AND SUSPENSION

8.1 Commencement of Works

8.1.1 Except as otherwise specified in the Special Conditions of Contract, the Commencement Date shallbethe date at which the following precedent condition shave all been fulfilled and the Architect notification recording the agreement of both Parties on such fulfilment and instructing to commencethe Work is received by the Contractor:

a) Signature of the Contract Agreement by both Parties, and if required, approval of the Contractby relevant authorities of Kenya;

b) except if otherwise specified in the Special Conditions of Contract, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works.

c) Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

8.1.2 If the said Architect instruction is not received by the Contractor within 180 days from his receipt oftheLetter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause1 6.2 [Terminationby Contractor].

8.1.3 The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date and shal lthen proceed with the Works with due expedition andwithout delay.

8.2 Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time forCompletion for the Works or Section (as the case may be), including:

a) Achieving the passing of the Testson Completion, and

b) completing all work which is stated in the Contract as being required for the Works or Sectiontobe 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

8.3.1 The Contractor shall submit a detailed time programme to the Architect within1 4 days after receiving thenotice 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 themajor 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 Sitefor each major stage.

8.3.2 Unless the Engineer, within 14 days after receiving a programme, gives notice to the Contractor statingthe extent to which it does not comply with the Contract, the Contractor shall proceed in accordancewith the programme, subject to his other obligations under the Contract. The Procuring Entity's Personnel shall be entitled to rely upon the programme when planning their activities.

8.3.3 The Contractor shall promptly give notice to the Architect of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works.

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

8.4 Extension of Time for Completion

8.4.1 The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension oftheTime for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [TakingOver of the Works and Sections] is or will be delayed by any of the following causes:

a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,

b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,

c) exceptionally adverse climatic conditions,

d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or

e) any delay, impediment or prevention caused by or attributable to the Procuring Entity, theProcuring Entity's Personnel, or the Procuring Entity's other contractors.

8.4.2 If the Contractor considers itself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Architect in accordance with Sub-Clause 20.1 [Contractor's Claims].When determining each extension of time under Sub-Clause 20.1, the Architec tshall review previousdeterminations 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 Kenya,

b) These authorities delay or disrupt the Contractor's work, and

c) the delay or disruption was Unforeseeable, then this delay or disruption will be considered asacause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

8.6 Rate of Progress

8.6.1 If, at anytime:

a) Actual progress is too slow to complete within the Time for Completion, and/or

b) Progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme], other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Architect may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within theTime forCompletion.

8.6.2 Unless the Architect notifies otherwise, the Contractor shall adopt these revised methods, which mayrequire increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Procuring Entity to

incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Procuring Entity'sClaims] pay these costs to the Procuring Entity, in addition to delay damages (if any) under Sub- Clause 8.7 below.

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

8.7 Delay Damages

8.7.1 If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to notice under Sub-Clause 2.5 [Procuring Entity's Claims] pay delay damages to the ProcuringEntity for this default. These delay damages shall be the sum stated in the Special Conditions of Contract, which shall be paid for everyday which shall elapse between the relevant Time for Completion and the date stated in the taking-Over Certificate. However, the total amount due underthis Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the SpecialConditions of Contract.

8.7.2 These delay damages shall be the only damages due from the Contractor for such default, other than inthe event of termination under Sub-Clause 15.2 [Termination by Procuring Entity] prior to completionof 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

8.8.1 The Architect may at anytime 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 a gainst anydeterioration, loss or damage.

8.8.2 The Architect may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

8.9 Consequences of Suspension

8.9.1 If the Contractor suffers delay and/or incurs Cost from complying with the Architect instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

b) Payment of any such Cost, which shall be included in the Contract Price.

8.9.2 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause3.5 [Determinations] to agree or determine these matters.

8.9.3 The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurredin, 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 ofWork].

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/orMaterials 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 30days, and

b) the Contractor has marked the Plant and/or Materials as the Procuring Entity's property in accordance with the Architect instructions.

8.11 ProlongedSuspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days,theContractor may request the Architect permission to proceed. If the Architect does not give permissionwithin 30 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 Architect shall jointlyexamine 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 receivingf rom the Architec tan instruction to this effect under Clause 13 [Variations and Adjustments].

9. TESTS ON COMPLETION

9.1 Contractor's Obligations

9.1.1 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].

9.1.2 The Contractor shall give to the Architect not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests onCompletion shall be carried out within 14 days after this date, on such day or days as the Architect shallinstruct.

9.1.3 In considering the results of the Tests on Completion, the Architect shall make allowances for the effect of any use of the Works by the Procuring Entity on the performance or other characteristics oftheWorks. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shallsubmit a certified report of the resultsof these Tests to the Engineer.

9.2 Delayed Tests

9.2.1 If the Tests on Completion are being unduly delayed by the Procuring Entity, Sub-Clause 7.4 [Testing] (fifth paragraph) and/ or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

9.2.2 If the Tests on Completion are being unduly delayed by the Contractor, the Architect may by noticerequire the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Testson such day or days within that period as the Contractor may fix and of whichhe shallgive notice to the Engineer.

9.2.3 If the Contractor fails to carryout the Tests on Completion within the period of 21 days, the ProcuringEntity's Personnel may proceed with the Test sat 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 theresults of the Tests shall be accepted asaccurate.

9.3 Retesting of related works

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Architect or the Contractor may require the failed Tests, and Tests on Completion on any relatedwork, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

9.4.1 If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Architect shall be entitled to:

a) Order further repetition of Tests on Completion under Sub-Clause 9.3; or

b) if the failure deprives the Procuring Entity of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Procuring Entityshallhave the same remedies as are provided in sub-paragraph (c) of Sub-Clause1 1.4 [Failure to Remedy Defects].

10. PROCURING ENTITY'S TAKING OVER

10.1 Taking Over of the Works and Sections

10.1.1 Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be takenoverby the Procuring Entity when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

10.1.2 The Contractor may apply by notice to the Architect for a Taking-Over Certificate not earlier than 14days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If theWorks are divided into Sections, the Contract or may similarly apply for a Taking-Over Certificate foreach Section.

10.1.3 The Architect shall, within 30 days after receiving the Contractor's application:

a) Issue the Taking-Over Certificate to the Contract or, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor out standing 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 undert his Sub-Clause.

10.1.4 If the Architect fails either to issue the Taking-Over Certificate or to reject the Contractor's applicationwithin the period of 30 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on thel ast day of that period.

10.2 Taking Over of Parts of the Works

10.2.1 The Architect may, at the sole discretion of the Procuring Entity, issue a Taking-Over Certificate for any part of the Permanent Works.

10.2.2 The Procuring Entity shall not use any part of the Works (other than as a temporary measure whichiseither specified in the Contract or agreed by both Parties) unless and until the Architect has issueda Taking-Over Certificate for this part. However, if the Procuring Entity does use any part of the Worksbefore 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 isused,

b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Procuring Entity, and

c) if requested by the Contractor, the Architect shall issue a Taking-Over Certificate for this part.

10.2.3 After the Architect has issued a Taking-Over Certificate for a part of the Works, the Contractor shallbegiven the earliest opportunity to take such steps as may be necessary to carry out any outstanding Testson Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

10.2.4 If the Contractor incurs Cost as a result of the Procuring Entity taking over and/or using a part of theWorks, other than such use as is specified in the Contractor agreed by the Contractor, the Contractor shall (i) give notice to the Architect and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims]to payment of any such accrued costs, which shall be included in the Contract Price. After receivingthisnotice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agreeor determine this accrued cost.

10.2.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delaydamages there after 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 socertified bears to the value of the Works or Section (as the case may be) as a whole. The Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages] and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

10.3.1 If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion byacause for which the Procuring Entity is responsible, the Procuring Entity shall be deemed to havetakenover the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

10.3.2 The Architect shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects NotificationPeriod. The Architect shall require the Tests on Completion to be carried out by giving 14 days' notice andin accordance with the relevant provisions of the Contract.

10.3.3 If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Architect and shall be entitled subject to Sub- Clause 20.1 [Contractor's Claims] to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and

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

10.3.4 After receiving this notice, the Architect 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 theWorks 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

11.1.1 In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fairwear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable there after, the Contractor shall:

a) complete any work which is outstanding on the date stated in a Taking-Over Certificate,within such reasonable time as is instructed by the Engineer, and

b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of)the Procuring Entity on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

11.1.2 If a defect appears or damage occurs, the Contractor shall be notified accordingly by the Engineer.

11.2 Cost of Remedying Defects

11.2.1 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 thatthework 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.

11.2.2 If and to the extent that such work is attributable to any other cause, the Contractor shall be notifiedpromptly by (or on behalf of) the Procuring Entity, and Sub-Clause 13.3 [Variation Procedure] shall apply.

11.3 Extension of Defects Notification Period

11.3.1 The Procuring Entity shall be entitled subject to Sub-Clause 2.5 [Procuring Entity's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be usedforthe purposes for which they are intended by reason of a defect or by reason of damage attributableto the Contractor. However, a Defects Notification Period shall not be extended by morethan two years.

11.3.2 If delivery and/ or erection of Plant and/ or Materials was suspended under Sub-Clause 8.8 [Suspensionof Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligationsunder this Clause shall not appl yto any defectsor damage occurring more than two yearsafter the Defects Notification Period for the Plant and/ or Materials would otherwise have expired.

11.4 Failure to Remedy Defects

11.4.1 If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixedbythe Engineer, on or by which the defect or damage is to be remedied. The Contractor shall be givenreasonable notice of this date.

11.4.2 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[Costo f Remedying Defects], the Procuring Entity may (at his option):

(a) Carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, butthe Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the Procuring Entity the costs reasonably incurred by the Procuring Entity in remedying the defect or damage;

(b) Requirethe Architect to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or

(c) if the defect or damage deprives the Procuring Entity of substantially the whole benefit of the Works or any major part of the Works, terminate the Contractas a whole, or in respect of suchmajor part which cannot be put to the intended use. Without prejudice to any other rights, under the Contractor otherwise, the Procuring Entity shall then be entitled to recover all sumspaid 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 defector damage cannot be remedied expeditiously on the Site and the Procuring Entity gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant asaredefective 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

11.6.1 If the work of remedying of any defector damage may affect the performance of the Works, the Architect may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 14 days after the defect or damage is remedied.

11.6.2 These tests shall be carried out in accordance with the terms applicable to the previous tests, exceptthatthey 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

Unti lthe Completion Certificate has been issued, the Contractor shall have such right of access to theWorks as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Procuring Entity's reasonable security restrictions.

11.8 Contractor to Search

The Contractor shall, if required by the Engineer, search for the cause of any defecton parts of the works that have already accepted, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Costofthe search plus profit shall be agreed or determined by the Architect in accordance with Sub-Clause
3.5 [Determinations] and shall be included in the Contract Price.

11.9 Completion Certi**fi**cate

11.9.1 Performance of the Contractor's obligations shall not be considered to have been completed until theArchitect has issued the Completion Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

11.9.2 The Architect shall issue the Completion Certificate within 30days after the latest of the expiry datesofthe Defects Liability Period, or as soon there after as the Contractor has supplied all the Contractor'sDocuments and completed and tested all the Works, including remedying any defects. A copy of the Completionn Certificate shall be issued to the Procuring Entity.

11.9.3 Only the Completion Certificate shall be deemed to constitute acceptance of the Works.

11.10 Unful**fi**lled Obligations

After the Completion Certificate has been issued, each Party shall remain liable for the fulfilment ofany obligation which remains unperformed at that time. For the purposes of determining the natureand extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11 Clearance of Site

11.11.1 Upon receiving the Completion Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

11.11.2 If all these items have not been removed within 30 days after receipt by the Contractor of the Completion Certificate, the Procuring Entity may sell or otherwise dispose of any remaining items. The Procuring Entity shall be entitled to be paid the costs incurred in connection with, or attributableto, such sale or disposal and restoring the Site.

11.11.3 Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Procuring Entity's costs, the Contractor shall pay the outstanding balance to the Procuring Entity.

12. MEASUREMENT AN DEVALUATION

12.1 Works to be Measured

12.1.1 The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractorshall 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 underthe Contract.

12.1.2 Whenever the Architect 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 Architect inmaking the measurement, and

b) supply any particulars requested by the Engineer.

12.1.3 If the Contractor fails to attend or send a representative, the measurement made by the Architect shall be accepted as accurate.

12.1.4 Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured fromrecords, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend toexamine and agreet her ecords with the Engineer, and shall sign the same when agreed. If the Contractordoes not attend, the records shall be accepted as accurate.

12.1.5 If the Contractor examines and disagrees the records, and/ or does not sign them as agreed, thentheContractor shall give notice to the Architect of the respects in which the records are asserted tobe inaccurate. After receiving this notice, the Architect shall review the records and either confirmor vary them and certify the paymentofthe undisputed part. If the Contractor does not so give notice to the Architect within 14 days after being requested to examine the records, they shall beaccepted as accurate.

12.2 Method of Measurement

Except as otherwise stated in the Contract:

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 otherapplicable Schedules.

12.3 Evaluation

12.3.1 Except as otherwise stated in the Contract, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of workd one by evaluating each item ofwork, 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.

12.3.2 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 Contractor, if there is no such item, specified for similar work.

12.3.3 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.

12.3.4 However, for a new item of work, a new rate or price shall be appropriate for such item of work if:

a) The work is instructed under Clause13 [Variations and Adjustments],
b) no rate or price is specified in the Contract for this item, and
c) no specified rate or price is appropriate because the item of work is not of similar character,or is not executed under similar conditions, as any item in the Contract.

12.3.5 Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no ratesorprices are relevant for the new item of work, it shall be derived from the reasonable Cost of executingsuch work, prevailing market rates, together with profit, taking account of any other relevant matters.

12.3.6 Until such time as an appropriate rate or price is agreed or determined, the Architect shall determineaprovisional rate or price for the purposes of Interim Payment Certificates as soon as the concernedworkcommences.

12.3.7 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), paymentvaluation certificates and variation orders on omissions and additions valued based on rates in theBillof Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage.The percentage already worked out during tender evaluation is worked out as follows: *(correctedtender price– tender price)/ tender price X 100*.

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, wouldhavebeen deemed to be covered by a sum forming part of the Accepted ContractAmount;

b) The omission of the work will result (or has resulted) in this sum not forming part of the ContractPrice; and

c) this cost is not deemed to be included in the evaluation of any substituted work; then the Contractor shall give notice to the Architect accordingly, with supporting particulars. Upon receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13. VARIATIONS AND ADJUSTMENTS

131 Right to Vary

13.1.1 Variations may be initiated by the Architect at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. No Variation instructed by the Architect under this Clause shall in any way vitiate or in validate the Contract.

13.1.2 The Contractor shall execute and be bound by each Variation, unless the Contractor promptly givesnotice to the Architect stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in thesequence or progress of the Works. Upon receiving this notice, the Architect shall cancel, confirm orvary the instruction.

13.1.3 Each Variation may include:

a) changes to the quantities of any item of work included in the Contract (however, suchchanges do not necessarily constitute a Variation),

b) changes to the quality and otherc haracteristics 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, includingany 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.

13.1.4 The Contractor shall not make any alteration and/or modification of the Permanent Works, unlessand until the Architect instructs after obtaining approval of the Procuring Entity.

132. Variation Order Procedure

1321 Priortoany Variation Order under Sub-Clause 13.1.4 the Architect shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Engineer:

a) A description of work, if any, to be performed and a programme for its execution, and

b) the Contractor's proposals for any necessary modifications to the Programme according toSub-Clause 8.3 or to any of the Contractor's obligations under the Contract, and

c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Architect shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out. If the Architect decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement.

If the Architect and the Contractor are unable to agree the adjustment of the Contract Price, theprovisions of Sub-Clause 13.2.2 shall apply.

1322 Disagreement on Adjustment of the Contract Price

If the Contractor and the Architecture unable to agree on the adjustment of the Contract Price, the

adjustment shall be determined in accordance with the rates specified in the Bills of Quantities or Schedule of Daywork Prices. If the rates contained in the Bills of Quantities or Dayworks Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing in the Dayworks Prices. Where rates are not contained in the said Prices, the amount shall be such as is in all the circumstances reasonable, reflecting a market price. Dueaccount shall be taken of any over-or under-recovery of overheads by the Contractor in consequenceof the variation. The Contractor shall also be entitled to be paid:

a) The cost of any partial execution of the Work srendered useless by any such variation,
b) Thecostof making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation,
c) any additional costs incurred by the Contractor by the disruption of the progress of the Worksas detailed in the Programme, and
d) the net effect of the Contractor's financec osts, including interest, caused by the variation.

The Architect shall on this basis determine the rates or prices to enable on-account payment to beincluded in certificates of payment.

13.2.3 Contractor to Proceed

On receipt of a Variation Order, the Contractor shall forth with proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause31.3.

13.3 Value Engineering

13.3.1 TheContractor may, at anytime, submit to the Architect written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Procuring Entity of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the ProcuringEntity of the completed Works, or
(iv) otherwise be of benefit to the Procuring Entity.

13.3.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed inSub-Clause 13.3 [Variation Procedure].

13.2.3 If a proposal, which is approved by the Engineer, includes a change in the design of part of thePermanent Works, then unless otherwise agreed by both Parties:

a) The Contractor shall design this part,
b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and
c) if this change results in a reduction in the contract value of this part, the Architect shall proceedin accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall behalf (50%) of the difference between the following amounts:
    i) such reduction in contract value, resulting from the change, excluding adjustments under Sub- Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes inCost], and
    ii) the reduction (if any) in the value to the Procuring Entity of the varied works, takingaccount of any improvement in quality, anticipated life or operational efficiencies.

13.3.4 However, if the amount established in item 13.2.3 (c) (i) is less than amount established in item 13.2.3 (c (ii), there shall not be a fee. However, if the if the amount established in item 13.2.3 (c) (i) is morethanamount established in item 13.2.3 (c (ii), it shall result in a price variation to the Procuring Entity.

13.4 Variation Procedure for Value Engineering proposal

13.4.1 If the Architect requests a proposal, prior to instructing a Variation, the Contractor shall respond in writinga s soon as practicable, either by giving reasons why he cannot comply (if this is the case) orbysubmitting:

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.

13.4.2 The Architect shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [ValueProject Engineering] or otherwise), respond with approval, disapproval or comments. The Contractorshall not delay any work whilst a waiting a response.

13.4.3 Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Architect to the Contractor, who shall acknowledge receipt.

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

13.5 Paymentin 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 oftheapplicable 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.

13.6 Provisional Sums

13.6.1 Each Provisional Sum shall only be used, in whole or inpart, in accordance with the Architect instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractorshall include onlysuch amounts, for the work, supplies or services to which the Provisional Sum relates, asthe Architect shall have instructed. For each Provisional Sum, the Architect May instruct:

a) Work to be executed (including Plant, Materialso r services to be supplied) by the Contractorand 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 beincluded 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 amountsbyapplying the relevant percentage rate (if any) stated in the appropriate Schedule. If thereis nosuch rate, the percentage rate stated in the Special Conditions of Contract shall be applied.

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

13.7 Dayworks

13.7.1 For work of a minor or incidental nature, the Architect may instruct that a Variation shall be executedon a daywork basis. The work shall then be valued in accordance with the Daywork Schedule includedin the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

13.7.2 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 anyGoods.

13.7.3 Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractorshall delive reach day to the Architect accurate statements induplicate which shall includethe 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.

13.7.4 One copy of each statement will, if correct, or when agreed, be signed by the Architect and returnedtothe 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].

13.8 Adjustments for Changes in Legislation

13.8.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from achange in the Laws of Kenya (including the introduction of new Laws and the repeal or modificationofexisting Laws) or in the judicial or official governmental interpretation of such Laws, made afterthe Base Date, which affect the Contractor in the performance of obligations under the Contract.

13.8.2 If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a resultofthese changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall givenotice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

13.8.4 Not withstanding 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].

13.9 Adjustments for Changes in Cost

13.9.1 In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local andforeign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clauseshall not apply.

13.9.2 If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted ContractAmount shall be deemed to have included a mounts to cover the contingency of other rises and fallsincosts.

13.9.3 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 tobeapplied to work valued on the basis of Cost or current prices. The formulae shall be of the followinggeneral type:

Price Adjustment Formula

Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC.** If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

P = A + B Im/Io
where:

P is the adjustment factor for the portion of the Contract Price payable.
A and **B** a recoefficients **specified in the SCC,** representing then on adjustable and adjustable portions, respectively, of the Contract Price payable and
I m is the index prevailing at the end of the month being invoiced and **Io**c is the index prevailing 30 days before Bid opening for inputs payable.

NOTE: The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

13.9.4 The cost indices or reference prices stated in the table of adjustment data shall be used. If their sourceis indoubt, itshall be determined by the Engineer. Forth is purpose, reference shall be made to thevaluesof the indices at stated dates (quoted in the fourth and fifth columns respectively of the table)for thepurposes of clarification of the source; although these dates (and thus these values) may notcorrespondto the base cost indices.

13.9.5 Incases 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 BankofKenya, of this relevant currency on the above date for which the index is required to be applicable.

13.9.6 Until such time as each current cost index is available, the Architect shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

13.9.7 If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices there after shall be made using either (i) each index or price applicableo n the date 49 days prior totheexpiry of the Time for Completion of the Works, or (ii) the current index or price, whichever ismorefavorable to the Procuring Entity.

13.9.8 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment datashallonly be adjusted if they have been rendered unreasonable, unbalanced or in applicable, as aresult ofVariations.

14 CONTRACT PRICE AND PAYMENT

141 The Contract Price

14.1.1 Unless otherwise stated in the Special Conditions:

a) The value of the payment certificate 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 Clause12 [Measurement and Evaluation]; and

d) the Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Architect may take accountofthe break down when preparing Payment Certificates but shall not be bound by it.

14.1.2 Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts there for, imported by the Contractor for the sole purpose of executing the Contract shall notbe exempt from the payment of import duties and taxes upon importation.

14.2 Advance Payment

14.2.1 The Procuring Entity shall make an advance payment, as an interest-free loan for mobilization and cashflow support, when the Contractor submits a guarantee in accordance with this Clause. The totaladvance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Special Conditions of Contract.

14.2.2 Unless and until the Procuring Entity receives this guarantee, or if the total advance payment is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

14.2.3 The Architect shall deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub- Clause 14.3 [Application for Interim Payment Certificates]) and after the Procuring Entity receives (i)the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guaranteein amounts and currencies equal to the a dvance payment. This guarantee shall be issued by a reputable bank or financial institutions elected by the Contractor and shall be in the form annexed to the SpecialConditions or in another form approved by the Procuring Entity.

14.2.4 The Contractor shall ensure that the guarantee is valid and enforceable until the advance paymenthasbeen 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 expirydate, and theadvance payment has not been repaid by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

14.2.5 Unless stated otherwise in the Special Conditions of Contract, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Architect in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:

a) Deductions shall commence in the next interim Payment Certificate following that in which thetotal of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and

b) deductions shall be made at the amortization rate stated in the Special Conditions of Contractofthe 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.

14.2.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for theWorks or prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as thec ase may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Procuring Entity], except for Sub-Clause 14.2.7 [Procuring Entity's Entitlement to Termination for Convenience], payable by the Contractor to the Procuring Entity.

14.3 Application for Interim Payment Certificates

14.3.1 The Contractor shall submit a Statement (in number of copies indicated in the Special Conditions of Contract) to the Architect after the end of each month, in aform approved by the Engineer, showingindetail the amounts to which the Contractor considers itself to be entitled, together with supporting documents which shall include there porton the progress during this month in accordance with Sub-Clause4.21 [Progress Reports].

14.3.2 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 producedupto 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 Special Conditions of Contract to the total of the above amounts, until the amountso retained by the Procuring Entity reaches the limit of Retention Money (if any) stated in the Special Conditions of Contract;

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 Contractor 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

14.4.1 I fthe Contract includes a schedule of payments specifying the instalments in which the Contract Price willbe paid, then unless otherwise stated in this schedule:

a) The instalments quoted in this schedule of payments shall be the estimated contract values forthepurposes 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 theWorks, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

14.4.2 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 besubmitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

14.5.1 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 incorporationin the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials isincludedas part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Applicationfor Interim Payment Certificates].

14.5.2 If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, thisSub-Clause shall not apply.

14.5.3 The Architect shall determine and certify each addition if the following conditions a resatisfied:

a) The Contractor has:
   i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
   (ii) submitted statement of the Cost of acquiring and delivering the Plant and Materials tothe Site, supported by satisfactory evidence;

   and either:

b) the relevant Plant and Materials:
   i) are those listed in the Schedules for payment when shipped,
   ii) have been shipped to Kenya, enroute to the Site, in accordance with the Contract; and
   iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Architect together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form andissued by an entity approved by the Procuring Entity in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the formreferred to in Sub-Clause14.2 [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.

14.5.4 The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Architect determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

14.5.5 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 forInterim 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 additionalamount for the relevant Plant and Materials.

14.6 Issue of Interim Payment Certi**fi**cates

14.6.1 No amount will be certified or paid until the Procuring Entity has received and approved the Performance Security. Thereafter, the Architect shall, within 30 days after receiving a Statement and supporting documents, deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate which shall state the amount which the Architect fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Architect on the Statemen tif any.

14.6.2 However, prior to issuing the Taking-Over Certificate for the Works, the Architect shall not be boundto issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Special Conditions of Contract. In this event, the Architect shall give notice to the Contractor accordingly.

14.6.3 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 maybe withheld until the work or obligation has been performed.

4.6.4 The Architect may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Architect acceptance, approval, consent or satisfaction.

14.7 Payment

14.7.1 The Procuring Entity shall pay to the Contractor:

a) The advance payment shall be paid within 60 days after signing of the contract by both partiesorwithin 60 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], which ever is later;

b) The amount certified in each Interim Payment Certificate within 60 days after the Architect IssuesInterim Payment Certificate; and

c) the amount certified in the Final Payment Certificate within 60 days after the Procuring Entity Issues Interim Payment Certificate; or after determination of any disputed amount shown in the FinalStatement in accordance with Sub-Clause 16.2 [Terminationby Contractor].

14.7.2 Payment of the amount due in each currency shall be made into the bank account, nominated by theContractor, in the payment country (forth is currency) specified in the Contract.

14.8 Delayed Payment

14.8.1 If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges (simple interest) monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b) ofthedate onwhich any Interim Payment Certificate isissued.

14.8.2 These financing charges shall be calculated at the annual rate of three percentage points above the mean rate of the Central Bank in Kenya of the currency of payment, or if not available, the inter bank offered rate, and shall be paid in such currency.

14.8.3 The Contractor shall be entitled to this payment without formal notice and certification, and withoutprejudice to any other right or remedy.

14.9 Payment of Retention Money

14.9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Moneyshall be certified by the Architect for payment to the Contractor. If a Taking-Over Certificate is issuedfora Section or part of the Works, a proportion of the Retention Money shall be certified and paid.Thisproportion shall behalf (50%) of the proportion calculated by dividing the estimated contract valueof the Section or part, by the estimated final Contract Price.

14.9.2 Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balanceofthe Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking-OverCertificate was issued for a Section, a proportion of the second half of the Retention Money shall becertified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall behalf (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

14.9.3 However, if any work remains to be executed under Clause 11 [Defects Liability], the Architects hallbeentitled to withhold certification of the estimated cost of this work until it has been executed.

14.9.4 When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause13.8 [Adjustments for Changes in Cost].

14.9.5 Unless otherwise stated in the Special Conditions, when the Taking-Over Certificate has been issuedforthe Works and the first half of the Retention Money has been certified for payment by the Engineer,the Contractor shall be entitled to substitute a Retention Money Security guarantee, in the form annexed to the Special Conditions or in another form approved by the Procuring Entity and issued by a reputable bank or financial institution selected by the Contractor, for the second half ofthe Retention Money.

14.9.6 The Procuring Entity shall return the Retention Money Security guarantee to the Contractor within14 days after receiving a copy of the Completion Certificate.

1410 Statement at Completion

14.10.1 Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submitto the Architect three copies of a Statement at completion with supporting documents, in accordancewith 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 theTaking-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 himunder the Contract. Estimated amounts shall be shown separately in this Statement at completion.

14.10.2 The Architect shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

1411 Application for Final Payment Certi**fi**cate

14.11.1 Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a formapproved 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 Contractorotherwise.

14.11.2 If the Architect disagrees with or cannot verify any part of the draft final statement, the Contractorshall submit such further information as the Architect may reasonably require within 30 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Architect the final statement as agreed. This agreedstatement is referred to in these Conditions as the "Final Statement".

14.11.3 However, if, following discussions between the Architect and the Contractor and any changes to thedraft final statement which are agreed, it be comes evident that a dispute exists, the Architectshall deliver to the Procuring Entity (with a copy to the Contractor) an Interim Payment Certificatefor theagreed parts of the draft final statement. Thereafter, if the dispute is finally resolved underSub-Clause 20.4 [Obtaining Dispute Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Procuring Entity (with a copy to the Engineer) a Final Statement.

1412 Discharge

When submitting the Final Statement, the Contractor shall submit a discharge which confirms thatthetotal of the Final Statement represents full and final settlement of all moneys due to the Contractorunder or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the out standing balanceof this total, in which event the discharge shall be effective on such date.

14.13 Issue of Final Payment Certificate

14.13.1 Within 30days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall deliver, to the Procuring Entity and to the Contractor, the Final Payment Certificate which shall state:

a) The amount which he fairly determines is finally due, and
b) After giving credit to the Procuring Entity for all amounts previously paid by the Procuring Entityand for all sums to which the Procuring Entity is entitled, the balance (if any) due from the Procuring Entity to the Contractor or from the Contractor to the Procuring Entity, as the case may be.

14.13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall request theContractor to do so. If the Contractor fails to submit an application within a period of 30 days, the Architect shall issue the Final Payment Certificate for such amount as he fairly determinesto be due.

14.14 Cessation of Procuring Entity's Liability

14.14.1 The Procuring Entity 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 theWorks) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

14.14.2 However, this Sub-Clause shall not limit the Procuring Entity's liability under his in demnification obligations, or the Procuring Entity's liability in any case of fraud, deliberate default or reckless misconduct by the Procuring Entity.

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) otherpaymentsanddeductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a) (i) above;
b) payment of the damages specified in the Special Conditions of Contract, shall be made in thecurrencies and proportions specified in the Schedule of Payment Currencies;
c) other payments to the Procuring Entity by the Contractor shall be made in the currency in which the sum was expended by the Procuring Entity, or in such currency as may be agreed byboth Parties;
d) if any amount payable by the Contractor to the Procuring Entity in a particular currency exceedsthe sum payable by the Procuring Entity to the Contractor in that currency, the Procuring Entitymay 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 Kenya.

15. TERMINATION BY PROCURING ENTITY

15.1 Notice to correct any defects or failures

If the Contractor fails to carry out any obligation under the Contract, the Architect may by noticerequire the Contractor to make good the failure and to remedy it within 30 days.

15.2 Termination by Procuring Entity

15.2.1 The Procuring Entity shall be entitled to terminate the Contract if the Contractor breaches thecontract based on following circumstances which shall include but not limited to:

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 30 days after receiving it,

d) subcontracts the major part or whole of the Works or assigns the Contract without theconsent of the Procuring Entity,

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 theseacts 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 induce mentor reward:

i) for doing or for bearing to do any action in relation to the Contract, or

ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract,or

iii) if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such induce mentor reward as is described in this sub-paragraph(f). However, lawful inducements and rewards to Contractor's Personnel shall not entitletermination, or

g) If the contract or repeatedly fails to remedy delivers defective work,

h) based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Appendix B to these General Conditions, incompeting for or in executing theContract.

15.2.2 In any of these events or circumstances, the Procuring Entity may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case ofsub-paragraph (e) or (f) or (g) or (h), the Procuring Entity may by notice terminate the Contract immediately.

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

15.2.4 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 usehis 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 safetyof the Works.

15.2.5 After termination, the Procuring Entity may complete the Works and/ or arrange for any other entities to do so. The Procuring Entity and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

15.2.6 The Procuring Entity 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 Procuring Entity, these items may be sold by the Procuring Entity in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation at Date of Termination

Assoon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by ProcuringEntity] has taken effect, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents,and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by Procuring Entity] has takeneffect, the Procuring Entity may:

a) Proceed in accordance with Sub-Clause 2.5 [Procurin Entity's Claims],
b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Procuring Entity, have been established, and/ or

c) recover from the Contractor any losses and damages incurred by the Procuring Entity and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damagesandextra costs, the Procuring Entity shall pay any balance to the Contractor.

15.5 Procuring Entity's Entitlement to Termination for Convenience

The Procuring Entity shall be entitled to terminate the Contract, at any time at the Procuring Entity's convenience, by giving notice of such termination to the Contractor. The termination shall take effect30 days after the later of the dates on which the Contractor receives this notice or the ProcuringEntityreturns the Performance Security. The Procuring Entity shall not terminate the Contract underthis Sub-Clausein order to execute the Works itself or to arrange for the Works to be executed byanother 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 withSub-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 Fraud and Corruption

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and its prevailing sanctions.

15.7 Corrupt gifts and payments of commission

15.7.1 The Contractor shall not;

a) Offer or give or agree to give to any person in the service of the Procuring Entity any gift or consideration of any kind as an inducement or reward for doing or for bearing to door for having done or for borne to do any act in relation to the obtaining or execution of this or anyother Contract for the Procuring Entity or for showing or for bearing to show favor or disfavorto any person in relation to this or any other contract for the Procuring Entity.
b) Enter into this or any other contract with the Procuring Entity in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment there of have been disclosed in writing to the Procuring Entity.

15.7.2 Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the

provisions of the Public Procurement and Asset Disposal Act (2015) and the Anti-Corruption and Economic Crimes Act (2003) of the Laws of Kenya.

16. SUSPENSION AND TERMINATION BY CONTRACTOR

16.1 Contractor's Entitlement to Suspend Work

16.1.1 If the Architect fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or Sub-Clause 14.7 [Payment],or not receiving instructions that would enable the contractor to proceed with the works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to the Procuring Entity, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may bea nd as described in the notice.

16.1.2 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 [Terminationby Contractor].

16.1.3 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.

16.1.4 If the Contractor suffers delay and/ori ncurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Architect and shallbe 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.

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

16.3 Termination by Contractor

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

a) the Architect fails, within 60 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
b) the Contractor does not receive the amount due under an Interim Payment Certificate within 90 days after the expiry of the time stated in Sub-Clause1 4.7 [Payment] within which paymentisto be made (except for deductions in accordance with Sub-Clause 2.5 [Procuring Entity's Claims]),
c) the Procuring Entity substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
d) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11[Prolonged Suspension], or
e) the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
f) the Contractor does not receive the Architect instruction recording the agreement of both Parties onthe fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

16.3.2 In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Procuring Entity, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

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

16.4 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Procuring Entity's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

a) cease all further work, except for such work as may have been instructed by the Architect forthe 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 Contractorhas received payment, and
c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.5 PaymentonTermination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect,the Procuring Entity shall promptly:

a) Return the Performance Security to the Contractor,
b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment andRelease], and
c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a resultofthis termination.

17. RISK AND RESPONSIBILITY

17.1 Indemnities

17.1.1 The Contractor shall indemnify and hold harmless the Procuring Entity, the Procuring Entity's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

a) Bodily injury, sickness, disease or death, of any person what so ever arising outo for in the course of or by reason of the Contractor's design (if any), the execution and completion of theWorks and the remedying of any defects, unless attributable to any negligence, willful actor breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of theirrespective 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 andtothe extent that any such damage or loss is attributable to any negligence, willful act or breach of theContract by the Procuring Entity, the Procuring Entity's Personnel, their respective agents, or anyonedirectly or indirectly employed by any of them.

17.1.2 The Procuring Entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal feesand expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and (2) the matters for which liability may be excludedfrom insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property], unless and to the extent that any such damageorloss is attributable to any negligence, willful actor breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

17.2 Contractor's Care of the Works

17.2.1 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 careof the Works shall pass to the Procuring Entity. If a Taking-Over Certificate is issued (or is sodeemedto be issued) for any Section or part of the Works, responsibility for the care of the Sectionor part shallthen pass to the Procuring Entity.

17.2.2 After responsibility has accordingly passed to the Procuring Entity, the Contractor shall takeresponsibility 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.

17.2.3 If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractorisresponsiblefor their care, from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost,so that the Works, Goods and Contractor's Documents conform with the Contract.

17.2.4 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 Procuring Entity's Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Procuring Entity's Risks] below, in so far asthey directly affect the execution of the Works in Kenya, are:

a) War hostilities (whether war be declared or not),
b) rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's Personnel,
c) explosive materials, ionizing gradiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such explosives, radiation or radio-activity,
d) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,
e) use or occupation by the Procuring Entity of any part of the Permanent Works, except as maybe specified in the Contract,
f) design of any part of the Works by the Procuring Entity's Personnel or by others for whom theProcuring Entity is responsible, and
g) any operation of the forces of nature which is Unforeseeable or against which an experiencedcontractor could not reasonably have been expected to have taken adequate preventive precautions.

17.4 Consequences of Procuring Entity's Risks

17.4.1 If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage totheWorks, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Architectand shall rectify this loss or damage to the extent required by the Engineer.

17.4.2 If the Contractor suffers delay and/ or incurs Cost from rectifying this loss or damage, the Contractor shallgive a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

(a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of TimeforCompletion], and
(b) paymentofany such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs(e)and (g) of Sub-Clause 17.3 [Procuring Entity's Risks], Accrued Costs shall be payable.

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

17.5 Intellectual and Industrial Property Rights

17.5.1 In this Sub-Clause, “infringement” shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and “claim” shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.

17.5.2 Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub- Clause.

17.5.3 The Procuring Entity shall indemnify and hold the Contractor harmless against and from any claimalleging an infringement which is or was:

a) An un avoidable result of the Contractor's compliance with the Contract, or
b) A result of any Works be ingused by the Procuring Entity:
   i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract,or
   ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

17.5.4 The Contractor shall indemnify and hold the Procuring Entity harmless again stand 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.

17.5.5 IfaPartyisentitledtobeindemnified 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 mightbeprejudicial 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.

17.5.6 For operation and maintenance of any plan to requipment installed, the contractor shall grant a non-exclusive and non-transferable license to the Procuring Entity under the patent, utility models ,or other intellectual rights owned by the contractor or a third party from whom the contract or hasreceived the rights to grant sub-licenses and shall also grant to the Procuring Entity a non-exclusiveandnon-transferable rights (without the rights to sub-license) to use the know how and other technical information disclosed to the contract or under the contract. Nothing contained here-in shall be construed as transferring ownership of any patent, utility model, trademark, design, copyright, know-how or other intellectual rights from the contractor or any other third party to the ProcuringEntity.

17.6 Limitation of Liability

17.6.1 Neither Party shall be liable to the other Party for loss of use of anyW orks, loss of profit, loss of anycontractor for any in director consequential loss or damage which may be suffered by the other Partyin 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 afterTermination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b)[Consequences of Procuring Entity's Risks] and Sub-Clause 17.5 [Intellectual and IndustrialProperty Rights].

17.6.2 The total liability of the Contractor to the Procuring Entity, under or in connection with the Contractother than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Procuring Entity's Equipment and Free-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectualand Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less orgreater than one) to the Accepted Contract Amount, as stated in the Special Conditions ofContract,or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.

17.6.3 This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconductbythe defaulting Party.

17.7 Use of Procuring Entity's Accommodation/Facilities

17.7.1 The Contractor shall take full responsibility for the care of the Procuring Entity provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

17.7.2 If any loss or damage happens to any of the above items while the Contractor is responsible for their carearising from any cause whatsoever other than those for which the Procuring Entity 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 Requirements for Insurances

18.1.1 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.

18.1.2 Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Procuring Entity. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

18.1.3 Wherever the Procuring Entity is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Partiesbefore the date of the Letter of Acceptance. This agreement of terms shall take precedenceover the provisions of this Clause.

18.1.4 If a policy is required to indemnify joint insured, the cover shall apply separately to each insured asthough 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 Contractorshall act under the policy on behalf of these additional joint insured except that the Procuring Entityshall act for Procuring Entity's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) theinsuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

18.1.5 Each policy insuring against loss or damage shall provide for payments to be made in the currenciesrequired to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

18.1.6 The relevant insuring Party shall, within the respective periods stated in the Special Conditions of Contract (calculated from the Commencement Date), submit to the other Party:

a) Evidence that the insurances described in this Clause have been affected, and
b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damageto Property].

18.1.7 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.

18.1.8 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuringParty 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.

18.1.9 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 at tempts to make) any alteration, the Party firstnotified by the insurer shall promptly give notice to the other Party.

18.1.10 If the insuring Party fails to effect and keep in force any of the insurances it is required to effect andmaintain under the Contractor 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.

18.1.11 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring Entity, under the other terms of the Contractor otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Procuring Entity.

18.1.12 Procuring Entity in accordance with these obligations, liabilitieso r 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 noreffectsinsurance for the coverage relevant to this default, any moneys which should have been recoverableunder this insurance shall be paid by the insuring Party.

18.1.13 Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Procuring Entity's Claims]or Sub-Clause 20.1 [Contractor's Claims], as applicable.

18.1.14 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

18.2.1 The insuring Party shall insure the Works, Plant, Material sand Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professionalfees 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.

18.2.2 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]).

18.2.3 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.

18.2.4 Unless otherwise stated in the Special Conditions, insurances under this Sub-Clause:

a) Shal lbe 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 fromthe insurers, payments being held or allocated to the Party actually bearing the costs of rectifyingtheloss or damage,

c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks],

d) shall also cover, to the extent specifically required in the tendering documents of the Contract,loss or damage to a part of the Works which is attributable to the use or occupation by the Procuring Entity of another part of the Works, and loss or damage from the risks listed in sub- paragraphs (c), (g) and (h)of Sub-Clause 17.3 [Procuring Entity's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of notmore than the amount stated in the Special Conditions of Contract (if an amount is notso stated,t his 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 adirectresult of this defective condition and not as described in sub-paragraph (ii) below),

   ii) apart of the Works which is lost or damaged inorder to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materialsorworkmanship,

   iii) apart of the Works which has been taken over by the Procuring Entity, except to theextent that the Contractor is liable for the loss or damage, and

   iv) Goods while they are not in Kenya, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

18.2.5 If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceasestobe available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Procuring Entity, with supporting particulars. The Procuring Entity shall then (i) be entitled

subject to Sub-Clause 2.5 [Procuring Entity's Claims] to payment of an amount equivalent to such commercially reasonable terms asthe 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 theomission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

18.3.1 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'sperformance of the Contract and occurring before the issue of the Performance Certificate.

18.3.2 This insurance shall be for a limit per occurrence of not less than the amount stated in the Special Conditions of Contract, with no limit on the number of occurrences. If an amount is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

18.3.3 Unless otherwise stated in the Special 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 Procuring Entity's property(except things insured under Sub-Clause 18.2) arising out of the Contractor's performance oftheContract, and
d) may however exclude liability to the extent that it arises from:
   i) the Procuring Entity's right to have the Permanent Works executed on, over, under, in or
   ii) through any land, and to occupy this land for the Permanent Works,
   iii) damage which is an unavoidable result of the Contractor's obligations to execute the
   iv) Works and remedy any defects, and
   v) a cause listed in Sub-Clause 17.3 [Procuring Entity's Risks], except to the extent that coveris available at commercially reasonable terms.

18.4 Insurance for Contractor's Personnel

18.4.1 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.

18.4.2 The insurance shall cover the Procuring Entity and the Architect against liability for claims, damages, lossesand expenses (including legal fees and expenses) arising from injury, sickness, disease or deathof anyperson employed by the Contractoror any othe rof the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect ofthe Procuring Entity or of the Procuring Entity's Personnel.

18.4.3 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 beeffected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. FORCE MAJEURE

19.1 Definition of Force Majeure

19.1.1 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 over come, and
d) which is not substantially attributable to the other Party.

19.1.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, s olong as conditions (a) to (d) above are satisfied:

a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
c) riot, commotion, disorder, strike or lock out by persons other than the Contractor's Personnel,
d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity,except as maybeattributabletotheContractor'suseofsuchmunitions, explosives, radiation or radio-activity, and
e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

19.2.1 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 constitutingtheForce Majeure and shall specify the obligations, the performance of which is or will be prevented.Thenotice 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.

19.2.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

19.2.3 Not withstanding any other provision of this Clause, Force Majeure shall not apply to obligations ofeither Party to make payments to the other Party under the Contract.

19.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performanceofthe Contract as a result of Force Majeure. A Party shall give notice to the other Party when it ceasesto be affected by the Force Majeure.

19.4 Consequences of Force Majeure

19.4.1 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], andsuffers delay and/ or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in Kenya, paymentofany such Cost, including the costs of rectifying or replacing the Works and/or Goods damagedordestroyed by Force Majeure, to the extent they are not indemnified through the insurance policyreferred to in Sub- Clause18.2 [Insurance for Works and Contractor's Equipment].

19.4.2 After receiving this notice, the Architect shall proceed in a ccordance 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 forcemajeure on terms additional to or broader than those specified in this Clause, such additionalor broader force majeure events or circumstances shall not excuse the Contractor's non-performance orentitle him to relief under this Clause.

19.6 Optional Termination, Payment and Release

19.6.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84days 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].

19.6.2 Upon such termination, the Architect shall determine the value of the work done and issue a

Payment Certificate which shall include:

a) theamountspayableforanyworkcarriedoutforwhichapriceisstatedintheContract;

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 shallbecome the property of (and be at the risk of) the Procuring Entity when paid for by the Procuring Entity, and the Contractor shall place the same at the Procuring Entity'sdisposal;

c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred bythe 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 nogreater cost); and

e) the Cost of repatriation of the Contractor's staff and lab or employed wholly in connection withthe Works at the date of termination.

19.7 Release from Performance

Not withstanding any other provision of this Clause, if any event or circumstance outside the controlof 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 Partyofsucheventorcircumstance:

a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

b) The sum payable by the Procuring Entity to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

20. SETTLEMENT OF CLAIMS AND DISPUTES

20.1 Contractor's Claims

20.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 daysafter theContractor became aware, or should have become aware, of the event or circumstance.

20.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

20.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

20.1.4 TheContractorshallkeepsuch contemporary records as may be necessary to substantiate any claim, either on the Site or at an other location acceptable to the Engineer. Without admitting the ProcuringEntity's liability, the Architect may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/ or instruct the Contractor to keep further contemporary records. The Contractorshall permit the Architect to inspect all these records and shall (if instructed) submit copies to the Engineer.

20.1.5 Within 42days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Architect fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of timeand/ or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

a) This fully detailed claim shall be considered as interim;

b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/ or amount claimed, and such further particulars as the Architect may reasonably

require; and

c) The Contractor shall send a final claim within 30 days after the end of the effects resulting fromtheeventor circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

20.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Architect and approved by the Contractor, the Architect shall respond with approval, or with disapproval and detailed comments.He may also request any necessary further particulars but shall nevertheless give his response on theprinciples of the claim within the above defined time period.

20.1.7 Within the above defined period of 42 days, the Architect shall proceed in accordance with Sub- Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

20.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract.Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled topayment for such part of the claim as he has been able to substantiate.

20.1.9 If the Architect does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordance with Clause 20.3.

20.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to anyclaim, any extension of time and/ or additional payment shall take account of the extent (if any) towhich the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 20.3.

20.2 Procuring Entity's Claims

20.2.1 If the Procuring Entity considers itself to be entitled to any payment under any Clause of these Conditionsor otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Procuring Entity or the Architect shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Procuring Entity's Equipment and Free-Issue Materials], orforother services requested by the Contractor.

20.2.2 The notice shall be given as soon as practicable and no longer than 30 days afte rthe Procuring Entitybecame aware, or should have become aware, of the event or circumstances giving rise to the claim. Anotice relating to any extension of the Defects Notification Period shall be given before the expiryofsuch period.

20.2.3 The particulars shall specify the Clause or other basis of the claim and shall include substantiation oftheamount and/or extension to which the Procuring Entity considers itself to be entitled in connection with the Contract. The Architect shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Procuring Entity is entitledtobe 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].

20.2.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. The Procuring Entity shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

20.3 Amicable Settlement

Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party

giving a notice of a claim in accordance with Sub-Clause 20.1 above should move to commence arbitrationa fter 60 days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

20.4 Matters that may be referred to arbitration

Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contractby either party:

a) Whether or not the issue of an instruction by the Architect is empowered by these Conditions.
b) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
c) Any dispute arising in respect risks arising from matters referred to in Clause 17.3 and Clause 19.
e) All other matters shall only be referred to arbitration after the completion or alleged completionofthe Works or termination or alleged termination of the Contract, unless the Procuring Entityandthe Contractor agree otherwise in writing.

20.5 Arbitration

20.5.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settledamicably in accordance with Sub-Clause 20.3 shall be finally settled by arbitration.

20.5.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim ordispute has not been given by the applying party within ninety days of the occurrence or discoveryofthe matter or issue giving rise to the dispute.

20.5.3 Not withstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall notcommence unless an attempt has in the first instance been made by the parties to settle suchclaim ordispute amicably with or without the assistance of third parties. Proof of such attempt shallbe required.

20.5.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and a ward any sums which ought to have been the subject of or included in any certificate.

20.5.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision require mentor notice had been given.

20.5.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Architect from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

20.5.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

20.57 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Architect shall not be altered by reason of any arbitration being conducted during the progress of the Works.

20.58 Thetermsofthere muneration of each or all the members of Arbitration shall be mutually agreed uponby the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

20.6 Arbitration with National Contractors

20.6.1 If the Contractis with national contractors, arbitration proceedings will be conducted in accordancewith the Arbitration Laws ofKenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to

concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on therequest of the applying party, by the Chairman or Vice Chairman of any of the following professionalinstitutions;

i) Architectural Association of Kenya
ii) Institute of Quantity Surveyors of Kenya
iii) Association of Consulting Engineers of Kenya
iv) Chartered Institute of Arbitrators (Kenya Branch)
v) Institution of Engineers of Kenya

20.6.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

20.7 Arbitration with Foreign Contractors

20.7.1 Arbitration with foreign contractors shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC RulesofArbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

20.7.2 The place of arbitration shall be a location specified in the SCC; and the arbitration shall be conductedinthe language for communications defined in Sub-Clause1.4 [Law and Language].

20.8 Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

20.9 Failureto Comply with Arbitrator's Decision

20.9.1 The award of such Arbitrator shall be final and binding up on the parties.

20.9.2 In the even tthat a Party fails to comply with a final and binding Arbitrator's decision, then the otherParty may, without prejudice to any other rights it may have, refer the matter to a competent courtoflaw.

20.10 Contract operations to continue

Notwithstanding any reference to arbitration herein,

1.1.1 the parties shall continue to perform their respective obligations under the Contract unlessthey otherwise agree; and

1.1.2 the Procuring Entity shall pay the Contractor any monies due the Contractor.

Section IX - Special Conditions of Contract

The following Special Conditions shall supplement the GCC. Whenever there is a conflict, the provisionshere in shall prevail over those in the GCC.

Conditions	Sub-Clause	Data
Part A - Contract Data		
Procuring Entity's name and address	Heading	BUTULA NG -CDF P.O BOX 53 -50405 .Butula
Name and Reference No. of the Contract	Heading and 1.1	PROPOSED RENOVATIONS TO COMPLETION OF 4 CLASSROOMS AT EMAGOMBE PRIMARY SCHOOL IN BUTULA IN BUTULA **TENDER NO: NG-CDF/BTL/01/R4NOCL/EPS/2026-2027**
Engineers Name and address	Heading and 3.1.1	Department Public Works- P. O. Box 470-50400, County Government of Busia
Contractor's Representative's Name	4.3.1	*[Contractor to insert insert]*
Key Personnel names	16.9.1	[Contractor to insert names] 1. Project Manager…… 2. Site Agent…… …… 3. Foreman……
Time for Completion	1.1.	16 Weeks from Commencement date
Defects Notification Period	1.1	Immediately
Sections	1.1	Not Applicable
Electronic transmission systems	1.3	
Time for the Parties enteringinto a Contract Agreement	1.6	Within 30 days after intention to award
Commencement Date	8.1.1	Within 14 days after order to commence
Time for access to the Site	2.1.1	Not later than 14 days after Commencement Date
Architect Duties and Authority	3.1.6 (b) (ii)	Variations resulting in an increase above the Contract Amount shall require approval of theProcuring Entity
Performance Security	4.2.1	The performance security will be in the form of a performance bond in the amount(s) of 5 percentof the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount.
Normal working hours	6.5	0800-1700 HRS
Delay damages for the Works	8.7 & 14.15(b)	1 % of the Contract Price per day.

Conditions	Sub-Clause	Data
Maximum amount of delay damages	8.7.1	10% of the final Contract Price
Provisional Sums	13.6. (b)(ii)	*None* %
Adjustments for Changes in Cost	13.9	Not Applicable
Total advance payment	14.2.1	Not Applicable
Repayment amortization rate of advance payment	14.2.5 (b)	Not Applicable
Percentage of Retention	14.3.2 (c)	10%
Limit of Retention Money	14.3.2 (c)	10% of the Accepted Contract Amount
Plant and Materials	14.5.3(b)(i)	If Sub-Clause 14.5 applies: Plant and Materials for payment Free on Board
	14.5.3(c)(i)	Plant and Materials for payment when deliveredto the Site _ Plant and Materials to be Incorporated into Permanent WorK.
Minimum Amount of Interim Payment Certificates	14.6.2	20% of the Accepted Contract Amount
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	Central Bank of Kenya at 3 percentage points above the average rate for base lending prevailing as of the first day the payment becomes overdue
Maximum total liability of theContractor to the Procuring Entity	17.6.2	The product of 1.1 times the Accepted Contract Amount..
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1.6	 14 days 14 days
Maximum amount of deductibles for insurance of the Procuring Entity's risks	18.2.4 (d)	***As per applicable Kenyan Law***
Minimum amount of third-partyinsurance	18.3.2	***As per applicable Kenyan Law***
The place of arbitration	20.7.2	*The place of arbitration shall be The place of arbitration shall be Nairobi Centre for International Arbitration (NCIA)*

SECTION X - CONTRACT FORMS

FORM No. 1 - NOTIFICATION OF INTENTION TO AWARD

FORM NO. 2 – REQUEST FOR REVIEW

FORM No. 3-LETTEROF AWARD

FORM No. 4 - CONTRACT AGREEMENT

FORM No. 5 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]FORM

No. 6- PERFORMANCE SECURITY [Option 2– Performance Bond]

FORM No. 7 - ADVANCE PAYMENT SECURITY

FORM No. 8 - RETENTION MONEY SECURITY

FORM No 1: NOTIFICATION OF INTENTION TOAWARD OF CONTRACT

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

FORMAT

1. For the attention of Tenderer's Authorized Representative

   i) Name: *[insert Authorized Representative's name]*

   ii) Address: *[insert Authorized Representative's Address]*

   iii) Telephone: *[insert Authorized Representative's telephone/fax numbers]*

   iv) Email Address: *[insert Authorized Representative's email address]*

   [IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification mustbe sent to all Tenderers simultaneously. This means on the same date and as close to the sametime as possible.]

2. Date of transmission: [*email*] on [*date*] (local time)

   This Notification is sent by (*Name and designation*) _____

3. Notification of Award

   i) Procuring Entity: *[insert the name of the ProcuringEntity]*

   ii) Project: *[insert name ofproject]*

   iii) Contract title: *[insert the name of thecontract]*

   iv) ITT No: *[insert ITT reference number from ProcurementPlan]*

   This Notification of Intention to Award (Notification) notifies you of our decision to award the abovecontract. The transmission of this Notification begins the Standstill Period. During the Standstill Period,you may:

4. Request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related Complaint in relation to the decision to award the contracts.

   a) The successful tenderers

   i) Name of successful Tender _____

   ii) Address of the successful Tender _____

   _____

   iii) Contract price of the successful Tender Kenya Shillings _____

   (in words _____)

   b) The reasons for your tender being unsuccessful are as follows:

   c) OtherTenderers

   Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include theevaluated price as well as the Tender price as read out.

SNo	Name of Tender	Tender Priceas read out	Tender's evaluated price (Note a)	One Reason Why NotEvaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

a) DEADLINE: The dead line to request a debriefing expires at midnight on [*insert date*] (*local time*).

b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days ofreceipt of this Notification of Intention to Award.

c) Provide the contract name, reference number, name of the Tenderer, contact details; and addresstherequest for debriefing as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/position*]

iii) Agency: [*insert name of Procuring Entity*]

iv) Email address: [*insert email address*]

d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefingwithin five (3) Business Days of receip tof your request. If we are unable to provide the debriefingwithin this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.

e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptlyadvise you in writing how the debriefing will take place and confirm the date and time.

f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case,wewill provide the debriefing as soon as practicable, and normally no later than fifteen (15) Daysfromthe date of publication of the Contract Award Notice.

6. How to make a complaint

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted bymidnight, [*insert date*] (local time).

b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

i) Attention: [*insert full name of person, if applicable*]

ii) Title/position: [*insert title/ position*]

iii) Agency: [*insert name of Procuring Entity*]

iv) Email address: [*insert email address*]

c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, adebriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

d) Further information: For more information refer to the Public Procurement and Disposals Act 2015and its Regulations a vailable from the Website www.ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

e) There are four essential requirements:
   i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tenderin this tendering process and is the recipient of a Notification of Intention to Award.
   ii) The complaint can only challenge the decision to award the contract.
   iii) You must submit the complaint within the period stated above.
   iv) You must include, in your complaint, all of the information required to support yourcomplaint.

7. Standstill Period

i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).
ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
iii) The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate tocontact us. On behalf of the Procuring Entity:

Signature: _____

Name: _____

Title/position: _____

_____

Telephone: _____

FORM NO. 2- REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO…….OF…….20……...

BETWEEN

.....APPLICANT

AND

…..... RESPONDENT (Procuring Entity)

Request for review of the decision of the…… (Name of the Procuring Entity of ……dated the…day of ……20…….in the matter of Tender No……..…of ……..20….. for.. (Tender description).

REQUEST FOR REVIEW

I/We……,the above named Applicant(s), of address: Physical address ..... P. O. Box No……. Tel. No……..Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:1.2.

By this memorandum, the Applicant requests the Board for an order/orders that:

1.

2.

SIGNED …….(Applicant) Dated on…….day of ……/…20……

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on..... day of ……....20…….……

SIGNED

Board Secretary

FORM NO 3: LETTER OF AWARD

letterhead paper of the Procuring Entity]

[date]

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

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amoun tin numbersandwords] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers,is here by accepted by *(name of Procuring Entity)*.

You are requested to furnish the Performance Security within in accordance with the Conditions of Contract,using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, oftheTender Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity: .....

Attachment: *Contract Agreement:* .....

FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the day of…… 20……, between……
……..of.....(hereinafter "the Procuring Entity"), of the one part, and_____of _____(hereinafter "the Contractor"), of the other part:

WHEREAS the Procuring Entity desires that the Worksknownas_____should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Worksand the remedying of any defects there in,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned tothemin the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. ThisAgreement shall prevail over all other Contract documents.

   a) theNotification of Award
   b) the Form of Tender
   c) the addenda Nos_____(if any)
   d) the Special Conditions of Contract
   e) the General Conditions of Contract;
   f) the Specifications
   g) the Drawings; and
   h) the completed Schedules and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor here by covenants with the Procuring Entity to execute the Works andtoremedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Procuring Entity here by covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects there in, the Contract Price or such other sumasmay become payable under the provisions of the Contract at the times and in the manner prescribedbythe Contract.

   INWITNESS where of the parties here to have caused this Agreement to be executed in accordancewiththe Laws of Kenya on the day, month and year specified above.

   Signeda nd sealed by_____(for the Procuring Entity)

   Signed and sealed by_____(for the Contractor).

FORM NO. 5 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Bene**fi**ciary: *[insert name and Address of Procuring Entity]*

Date: _____*[Insert date of issue]*

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

1. We have been informedthat_____(hereinafter called "the Contractor") has entered into Contract No._____dated_____with (*name of Procuring Entity*)_____(the Procuring Entity as the Beneficiary), for the executionof _____(hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guaranteeisrequired.

3. Atthe request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiaryany sum or sums not exceeding in total an amount of (*in words*),[1] such sum being payable in the types andproportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary'scomplying demand supported by the Beneficiary's statement, whether in the demand it self or in a separate signed document accompanying or identifying the demand, stating that the Applicantis in breach of itsobligation(s) under the Contract, without the Beneficiary needing to prove or to showgrounds for yourdemand or the sum specified therein.

4. This guarantee shall expire, no later than the……...Day of .....,2 ..[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, inresponse tot he Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

.....

[Name of Authorized Official, signature(s) and seals/stamps]

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

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[1] *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2] *Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee fromthe Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

FORM No. 6- PERFORMANCE SECURITY

[Option 2– Performance Bond]

[Note: Procuring Entities a readvised to use Performance Security – Unconditiona lDemand Bank Guaranteein stead of Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier code]

Bene**fi**ciary:

*[insertnameandAddressof*ProcuringEntity*]* Date:

_____*[Insert date of issue]*

PERFORMANCE BONDNo.:_____

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

1. By this Bond_____as Principal (hereinafter called "the Contractor")and_ _____] as Surety (hereinafter called"the Surety"),are held and firmly bound unto] as Obligee (hereinafter called "the Procuring Entity")in the amount of for the payment of which sum well and truly to be made in the types and proportionsof currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, theirheirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the _____day of____,20_____, for_____in accordance with the documents, plans, specifications, and amendments there to, which to the extent here in provided for, are by reference made part here of and are here in after referred to as the Contract.

3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly andfaithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, anddeclared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default,orshall promptly:

   a) Complete the Contract in accordance with its terms and conditions; or

   b) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make a vailable as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completionarranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the ContractPrice; but not exceeding, including other costs and damages for which the Surety may beliable hereunder, the amount set forth in the first paragraph hereof. The term "Balance of the Contract Price," as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor;or

   c) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions upto a total not exceeding the amount of this Bond.

4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any personor corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has here unto set his hand and affixed his seal, and the Surety has causedthese presents to be sealed with his corporate seal duly at tested by the signature of his legal representative, this day_of _____20_.

SIGNED ON_____on behalf of_____

By_____in the capacity of_____

Inthepresenceof_____

SIGNED ON_____on behalf of_____

By_____in the capacity of_____

Inthepresence of_____

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Bene**fi**ciary:_____*[Insert name and Address of*

ProcuringEntity*]* Date:_____*[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

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

1. We have been informed that_____(hereinafter called "the Contractor") has entered into Contract No. _____*dated*_____with the Beneficiary, for the execution of_____ (hereinafter called" the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment inthe sum _____(*in words*_____) is to be made against an advance payment guarantee.

3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiaryany sum or sums not exceeding in total an amount of_____(*in words*_____)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand,stating either that the Applicant:
   a) Has used the advance payment for purposes other than the costs of mobilization in respect of theWorks; or
   b) Has failed to repay the advance payment in accordance with the Contract conditions, specifyingthe amount which the Applicant has failed to repay.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number_____at_.

5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy oftheinterim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, oronthe dayof ,2 ,[2] whichever is earlier. Consequently,any demand for payment under this guarantee must be received by us at this office on orbefore that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

_____

[Name of Authorized Official, signature(s) and seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deletedfromthe final product.

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[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance paymen tas specified in the Contract.*

[2] *Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Suc h request must be in writing and must be made prior to the expiration date established in the guarantee.*

FORM NO. 8 – RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Bene**fi**ciary:_____*[Insert name and Address of* Procuring Entity*]*

Date:_____*[Insert date of issue]*

Advance payment guarantee no. *[Insert guarantee reference number]*

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

1. We have been informed that_____*[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered intoContract No. _____*[insert reference number of the contract]* dated_____with the Beneficiary, forthe executionof_____*[insert name of contract and brief description of* Works*]* (hereinafter called "the Contract").

2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys upto 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 beencertified for payment, and payment of *[*insert the second half of the Retention Money] is to be made against a Retention Money guarantee.

3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiaryany sum or sums not exceeding in total an amount of *[insert amount in figures]* _ (*[insert amount inwords* _____*])*[1] upon receipt by us of the Beneficiary's complying demands upported by the Beneficiary's statement, whether in the demand itself or in a separate signed documentaccompanying or identifyingthedemand, stating that the Contractor is in breach of its obligation(s) under theContract, without your needing to prove or showgrounds for your demand or the sum specified there in.

4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred toabove has been credited to the Contractor on its account numb er at *[insert name and address ofApplicant's bank]*.

5. This guarantee shall expire no later than the.....Day of.....2 .....[2], and any demand for payment under it must be received by us at the office indicated above on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

_____

[Name of Authorized Official, signature(s) and seals/stamps]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted fromthe final product.

[1] *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.*

[2] *Insert a date that is twenty-eight days after the expiry of retention period after the actua lcompletion date of the contract. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity 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.*

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FORM

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the Tenderer by meeting one or more of the following conditions:

- *Directly or indirectly holding 25% or more of the shares.*
- *Directly or in directly holding 25% or more of the voting rights.*
- *Directly or indirectly having the right to appoint a majority of the board of directors or equivalent governing body of the Tenderer.*

Tender Reference No.:_____[*insert identification no*] Name of the Assignment:_____*[insert name of the assignment]*to:

_____*[insert complete name of Procuring Entity]*

In response to your notification of award dated_____*[insert date of notification of award]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

I) We here by provide the following beneficial ownership

information.Details of bene**fi**cial ownership

Identity of Beneficial Owner	Directly or indirectly holding25% or more of the shares (Yes / No)	Directly or indirectlyholding 25 % or more of the Voting Rights (Yes / No)	Directly or indirectly having the rightto appoint a majority of the board ofthe directors or an equivalent governing body of the Tenderer (Yes / No)
[include full name (last, middle, first), nationality, countryof residence]			

OR

ii) We declare that there is no Beneficial Owner meeting one or more of the following conditions: directly or indirectly holding 25% or more of the shares. Directly or indirectly holding 25% or more of the voting rights. Directly or indirectly having the right to appoint a majority of the board ofdirectorsor equivalent governing body of the Tenderer.

OR

We declare that we are unable to identify any Beneficial Owner meeting one or more of the following conditions. [If this option is selected, the Tenderer shall provide explanation on why it is unable to identifyany Beneficial Owner]

Directly or indirectly holding 25% or more of the shares. Directly or indirectly holding25% or more of the voting rights.

Directly or indirectly having the right to appoint a majority of the board of directors or equivalentgoverningbody of the Tenderer]"

*Name of the Tenderer ..... *[insert complete name of the Tenderer]_____*

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

Title of the person signing the Tender..... [insert complete title of the person signing the Tender]

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

Date signed ..... [insert date of signing] day of ..... [Insert month], [insert year]

BILL N0.1 - PARTICULAR PRELIMINARIES

ITEM	DESCRIPTION	AMOUNT
	BILL NO.1 **PARTICULAR PRELIMINARIES** **NOTES ON PRICING OF ITEMS OFPRELIMINARIES** Items described in this section cover the minimum requirements and conditions necessary for the full and proper execution of the contract. The tenderer is required toread and fully understand his obligations under each item and thus asses his costs for complying with the same for the duration of the contract. Should no price be inserted against any item, it shall be assumed that the tenderer has covered any costs associated with that item elsewhere in the Bills of quantities and shall neverthelessbe required to comply with such and all items of preliminaries.	
A	Definition of Terms (i) Project Managers: The term 'Project Manager' wherever used hereinafter and in all contract documents shall mean Works Director, Public Works-Busia County, P.O.Box 470-50400 Busia. (ii) Architect The term 'Architect' whenever used hereinafter and in all contract documents shall mean 'Chief Architect', Public Works-Busia County, P.O. Box 470-50400 Busia. Quantity Surveyor The term 'Quantity Surveyor' wherever used hereinafter and in all contract documents shall mean Chief Quantity Surveyor, Public Works-Busia County, P.O. Box 470-50400 Busia. (iii) Engineer (Structural) The term 'Engineer (Structural)' wherever used hereinafter and in all contract documents shall mean Chief Engineer (Structural), Public Works-Busia County, P.O. Box 470-50400 Busia. Electrical Engineer - The term 'Electrical Engineer wherever used hereinafter and in all contract documents shall mean Chief Engineer (Electrical)-BS, Public Works-Busia County, P.O. Box 470-50400 Busia. (iv) Mechanical Engineer - The term 'Mechanical Engineer wherever used hereinafter and in all contract documents shall mean Chief Engineer Mechanical-BS, Public Works-Busia County, P.O. Box 470-50400 Busia. (vii) Interior Designer-The term "Interior Designer" shall be deemed to mean Chief Designer, State Department for Public Works, Ministry of Lands, Public Works, Housing & Urban Development, P.O. Box 30743-00100 Nairobi. (vii) Employer - The term 'Employer' wherever used hereinafter and in all Contract Documents shall meanThe Employer is Principal Secretary Ministry of Public Service, Performance and Delivery Standards, P.O Box 30050-00100, Nairobi	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT
	Particular Preliminaries (ctd) Definition of terms (ctd) (viii) Contractor - Means the person or firm named in the articles of agreement with whom the Employer has entered into contract and includes the legalsuccessors in title and permitted assigns (ix) Works - Means the permanent works designed for the Employer by theArchitect or other agents for execution by the Contractor and as described in the contract documents. It shall include work of all sub-contractors and suppliers aswell as materialsand goods supplied for incorporation in the Works (x) Contract. The term "Contract" wherever used hereinafter and in all contract documents shall mean the letter of award of Contract, Agreement and Conditions of Contract for Building Works, Drawings, priced and signed Bills of Quantities, the schedules and other documents forming part of the contract (xi) Contract Drawings. The term "Contract Drawings" wherever used hereinafter and in all contract documents shall be deemed to imply the drawing referred to in these Bills of Quantities (xii) Site Means the place or places where the permanent Works are to be carried out and to which materials and goods are to be delivered and includes workshopsor other places where materials, goods or work are being prepared for incorporation in the Works either by the Contractor, sub-contractors or by others. (xiii) Approved, Directed and Selected. The terms "Approved", "Directed" and "Selected" wherever used hereinafter and in all contract documents shall mean the approval, direction and selection of or by the Architect. (xiv) Singular and Plural. Words importing the singular only wherever used hereinafter and in all contract documents shall also include the plural and vice versawhere the context requires. Persons shall include bodies corporate.	
A	Value Added Tax (Vat) and other Taxes Priced items including P.C & Provisional Sums shall shall include all taxes.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT
	Particular Preliminaries (ctd)	
A	Scope of Contract Renovation works with; associated Electrical Works.	
B	Bid Security The bid security will be as per tender invitation notice.	
C	Firm Price contract Unless otherwise specifically stated, this is a firm price contract and the Contractor must allow in his tender rates for any increase in the cost oflabourand/or materials during the currency of the contract.	
D	Site visit The contractor is advised to visit the site and acquaint himself with the conditions and if unable to do so apply to the Project Manager for directions to enable him todo so.	
E	No claim will be allowed for travelling or other expenses which may be incurred bythe contractor in visiting the site preparing for the tender for the works.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT
A	Measurements In the event of any discrepancies between the Bills of Quantities are the actual works, the site measurements shall generally take precedence. However, such discrepancies between any contract document shall immediately be referred to theProject Manager.	
B	Claims It shall be a condition of this Contract that upon it becoming reasonably apparent by the Contractor that he has incurred losses and/or expenses due to any of the Contract Conditions, or by any other reason whatsoever, he shall present such claimor intent notice to the PROJECT MANAGER within the Contract Period. No claims shall be entertained upon the expiry of the said contract period	
C	Materials from demolition Any materials arising from demolition shall become property of the Contractor. The Contractor shall therefore allow for credit in his tender in this respect.	
D	Contract completion period The contract completion period in accordance with condition 31 of the the conditions of contract must be strictly adhered to. The "PROJECT MANAGER" shallstrictly monitor the Contractor's progress in relation to the progress chart and shouldit be found necessary, the "PROJECT MANAGER" shall inform the Contractor in writing that his actual performance on site is not satisfactory. In all such cases , the Contractor shall accelerate his rate of performance, productionand progress by all means such as additional labour , plant e.t.c., and working overtime all at his cost.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT
A	Particular Preliminaries (ctd) Particulars of insertions to be made in the appendix to contract agreement The following are insertions to be made in the Special Conditions to the ContractAgreement. i) Period of Final Measurement completiondate — 3 Months from practical ii) Defects Liability Period completiondate — 6 Months from practical iii) Date for possession of site — To be agreed with the Project Manager iv) Date for completion — As stated in the Special v) Liquidated & Ascertained damages — At the of 0.02% of the Contract Sumper Week per week or part thereof vi) Period of Interim Certificates — Monthly vii) Period of honouring certificates — Within 30 days of the date of certification viii) Percentage of certified value retained 10% ix) Limit of retention fund — 10% of Contract Sum x) Bond — As per tender notice and Contract Conditions xi) Date for Completion — 16 weeks from commencement date	
B	Labour camps The Contractor contractors shall not erect camps on site.	
C	Office for the "Project Manager" The site office mentioned in item 'A' page GP/5 of the general preliminaries shall be type B as shown on the Directorate of Public Works standard details. The same shallbe erected and maintained for the duration of the contract.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT
	Particular Preliminaries (ctd)	
A	Tender documents Tender documents are as listed in the Conditions of Contract	
B	Signboard Provide and erect where directed and maintain during the whole period of building operations and remove at completion an approved temporary 1 No. signboards at site to the Architect's standard design and giving the title of the Works and showing the names of the Employer, Architect, Quantity Surveyor, Engineers and the Contractor with sufficient space to add the names of the Nominated Sub- Contractorsand suppliers. The lettering concerning the Architect, Quantity Surveyor and the Engineer is not to be more than 50 mm high.	
C	Hoarding The contractor shall be required to erect and maintain hoarding around the site forthe duration of the contract. Thereafter he shall be required to demolish and clear away arising's and make good any disturbances.	
D	Programme progress charts The Contractor shall upon possession of the site and in agreement with the "PROJECT MANAGER" prepare a progress chart for the whole of the works. One copy shall be forwarded to the "PROJECT MANAGER" and another copy shall be retained on site on which progress shall be recorded by the Contractor. Should any circumstance arise affecting the programme or progress, the chart shall be modified asnecessary in consultation with the "PROJECT MANAGER".	
D	Performance security (bond) The Contractor should note that the Performance Security to be provided must beinform of a bank guarantee in the amount of 5% of the Contract Sum.	
E	Appendices The Appendices to the Bills of Quantities shall be regarded for contract purposes aspart of the Bill and shall be read and construed with the appropriate sections of theBills if contained therein.	
F	Sufficiency of tender The main Contractor shall be deemed to have satisfied himself before tendering astothe correctness and sufficiency of his tender for the works and of the rates and pricesstated in the Bills of Quantities which rates and prices shall cover all his obligations under the contract and all matters and things necessary for the proper completion of the works.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT
	Particular Preliminaries (ctd)	
A	General specifications works, the Contractor is referred to the Ministry of Works General specifications for building works dated 1976 or any subsequent revision thereof which is issued asaseparate document and which shall be followed in all respects unless it conflicts withthe General and Particular Preliminaries, Trade Preambles or other items in these Bills of Quantities. In the event of such conflict, then the provisions of the General and ParticularPreliminaries, Trade Preambles and these Bills of Quantities take precedence.	
B	Training levy The Contractor's attention is drawn to Legal Notice No. 237 of October 1971 whichrequires payment by the Contractor of a Training levy at the rate of 1/4 % of the Contract Sum on all Contracts of more than Kshs. 50,000.00 in value.	
C	Construction materials All materials for incorporation in the works must be stored on or adjacent to the site of the works before payment is effected by the "PROJECT MANAGER" This is toinclude materials of the Main Contractor, Sub - contractors and Nominated Suppliers.	
D	Advance payment Pursuant to the relevant clause of the Conditions of Contract, the tenderer willNOT be granted ADVANCE PAYMENT (See Appendix to Conditions of Contract) Advance payments on specialist's works shall be paid to the respective nominated Subcontractors directly, but on similar terms.	
E	Nuisance The Contractor shall not directly or indirectly or otherwise by himself or through his agents cause nuisance to the activities taking place inside. Should he do so he shallbe directly responsible for such acts.	
F	Form of Contract The Form of Contract shall be as stipulated in the Republic of Kenya's Standard Tender Document for Procurement of Building Works (2021Revised edition) included herein.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT
	Collection Total from page PP/1 Total from page PP/2Total from page PP/3Total from page PP/4Total from page PP/5 Total from page PP/6Total from page PP/7	
	Total for Particular Preliminaries carried to Summary (SUM1)	

BILL N0.2 - GENERAL PRELIMINARIES

ITEM	DESCRIPTION	AMOUNT(KSHS)
	BILL NO.2 - GENERAL PRELIMINARIES	
A.	Pricing of items of preliminaries and preambles Prices will be inserted against items of Preliminaries in the Contractor's priced Bills of Quantities and Specification. The Contractor shall be deemed to have included in his prices or rates for the various items in the Bills of Quantities or Specification for all costs involved in complying with all the requirements for the proper execution of the whole of the works in the Contract.	
B.	Plant, tools and vehicles Allow for providing all scaffolding, plant, tools and vehicles required for the works except in so far as may be stated otherwise herein and except for such items specifically and only required for the use of nominated Sub-Contractorsas described herein. No timber used for scaffolding, formwork or temporary works of any kind shall be used afterwards in the permanent work.	
C.	Transport Allow for transport of workmen, materials, etc., to and from the site at such hours and by such routes as may be permitted by the competent authorities.	
D.	Mateials and workmanship All materials and workmanship used in the execution of the work shall be of the best quality and description unless otherwise stated. The Contractor shall order all materialsto be obtained from overseas immediately after the Contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that they are onsite when required foruse in the works. The Bills of Quantities shall not be used for the purpose of ordering materials.	
E.	Sign for materials supplied The Contractor will be required to sign a receipt for all articles and materials supplied by the PROJECT MANAGER at the time of taking deliver thereof, as having received them in good order and condition, and will thereafter be responsible for any loss or damage and for replacements of any such loss or damage with articles and/or materials which will be supplied by the PROJECT MANAGER at the current market prices including Customs Duty and V.A.T., all at the Contractor's own cost and expense, to the satisfaction of the PROJECT MANAGER.	
F.	Storage of materials The Contractor shall make at his own risk and cost arrangement for storage of materials for incoperation into the works. Nominated Sub-contractors areto be made liable for the cost of any storage accommodation provided specifically for their use.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
A	Samples The Contractor shall furnish at his own cost any samples of materials or workmanship including concrete test cubes required for the works that may becalled for by the PROJECT MANAGER for his approval until such samplesareapproved by the PROJECT MANAGER and the PROJECT MANAGER, may reject any materials or workmanship not in his opinion to be up to approved samples. The PROJECT MANAGER shall arrange for the testing of such materials as he may at his discretion deem desirable, but the testing shallbe made at the expense of the Contractor and not at the expense of the PROJECT MANAGER. The Contractor shall pay for the testing in accordance with the current scale of testing charges laid down by the Directorate of Public Works. The procedure for submitting samples of materials for testing and the methodof marking for identification shall be as laid down by the PROJECT MANAGER The Contractor shall allow in his tender for such samples and tests except those in connection with nominated sub-contractors' work.	
B.	Governments Acts regarding work people, etc. Allow for complying with all Government Acts, Orders and Regulations in connection with the employment of Labour and other matters related to the execution of the works. In particular the Contractor's attention is drawn to the provisions of the Factory Act 1950 and his tender must include for all costs arising or resulting from compliance with any Act, Order or Regulation relating to Insurances, pensions and holidays for workpeople or so the safety, health and welfare of the workpeople. The Contractor must make himself fully acquainted with current Acts and Regulations,including Police Regulationsregarding the movement, housing, security and control of labour, labour camps , passes for transport, etc. It is most important that theContractor, before tendering, shall obtain from the relevant Authority the fullest information regarding all such regulations and/or restrictions which may affectthe information regarding all such regulations and/or restrictions which may affect the organisation of the works, supply and control of labour, etc., and allow accordingly in his tender. No claim in respect of want of knowledge in this connection will beentertained.	
C.	Security of works, etc. The Contractor shall be entirely responsible for the security of all the works stores,materials, plant, personnel, etc., both his own and sub-contractors' andmust provide all necessary watching, lighting and other precautions as necessary to ensure security against theft, loss or damage and the protectionofthe public.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
A.	Public and private roads Maintain as required throughout the execution of the works and make good any damage to public or private roads arising from or consequent upon the execution of the works to the satisfaction of the local and other competent authority and the PROJECT MANAGER.	
B.	Existing property The Contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and he will be held responsible for and shall make good all such damage arising from the execution of this contract at his own expense to the satisfaction of the PROJECT MANAGER.	
C.	Visit the site and examine drawings The Contractor is recommended to examine the drawings and visit the site the location of which is described in the Particular Preliminaries hereof. He shall be deemed to have acquainted himself therewith as to its nature, position, means of access or any other matter which, may affect his tender. No claim arising from his failure to comply with this recommendation will be considered.	
D.	Access to site and temporary roads Means of access to the Site shall be agreed with the PROJECT MANAGER prior to commencement of the work and Contractor must allow for building any necessary temporary access roads for the transport of the materials, plant and workmen as may be required for the complete execution of the works including the provision of temporary culverts, crossings, bridges, or any other means of gaining access to the Site. Upon completion of the works, the Contractor shall remove such temporary access roads; temporary culverts, bridges, etc., and make good and reinstate all works and surfaces disturbed to the satisfaction of the PROJECT MANAGER.	
E.	Area to be occupied by the Contractor The area of the site which may be occupied by the Contractor for use of storage and for the purpose of erecting workshops, etc., shall be defined onsite by the PROJECT MANAGER.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
A.	Office, etc, for the Project Manager The Contractor shall construct a temporary site office of type described and to the satisfaction of the Project Manager. He shall also provide a strong metal trunk complete with strong hasp and staple fastening and two keys. Heshall maintain a lock-up type water or bucket closet for the sole use of the PROJECT MANAGER and shall provide services of cleaner and pay all conservancy charges and keep both office and closet in a clean and sanitary condition from commencement to the completion of the works and dismantle and make good disturbed surfaces. The Contractor shall make available on the Site as and when required by the "PROJECT MANAGER" a modern and accurate level together with levelling staff, ranging rods and 50 metre metallic or linen tape.	
B.	Water and electricity supply for the works The Contractor shall make arrangements to provide all necessary water, electric light and power required for use in the works. No guarantee is given or implied that sufficient water will be available from mains and the Contractor must make his own arrangements for augmenting this supply at his own cost. Nominated Sub--contractors are to be made liable for the cost of any water or electric current used and for any installation provided especially for their own use.	
C.	Sanitation of the works The Sanitation of the works shall be arranged and maintained by the Contractor to the satisfaction of the Government and/or Local Authorities, Labour Department and the PROJECT MANAGER.	
D.	Supervision and working hours The works shall be executed under the direction and to the entire satisfactionin all respects of the PROJECT MANAGER who shall at all times during normal working hours have access to the works and to the yards and workshops of the Contractor and sub-Contractors or other places where work is being prepared for the contract.	
E.	Provisional sums The term "Provisional Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section A item A7(i) of the Standard Method of Measurement.Such sums are net and no addition shall be made to them for profit.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
A.	Prime Cost (or P.C) Sums The term "Prime Cost Sum" or "P.C. Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section A item A7 (ii) of the Standard Method of Measurement . Persons or firms nominated by the PROJECT MANAGER to execute work or to provide and fix materials or goods are described herein as Nominated Sub-Contractors.Persons or firms so nominated to supply goods or materials are described herein as Nominated Suppliers.	
B.	Progress chart The Contractor shall provide within two weeks of Possession of Site and in agreement with the PROJECT MANAGER a Progress Chart for the whole of the works including the works of Nominated Sub-Contractors ; one copy to be handed to the PROJECT MANAGER and a further copy to be retained on Site. Progress to be recorded and chart to be amended as necessary as thework proceeds.	
C.	Adjustment of P.C sums In the final account all P.C. Sums shall be deducted and the amount properly expended upon the PROJECT MANAGER'S order in respect of each of them added to the Contract sum. The Contractor shall produce to the PROJECT MANAGER such quotations, invoices or bills, properly receipted, as may be necessary to show the actual details of the sums paid by the Contractor. Itemsof profit upon P.C. Sums shall be adjusted in the final account pro-rata to the amount paid. Items of "attendance" (as previously described) following P.C. Sums shall be adjusted pro-rata to the physical extent of the work executed (not pro-rata to the amount paid) and this shall apply even though the Contractor's priced Bill shows a percentage in the rate column in respect of them. Should the Contractor be permitted to tender and his tender be accepted of any work for which a P.C. Sum is included in these Bill of Quantities profit and attendance will be allowed at the same rate as it would be if the work were executed by a Nominated Sub-Contractor.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
A.	Adjustment of provisional sums In the final account all Provisional Sums shall be deducted and the value of the work properly executed in respect of them upon the PROJECT MANAGER's order added to the Contract Sum. Such work shall be valued , but should any part of the work be executed by a Nominated Sub-Contractor, the value of such work or articles for the work to be supplied by a Nominated Supplier, the value of such work or articles shall be treated as a P.C. Sum and profit and attendance comparable to that contained in thepriced Bills of Quantities for similar items added.	
B.	Nominated subcontractors When any work is ordered by the PROJECT MANAGER to be executed by nominated sub-contractors, the Contractor shall enter into sub-contracts and shall thereafter be responsible for such sub-contractors in every respect. Unless otherwise described the Contractor is to provide for such Sub-Contractors any or all of the facilities described in these Preliminaries. The Contractor should price for these with the nominated Sub-contract Contractor's work concerned in the P.C. Sums under the description "add for Attendance".	
C.	Direct Contracts Notwithstanding the foregoing conditions, the Government reserves the right to place a "Direct Contract" for any goods or services required in the works which are covered by a P.C. Sum in the Bills of Quantities and to pay for the same direct. In any such instances, profit relative to the P.C. Sum in the priced Bills of Quantities will be adjusted as described for P.C. Sums is allowed.	
D.	Attendance upon other tradesmen, etc. The Contractor shall allow for the attendance of trade upon trade and shall afford any tradesmen or other persons employed for the execution of any work not included in this Contract every facility for carrying out their work and also for use of his ordinary scaffolding. The Contractor, however, shall not be required to erect any special scaffolding for them. The Contractor shall perform such cutting away for and making good after the work of such tradesmen or persons as may be ordered by the PROJECT MANAGER and the work will be measured and paid for to the extent executed at rates provided in these Bills.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
A.	Insurance The Contractor shall insure as required by the Conditions of Contract. No payment on account of the work executed will be made to the Contractor until he has satisfied the PROJECT MANAGER either by production of an Insurance Policy or and Insurance Certificate that the provision of the foregoing Insurance Clauses have been complied with in all respects. Thereafter the PROJECT MANAGER shall from time to time ascertain that premiums are duly paid up by the Contractor who shall if called upon to do so, produce the receipted premium renewals for the PROJECT MANAGER's inspection.	
B.	Provisional work All work described as "Provisional" in these Bills of Quantities is subject to remeasurement in order to ascertain the actual quantity executed for which payment will be made. All "Provisional" and other work liable to adjustment under this Contract shall left uncovered for a reasonable time to allow all measurements needed for such adjustment to be taken by the PROJECT MANAGER Immediately the work is ready for measuring, the Contractor shall give notice to the PROJECT MANAGER. If the Contractor makes default in these respects he shall if the PROJECT MANAGER so directs uncover the work to enable all measurements to be taken and afterwards reinstate at his own expense.	
C.	Alteration to bills of quantities, pricing, etc. Any unauthorised alteration or qualification made to the text of the Bills of Quantities may cause the Tender to be disqualified and will in any case be ignored. The Contractor shall be deemed to have made allowance in his prices generally to cover any items against which no price has been insertedin the priced Bills of Quantities.All items of measured work shall be priced in detail and the Tenders containing Lump Sums to cover trades or groups of work must be broken down to show the price of each item before they will be accepted.	
D.	Blasting operations Blasting will only be allowed with the express permission of the PROJECT MANAGER in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost in accordance with any Government regulations in force for the time being, and any special regulations laid down by the PROJECT MANAGER governing the use and storage of explosives.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
ITEM	DESCRIPTION	
A.	Materials arising from excavations Materials of any kind obtained from the excavations shall be the property of the Government. Unless the PROJECT MANAGER directs otherwise such materials shall be dealt with as provided in the Contract. Such materials shall only be used in the works, in substitution of materials which the Contractor would otherwise have had to supply with the written permission of the PROJECT MANAGER Should such permission be given, the Contractor shall make due allowance for the value of the materials so used at a price to be agreed.	
B.	Protection of the works Provide protection of the whole of the works contained in the Bills of Quantities,including casing , casing up, covering or such other means as maybe necessary to avoid damage to the satisfaction of the PROJECT MANAGER and remove such protection when no longer required and make good any damage which may nevertheless have been done at completion free of cost to the Government.	
C.	Removal of rubish, etc. Remove rubbish and debris from the Buildings and site as it accumulates andat the completion of the works and remove all plant, scaffolding and unused materials at completion.	
D.	Works to be delivered up clean Clean and flush all gutters, rainwater and waste pipes, manholes and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary fittings,glass inside and outside and any other parts of the works and remove all marks,blemishes, stains and defects from joinery, fittings and decorated surfaces generally,polish door furniture and bright parts of metalwork and leave the whole of the buildings watertight, clean, perfect and fit for occupation to the approval of the PROJECT MANAGER.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
A.	General specifications For the full description of materials and workmanship, method of execution of the work and notes for pricing, the Contractor is referred to the Ministry of Roads and Public Works and Housing General Specification dated 1976 orany subsequent revision thereof which is issued as a separate document, and which shall be allowed in all respects unless it conflicts with the General Preliminaries, Trade Preambles or other items in these Bills of Quantities.	
B	Materials on site All materials for incorporation in the works will be stored on site before payment is effected unless specifically exempted by the PROJECT MANAGER. The Main Contractor shall make arrangements to secure the place for the safety of the Materials. This includes the materials of the MainContractor, Nominated Sub-Contractors and Nominated Suppliers.	
C	Contractor's Superinteendence/Site Agent The Contractor shall constantly keep on the works a literate English speaking Agent or Representative, competent and experienced in the kind of work involved who shall give his whole experience in the kind of work involved and shall give his whole time to the superintendence of the works. Such Agentor Representative shall receive on behalf of the Contractor all directions and instructions from the Project Manager and such directions shallbe deemed to have been given to the Contractor in accordance with the Conditions of Contract.	
	Total carried forward to collection	

ITEM	DESCRIPTION	AMOUNT(KSHS)
	COLLECTION	
1	Total from page GP/1	
2	Total from page GP/2	
3	Total from page GP/3	
4	Total from page GP/4	
5	Total from page GP/5	
6	Total from page GP/6	
7	Total from page GP/7	
8	Total from page GP/8	
9	Total from page GP/9	
	Total for General Preliminaries carried to Summary (SUM1)	

BUILDER'S WORK

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	RENOVATION OF 4NO CLASSROOMS AT EMAGOMBE PRIMARY SCHOOL.				
	ELEMENT NO. 1				
	SUBSTRUCTURE				
	Paving Slabs				
A	600x600x50mm Thick pre-cast concrete (1:2:4) slabs laid on and including 50mm consolidated sand, jointed and pointed in cement and sand (1:4) mortar.	32	sm		
	Plinth				
B	15mm Thick cement and sand (1:4) render to plinth finished with a wood float.	32	sm		
C	Prepare and apply three coats of black bituminous paint to rendered plinth walls externally.	32	sm		
	TOTAL CARRIED TO SUMMARY OF ELEMENTS				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	ELEMENT NO. 2				
	ROOF				
A	Carefully remove and dispose existing old roof covering including iron sheets, timber battens, fascia boards, and all roof accessories. Lower materials safely to ground. Sort reusable materials as directed by P.M. Remove and cart away all debris as directed by school management away from site. Protect existing walls from damage during demolition.	440	SM		
	All in sawn, well seasoned and tretaed seasoned cypress timber gradeII Trusses) -Replace wornout timbers				
B	150x50mm Rafters	270	LM		
C	75x50mm Purlins	350	LM		
	Wrot cypress				
D	250x25mm Fascia board.	72	Lm		
E	250x25mm verge boards.	24	Lm		
	NEW ROOF COVER				
F	30 gauge pre-painted IT-5 on timber purlins (m.s)	440	sm		
G	Ditto Matching ridge cover.	37	Lm		
	RAIN WATER GOODS:				
	(All in click fit second grade upvc products.)				
H	150mm Diameter half round gutter with matching brackets.	72	Lm		
J	Extra over ditto for closed ends.	4	NO		
K	100mm Diameter rain water down pipe.	20	Lm		
L	Extra over ditto nozzle outlet.	8	NO		
M	Ditto 600mm projection swarn neck	8	NO		
N	Ditto rain water shoe.	8	NO		
	Total Carried to Collection				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	ELEMENT NO. 3				
	REINFORCED CONCRETE FRAME				
A	Hack off plaster and expose existing concrete ring beam 200x300mm to receive new concrete. Clean surface and apply bonding agent SikaLatex or approved equal to ensure monolithic bond between old and new concrete. Rate to include all labor.	113	LM		
	Vibarted reinforced concrete (1:2:4) 20/20mm aggregate in:-				
B	Ring beam and tie beams	7	cm		
	Reinforcement:				
	High tensile square twisted bars to B.S. 4461 as before described.				
C	8mm Diameter bars	200	KG		
D	12mm Diameter	400	KG		
	Sawn form work to:-				
E	Sides of ring beam and tie beams.	70	sm		
F	Supply and weld new 75mm dia x3mm CHS extension piece to match existing stanchion, length as required to raise roof by 600mm. Include 4No 10mm thick splice plates 200x200mm, 4 sides, welded all round with 6mm fillet weld	50	LM		
	TOTAL CARRIED TO SUMMARY OF ELEMENTS				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	ELEMENT NO. 4 EXTERNAL & INTERNAL WALLING NATURAL STONE WALLING				
A	Carefully demolish existing 150mm thick stone/block gable walls from wall plate level up to ridge, average height 1.5m. Lower debris safely. Rate to include scaffolding.	80	SM		
B	150mm thick approved local; handdressed stone bedding, jointing and pointing in cement sand (1:4) mortar to gable walls and roof eaves.	80	sm		
	Wall finishes Plaster; 12mm thick 2 No. coatwork, 9mm first coat of cement sand (1:6); 3mm second coat of cement and lime putty (1:10); steel trowelled toconcrete or blockwork base generally to: -				
C	Walls; internal	200	sm		
D	walls external	200	sm		
	TOTAL FOR EXTERNAL & INTERNAL WALLING CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	ELEMENT NO. 3				
	DOORS				
A	Carefully remove existing 900x2100mm single steel door and frame including hinges, lock, and all ironmongery. Lower safely and stack in store as directed by P.M. Rate to include making good plaster reveals	4	NO		
B	Hack brickwork/stone wall to enlarge existing door opening from 900mm to 1200mm wide x 2400mm high to receive new double door. Remove and cart away debris. Prop lintel/roof during hacking	12	SM		
C	Supply and deliver new 1200x2400mm double leaf mild steel door complete with 1.6mm thick door leaves, 2.0mm frame, 2No hinges per leaf, lockset, door bolts, and handles. Gauge 16 leaves, factory primed.	4	NO		
D	Build in new double steel door frame to widened opening using 6No 12mm diameter mild steel lugs 300mm long built into brickwork at 600mm centers. Plumb, level, and grout frame with 1:3 mortar	4	NO		
E	Make good plaster to reveals and jambs 20mm thick cement:sand 1:4 to match existing after door fixing	25	SM		
F	Apply 1 coat red oxide primer + 2 coats gloss oil paint to new steel door and frame, color as directed	25	SM		
	TOTAL CARRIED TO SUMMARY OF ELEMENTS				

ITEM	DESCRIPTION	QTY	UNIT		
	ELEMENT NO. 4				
	WINDOWS				
A	Remove the existing old windows measuring 1200x1200 and dispose as directed by school management.	20	NO		
	Supply standard steel casement (3mm thick) purpose made windows complete with fixing, hanging, closing and opening accessories with and including permanent vents all primed once with red-oxide.				
B	Window size 1500x1500mm High.	20	No		
C	Apply 2 coats gloss oil paint to undercoated surfaces. Colour as directed by client user.	40	SM		
D	4mm thick clear glazing including putty and silicon	40	sm		
	TOTAL CARRIED TO SUMMARY OF ELEMENTS				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	FINISHES				
	Wall finishes				
	Plaster; 12mm thick 2 No. coatwork, 9mm first coat of cement sand (1:1:6); 3mm second coat of cement and lime putty (1:10); steel trowelled toconcrete or blockwork base generally to: -				
A	Plaster Walls; internaly	400	sm		
B	walls external	300	sm		
	Floor screed				
	Screed; cement and sand (1:4) wood floated :-				
C	Hack and screed 25 mm thick to receive floor tiles finish (m.s)	340	Sm		
	Tile Finish				
D	400x400x7.5mm non slip ceremic floor tiles	340	Sm		
E	100mm high matching tile skirting	174	Lm		
	TOTAL CARRIED TO SUMMARRY OF ELEMENTS				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	PAINTING AND DECORATING				
	(All as 'CROWN' 1st grade or equal approved)				
	Steel brush, dust off,prepare and apply one undercoat and two finishing coats of plastick emulsion paint on :-				
A	Walls internally	400	Sm		
B	Ditto externally	300	sm		
	Knot,prime,stop, prepare and apply one coat and two finishing coats of gloss oil paint on:				
C	Surface of doors internally	12	Sm		
D	Ditto externally	12	Sm		
E	Surface of windows internally	40	Sm		
F	Ditto externally	40	Sm		
G	Ditto to fascia board and verge board	97	sm		
H	Ditto to steel stanchion of 75mm dia	48	lm		
	TOTAL CARRIED TO COLLECTION				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
1	Substructure----------RWB/1				
2	Roof----------RWB/2				
3	Reinforcement frame----------RWB/3				
4	External and Internal walling----------RWB/4				
5	Doors----------RWB/5				
6	Windows----------RWB/6				
7	Floor finish----------RWB/7				
7	Painting and decoration----------RWB/8				
	TOTAL CARRIED TO COLLECTION				

PROPOSED ELECTRICAL INSTALATION OF 4NO. CLASSROOMS					
ITEM	**DESCRIPTION**	**QTY**	**UNIT**	**RATE**	**KSHS.**
	SUPPLY,DELIVER, INSTALL, TEST AND COMMISSION THE FOLLOWING WORKS:				
A	Lighting points comprising 1.5 sq. mm P.V.C S. C. copper cables, 20mm dia. P.V.C hg conduits c/w all accessories flush in walls excluding switches and electrical luminaries on one way switching.	12	NO		
B	Power points comprising 2.5 square mm P.V.C S. C. copper cables, 20mm dia. P. V C HG conduit c/w all accessories flush in wall excluding 13A socket outlet	4	NO		
C	13A Twin switched socket outlets as tronic or equivalent	4	NO		
D	10A 2gang 1-way switch as tronic or equivalent.	4	NO		
E	10A 1gang 2-way switch as tronic or equivalent.	4	NO		
F	200mmx200x150mm G20 mettalic Standard looping box locally fabricatedc/w 80A HR Fuse cut out.	1	NO		
G	Ceiling rose c/w 1.5mm sq 2-core flexible white cable and blank single cover plate.	5	LM		
	TOTAL CARRIED TO COLLECTION				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
A	18W/24W Dp LED moisture proof oval head bulkhead to be approved or equivalent.	5	NO		
B	36wx1200 mm LED single batten fluorescent fitting c/w all accessories.	12	NO		
C	100A x 4-way Consumer Unit as Tronic or equivalent	1	NO		
D	Excavate 300mmx600mm deep trench to S.W.A P.V.C armoured cable. Cover the trench with the excavated soil ensures the cable insulation is not punctured	15	LM		
E	Lay 6.0mm sq 2-core S.W.A. PVC armoured cable. Cover the trench with the excavated soil ensures the cable insulation is not punctured	10	LM		
F	3x6.0 sq mm P.V.C S.C. copper cables (Red Black and Green) drawn in 25 mm dia. P.V.C HG conduit for Sub mains cables	10	LM		
G	S P Miniature Circuit Breakers as Tronic or equivalent (6Ax2NO, 16Ax1N0)	3	NO		
H	Earthing complete including 6.0mm sq earth wire (Yellow/ Green), 1200mm copper earth electrode and clamp c/w 30mm0X300mmX2300mm earthing inspection chamber plus cover	1	ITEM		
	TOTAL CARRIED TO COLLECTION				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	COLLECTION Total Carried from Page Elec/01…… Total Carried from Page Elec/02……				
	TOTAL CARRIED TO GRAND SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS.
	PRIME COST AND PROVISIONAL SUMS				
A	Allow aprovisonal sum of Kenya shillings fifty thousand (Kshs.50000 only for PMC.				
B	Allow aprovisonal sum of Kenya shillings eighty thousand (Kshs.80000 only for project management expenses.				
C	Allow aprovisonal sum of Kenya shillings twenty thousand (Kshs.20,000) only for branding				
D	Allow aprovisonal sum of Kenya shillings twenty thousand (Kshs.20,000) only for contigencies				
	TOTAL CARRIED TO GRAND SUMMARY				

GRAND SUMMARY			
		TENDER'S USE	OFFICIAL
ITEM	DESCRIPTION	SHS	SHS
1	Particular Preliminaries…….....PP/9		
2	General Preliminaries…….……....GP/20		
3	RENOVATION work….....RW/9		
4	Electrical works……...EL/3		
5	Prime cost and Provisional sums…….……...PS/1		
	Sub -total		
6	ADD 0.03% for procument capacity building		
	TOTAL CARRIED TO FORM OF TENDER		

Prices inclusive of all taxes

AMOUNT IN WORDS: **……..**

…….……..

BIDDER'S NAME …….……..

ADRESS :…….……

SIGNATURE:……...……....

DATE:……...……..…….

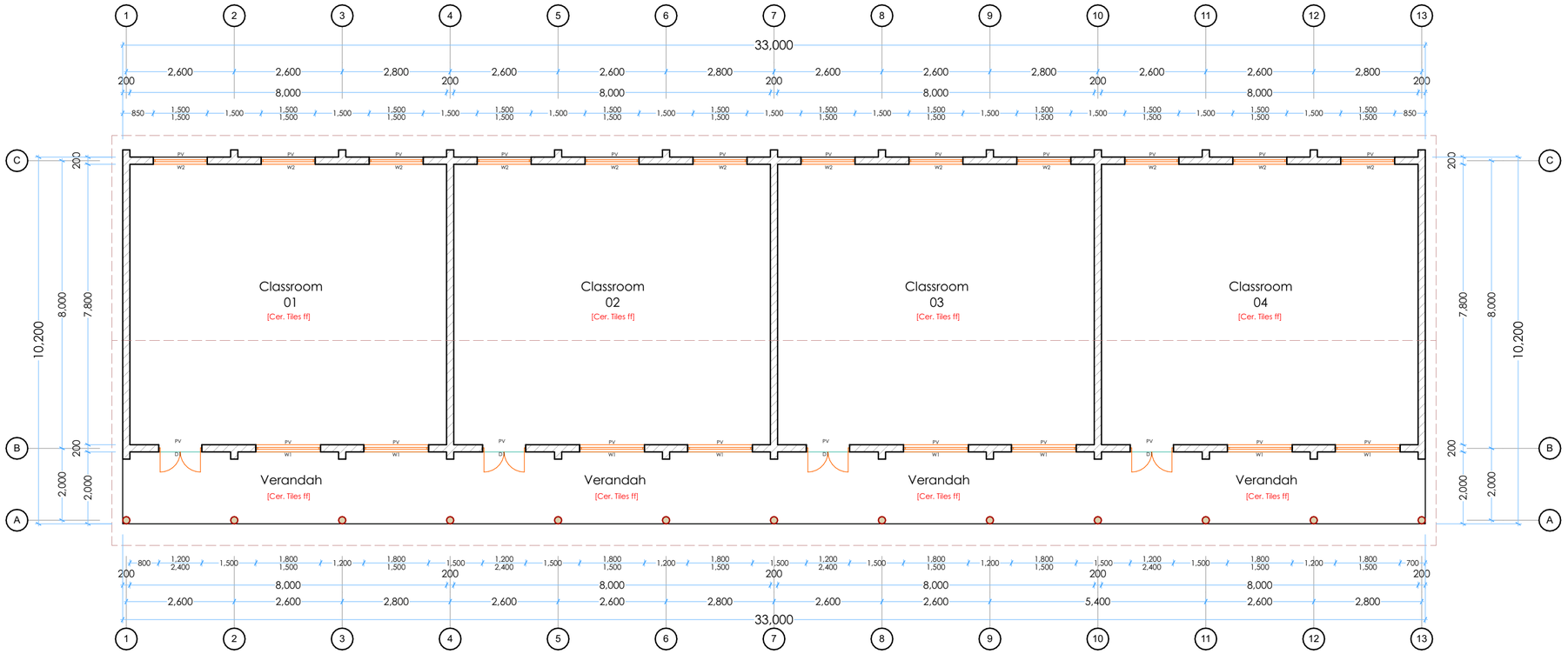
WITNESS NAME …….……..

ADRESS :…….……

SIGNATURE:……...……....

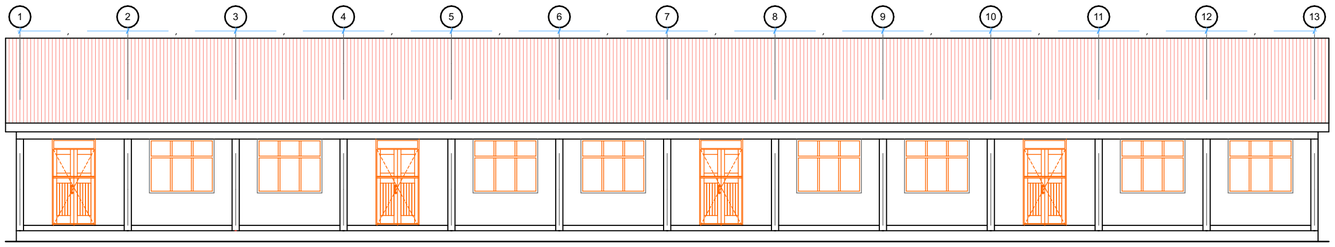
DATE:……...……..…….

DRAWINGS



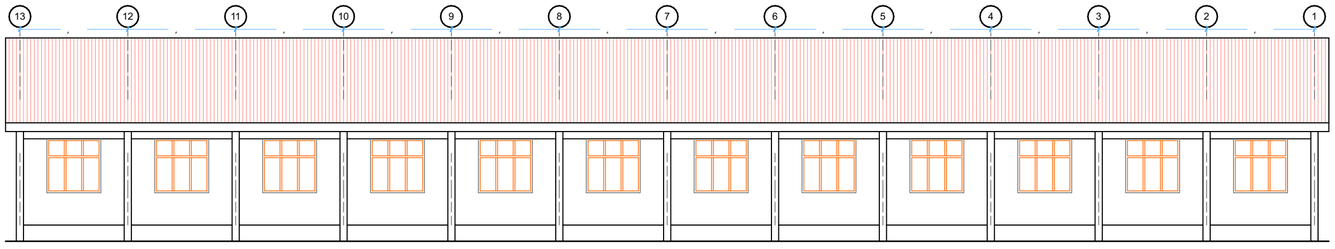
Ground Floor Plan

Scale: 1:100



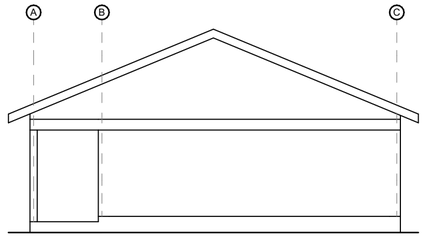
FRONT ELEVATION

Scale 1:100



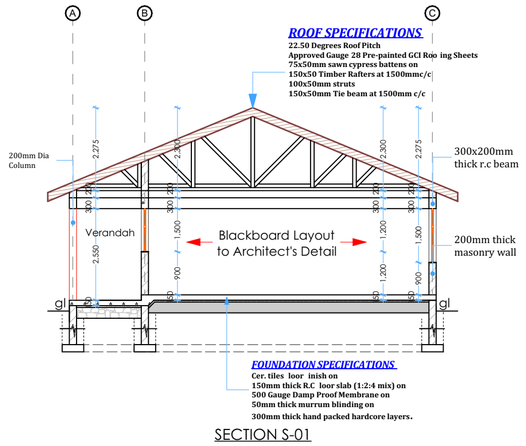
REAR ELEVATION

Scale 1:100



END ELEVATION

Scale 1:100



SECTION S-01

Scale 1:100

COUNTY GOVERNMENT OF BUSIA
DIRECTORATE OF PUBLIC WORKS
P.O BOX 470 - 50400
BUSIA, KENYA

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GENERAL NOTES

1. All dimensions are in millimetres, unless otherwise stated.
2. All dimensions to be checked and confirmed on site before commencement of any work.
3. Written dimensions overrides scaled dimensions,thus all dimensions are to be read and not at any time scaled from the drawing.
4. Any discrepancy to be reported to the project Architect promptly before proceeding.

NO.	REVISION	DATE	APPR

CLIENT:

MINISTRY OF EDUCATION

PROJECT:

PROPOSED RENOVATION OF 4 NO. CLASSROOMS AT EMAGOMBE PRIMARY P.O BOX ..... BUTULA

DRAWING TITTLE:

PLANS, SECTION & ELEVATION

DRAWN BY	ETYANG'	
CHECKED BY		
APPROVED BY		

PROJECT NO.