REPUBLIC OF KENYA

EMBU COUNTY GOVERNMENT

PROJECT NAME

PROPOSED CONSTRUCTION OF CANAAN WALL AND SHAURI DRAINAGE

TENDER NO. 2675587-2026/2027

TENDER CLOSING/OPENING DATE: 17th November, 2026 AT 11:00 A.M

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INVITATION TO TENDER

PROCURING ENTITY: EMBU COUNTY **Invitation Date 9th November 2026**

1. The **EMBU COUNTY GOVERNMENT (ECG)** invites sealed tenders for the Construction of Cnaan Wall and Drainage. Tendering will be conducted under National open competitive method using a standardized tender document. Tendering is open to all eligible, qualified and interested Tenderers.
2. The project is Funded by Embu County Government
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents from 0900-1700hours at the address: The County secretary, Embu county government,
4. Tender documents may be viewed and downloaded for free from www.embu.go.ke or www.tenders.go.ke.
5. Tenders shall be quoted in Kenya Shillings and shall include all taxes. Tenders shall remainvalid for **150 days** from the date of opening of tenders.
6. The Tenderer shall chronologically serialize all pages of the tender documents submitted. **A.**
7. Completed tenders must be delivered to the address below on or before **at 17th November, 2026, 11:00 AM Both Manually and through the IFMIS system.** The eligible tenderers are also required to STRICTLY respond through e-procurement supplier's portal: www.supplier.treasury.go.ke and submit a copy of the original duly filled tender document (same as the one submitted online).
8. Tenders will be opened immediately after the deadline date and time specified above or any deadline date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.

Late tenders will be rejected.

The addresses referred to above are:

A. Address for obtaining further information

County secretary.

Embu county government

P.O. Box 36-60100 Embu.

B. Address for Submission of Tenders.

County secretary.

Embu county government

P.O. Box 36-60100 Embu.

C. Address for Opening of Tenders.

Embu county government

P.O. Box 36--60100 Embu.

9. **Hand Delivered tender documents to be deposited in the Tender Box located at main Procurement office on or before 17th November, 2026 at 11:00AM.** Late tenders will be rejected.
10. NOTE: **Due diligence shall be carried out on all information provided.**
    All interested bidders are required to continually check the Embu county website www.embu.go.kefor any tender addendums or clarification that may arise before submission date

PART 1 - TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A GENERAL PROVISIONS

Scope of tender

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

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

PART TENDERING PROCEDURES

Fraud and corruption.

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

The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive 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 the Form of Tender.

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

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

Eligible tenderers

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

the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS.**

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

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

Directly or indirectly controls, is controlled by or is under common control with another tenderer;

Receives or has received any direct or indirect subsidy from another tenderer;

Has the same legal representative as another tenderer;

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;

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;

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

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;

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

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 teeming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

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

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

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

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

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

A legal public entity of Government and/or public administration, financially autonomous and not receiving any significant subsidies or budget support from any public entityor Government, and;

(iii) Operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

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

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

By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any payments to any country, person, or entity in that country. A tenderer shall provide suchdocumentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

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

Pursuant to the eligibility requirements of ITT 3.10, a tender is considered a foreign tenderer, If it is registeredin Kenya and has less than 51 percent ownership by nationals of Kenya and if it does not subcontract to foreignfirms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs are consideredas 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.

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

The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which mayprevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. 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 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.

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

Eligible goods, equipment, and services

Goods, equipment and services to be supplied under the Contract may have their origin in any country that isnot ineligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidenceof the origin of Goods, equipment and services.

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

Tenderer’s responsibilities

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

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

The Tenderer and any of its personnel or agents will be granted permission by the Procuring Entity to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the Procuring Entity 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.

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.

CONTENTS OF TENDER DOCUMENTS

Sections of Tender Document

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

PART 1: Tendering Procedures
Section I – Instructions to Tenderers
Section II – Tender Data Sheet (TDS) Section
III- Evaluation and Qualification
Criteria Section IV – Tendering Forms

PART 2: Works' RequirementsSection
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

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 theTender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 10. In case of anycontradiction, documents obtained directly from the Procuring Entity shall prevail.

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

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

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

The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender.

The costs of visiting the Site shall be at the Tenderer's own expense. The Procuring Entity shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

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

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

The Procuring Entity shall al so promptly publish anonym zed (*no names*) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pretender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

Amendment of Tender Documents

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

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

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

PREPARATION OF TENDERS

Cost of Tendering

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

10.0 Language of Tender

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

Documents Comprising the Tender

The Tender shall comprise the following:

Form of Tender prepared in accordance with ITT 12;

Schedules including priced Bill of Quantities, completed in accordance with ITT 12 and ITT 14;

Tender Security or Tender-Securing Declaration, in accordance with ITT 19.1;

Alternative Tender, if permissible, in accordance with ITT 13;

Authorization*:* written confirmation authorizing the signatory of the Tender to commit the Tenderer, inaccordancewithITT20.3;

Qualifications: documentary evidence in accordance with ITT 17 establishing the Tenderer's qualifications toperform the Contract if its Tender is accepted;

Conformity: a technical proposal in accordance with ITT 16;

Any other document required in the **TDS.**

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

Form of Tender and Schedules

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

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

Alternative Tenders

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

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

Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirementsof the Tender Documents must first price the Procuring Entity's design as described in the Tender Documentsand shall further provide all information necessary for a complete evaluation of the alternative by the ProcuringEntity, 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 ProcuringEntity.

When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for

specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

Tender Prices and Discounts

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

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

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

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

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

Where tenders are being invited for individual lots (contracts)or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time.
All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of thedate 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

Currencies of Tender and Payment

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

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

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 the **TDS**) indicate in the Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), needed by the Tenderer for the payment of such foreign currency requirements, limited to no more than two foreign currencies.

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

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

16.0 Documents Comprising the Technical Proposal

The 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, and insufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

Documents Establishing the Eligibility and Qualifications of the Tenderer

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

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

If a margin of preference applies as specified in accordance with ITT 33.1, nation al tenderers, individually orin joint ventures, applying for eligibility for national preference shall supply all information required to satisfythe criteria for eligibility specified in accordance with ITT 33.1.

Tenderers shall be asked to provide, as part of the data for qualification, such information, including details ofownership, 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 potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, andthereby help to prevent any corrupt influence in relation to the procurement process or contract management.

The purpose of the information described **in ITT 17.4** above overrides any claims to confidentiality which

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

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

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

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

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

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

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

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). A tender valid for a shorter period shall be rejected by the Procuring Entity as nonresponsive.

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be madein 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 forfeitingits Tender security. A Tenderer granting there quest shall not be required or permitted to modify its Tender.

Tender Security

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

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

cash;

a bank guarantee;

a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listedby the Authority;

a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from areputable source, and an eligible country.

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

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

If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall bereturned 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 promptlyreturn the tender security to the tenderers where the procurement proceedings are terminated, all tenders weredetermined non-responsive or a bidder declines to extend tender validity period.

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 other documents required in the TDS.

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

if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on theForm of Tender, or any extension there to provide by the Tenderer; or

if the successful Tenderer fails to: -

sign the Contract in accordance with ITT47; or

Furnish a Performance Security and if required in the TDS, and any other documents required in theTDS.

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

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

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

Format and Signing of Tender

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

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

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

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.

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

SUBMISSION AND OPENING OF TENDERS

Sealing and Marking of Tenders

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

in an envelope or package or container marked **"ORIGINAL",** all documents comprising the Tender, asdescribed in ITT 11; and

in an envelope or package or container marked **"COPIES",** all required copies of the Tender; and

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

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

in the envelope or package or container marked **"COPIES- ALTERNATIVE TENDER",** all requiredcopies of the alternative Tender.

The inner envelopes or packages or containers shall:
bear the name and address of the Procuring Entity,

bear the name and address of the Tenderer; and
bear the name and Reference number of the Tender.

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

Deadline for Submission of Tenders

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

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

23.0 Late Tenders

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

Withdrawal, Substitution, and Modification of Tenders

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

prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawals notices do not requirecopies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL,"

"SUBSTITUTION," "MODIFICATION;" and

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

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

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

Tender Opening

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

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

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

Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender.

No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorizationtorequestthemodificationandisreadoutatTenderopening.

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

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

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

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

the name of the Tenderer and whether there is a withdrawal, substitution, or modification;

the Tender Price, per lot (contract) if applicable, including any discounts;

any alternative Tenders;

the presence or absence of a Tender Security, if new as required and number of pages of each tender document submitted.

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

EVALUATION AND COMPARISON OF TENDERS

Confidentiality

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

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

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

Clarification of Tenders

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

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

Deviations, Reservations, and Omissions

During the evaluation of tenders, the following definitions apply: -
"Deviation" is a departure from the requirements specified in the tender document;
"Reservation" is the setting of limiting conditions or withholding from complete acceptance of therequirements specified in the tender document; and
"Omission" is the failure to submit part or all of the information or documentation required in the Tender document.

Determination of Responsiveness

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

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

Affect tin any substantial way the scope, quality, or performance of the Works specified in theContract;

limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights orthe tenderer's obligations under the proposed contract;

if rectified, would unfairly affect the competitive position of other tenderers presenting substantiallyresponsive tenders.

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

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

Non-material non-conformities

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

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

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

Arithmetical Errors

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

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

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

Any errors in the submitted tender arising from a miscalculation of unit price, quantity, and subtotal and totalbid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. And if there is a discrepancy between words and figures, the amount in words shall prevail

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

32.0 Conversion to Single Currency

For evaluation and comparison purposes, the currency (ies) of the Tender shall be converted in to a single currencyas specified in the **TDS**.

Margin of Preference and Reservations

A margin of preference may be allowed only when the contract is open to international competitive tendering

where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.

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

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

Where it is intended to reserve a contract to as specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the **TDS**, a procuring entityshall 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 toTender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

Nominated Subcontractors

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. In case the Procuring Entity nominates a subcontractor, the subcontract agreement shall be signed by the Subcontractor and the Procuring Entity. The main contract shall specify the working arrangements between the main contractor and the nominated subcontractor.

Tenderers may propose sub-contracting up to the percentage of total value of contracts or the volume of worksas specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of theWorks.

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 metby subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Sub contractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

Evaluation of Tenders

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

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

Price adjustment in accordance with ITT 31.1 (iii); excluding provisional sums and contingencies, if any, butincluding Day work items, where priced competitively;

price adjustment due to discounts offered in accordance with ITT 14.4;converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency inaccordance with ITT 32;

price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3; and

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

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

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

Abnormally low tenders and abnormally high tenders

Abnormally Low Tenders

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

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

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

Abnormally high tenders

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

In case of 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 the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entitymay also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations. ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates,specifications, scope of work and conditions of contract, as the case may be.

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.

Unbalanced and/ or front-loaded tenders

If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or 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 thescope of works, proposed methodology, schedule and any other requirements of the Tender document.

After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate: a) accept the Tender; require that the total amount of the Performance Security be increased at the expense of the Tenderer to alevel not exceeding a 30% of the Contract Price; agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much forundelivered works; reject the Tender,

Qualifications of the tenderer

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

The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into considerationthe 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 fromthe Tenderer.

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 Procuring Entity shall proceed tothe 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.

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:
Most responsive to the Tender document; and 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 and reject 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 theTenderers.

AWARD OF CONTRACT

42.0 Award criteria

The Procuring Entity shall award the Contract to the successful tenderer whose tender has been determined to bethe Lowest Evaluated Tender.

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

Upon award of the contract and prior to the expiry of the Tender Validity Period the Procuring Entity shall 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 is addressed 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;

Stand still Period

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

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

Debriefing by the Procuring Entity

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 debriefing on specific issues or concerns regarding their tender. The Procuring Entity shall provide the debriefing within five days of receipt of the request.

Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costsof 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 in ITT 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 requestthe successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

Signing of Contract

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

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

The written contract shall be entered into within the period specified in the notification of award and before expiryof the tender validity period.

Performance Security

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

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

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

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 notice shall contain thefollowing information:

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

Procurement related Complaints and Administrative Review

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

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

section II - Tender Data Sheet (TDS)

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

Referenceto ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The name of the contract is **CONSTRUCTION OF CANAAN WALL AND DRAINAGE** **The reference number of the Contract is; 2675587-2026/2027** The number and identification of lots (contracts)comprising this Tender are *[insertnumber and identification of lots (contracts)]* Lot 1- Name_____N/A_____ Lot 2- Name_____N/A_____ Lot… Name_____N/A_____
ITT 2.4	The Information made available on competing firms is as follows: N/A
ITT 2.4	The firms that provided consulting services for the contract being tendered for are: N/A
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: ***[insert a number]*.N/A**
B. Contents of Tender Document	
ITT 7.1	The prospective bidder requiring any clarification of the bidding documents may notify the Employer in writing or visits our procurement office at EmbuCounty Headquarters. not later than 7 days prior to submission of bids
ITT 7.2	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than 7 days prior to submission of the bids

ITT 7.5	The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arrangedpretender will be published
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for obtaining tender documents, the Procuring Entity's address is: Name of Procuring Entity: **EMBU COUNTY GOVERNMENT (ECG)** Postal Address :**P.O. BOX 36-60100,EMBU** 3.Physical address for the hand courier delivery to **TENDER BOX AT EMBU COUNTY PROCUREMENT OFFICE BLOCK**

Reference to ITC Clause	**PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS**
	additional document not already listed in ITT 11.1 that must be submitted with theTender. The list of additional documents should include the following:]
C. Preparation of Tenders	
ITT 11.1 (h)	**The Tenderer shall submit the following additional documents in its Tender**: 1. Written Form of Power Attorney. The written confirmation of authorization to sign on behalf of the Tenderer shall consist of The form of power of attorney that shall be duly filled, signed and stamped to demonstrate the authority of the signatory to sign the Tender incase the person appointed to sign the tender is not one of the directors in the company, but if it's one of the directors, attach board of directors resolution and either of them must be endorsed by an advocate or commissioner of oaths registered in Kenya. 2. Copy of Valid Tax Compliance Certificate certified by Commissioner of Oaths. 3. Bills of Quantities duly Completed, Signed and Stamped by the Tenderer in the format provided. 4. Duly filled, stamped and dated form of tender bearing bidders letterhead signed by an individual entrusted with the powers ofattorney. 5. Provide completion certificates of building works of the same magnitude or above from three different clients. 6. Certified copy of certificate of incorporation (by commissioner for oaths). 7. Certified Copy of recent CR12 form generated through the system-(*not older than three months before opening date*) from Registrar of companies (certified by commissioner for oaths)and also certified IDs (both sides) /passport of all directors (certified by commissioner for oaths) 8. Properly Tape bound, good presented document. The tender document including all attachments shall be numerically paginated in the format 1,2, 3,…. all pages. i.e. (each page in the submitted bid document). 10. Attach Company profile which must include and not limited to; organization structure, current tax compliance for the staff and, valid single business permit, list of personnel's and every page endorsed by the commissioner of oaths. 11. Submit a Valid certified relevant current Trading License/Single Business Permit relevant to the work (certified by commissioner for oaths) 12. Copy valid of registration Certificate with National Construction Authority in the category **of building and construction (NCA-7 and above) (**certified by commissioner for oaths) 13. Certified Copy of valid current NCA practicing licenses for building works. (certified by commissioner for oaths) 14. Provide a Certified Copy of work methodology. 15. Provide a copy of sworn affidavit refer to certificate of independent tender determination endorsed by an advocate.

	16. Copies of audited accounts and bank statements for each of the last three years beginning fromthe most recent year. **ALL CERITIFICATION MUST BE BY COMMISSIONER FOR OATHS.** **Note: The County Government of Embu shall verify all the information submitted. Any form of forgery or misinformation from the bidder shall lead to cancellation of the bid/ award, institution of legal preceding and banning for all future Embu county government contracts.** **Bidders who will not comply with the above criteria shall be consider non-responsive and will not be subjected to technical evaluation.**
ITT 13.1	Alternative Tenders *["**shall not be**"]*_____considered. *[If alternatives shall be considered, the methodology shall be defined in Section III, Evaluation andQualification Criteria.]* ***N/A***
ITT 13.2	Alternative times for completion *[insert "shall be" or "**shall not be**"]*_____permitted. *[If alternative times for completion are permitted, the evaluation method will be as specified in SectionIII, Evaluation and Qualification Criteria.] –**N/A***
ITT 13.4	Alternative technical solutions **shall not** be permitted for the following parts of the Works: _____N/A_____*[insert parts of the Works]:* *[If alternative technical solutions are permitted, the evaluation method will be as specified in SectionIII, Evaluation and Qualification Criteria.]*

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ITT 14.5	The prices quoted by the Tenderer shall be: f**ixed**
ITT 15.2 (a)	Foreign currency requirements ~~**allowed**~~**/not allowed.**
ITT 18.1	The Tender validity period shall be_____**150 days**____*[insert a number of days that is a multiple of seven counting as of the deadline for Tender submission]* days.
ITT 18.3	Additional ITT 18.3 on Clause 18 The Number of days beyond the expiry of the initial tender validity period will be 30 days. The Tender price shall not be adjusted.
ITT 19.1	A Tender-Securing Declaration *"shall not be*" required
ITT 20.1	In addition to the original of the Tender, the number of copies is: **1 (ONE)**

Reference to ITC Clause	**PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS**
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consisto The form of power of attorney that shall be duly filled, signed and stamped to demonstrate the authority of the signatory to sign the Tender
D. Submission and Opening of Tenders	
ITT 21.2	A tender package or container that cannot fit in the tender box shall be received and registered at the Director Of Procurement Office
ITT 22.1	For Tender submission purposes only, the Procuring Entity's address is: County Secretary Embu County Government P.O.Box 36 Embu
ITT 25.1	The Tender opening shall take place at the time and the address for Opening of Tenders provided below: Name of Procuring Entity: **EMBU COUNTY GOVERNMENT** Physical address for the location: **Off Meru Nairobi Highway, Opposite Huduma Center at Main procurement office** **On 6th November,2026 at 11:00 AM.**

ITT 25.1	Tenderers must submit Tenders electronically, they shall follow theelectronic tender submission procedures **specified below** E-procurement suppliers' portal: **www.supplier.treasury.go.ke** *yes*____-
E. Evaluation, and Comparison of Tenders	
ITT 30.3	The adjustment shall be based on the_____*N/A*_____*[insert "average" or "highest"]* price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the Procuring Entity shall use its Lowest estimate.
ITT 31.2	The arithmetic error(s) of material deviation shall be considered a major deviation that leads todisqualification if the percentage of the error (error over the tender price quoted) is: **more than__5_____% or less than_5_____%.**
ITT 32.1	The currency that shall be used for Tender evaluation will be Kenya shillings
ITT 33.2	A margin of preference *"**shall not**"* apply.
ITT 33.4	The invitation to tender is extended to the following groups that qualify for Reservations NOT APPLICABLE
ITT 34.1	At this time the Procuring Entity, DOES NOT INTEND to execute certain specific parts of the works bysubcontractors selected in advance.
ITT 34.2	Contractor shall not be allowed to subcontract any parts of the Works in this tender.

Reference to ITC Clause	**PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS**
ITT 34.3	The parts of the works for which the procuring entity permits tenderers to propose SpecializedSubcontractors are designed as follows: NOT APPLICABLE
ITT 35.2 (d)	Additional requirements apply. These are detailed in the evaluation criteria in Section III-Evaluation andQualification Criteria
ITT 48.1	Other documents required in addition to the Performance Security are(N/A)_____
ITT 48.2	Additional requirements are: NOT APPLICABLE

ITT 50.1	The procedures for making a Procurement-related Complaint are available from the PPRA website info@ppra.go.ke or complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is eitherby hand delivery or email to: For the attention: *County Secretary* Title/position: *County Secretary* Procuring Entity: *Embu County Government* Email address*: P.o Box 36* In summary, a Procurement-related Complaint may challenge any of the following: 1. The terms of the Tender Documents; and 2. The Procuring Entity's decision to award the contract.

SECTIONIII-EVALUATION AND QUALIFICATION CRITERIA

GENERAL PROVISIONS

This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The 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 evaluating Tenders.

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

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

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

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

EVALUATION AND CONTRACT AWARD CRITERIA

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

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 Report Document for Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non-responsive and will not be considered further.

1. The form of bid **shall** be prepared as per section 7, signed and stamped by an individual entrusted with the powers ofattorney.
2. The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.

All italicized text is to help Tenderer in preparing this form.

3. Tenderers shall ensure that the submitted bid (documents) is (are) serialized consistency and numerically all pages. i.e. 1,2,3…. (each page in the submitted bid document).
4. Tenderer shall fill, stamp and sign the below forms / schedules in the bid document and include all attachments as required.
    - Form Equipment
    - Form Mper-1
    - Form per-2
    - Tenderer's eligibility-confidential business questionnaire which shall bear tenderers letterhead
    - Financial documents
    - Form fin – 3.1
    - Form fin 3.4
    - Form Exp – 4.1
    - Form exp 42 (a)
    - Certificate of independent Tender Determination which shall bear tenderers letterhead
    - Declaration & Commitment to the code of ethics which shall bear tenderers letterhead
5. Written Form of Power Attorney. The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: The form of power of attorney that shall be duly filled, signed and stamped to demonstrate the authority of the signatory to sign the Tender incase the person appointed to sign the tender is not one of the directors in the company, but if it's one of the directors, attach board of directors resolution and either of them must be endorsed by an advocate or commissioner of oaths registered in Kenya.
6. Copy of Valid Tax Compliance Certificate or tax exemption certificate issued by the Kenya Revenue Authority certified by Commissioner of Oaths.
7. Provide completion certificates of minimum of three building works of the same magnitude or above from three different clients.
8. Certified copy of certificate of incorporation (by commissioner for oaths).
9. Certified Copy of recent CR12 form generated through the system-(*not older than three months before opening date*) from Registrar of companies (certified by commissioner for oaths) and also certified IDs (both sides) /passport of all directors (certified by commissioner for oaths)
10. The bidder shall initialize the tender document including all attachments (each page in the submitted bid document).
11. Attach Company profile which must include and not limited to; organization structure, current tax compliance for the staff and PIN numbers, valid single business permit, list of personnel's and every page endorsed by the commissioner of oaths.
12. Submit a Valid certified relevant current Trading License/Single Business Permit relevant to the work
13. Certified Copy of registration Certificate with National Construction Authority for -Building and construction category **-7 and above**
14. Certified Copy of valid current NCA practicing licenses for building works.
15. Provide a work methodology.
16. Provide a copy of sworn affidavit refer to certificate of independent tender determination endorsed by an advocate.
17. Financial audited accounts for the immediate previous three years endorsed, stamped, signed by a registered

external auditor

18. Attach a bid security of Kenya shillings 150,000 (One Hundred and Fifty Thousand) in form of bank guarantee, Financial institution approved by Central Bank of Kenya (CBK) or an Insurance company approved by Insurance Regulatory Authority (IRA)
19. Fill, stamp and sign SD1 and SD 2 with tenderers letterhead

ALL CERITIFICATION MUST BE BY COMMISSIONER FOR OATHS.

Note: The County Government of Embu shall verify all the information submitted. Any form of forgery or misinformation from the bidder shall lead to cancellation of the bid/ award, institution of legal preceding andblacklisting for all future Embu county government contracts.

Bidders who will not comply with the above criteria shall be consider non-responsive and will not be subjected totechnical evaluation.

SECTION II: TECHNICAL EVALUATION

2. TECHNICAL EVALUATION		Max Score	Awarded score
Financial performances			
	Evaluation of submitted Audited Accounts for the immediate last three years		
	Has the Bidder's submitted annual audited account for the immediate last three years reflect a reasonable cumulative turnover? (**Award 15 marks** for average turnover exceeding 40 million) (**Award 10 marks** for turnover between 20-30 million) **(Award 5 marks** for turnover below 20million) (Award 0 for no attachments)	**15.00**	
	(d) Provide a letter of credit (original copy) from the bank that provided the (Certified Bank Accounts) (b) above. The letter should be authentic, with an email address of the contact person for verification. **(A**ward 5 marks for an authenticated letter of credit from the bank within the 12months) (Award 0 for no attachments or statement older than 12months)	**5.00**	
	TOTAL (Financial performance)	**20.00**	

Equipment holding			
b) Equipment holding Requirements			
TOTAL (Equipment holding Requirements)	Bidder to attach either a copy of lease agreement / logbook for vehicular machines / copy of purchase receipts for minor equipment for the works. Backhole - **award 6 marks** for owned / leased Truck/ Lorry - **award 6 marks** / leased Excavator - **award 6 marks** for owned /leased Compactor - **award 5 marks** for owned / leased Concrete Mixer - **award 6 marks** for owned / leased Poker Vibrator - **award 6 marks** for owned /leased Total station- **award 5 marks** for owned / leased **Note: All lease agreements from private firms and from Ministry of Transport and Infrastructure should be stamped, signed and dated. For privately leased there shall be a consent to lease agreement**	**40.00**	
d) Total for Equipment holding Requirements		**40.00**	
c) Key Personnel			
	Evaluate if key technical personnel have the academic qualifications and experience .Attach academic certificate on each category		
	Director of the firm At least Degree holder of **(**Structural Engineering Related Field**)** Holder of degree in Structural Engineering field ----- 5 Holder of diploma Building and Civil Engineering ---- 3 Holder of certificate in relevant Engineering field----- 1.5 No relevant certificate----------0	**5.00**	
	Site agent-minimum qualification, Diploma in building and civil works construction. Award 3marks for academic certificate attached 5 years and above of specific and building construction experience (3marks) Award 2 marks for academic certificate attached with 2-4 years of specific building construction experience (2 marks) Otherwise, award (1Marks) for less than 2 years of specific building construction experience	**3.00**	

	Foreman - minimum qualification, Diploma in building and civil works construction. Award 7 marks for academic certificate attached 5 years and above of specific and building construction experience : 5 years and above of specific building construction experience (7 marks) with 2-4 years of specific building construction experience (4 marks) Otherwise, award 2 marks for less than 2 years of specific road construction experience.	**7.00**	
	d) Total for Key Personnel	**15.00**	
d) Construction experience		**Max Score**	
	General Construction Experience		
	Experience of the Contractor as a building Contractor (Award 15 marks for over 4 years' experience based on NCA year of Registration.) (Award 10 marks for 3-4 years' experience based on NCA year of Registration.) (Award 5 marks for less than 3 years) experience based on NCA year of Registration.)	**15.00**	
	d) Construction experience	**15.00**	
e) Firm Experience	**Minimum experience from different clients** 3 completion certificates of same magnitude or above in building works from 3 different clients (10mks) 2 completion certificates from different clients (5 mks)	**10**	
	d) Construction experience	**10.00**	
	Total	**100.00**	
GRAND TOTAL	(Totals for; A, B, C, D E & F) **- SET PASSMARK AT 70%**	**100.00**	

Bidders who shall not get 70% marks and above in TECHNICAL evaluation will be considered non-responsive andwill not be subjected to financial evaluation.

3. FINANCIAL EVALUATION

The financial evaluation will include:

Arithmetic Errors (Clause 29)

The bid shall be checked for arithmetic errors based on the rates and the total sums indicated in the bills of quantities. Confirmation shall be sought in writing from the Tenderers whose Tender sums will be determined tohave a significant arithmetic error to their disadvantage, to confirm whether they stand by their Tender sums.) Ifthe arithmetical check computation will exceed the form bid amount (materially deviation) then, the bidder shallbe considered as non-responsive.

Comparison of rates (clause 30)

The evaluation committee will compare rates from different bidders and note consistency of rates and front loading. The evaluation committee will judge and make an appropriate decision giving evidence.

STAGE 3 –RECOMMENDATION FOR AWARD

AWARD CRITERIA:

Bidders who attain **70 %** Points and above in technical evaluation stage will be subjected to Pricing and Arithmetical Analysis to determine compliance with the tender requirements. Compliant tenders will be ranked according to the tender amounts quoted. Having compared the evaluated prices of Tenders, the Procuring Entity shall determine the Lowest Evaluated Tender. Tender ranked first will be the one with the Lowest Evaluated Tender Price. The Lowest Evaluated bid document is of the Tenderer that meets the Qualification Criteria and whose Tenderer has been determined to be: a) Most responsive to the Tender document; and b) the lowest evaluated price. The Tenderer will be notified for Award**.**

Note The lowest bidder shall be within the allocated amount for the project

Post qualification and Contract Award (ITT39), 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 lowestevaluated 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 realassets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings Ten Million.
Minimum average annual construction turnover of Kenya Shillings Forty million, equivalent calculatedas total certified payments received for contracts in progress and/or completed within the last 3 years.
At least 3 contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor.
Contractor's Representative and Key Personnel, which are specified as which are specified as: -Project Manager, Site Agent, General Foreman.
Contractors‟ key equipment listed on the table "Contractor's Equipment" below and morespecifically listed as [specify requirements for each lot as applicable]

Transport (Lorry/Pick-up)
Hand Tools – Grinders, Welding machines, etc
Concrete mixers
Concrete vibrators
-And any other relevant equipment

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 in the last **on and before FY 2022/-2023 (*Since July 2022 And Before*).**. The required information shall be furnished in the appropriate form.

Pending Litigation

Financial position and prospective long-term profitability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respectto 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*5 years.* All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the years specified.
A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

DUE DILIGENCE

An evaluation committee may, after Tender evaluation, but prior to the award of the Tender, conducts due diligence and present the report in writing toconfirm and verify the qualifications of the Tenderer who submitted the lowest evaluated responsive Tender to be awarded the contract in accordance with this Act.
The conduct of due diligence may include obtaining confidential references from persons with whom the Tenderer has had prior engagement.
To acknowledge that the report is a true reflection of the proceedings held, each member who was part of the due diligence by the evaluation committeeshall-
initial each page of the report; and
Append his or her signature as well as their full name and designation.

STAGE 3: FINANCIAL EVALUATION

The financial evaluation will commence with financial ranking of the bids from the lowest to the highest.
In case of discrepancy between the unit price and the total price, the unit price shall prevail.
Errors will be calculated and the effect of the error on the overall bid shall be reported.

Comparison of bids with the estimate will be done and reported. Bids with inconsistent rating (Front, mid, back loading) will be noted and may be disqualified.

Comparison of bid rates with the estimate/ market rates will be done and discrepancies reported.

The bidder who meets all the above conditions, achieves the Highest Combined Technical and Financial Score will be recommended for further consideration.

SUMMARY OF EVALUATION AND COMPARISON OF TENDERS

The following evaluation criteria shall be applied not withstanding any other requirement in the tender documents.

Selection Process

Quality Cost Based Selection

STEP 1: **Preliminary evaluation**
This will be an elimination stage which will be done as per criteria above

STEP 2: Technical Evaluation

Tenderers will be required to provide technical details on their product that meets the provided technical requirement.

STEP3: Financial Evaluation

The financial evaluation will commence with financial ranking of the bids from the lowest to the highest.

In case of discrepancy between the unit price and the total price, the unit price shall prevail.

Errors will be calculated and the effect of the error on the overall bid shall be reported.

Comparison of bids with the estimate will be done and reported. Bids with inconsistent rating (Front, mid,back loading) will be noted and may be disqualified.

Comparison of bid rates with the estimate/ market rates will be done and discrepancies reported.

The bidder who meets all the above conditions, achieves the Highest Combined Technical and Financial Score will be recommended for further consideration. 39

1	2	3	*4*
Item No.	**Qualification Subject**	**Qualification Requirement**	***Document To be Complet***
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2,
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by the the Kenya Revenue Authority in accordance with ITT 3.14.	Form of Tender
3	Conflict of Interest	No conflicts of interest in accordance with ITT 3.3	Form of Tender
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.8	Form of Tender
5	State- owned Enterprise	Meets conditions of ITT 3.7	Forms ELI – 1.1 and 1.2,
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2,
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1st January*2019*	Form CON-2
8	Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9	Form of Tender
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON – 2
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since 1st January *2019]*	Form CON – 2
11	Financial Capabilities	(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings *Ten Million or* equivalent for the subject contract(s) net of the Tenderer's other commitments. (ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. (iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last *[3]* years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.	Form FIN – 3.1, with attac
12	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings *[Forty Million]*, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last *[3]* years,	Form FIN – 3.2
13	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last *[5]* years, starting 1st January *2019]*.	Form EXP – 4.1
	Specific Construction	A minimum number of *[Three]* similar contracts	Form EXP 4.2(a)

1	2	3	*4*
Item No.	**Qualification Subject**	**Qualification Requirement**	***Document To be Complet***
	& Contract Management Experience	specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January [*2021*] and tender submission deadline i.e. …. (3)contracts, each of minimum value Kenya shillings…….. equivalent. [*In case the Works are to be tender as individual contracts under multiple contract procedure, the minimum number of contracts required for purposes of evaluating qualification shall be selected from the options mentioned in ITT 35.4]* The similarity of the contracts shall be based on the following: [*Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITT 34.3]*	

1	2	3	*4*
Item No.	**Qualificatio nSubject**	**Qualification Requirement**	***Document To be Co by Tenderer***
11	Financial Capabilities	Subject contract(s) net of the Tenderer's othercommitments. (ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cashflow requirements on works currently in progress and for future contract commitments. (iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last **3No.years** shall besubmitted and must demonstrate the current Soundness of the Tenderer's financial positionand indicate its prospective long-term profitability.	
12	Average Annual Construction Turnover	Minimum average annual construction turnover of **Kenya Shillings *[40m],*** equivalent calculated as total certified payments received forcontracts in progress and/or completed within the**last 3 years,** divided by *[3]*years	Form FIN – 3.2
13	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, subcontractor, or management contractor for at least the last **3 years**, starting **1st January 2019.**	Form EXP – 4.1 **Experience**
14	Specific Construction & Contrac t Managemen tExperience	A minimum number of **[3]** similar contracts specified below that have been satisfactorily andsubstantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between **1st January, 2019** and tender submission deadline i.e., …3. (number) contracts, each of minimum value Kenya shillings equivalent. [*In case the Works are to be tendered as individual contracts under multiple contract*	Form EXP 4.2(a)

SECTION IV - TENDERING FORMS

QUALIFICATION FORMS

FOREIGN TENDERERS 40%RULE.

TENDERER'S ELIGIBILITY- CONFIDENTIAL BUSINESS QUESTIONNAIRE

Form EQU: EQUIPMENT.

FORM PER -1.

FORM PER-2.

TENDERERS QUALIFICATION WITHOUT PRE-QUALIFICATION.

FORM ELI-1.1.

FORM ELI-1.2.

FORM CON –2.

FORM FIN –3.1.

FORM FIN –3.2.

FORM FIN –3.3.

FORM FIN –3.4.

FORM EXP -4.1.

FORM EXP - 4.2(a).

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

FORM EXP -4.2 (b).

OTHER FORMS

FORM OFTENDER.

FORM OF TENDER SECURITY - DEMAND BANKGUARANTEE.

FORM OF TENDER SECURITY (TENDERBOND).

FORM OF TENDER-SECURINGDECLARATION.

APPENDIX TO TENDER.

TECHNICAL PROPOSAL FORMS

Site Organization.

Method Statement.

Mobilization
Schedule.

Construction
Schedule.

QUALIFICATION FORMS

FOREIGN TENDERERS 40%RULE

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

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	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			
	PERCENTAGE OF CONTRACT PRICE			

FORM OF 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 shall be prepared for each item of equipment listed, or for alternative equipment proposed by the Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	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	

FORM PER -1

Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to performthe 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 position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
2.	**Title of position:** *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
3.	**Title of position:** *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
4.	**Title of position:** *[_____]*	
	Name of candidate:	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]
5.	**Title of position:** *[insert title]*	
	Name of candidate	
	Duration of appointment:	[*insert the whole period (start and end dates) for which this position will be engaged*]
	Time commitment: for this position:	[*insert the number of days/week/months/ that has been scheduled for this position*]
	Expected time schedule for this position:	[*insert the expected time schedule for this position (e.g. attach high level Gantt chart*]

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 writing skills]*	
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 to thebest of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualifications and my experience.

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

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

TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

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

FORM ELI -1.1 Tenderer

Information Form

Date:_____

ITT No. and title:_____

(*For this form to be complete attach Certified Copy of recent CR12 form generated through the system-(not older than three months before opening date) from Registrar of companies (certified by commissioner for oaths) and also certified IDs (both sides) /passport of all directors (certified by commissioner for oaths)*

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's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name:_____ Address:_____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of 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 Establishing that the Tenderer is not under the supervision of the Procuring Entity Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

FORM ELI -1.2

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

Date:_____

ITT No. and title:_____

Tenderer's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information 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 ofthe Procuring Entity, in accordance with ITT 3.5. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

FORM CON –2

Historical Contract Non-Performance, Pending Litigation and Litigation History

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

This form must be endorsed by an advocate or commissioner of oaths registered in Kenya

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
Contract non-performance did not occur since 1st January *[2019]* specified in Section III, Evaluationand Qualification Criteria, Sub-Factor 2.1. Contract(s) not performed since 1st January *[2019]* specified in Section III, Evaluation andQualification Criteria, requirement 2.1 Contract(s) withdrawn since 1st January *[2019]* specified in Section III, Evaluation and QualificationCriteria, 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]* Name of Procuring Entity: *[insert full name]* Address of Procuring Entity: *[insert street/city/country]* Reason(s) for nonperformance: *[indicate main reason(s)]*	*[insert amount]*
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3. Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	**Amount in dispute (currency)**	**Contract Identification**	**Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)**
		Contract Identification: _____ 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-Factor2.4. Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			

Year of dispute	**Amount in dispute (currency)**	**Contract Identification**	**Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)**
[insert year]	*[insert percentage]*	Contract Identification: [indicate complete contract name, number, and any 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 were withdrawn, jointbids with competitors, subcontracting work to unsuccessful tenderers, etc.

FORM FIN – 3.1:

Financial Situation and Performance

Tenderer's Name:_____

Date: _____

JV Member'sName_____

_____

__

ITT No. and title: _____

Financial Data

Type of Financial information in_____ (currency)	**Historic information for previous____*3_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 Operating Activities					

*Refer to ITT 15 for the exchange rate

Sources of Finance

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

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

Financial documents

The Tenderer and its parties shall provide copies of financial statements for 3 years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

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

be independently audited or certified in accordance with local legislation.

be complete, including all notes to the financial statements.

correspond to accounting periods already completed and audited.

attach a certified reference letter from the bank

Attached are copies of financial statements[1] for 3 months years required above; and complying withthe 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 this should be justified.

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.

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 of the subjectcontract or contracts as specified in Section III, Evaluation and Qualification Criteria

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

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 contracts that havebeen 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 Completion Date**	**Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]**
1					
2					
3					
4					
5					

FORM EXP - 4.1

General Construction Experience

Tenderer's Name:_____Date:
_____ JV Member'sName_____
ITT No. and title: _____

Page_____of_____pages

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

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:				

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	

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 and Section III, Evaluationand Qualification Criteria, Sub-Factor 4.2.

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 number E-mail:				

[2] If applicable

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

Activity No. Two

3. ……

OTHER FORMS
FORM OF TENDER

INSTRUCTIONS TO TENDERERS

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

All italicized text is to help Tenderer in preparing this form.

Tenderer must complete and sign CERTIFICATE OF INDEPENDENT TENDER DETERMINATIONand the SELF DECLARATION OF THE TENDERER attached to this Form of Tender.

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 both SD 1 and SD 2 endorsed by advocate or commissioner of oaths registered in Kenya.

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

To: [*insert complete name of*

ProcuringEntity] Dear Sirs,

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

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

_____

The percentage or amount quoted above does not include provisional sums, and only allows not more than two foreign currencies.

We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Engineer's notice to commence, and to complete the whole of the Works comprised in the Contractwithin the time stated in the Particular Conditions of Contract.

We agree to adhere by this tender until_____*[Insert date]*, and it shall remain binding uponus and may be accepted at any time before that date.

Unless and until a formal Agreement is prepared and executed this tender together with your written acceptance thereof, shall constitute abinding Contract between us. We further understand that you are not bound to accept the lowest or any tender you may receive.

We, the undersigned, further declare that:

No reservations: We have examined and have no reservations to the tender document, including Addendaissued in accordance with ITT 8;

Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3and 4;

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;

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];*

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

Option1, incase of one lot: Total price is: [*insert the total price of the Tender in words and figures, indicatingthe various amounts and the respective currencies*]; Or

Option2, in case of multiple lots:

Total price of each lot [*insert the total price of each lot in words and figures, indicating the variousamounts and the respective currencies*]; and

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

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

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

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

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 thatperiod;

Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;

One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirementsof ITT3.4, other than alternative Tenders submitted in accordance with ITT 13.3;

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

State-owned enterprise or institution: [*select the appropriate option and delete the other*] [*We are not a state-owned enterprise or institution*]/[*We are a state-owned enterprise or institution but meet the requirements of ITT 3.7*];

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

Name of Recipient	**Address**	**Reason**	**Amount**

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

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

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

Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or onour behalf engages in any type of Fraud and Corruption;

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.

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

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

Tenderer's Eligibility; Confidential Business Questionnaire – to establish we are not in any conflict tointerest.

Certificate of Independent Tender Determination – to declare that we completed the tender withoutcolluding with other tenderers.

Self-Declaration of the Tenderer– to declare that we will, if awarded a contract, not engage in any formof fraud and corruption.

Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement andAsset Disposal.

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

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

Tender]

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

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

Date signed_____day of_____,_____

Notes
** In the case of the Tender submitted by joint venture specify the name of the Joint Venture as Tenderer*

(a) TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

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

Tenderer's details

	ITEM	**DESCRIPTION**
1	Name of the Procuring Entity	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	Country 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 listed in stock exchange, give name and full address (*postal and physical addresses, email, and telephone number*) of state which stock exchange	

General and Specific Details

Sole Proprietor, provide the following details.

Name in full_____ Age_____

Nationality_____Country of Origin___Citizenship_____

Partnership, provide the following details.

	Names of Partners	**Nationality**	**Citizenship**	**% Shares owned**
1				
2				
3				

Registered Company, provide the following details.

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				

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			

Conflict 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 putit 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 during implementation of the contract specifiedin 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		
	Type of Conflict	**Disclosure YES OR NO**	**If YES provide details of the relationship with Tenderer**
	the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above beenresolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract?		

Certification

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

Full Name

_____

Title or Designation_____

(Signature) *(Date)*

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: *[Nameof Tenderer]*

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of_____*[Name of Tenderer]* that:

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

I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;

I am the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tenderon behalf of the Tenderer;

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

Has been requested to submit a Tender in response to this request for tenders;

Could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities or experience;

The Tenderer discloses that [check one of the following, as applicable]:

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

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

In particular, without limiting the generality of paragraphs (5)(a) or (5)(b) above, there has been no consultation,

communication, agreement or arrangement with any competitor regarding: a) prices;

methods, factors or formulas used to calculate prices;

the intention or decision to submit, or not to submit, a tender; or

the submission of a tender which does not meet the specifications of the request for Tenders; except as specifically disclosed pursuant to paragraph(5)(b)above;

In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality ,quantity, specifications or delivery particulars of the works or services to which this requestfor tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;

The terms of the Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5) (b) above.

Name_____ Title_____ Date __

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

SELF-DECLARATION FORMS

FORM SD1

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

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

THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Director of ……...…….. *(insert name of the Company)* who is a Bidder in respect of **Tender No. ……..** for ……... *(insert tender title/description)* for …….. *(Insert name of the Procuring entity)* and duly authorized andcompetent to make this statement.

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

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 ORFRAUDULENT PRACTICE.

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

THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ……..... (insert name of the Company) who is a Bidder in respect of **Tender No. .....** for ……*(insert tender title/description)* for ……*(insert name of the Procuring entity)* and duly authorized and competent to make this statement.

THAT the aforesaid Bidder, its servants and/or agents/subcontractors will not engage in any corrupt or fraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents of ..... *(insert name of the Procuring entity)* which is the procuring entity.

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

THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender

THAT what is deponed to herein above is true to the best of my knowledge in formation 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 contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement 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…….....

APPENDIX 1-FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

Purpose

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

Requirements

The Government of Kenya requires that all parties including Procuring Entities, Tenderer s,(applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providersorSuppliers;anyAgents(whetherdeclaredornot);andanyoftheirPersonnel,involvedandengagedin procurementunderKenya'sLawsandRegulation,observethehigheststandardofethicsduringtheprocurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully complywithKenya'slawsandRegulationsasperparagraphs1.1above.

Kenya's public procurement and asset disposal act *(no. 33 of 2015)* under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, andConflictsofInterestinprocurementincludingconsequencesforoffencescommitted.Afewofthe provisionsnotedbelowhighlightKenya'spolicyofnotoleranceforsuchpracticesandbehavior:

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 asset disposal proceeding;

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

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

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

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

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

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

Shall not take part in the procurement proceedings;

Shall not, after a procurement contract has been entered into, take part in any decision relating to theprocurement or contract; and

Shall not be a subcontractor for the tender to whom was awarded contract, or a member of the groupof tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

An employee, agent or member described in subsection (1) who refrains from doing anything prohibitedunder that subsection, but for that subsection, would have been within his or her duties shall disclose theconflict of interest to the procuring entity;

If a person contravenes subsection (1) with respect to a conflict of interest described in sub section (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.

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

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

"corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly ,of anythingof value to influence improperly the actions of another party;
"fraudulent practice "is an act of omission, including misrepresentation, that knowingly or recklesslymisleads, or attempts to mislead, party to obtain financial or other benefit or to avoid an obligation;
"collusive practice "is an arrangement between one or more parties designed to achieve an improperpurpose, including to influence improperly the actions of a other party;
"Coercive practice "is impairing or harming, or threatening to impairorharm, directly or in directly,any party or the property of the party to influence improperly the actions of a party;
"obstructive practice "is:

Deliberatelydestroying,falsifying,altering,orconcealingofevidencematerialtotheinvestigation ormaking false statements to investigators in order to materially impede investigation by PublicProcurement Regulatory Authority (PPRA) or any other appropriate authority appointed byGovernment of Kenya into allegations of a corrupt, fraudulent, coercive, or collusive practice;
and/orthreatening,harassing,orintimidatinganypartytopreventitfromdisclosingitsknowledge ofmattersrelevanttotheinvestigationorfrompursuingtheinvestigation;or

acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspectionandauditrightsprovidedforunderparagraph2.3e.below.

Defines more specifically, in accordance with the above procurement Act provisions set for fraudulent andcollusive practices as follows:

"Fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposalprocess or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor,and includes collusive practices amongst tenderers prior to or after tender submission designed to establishtender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of freeand open competition. Rejects a proposal forward[3]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 contracting question;

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

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[4]all a accounts, records and other documents
relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and 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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[3] *Fortheavoidanceofdoubt,aparty'sineligibilitytobeawardedacontractshallincludee,withoutlimitation,(i)applyingforpre-qualification,expressinginterestin a consultancy,andtendering,eitherdirectlyorasanominatedsub-contractor,nominatedconsultant,nominatedmanufacturerorsupplier,ornominatedservice provider,Inrespectofsuchcontract,and(ii)enteringintoanaddendum oramendmentintroducingamaterialmodificationtoanyexistingcontract.*

[4] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or personsappointedbytheProcuringEntitytoaddressspecificmattersrelatedtoinvestigations/audits,suchasevaluatingtheveracityofanallegationofpossible FraudandCorruption,throughtheappropriatemechanisms.Suchactivityincludesbutisnotlimitedto:accessingandexaminingafirm'sorindividual'sfinancial records*

and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copyor electronicformat)deemedrelevantfortheinvestigation/audit,andmakingcopiesthereofasrelevant;interviewingstaffandotherrelevantindividuals;performing physicalinspectionsandsitevisits;andobtainingthirdpartyverificationofinformation.

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

Beneficiary:_____ Request for Tenders No:

Date:_____TENDER GUARANTEE No.:_____

Guarantor: _____

We have been informed that (here in after called "the Applicant") has submitted or will submit to the Beneficiaryits Tender (here in after called" the Tender") for the execution of_____under Request for TendersNo._____(“the ITT”).

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

At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sumor 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

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

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

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

_____

[Signature]

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

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee] TENDER GUARANTEE No.:

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

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

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

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

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

having been notified of the acceptance of its Tender by the Procuring Entity during the Tender ValidityPeriod or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement;or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Procuring Entity's Tendering document.

then the guarantee undertakes to immediately pay to the Procuring Entity up to the above amount uponreceipt of the Procuring Entity's first written demand, without the Procuring Entity having to substantiateits demand, provided that in its demand the Procuring Entity shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

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

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: ..... *[insertcompletenameofPurchaser]* I/We, the undersigned, declare that:

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

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

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

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 submit the bid, and the Joint Venture has not been legally constituted at the time of bidding,the Tender Securing Declaration shall be in the names of all future partners as named in the letter of intent.

Signed:……..……..

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

Name:……..

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

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

Appendix to Tender

Schedule of Currency requirements

Summary of currencies of the Tender for

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*]

[Insert name of Section of the Works]

PART II – THE CONDITIONS OF CONTRACT ANDCONTRACT AGREEMENT

SECTION V - GENERAL CONDITIONS OF CONTRACT (GCC)

[Name of Procuring

Entity][Name of Contract]

[Architect Name and Address]

General Conditions of Contract

GENERAL PROVISIONS

Definitions

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

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

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

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

"Completion Date" means the date of completion of the Works as certified by the Engineer.

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

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

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

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

"Contractor's Personnel" means the Contractor's Representative and all personnel whom the Contractor utilizes onSite, 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 from time to time by the Contractor who acts on behalf of the Contractor.

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

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

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

"Day works" means Work inputs subject to payment on a time basis for labour and the associated materials and plant.
"Defect" means any part of the Works not completed in accordance with the Contract.

"Defects Liability Certificate" means the certificate issued by Architect upon correction of defects by the Contractor.

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

"Defects Notification Period" means the period for notifying defects in the Works or a Section (as the case may be) underSub-Clause11.1 [Completion of Outstanding Work and Remedying Defects], which extends over the days stated in the Special Conditions of Contract.

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

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

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

"Force Majeure "is defined in Clause 19[Force Majeure].

"Foreign Currency" means a currency of another country (not Kenya) in which part (or all) of the Contract Price ispayable, but not the Local Currency.

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

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

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

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

"Local Currency" means the currency of Kenya.

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

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

"Special Conditions of Contract" means the pages completed by the Procuring Entity entitled Special Conditionsof Contract which constitute Part A of the Special Conditions.

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

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

"Performance Certificate" means the certificate issued under Sub-Clause 11.9 [Performance Certificate].

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

"Permanent Works" means the permanent works to be executed by the Contractor under the Contract.

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

Works.

"Procuring Entity's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Procuring Entity for the use of the Contractor in the execution of the Works, as stated in the Specification; but doesnot 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, labour and other employees of the Architect and of the Procuring Entity; and any other personnel notified to the Contractor, by the Procuring Entity or the Engineer, as Procuring Entity's Personnel.

"Procuring Entity" means the Entity named in the Special Conditions of Contract.

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

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

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

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

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

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

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

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

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

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

"Statement" means a statement submitted by the Contractor as part of an application, under Clause14[Contract Price and Payment], for a payment certificate.

"Sub-contractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works.

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

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

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

"Tender" means the Form of Tender and all other documents which the Contractor submitted with the Form of

Tender, as included in the Contract.

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

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

"Time for Completion" means the time for completing the Works or a Section (as the case may be) as stated in theSpecial 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.

Interpretation

In the Contract, except where the context requires otherwise: a)
Words indicating one gender include all genders;
words indicating the singular also include the plural and words indicating the plural also include thesingular;
provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded inwriting;
"written" or "in writing" means hand-written, type-written, printed or electronically made, and resultingin a permanent record;and

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

Communications
Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:
In writing and delivered by hand(against receipt), sent by mail or courier, or transmitted using any of theagreed systems of electronic transmission as stated in the Special Conditions of Contract; and
delivered, sent or transmitted to the address for the recipient's communications as stated in the Special Conditions of Contract. However:

if the recipient gives notice of another address, communications shall thereafter be deliveredaccordingly; and
if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to theaddress from which the request was issued.

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

Law and Language

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

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

Priority of Documents

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

The Contract Agreement,
The Letter of Acceptance,
The Special Conditions–Part A,
The Special Conditions–Part B
The General Conditions of Contract
The Form of Tender,
The Specifications and Bills of Quantities
the Drawings, and
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 necessary clarification or instruction.

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 shall be based upon the form annexed to the Special Conditions. The costs of stamp duties and similar charges (if any) imposed bylaw in connection with entry into the Contract Agreement shall be borne by the Procuring Entity.

Assignment

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

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

Care and Supply of Documents

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 the cost of the Contractor.

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

The Contractor shall keep, on the Site, a copy of the Contract, publications named in the Specification, the Contractor's Documents (if any), the Drawings and Variations and other communications given under the Contract. The Procuring Entity's Personnel shall have the right of access to all these documents at all reasonabletimes.

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

Timely provision of Drawings or Instructions

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 delay or disruption likely to be suffered if it is late.

If the Contractor suffers delay and/or incurs Cost as a result of a failure of the 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:

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

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

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

However, if and to the extent that the Architect failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shallnot be entitled to such extension of time, or costs accrued.

Procuring Entity's Use of Contractor's Documents

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

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

apply throughout the actual or intended working life (whichever is longer) of the relevant parts of theWorks,
entitle any person improper 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
in the case of Contractor's Documents which are in the form of computer programs and other software,permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

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

Contractor's Use of Procuring Entity's Documents

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

Confidential Details

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

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

Compliance with Laws

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

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

the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses andapprovals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Procuring Entity harmlessagainst 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.

Joint and Several Liabilities

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

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

Inspections and Audit by the Procuring Entity

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

THE PROCURING ENTITY

Right of Access to the Site

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

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

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

Payment of any such Cost-plus profit, which shall be included in the Contract Price.

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

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

Permits, Licenses or Approvals

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

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

Which the Contractor is required to obtain under Sub-Clause1.13 [Compliance with Laws],
for the delivery of Goods, including clearance through customs, and iii) for the export ofContractor's Equipment when it is removed from the Site.

Procuring Entity's Personnel

The Procuring Entity shall be responsible for ensuring that the Procuring Entity's Personnel and the ProcuringEntity's other contractors on the Site: co-operate with the Contractor's efforts under Sub-Clause 4.6[Co-operation], and take actions similar to those which the Contractor is required to take under sub-paragraphs (a),(b)and(c)of Sub-Clause 4.8[Safety Procedures]and under Sub-Clause 4.18[Protection of the Environment].

Procuring Entity's Financial Arrangements

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

THE ENGINEER

Architect Duties and Authority

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

The Architect shall have no authority to amend the Contract.

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

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

Except as otherwise stated in these Conditions:

Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Architect shall be deemed to act for the Procuring Entity;

The Architect has no authority to relieve either Party of any duties, obligations or responsibilities underthe Contract;

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

Any act by the Architect in response to a Contractor's request shall be notified in writing to the Contractor within 14 days of receipt.

The following provisions shall apply:

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

Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost.K

Sub-Clause 13.1: instructing a Variation, except;

In an emergency situation as determined by the Engineer, or

If such a Variation would increase the Accepted Contract Amount by less than the percentagespecified in the **Special Conditions of Contract.**

Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance withSub Clause 13.1 or 13.2.

Sub-Clause 13.4: Specifying the amount payable in each of the applicable three currencies.

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

Delegation by the Engineer

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

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorizedto 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 anassistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

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;

If the Contractor questions any determination or instruction of an assistant, the Contractor may referthe matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

Instructions of the Engineer

The Architect may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordancewith the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under Clause3.2.1.

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

Gives an oral instruction, receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within twoworking days after giving the instruction, and does not reply by issuing a written rejection and/or instruction within two working days after receivingthe confirmation,

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

Replacement of the Engineer

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

Determinations

Whenever these Conditions provide that the Architect shall proceed in accordance with this Sub-Clause3.5 to agree or determine any matter, the Architect shall consult with each Party in an endeavor to reach 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 agreement or determination, with supporting particulars, within 30 days from the receipt of the corresponding claim or request except when otherwise specified. EachParty shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims,Disputes and Arbitration].

THE CONTRACTOR

Contractor's General Obligations

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

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

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

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

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

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

The Contractor shall submit to the Architect the Contractor's Documents for this part in accordance with the procedure specified in the Contract; these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shallinclude additional information required by the Architect to add to the Drawings for co-ordination of each Party's designs;
the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit forsuch purposes for which the part is intended as are specified in the Contract; and

prior to the commencement of the Tests on Completion, the Contractor shall submit to the Architect the "as-built "documents and, If applicable, operation and maintenance manuals in accordance with the Specification and insufficient detail for the Procuring Entity to operate ,maintain ,dismantle reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completedfor the purposes of taking-over under Sub-Clause 10.1[Taking Over of the Works and Sections] untilthese documents and manuals have been submitted to the Engineer.

Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount statedin 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 Conditionsof Contract, this Sub-Clause shall not apply.

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

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

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

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

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

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

Contractor's Representative

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

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

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

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

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

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

The Contractor's Representative shall be fluent in the language for communications defined in SubClause1.4[Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

Sub-contractors

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

The Contractor shall be responsible for the acts or defaults of any Sub contractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Special Conditions: a) The Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
The prior consent of the Procuring Entity shall be obtained to other proposed Subcontractors;
the Contractor shall give the Procuring Entity not less than 14 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
each subcontract shall include provisions which would entitle the Procuring Entity to require the subcontract to be assigned to the Procuring Entity under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2[Terminationby Procuring Entity].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause1.12[Confidential Details] apply equally to each Subcontractor.

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

Assignment Benefit of Subcontract If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign thebenefit of such obligations to the Procuring Entity, then the Contractor shall do so. Unless otherwise stated inthe assignment, the Contractor shall have no liability to the Procuring Entity for the work carried out by the Subcontract or after the assignment takes effect.

Co-operation

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

The Procuring Entity's Personnel,

Any other contractors employed by the Procuring Entity, and

The personnel of any legally constituted public authorities, who may be employed in the execution onor near the Site of any work not included in the Contract.

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

If, under the Contract, the 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 submitsuch documents to the Architect in the time and manner stated in the Specification.

Setting Out of the Works

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

The Procuring Entity shall be responsible for any errors in these specified or notified items of reference, butthe 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 and shall been titled subject to Sub-Clause20.1[Contractor's Claims]to:

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

payment of any such costs accrued, which shall be included in the Contract Price.

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

Safety Procedures

The Contractor shall:

Comply with all applicable safety regulations,

Take care for the safety of all person sent it led to be on the Site,

Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid dangerto these persons,

provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause10[Procuring Entity's Taking Over],and

provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of ownersand occupiers of adjacent land.

Quality Assurance

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

Details of all procedures and compliance documents shall be submitted to the Architect for informationbefore 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 documentitself.

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

Site Data

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

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

The form and nature of the Site, including sub-surface conditions,

The hydrological and climatic conditions,

the extent and nature of the work and Goods necessary for the execution and completion of the Worksand the remedying of any defects,

the Laws, procedures and labour practices of Kenya, and

the Contractor's requirements for access, accommodation, facilities, personnel, power, transport,water and other services.

Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

Have satisfied itself as to the correctness and sufficiency of the Accepted Contract Amount, and

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[SiteData].

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 forthe proper execution and completion of the Works and the remedying of any defects.

Unforeseeable Physical Conditions

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

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

This notice shall describe the physical conditions, so that they can be inspected by the Architect and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Architect may give. If an instruction constitutesa Variation, Clause13 [Variations and Adjustments]shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives sucha notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subjectto notice under Sub-Clause20.1[Contractor's Claims]to:

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

Payment of any such Cost, which shall be included in the Contract Price.

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

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect mayalso review whether other physical conditions in similar parts of the Works(if any)were more favorable thancould reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favorable conditions were encountered, the Architect may proceed in accordance with SubClause3.5[Determinations]to agree or determine the reductions in Cost which were due to theseconditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However,the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in an reduction in the Contract Price.

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

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.

Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

The convenience of the public, or

The access to and use and occupation of all roads and footpaths, irrespective of whether they are publicor in the possession of the Procuring Entity or of others.

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

Access Route

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

Except as otherwise stated in these Conditions:

The Contractor shall(as between the Parties)be responsible for any maintenance which may be requiredfor his use of access routes;

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

the Procuring Entity shall not be responsible for any claims which may arise from the use or otherwiseof any access route;

the Procuring Entity does not guarantee the suitability or availability of particular access routes; and

Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routesshall be borne by the Contractor.

Transport of Goods

Unless otherwise stated in the Special Conditions:

the Contractor shall give the Architect not less than 21 days' notice of the date on which any Plant or amajor item of other Goods will be delivered to the Site;

the Contractor shall be responsible for packing, loading ,transporting ,receiving ,unloading's touring and protecting all Goods and other things required for the Works ;and

the Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods and shallnegotiate and pay all claims arising from their transport.

Contractor's Equipment

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

Protection of the Environment

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

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

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

Electricity, Water and Gas

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

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

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

Procuring Entity's Equipment and Free-Issue Materials

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

The Procuring Entity shall be responsible for the Procuring Entity's Equipment, except that

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

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

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

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

Progress Reports

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

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

charts and detailed descriptions of progress, including each stage of design (if any), Contractor'sDocuments, procurement, manufacture, delivery to Site, construction, erection and testing; andincluding these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),

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

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 date so f: i) commencementof manufacture, ii) Contractor's inspections, iii) tests, and

iv) Shipment and arrival at the Site;

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

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

list of notices given under Sub-Clause2.5[Procuring Entity's Claims]and notices given underSub- Clause 20.1[Contractor's Claims];

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

environmental aspects and public relations; and

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

Security of the Site

Unless otherwise stated in the Special Conditions:

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

authorized persons shall be limited to the Contractor's Personnel and the Procuring Entity's

Personnel; and to any other personnel notified to the Contractor, by the Procuring Entity or the Engineer,as authorized personnel of the Procuring Entity's other contractors on the Site.

Contractor's Operations on Site

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

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

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

Fossils

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

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause20.1[Contractor's Claims]to:

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

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.

NOMINATED SUBCONTRACTORS

Definition of "nominated Sub contractor"

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-Clause5.2 [Objection to Notification].

Objection to Nomination

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

there are reasons to believe that the Subcontractor does not have sufficient competence, resources orfinancial strength;

the nominated Subcontractor does not accept to indemnify the Contractor against and from anynegligence misuse of Goods by the nominated Subcontractor, his agents and employees; or

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:

undertake to the Contractor such obligations and liabilities as will enable the Contractor todischarge his

obligations and liabilities under the Contract;

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 fulfill these liabilities, and

be paid only if and when the Contractor has received from the Procuring Entity payments for sumsdue under the Subcontract referred to under Sub-Clause5.3[Payment to nominated Subcontractors].

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 sub contract. These amounts plus other charges shall be included in the Contract Price in accordancewith sub-paragraph(b) of Sub-Clause13.5[Provisional Sums],except as stated in SubClause5.4[Evidence of Payments].

Evidence of Payments

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

Submits this reasonable evidence to the Engineer, or

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, direct to the nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submit the evidence described in sub-paragraphs(a)or(b)above. The Contractor shall then repay, to the Procuring Entity, the amount which the nominated Subcontractor was directly paid by the Procuring Entity.

STAFF AND LABOR

Engagement of Staff and Labor

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

Rates of Wages and Conditions of Labor

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

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

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.

Labor Laws

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

Working Hours

No work shall be carried out on the Site on locally recognized days of rest, or outside the normal working hours stated in the **Special Conditions of Contract**, unless: a) Otherwise stated in the Contract,
The Architect gives consent, or
The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works,in which case the Contractor shall immediately advise the Engineer, provided that work done outside the normal working hours shall be considered and paid for as overtime.

Facilities for Staff and Labor

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

Health and Safety

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

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

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

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

Contractor's Superintendence

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

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

Contractor's Personnel

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective tradesor 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 person employed on the Site orWorks, including the Contractor's Representative if applicable, who: a) Persists in any misconduct or lack of care,

Carries out duties incompetently or negligently,

Fails to conform with any provisions of the Contract,

persists in any conduct which is prejudicial to safety ,health, or the protection of the environment, or

based on reasonable evidence, is determined to have engaged in Fraud and Corruption during theexecution of the Works.

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

Records of Contractor's Personnel and Equipment

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

Disorderly Conduct

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

Foreign Personnel

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

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

Supply of Water

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

Measures against Insect and Pest Nuisance

The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employedon the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall complywith all the regulations of the local health authorities, including use of appropriate insecticide.

Alcoholic Liquor or Drugs

The Contractor shall not, otherwise than in accordance with the Laws of Kenya, on site, import, sell ,give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation ,sale ,gift, barter or disposal thereof by Contractor's Personnel.

Prohibition of Forced or Compulsory Labour

The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of

involuntary or compulsory labor, such as in denture labor, bonded laborer similar labor-contracting arrangements.

Prohibition of Harmful Child Labor

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental,spiritual, moral, or social development. Where the relevant labour laws of Kenya have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

Employment Records of Workers

The Contractor shall keep complete and accurate records of the employment of labour at the Site. There cordsshall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer. These records shall be included in the detailsto be submitted by the Contractor under Sub-Clause 6.10[Records of Contractor's Personnel and Equipment].

Workers' Organizations

The Contractor shall comply with the relevant labor laws that recognize workers' rights to form and to join workers' organizations of their choosing without interference.

Non-Discrimination and Equal Opportunity

The Contractor shall base the labour employment on the principle of equal opportunity and fair treatment andshall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation(including wages and benefits),working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline.

PLANT, MATERIALS AND WORKMANSHIP

Manner of Execution

The Contractor shall carry out the manufacture/assemble of plant, the production and manufacture ofMaterials, and all other execution of the Works:

In the manner(if any)specified in the Contract,

In a proper workman like and careful manner, in accordance with recognized good practice, and

with properly equipped facilities and non-hazardous Materials, except as otherwise specified in theContract.

Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Architect forconsent prior to using the Materials in or for the Works:

manufacturer's standard samples of Materials and samples specified in the Contract, all at theContractor's cost, and

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

The Procuring Entity's Personnel shall at all reasonable times:

Have full access to all parts of the Site and to all places from which natural Materials are being obtained,and during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Procuring Entity's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

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

the Architect does not require to do so. If the Contractor fails to give the notice, he shall, if and when requiredby the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

Testing

This Sub-Clause shall apply to all tests specified in the Contract.

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. TheContractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materialsand other parts of the Works.

The Architect may, under Clause13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Architect shall give the Contractor not less than 24 hours' notice of the Architect intention to attend thetests. If the Architect does not attend at the time and place agreed, the Contractor may proceed with the tests,unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Architect presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of adelay for which the Procuring Entity is responsible, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1[Contractor's Claims]to:

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

payment of any such Cost-plus profit, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause3.5 [Determinations] to agree or determine these matters.

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

Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship isfound to be defective or otherwise not in accordance with the Contract, the Architect may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Architect requires this Plant, Materials or workmanship to be retested, the tests shall be repeated underthe same terms and conditions. If the rejection and retesting cause the Procuring Entity to incur additional costs, the Contractor shall subject to Sub-Clause2.5 [Procuring Entity's Claims]pay these costs to the Procuring Entity.

Remedial Work

Notwithstanding any previous test or certification, the Architect may instruct the Contractor to:
Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
Remove and re-execute any other work which is not in accordance with the Contract, and execute any work which is urgently required for the safety oft the Works, whether because of anaccident, unforeseen able event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph(c).

If the Contractor fails to comply with the instruction, the Procuring Entity shall be entitled to employ and payother persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the Procuring Entity all costs arising from this failure.

If the contractor repeatedly delivers defective work, the Procuring Entity may consider termination in accordance with Clause 15.

Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall become the property of the Procuring Entity at whichever is the earlier of the following times, free from liens and other encumbrances: a) When it is incorporated in the Works;
b) When the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:
Natural materials obtained from outside the Site, and
The disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

COMMENCEMENT, DELAYS AND SUSPENSION

Commencement of Works

Except as otherwise specified in the Special Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Architect notification recording the agreement of both Parties on such fulfillment and instructing to commence the Work is received by the Contractor:
Signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of Kenya;
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-Clause1.13 [Compliance with Laws]as required for the commencement of the Works.
Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2[Advance Payment] providedthat the corresponding bank guarantee has been delivered by the Contractor.

If the said Architect instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2[Termination by Contractor].

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date and shall then proceed with the Works with due expedition and without delay.

Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Timefor Completion for the Works or Section (as the case may be), including: a)

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hieving the passing of the Tests on Completion, and

b) Completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of theWorks and Sections].

Programme

The Contractor shall submit a detailed time programme to the Architect within 14 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

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,each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),the sequence and timing of inspections and tests specified in the Contract, and

a supporting report which includes:

a general description of the methods which the Contractor intends to adopt, and of the majorStages, in the execution of the Works, and details showing the Contractor's reasonable estimate of the number of each class of Contractor'sPersonnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 14 days after receiving a programme, gives notice to the Contractor stating theextent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Procuring Entity's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Architect of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works.

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

Extension of Time for Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Timefor Completion if and to the extent that completion for the purposes of Sub-Clause 10.1[Taking Over of theWorks and Sections] is or will be delayed by any of the following causes:

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,

a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions, c) exceptionally adverse climatic conditions,

Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmentalactions, or

any delay, impediment or prevention caused by or attributable to the Procuring Entity, the ProcuringEntity's Personnel, or the Procuring Entity's other contractors.

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

Delays Caused by Authorities

If the following conditions apply, namely:
The Contractor has diligently followed the procedures laid down by the relevant legally constitutedpublic authorities in Kenya,
These authorities delay or disrupt the Contractor's work, and
the delay or disruption was Unforeseeable, then this delay or disruption will be considered as a cause ofdelay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

Rate of Progress

If,at any time:
Actual progress is too slow to complete within the Time for Completion, and/or
Progress has fallen (or will fall) behind the current programme underSub-Clause8.3 [Programme],otherthan as a result of a cause listed in Sub-Clause8.4[Extension of Time for Completion],then the Architectmay instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the Architect notifies otherwise, the Contractor shall adopt these revised methods, which may requireincreases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk andcost of the Contractor. If these revised methods cause the Procuring Entity to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs to the Procuring Entity, in addition to delay damages (if any) under Sub-Clause 8.7 below.

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

Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject tonotice under Sub-Clause 2.5 [Procuring Entity's Claims] pay delay damages to the Procuring Entity for thisdefault. These delay damages shall be the sum stated in the **Special Conditions of Contract**, which shall bepaid for every day which shall elapse between the relevant Time for Completion and the date stated in the taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximumamount of delay damages (if any) stated in the Special Conditions of Contract.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Procuring Entity] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

Suspension of Work

The Architect may at any time instruct the Contractor to suspend progress of part or all of the Works. Duringsuch suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Architect may also notify the cause for the suspension. If and to the extent that the cause is notified andis the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Architect instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1[Contractor's Claims]to:

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

Payment of any such Cost, which shall be included in the Contract Price.

After receiving this notice, the Architect shall proceed in accordance with Sub-Clause3.5 [Determinations]toagree or determine these matters.

The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, makinggood the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.8[Suspension of Work].

Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension)of Plant and/or

Materials which have not been delivered to Site, if:

The work on Plant or delivery of Plant and/or Materials has been suspended for more than 30 days, and

the Contractor has marked the Plant and/or Materials as the Procuring Entity's property in accordancewith the Architect instructions.

Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Architect permission to proceed. If the Architect does not give permission within30 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause13[Variations and Adjustments] of the affected part of the Works. Ifthe suspension affects the whole of the Works, the Contractor may give notice of termination under Sub Clause 16.2 [Termination by Contractor].

Resumption of Work

After the permission or instruction to proceed is given, the Contractor and the Architect shall jointly examinethe Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defection loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Architect an instruction to this effect under Clause 13[Variations and Adjustments].

TESTS ON COMPLETION

Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing],after providing the documents in accordance with sub-paragraph(d)of Sub-Clause 4.1[Contractor'sGeneral Obligations].

The Contractor shall give to the Architect not less than 21days' notice of the date after which the Contractorwill be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date,on such day or days as the Architect shall instruct.

In considering the results of the Tests on Completion, the Architect shall make allowances for the effect of any use of the Works by the Procuring Entity on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certifiedreport of the results of these Tests to the Engineer.

Delayed Tests

If the Tests on Completion are being unduly delayed by the Procuring Entity, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause10.3 [Interference with Tests on Completion] shall be applicable.

If the Tests on Completion are being unduly delayed by the Contractor, the Architect may by notice requirethe Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry outthe Tests on such day or days within that period as the Contractor may fix and of which he shall give noticeto the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Procuring Entity's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completionshall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

Retesting of related works

If the Works, or a Section, fail to pass the Tests on Completion,Sub-Clause7.5[Rejection]shall apply, and the Architect or the Contractor may require the failed Tests, and Tests on Completion on any related work, to berepeated under the same terms and conditions.

Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3[Retesting],theArchitect shall be entitled to:
Order further repetition of Tests on Completion under Sub-Clause9.3;or

if the failure deprives the Procuring Entity of substantially the whole benefit of the Works or Section,reject the Works or Section(as the case may be),in which event the Procuring Entity shall have the same remedies as are provided in sub-paragraph(c)of Sub-Clause 11.4[Failure to Remedy Defects].

PROCURING ENTITY'S TAKING OVER

Taking Over of the Works and Sections

Except as stated in Sub-Clause9.4 [Failure to Pass Tests on Completion],the Works shall be taken over by the Procuring Entity when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause8.2[Time for Completion]and except as allowed in sub- paragraph(a)below, and(ii)a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Architect for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking ver. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Architect shall, within 30 days after receiving the Contractor's application:
Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defectswhich 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 reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Architect fails either to issue the Taking-Over Certificate or to reject the Contractor’s application within the period of 30days, and if the Works or Section (as the case maybe) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

Taking Over of Parts of the Works

The Architect may, at the sole discretion of the Procuring Entity, issue a Taking-Over Certificate or any partof the Permanent Works.

The Procuring Entity shall not use any part of the Works (other than as a temporary measure which is eitherspecified in the Contract or agreed by both Parties) unless and until the Architect has issued a Taking-Over Certificate for this part. However, if the Procuring Entity does use any part of the Works before the Taking Over Certificate is issued:

The part which is used shall be deemed to have been taken over as from the date on which it is used,

The Contractor shall cease to be liable for the care of such parts from this date, when responsibilityshall pass to the Procuring Entity, and if requested by the Contractor, the Architect shall issue a Taking-Over Certificate for this part.

After the Architect has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

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

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damagesthereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Worksor Section (as the case may be) as a whole. The Architect shall proceed in accordance with SubClause3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only applyto the daily rate of delay damages under Sub-Clause 8.7[Delay Damages] and shall not affect the maximumamount of these damages.

Interference with Tests on Completion

If the Contractor is prevented, for more than14days,from carrying out the Tests on Completion by a cause for which the Procuring Entity is responsible, the Procuring Entity shall be deemed to have taken over the Works or Section(as the case maybe) on the date when the Tests on Completion would otherwise have beencompleted.

The Architect shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out theTests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Architect shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordancewith the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause20.1[Contractor's Claims]to: 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

Payment of any such accrued costs, which shall be included in the Contract Price.

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

Surfaces Requiring Reinstatement

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shallnot be deemed to certify completion of any ground or other surfaces requiring reinstatement.

DEFECTS LIABILITY

Completion of Outstanding Work and Remedying Defects

In order that the Works and Contractor's Documents, and each Section, shall be in the condition required bythe Contract(fair wear and tear excepted)by the expiry date of the relevant Defects Notification Period or assoon as practicable thereafter, the Contractor shall:

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

execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Procuring Entity on or before, the expiry date of the Defects Notification Period for the Works or Section(as the case may be).

If a defect appears or damage occurs, the Contractor shall be notified accordingly by the Engineer.

Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the workis attributable to:

Any design for which the Contractor is responsible,

Plant, Materials or workmanship not being in accordance with the Contract, or

Failure by the Contractor to comply with any other obligation.

If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptlyby (or on behalf of) the Procuring Entity, and Sub-Clause 13.3[Variation Procedure]shall apply.

Extension of Defects Notification Period

The Procuring Entity shall be entitled subject toSub-Clause2.5 [Procuring Entity's Claims]to an extension ofthe Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a

major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which theyare intended by reason of a defect or by reason of damage attributable to the Contractor. However, a DefectsNotification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause8.8[Suspension of Work] or Sub-Clause 16.1[Contractor's Entitlement to Suspend Work],the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by theEngineer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonablenotice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to beexecuted at the cost of the Contractor under Sub-Clause11.2 [Cost of Remedying Defects],the Procuring Entity may(at his option):

Carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall 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;

Require the Architect to agree or determine a reasonable reduction in the Contract Price in accordancewith Sub-Clause 3.5 [Determinations]; or

if the defect or damage deprives the Procuring Entity of substantially the whole benefit of the Worksor any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract orotherwise, the Procuring Entity shall then be entitled to recover all sums paid for the Works or for such part(as the case maybe),plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Procuring Entity gives consent,the Contractor may remove from the Site for the purposes of repair such items of Plant as a defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by thefull replacement cost of these items, or to provide other appropriate security.

Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Architect may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 14 days after the defect or damage is remedied.

These tests shall be carried out in accordance with the terms applicable to the previous tests, except that theyshall be carried out at the risk and cost of the Party liable, under Sub-Clause11.2 [Cost of Remedying Defects], for the cost of the remedial work.

Right of Access

Until the Completion Certificate has been issued, the Contractor shall have such right of access to the Worksas is reasonably required in order to comply with this Clause, except as may be inconsistent with the ProcuringEntity's reasonable security restrictions.

Contractor to Search

The Contractor shall, if required by the Engineer, search for the cause of any defect on parts of the works thathave already accepted, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus profit shall be agreed or determined by the Architect in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.

Completion Certificate

Performance of the Contractor's obligations shall not be considered to have been completed until the Architect has issued the Completion Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Architect shall issue the Completion Certificate within 30days after the latest of the expiry dates of theDefects Liability Period, or as soon thereafter as the Contractor has supplied all the Contractor's Documentsand completed and tested all the Works, including remedying any defects. A copy of the Completion Certificate shall be issued to the Procuring Entity.

Only the Completion Certificate shall be deemed to constitute acceptance of the Works.

Unfulfilled Obligations after the Completion Certificate has been issued; each Party shall remain liable for the fulfillment of any obligation which remains unperformed at that time. For the purposes of determining thenature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

Clearance of Site

Upon receiving the Completion Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 30days after receipt by the Contractor of the Completion Certificate, the Procuring Entity may sell or otherwise dispose of any remaining items. The Procuring Entityshall been titled to be paid the costs incurred in connection with, or attributable to, such sale or disposal andrestoring the Site.

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.

MEASUREMENT AND EVALUATION

Works to be measured

The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shallshow in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

Whenever the Architect requires any part of the Works to be measured, reasonable notice shall be given tothe Contractor's Representative, who shall:promptly either attend or send another qualified representative to assist the Architect in making themeasurement, and
Supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by the Architect shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records,these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine andagree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend,the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Architect of the respects in which the records are asserted to be inaccurate.After receiving this notice, the Architect shall review the records and either confirms or vary them and certifythe payment of the undisputed part. If the Contractor does not so give notice to the Architect within 14 daysafter being requested to examine the records, they shall be accepted as accurate.

Method of Measurement

Except as otherwise stated in the Contract:
Measurement shall be made of the net actual quantity of each item of the Permanent Works, and the method of measurement shall be in accordance with the Bill of Quantities or other applicableSchedules.

Evaluation

Except as otherwise stated in the Contract, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations]to agree or determine the value of work done by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for suchitem in the Contractor, if there is no such item, specified for similar work.

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, for a new item of work, a new rate of price shall be appropriate for such item of work if:
The work is instructed under Clause13[Variations and Adjustments],

No rate or price is specified in the Contract for this item, and no specified rate or price is appropriate because the item of work is not of similar character, or is notexecuted under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no rates or pricesare relevant for the new item of work, it shall be derived from the reasonable Cost of executing such work, prevailing market rates, together with profit, taking account of any other relevant matters.

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

Where the contract price is different from the corrected tender price, in order to ensure the contractor is notpaid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows :*(corrected tender price–tender price)/tenderprice X 100*.

Omissions
Whenever the omission of any work forms part(or all)of a Variation, the value of which has not been agreed, if: a) The Contractor will incur (or has incurred)cost which, if the work had not been omitted, would have beendeemed to be covered by a sum forming part of the Accepted Contract Amount;
The omission of the work will result (or has resulted)in this sum not forming part of the ContractPrice; and
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.

VARIATIONS AND ADJUSTMENTS

Right to Vary
Variations may be initiated by the Architect at any time prior to issuing the Taking-Over Certificate for theWorks, 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 anyway vitiate or invalidate the Contract.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Architect stating(with supporting particulars)that(i)the Contractor cannot readily obtain the Goods required for the Variation, or(ii)such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Architect shall cancel, confirm or vary the instruction.

Each Variation may include: changes to the quantities of any item of work included in the Contract (however, such changes do notnecessarily constitute a Variation), changes to the quality and other characteristics of any item of work,

changes to the levels, positions and/or dimensions of any part of the Works,
omission of any work unless it is to be carried out by others,
any additional work, Plant, Materials or services necessary for the Permanent Works, including anyassociated Tests on Completion, boreholes and other testing and exploratory work, or
Changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and untilthe Architect instructs after obtaining approval of the Procuring Entity.

Variation Order Procedure

Prior to any Variation Order under Sub-Clause13.1.4 the Architect shall notify the Contractor of the natureand form of such variation. As soon as possible after having received such notice, the Contractor shall submitto the Engineer:

A description of work, if any, to be performed and a programme for its execution, and

The Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause8.3 or to any of the Contractor's obligations under the Contract, and

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 identifiedas such in accordance with the Contractor's submission or as modified by agreement.

If the Architect and the Contractor are unable to agree the adjustment of the Contract Price, the provisions ofSub-Clause13.2.2 shall apply.

Disagreement on Adjustment of the Contract Price

If the Contractor and the Architecture unable to agree on the adjustment of the Contract Price, the adjustmentshall be determined in accordance with the rates specified in the Bills of Quantities or Schedule of Day workPrices. If the rates contained in the Bills of Quantities or Day works Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing inthe Day works Prices. Where rates are not contained in the said Prices, the amount shall be such as is in all the circumstances reasonable, reflecting a market price. Due account shall be taken of any over-or under- recovery of overheads by the Contractor in consequence of the variation. The Contractor shall also be entitledto be paid:

The cost of any partial execution of the Works rendered useless by any such variation,

The cost of making necessary alterations to Plant already manufactured or in the course ofmanufacture or of any work done that has to be altered in consequence of such a variation,

Any additional costs incurred by the Contractor or by the disruption of the progress of the Works asdetailed in the Programme, and

The net effect of the Contractor's finance costs, including interest, caused by the variation.

The Architect shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

Contractor to Proceed

On receipt of a Variation Order, the Contractor shall 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-Clause 31.3.

Value Engineering

The Contractor may, at any time, submit to the Architect written proposal which(in the Contractor's opinion)will, if adopted,(i)accelerate completion,(ii)reduce the cost to the Procuring Entity of executing, maintainingor operating the Works,(iii)improve the efficiency or value to the Procuring Entity of the completed
Works, or

(iv) Otherwise be of benefit to the Procuring Entity.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause [Variation Procedure].

13.2.3 If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties: a) The Contractor shall design this part,

sub-paragraphs(a)to(d)ofSub-Clause4.1[Contractor's General Obligations]shall apply, and

if this change results in a reduction in the contract value of this part, the Architect shall proceed in accordance with Sub-Clause3.5[Determinations]to agree or determine a fee, which shall be included inthe Contract Price. This fee shall be half(50%) of the difference between the following amounts:
Such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and ii) the reduction (if any) in the value to the Procuring Entity of the varied works, taking account of any improvement in quality, anticipated life or operational efficiencies.

13.3.4 However, if the amount established in item 13.2.3 (c) (i) is less than amount established in item 13.2.3 (c (ii),there shall not be a fee. However, if the if the amount established in item 13.2.3 (c) (i) is more than amount established in item 13.2.3 (c (ii), it shall result in a price variation to the Procuring Entity.

Variation Procedure for Value Engineering proposal

If the Architect requests a proposal, prior to instructing a Variation, the Contractor shall respond in writingas soon as practicable, either by giving reasons why he cannot comply(if this is the case)or by submitting:
A description of the proposed work to be performed and a programme for its execution,
the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause8.3 [Programme] and to the Time for Completion, and
the Contractor's proposal for evaluation of the Variation.

The Architect shall, as soon as practicable after receiving such proposal(under Sub-Clause 13.2[Value Project Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued bythe Architect to the Contractor,who shall acknowledge receipt.

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

Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for paymentof the Contract Price.

Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Architect instructions,and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include onlysuch amounts, for the work, supplies or services to which the Provisional Sum relates, as the Architectshall have instructed. For each Provisional Sum, the Architect May instruct:

Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause13.3[Variation Procedure]; and/or

Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause5[Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:

The actual amounts paid (or due to be paid) by the Contractor, and

A sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no suchrate, the percentage rate stated in **the Special Conditions of Contract** shall be applied.

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

Day works

For work of a minor or incidental nature, the Architect may instruct that a Variation shall be executed on a day work basis. The work shall then be valued in accordance with the Day work Schedule included in the Contract, and the following procedure shall apply. If a Day work Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applyingfor payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Day work Schedule specifies that payment is not due, the Contractor shall deliver each day to the Architect accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:
The names, occupations and time of Contractor's Personnel,
The identification, type and time of Contractor's Equipment and Temporary Works, and
The quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Architect and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause14.3[Application for Interim Payment Certificates].

Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of thesechanges into the Laws or in such interpretations, made after the Base Date, the Contractor shall give noticeto the Architect and shall be entitled subject to Sub-Clause 20.1[Contractor's Claims]to:
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
Payment of any such Cost, which shall be included in the Contract Price.

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

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Costshall 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 forChanges in Cost].

Adjustments for Changes in Cost

In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determinedby the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

3.9.3 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 to be applied to work valued on the basis of Costor current prices. The formulae shall be of the following general 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 mis 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 non-adjustable components. The sum of the adjustments for each currency are added to the Contract Price.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of theindices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base costindices.

In cases where the "currency of index "is not there Levant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the Central Bank of Kenya,of this relevant currency on the above date for which the index is required to be applicable.

Until such time a search current cost index is available, the Architect shall determine a provisional index forthe issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereaftershall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favorable to the Procuring Entity.

The weightings (co efficient)for each of the factors of cost stated in the table(s)of adjustment data shall onlybe adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

CONTRACT PRICE AND PAYMENT

The Contract Price

Unless otherwise stated in the Special Conditions:

The value of the payment certificate shall be agreed or determined under Sub-Clause12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;

The Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, andthe Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause13.7 [Adjustments for Changes in Legislation];

Any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantitiesand are not to be taken as the actual and correct quantities:

of the Works which the Contractor is required to execute, or ii) forthe purposes of Clause12[Measurement and Evaluation]; and

the Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposedbreakdown of each lump sum price in the Schedules. The Architect may take account of the breakdown when preparing Payment Certificates but shall not be bound by it.

Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare partstherefor, imported by the Contractor for the sole purpose of executing the Contract shall not be exempt fromthe payment of import duties and taxes upon importation.

Advance Payment

The Procuring Entity shall make an advance payment, as an interest-free loan form mobilization and cash flow support, when the Contractor submits a guarantee in accordance with this Clause. The total advance payment, the number and timing of installments (if more than one), and the applicable currencies and proportions, shall be as stated in the **Special Conditions of Contract.**

Unless and until the Procuring Entity receives this guarantee, or if the total advance payment is not stated inthe Special Conditions of Contract, this Sub-Clause shall not apply.

The Architect shall deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate forthe advance payment or its first installment after receiving a Statement (under Sub-Clause 14.3 [Applicationfor Interim Payment Certificates]) and after the Procuring Entity receives (i) the Performance Security in accordance with Sub-Clause4.2 [Performance Security] and (ii)a guarantee in amounts and currencies equalto the advance payment. This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Special Conditions or in another form approved by the Procuring Entity.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has beenrepaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated inthe Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment hasnot been repaid by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in **the Special Conditions of Contract**, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Architect in accordance with Sub- Clause14.6 [Issue of Interim Payment Certificates], as follows:

Deductions shall commence in the next interim Payment Certificate following that in which the total ofall 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

deductions shall be made at the amortization rate stated in the **Special Conditions of Contract** of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advancepayment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension and Termination by Contractor]orClause19[Force Majeure](as the case may be),the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Procuring Entity], except for Sub-Clause 14.2.7 [Procuring Entity's Entitlement to Termination for Convenience],payable by the Contractor to the Procuring Entity.

Application for Interim Payment Certificates

The Contractor shall submit a Statement (in number of copies indicated in the **Special Conditions of Contract**) to the Architect after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers itself to be entitled, together with supporting documentswhich shall include the report on the progress during this month in accordance with Sub-Clause 4.21[Progress Reports].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

the estimated contract value of the Works executed and the Contractor's Documents produced up to theend of the month(including Variations but excluding items described in sub-paragraphs(b)to(g)below);

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 forChanges in Cost];

any amount to be deducted for retention, calculated by applying the percentage of retention stated in **the Special Conditions of Contract** to the total of the above amounts, until the amount so retained bythe Procuring Entity reaches the limit of Retention Money (if any) stated **in the Special Conditions ofContract**;

any amounts to be added for the advance payment and(if more than one installment)and to be deductedfor its repayments in accordance with Sub-Clause 14.2[Advance Payment];

any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause14.5 [Plant and Materials intended for the Works];

any other additions or deductions which may have become due under the ContractOtherwise, including those under Clause 20[Claims, Disputes and Arbitration]; and

the deduction of amounts certified in all previous Payment Certificates.

Schedule of Payments

If the Contract includes a schedule of payments specifying the installments in which the Contract Price willbe paid, then unless otherwise stated in this schedule:

The installments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph(a)of Sub-Clause14.3[Application for Interim Payment Certificates];

Sub-Clause14.5[Plant and Materials intended for the Works] shall not apply; and

If these instalments are not defined by reference to the actual progress achieved in executing the Works,and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree ordetermine revised installments, which shall take account of the extent to which progress is less or morethan that on which the installments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

Plant and Materials intended for the Works

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph(e)of Sub-Clause14.3,(i)an amount for Plant and Materials which have been sent to the Site for incorporation in the PermanentWorks, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph(a)of Sub-Clause 14.3[Application for Interim Payment Certificates].

If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub Clause shall not apply.

The Architect shall determine and certify each addition if the following conditions are satisfied: a) The Contractor has:

i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) whichare available for inspection, and
(ii) Submitted statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence; and either:

the relevant Plant and Materials:

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 otherdocuments reasonably required, and a bank guarantee in a form and issued by an entity approvedby the Procuring Entity in amounts and currencies equal to the amount due under this Sub Clause:this guarantee may be in a similar form to the form referred to in SubClause14.2[Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protectedagainst loss, damage or deterioration; or

the relevant Plant and Materials:

are those listed in the Schedules for payment when delivered to the Site, and

have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Architect determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will be come due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevantPlant and Materials.

Issue of Interim Payment Certificates

No amount will be certified or paid until the Procuring Entity has received and approved the Performance Security. Thereafter, the Architect shall, within 30 days after receiving a Statement and supporting documents, deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate which shallstate the amount which the Architect fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Architect on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Architect shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions)be less than the minimum amount of Interim Payment Certificates(if any)stated **in the Special Conditions of Contract**. In this event, the Architect shall give notice to the Contractor accordingly.

An Interim Payment Certificate shall not be withheld for any other reason, although:

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

if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until thework or obligation has been performed.

4.6.4 The Architect may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Architect acceptance, approval, consent or satisfaction.

Payment

The Procuring Entity shall pay to the Contractor:
The advance payment shall be paid within 60 days after signing of the contract by both parties or within60 days after receiving the documents in accordance with Sub-Clause 4.2[Performance
Security] and Sub- Clause 14.2[Advance Payment], whichever is later;
The amount certified in each Interim Payment Certificate within 60 days after the Architect Issues Interim Payment Certificate; and
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 Final Statementin accordance with Sub-Clause 16.2[Termination by Contractor].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause14.7[Payment],the Contractor shall be entitled to receive financing charges (simple interest) monthly on the amount unpaid during the periodof delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b) of the date on which any Interim PaymentCertificate issued.

These financing charges shall be calculated at the annual rate of three percentage points above the mean rateof the Central Bank in Kenya of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice and certification, and without prejudiceto any other right or remedy.

Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shallbe certified by the Architect for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportionshall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certifiedand 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.

However, if any work remains to be executed under Clause 11[Defects Liability], the Architect shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Special Conditions, when the Taking-Over Certificate has been issued for theWorks and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a Retention Money Security guarantee, in the form annexed to the Special Conditions or in another form approved by the Procuring Entity and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money.

The Procuring Entity shall return the Retention Money Security guarantee to the Contractor within 14 daysafter receiving a copy of the Completion Certificate.

Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Architect three copies of a Statement at completion with supporting documents, in accordance with Sub-Clause14.3 [Application for Interim Payment Certificates], showing:
the value of all work done in accordance with the Contract up to the date stated in the Taking-OverCertificate for the Works,
any further sums which the Contractor considers to be due, and
an estimate of any other amounts which the Contractor considers will become due to him under theContract. Estimated amounts shall be shown separately in this Statement at completion.

The Architect shall then certify in accordance with Sub-Clause 14.6[Issue of Interim Payment Certificates].

Application for Final Payment Certificate

Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the Engineer, sixcopies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:
The value of all work done in accordance with the Contract, and
Any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Architect disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Architect may reasonably require within 30 days from receipt of saiddraft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Architect the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However, if, following discussions between the Architect and the Contractor and any changes to the draft Final statements which are agreed, it becomes evident that a dispute exists, the Architect shall deliver to theProcuring Entity (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of thedraft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining DisputeBoard's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submitto the Procuring Entity (with a copy to the Engineer) a Final Statement.

Discharge

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the totalof the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total,in which event the discharge shall be effective on such date.

Issue of Final Payment Certificate

Within 30 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate]and Sub-Clause14.12[Discharge],the Architect shall deliver, to the Procuring Entity and to the Contractor, the Final Payment Certificate which shall state: a) The amount which he fairly determines is finally due, and
b) After giving credit to the Procuring Entity for all amounts previously paid by the Procuring Entity and forall sums to which the Procuring Entity is entitled, the balance(if any)due from the Procuring Entity to the Contractor or from the Contractor to the Procuring Entity, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause14.12 [Discharge], the Architect shall request

the Contractor to do so. If the Contractor fails to submit an application within a period of 30 days, theArchitect shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

Cessation of Procuring Entity's Liability

The Procuring Entity shall not be liable to the Contractor for any matter or thing under or in connection withthe Contract or execution of the Works, except to the extent that the Contractor shall have included an amountexpressly for it:

in the Final Statement and also,

(Except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in theStatement at completion described in Sub-Clause14.10 [Statement at Completion].

However, this Sub-Clause shall not limit the Procuring Entity's liability under his indemnification obligations, or the Procuring Entity's liabilities in any case of fraud, deliberate default or reckless misconductby the Procuring Entity.

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 bemade in the applicable currencies and proportions; and

iii) other payments and deductions under sub-paragraphs(a)to(d)of Sub-Clause 14.3[Application forInterim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph(a)(i)above;

payment of the damages specified in the Special Conditions of Contract, shall be made in the currenciesand proportions specified in the Schedule of Payment Currencies;

other payments to the Procuring Entity by the Contractor shall be made in the currency in which the sumwas expended by the Procuring Entity, or in such currency as may be agreed by both Parties;

if any amount payable by the Contractor to the Procuring Entity in a particular currency exceeds the sumpayable by the Procuring Entity to the Contractor in that currency, the Procuring Entity may recover thebalance of this amount from the sums otherwise payable to the Contract or in other currencies; and

if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailingon the Base Date and determined by the Central Bank of Kenya.

TERMINATION BY PROCURING ENTITY

Notice to correct any defects or failures

If the Contractor fails to carry out any obligation under the Contract, the Architect may by notice require theContractor to make good the failure and to remedy it within 30 days.

Termination by Procuring Entity

The Procuring Entity shall be entitled to terminate the Contract if the Contractor breaches the contract basedon following circumstances which shall include but not limited to:

fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1[Notice to Correct],

abandons the Works or otherwise plainly demonstrates the intention not to continue performance of hisobligations under the Contract,

without reasonable excuse fails:

to proceed with the Works in accordance with Clause8[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], within30 days after receiving it,

subcontracts the major part or whole of the Works or assigns the Contract without the consent of theProcuring 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 asimilar effect to any of these acts or events, or

gives or offers to give(directly or indirectly)to any person any bribe, gift, gratuity, commission or otherthing of value, as an inducement or reward:

i) for doing or for bearing to do any action in relation to the Contract, or ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract, or iii) if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give(directly or indirectly) to any person any such inducement orreward as is described in this subparagraph(f).However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or

If the contractor repeatedly fails to remedy delivers defective work,

based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Appendix B to these General Conditions, in competing for or in executing the Contract.

In any of these events or circumstances, the Procuring Entity may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub- paragraph (e) or (f) or (g)or(h),the Procuring Entity may by notice terminate the Contract immediately.

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

The Contractor shall then leave the Site and deliver any required Goods, all Contractors' Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignmentof any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Procuring Entity may complete the Works and/or arrange for any other entities to doso. The Procuring Entity and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Procuring Entity shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the riskand cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to theProcuring Entity, these items may be sold by the Procuring Entity in order to recover this payment .Any balance of the proceeds shall then be paid to the Contractor.

Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause15.2[Termination by Procuring Entity]has taken effect ,the Architect shall proceed in accordance with Sub-Clause 3.5[Determinations]to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

Payment after Termination

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

Proceed in accordance with Sub-Clause 2.5[Procuring Entity's Claims],

Withhold further payments to the Contractor until the costs of execution, completion and remedying ofany defects, damages for delay in completion (if any),and all other costs incurred by the Procuring Entity,have been established, and/or

recover from the Contractor any losses and damages incurred by the Procuring Entity and any extra costs of

completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3

[Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, theProcuring Entity shall pay any balance to the Contractor

.

Procuring Entity's Entitlement to Termination for Convenience

The Procuring Entity shall be entitled to terminate the Contract, at any time at the Procuring Entity's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 30 daysafter the later of the dates on which the Contractor receives this notice or the Procuring Entity returns the Performance Security. The Procuring Entity shall not terminate the Contract under this Sub-Clause in orderto execute the Works itself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor]. After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

Fraud and Corruption

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and itsprevailing sanctions.

Corrupt gifts and payments of commission

The Contractor shall not;

Offer or give or agree to give to any person in the service of the Procuring Entity any gift or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or for borne to do any act in relation to the obtaining or execution of this or any other Contract for the Procuring Entity or for showing or for bearing to show favor or disfavor to any person in relation to this or any other contract for the Procuring Entity.

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 for to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreementfor the payment thereof have been disclosed in writing to the Procuring Entity.

Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement and Asset Disposal Act (2015) and the Anti-Corruption and Economic Crimes Act (2003)of the Laws of Kenya.

SUSPENSION AND TERMINATION BY CONTRACTOR

Contractor's Entitlement to Suspend Work

If the Architect fails to certify in accordance with Sub-Clause 14.6[Issue of Interim Payment Certificates]orSub-Clause14.7[Payment],or not receiving instructions that would enable the contractor to proceed with theworks 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 thePayment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and tot termination under Sub-Clause16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in therelevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work(or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Architect and shall be entitled subjecttoSub-Clause20.1[Contractor's Claims]to:

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
Payment of any such Cost-plus profit, which shall be included in the Contract Price.

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

Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:
the Architect fails, within 60 days after receiving a Statement and supporting documents, to issue therelevant Payment Certificate, the Contractor does not receive the amount due under an Interim Payment Certificate within 90days after the expiry of the time stated in Sub-Clause14.7[Payment]within which payment is to be made
(Except for deductions in accordance with Sub-Clause2.5 [Procuring Entity's Claims]), 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, a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [ProlongedSuspension],or
the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving oradministration 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. The Contractor does not receive the Architect instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1[Commencement of Works].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Procuring Entity, terminate the Contract. However, in the case of sub-paragraph (f)or(g),the Contractor may by noticeterminate the Contract immediately.

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

Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Procuring Entity's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

Cease all further work, except for such work as may have been instructed by the Architect for theprotection of life or property or for the safety of the Works,
Hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor hasreceived payment, and
Remove all other Goods from the Site, except as necessary for safety, and leave the Site.

Payment on Termination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, theProcuring Entity shall promptly:
Return the Performance Security to the Contractor, pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release],and pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of thistermination.

RISK AND RESPONSIBILITY

Indemnities

The Contractor shall indemnify and hold harmless the Procuring Entity, the Procuring Entity's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal feesand expenses) in respect of:

Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of the irrespective agents, and

Damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful actor breach of the Contract bythe Procuring Entity, the Procuring Entity's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Procuring Entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence,willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of theirrespective agents, and(2)the matters for which liability may be excluded from insurance cover, as describedin sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damageto Property],unless and to the extent that any such damage or loss is attributable to any negligence, willful actor breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or anyonedirectly or indirectly employed by any of them.

Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the CommencementDate until the Taking-Over Certificate is issued (or is deemed to be issued underSub-Clause10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass tothe Procuring Entity. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Procuring Entity.

After responsibility has accordingly passed to the Procuring Entity, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3[Procuring Entity's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

Procuring Entity's Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Procuring Entity's Risks] below, in so far as theydirectly affect the execution of the Works in Kenya, are: a) War hostilities(whether war be declared or not),rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor'sPersonnel,

explosive materials, ionizing gladiation or contamination by radio-activity, except as may beattributable to the Contractor's use of such explosives, radiation or radio-activity, pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,

use or occupation by the Procuring Entity of any part of the Permanent Works, except as may bespecified in the Contract, design of any part of the Works by the Procuring Entity's Personnel or by others for whom the Procuring Entity is responsible, and any operation of the forces of nature which is Unforeseeable or against which an experienced contractorcould not reasonably have been expected to have taken adequate preventive precautions.

Consequences of Procuring Entity's Risks

If and to the extent that any of the risks listed in Sub-Clause17.3above results in loss or damage to the Works,Goods or Contractor's Documents, the Contractor shall promptly give notice to the Architect and shall rectifythis loss or damage to the extent required by the Engineer.

If he Contractor suffers delay yard/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause20.1 [Contractor's Claims]to:

An extension of time for any such delay, if completion is or will be delayed, underSub-Clause8.4[Extensionof Time for Completion],and
Payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (e) and (g) of Sub-Clause 17.3 [Procuring Entity's Risks], Accrued Costs shall be payable.

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

Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 30days of receiving the claim,the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Procuring Entity shall indemnify and hold the Contractor harmless against and from any claim allegingan infringement which is or was:
An unavoidable result of the Contractor's compliance with the Contract, or
A result of any Works being used by the Procuring Entity:
for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Procuring Entity harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii)any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (atitscost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. Theother Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This otherParty (and its Personnel)shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation orarbitration upon being requested to do so by such other Party.

For operation and maintenance of any plan to equipment installed, the contractor shall grant a nonexclusiveand non-transferable license to the Procuring Entity under the patent, utility models, or other intellectual rights owned by the contractor or a third-party from whom the contractor has received the rights to grant sub-licenses and shall also grant to the Procuring Entity a non-exclusive and non-transferable rights(without therights to sub-license)to use the know-how and other technical information disclosed to the contractor under the contract. Nothing contained here-in shall be construed as transferring ownership of any patent, utility

model, trademark, design, copy right, know-how or other intellectual rights from the contractor or any otherthird party to the Procuring Entity.

Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contractor for any indirect or consequential loss or damage which may be suffered by the other Party inconnection with the Contract, other than as specifically provided in Sub-Clause8.7[DelayDamages];SubClause11.2[Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination];Sub-Clause 17.1[Indemnities];Sub-Clause17.4(b)[Consequences ofProcuring Entity's Risks] and Sub-Clause 17.5[Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Procuring Entity, under or in connection with the Contract other than under Sub-Clause 4.19[Electricity, Water and Gas],Sub-Clause4.20[Procuring Entity's Equipment and Free- Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights],shall not exceed the sum resulting from the application of a multiplier(less or greater than one)to the Accepted Contract Amount, as stated in **the Special Conditions of Contract**, or (if such multiplieror other sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

Use of Procuring Entity's Accommodation/Facilities

The Contractor shall take full responsibility for the care of the Procuring Entity provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractoruntil cessation of occupation(where hand-over or cessation of occupation may take place after the date statedin the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Procuring Entity is liable, the Contractor shall, at his own cost,rectify the loss or damage to the satisfaction of the Engineer.

INSURANCE

General Requirements for Insurances

In this Clause, “insuring Party” means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Procuring Entity. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisionsof this Clause.

Wherever the Procuring Entity is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisionsof this Clause.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though aseparate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured,namely in addition to the insured specified in this Clause,(i)the Contractor shall act under the policy on behalfof these additional joint insured except that the Procuring Entity shall act for Procuring Entity's Personnel,(ii)additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and(iii)the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies

Required to rectify the loss or damage. Payments received from insurers shall be used for the rectification ofthe loss or damage.

The relevant insuring Party shall, within the respective periods stated in **the Special Conditions of Contract** (calculated from the Commencement Date), submit to the other Party:

Evidence that the insurances described in this Clause have been affected, and
Copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintainunder 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 insurancefor the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the ProcuringEntity, under there 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.

Procuring Entity in accordance with these obligations, liabilities or responsibilities. However, if the insuringParty fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for thecoverage relevant to this default, any moneys which should have been recoverable under this insurance shallbe paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5[Procuring Entity's Claims]or Sub-Clause 20.1[Contractor's Claims],as applicable.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than thefull reinstatement cost including the costs of demolition, removal of debris and professional fees and profit.This insurance shall be effective from the date by which the evidence is to be submitted under subparagraph (a) of Sub-Clause 18.1[General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11[Defects Liability]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery toSite.Foreachitem of Contractor's Equipment, the insurance shall be effective while it isbeing transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated int he Special Conditions, insurances under this Sub-Clause:
Shall be effected and maintained by the Contractor as insuring Party,

shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,

Shall cover all loss and damage from any cause not listed in Sub-Clause 17.3[Procuring Entity's Risks],

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 ofanother part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h)ofSub-Clause 17.3 [Procuring Entity's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated **inthe Special Conditions** of Contract(if an amount is not so stated, this sub-paragraph(d)shall not apply),and may however exclude loss of, damage to, and reinstatement of:

a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct resultof this defective condition and not as described in sub-paragraph (ii)below),

a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,

a part of the Works which has been taken over by the Procuring Entity, except to the extent that the Contractor is liable for the loss or damage, and Goods while they are not in Kenya, subject toSub-Clause14.5[Plant and Materials intended for theWorks].

If, more than one year after the Base Date, the cover described in sub-paragraph(d)above ceases to be availableat 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 SubClause2.5[Procuring Entity's Claims]to payment of an amount equivalent to such commercially reasonable terms as the Contractorshould have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under SubClause18.1[General Requirementsfor Insurances].

Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss,damage,death or bodily injury whichmay occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works andContractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]),which may arise out of the Contractor's performance of the Contract and occurringbefore the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in **the Special Conditionsof Contract**,with no limit on the number of occurrences.If an amount is not stated in the **Special Conditionsof Contract**,this Sub-Clause shall not apply.

Unless otherwise stated in the Special Conditions, the insurances specified in this Sub-Clause:

Shall be effected and maintained by the Contractor as insuring Party,

Shall be in the joint names of the Parties, shall be extended to cover liability for all loss and damage to the Procuring Entity's property (exceptthings insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and may however exclude liability to the extent that it arises from: 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,

Damage which is a nun avoidable result of the Contractor's obligations to execute the iv)
Works and remedy any defects, anda cause listed in Sub-Clause 17.3 [Procuring Entity's Risks], except to the extent that cover isavailable at commercially reasonable terms.

Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses)arising from injury,sickness,disease or death of any person employed bythe Contractor or any other of the Contractor's Personnel.

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 death of any personemployed by the Contractor or any other of the Contractor's Personnel, except that this insurance may excludelosses and claims to the extent that they arise from any act or neglect of the Procuring Entity or of the Procuring Entity's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of theWorks.For a Subcontractor's employees,the insurance may be effected by theSubcontractor, but the Contractor shall be responsible for compliance with this Clause.

FORCE MAJEURE

Definition of Force Majeure

In this Clause, “Force Majeure” means an exceptional event or circumstance:

Which is beyond aParty's control,Which such Party could not reasonably have provided against be for entering into the Contract,which, having arisen, such Party could not reasonably have avoided or overcome, andwhich is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below,so long as conditions (a)to(d)above are satisfied:war, hostilities(whether war be declared or not),invasion, act of foreign enemies,rebellion, terrorism, sabotage by persons other than the Contractor's Personnel,revolution,insurrection,military or usur pedpower,or civil war,
riot, commotion,disorder,strike or lockout by persons other than the Contractor's Personnel,
munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except asmay be attributable to the Contractor's use of such munitions,explosives,radiation or radio-activity,and
natural catastrophes such as earthquake,hurricane,typhoon or volcanic activity.

Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shallbe given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause,Force Majeure shall not apply to obligations of eitherParty to make payments to the other Party under the Contract

Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a resultof Force Majeure.A Party shall give notice to the other Party when it ceases to be affectedby the Force Majeure.

Consequences of Force Majeure

If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2[Notice of Force Majeure], and suffers delayand/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause
20.1 [Contractor's Claims] to: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
if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure]and,in sub-paragraphs(ii)to(iv),occurs in Kenya, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub- Clause18.2[Insurance for Works and Contractor's Equipment].

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

Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause,such additional or broader forcemajeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days byreason of Force Majeure of which notice has been given under Sub-Clause 19.2[Notice of Force Majeure],orfor multiple periods which total more than 140 days due to the same notified Force Majeure, the neither Partymay 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 Workand Removal of Contractor's Equipment].

Upon such termination, the Architect shall determine the value of the work done and issue a Payment Certificate which shall include:
The amounts payable for any work carried out for which a price is stated in the Contract;
the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and beat the risk of)the Procuring Entity when paid for by the Procuring Entity, and the Contractor shall place the same at the Procuring Entity's disposal;other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;the Cost of removal of Temporary Works and Contractor's Equipment from the Site and there turn ofthese items to the Contractor's works in his country(or to any other destination at no greater cost);and
the Cost of repatriation of the Contractor's staff and labor employed wholly in connection with theWorks at the date of termination.

Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either orboth Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitlesthe Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:
The Parties shall be discharged from further performance, without prejudice to the rights of either Partyin respect of any previous breach of the Contract, and The sum payable by the Procuring Entity to the Contractor shall be the same as would have been payableunder Sub-Clause 19.6[Optional Termination, Payment and Release]if the Contract had been terminatedunder Sub-Clause 19

SETTLEMENT OF CLAIMS AND DISPUTES

Contractor's Claims

If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, theContractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. Thenotice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, orshould have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shallnot be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall bedischarged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Procuring Entity's liability, the Architect may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Architectto inspect all these records and shall(if instructed)submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the eventor circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor andapproved by the Engineer, the Contractor shall send to the Architect fully detailed claim which includes fullsupporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect: a) This fully detailed claim shall be considered as interim;

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

The Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approvedby the Engineer.

Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, orwithin such other period as may be proposed by the Architect and approved by the Contractor, the Architectshall respond with approval, or with disapproval and detailed comments. He may also request any necessaryfurther particulars but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations]to agree or determine(i)the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additionalpayment (if any)to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied aresufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Architect does not respond within the time frame defined in this Clause, either Party may consider thatthe claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordancewithClause20.3.

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim.If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extensionof time and/or additional payment shall take account of the extent(if any)to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 20.3.

Procuring Entity's Claims

If the Procuring Entity considers itself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Procuring Entity or the Architect shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Procuring Entity's Equipment and Free-Issue Materials],or for other services requested by the Contractor.

The notice shall be given as soon as practicable and no longer than 30 days after the Procuring Entity becameaware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relatingto any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim and shall include substantiation of the amount and/or extension to which the Procuring Entity considers itself to be entitled in connection with the Contract. The Architect shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine(i)the amount (if any) which the Procuring Entity is entitled to be paid by the Contractor, and/or(ii)the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The ProcuringEntity shall only be entitled to set off against or make any deduction from an amount certified in a PaymentCertificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

Amicable Settlement

Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 20.1 above should move to commence arbitration after 60days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

Matters that maybe referred to arbitration

Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by eitherparty:
Whether or not the issue of an instruction by the Architect is empowered by these Conditions.

Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.

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 completion of the Works or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

Arbitration

Any claim or dispute between the Parties arising out of or in connection with the Contract not settle amicablyin accordance with Sub-Clause 20.3 shall be finally settled by arbitration.

No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not Commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.

The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine therights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or noticehad been given. 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.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, andthe Architect shall not be altered by reason of any arbitration being conducted during the progress of the Works.

The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

Arbitration with National Contractors

If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writingby 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 the request of the applying party, by the Chairman or Vice Chairman ofany of the following professional institutions; i) Architectural Association of Kenya ii) Institute of QuantitySurveyors of Kenya iii) Association of Consulting Engineers of Kenya iv) Chartered Institute of Arbitrators(Kenya Branch) v) Institution of Engineers of Kenya

The institution written to first by the aggrieved party shall take precedence over all other institutions.

Arbitration with Foreign Contractors

Arbitration with foreign contractors shall be conducted in accordance with the arbitration rules of the UnitedNations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

The place of arbitration shall be a location specified in the **SCC;** and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4[Law and Language].

Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

Failure to Comply with Arbitrator's Decision

The award of such Arbitrator shall be final and binding upon the parties.

In the event that a Party fails to comply with a final and binding Arbitrator's decision, then theother Partymay, without prejudice to any other rights it may have, refer the matter to a competent court of law.

Contract operations to continue

Notwithstanding any reference to arbitration herein,

1.1.1 the parties shall continue to perform their respective obligations under the Contract unless theyotherwise agree; and the Procuring Entity shall pay the Contractor any monies due the Contractor.

Section VI - Special Conditions of Contract

THE EMPLOYER IS

Name: COUNTY GOVERNMENT OF EMBU

Address: P.O BOX 36-60100 EMBU

The Project Manager is

Name: CHIEF OFFICER-SPORTS AND CREATIVE ARTS

.Address: P.O BOX 36-60100 EMBU

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

Conditions	**Sub-Clause**	**Data**
Part A - Contract Data		
Procuring Entity's name and address	Heading	**EMBU COUNTY GOVERNMENT (ECG)** **P.O. BOX 336-60100, EMBU**
Name and Reference No. of the Contract	Heading and 1.1	**CONSTRUCTION OF CANAAN WALLAND SHAURI DRAINAGE TENDER REF: -** 2675587-2026/2027
Engineers Name and address	Heading and 3.1.1	Roads Transport & Public Works
Contractor's Representative's name	4.3.1	*[insert the name of the Contractor's Representative agreed by the Procuring Entity prior to Contract signature]*
Key Personnel names	16.9.1	*[insert the name of each Key Personnel agreed by the Procuring Entity prior to Contract signature]*

Time for Completion	1.1.	..... WEEKS *If Sections are to be used, refer to Table: Summary of Sections below*
Defects Notification Period	1.1	6 MONTHS
Sections	1.1	*If Sections are to be used, refer to Table: Summary of Sections below*
Electronic transmission systems	1.3	N/A
Time for the Parties entering into a Contract Agreement	1.6	Within 30days
Period for commencement, from Engineer's order to commence	8.1.1	14 Days
Time for access to the Site	2.1.1	No later than the Commencement Date, and not later than 14 days after Commencement Date

Performance Security	4.2.1	The performance security will be in the form of a bank guarantee, from Insurance company approved by IRA, any other financial institution approved by Central Bank of Kenya 5% percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.
Normal working hours	6.5	Specify
Delay damages for the Works	8.7 & 14.15(b)	0.005 % of the Contract Price per day. *If Sections are to be used, refer to Table: Summary of Sections below*
Maximum amount of delay damages	8.7.1	0.1% of the final Contract Price.
Provisional Sums	13.6. (b)(ii)	*[If there are Provisional Sums, insert a percentage for adjustment of Provisional Sums]* %
Conditions	**Sub-Clause**	**Data**
Adjustments for Changes in Cost	13.9	Period "n" applicable to the adjustment multiplier "Pn": *[Insert the period if different from one (1) month; if period "n" is one (1) month, insert "not applicable"]*
Total advance payment	14.2.1	% Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable *[Insert number and timing of installments if applicable]N/A*
Repayment amortization rate of advance payment	14.2.5 (b)	%
Percentage of Retention	14.3.2 (c)	10 %
Limit of Retention Money	14.3.2 (c)	5 % 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 *[list]*.
	14.5.3(c)(i)	Plant and Materials for payment when delivered to the Site *[list]*.
Minimum Amount of Interim Payment Certificates	14.6.2	10 % of the Accepted Contract Amount.
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	Specify 0.05 % rate per month of delayed payment.
Maximum total liability of the Contractor to the Procuring Entity	17.6.2	*[Select one of the two options below as appropriate]* The product of *[insert a multiplier less or greater than one]* times the Accepted Contract Amount, *or* *[insert amount of the maximum total liability]*
Periods for submission of insurance:	18.1.6	*[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 30days.]*
a. evidence of insurance.		30_days

b. relevant policies		__30____days
Maximum amount of deductiblesfor insurance of the Procuring Entity's risks	18.2.4 (d)	*[Insert maximum amount of deductibles]-KSHS 500,000.00*
Minimum amount of third-party insurance	18.3.2	*[Insert amount of third-party insurance]-KSHS 500,000.00*
The place of arbitration	20.7.2	Chairman, Chartered Institute of Arbitrators-Kenya Chapter

SECTION VII - CONTRACT FORMS

FORM No. 1 - NOTIFICATION OF INTENTION TO

AWARDFORM 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

SECURITYFORM No. 8 - RETENTION MONEY

SECURITY

FORM No 1: NOTIFICATION OF INTENTION TO AWARD OF CONTRACT

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send thisNotification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

FORMAT

For the attention of Tenderer's Authorized Representative

Name: *[insert Authorized Representative's name] ii)* Address: *[insert*

Authorized Representative's Address] iii) Telephone: *[insert*

Authorized Representative's telephone/fax numbers] iv) Email

Address: *[insert Authorized Representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sentto all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

Date of transmission: [*email*] on [*date*] (local time)

This Notification is sent by (*Name and designation*) _____

Notification of Award

Procuring Entity: *[insert the name of the Procuring Entity]*

Project: *[insert name of project] iii)* Contract title:

[insert the name of the contract]

iv) ITT No: *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

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.

The successful tenderers

Name of successful Tender_____

Address of the successful Tender_____

_____

Contract price of the successful Tender Kenya Shillings _____

(in words

_____

)

The reasons for your tender being unsuccessful are as follows:

Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was Evaluated include the evaluated price as

well as the Tender price as read out.

SNo	Name of Tender	Tender Price as read out	Tender‟s evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

How to request a debriefing

DEADLINE: The deadline to request a debriefing expires at midnight on[*insert date*](*local time*).

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 five (5) Business Days of receipt of this Notification of Intention to Award.

Provide the contract name, reference number, name of the Tenderer, contact details; and address therequestfor debriefing as follows:
Attention: [*insert full name of person, ifapplicable*]

Title/position: [*insert title/position*] iii)
Agency: [*insert name of Procuring Entity*]
iv) Email address: [*insert email address*]

If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing withinfive (5) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (5) 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.

The debriefing may be in writing, by phone, videoconference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.

If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, as and normally no later than fifteen (15) Days from the dateof publication of the Contract Award Notice.

How to make a complaint

Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insert date*] (local time).

Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaintas follows:
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*]

At this point in the procurement process, you may submit a Procurement-related Complaint challenging thedecision to award the contract. You do not need to have requested, or received, a debriefing before makingthis complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.

Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website www.ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

There are four essential requirements:
You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in thistendering process and is the recipient of a Notification of Intention to Award.
The complaint can only challenge the decision to award the contract.

You must submit the complaint within the period stated above.

You must include, in your complaint, all of the information required to support your complaint.

Standstill Period

DEADLINE: The Stand still Period is due to end at midnight on [*insert date*] (local time).

The Standstill Period lasts fourteen (14) Days after the date of transmission of this Notification of Intentionto Award.
The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate to contact us.On behalf of the Procuring Entity:

Signature: _____

Name: _____

Title/position: _____

_____

Telephone: _____

FORM NO. 2- REQUEST FOR REVIEW

FORM FOR REVIEW (r.203 (1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARDAPPLICATION

NO……. OF…….….20

.....B

ETWEEN

……..……. APPLICANTAND

……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/order

that:1.

2.

SIGNED ……. (Applicant) Dated on……. day of ……/…20……

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on……day of ……....20….……

SIGNED

Board Secretary

FORM NO 3: LETTER OF AWARD

letterhead paper of the Procuring

Entity][date]

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

This is to notify you that your Tender dated *[date]*for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by.....*(name of Procuring Entity).*

You are requested to furnish the Performance Security within in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity: .....

Attachment: *Contract Agreement:* .....

FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the day of……. 20……., between……. ……..of.....(hereinafter "the Procuring Entity"), of the one part, and_____of_____(herein after "the Contractor"), of the other part:

WHEREAS the Procuring Entity desires that the Works known as_____should beexecuted by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein,

The Procuring Entity and the Contractor agree as follows:

In this Agreement words and expressions shall have the same meanings as are respectively assigned to them inthe Contract documents referred to.

The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

The Notification of Award
The Form of Tender
The addenda Nos___(if any)
The Special Conditions of Contract
The General Conditions of Contract;
The Specifications
The Drawings*;* and
The completed Schedules and any other documents forming part of the contract.

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

The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payableunder the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS where of the parties here to have caused this Agreement to be executed in accordance with theLaws of Kenya on the day, month and year specified above.

Signed and sealed by_____(for the Procuring Entity)

Signed and sealed by_____(for the Contractor).

FORM NO. 5 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: *[insert name and Address of Procuring Entity]*

Date: *[Insert date of issue]*

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

We have been informed that (hereinafter called "the Contractor") has entered into Contract No. dated with (*nameof Procuring Entity*) (the Procuring Entity as the Beneficiary), for the execution of (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of (*in words*),[5] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the……...Day of……,2...…[6],and any demand for payment under it must be received by us at the office indicated above on or before that date.

The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed*[six months][one year]*,in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee." .....

[Name of Authorized Official, signature(s) and seals/stamps]

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

[5] *The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, ifany, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[6] *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 thisguarantee from the Guarantor. Such request must be inwriting 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 are advised to use Performance Security–Unconditional Demand Bank Guarantee insteadof Performance Bond due to difficulties involved in calling Bond holder to action]*
[Guarantor letterhead or SWIFT identifier code]
Beneficiary: *[insert name and Address of Procuring*

*Entity]***Date:**_____*[Insert date of*

issue] **PERFORMANCE BOND No.:**_____

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

By this Bond as Principal (hereinafter called "the Contractor") and _____] as Surety (herein after called "the Surety"), are held and firmly bound unto] as Oblige (herein after called "the Procuring Entity") in the amountof for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

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 herein provided for, are by reference made part here of and are herein after referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the ProcuringEntity 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, or shall promptly: a) Complete the Contractin accordance with its terms and conditions; or

Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses(even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable here under, the amount set forth in thefirst paragraph hereof. The term "Balance of the Contract Price, "as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contract or under the Contract, less the amount properly paid by Procuring Entity to Contractor; or

Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

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 to faction shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, andassigns of the Procuring Entity.

In testimony where of, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused thesepresents to be sealed with his corporate seal duly attested by the signature of his legal representative, this day
of_____20
SIGNED ON_____ on behalf of_____by_____In the capacity of

In the presence of _____ SIGNED ON__on behalf of
_____By
__in the capacity of_____In the presence of_____

FORM NO. 7 - ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: *[Insert name and Address of Procuring Entity]*

Date: *[Insert date of issue]*

ADVANCE PAYMENTGUARANTEE No.: *[Insert guarantee reference number]*

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

We have beeninformedthat (hereinafter called "the Contractor") has entered into Contract No. *dated* with the Beneficiary, for the execution of (herein after called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum (*in words*) is to be made against an advance payment guarantee.

At the request of the Contractor, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sumor sums not exceeding in total an amount of (*in words*)[7]
upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether inthe demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or

Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amountwhich the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate fromthe Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor onits account number at .

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has beencertified for payment, or on the dayof ,2 ,[8] whichever is earlier. Consequently, any demand for payment undert his guarantee must be received by us at this office on or before that date.

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 Guarantorbefore 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.*

[7] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency ofthe advance payment as specified in the Contract.*

[8] *Insert the expected expiration date of the Time forCompletion.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 tor equest an extension of this guarantee from the Guarantor.Such request must be inwriting and must be made prior to the expiration date established in the guarantee.*

FORM NO.8– RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary:_____ *[Insert name and Address of Procuring Entity]*

Date:_____*[Insert date of issue]*

Advance payment guarantee no. *[Insert guarantee reference number]*

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

We have been informed that_____*[insert name of Contractor, which in the case of a joint ventureshall be the name of the joint venture]* (herein after called" the Contractor") has entered into Contract No.
_____*[insert reference number of the contract]* dated_____with the Beneficiary, for theexecution of *[insert name of contract and brief description of* Works*]* (herein after called" the Contract").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains money uptothe limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and paymentof *[*insert the second half of the Retention Money]is to be made against a Retention Money guarantee.

At the request of the Contractor ,we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sumor sums not exceeding in total an amount of *[insert amount in figures]*_____
(*[insert amount inwords* _____ *])*[1] upon receipt by us of the Beneficiary "complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying oridentifying the demand, stating that the Contractor is in breach of its obligation(s)under the Contract, without your needing to prove or showground's for your demand or the sum specified therein.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate fromthe Beneficiary"s bank stating that the second half of the Retention Money as referred to above has been creditedto the Contractor on its account number at *[insert name and address of Applicant's bank]*.

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.

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 Guarantorbefore 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.*

[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 actual completion 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.

BENEFICIAL OWNERSHIP DISCLOSURE FORM

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM

This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.

For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.

Tender Reference No.:_____[*insert identification no*]Name of the Tender Title/Description:_____*[insert name of the assignment]* to:

_____*[insert complete name of Procuring Entity]*

In response to the requirement in your notification of award dated *[insert date of notification of award]* to furnish additional information on beneficial ownership: *[select one option as applicable and delete the options that are not applicable]*

We here by provide the following beneficial ownership information.
We here by provide the following beneficial ownership information.

Details of beneficial ownership

Identity of Beneficial Owner	**Directly or indirectly holding 25% or more of the shares (Yes / No)**	**Directly or indirectly holding 25 % or more of the Voting Rights (Yes / No)**	**Directly or indirectly having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer (Yes / No)**
[include full name (last, middle, first), nationality, country of residence]			

OR

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 of directors or equivalentgoverning 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 identify any 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 equivalent governing bodyof 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 of personduly 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]

PART III - WORKS REQUIREMENTS

SECTION VIII: SPECIFICATIONS

INTRODUCTION

1.0 GENERALLY

All work to be carried out in accordance with the Ministry of Public Works General Specifications for Building Works issued in 1976 or as qualified or amended.

MANUFUCTURES' NAMES

Whereas manufactures‟ names and catalogue references are given for guidance to quality and standards only, alternative manufacturer of equal quality will be accepted at the discretion of the Project Manager.

WALLING

All pre-cast blocks shall be manufactured by the methods and to the sizes specified in the Ministry of Works "Specification for Metric Sized Concrete Blocks for Building (1972). Walling of 150mm thickness or undershall be reinforced with hoop iron in every alternate course. Prices for walling must allow for costs in preparing, packing and sending sample blocks for testing as and when required by the Project Manager.

CARPENTRY

The grading rules for cypress shall be the same as podo-carpus and all timber used for structural work shallbe select (second grade). All structural timber must conform to the minimum requirements for moisture content and preservative treatment and timber prices must allow for preparing, packing and sending samplesfor testing when required. Prices must also include for nails and fasteners.

JOINERY

Cypress for joinery shall be second grade in accordance with the latest grading rules of the Kenya Government. Where mahogany is specified, this refers to grading only. The Contractor may with the approval of the Project Manager, use either Msharagi or Mvuli in lieu of Mahogany but such approval willonly be given in the case of shortages of the hardwoods specified. Plugging shall be carried out by drillingwalling or concrete with masonry drill and filling with propriety plugs of the correct sizes. Cutting with hammer or chisel will not be allowed. Prices for joinery must include for pencil arises, protection against damage, nails, screws, framing and bedding in cement mortar as required. Sizes given for joinery items arenominal sizes and exact dimensions of doors, etc, must be ascertained on site.

IRON MONGERY

Ironmongery shall be specified in the Bill of Quantities or equal and approved. Prices must include for removing and refixing during and after painting, labeling all keys, and for fixing to hardwood, softwood, concrete or block work. Catalogue references given for ironmongery are for purposes of indicating qualityand sizes of item(s). Should the Contractor wish to substitute the specified item(s) with other equal quality,he must inform the Project Manager and obtain approval in writing.

1.5 STRUCTURAL STEELWORK

All structural steelwork shall comply with the Ministry of Works „Structural Steelwork Specification(1973)" and shall be executed by an approved Subcontractor.

PLASTERWORKS AND OTHER FINISHES

All finishing shall be as described in the General Specifications and the Bill of Quantities. Prices for pavings are to include for brushing concrete clean, wetting and coating with cement and sand grout (1:1). Rates for glazed wall tiling are to include for a 12mm cement and sand (1:4) backing screed unlessotherwise specified in the Bills of Quantities.

GLAZING

Where polished plate glass is specified, this refers to general glazing quality. Prices for glazing shall include priming of rebates before placing putty. The Contractor will be responsible for replacing any broken or scratched glass and handing over in perfect condition.

PAINTING

All painting shall be 1st quality „Crown Solo" or other equal and approved. Painting shall be applied in accordance with the manufactures" written instruction. Prices of painting are to include for scaffolding, preparatory work, priming coats, protection of other works, and for cleaning upon completion. Prices of painting on galvanized metal are to include for mordant solutions as necessary.

DETAILED SPECIFICATIONS

The Contractor should read carefully the following specification for workmanship prepared in accordance with the Standard Specification for Building Works 1976 Edition Prepared by Ministryof Works.

GENERAL ITEMS

Materials Generally

All materials used in the works shall be new and of the qualities and kinds specified herein and equal to approved samples. Deliveries shall be made sufficiently in advance to enable samples to be taken and testedas required. No material shall be used until approved and all materials not approved or which are damaged,contaminated or have deteriorated in any way or do not comply in any way with the requirement of this specification shall be rejected and immediately removed from the site at Contractor's own expense.

Material for which there is a Kenya Bureau of Standard (KBS) Specification.

All materials used in the works for which a Kenya Bureau of Standard Specification has been published shall conform to the latest edition thereof in every way. The Project Manager has the right to demand that the Contractor obtains at his own expense a certificate in respect of any material stating that it conforms toKBS Specifications.

Materials for which there is no KBS Specifications

All materials used in the works for which no KBS Specifications has been published shall conform to British Standard (BS) Specifications for such materials. If there are no published standards as specified forany materials, the quality of such a material shall be of a standard equal to those for which there is a KBS or BS Specifications.

REPUBLIC OF KENYA

EMBU COUNTY GOVERNMENT

PROPOSED CONSTRUCTION OF CANAAN WALL AND DRAINAGE

BILLS OF QUANTITIES

Prepared by:

Department of Public Works
P.O. Box 29 - EMBU.

EMBU COUNTY

FN

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	PROPOSED CONSTRUCTION OF CANAAN WALL AND DRAINAGE **Preliminaries** **CONCRETE TESTS** Concrete test cubes, i.e. per set of four as described, including testing fee, labour and materials, making moulds, transport and handling, etc. Successful tests only (PROVISIONAL): Sets of four: No. @..... (Tenderer must insert rate and extend) The Contractor is to organise with the testing laboratory that copies of the Test Cube Reports are forwarded direct to the Structural Engineer. The accurate record of all test cubes taken and crushed must be kept on site and the Contractor will only be reimbursed for successful tests upon production of laboratory certificates. Note: The price per set inserted by the Tenderer is to include for making of the four cubes, curing, transporting and handling and crushing of one, two, three or four cubes in order to obtain a satisfactory results.				
	Total Carried to Collection				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	PRELIMINARIES				
	Site Preparation (Hoarding, Site Office, Site Storage)				
	Temporary hoarding shall be provided all around the site. The hoarding shall be made up of hoarding iron sheets. The tenderers amount for hoarding shall be deemed to be inclusive of all legally demandable fees for the temporary hoarding by the Local and Central Authorities.				
A	The Contractor shall allow for thoroughly maintaining the hoarding, shed nets and gates throughout the contract and clearing away and making good disturbed ground on completion. All materials arising will remain the property of the Contractor and he should allow credit against this.				
B	Allow for provision of a Site office through hiring or constructing. The office shall be maintained for use by the Employer, the Contractor, the Consultants, and the Clerk of Works. The Contractor shall dismantle the office and make good disturbed surfaces upon completion of the works to the satisfaction of the Project Manager				
C	The contractor shall provide sheds or facilities for storage accommodation for all goods and materials liable to suffer damage from exposure to sunlight or inclement weather. The Contractor shall dismantle any temporary structures and make good disturbed surfaces upon completion of the works to the satisfaction of the Project Manager				
	Total Carried to Collection				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	Preliminaries (Cont'd)				
	Insurance for the Works				
A	Allow for acquisition of insurance cover for Contractor's employees and workmen on site (WIBA Insurance)				
B	Allow for acquisition of insurance cover for works on site (CAR Insurance)				
	Performance Security				
C	Allow for provision of a performance security (bond) in the form of a bank guarantee or insurance bond in the amount of 10% of the Contract Sum. Note that no payment on account of the works executed will be made to the Contractor until he has submitted the Performance Bond to the Project Manager duly signed, sealed, and stamped from an approved bank or insurance agency approved by PPRA				
	Sign Board				
D	The Contractor shall provide and erect where directed and maintain during the whole period of the building operation and remove at completion one approved temporary notice board to the Architect's standard design giving a brief description of the works and showing the names of the employer, Contractor and the consultants, with sufficient space to append the names of the sub-contractors and suppliers when known. The lettering concerning the Architect, Quantity Surveyor and Engineer is not to be more than 50mm high.				
	Total Carried to Collection				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	No other signboards or advertising will be permitted without the written authority of the Employer and Project Manager and this rule is to be observed throughout the course of the Contract.				
A	**Site Security** Allow for provision of security of all works, stores, materials, plant, personnel etc. both the Main Contractor and sub-contractors. The contractor shall also provide all necessary watching, lighting, and other precautions as necessary to ensure the security, the safety and protection of the public.				
B	**Health and Safety** The Contractor shall allow for providing for the safety, health and welfare of work people and for complying with any relevant Ordinances, Regulations or Union Agreement. In addition to complying with the requirements of the Occupational Safety & Health Act 2007 and the Factories Act, the Contractor and Sub-Contractors shall be required to comply in all respects with the Factories (Building Operations and Work of Engineering Construction) rules together with the Construction Safety Plan in compliance with International Labour Organizations (ILO) Regulations. The Contractor will also be required to provide approved good quality hard hats, gumboots and other necessary protective gear for all workers on site including Sub-Contractors workers and also for the exclusive use by the Clerk of Works and representatives of the Employer and Consultants. The Employer reserves the right to hold back the amount priced against this Clause either in full or in part due to any non-performance by the Contractor under this Clause.				
	Total Carried to Collection				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	Preliminaries (Cont'd) Adequate temporary Notices and Signs shall be posted to indicate e.g. that building operations are in progress and entry is at one's own risk or trespassers are liable to be prosecuted or such other Notices and Signs as the Architect may consider necessary from time to time. The design and location of such signs will be to the approval of the Architect **Materials, Tools, Plant, and Scaffoldings** All materials and workmanship used in the execution of the works shall be of the best quality and description. Any materials for the works condemned by the Architect shall immediately be removed from the site at the Contractor's expense.				
A	All materials and workmanship shall unless otherwise specified or described conform to the appropriate British Standards Institution specification current at the date of tender The works throughout shall be executed by skilled workmen well versed in their respective trades.				
B	The contractor shall be responsible for the provision of all materials, hoists, Tower cranes, tackle, plant, vehicles, tools and appliances scaffolding, transport and workmen required for the works except in so far as may be stated otherwise herein and he shall allow for the provision of the foregoing No timber used for scaffolding, formwork or similar purpose shall be used afterwards in the permanent works. The Contractor shall allow for all costs related to hoisting his or his Sub-Contractor's materials for fixing at any level within the limits shown on the drawings or included in the general description of the works.				
	Total Carried to Collection				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	Preliminaries (Cont'd)				
	All such plant, tools and scaffolding shall comply with all regulations whether general or local in force throughout the period of the contract and shall be required as may be necessary to comply with any amendments in or additions to such regulations				
	Water for the Works				
A	The contractor shall provide at his own risk and cost all water for use in connection with the works including the work of sub-contractors whether through arrangements with the local authority or water suppliers or the institution. He shall also provide temporary storage tanks and tubing etc. as he may consider necessary and clear away at completion or when no longer required. All water shall be fresh, clean and pure, free from earthly vegetable or organic matter, acid or alkaline substance in solution or suspension. No claims for lack of water or water pressure will be entertained.				
	Lighting and Power				
B	The contractor shall provide at his own risk and cost all temporary artificial lighting and power for use on the works including all sub-contractors and specialists' requirements and including all temporary connections, wiring, fittings etc. and clearing away on completion. The Contractor shall pay all fees, bills and obtain all permits in connection therewith without charge to subcontractors. No claims due to lack of electricity or due to power fluctuations will be accepted.				
	Licenses and Statutory Approvals				
C	Allow for liasing and obtaining of relevant licences and statutory approvals for the works from the local authorities				
	Total Carried to Collection				

ITEM	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	Preliminaries (Cont'd)				
	Material Samples				
A	The contractor shall furnish at the earliest possible opportunity before work commences and at his own cost any samples of materials or workmanship that may be called for by the Architect for his approval or rejection until such samples are approved to be the minimum standard for the work to which they apply. The Contractor shall ensure their protection against theft, loss or damage.				
B	Allow for preparation of working drawings "As installed" record drawings.				
C	Allow for preparation and submission of all operation manuals, test reports among other handover documents				
	Total Carried to Collection				
	COLLECTION				
	From Page 1				
	From Page 2				
	From Page 3				
	From Page 4				
	From Page 5				
	From Page 6				
	From Page 7				
	TOTAL FOR PRELIMINARIES				

PREAMBLES AND PRICING NOTES

A. GENERALLY

All work to be carried out in accordance with the Ministry of Public Works General Specifications for Building Works issued in 1976 or as qualified or amended below.

B. MANUFACTURERS' NAMES

Where manufacturers' names and catalogue references are given for guidance to quality and standard only. Alternative manufacturer of equal quality will be accepted at the discretion of the Project Manager.

C. WALLING

All precast concrete blocks shall be manufactured by the methods and to the sizes specified in the Ministry of Public Works "Specification for Metric Sized Concrete Blocks for Building (1972)" Walling of 100 mm thickness or under shall be reinforced with hoop iron every alternate course. Prices for walling must allow for all costs in preparing, packing and sending sample blocks for testing as and when required by the Project Manager.

D. CARPENTRY

The grading rules for cypress shall be the same for podocarpus and all timber used for structural work shall be select (second grade). All structural timber must conform to the minimum requirements for moisture content and preservative treatment and timber prices must allow for preparing, packing and sending samples for testing when required. Prices must also include for all nails and fasteners.

A. JOINERY

Cypress for joinery shall be second grade in accordance with the latest grading rules of the Kenya Government. Where Mahogany is specified, this refers to prime grade only. The Contractor may with the approval of the Project Manager; use either Msharagi or Mvuli in lieu of Mahogany but such approval will be given only in the case of shortages of the hardwoods specified. Plugging shall be carried out by drilling walling or concrete with masonry drill and filling with propriety plugs of the correct sizes. Cutting with hammer and chisel will not be allowed. Prices for joinery must include for pencil rounded arises, protection against damage, nails, screws, framing and bedding in cement mortar as required. Sizes given for joinery items are nominal sizes and exact dimensions of doors, etc, must be ascertained on site.

B. IRONMONGERY

Ironmongery shall be specified in the Bills of Quantities or equal and approved. Prices must include for removing and re-fixing during and after painting, labeling all keys, and for fixing to hardwood, softwood, concrete or blockwork. Catalogue references given for ironmongery are for purposes of indicating quality and size of item(s). Should the Contractor wish to substitute the specified item(s) with others of equal manufacture, he must inform the Project Manager and obtain approval in writing.

C. STRUCTURAL STEELWORK

All structural steelwork shall comply with the Ministry of Public Works “Structural Steelwork Specification (1973) and shall be executed by an approved Sub-contractor.

A. PLASTERWORK AND OTHER FINISHES

All finishings shall be as described in the general specifications and in these Bills of Quantities. Prices for pavings are to include for brushing concrete clean, wetting and coating with cement and sand grout 1:1. Rates for glazed wall tiling are to include for a 12 mm cement and sand (1:4) backing screed unless otherwise specified in these Bills of Quantities.

B. GLAZING

Where polished plate glass is specified, this refers to general glazing quality. Prices for glazing shall include for priming of rebates before placing putty. The Contractor will be responsible for replacing any broken or scratched glass and handing over in perfect condition.

C. PAINTING

Painting shall be applied in accordance with the manufacturers' instructions. Prices for painting are to include for scaffolding, preparatory work, priming coats, protection of other works and for cleaning up on completion. Prices for painting on galvanized metal are to include for mordant solution as necessary.

STORM WATER DRAINAGE

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	STORM WATER DRAINAGE				
	Excavations and Earthworks				
A	Excavate to reduced level n.e 1.5 m deep for Cast in-situ reinforced concrete drainage channel including return, fill and ram selected and carting away of excavated material	635	CM		
B	Extra over for excavations in concrete surfaces	37	SM		
C	Extra over for trimming and levelling bottoms and sides of excavations and cart away	1269	SM		
	Fillings				
D	Provide, lay and compact 100mm thick murram sub-base blinding well watered and compacted to beds	423	SM		
	Culvert Installations				
E	900mm diameter with surround including concrete headwall construction	30	LM		
	Insitu vibrated reinforced 1:2:4 class 20/20 in:				
F	150 mm thick channel base	353	SM		
G	150 mm thick channel sides	584	SM		
H	150 mm thick channel cover slabs	112	SM		
I	200 mm thick channel sides	122	SM		
	Fabric reinforcement				
J	BRC mesh type No. A142 weighing 2.22KG/SM including 200mm minimum end and side laps	1171	SM		
	Total Carried Forward				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	STORM WATER DRAINAGE CONTINUED				
	Total Brought Down				
	Sawn formwork as described to:				
A	Channel sides	1412	SM		
B	Soffits of channel cover slabs	112	SM		
	TOTAL FOR STORM WATER DRAINAGE CARRIED TO GRAND SUMMARY				

PERIMETER WALL

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	PERIMETER WALL				
	SUPERSTRUCTURES				
	Insitu vibrated reinforced 1:2:4 class 20/20 in:				
A	Columns	4	Cm		
	High yield Deformed reinforcement bars to BS 4461;				
B	12mm diameter bars	500	Kg		
C	8mm diameter bars	200	Kg		
	Sawn formwork as described to:				
D	Sides of columns	34	SM		
	Wall:-				
E	200 mm fine dressed natural stone wall in cement : sand mortar (1:3).	200	SM		
	Coping				
F	300 x 50mm thick precast concrete (1:2:4) coping, twice weathered and throated	95	Lm		
G	Precast concrete (1:2:4) column capping, twice weathered and throated; Size 300 x 400 x 50mm	35	No		
	Cement and sand (1:4)				
H	15mm thick to concrete/masonry surfaces	434	Sm		
	Prepare and apply three coats first quality external paint				
I	Rendered surfaces	434	Sm		
	TOTAL FOR PERIMETER WALL CARRIED TO GRAND SUMMARY				

GRAND SUMMARY

GRAND SUMMARY

PROPOSED CONSTRUCTION OF CANAAN WALL AND DRAINAGE			
ITEM	DESCRIPTION	FOR TENDERER'S USE ONLY	FOR OFFICIAL USE ONLY
		KSHS.	KSHS.
1	PRELIMINARIES		
2	STORM WATER DRAINAGE		
3	PERIMETER WALLING		
	SUB-TOTAL (1)		
4	ADD 16% VAT (On Sub-Total 1 Above)		
	GRAND TOTAL CARRIED TO FORM OF TENDER (VAT INCLUSIVE)		

AMOUNT IN WORDS: ……

…….....……

NAME OF THE CONTRACTOR: ……

STAMP **SIGN:……**

Prepared by:

Department of public works
P.O. Box 29- EMBU.
EMBU COUNTY

FN