NG-CDF BOARD

National Government Constituencies Development Fund Board
Webuye East Constituency
At Webuye East Sub County HQs
P.O Box 404-50205, WEBUYE
Tel: ..... | Cell: 070426594
Email: cdfwebuyeeast@ngcdf.go.ke | Website:www.ngcdf.go.ke

Date: 24-04-2025

ADVERTISEMENT!!

TENDER INVITATION NOTICE!!!!!

NG-CDF WEBUYE EAST INVITES BIDS FROM ELIGIBLE BIDDERS PRE-QUALIFIED BY NG-CDF WEBUYE EAST FOR PROPOSED RENOVATION WORKS AND STRUCTURAL CABLING OF WEBUYE EAST NG-CDF ICT CENTRE AS ILLUSTRATED BELOW; -

	TENDER NO.	PROJECT NAME	SCOPE DESCRIPTION	TARGET GROUP
1	NG-CDF/ICT-C/001/2023-2024	Webuye East NG-CDF Office ICT Centre	Proposed Renovation works and structural cabling. Partitioning the office with appropriate ICT Hub work stations.	Open

Eligible bidders are invited to submit their filled application in **original** and **two (2) duplicate copies** put in separate envelopes, marked original/duplicate with the **relevant tender number** as above.

The tender documents can be downloaded from NG-CDF website www.ngcdf.go.ke for free.

MANDATORY REQUIREMENTS

1. Certified copy of Company registration/incorporation.
2. Certified copy of NCA certificate category 8 and above.
3. Certified renewed copy of annual practicing license with NCA.
4. Certified copy of CR12 with copies of ID's/Passport for Directors.
5. Certified renewed copy of NCA Practicing license in the relevant trade area.
6. Certified copy of valid/current tax compliance certificate (KRA).
7. Certified copy of KRA pin certificate.
8. Certified copy of valid single business permit from any county government authority.
9. Certified copies of Bank statements for 3 months from the time of advertisement.
10. Dully filled, signed and stamped self-declaration form SD1 (Public Procurement and Disposal Act non debarment form).
11. Dully filled, signed and stamped self-declaration form SD2 (Anti-corruption pledge).
12. All pages MUST be stamped and serialized/paged.
13. Dully filled, signed and stamped form of tender in the format prescribed **(on the contractor's letter head).**

NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND
0704 265941
WEBUYE EAST CONSTITUENCY
24 APR 2025
FUND ACCOUNT MANAGER

All bids to be dropped in the tender box at the Webuye East NG-CDF Office by Friday 2nd May, 2025 on or before 10.00am and immediately thereafter, tenders shall be opened in the presence of the tenderers or their representatives.

Tenders to be addressed to the **Fund Account Manager Webuye East NG-CDF** as per the below address

THE FUND ACCOUNT MANAGER

NG-CDF WEBUYE EAST

P.O BOX 404-50205

WEBUYE.

NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND
0704 265941
WEBUYE EAST CONSTITUENCY
24 APR 2025
FUND ACCOUNT MANAGER
P. O. Box 404-50205, WEBUYE (K)

REPUBLIC OF KENYA
MINISTRY OF LANDS, HOUSING AND URBAN DEVELOPMENT
DEPARTMENT OF PUBLIC WORKS

SPECIFICATIONS AND BILLS OF QUANTITIES

FOR

PROPOSED RENOVATION WORKS AND STRUCTURAL CABLING OF ICT CENTRE AT WEBUYE EAST CDF IN BUNGOMA COUNTY

TENDER NO. .....

PREPARED BY:
County Quantity Surveyor
P.O Box 763
Bungoma

County Elect./Mech. Engineer
P.O Box 763
Bungoma

COUNTY WORKS OFFICER
BUNGOMA COUNTY
P.O. Box 763
BUNGOMA

County Architect
P.O Box 763
Bungoma.

County structural Engineer
P.O Box 763
Bungoma.

Issued By:
County Works Officer
Department of Public Works
P.O. Box 763
Bungoma

FORM NO. 2 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary:_____ **Date:**_____

Guarantor: _____

1. We have beeninformedthat_____(hereinafter called "the Contractor") has entered intoContractNo._____dated_____with _____(theProcuringEntityastheBeneficiary),fortheexecutionof _____(hereinaftercalled"theContract").

2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

3. AttherequestoftheContractor,weasGuarantor,herebyirrevocablyundertaketopaytheBeneficiaryanysumor sumsnotexceedingintotalanamountof_____(*in words*),[1] 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, whetherinthedemanditselforinaseparatesigneddocumentaccompanyingoridentifyingthedemand,stating thattheApplicantisinbreachofitsobligation(s)undertheContract,withouttheBeneficiaryneedingtoproveor toshowgroundsforyourdemandorthesumspecifiedtherein.

4. Thisguaranteeshallexpire,nolaterthanthe….Dayof……,20……[2],andanydemandforpaymentunderitmustbere ceivedbyusattheofficeindicatedaboveonorbeforethatdate.

5. TheGuarantoragreestoaone-timeextensionofthisguaranteeforaperiodnottoexceed*[sixmonths]/[oneyear]*, inresponsetotheBeneficiary'swrittenrequestforsuchextension,suchrequesttobepresentedtotheGuarantor beforetheexpiryoftheguarantee."

Name of Authorized Official_____

Signature_____

Stamps_____

FORM No. 3– PERFORMANCESECURITY

[Option 2– Performance Bond]

Guarantor letterhead or SWIFT identifier code]

Beneficiary:_____ **Date:**_____

PERFORMANCE BONDNo.:_____

Guarantor:
Name_____

Address _____

1. BythisBond_____as Principal (hereinafter called "the Contractor") and_____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto_____] asObligee (hereinaftercalled"theProcuringEntity")intheamountof_____forthe paymentofwhichsumwellandtrulytobemadeinthetypesandproportionsofcurrenciesinwhichtheContract Priceispayable,theContractorandtheSuretybindthemselves,theirheirs,executors,administrators,successors andassigns,jointlyandseverally,firmlybythesepresents.

2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity datedthe _____dayof_____, 20-----,for_____inaccordancewiththedocuments,plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereofandarehereinafterreferredtoastheContract.

3. NOW,THEREFORE,theConditionofthisObligationissuchthat,iftheContractorshallpromptlyandfaithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity'sobligationsthereunder,theSuretymaypromptlyremedythedefault,orshallpromptly:
   1) completetheContractinaccordancewithitstermsandconditions;or
   2) obtainatenderortendersfromqualifiedtenderersforsubmissiontotheProcuringEntityforcompletingthe Contractinaccordancewithitstermsandconditions,anduponeterminationbytheProcuringEntityand theSuretyofthelowestresponsiveTenderers,arrangeforaContractbetweensuchTenderer,andProcuring 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 paythecostofcompletionlesstheBalanceoftheContractPrice;butnotexceeding,includingothercosts anddamagesforwhichtheSuretymaybeliablehereunder,theamountsetforthinthefirstparagraphhereof. Theterm"BalanceoftheContractPrice,"asusedinthisparagraph,shallmeanthetotalamountpayableby Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor;or
   3) paytheProcuringEntitytheamountrequiredbyProcuringEntitytocompletetheContractinaccordance withitstermsandconditionsuptoatotalnotexceedingtheamountofthisBond.

4. TheSuretyshallnotbeliableforagreatersumthanthespecifiedpenaltyofthisBond.

5. AnysuitunderthisBondmustbeinstitutedbeforetheexpirationofoneyearfromthedateoftheissuingofthe Taking-OverCertificate.Norightofactionshallaccrueonthisbondtoorfortheuseofanypersonorcorporation otherthantheProcuringEntitynamedhereinortheheirs,executors,administrators,successors,andassignsof theProcuringEntity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety hascaused thesepresentstobesealedwithhiscorporatesealdulyattestedbythesignatureofhislegalrepresentative,this day__of _____20_____.

SIGNEDON_____on behalfof By___inthecapacityof

Inthepresenceof

SIGNEDON_____on behalf of By__inthecapacityof

Inthepresenceof

FORM NO. 4 -ADVANCE PAYMENT SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary:_____
Date:_____

ADVANCE PAYMENTGUARANTEENo.:_____Guarantor:

Name_____

Address _____

1. We have beeninformedthat_____(hereinafter called "the Contractor") has entered into Contract No._____*dated*_____withtheBeneficiary,fortheexecutionof_____

2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in thesum _____(*inwords*) istobemadeagainstanadvancepaymentguarantee.

3. AttherequestoftheContractor,weasGuarantor,herebyirrevocablyundertaketopaytheBeneficiaryanysum orsumsnotexceedingintotalanamountof_____(*inwords*_____)' upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demanditselforinaseparatesigneddocumentaccompanyingoridentifyingthedemand,statingeitherthatthe Applicant:
   a) hasusedtheadvancepaymentforpurposesotherthanthecostsofmobilizationinrespectoftheWorks;or
   b) hasfailedtorepaytheadvancepaymentinaccordancewiththeContractconditions,specifyingtheamount whichtheApplicanthasfailedtorepay.

4. Ademandunderthisguaranteemaybepresentedasfromthepresentationtothe Guarantorofacertificatefrom theBeneficiary'sbankstatingthattheadvancepaymentreferredtoabovehasbeencreditedtotheContractoron itsaccountnumber_____at_____.

5. Themaximumamountofthisguaranteeshallbeprogressivelyreducedbytheamountoftheadvancepayment 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 certificateindicatingthatninety(90)percentoftheAcceptedContractAmount,lessprovisionalsums,hasbeen certified for payment, or on the dayof_____, 2 ,[2] whichever is earlier. Consequently, ademandforpaymentunderthisguaranteemustbereceivedbyusatthisofficeonorbeforethatdate.

6. TheGuarantoragreestoaone-timeextensionofthisguaranteeforaperiodnottoexceed*[sixmonths][oneyear]*, inresponsetotheBeneficiary'swrittenrequestforsuchextension,suchrequesttobepresentedtotheGuarantor beforetheexpiryoftheguarantee.

Name of Authorized Official_____

Signature_____

Stamps_____

FORM NO. 5 - RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____

Date:_____

Advance payment guarantee no. _____

Guarantor:

Name_____

Address _____

1. We have beeninformedthat hereinaftercalled"theContractor")hasenteredintoContractNo. _____dated_____with the Beneficiary, for the executionof_____ _____hereinafter called"theContract").

2. Furthermore, weunderstandthat,accordingtotheconditionsoftheContract,theBeneficiaryretainsmoneysup tothelimitsetforthintheContract("theRetentionMoney"),andthatwhentheTaking-OverCertificatehasbeen issuedundertheContractandthefirsthalfoftheRetentionMoneyhasbeencertifiedforpayment,andpayment of[insertthesecondhalfoftheRetentionMoney]istobemadeagainstaRetentionMoneyguarantee.

3. AttherequestoftheContractor,we,asGuarantor,herebyirrevocablyundertaketopaytheBeneficiaryanysum orsumsnotexceedingintotalanamountof*[insertamountinfigures]*_____upon receipt by us of the Beneficiary's complying demand supported bytheBeneficiary'sstatement,whetherinthedemanditselforinaseparatesigneddocumentaccompanyingor identifyingthedemand,statingthattheContractorisinbreachofitsobligation(s)undertheContract,without yourneedingtoproveorshowgroundsforyourdemandorthesumspecifiedtherein.

4. Ademandunderthisguaranteemaybepresentedasfromthepresentationtothe Guarantorofacertificatefrom theBeneficiary'sbankstatingthatthesecondhalfoftheRetentionMoneyasreferredtoabovehasbeencredited to the Contractor on its account number_____at_____.

5. 5.This guarantee shall expire no later than the ..... Day of ....., 2.....[2], andanydemandforpaymentunderitmustbereceivedbyusattheofficeindicatedaboveonorbeforethatdate.

6. TheGuarantoragreestoaone-timeextensionofthisguaranteeforaperiodnottoexceed*[sixmonths][oneyear]*. inresponsetotheBeneficiary'swrittenrequestforsuchextension,suchrequesttobepresentedtotheGuarantor beforetheexpiryoftheguarantee.

Name of Authorized Official_____

Signature_____

Stamps_____

ITEM	DESCRIPTION	KSHS
	GENERAL PRELIMINARIES	
A.	**PRICING OF ITEMS OF PRELIMINARIES AND PREAMBLES**	
	Prices will be inserted against items of Preliminaries in the Contractor's priced Bills of Quantities and Specification.	
	The Contractor shall be deemed to have included in his prices or rates for the various items in the Bills of Quantities or Specification for all costs involved in complying with all the requirements for the proper execution of the whole of the works in the Contract.	
B.	**ABBREVIATIONS**	
	Throughout these Bills, units of measurement and terms are abbreviated and shall be interpreted as follows:-	
	C.M. Shall mean cubic metre	
	S.M. Shall mean square metre	
	L.M. Shall mean linear metre	
	MM Shall mean Millimetre	
	Kg. Shall mean Kilogramme	
	No. Shall mean Number	
	Prs. Shall mean Pairs	
	B.S. Shall mean the British Standard Specification Published by the	
	Ditto Shall mean the whole of the preceding description except as qualified in the description in which it occurs.	
	m.s. Shall mean measured separately.	
	a.b.d Shall mean as before described.	
	Carried to collection	

ITEM	DESCRIPTION	KSHS
A.	**EXCEPTION TO THE STANDARD METHOD OF MEASUREMENT** **Attendance ;** Clause B19(a) of the Standard Method of Measurement is deleted and the following clause is substituted:- Attendance on nominated Sub-Contractors shall be given as an item in each case shall be deemed to include: allowing use of standing scaffolding, mess rooms, sanitary accommodation and welfare facilities; provision of special scaffolding where necessary; providing space for office accommodation and for storage of plant and materials; providing light and water for their work: clearing away rubbish; unloading checking and hoisting: providing electric power and removing and replacing duct covers, pipe casings and the like necessary for the execution and testing of Sub- Contractors' work and being responsible for the accuracy of the same.	
B	**Fix Only:-** "Fix Only" shall mean take delivery at nearest railway station (Unless otherwise stated), pay all demurrage charges, load and transport to site where necessary, unload, store, unpack, assemble as necessary, distribute to position, hoist and fix only.	
C	**EMPLOYER** The "Employer" is The term "Employer" and "Government" wherever used in the contract document shall be synonymous	
D	**PROJECT MANAGER** The term "P.M." wherever used in these Bills of Quantities shall be deemed to imply the Project Manager as defined in Condition 1 of the Conditions of Contract or such person or persons as may be duly authorised to represent him on behalf of the Government.	
E	**ARCHITECT** The term "Architect" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is County Works Office, Department of Public Works, P.O. Box 763, BUNGOMA.	
F	**QUANTITY SURVEYOR** The term "Quantity Surveyor" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is County Works Office, Department of Public Works, P.O. Box 763, BUNGOMA.	
G	**ELECTRICAL ENGINEER** The term "Electrical Engineer" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is County Works Office, Department of Public Works, P.O. Box 763, BUNGOMA.	
	Carried to collection	

ITEM	DESCRIPTION	KSHS
A	**MECHANICAL ENGINEER** The term "Mechanical Engineer" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is County Works Office, Department of Public Works, P.O. Box 763, BUNGOMA.	
B	**STRUCTURAL ENGINEER** The term "Structural Engineer" shall be deemed to mean "The P.M." as defined above whose address unless otherwise notified is County Works Office, Department of Public Works, P.O. Box 763, BUNGOMA.	
C	**FORM OF CONTRACT** The Form of Contract shall be as stipulated in the Republic of Kenya's Standard Tender Document for Procurement of Building Works(2000 Edition) a copy of which can be obtained from the Project Manager's office. The Conditions of Contract can also be obtained from the Project Manager's offices. ***Conditions of Contract*** These are numbered from 1 to 38 as set out in pages ***14 to 31*** of these tender documents. Particulars of insertions to be made in the Appendix to the Contract Agreement will be found in the Particular Preliminaries part of these Bills of Quantities	
D	**BOND.** The Contractor shall find and submit on the Form of Tender and approved bank or InsuranceCompany and who will be willing to be bound the Government in and amount equal to five per cent (5%) of the Contract amount for the due performances of the Contract up to the date of completion as certified by the PROJECT MANAGER and who will when and if called upon, sign a Bond to that effect on the relevant standard form included herein. (without the addition of any limitations) on the same day as the Contract Agreement is signed, by the Government, the Contractor shall furnish within seven days another Surety to the approval of the Government.	
E	**PLANT, TOOLS AND VEHICLES** Allow for providing all scaffolding, plant, tools and vehicles required for the works except in so far as may be stated otherwise herein and except for such items specifically and only required for the use of nominated Sub-Contractors as described herein. No timber used for scaffolding, formwork or temporary works of any kind shall be used afterwards in the permanent work.	
	Carried to collection	

A	**TRANSPORT.**	

ITEM	DESCRIPTION	KSHS
	Allow for transport of workmen, materials, etc., to and from the site at such hours and by such routes as may be permitted by the competent authorities.	
B	**MATERIALS AND WORKMANSHIP.** All materials and workmanship used in the execution of the work shall be of the best quality and description unless otherwise stated. The Contractor shall order all materials to be obtained from overseas immediately after the Contract is signed and shall also order materials to be obtained from local sources as early as necessary to ensure that they are onsite when required for use in the works. The Bills of Quantities shall not be used for the purpose of ordering materials.	
C	**SIGN FOR MATERIALS SUPPLIED.** The Contractor will be required to sign a receipt for all articles and materials supplied by the PROJECT MANAGER at the time of taking deliver thereof, as having received them in good order and condition, and will thereafter be responsible for any loss or damage and for replacements of any such loss or damage with articles and/or materials which will be supplied by the PROJECT MANAGER at the current market prices including Customs Duty and V.A.T., all at the Contractor's own cost and expense, to the satisfaction of the PROJECT MANAGER	
D	**STORAGE OF MATERIALS** The Contractor shall provide at his own risk and cost where directed on the site weather proof lock-up sheds and make good damaged or disturbed surfaces upon completion to the satisfaction of the PROJECT MANAGER Nominated Sub-Contractors are to be made liable for the cost of any storage accommodation provided especially for their use.	
E	**SAMPLES** The Contractor shall furnish at his own cost any samples of materials or workmanship including concrete test cubes required for the works that may be called for by the PROJECT MANAGER for his approval until such samples are approved by the PROJECT MANAGER and the PROJECT MANAGER, may reject any materials or workmanship not in his opinion to be up to approved samples. The PROJECT MANAGER shall arrange for the testing of such materials as he may at his discretion deem desirable, but the testing shall be made at the expense of the Contractor and not at the expense of the PROJECT MANAGER. The Contractor shall pay for the testing in accordance with the current scale of testing charges laid down by the Ministry of Roads, Housing and Public Works.	
	Carried to collection	
	The procedure for submitting samples of materials for testing and the method of marking for identification shall be as laid down by the PROJECT MANAGER The Contractor shall allow in his tender for such samples and tests except those in connection with nominated sub-contractors' work.	

ITEM	DESCRIPTION	KSHS
A	**GOVERNMENT ACTS REGARDING WORKPEOPLE ETC.** Allow for complying with all Government Acts, Orders and Regulations in connection with the employment of Labour and other matters related to the execution of the works. In particular the Contractor's attention is drawn to the provisions of the Factory Act 1950 and his tender must include for all costs arising or resulting from compliance with any Act, Order or Regulation relating to Insurances, pensions and holidays for workpeople or so the safety, health and welfare of the work people. The Contractor must make himself fully acquainted with current Acts and Regulations, including Police Regulations regarding the movement, housing, security and control of labour, labour camps , passes for transport, etc. It is most important that the Contractor, before tendering, shall obtain from the relevant Authority the fullest information regarding all such regulations and/or restrictions which may affect the organisation of the works, supply and control of labour, etc., and allow accordingly in his tender. No claim in respect of want of knowledge in this connection will be entertained.	
B	**SECURITY OF WORKS ETC.** The Contractor shall be entirely responsible for the security of all the works stores, materials, plant, personnel, etc., both his own and sub-contractors' and must provide all necessary watching, lighting and other precautions as necessary to ensure security against theft, loss or damage and the protection of the public. The procedure for submitting samples of materials for testing and the method of marking for identification shall be as laid down by the PROJECT MANAGER The Contractor shall allow in his tender for such samples and tests except those in connection with nominated sub-contractors' work.	
B	**PUBLIC AND PRIVATE ROADS.** Maintain as required throughout the execution of the works and make good any damage to public or private roads arising from or consequent upon the execution of theworks to the satisfaction of the local and other competent authority and the PROJECT MANAGER	
	Carried to collection	

A	**EXISTING PROPERTY.**	

ITEM	DESCRIPTION	KSHS
	The Contractor shall take every precaution to avoid damage to all existing property including roads, cables, drains and other services and he will be held responsible for and shall make good all such damage arising from the execution of this contract at his own expense to the satisfaction of the PROJECT MANAGER	
B	**VISIT SITE AND EXAMINE DRAWINGS.** The Contractor is recommended to examine the drawings and visit the site the location of which is described in the Particular Preliminaries hereof. He shall be deemed to have acquainted himself therewith as to its nature, position, means of access or any other matter which, may affect his tender. No claim arising from his failure to comply with this recommendation will be considered.	
C	**ACCESS TO SITE AND TEMPORARY ROADS.** Means of access to the Site shall be agreed with the PROJECT MANAGER prior to commencement of the work and Contractor must allow for building any necessary temporary access roads (approximately 70 metres long) for the transport of the materials, plant and workmen as may be required for the complete execution of the works including the provision of temporary culverts, crossings, bridges, or any other means of gaining access to the Site. Upon completion of the works, the Contractor shall remove such temporary access roads; temporary culverts, bridges, etc., and make good and reinstate all works and surfaces disturbed to the satisfaction of the PROJECT MANAGERThe Contractor should also allow for relocating existing fence (approx. 30 metres long).	
D	**AREA TO BE OCCUPIED BY THE CONTRACTOR** The area of the site which may be occupied by the Contractor for use of storage and for the purpose of erecting workshops, etc., shall be defined on site by the PROJECT MANAGER	
	Carried to collection	
A	**OFFICE ETC. FOR THE PROJECT MANAGER**	

ITEM	DESCRIPTION	KSHS
	The Contractor shall provide, erect and maintain where directed on site and afterwards dismantle the site office of the type noted in the Particular Preliminaries, complete with Furniture. He shall also provide a strong metal trunk complete with strong hasp and staple fastening and two keys. He shall provide, erect and maintain a lock-up type water or bucket closet for the sole use of the PROJECT MANAGER including makingtemporary connections to the drain where applicable to the satisfaction of Government and Medical Officer of Health and shall provide services of cleaner and pay all conservancy charges and keep both office and closet in a clean and sanitary condition from commencement to the completion of the works and dismantle and make good disturbed surfaces. The office and closet shall be completed before the Contractor is permitted to commence the works. The Contractor shall make available on the Site as and when required by the "PROJECT MANAGER" a modern and accurate level together with levelling staff, ranging rods and 50 metre metallic or linen tape.	
B	**WATER AND ELECTRICITY SUPPLY FOR THE WORKS** The Contractor shall provide at his own risk and cost all necessary water, electric light and power required for use in the works. The Contractor must make his own arrangements for connection to the nearest suitable water main and for metering the water used. He must also provide temporary tanks and meters as required at his own cost and clear away when no longer required and make good on completion to the entire satisfaction of the PROJECT MANAGER . The Contractor shall pay all charges in connection herewith. No guarantee is given or implied that sufficient water will be available from mains and the Contractor must make his own arrangements for augmenting this supply at his own cost. Nominated Sub--contractors are to be made liable for the cost of any water or electric current used and for any installation provided especially for their own use	
C	**SANITATION OF THE WORKS** The Sanitation of the works shall be arranged and maintained by the Contractor to the satisfaction of the Government and/or Local Authorities, Labour Department and the PROJECT MANAGER	
	Carried to collection	

A	**SUPERVISION AND WORKING HOURS**	

ITEM	DESCRIPTION	KSHS
	The works shall be executed under the direction and to the entire satisfaction in all respects of the PROJECT MANAGER who shall at all times during normal working hours have access to the works and to the yards and workshops of the Contractor and sub-Contractors or other places where work is being prepared for the contract.	
B	**PROVISIONAL SUMS.** The term "Provisional Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section A item A7(i) of the Standard Method of Measurement mentioned in Condition No. 16 of the conditions of Contract. Such sums are net and no addition shall be made to them for profit.	
C	**PRIME COST (OR P.C.) SUMS.** The term "Prime Cost Sum" or "P.C. Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section A item A7 (ii) of the Standard Method of Measurement mentioned in Condition No. 16 of the conditions of Contract. Persons or firms nominated by the PROJECT MANAGER to execute work or to provide and fix materials or goods as stated in Condition No. 20 of the Conditions of Contract are described herein as Nominated Sub-Contractors. Persons or firms so nominated to supply goods or materials are described herein as Nominated Suppliers.	
D	**PROGRESS CHART.** The Contractor shall provide within two weeks of Possession of Site and in agreement with the PROJECT MANAGER a Progress Chart for the whole of the works including the works of Nominated Sub-Contractors ; one copy to be handed to the PROJECT MANAGER and a further copy to be retained on Site. Progress to be recorded and chart to be amended as necessary as the work proceeds.	
E	**ADJUSTMENT OF P.C. SUMS.** In the final account all P.C. Sums shall be deducted and the amount properly expended upon the PROJECT MANAGER'S order in respect of each of them added to the Contract sum. The Contractor shall produce to the PROJECT MANAGER such quotations, invoices or bills, properly receipted, as may be necessary to show the actual details of the sums paid by the Contractor. Items of profit upon P.C. Sums shall be adjusted in the final account pro-rata to the amount paid. Items of "attendance" (as previously described) following P.C. Sums shall be adjusted pro-rata to the physical extent of the work executed (not pro-rata to the amount paid) and this shall apply even though the Contractor's priced Bill shows a percentage in the rate column in respect of them.	
	Carried to collection	

ITEM	DESCRIPTION	KSHS
	Should the Contractor be permitted to tender and his tender be accepted of any work for which a P.C. Sum is included in these Bill of Quantities profit and attendance will be allowed at the same rate as it would be if the work were executed by a Nominated Sub-Contractor.	
A	**ADJUSTMENT OF PROVISIONAL SUMS.** In the final account all Provisional Sums shall be deducted and the value of the work properly executed in respect of them upon the PROJECT MANAGER's order added to the Contract Sum. Such work shall be valued as described for Variations in Conditions No. 22 of the Conditions of Contract, but should any part of the work be executed by a Nominated Sub-Contractor, the value of such work or articles for the work to be supplied by a Nominated Supplier, the value of such work or articles shall be treated as a P.C. Sum and profit and attendance comparable to that contained in the priced Bills of Quantities for similar items added.	
B	**NOMINATED SUB-CONTRACTORS** When any work is ordered by the PROJECT MANAGER to be executed by nominated sub-contractors, the Contractor shall enter into sub-contracts as described in Condition No. 20 of the Conditions of Contract and shall thereafter be responsible for such sub-contractors in every respect. Unless otherwise described the Contractor is to providefor such Sub-Contractors any or all of the facilities described in these Preliminaries. The Contractor should price for these with the nominated Sub-contract Contractor's workconcerned in the P.C. Sums under the description "add for Attendance".	
C	**DIRECT CONTRACTS** Notwithstanding the foregoing conditions, the Government reserves the right to place a "Direct Contract" for any goods or services required in the works which are covered by a P.C. Sum in the Bills of Quantities and to pay for the same direct. In any such instances, profit relative to the P.C. Sum the priced Bills of Quantities will be adjusted as described for P.C. Sums and allowed.	
D	**ATTENDANCE UPON OTHER TRADESMEN, ETC.** The Contractor shall allow for the attendance of trade upon trade and shall afford any tradesmen or other persons employed for the execution of any work not included in this Contract every facility for carrying out their work and also for use of his ordinary scaffolding. The Contractor, however, shall not be required to erect any special scaffolding for them. The Contractor shall perform such cutting away for and making good after the work of such tradesmen or persons as may be ordered by the PROJECTMANAGER and the work will be measured and paid for to the extent executed at rates provided in these Bills.	
	Carried to collection	

ITEM	DESCRIPTION	KSHS
A	**INSURANCE** The Contractor shall insure as required in Conditions Nos. 22 and 23 of the Conditions of Contract. No payment on account of the work executed will be made to the Contractor until he has satisfied the PROJECT MANAGER either by production of an Insurance Policy or and Insurance Certificate that the provision of the foregoing Insurance Clauses have been complied with in all respects. Thereafter the PROJECT MANAGER shall from time to time ascertain that premiums are duly paid up by the Contractor who shall if called upon to do so, produce the receipted premium renewals for the PROJECT MANAGER's inspection.	
B	**PROVISIONAL WORK** All work described as "Provisional" in these Bills of Quantities is subject to remeasurement in order to ascertain the actual quantity executed for which payment willbe made. All "Provisional" and other work liable to adjustment under this Contract shall left uncovered for a reasonable time to allow all measurements needed for such adjustment to be taken by the PROJECT MANAGER Immediately the work is ready for measuring, the Contractor shall give notice to the PROJECT MANAGER. If the Contractor makes default in these respects he shall if the PROJECT MANAGER so directs uncover the work to enable all measurements to be taken and afterwards reinstate at his own expense.	
C	**ALTERATIONS TO BILLS, PRICING, ETC.** Any unauthorised alteration or qualification made to the text of the Bills of Quantities may cause the Tender to be disqualified and will in any case be ignored. The Contractor shall be deemed to have made allowance in his prices generally to cover any items against which no price has been inserted in the priced Bills of Quantities. All items of measured work shall be priced in detail and the Tenders containing Lump Sums to cover trades or groups of work must be broken down to show the price of each item before they will be accepted.	
D	**BLASTING OPERATIONS** Blasting will only be allowed with the express permission of the PROJECT MANAGER in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost in accordance with any Government regulations in force for the time being, and any special regulations laid down by the PROJECT MANAGER governing the use and storage of explosives.	
	Carried to collection	

A.	**MATERIALS ARISING FROM EXCAVATIONS**	

ITEM	DESCRIPTION	KSHS
	Materials of any kind obtained from the excavations shall be the property of the Government. Unless the PROJECT MANAGER directs otherwise such materials shall bedealt with as provided in the Contract. Such materials shall only be used in the works, in substitution of materials which the Contractor would otherwise have had to supply with the written permission of the PROJECT MANAGER Should such permission be given, the Contractor shall make due allowance for the value of the materials so used at a price to be agreed.	
B.	**PROTECTION OF THE WORKS.** Provide protection of the whole of the works contained in the Bills of Quantities, including casing , casing up, covering or such other means as may be necessary to avoid damage to the satisfaction of the PROJECT MANAGER and remove such protection when no longer required and make good any damage which may nevertheless have been done at completion free of cost to the Government.	
C	**REMOVAL OF RUBBISH ETC.** Removal of rubbish and debris from the Buildings and site as it accumulates and at the completion of the works and remove all plant, scaffolding and unused materials at completion.	
D	**WORKS TO BE DELIVERED UP CLEAN** Clean and flush all gutters, rainwater and waste pipes, manholes and drains, wash (except where such treatment might cause damage) and clean all floors, sanitary fittings, glass inside and outside and any other parts of the works and remove all marks, blemishes, stains and defects from joinery, fittings and decorated surfaces generally, polish door furniture and bright parts of metalwork and leave the whole of the buildings watertight, clean, perfect and fit for occupation to the approval of the PROJECT MANAGER	
E	**GENERAL SPECIFICATION.** For the full description of materials and workmanship, method of execution of the work and notes for pricing, the Contractor is referred to the Ministry of Roads and Public Works and Housing General Specification dated 1976 or any subsequent revision thereof which is issued as a separate document, and which shall be allowed in all respects unless it conflicts with the General Preliminaries, Trade Preambles or other items in these Bills of Quantities.	
	Carried to collection	

A	**TRAINING LEVY**	

ITEM	DESCRIPTION	KSHS
	The Contractor's attention is drawn to legal notice No. 237 of October, 1971, which requires payment by the Contractor of a Training Levy at the rate of 1/4 % of the Contract sum on all contracts of more than Kshs. 50,000.00 in value.	
B	**MATERIALS ON SITE** This includes the materials of the Main Contractor, Nominated Sub-Contractors and Nominated Suppliers.	
C	**HOARDING** The Contractor shall enclose the site (approx.150M long) of the works under construction with a hoarding 2400 mm high consisting of iron sheets on 100 x 50 mm timber posts firmly secured at 1800 mm centres with two 75 x 50 mm timber rails. The Contractor is in addition required to take all precautions necessary for the safe custody of the works, materials, plant, public and Employer's property on the site.	
D	**CONTRACTOR'S SUPERINTENDENCE/SITE AGENT** The Contractor shall constantly keep on the works a literate English speaking Agent or Representative, competent and experienced in the kind of work involved who shall give his whole experience in the kind of work involved and shall give his whole time to the superintendence of the works. Such Agent or Representative shall receive on behalf of the Contractor all directions and instructions from the Project Manager and such directions shall be deemed to have been given to the Contractor in accordance with the Conditions of Contract.	
	Carried to collection	
	COLLECTION	
A	**Brought Forward From Page GP/1**	
B	**Brought Forward From Page GP/2**	
C	**Brought Forward From Page GP/3**	
D	**Brought Forward From Page GP/4**	
E	**Brought Forward From Page GP/5**	
F	**Brought Forward From Page GP/6**	
G	**Brought Forward From Page GP/7**	
H	**Brought Forward From Page GP/8**	
I	**Brought Forward From Page GP/9**	
J	**Brought Forward From Page GP/10**	
K	**Brought Forward From Page GP/11**	
L	**Brought Forward From Page GP/12**	
	TOTAL FOR GENERAL PRELIMINARIES	

PARTICULAR PRELIMINARIES

Item	DESCRIPTION	Kshs.	Cts
A	**PRICING ITEMS OF PRELIMINARIES** Prices **SHALL BE INSERTED** against items of "preliminaries" in the tenderer's priced Bills of Quantities. The contractor is advised to read and understand all preliminary items.		
B	**DESCRIPTION OF THE WORKS** The works to be carried out under this contract basically involve Substructures, Reinforced Concrete Frame, Roofing, opening, Finishes'		
C	**FLOOR AREAS** The total gross floor areas are approximated as follows: - **square Metres** The overall floor area is given ***without warranty*** but for guidance only.		
D	**MEASUREMENTS** In the event of any discrepancies arising between the Bills of Quantities and the actual works, the site measurements shall generally take precedence. However, such discrepancies between any contract documents shall immediately be referred to the PROJECT MANAGER in accordance with Clause 22 of the Conditions of Contract. The discrepancies shall then be treated as a variation and be dealt with in accordance with Clause 22 of the said Conditions.		
E	**LOCATION OF SITE** The site of the proposed works is within Bungoma County. The Contractor is advised to visit the site to familiarize with the nature and position of the site. No claims arising from the Contractor's failure to do so will be entertained.		
	Carried to Collection		

Item	DESCRIPTION	Kshs.	Cts
A	**CLEARING AWAY** The Contractor shall remove all temporary works, rubbish, debris and surplus materials from the site as they accumulate and upon completion of the works, remove and clear away all plant, equipment, rubbish, unused works and stains and leave in a clean and tidy state to the reasonable satisfaction of the Project Manager. The whole of the works shall be delivered up clean, complete and in perfect condition in every respect to the satisfaction of the Project Manager.		
B	**CLAIMS** It shall be a condition of this contract that upon it becoming reasonably apparent to the Contractor that he has incurred losses and/or expenses due to any of the contract conditions, or by any other reason whatsoever, he shall present such claim or intent to claim notice to the PROJECT MANAGER within the contract period. No claims shall be entertained Upon the expiry of the said contract period.		
C	**PAYMENTS** The tenderer's attention is drawn to the fact that the GOVERNMENT DOES NOT MAKE ADVANCE PAYMENTS but pays for work done and materials delivered to site: all in accordance with Clause 23 of the Conditions of Contract Agreement. In order to facilitate this, a list of the general component elements for the works is given at the summary page of these specifications and the tenderer is requested to break down his tender sum commensurate to the said elements.		
D	**PREVENTION OF ACCIDENT, DAMAGE OR LOSS** The Contractor is notified that these works are to be carried out on a restricted site where the client is going on with other normal activities. The Contractor is instructed to take reasonable care in the execution of the works as to prevent accidents, damage or loss and disruption of normal activities being carried out by the Client. The Contractor shall allow in his rates any expense he deems necessary by taking such care within the site.		
	Carried to Collection		

Item	DESCRIPTION	Kshs.	Cts
A	**WORKING CONDITIONS** The Contractor shall allow in his rates for any interference that he may encounter in the course of execution of the works for the Client may in some cases ask the Contractor not to proceed with the works until some activities within the site are completed, as the College will be operating as usual during the course of the contract.		
B	**SIGNBOARD** Allow for providing, erecting, maintaining throughout the course of the Contract and afterwards clearing away a signboard as designed, specified and approved by the Project Manager.		
C	**LABOUR CAMPS** The Contractor shall not be allowed to house labour on site. Allow for transporting workers to and from the site during the tenure of the contract.		
D	**MATERIALS FROM DEMOLITIONS** Any materials arising from demolitions and not re-used shall become the Property of the government. The Contractor shall allow in his rates the cost of transporting the demolished materials to the County Works Office, BUNGOMA		
E	**PRICING RATES** The tenderer shall include for all costs in executing the whole of the works, including transport, replacing damaged items, fixing, all to comply with the Said Conditions of Contract.		
F	**TENDER VALIDITY** Tenders shall remain valid for a period of One Hundred and Fifty (150) days from the date of Tender Opening, and not Ninety (90) days. All Tenderer are advised to note this amendment when filling the Form of Tender.		
	Carried to Collection		

Item	DESCRIPTION	Kshs.	Cts
A	**SECURITY** The Contractor shall allow for providing adequate security for the works and the workers in the course of execution of this contract. No claim will be entertained from the Contractor for not maintaining adequate security for both the works and workers.		
B	**URGENCY OF THE WORKS** The Contractor is notified that these "works are urgent" and should be completed within the period stated in these Particular Preliminaries. The Contractor shall allow in his rates for any costs he deems that he/she may incur by having to complete the works within the stipulated contract Period.		
C	**PAYMENT FOR MATERIALS ON SITE** All materials for incorporation in the works must be stored on site before payment is effected, unless specifically exempted by the Project Manager. This is to include materials of the Contractor, nominated sub-Contractors and nominated suppliers.		
D	**EXISTING SERVICES** Prior to the commencement of any work, the Contractor is to ascertain from the relevant authority the exact position, depth and level of all existing services in the area and he/she shall make whatever provisions may be required by the authorities concerned for the support, maintenance and protection of such services.		
E	**TENDER SECURITY** Bid Bond/Tender Security, which must be from an established Bank or Insurance company, shall remain valid for a period of One Hundred and Fifty (150) days from the date of Tender Opening		
	Carried to Collection		

Item	DESCRIPTION	Kshs.	Cts
A	**PERFORMANCE BOND** A bond of 5% of the contract sum will be required in accordance with clause 6.00 on award of contract of the Instructions to Tenderer's. No payment on account for 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.		
B	**TENDER DOCUMENTS** Tender documents are as listed in Clause 2.1 of the Instruction to Tenderer's Page STD/8		
C	**DELIVERY OF TENDER** Tenders and all documents in connection therewith, as specified above must be delivered in the addressed envelope which should be properly sealed and deposited at the offices as specified in the letter accompanying these documents or as indicated in the advertisement. Tenders will be opened at the time specified in the letter accompanying these Tender Documents or as indicated in the advertisement. Tenders Delivered/received later than the above time will not be opened.		
D	**VALUE ADDED TAX** The Contractor's attention is drawn to the Legal Notice in the Finance Act part 3 Section 21(b) operative from 1st September, 1993 which requires payment of VAT on all contracts. The Contractor should therefore include allowance for VAT as indicated in the Main Summary. Any other Government taxes currently in force should be included in the tenderer's rates. The tenderer is advised that in accordance with Government public notice No. 35 & 36 Dated 11th September 2003 operational from **1st October 2003,** withholding **VAT** will be levied against the contract sum by the Employer and **remitted** to the Commissioner of VAT through all interim certificates. It should however be noted that this is not additional tax but a new mode of payment for VAT, any excess payment will be refundable once the Contractor has submitted monthly returns to the Commissioner of VAT who will do the refunds when satisfied that the VAT regulations have been complied with. **NB:** This item **SHALL** be priced at the Bill Summary page.		
	Carried to Collection		

Item	DESCRIPTION		Kshs.	Cts
	PARTICULARS OF INSERTIONS TO BE MADE IN APPENDIX TO CONTRACT AGREEMENT			
	The following are the insertions to be made in the appendix to the Contract Agreement: -			
A	**Period of Final Measurement**	3 Months From Practical completion		
B	**Defects Liability Period**	6 Months from practical completion		
C	**Date for Possession**	To be agreed with the Project Manager		
D	**Date for Completion**	**12 Weeks** from date of Possession		
E	**Liquidated and Ascertained**	At the rate of Kshs 5,000.00 per week or part thereof		
F	**Prime cost sums for which the The Contractor desires to tender**	....		
G	**Period of Interim Certificates**	Monthly		
H	**Period of Honouring Certificates**	30 days		
I	**Percentage of Certified Value Retained**	10%		
J	**Limit of Retention Fund**	10%		
K	Allow provisional sum of Kenya shillings Thirty Thousand (Kshs 30,000.00)only for project management		30,000	
	Carried to Collection		30,000	

Item	DESCRIPTION	Kshs.	Cts
	COLLECTION		
	Brought forward from page PP/1		
	Brought forward from page PP/2		
	Brought forward from page PP/3		
	Brought forward from page PP/4		
	Brought forward from page PP/5		
	Brought forward from page PP/6		
	PARTICULAR PRELIMINARIES CARRIED TO BILL NO. 1 SUMMARY		

Item	DESCRIPTION	Kshs.	Cts
	BILL NO 1 SUMMARY General Preliminaries From Page GP/12 Particular Preliminaries from Page PP/7		
	TOTAL BILL NO. 1 SUMMARY CARRIED TO GRAND SUMMARY		

PROPOSED RENOVATION OF ICT CENTRE - WEBUYE EAST

ITEM	DESCRIPTION	QTTY	UNIT	UNIT	KSHS
	ELEMENT NO 1				
	WALLING				
	Approved natural stone, fine chisel dressed one side bedded and jointed in recessed pointing one side in cement and sand mortar (1:4) .				
A	Walls 200mm thick reinforced with hoop iron gauge 500 in every alternate course	3	Sm		
B	Extra over walling for permanent vents	0	No		
	Vibrated reinforced concrete (1:2:4) in				
C	Ring beam	0	Cm		
D	Lab benches 100mm thick	0	Sm		
	Supply and install high tensile steel reinforcement bars				
E	12mm ditto	0	Kg		
F	8mm ditto	0	Kg		
G	Steel fabric mesh reinforcements Ref . No A66 weighing 0.54 kg per square metre with 2.25mm laps	0	Sm		
	Sawn formwork to:-				
H	Soffites and sides of beams and ringbeam.	0	Sm		
	Total carried to summary				

ITEM	DESCRIPTION	QTTY	UNIT	RATE	KSHS
	Element No 2				
	DOORS				
A	Carefully remove the existing 1800x2400mm high double door inreadiness to receive a single door (m.s) and make good the walls.	1	No		
B	Steel door size 900 x 2400mm overall in single leaf with fielded and raised panels made of gauge 18 m.s steel half other half glazed in 4mm thick clear sheet glazing to metal with putty.	1	No		
	Supply and fix the following ironmongary				
C	3-lever mortise door lock as per "union" or other equal and approved catalogue	0	No		
D	100mm pressed steel butt hinges	0	Prs.		
E	38mm rubber door stop with rawl bolt fixed to floor or wall	1	No.		
	Total carried to summary				

ITEM	DESCRIPTION	QTTY	UNIT	RATE	KSHS
	Element No 3 **WINDOWS** **PURPOSE MADE UNITS** **Casement mid hang window with horizontal pivots; standard metal casement sections, permanent ventilators comprising T-bar gauze wire and metal hood to fill width of window, but 100mm deep one coat primer by manufacturer; complete with all necessary ironmongery, steel for glazing with putty, cutting and pinning lugs to concrete or blockwork, fixing to head and sill with screws and plugging.**				
A	Overall size 2000 x 1200 mm high	0	No.		
B	Overall size 1500 x 1500 mm high	0	No		
C	Overall size 1500 x 1200 mm high	0	No		
D	Welded metal grill burglar proofing in 20mmxx20mmx 1.5mm thick SHS bars with one coat primer including welding to metal.	5	Sm		
	Glazing				
E	4mm clear sheet glass and glazing to metal with putty	5	Sm.		
	Total carried to summary				

ITEM	DESCRIPTION	QTTY	UNIT	RATE	KSHS
	Element No. 4 **Finishes** **Wall finishes**				
A	Carefully clean the existing wall inreadiness to receive paint (M.S) internally	60	Sm.		
B	Carefully clean the existing wall inreadiness to receive paint (M.S) externally	62	Sm.		
	PLASTER WALLS				
C	12mm two coat lime plaster to wall internally finished smooth.	3	Sm.		
D	14mm two coat lime plaster to wall Externally finished smooth.	3	Sm.		
	CEILINGS				
E	Carefully clean the existing ceiling inreadiness to receive paint (M.S)	25	SM		
	Painting **Prepare and apply three coats first grade plastic emulsion paint to:-**				
F	Plastered walls internally	60	Sm.		
G	Plastered walls externally	62	Sm.		
	Knot prime and stop and apply two undercoats and one finishing coat of gloss oil paint on woodwork.				
H	General Ceiling surfaces	25	Sm.		
I	Surfaces not exceeding 100mm girth	21	Lm		
	Prepare and apply one finishing coat gloss oil paint on:-				
J	Plastered wall surfaces internally	60	Sm.		
	ICT CENTREWORKSTATION				
K	Supply and fix mdf board along the ICT Centre room Walls to form a workstations for computers including all necessary accessories as per the engineers instructions and make good.	21	Sm		
	Total carried to summary				

ITEM	DESCRIPTION	QTTY	UNIT	RATE	KSHS
	Summary				
A	Walling from page 1				
B	Doors from page 2				
C	Windows from page 3				
D	Painting from page 4				
	Total carried to grand summary				

STRUCTURED CABLING (LAN) NET WORK AT THE PROPOSED OFFICE .

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT (KSHS)
	HORIZONTAL CABLING				
1.01	Cat 6e UTP data 24 pairs as Nexas Siemen or approved equivalent.	80	NO.		
1.02	Dual Data module (face plate coplete with keystones) as Siemen.	12	NO.		
1.03	3M Rj 45 to Rju5 UTP 6e patch cord (Nexans /Siemens.	30	NO.		
1.04	1M, Rj45 to Rju5 UTP CAT 6e patch cord (Nexas /Siemens)	10	NO.		
1.05	S110 (100 pair) cross connector punch down blocks	6	NO.		
1.06	S110 to Rj45,1M cat 6e parch cord	12	NO.		
1.07	3M. Rj45 to Rj 11,,1M cat 6e parch cord	30	NO.		
1.08	36 pair cat 6e link from discase to S11 termination	12	LM.		
1.09	Digital standard telephone instrunment Head c/w cord and termination.	5	LM.		
1.10	Cable drawing / pulling in metal trunking.	100	LM.		
1.11	Termination, Labling, Testing Customised programing and commissioning all UTP cables including certification.	40	NO.		
1.12	Installation of internet wireless access point complete with power cable and all accessories.	1	NO.		
1.13	36 port iuh Cat 6e UTP parch panel	1	NO.		
1.14	30 port iuh Cat 6e noise parch panel	1	NO.		
1.15	Supply and install a 3 compartment mettalic trunking complete with necessary accessories.	100	LM		
	Sub total carried forwad to collection page.				

STRUCTURED CABLING (LAN) NET WORK AT THE PROPOSED OFFICE .

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT (KSHS)
	BACK BONE CABLING.				
2.01	30 core fibre cable 50/125 mm to server room.	100	LM.		
2.02	36 core rack mount fibre patch panel.	1	NO.		
2.03	Fibre connectors sc.	48	NO.		
2.04	Fibre patch cords sc, 3M.	8	NO.		
2.05	Fibre Adapter.	24	NO.		
	CABINETS.				
2.06	30UH purpose mode data cabinet for Hub/parch panel c/w glass door fans and power distribution.	1	NO.		
2.07	2UH Cable manager / organiser.	1	NO.		
	ACTIVE COMPONENTS.				
2.08	36 Port UTP rack mount /manageable switch as CISCO02960G	1	NO.		
2.09	5 KVA UTS as APC manufacture.	1	NO.		
2.10	Additional items / Accessories to complete the installation.	1	NO.		
2.11	Supply a Tong Tester instrunment to PM as Siemens.	1	NO.		
	Sub total carried forwad to collection page.				
	COLLECTION PAGE.				
2.12	Total brought forward from page No. E/1				
2.13	Total brought forward from above.				
	TOTAL CARRIED FORWARD TO GRAND SUMMARY PAGE.				

ITEM	DESCRIPTION	QTY	UNIT	RATE	KSHS
	P.C AND PROVISIONAL SUMS				
A.	Allow a provisional Sum of Kenya shillings Fourty Five Thousand (Kshs. 45,000) only for metallic sign boad and commemoration plague				15,000
B	Allow a provisional Sum of Kenya shillings One Eighty Thousand (Kshs. 80,000) only for PMC Administrative costs				40,000
C	Allow a provisional Sum of Kenya shillings Eighty Thousand (Kshs. 80,000) only for Technical supervision				40,000
D	Allow a provisional Sum of Kenya shillings Twenty Five Thousand (Kshs. 25,000) only for Documentation				25,000
	TOTAL FOR P.C AND PROVISIONAL SUMS CARRIED TO GRAND SUMMARY				120,000

GRAND SUMMARY

ITEM	DESCRIPTION	PAGE NO.	For Official Use only	For Tenderer's use only
A	Bill No. 1 Preliminaries	PP/8		
B	Bill No. 2 Builder's Works	Pg 5		
C	Bill No. 3 Electrical workks			
D	Bill No. 4 PC and provisional Sums	PC.		
	GRAND TOTAL (VAT INCLUSIVE) CARRIED TO FORM OF TENDER:KSHS			

Amount in words: Kenya Shillings .....

Tenderer's Signature .....

Address .....

COUNTY WORKS OFFICER
BUNGOMA COUNTY
P.O. Box 783
BUNGOMA

Date .....

Witness Signature .....

Address .....

.....

Date .....



THE PROPOSED RENOVATION WORKS OF ICT CENTRE AT WEBUYE EAST IN BUNGOMA COUNTY.

CONTENTS

A.	CONTENTS PAGE	(i)
B.	SIGNATURE AND SPECIAL NOTES PAGE	(ii)
C.	STANDARD FORMS OF TENDER	(SFT/1 – SFT52)
D.	GENERAL PRELIMINARIES	(GP/1 – GP/13)
E	PARTICULAR PRELIMINARIES	(PP/1 – PP/8)
F.	PREAMBLES AND PRICING NOTES	(P/1 – P/3)
	G. MEASURED WORKS	
	BUILDERS WORKS	(P/1-18)
H.	P.C. & PROVISIONAL SUMS	PC/1
I.	GRAND SUMMARY PAGE	GS/1
J.	EVALUATION CRITERIA	APPENDIX

REPUBLIC OF KENYA

DEPARTMENT OF PUBLIC WORKS

BILLS OF QUANTITIES

SUPPLIED AS PART OF THE CONTRACT

FOR

THE PROPOSED RENOVATION WORKS OF ICT CENTRE AT WEBUYE EAST IN BUNGOMA COUNTY.

ISSUED BY: QUANTITIES AND CONTRACTS
SECTION P. O. BOX 763, BUNGOMA.

The contract for the above mentioned works, entered into on the ..... day of ..... 2024, by the undersigned parties, refer to these Bills of Quantities consisting of pages Numbers as shown on index page and the General Specification dated 1976, together with any amendments thereto issued since the date of publication, both of which shall be read and construed as part of the said contract.

....

CONTRACTOR

Date ..... Date .....

SPECIAL NOTES

The contractor is required to check the numbers of the pages of the Bills of Quantities together with all collections and summaries and should be find any missing or in duplicate or the figures indistinct, he must inform the County Works Officer, Ministry of Public Works, P. O. Box 763, and BUNGOMA.

Should the contractor be in doubt about the precise meaning of any items or figure, for any reason whatsoever, he must inform the County Works Officer, Ministry of Public Works, Bungoma in order that the correct meaning may be decided before the date for submission of Tenders.

No liability will be admitted, no claim allowed, in respect of errors in the contractor's Tender due to mistakes in the Bills of Quantities which should have been rectified in the manner described above.

PART1: TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A GENERALPROVISIONS

1.0 Scope oftender

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

1.2 Throughout this tendering document:

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

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

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

2.0 Fraud andcorruption

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

2.2 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 civilsanctions 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.

2.3 Tenderers shall permit and shall cause their agents (whether declared or not), sub-contractors, 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.

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

3.0 Eligible tenderers

3.1 A Tenderer may be a firm that is a private entity, astate-owned enterprise or institution sub jectto ITT3.8,or an individual or any combination of such entities in the form of ajoint venture (JV) under an existing agreement or with t he in tent to enter into such an agreement supported by alet terofintent.Inthecaseofajointventure,all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contractterms.The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender.The maximum number of JV members shall be specified in the **TDS.**

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

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

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

b) Receives or has received any direct or in direct subsidy from another tenderer;

c) Has the same legal representative as another tenderer;

d) Has a relationship with another tenderer, directly or through common third parties, that put sit in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process;

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

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

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

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

   i) Are directly or indirectly involved in the preparation of the Tender 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 conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

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

3.5 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 sub-contractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved. Members of ajoint 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.

3.6 A Tendere rmay 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 case maybe.This criteria on 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.

3.7 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.

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

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

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

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

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

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

(b) By an act of compliance with a decision of the United Nations Security Council take nunder 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 such documentary evidence of eligibility satisfactory to the Procuring Entity, as the Procuring Entity shall reasonably request.

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

3.11 Pursuant to the eligibility requirements of ITT3.10, a tender is considered a foreign tenderer, If it is registered in Kenya and has less than 51 percent ownership by nationals of Kenya and if it does not subcontract to foreign firms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs a reconsidered as foreign tenderers if the individual member firms registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than 10 percent of the contract price, excluding provisional sums.

3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate be fore 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 be fore such award and signature of contract. Application for registration with National Construction Authority may be a ccessed from the website www.nca.go.ke.

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

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

4.0 Eligible goods, equipment, and services

4.1 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under ITT3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.

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

5.0 Tenderer's responsibilities

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

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

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

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

B. CONTENTSOF TENDERDOCUMENTS

6.0 SectionsofTenderDocument

6.1 The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which shouldbereadinconjunctionwithanyAddendaissuedinaccordancewithITT10.

PART 1: Tendering Procedures
SectionI – InstructionstoTenderers
SectionII – TenderDataSheet(TDS)
SectionIII-EvaluationandQualificationCriteria
SectionIV – TenderingForms

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

PART 3: Conditions of Contract and Contract Forms
Section VIII - General Conditions (GCC)
SectionIX-SpecialConditionsofContract
SectionX-ContractForms

6.2 TheInvitationtoTenderNoticeissuedbytheProcuringEntityisnotpartoftheContractdocuments.Unlessobtaineddirectlyfromthe ProcuringEntity,theProcuringEntityisnotresponsible for the completeness of the Tenderdocument,responsestorequestsforclarification,theminutesofapre-arrangedsitevisitandthose of the pre-Tendermeeting(ifany),orAddendatotheTenderdocumentinaccordancewithITT10.Incaseofany contradiction,documentsobtaineddirectlyfromtheProcuringEntityshallprevail.

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

7.0 ClarificationofTenderDocument,SiteVisit,Pre-tenderMeeting

7.1 ATendererrequiringanyclarificationoftheTenderDocumentshallcontacttheProcuringEntityinwritingatthe ProcuringEntity'saddressspecifiedintheTDSorraiseitsenquiriesduringthepre-Tendermeetingifprovided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquiredtheTenderdocumentsinaccordancewithITT7.4,includingadescriptionoftheinquirybutwithout identifyingitssource.IfsospecifiedintheTDS,theProcuringEntityshallalsopromptlypublishitsresponseat the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the TenderDocuments,theProcuringEntityshallamendtheTenderDocumentsfollowingtheprocedureunderITT 8andITT22.2.

7.2 TheTenderer,attheTenderer'sownresponsibilityandrisk,isencouragedtovisitandexamineandinspectthe site(s) of the requiredcontractsandobtainallinformationthatmaybenecessaryforpreparingatender.Thecosts ofvisitingtheSiteshallbeattheTenderer'sownexpense.TheProcuringEntityshallspecifyintheTDSif 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 purposeofthesitevisitandthepre-tendermeetingwillbetoclarifyissuesandtoanswerquestionsonanymatter thatmayberaisedatthatstage.

7.3 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the periodspecifiedintheTDSbeforethemeeting.

7.4 Minutesofapre-arrangedsitevisitandthoseofthepre-tendermeeting,ifapplicable,includingthetextofthe

questionsaskedbyTenderersandtheresponsesgiven,togetherwithanyresponsespreparedafterthemeeting,will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.

7.5 TheProcuringEntityshallalsopromptlypublishanonymized(*nonames*)Minutesofthepre-arrangedsitevisit 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 pre-tender meetingshallbemadebytheProcuringEntityexclusivelythroughtheissueofanAddendumpursuanttoITT8 andnotthroughtheminutesofthepre-Tendermeeting.Non-attendanceatthepre-arrangedsitevisitandthepre-tendermeetingwillnotbeacausefordisqualificationofaTenderer.

8.0 AmendmentofTenderDocuments

8.1 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documentsbyissuingaddenda.

8.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to allwho have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shall also promptly publishtheaddendumontheProcuringEntity'swebsiteinaccordancewithITT7.5.

8.3 To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the ProcuringEntityshouldextendthedeadlineforthesubmissionofTenders,pursuanttoITT22.2.

C. PREPARATIONOFTENDERS

9. CostofTendering

TheTendershallbearallcostsassociatedwiththepreparationandsubmissionofitsTender,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

TheTender,aswellasallcorrespondenceanddocumentsrelatingtothetenderexchangedbythetendererandthe ProcuringEntity,shallbewrittenintheEnglishLanguage.Supportingdocumentsandprintedliteraturethatare part of the Tender may be in another language provided they are accompanied by an accurate and notarized translationoftherelevantpassagesintotheEnglishLanguage,in which case,forpurposesofinterpretationofthe Tender,suchtranslationshallgovern.

11.0 DocumentsComprisingtheTender

11.1 TheTendershallcomprisethefollowing:

a) FormofTenderpreparedinaccordancewithITT12;
b) SchedulesincludingpricedBillofQuantities,completedinaccordancewithITT12andITT14;
c) TenderSecurityorTender-SecuringDeclaration,inaccordancewithITT19.1;
d) AlternativeTender,ifpermissible,inaccordancewithITT13;
e) ***Authorization:*** written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordancewithITT20.3;
f) *Qualifications:*documentaryevidenceinaccordancewithITT17establishingtheTenderer'squalifications toperformtheContractifitsTenderisaccepted;
g) *Conformity:*atechnicalproposalinaccordancewithITT16;
h) AnyotherdocumentrequiredintheTDS.

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

12.0 Form of Tender and Schedules

12.1 TheFormofTenderandSchedules,includingtheBillofQuantities,shallbepreparedusingtherelevantforms furnishedinSectionIV,TenderingForms.Theformsmustbecompletedwithoutanyalterationstothetext,and no substitutes shall be accepted except as provided under ITT 20.3. All blank spaces shall be filled in withthe informationrequested.TheTenderershallchronologicallyserializeallpagesofthetenderdocumentssubmitted.

12.2 TheTenderershallfurnishintheFormofTenderinformationoncommissionsandgratuities,ifany,paidortobe paidtoagentsoranyotherpartyrelatingtothisTender.

13. AlternativeTenders

13.1 UnlessotherwisespecifiedintheTDS,alternativeTendersshallnotbeconsidered.

13.2 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, EvaluationandQualificationCriteria.

13.3 ExceptasprovidedunderITT13.4below,Tendererswishingtooffertechnicalalternativestotherequirements of the TenderDocumentsmustfirstpricetheProcuringEntity'sdesignasdescribedintheTenderDocumentsand shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed constructionmethodologyandotherrelevantdetails.Onlythe technical alternatives,ifany,oftheTendererwith theWinningTenderconformingtothebasictechnicalrequirementsshallbeconsideredbytheProcuringEntity.

13.4 WhenspecifiedintheTDS,Tenderersarepermittedtosubmitalternativetechnicalsolutionsforspecifiedparts of the Works,andsuchpartswillbeidentifiedintheTDS,aswillthemethodfortheirevaluating,anddescribed inSectionVII,Works'Requirements.

14.0 TenderPricesandDiscounts

14.1 ThepricesanddiscountsincludinganypricereductionquotedbytheTendererintheFormofTenderandinthe BillofQuantitiesshallconformtotherequirementsspecifiedbelow.

14.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items againstwhichnorateorpriceisenteredbytheTenderershallbedeemedcoveredbytheratesforotheritemsin theBillofQuantitiesandwillnotbepaidforseparatelybytheProcuringEntity.Anitemnotlistedinthepriced BillofQuantitiesshallbeassumedtobenotincludedintheTender,andprovidedthattheTenderisdetermined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsiveTenderswillbeaddedtotheTenderpriceandtheequivalenttotalcostoftheTendersodetermined will be usedforpricecomparison.

14.3 ThepricetobequotedintheFormofTender,inaccordancewithITT12.1,shallbethetotalpriceoftheTender, includinganydiscountsoffered.

14.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordancewithITT12.1.

14.5 ItwillbespecifiedintheTDSiftheratesandpricesquotedbytheTenderarefixedornotsubjecttoadjustment duringtheperformance of the Contractinaccordancewiththeprovisionsoftheconditionsof Contract,except incaseswherethecontractissubjecttofluctuationsandadjustments,notfixedprice.Insuchacase,theTenderer shallfurnishtheindicesandweightingsforthepriceadjustmentformulaeintheScheduleofAdjustmentData and the ProcuringEntitymayrequiretheTenderertojustifyitsproposedindicesandweightings.

14.6 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 openedatthesametime.

14.7 Allduties,taxes,andotherleviespayablebytheContractorundertheContract,orforanyothercause,asofthe date30dayspriortothedeadlineforsubmissionofTenders,shallbeincludedintheratesandpricesandthetotal TenderPricesubmittedbytheTenderer.

15.0 CurrenciesofTenderandPayment

15.1 Thecurrency(ies)oftheTenderandthecurrency(ies)ofpaymentsshallbethesame.

15.2 TenderersshallquoteentirelyinKenyaShillings.Theunitratesandthepricesshallbequotedbythetenderer in theBillofQuantities,entirelyinKenyashillings.

a) ATendererexpectingtoincurexpenditures inothercurrenciesforinputstotheWorkssuppliedfromoutside Kenya(referredtoas"theforeigncurrencyrequirements")shall(ifsoallowedintheTDS)indicateinthe Appendix to Tender the percentage(s) of the Tender Price (excluding Provisional Sums), needed by the Tenderer for the payment of such foreign currency requirements, limited to no more than two foreign currencies.

b) The rates of exchange to be used by the Tenderer in arriving at the local currency equivalent and the percentage(s)mentionedin(a)aboveshallbespecifiedbytheTendererintheAppendixtoTenderandshall bebasedontheexchangerateprovidedbytheCentralBankofKenyaonthedate30dayspriortotheactual dateoftenderopening.Suchexchangerateshallapplyforallforeignpaymentsunderthecontract.

15.3 TendersmayberequiredbytheProcuringEntitytojustify,totheProcuringEntity'ssatisfaction,theirlocaland 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 breakdownoftheforeigncurrencyrequirementsshallbeprovidedbyTenderers.

16.0 Documents Comprising the Technical Proposal

TheTendershallfurnishatechnicalproposalincludingastatementofworkmethods,equipment,personnel, scheduleandanyotherinformationasstipulatedinSectionIV,TenderForms,insufficientdetailtodemonstrate theadequacyoftheTenderer'sproposaltomeetthework'srequirementsandthecompletiontime.

17.0 DocumentsEstablishingtheEligibilityandQualificationsoftheTenderer

17.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibilityinaccordancewithITT4.

17.2 InaccordancewithSectionIII,EvaluationandQualificationCriteria,toestablishitsqualificationstoperformthe ContracttheTendershallprovidetheinformationrequestedinthecorrespondinginformationsheetsincluded inSectionIV,TenderForms.

17.3 Ifamarginofpreferenceappliesasspecifiedinaccordancewith ITT33.1,nationaltenderers,individuallyorin jointventures,applyingforeligibilityfornationalpreferenceshallsupplyallinformationrequiredtosatisfythe criteriaforeligibilityspecifiedinaccordancewithITT33.1.

17.4 Tenderers shall be asked to provide, as part of the data for qualification, such information, including detailsof ownership,asshallberequiredtodeterminewhether, according to theclassificationestablishedbytheProcuring Entity,aparticularcontractororgroupofcontractorsqualifiesforamarginofpreference.Furthertheinformation willenabletheProcuringEntityidentifyanyactualorpotentialconflictofinterestinrelationtotheprocurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to preventanycorruptinfluenceinrelationtotheprocurementprocessorcontractmanagement.

17.5 The purpose of the information described **in ITT 17.4** above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to 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'sfailuretodisclose,orfailuretoproviderequiredinformationonitsownershipand control.

17.6 The Tenderer shall provide further documentary proof, information or authorizations that the ProcuringEntity mayrequestinrelationtoownershipandcontrolwhichinformationonanychangestotheinformationwhichwas providedbythetendererunderITT6.4.Theobligationstorequirethisinformationshallcontinuefortheduration oftheprocurementprocessandcontractperformanceandaftercompletionofthecontract,ifanychangetothe informationpreviouslyprovidedmayrevealaconflictofinterestinrelationtotheawardormanagementofthe contract.

17.7 Allinformationprovidedbythetendererpursuanttotheserequirementsmustbecomplete,currentandaccurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements,theTendershallwarrantthattheinformationsubmittediscomplete,currentandaccurateasat

thedateofsubmissiontotheProcuringEntity.

17.8 Ifatendererfailstosubmittheinformationrequiredbytheserequirements,itstenderwillberejected.Similarly, iftheProcuringEntityisunable,aftertakingreasonablesteps,toverifytoareasonabledegreetheinformation submittedbyatendererpursuanttotheserequirements,thenthetenderwillberejected.

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

i) Iftheprocurementprocessisstillongoing,thetendererwillbedisqualifiedfromtheprocurementprocess,

ii) ifthecontracthasbeenawardedtothattenderer,thecontractawardwillbesetasidependingtheoutcomeof(iii),

iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tendereroranyotherpersonshavecommittedanycriminaloffence.

17.10 Ifatendersubmitsinformationpursuanttotheserequirementsthatisincomplete,inaccurateorout-of-date,or attemptstoobstructtheverificationprocess,thentheconsequencesITT17.8willensueunlessthetenderercan show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuineerrorwhichwasnotattributabletotheintentionalact,negligenceorrecklessnessofthetender.

18.0 Period of Validity of Tenders

18.1.TendersshallremainvalidfortheTenderValidityperiodspecifiedintheTDS.TheTenderValidityperiodstarts from the datefixedfortheTendersubmissiondeadline(asprescribedbytheProcuringEntityinaccordancewith ITT22).At endervalidforashorterperiodshallberejectedbytheProcuringEntityasnon-responsive.

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may requestTendererstoextendtheperiodofvalidityoftheirTenders.Therequestandtheresponsesshallbemadein writing.IfaTenderSecurityisrequestedinaccordancewithITT19,itshallalsobeextendedforthirty(30)days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tendersecurity.ATendergrantingtherequestshallnotberequiredorpermittedtomodifyitsTender.

19.0 TenderSecurity

19.1 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specifiedintheTDS,inoriginalformand, in the caseofaTenderSecurity,intheamountandcurrency**specified** in the TDS.ATender-SecuringDeclarationshallusetheformincludedinSectionIV, TenderForms.

19.2 IfaTenderSecurityisspecifiedpursuanttoITT19.1,theTenderSecurityshallbeademandguaranteeinanyof thefollowingformsattheTenderer'soption:

l) cash;

ii) abankguarantee;

iii) aguaranteebyaninsurancecompanyregisteredandlicensedbytheInsuranceRegulatoryAuthoritylisted bytheAuthority;

(iv) aguaranteeissuedbyafinancialinstitutionapprovedandlicensedbytheCentralBankofKenya,froma reputablesource,andaneligiblecountry.

19.3 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondentbanklocatedinKenyatomakeitenforceable.TheTenderSecurityshallbevalidforthirty(30) daysbeyondtheoriginalvalidityperiodoftheTender,orbeyondanyperiodofextensionifrequestedunderITT 18.2.

19.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tender not accompaniedbyasubstantiallyresponsiveTenderSecurityorTender-SecuringDeclarationshallberejectedby theProcuringEntityasnon-responsive.

19.5 If a Tender Security is specified pursuant to ITT 19.1, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the PerformanceSecurityandanyotherdocumentsrequiredintheTDS.TheProcuringEntityshallalsopromptly returnthetendersecuritytothetendererswheretheprocurementproceedingsareterminated,alltenderswere determinednon-responsiveorabidderdeclinestoextendtendervalidityperiod.

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

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

19.7 TheTenderSecuritymaybeforfeitedortheTender-SecuringDeclarationexecuted:

a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the FormofTender,oranyextensiontheretoprovidedbytheTenderer;or

b) ifthesuccessfulTendererfailsto: -

i) signtheContractinaccordancewithITT47;or

ii) furnishaPerformanceSecurityandifrequiredintheTDS,andanyotherdocumentsrequiredinthe TDS.

19.8 WheretendersecuringdeclarationisexecutedtheProcuringEntityshallrecommendtothePPRAto debarstheTendererfromparticipatinginpublicprocurementasprovidedinthelaw.

19.9 TheTenderSecurityortheTender-SecuringDeclarationofaJVshallbeinthenameoftheJVthatsubmitsthe Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the TenderSecurityortheTender-SecuringDeclarationshallbeinthenamesofallfuturemembersasnamedinthe letterofintentreferredtoinITT4.1andITT11.2.

19.10 Atenderershallnotissueatendersecuritytoguaranteeitself.

20.0 FormatandSigningofTender

20.1 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."Inaddition,theTenderershallsubmitcopiesoftheTender,in the numberspecified in the **TDS**andclearlymarkthem"COPY."Intheeventofanydiscrepancybetweentheoriginalandthecopies, theoriginalshallprevail.

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

20.3 TheoriginalandallcopiesoftheTendershallbetypedorwritteninindelibleinkandshallbesignedbyaperson dulyauthorizedtosignonbehalfoftheTenderer.Thisauthorizationshallconsistofawrittenconfirmationas specifiedintheTDSandshallbeattachedtotheTender.Thenameandpositionheldbyeachpersonsigningthe authorizationmustbetypedorprintedbelowthesignature.AllpagesoftheTenderwhereentriesoramendments have been madeshallbesignedorinitialedbythepersonsigningtheTender.

20.4 IncasetheTendererisaJV,theTendershallbesignedbyanauthorizedrepresentativeoftheJVonbehalfofthe JV,andsoastobelegallybindingonallthemembersasevidencedbyapowerofattorneysignedbytheirlegally authorizedrepresentatives.

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

D. SUBMISSION AND OPENING OF TENDERS

21.0 SealingandMarkingofTenders

21.1 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealedcontainerbearingthenameandReferencenumberoftheTender,addressedtotheProcuringEntityanda warning not to open before the time and date for Tender opening date. Within the single envelope, packageor container,theTenderershallplacethefollowingseparate,sealedenvelopes:

a) in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, as describedinITT11;and

b) inanenvelopeorpackageorcontainermarked"COPIES",allrequiredcopiesoftheTender;and

c) ifalternativeTendersarepermittedinaccordancewithITT13,andifrelevant:

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

ii) in the envelope or package or container marked "COPIES- ALTERNATIVE TENDER", all required copiesofthealternativeTender.

The inner envelopes or packages or containers shall:

a) bearthenameandaddressoftheProcuringEntity,
b) bearthenameandaddressoftheTenderer;and
c) bearthenameandReferencenumberoftheTender.

21.2 Ifanenvelopeorpackageorcontainerisnotsealedandmarkedasrequired,the*ProcuringEntity*willassumeno responsibility for the misplacement or premature opening of the Tender.Tendersmisplaced or opened prematurelywillnotbeaccepted.

22.0 DeadlineforSubmissionofTenders

22.1 TendersmustbereceivedbytheProcuringEntityattheaddressspecifiedintheTDSandnolaterthanthedate andtimealsospecifiedintheTDS.WhensospecifiedintheTDS,tenderersshallhavetheoptionofsubmitting their Tenders electronically. Tenderers submitting Tenders electronically shall follow the electronic Tender submissionproceduresspecifiedintheTDS.

22.2 TheProcuringEntitymay,atitsdiscretion,extendthedeadlineforthesubmissionofTendersbyamendingthe TenderDocumentsinaccordancewithITT8, in which caseallrightsandobligationsoftheProcuringEntityand Tendererspreviouslysubjecttothedeadlineshallthereafterbesubjecttothedeadlineasextended.

23.0 Late Tenders

TheProcuringEntityshallnotconsideranyTender thatarrivesafterthedeadlineforsubmissionoftenders,in accordance with ITT 22. Any Tender received by the Procuring Entity after the deadline for submission of Tendersshallbedeclaredlate,rejected,andreturnedunopenedtotheTenderer.

24.0 Withdrawal,Substitution,andModificationofTenders

24.1 ATenderermaywithdraw,substitute,ormodifyitsTenderafterithasbeensubmittedbysendingawrittennotice, dulysignedbyanauthorizedrepresentative,andshallincludeacopyoftheauthorizationinaccordancewithITT 20.3,(exceptthatwithdrawalnoticesdonotrequirecopies).Thecorrespondingsubstitutionormodificationof theTendermustaccompanytherespectivewrittennotice.Allnoticesmustbe:

a) prepared and submitted in accordance with ITT 20 and ITT 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION,""MODIFICATION;"and
b) receivedbytheProcuringEntitypriortothedeadlineprescribedforsubmissionofTenders,inaccordance withITT22.

24.2 TendersrequestedtobewithdrawninaccordancewithITT24.1shallbereturnedunopenedtotheTenderers.

24.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of TendersandtheexpirationoftheperiodofTendervalidityspecifiedbytheTendererontheFormofTenderorany extensionthereof.

25. TenderOpening

25.1 ExceptinthecasesspecifiedinITT23andITT24.2,theProcuringEntityshallpubliclyopenandreadoutall Tendersreceivedbythedeadline,atthedate,timeandplacespecified**intheTDS**, in the presenceofTenderers' designatedrepresentativeswhochoosestoattend.AnyspecificelectronicTenderopeningproceduresrequiredif electronicTenderingispermittedinaccordancewithITT22.1,shallbeasspecifiedintheTDS.

25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelopes with the correspondingTendershallnotbeopenedbutreturnedtotheTenderer.NoTenderwithdrawalshallbepermitted unlessthecorrespondingwithdrawalnoticecontainsavalidauthorizationtorequestthewithdrawalandisread outatTenderopening.

25.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer.NoTendersubstitutionshallbepermittedunlessthecorrespondingsubstitutionnoticecontainsavalid authorizationtorequestthesubstitutionandisreadoutatTenderopening.

25.4 Next,envelopesmarked"MODIFICATION"shallbeopenedandreadoutwiththecorrespondingTender.No Tender modification shall be permitted unless the corresponding modification notice contains a valid

authorizationtorequestthemodificationandisreadoutatTenderopening.

25.5 Next,allremainingenvelopesshallbeopenedoneatatime,readingout:thenameoftheTendererandwhether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternativeTenders;thepresenceorabsenceofaTenderSecurityorTender-SecuringDeclaration,ifrequired; andanyotherdetailsastheProcuringEntitymayconsiderappropriate.

25.6 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be consideredfurtherforevaluation.TheFormofTenderandpagesoftheBillofQuantities(tobedecidedonbythe tender opening committee) are to be initialed by the members of the tender opening committee attending the opening.

25.7 AttheTenderOpening,theProcuringEntityshallneitherdiscussthemeritsofanyTendernorrejectanyTender (exceptforlateTenders,inaccordancewithITT23.1).

25.8 TheProcuringEntityshallprepareminutesoftheTenderOpeningthatshallinclude,asaminimum: -

a) thenameoftheTendererandwhetherthereisawithdrawal,substitution,ormodification;
b) theTenderPrice,perlot(contract)ifapplicable,includinganydiscounts;
c) anyalternativeTenders;
d) thepresenceorabsenceofaTenderSecurity, if newasrequired;
e) numberofpagesofeachtenderdocumentsubmitted.

25.9 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 tenderopeningregistershallbedistributedtoallTenderers.

E. EVALUATION AND COMPARISON OF TENDERS

26. Confidentiality

26.1 InformationrelatingtotheevaluationofTendersandrecommendationofcontractawardshallnotbedisclosedto TenderersoranyotherpersonsnotofficiallyconcernedwiththeTenderprocessuntilinformationonIntentionto AwardtheContractistransmittedtoallTenderersinaccordancewithITT43.

26.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisionsmayresultintherejectionofitstender.

26.3 NotwithstandingITT26.2,fromthetimeoftenderopeningtothetimeofcontractaward,ifatendererwishesto contacttheProcuringEntityonanymatterrelatedtothetenderingprocess,itshalldosoinwriting.

27.0 ClarificationofTenders

27.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the ProcuringEntitymay,atitsdiscretion,askanytendererforaclarificationofitstender,givenareasonabletimefor aresponse.AnyclarificationsubmittedbyatendererthatisnotinresponsetoarequestbytheprocuringEntity shallnotbeconsidered.TheProcuringEntity'srequestforclarificationandtheresponseshallbeinwriting.No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered,orpermitted,exceptto confirmthecorrectionofarithmeticerrorsdiscoveredbytheProcuringEntityin theevaluationofthetenders,inaccordancewithITT31.

27.2 IfatendererdoesnotprovideclarificationsofitstenderbythedateandtimesetintheprocuringEntity'srequestforclarifi cation,itsTendermayberejected.

28.0 Deviations,Reservations,andOmissions

28.1 Duringtheevaluationoftenders,thefollowingdefinitionsapply: -

a) *"Deviation"* isadeparturefromtherequirementsspecifiedinthetenderdocument;
b) *"Reservation"* is the setting of limiting conditions or withholding from complete acceptance of the requirementsspecifiedinthetenderdocument;and
c) *"Omission"* isthefailuretosubmitpartorallofthe information ordocumentationrequiredintheTender document.

29.0 Determination ofResponsiveness

29.1 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself,asdefinedinITT11.

29.2 A substantially responsive Tender is one that meets the requirements of the Tender document withoutmaterial deviation,reservation,oromission.Amaterialdeviation,reservation,oromissionisonethat,ifaccepted,would:

a) Affectinanysubstantialwaythescope,quality,orperformanceoftheWorksspecifiedintheContract;
b) limit in any substantial way, inconsistent with the tender document, the Procuring Entity's rights or the tenderer'sobligationsundertheproposedcontract;
c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsivetenders.

29.3 TheProcuringEntityshallexaminethetechnicalaspectsofthetendersubmittedinaccordancewithITT16,to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation,reservationoromission.

29.4 Ifatenderisnotsubstantiallyresponsivetotherequirementsofthetenderdocument,itshallberejectedbythe Procuring Entity and may not subsequently be made responsive by correction of the material deviation, reservation,oromission.

30.0 Non-materialNon-conformities

30.1 Providedthatatenderissubstantiallyresponsive,theProcuringEntitymaywaiveanynon-conformitiesinthe tender.

30.2 ProvidedthataTenderissubstantiallyresponsive,theProcuringEntitymayrequestthatthetenderersubmitthe necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformitiesinthetenderrelatedtodocumentationrequirements.Requestinginformationordocumentationon such non-conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to complywiththerequestmayresultintherejectionofitstender.

30.3 Providedthatatenderissubstantiallyresponsive,theProcuringEntityshallrectifyquantifiablenon-material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposesonly,toreflectthepriceofamissingornon-conformingitemorcomponentinthemannerspecifiedin **theTDS.**

31.0 ArithmeticalErrors

31.1 Thetendersumassubmittedandreadoutduringthetenderopeningshallbeabsoluteandfinalandshallnotbe thesubjectofcorrection,adjustmentoramendmentinanywaybyanypersonorentity.

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

a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualificationofthetenderasnon-responsive.
b) Anyerrorsinthesubmittedtenderarisingfromamiscalculationofunitprice,quantity,subtotalandtotal bidpriceshallbeconsideredasamajordeviationthataffectsthesubstanceofthetenderandshallleadto disqualificationofthetenderasnon-responsive.and
c) ifthereisadiscrepancybetweenwordsandfigures,theamountinwordsshallprevail

31.3 Tenderersshallbenotifiedofanyerrordetectedintheirbidduringthenotificationofaward.

32.0 Conversion to Single Currency

Forevaluationandcomparisonpurposes,thecurrency(ies) of the Tendershallbeconvertedintoasinglecurrency asspecifiedintheTDS.

33.0 MarginofPreferenceandReservations

33.1 A margin of preference may be allowed only when the contract is open to international competitive tendering whereforeigncontractorsareexpectedtoparticipateinthetenderingprocessandwherethecontractexceedsthe value/thresholdspecifiedintheRegulations.

33.2 AmarginofpreferenceshallnotbeallowedunlessitisspecifiedsointheTDS.

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

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

34.0 Nominated Subcontractors

34.1 Unless otherwise stated in the **TDS,** the Procuring Entity does not intend to execute any specific elements of the Works by subcontractors selected/nominated by the Procuring Entity. 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.

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

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

35. Evaluation of Tenders

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

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

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

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

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

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

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

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

35.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tender or tenderers based on 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.

37.0 Abnormally low tenders and abnormally high tenders

Abnormally Low Tenders

37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's

abilitytoperformtheContractfortheofferedTenderPriceorthatgenuinecompetitionbetweenTenderersis compromised.

37.2 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matterofthecontract,scope,proposedmethodology,schedule,allocationofrisksandresponsibilitiesandany otherrequirementsoftheTenderdocument.

37.3 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failedtodemonstrateitscapabilitytoperformtheContractfortheofferedTenderPrice,theProcuringEntityshallrejectt heTender.

Abnormally high tenders

37.4 Anabnormallyhightenderpriceisonewherethetenderprice,incombinationwithotherconstituentelementsof 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 comparedwithmarketpricesorthatgenuinecompetitionbetweenTenderersiscompromised.

37.5 Incaseofanabnormallyhighprice,theProcuringEntityshallmakeasurveyofthemarketprices,checkifthe estimatedcostofthecontractiscorrectandreviewtheTenderDocumentstocheckifthespecifications,scopeof workandconditionsofcontractarecontributorytotheabnormallyhightenders.TheProcuringEntitymayalso seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceedasfollows:

i) Ifthetenderpriceisabnormallyhighbasedonwrongestimatedcostofthecontract,theProcuringEntity mayacceptornotacceptthetenderdependingontheProcuringEntity'sbudgetconsiderations.

ii) Ifspecifications,scopeofworkand/orconditionsofcontractarecontributorytotheabnormallyhightender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates,specifications,scopeofworkandconditionsofcontract,asthecasemaybe.

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 investigationonthecauseofthecompromise,beforeretendering.

38.0 Unbalancedand/orfront-loadedtenders

38.1 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalancedand/orfrontloaded,theProcuringEntitymayrequiretheTenderertoprovidewrittenclarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scopeofworks,proposedmethodology,scheduleandanyotherrequirementsoftheTenderdocument.

38.2 After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entitymayasappropriate:

a) acceptTheTender;

b) requirethatthetotalamountofthePerformanceSecuritybeincreasedattheexpenseoftheTenderertoa levelnotexceedinga30%oftheContractPrice;

c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undeliveredworks;

d) rejectTheTender,

39.0 Qualificationsofthetenderer

39.1 TheProcuringEntityshalldeterminetoitssatisfactionwhethertheeligibleTendererthatisselectedashaving submittedthelowestevaluatedcostandsubstantiallyresponsiveTender,meetsthequalifyingcriteriaspecified inSectionIII,EvaluationandQualificationCriteria.

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualificationssubmittedbytheTenderer,pursuanttoITT17.Thedeterminationshallnottakeintoconsideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (otherthanSpecializedSub-contractorsifpermittedintheTenderdocument),oranyotherfirm(s)differentfrom theTenderer.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determinationshallresultindisqualificationoftheTender,inwhicheventtheProcuringEntityshallproceedto theTendererwhooffersasubstantiallyresponsiveTenderwiththenextlowestevaluatedpricetomakeasimilar determinationofthatTenderer'squalificationstoperformsatisfactorily.

40.0 Lowest evaluatedtender

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

a) MostresponsivetotheTenderdocument;and
b) thelowestevaluatedprice.

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

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

F. AWARDOFCONTRACT

42.0 Award criteria

TheProcuringEntityshallawardtheContracttothesuccessfultendererwhosetenderhasbeendeterminedtobetheLow estEvaluatedTender.

43.0 NoticeofIntentiontoEnterintoaContract/Notification of Award

UponawardofthecontractandPriortotheexpiryoftheTenderValidityPeriodtheProcuringEntityshallissuea NotificationofIntentiontoEnterintoaContract/Notificationofawardtoalltenderers whichshallcontain,ata minimum,thefollowinginformation:

a) thenameandaddressoftheTenderersubmittingthesuccessfultender;
b) theContractpriceofthesuccessfultender;
c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful,unlessthepriceinformationin(c)abovealreadyrevealsthereason;
d) theexpirydateoftheStandstillPeriod;and
e) instructionsonhowtorequestadebriefingand/orsubmitacomplaintduringthestandstillperiod;

44.0 StandstillPeriod

44.1 TheContractshallnotbesignedearlierthantheexpiryofaStandstillPeriodof14daystoallowanydissatisfied tendertolaunchacomplaint.WhereonlyoneTenderissubmitted,theStandstillPeriodshallnotapply.

44.2 WhereaStandstillPeriodapplies,itshallcommencewhentheProcuringEntityhastransmittedtoeachTendertheNo tificationofIntentiontoEnterintoaContractwiththesuccessfulTenderer.

45.0 DebriefingbyTheProcuringEntity

45.1 On receipt of the Procuring Entity's Notification of Intention to Enter into a Contract referred to in ITT 43, an unsuccessfultenderermaymakeawrittenrequesttotheProcuringEntityforadebriefingonspecificissuesor concernsregardingtheirtender.TheProcuringEntityshallprovidethedebriefingwithinfivedaysofreceiptof therequest.

45.2 DebriefingsofunsuccessfulTenderersmaybedoneinwritingorverbally.TheTendershallbearitsowncosts ofattendingsuchadebriefingmeeting.

46.0 Letter of Award

PriortotheexpiryoftheTenderValidityPeriodanduponexpiryoftheStandstillPeriodspecifiedinITT42.1,

uponaddressingacomplaintthathasbeenfiledwithintheStandstillPeriod,theProcuringEntityshalltransmit theLetterofAwardtothesuccessfulTenderer.Theletterofawardshallrequestthesuccessfultenderertofurnish thePerformanceSecuritywithin21daysofthedateoftheletter.

47.0 SigningofContract

47.1 UpontheexpiryofthefourteendaysoftheNotificationofIntentiontoenterintocontractanduponthepartiesmeeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the ContractAgreement.

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

47.3 The written contract shall be entered into within the period specified in the notification of award and before expiryofthetendervalidityperiod.

48.0 PerformanceSecurity

48.1 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful TenderershallfurnishthePerformanceSecurityand,anyotherdocumentsrequiredintheTDS,inaccordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institutionprovidingabankguaranteeshallhaveacorrespondentfinancialinstitutionlocatedinKenya,unless theProcuringEntityhasagreedinwritingthatacorrespondentbankisnotrequired.

48.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and otherdocumentsrequiredintheTDSorsigntheContractshallconstitutesufficientgroundsfortheannulmentoftheaw ardand forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offeringthenextBestEvaluatedTender.

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

49.0 PublicationofProcurementContract

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 containthe followinginformation:

a) nameandaddressoftheProcuringEntity;
b) nameandreferencenumberofthecontractbeingawarded,asummaryofitsscopeandtheselectionmethod used;
c) thenameofthesuccessfulTenderer,thefinaltotalcontractprice,thecontractduration;
d) datesofsignature,commencementandcompletionofcontract;
e) namesofallTendersersthatsubmittedTenders,andtheirTenderpricesasreadoutatTenderopening.

50.0 Procurement related Complaints and Administrative Review

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

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

Section II - Tender Data Sheet (TDS)

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

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The name of the contract is _____ The reference number of the Contract is _____ The number and identification of lots (contracts)comprising this Tender are *[insert number and identification of lots (contracts)]* Lot 1- Name _____ Lot 2- Name _____ Lot… Name _____ ETC
ITT 2.3	The Information made available on competing firms is as follows:
ITT 2.4	The firms that provided consulting services for the contract being tendered for are:
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be:.....
B. Contents of Tender Document	
ITT 7.1	(i) The Tenderer will submit any request for clarifications in writing at the Address _____ to reach the Procuring Entity not later than _____ (ii) TheProcuringEntityshallpublishits response at thewebsite _____
ITT 7.2	(A) A pre-arranged pretender site visit *[insert "shall" or "shall not"]* take place at the following date, time and place: Date: _____ Time: _____ Place: _____ (B) Pre-Tender meeting *[insert "shall" or "shall not"]* take place at the following date, time and place: Date: _____ Time: _____ Place: _____
ITT 7.3	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than _____ before the meeting.
ITT 7.5	The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is _____
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's address is: (1) Name of Procuring Entity ----------

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	(2) Physical address for hand Courier Delivery to an office or Tender Box (City, Street, Building, Floor Number and Room) ---------- (3) Postal Address ---------- (4) Insert name, telephone number and e-mail address of the officer to be contacted. ----------
C. Preparation of Tenders	
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: ……
ITT 13.1	Alternative Tenders *[insert "shall be" or "shall not be"]* _____ considered.
ITT 13.2	Alternative times for completion *[insert "shall be" or "shall not be"]* _____permitted.
ITT 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: _____
ITT 14.5	The prices quoted by the Tenderer shall be: _____
ITT 15.2 (a)	Foreign currency requirements **allowed/not allowed.**
ITT 18.1	The Tender validity period shall be _____ days.
ITT 18.3	(a) The Number of days beyond the expiry of the initial tender validity period will be _____days. (b) The Tender price shall be adjusted by the following percentages of the tender price: (i) By _____% of t*he local currency portion of the Contract price adjusted to reflect local inflation during the period of extension,* *and* *(ii) By_____% the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.*
ITT 19.1	Tender shall provide **a Tender-Securing Declaration or a Tender Security***(select one)* The type of Tender security shall be ----------in the amount of Kenya shillings _____
ITT 20.1	In addition to the original of the Tender, the number of copies is: _____
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: _____
D. Submission and Opening of Tenders	
ITT 22.1	(A) For Tender submission purposes only, the Procuring Entity's address is: (1) Name of Procuring Entity…… (2) Postal Address …… (3) …… (4) Date and time for submission of Tenders…… (5) Tenders shall **submit/shall not submit** tenders electronically.
ITT 25.1	The Tender opening shall take place at the time and the address for Opening of Tenders provided below:

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	(1) Name of Procuring Entity..... (2) Physical address for the location ..... (3) .....
ITT 25.1	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures **specifiedbelow**_____
E. Evaluation, and Comparison of Tenders	
ITT 30.3	The adjustment shall be based on the _____ *[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 best estimate.
TT 32.1	The currency that shall be used for Tender evaluation and comparison purposes only to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is: _____ The source of exchange rate shall be: **The Central bank of Kenya** (mean rate) The date for the exchange rate shall be: **the deadline date for Submission of the Tenders.**
ITT 33.2	A margin of preference *[inserteither "shall" or "shall not"]* _____apply.
ITT 33.4	The invitation to tender is extended to the following group that qualify for Reservations _____
ITT 34.1	At this time, the Procuring Entity _____ *[insert "intends" or "does not intend"]* to execute certain specific parts of the Works by subcontractors selected in advance.
ITT 34.2	Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is: _____*% of the total contract amount.* Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience.
ITT 34.3	*[Indicate N/A if not applicable]* The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows: _____

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
	_____ For the above-designated parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Tenderer for the purpose of evaluation.
ITT 35.2 (e)	Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.
ITT 48.1	Other documents required in addition to the Performance Security are _____
ITT 50.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: *[insert full name of person receiving complaints]* Title/position: *[insert title/position]* Procuring Entity: *[insert name of Procuring Entity]* Email address: *[insert email address]* In summary, a Procurement-related Complaint may challenge any of the following (among others): (i) the terms of the Tender Documents; and (ii) the Procuring Entity's decision to award the contract.

SECTIONIII-EVALUATIONANDQUALIFICATIONCRITERIA

After tender opening, the tenders will be evaluated in 3 stages, namely:

1. Determination of Responsiveness
2. Detailed Technical Examination
3. Financial Evaluation.

STAGE 1- DETERMINATION OF RESPONSIVENESS

A) PRELIMINARY EXAMINATION

This stage of evaluation shall involve examination of the pre-qualification conditions as set out in the Tender Advertisement Notice or Letter of Invitation to Tender and any other conditions stated in the bid document.

These conditions may include the following:

i Category of Registration with National Construction Authority in the relevant trade and or any other statutory bodies for building works: **NCA 8** and above.

ii) Certified copy of Valid Single business permit from any county government authority

iii) Certified copy of Valid Tax compliance certificate issued by Kenya Revenue Authority.

iv) Certified copy of Company certificate of incorporation / certificate of registration.

v) Dully filled, signed and stamped Form of Tender.

vi) Provision of Bid Security of 2% from reputable bank or approved insurance firm by PPRA.

vii) Certified copy of CR12 and must provide copies of IDs/passport for Directors.

viii Certified Renewed copy of practicing license with NCA as per the tender notice.

xi All pages MUST be serialized/ paged and stamped.

x Bill of Quantities must be duly filled in ink and stamped.

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

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

B) COMPLETENESS OF TENDER DOCUMENT

The tender document shall be examined based on the Instruction to Tenderers which states as follows:

In accordance to Instructions to Tenderers, the tenderers will be required to provide evidence for eligibility of the award of the tender by satisfying the employer of their eligibility and adequacy of resources to effectively carry out the subject contract. The tenderers shall be required to fill the Standards Forms provided for the purposes of providing the required information. The tenderers may also attach the required information if they so desire.

The award of points for the **STANDARD FORMS** considered in this section shall be as shown below:

	PARAMETER	**MAXIMUM POINTS**
(i)	Statement of Compliance	3
(ii)	Confidential business questionnaire	5
(iii)	Key personnel -	20
(iv)	Contract Completed in the last Five (5) years -	12
(v)	Schedules of on-going projects	4
(vi)	Schedules of contractors equipment	8
(vii)	Contracts performance with the client	15
(viii)	Audited Financial Report for the last 3 years	10
(ix)	Evidence of Financial Resources	10
(x)	Name, Address and Telephone of Banks (Contractor to provide)	5
(xi)	Litigation History	3
(xii)	Sanctity of the tender document as in accordance with clause 5 Of instruction to tenderer	
	TOTAL	**100**

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

Item	Description	Point Scored	Max. Point	
i	**Statement of Compliance** Filled signed and stamped----------3 Signed but not stamped or vice versa ---------- 2 Not signed nor stamped ---------- 0		3	
ii	**Confidential Business Questionnaire Form.** Completely filled ---------- 5 Partially filled ---------- 3 Not filled ---------- 0		5	
iii	**Key Personnel (Attach evidence)**			20
	Director of the firm o Holder of degree or diploma in relevant Engineering field---------- 4 o Holder of certificate in relevant Engineering field-3 o Holder of trade test certificate in relevant Engineering field----------1 o No relevant certificate ----------0		4	
	At least 2No. degree/diploma holder of key personnel in relevant Engineering field o With over 10 years relevant experience ----------3 o With over 5 years relevant experience ---------- 2 o With under 5 years relevant experience ---------- 1		6	
	At least 2No certificate holder of key personnel in relevant Engineering field o With over 10 years relevant experience ---------- 3 o With over 5 years relevant experience ---------- 2 o With under 5 years relevant experience ----------1		6	
iv	**Contract completed in the last five (5) years (A max of 4No.Projects) (attach evidence)** o Project of similar nature, complexity and magnitude ----------3 o Project of similar nature but of lower value than the one in consideration---------- 2 o No completed project of similar nature ---------- 0 o		12	
v	**On-going projects (A max of 2No.Projects) (attach evidence)** o Project of similar nature, complexity and magnitude ------		4	

	---------- 2 o Project of similar nature but of lower value than the one in consideration ---------- 1 o No ongoing project of similar nature - ----------0			
vi	**Schedules of contractors equipment and transport (attach proof or evidence of ownership)** o Means of transport (Vehicle) ---------- 4 o No means of transport ---------- 0		4	**8**
	For each specific equipment required in the installation of the work being tendered for. (Maximum No. of equipment to be considered – 2No.) --2		4	
vii	**Contracts performance with clients** • Contracts on schedule/New contracts..... 15 • Contracts behind schedule without redress from project manager..... 5 • Contract with default notices without redress from project manager..... 3 • Terminated contracts in the last five years..... 0			**15**
viii	**Financial report** **Audited financial report (last three (3) years)** o Annual turnover greater or equal to 5 times the cost of the project ---------- 10 o Annual turnover greater or equal to 3 times the cost of the project---------- 6 o Annual turnover greater or equal to the cost of the project ----------4 o Turnover below the cost of the project ------ 2		**10**	
ix	**Evidence of Financial Resources (cash in hand, lines of credit, over draft facility etc)** o Has financial resources equal or above the cost of the project----------10 o Has financial resources below the cost of the project ------- ----------5 o Has not indicated sources of financial resources ---0		**10**	
x	**Name, Address and Telephone of Banks (Contractor to provide)** o Provided ---------- 5 o Not provided ---------- 0		**5**	
xi	**Litigation History** o Filled ----------3 o Not filled ----------0		**3**	
xii	**Sanctity of the tender document** o Having the document intact		**5**	

	(not tampered with in any way) ----------5 ○ Having mutilated or modified the tender document--------- ----------0		
	TOTAL		**100**

Any bidder who scores 60 points and above shall be considered for further evaluation

STAGE 2 - TECHNICAL EVALUATION

A) COMPLIANCE WITH TECHNICAL SPECIFICATIONS

(For equipment)

In this section, the bid will be analyzed to determine compliance with General and Particular technical specifications for the works as indicated in the tender document.

The tenderer shall fill in the Technical Schedule as specified in the tender document for Equipment and Items indicating the Country of Origin, Model/Make/Manufacturer of the Item/Equipment they propose to supply.

Where the Equipment proposed by the tenderer differs with the models specified in the tender document, it is mandatory that the brochures/catalogues of the same be submitted with the tender document highlighting the catalogues Numbers of the proposed items. Such brochures/catalogues should indicate comprehensive relevant data of the proposed equipment/items which should include but not limited to the following:

a) Standards of manufacture
b) Performance ratings/characteristics
c) Material of manufacture
d) Electrical power ratings and
e) Any other necessary requirements (Specify)

Following the above analyses, where the proposed equipment are found not to satisfy the specifications, the tender will be deemed Non – Responsive and will not be evaluated further.

B) DETAILED TECHNICAL EXAMINATION

(For Builders work only tenders' rates shall apply)

In this section, the information provided in Schedule of Unit Rates and Technical Schedule will be analyzed and points awarded as shown below.

	PARAMETER	MAXIMUM POINTS
(i)	Tender rates----------	30
(ii)	Technical Schedule - ----------	40
	TOTAL	70

The detailed scoring plan shall be as shown in table 2 below:

TABLE 2

Item	Description	Score	Max. score
i	**Tender rates** (The average of tender sums of the bidders less PCs Sums and contingency shall be worked out. The deviation of bidders tender Sum from the average shall then be worked out as a percentage of the average and score allocated as follow:-) ○ Deviation of between 0% to 5% ---------- 30 ○ Deviation of between 5% to 10% ---------- 25 ○ Deviation of between 10% to 15% ----------20 ○ Deviation of between 15% to 20% ----------15 ○ Deviation of between 20% to 25% ---------- 10 ○ Deviation of between 25% to 30% ---------- 5 ○ Deviation of above 30% ---------- 2		**30**
ii	**Technical schedule** ○ Relevant Manufacturer Brochures for items in the technical schedule with equipments to be supplied highlighted and meets specification (Where alternative are to supplied----------=----- 40 or ○ Completely filled Technical Schedule indicating Brand, Model/ Country of origin as per specification in the tender---------- ---------- 40 ○ Relevant Manufacturer Brochures for items in the technical schedule with equipments to be supplied not highlighted but within range of those specified and meets specifications ---------- ---------- 30 or ○ Completely filled Technical Schedule indicating items as specified in the tender but with about 75% of technical data left out ---------- ----------30 ○ Relevant Manufacturer Brochures for less than 50% of items in the technical schedule with equipments to be supplied highlighted and meets specifications---------- 20 or ○ About 50% of Technical Schedule filled indicating Brand, Model/Country of origin for the items considered as specified in the tender ----------20 No technical data provided, either in form of brochures or filling of Technical Schedule. ---------- 0		**40**
	TOTAL		70

For a bidder to be deemed technically responsive they must score 40 points and above based on the above scoring plan. For bidders in building and civil works they will be deemed technically responsive if they score 15 points out of 30 points. Any tenderer whose tender figure is deemed to be unreasonably too high or unreasonably too low shall not be included during the tabulation of the averages of the tender sum.

STAGE 3 - FINANCIAL EVALUATION

The evaluation shall be in two sections
1. Preliminary examinations and
2. Tender sum Comparisons

1. PRELIMINARY EXAMINATIONS

The preliminary examination in the Financial Evaluation shall be in accordance with Instruction to Tenderers.

The parameter to be considered under this section includes the following:

a) Arithmetic errors

The bid shall be checked for arithmetic errors based on the rates and the total sums indicated in the bills of quantities.

b) Confirmation shall be sought in writing from the tenderers whose tender sums will be determined to have a significant arithmetic error to their disadvantage, to confirm whether they stand by their tender sums. The error shall be treated as per **the Instructions to Tenderers**.

Non compliance with the above shall lead to**automatic disqualification from further evaluation.**

Discount if any shall be treated as an error in pursuant to the Instructions to Tenderers

2. TENDER SUM COMPARISONS

The evaluation team shall compare the prices offered by the tenderers and the financial scores (Fs) will be determined using the formulae bellow. The financial score will be allocated a maximum of 30%.

Fs = 30 x Fm/F

Where Fs is the financial score, Fm is the lowest priced responsive financial bid and F is the price of the bid under consideration

CONCLUSION

COMBINATION OF TECHNICAL AND FINANCIAL SCORE

The evaluation team shall combine Technical and Financial Score as below:

Technical score (Ts) +Financial score (Fs) = 70% +30%

RECOMMENDATION

The combined technical and financial score shall be determined and the employer shall recommend for award of the **Tender** to the firm achieving the highest combined technical and financial scores.

NOTE: The technical score will range between 60 and 70 while that one for the financial will be between 40 and 30 depending on the project, to be decided by the client. But the combined total will remain at 100 points.

QUALIFICATION FORM*

1	2	3	*4*	*5*
Item No.	**Qualification Subject**	**Qualification Requirement**	***Document To be Completed by Tenderer***	***For Procuring Entity's Use (Qualification met or Not Met)***
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority in accordance with ITT 3.14.	Attachment	
3	Conflict of Interest	No 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 3.7	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.8	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, with attachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1st January [.....].	Form CON-2	
8	Suspension Based on Execution of Tender/Proposal Securing Declaration by the Procuring Entity	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9	Form of Tender	
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON – 2	
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since 1st January	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 .....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.	Form FIN – 3.1, with attachments	

1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 *Document To be Completed by Tenderer*	5 *For Procuring Entity's Use (Qualification met or Not Met)*
		(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 ……..years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.		
12	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings *[insert amount]*, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last ……..years, divided by ……..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 ……..years, starting 1st January ……..	Form EXP – 4.1	
14	Specific Construction & Contract Management Experience	A minimum number of ……..similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January…….. and tender submission deadline i.e. …. (number) contracts, each of minimum value Kenya shillings…….. equivalent. [The similarity of the contracts shall be based on the following:	Form EXP 4.2(a)	

SECTION IV - TENDERING FORMS

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE

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

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

2. FORMEQU:EQUIPMENT

The Tenderer shall provide adequate information to demonstrate clearly that it has the capability to meet the requirementsforthekeyequipmentlistedinSectionIII,EvaluationandQualificationCriteria.AseparateFormshallbe preparedforeachitemofequipmentlisted,orforalternativeequipmentproposedbytheTenderer.

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	

3. FORM PER -1

Contractor'sRepresentativeandKeyPersonnel Schedule

Tenderersshouldprovidethenamesanddetailsofthesuitablyqualified Contractor'sRepresentativeandKeyPersonnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

Contractor' Representative and Key Personnel

1.	**Title of position: Contractor's Representative**	
	Name of candidate:	
	Duration of appointment:	Start Date…… End Date……
	Time commitment: for this position:	…… ……
	Expected time schedule for this position:	……
2.	**Title of position: [ ]**	
	Name of candidate:	
	Duration of appointment:	Start Date…… End Date……
	Time commitment: for this position:	…… ……
	Expected time schedule for this position:	……
3.	**Title of position: [ ]**	
	Name of candidate:	
	Duration of appointment:	Start Date…… End Date……
	Time commitment: for this position:	…… ……
	Expected time schedule for this position:	……
4.	**Title of position: [ ]**	
	Name of candidate:	
	Duration of appointment:	Start Date…… End Date……
	Time commitment: for this position:	…… ……
	Expected time schedule for this position:	……
5.	**Title of position: [ ]**	
	Name of candidate	
	Duration of appointment:	Start Date…… End Date……
	Time commitment: for this position:	…… ……
	Expected time schedule for this position:	……

4. FORM PER-2:

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

Name of Tenderer

Position [*#1*]: [*title of position from Form PER-1*]		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency:	
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**

Declaration

I,theundersigned.....,certifythattothe best of my knowledge and belief, the information contained in this Form PER-2 correctly describes myself, my qualificationsandmyexperience.

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:	Start Date..... End Date.....
Time commitment:	Start Date..... End Date.....

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

a) betakenintoconsiderationduringTenderevaluation;
b) resultinmydisqualificationfromparticipatingintheTender;
c) resultinmydismissalfromthecontract.

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

Signature:_____

Date:(daymonthyear):

_____Countersignatureo

fauthorizedrepresentativeoftheTenderer:

Signature:_____

Date:(daymonthyear):_____

5. TENDERERSQUALIFICATIONWITHOUTPREQUALIFICATION

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.

5.1 FORM ELI -1.1

Tenderer Information Form
Date: _____

ITT No. and title: _____

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration:
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 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

5.2 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 of the Procuring Entity, in accordance with ITT 3.8. 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

5.3 FORM CON – 2

Historical Contract Non-Performance, Pending Litigation and Litigation History

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

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
☐ Contract non-performance did not occur since 1st January *[insert year]*specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1. ☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	**Non- performed portion of contract**	**Contract Identification**	**Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)**
.....	.....	Contract Identification: .... Name of Procuring Entity: ..... Address of Procuring Entity: ..... Reason(s) for nonperformance:	.....
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-Factor 2.4. ☐ Litigation Historyin accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated			

below.			
Year of award	**Outcome as percentage of Net Worth**	**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: …… Reason(s) for Litigation and award decision ……	……

5.4 FORM FIN – 3.1:

Financial Situation and Performance

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

5.4.1. Financial Data

Type of Financial information in_____ (currency)	**Historic information for previous _____ *years*, _____ (amount in currency, currency, exchange rate*, USD equivalent)**				
	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

*Refer to ITT 15 for the exchange rate

5.4.2 Sources of Finance

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

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

5.4.3 Financial documents

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

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

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

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

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

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

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

5.5 FORM FIN – 3.2:

Average Annual Construction Turnover

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

	Annual turnover data (construction only)		
Year	**Amount Currency**	**Exchange rate**	**Kenya Shilling equivalent**
Average Annual Construction Turnover *			

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

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

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

5.7 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 have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

Current Contract Commitments.

	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					

5.8 FORM EXP - 4.1

General Construction Experience

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

Page _____ of _____ pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		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: _____	

5.9 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

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

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

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

Specific Construction and Contract Management Experience (cont.)

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

5.11 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, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: _

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

[2] If applicable

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

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

OTHERFORMS

6. FORMOFTENDER

INSTRUCTIONS TO TENDERERS

i) *TheTendermustprepare thisFormofTenderonstationerywithitsletterheadclearlyshowingtheTenderer'scomplet enameandbusinessaddress.*

ii) *Allitalicizedtextistohelp Tendererin preparing thisform.*

iii) *TendermustcompleteandsignCERTIFICATEOFINDEPENDENTTENDERDETERMINATIONandthe SELFDECLARATIONOFTHETENDERERattachedtothisFormofTender.*

iv) *TheFormofTendershallincludethefollowingFormsdulycompletedandsignedbytheTenderer.*

- *Tenderer'sEligibility-ConfidentialBusinessQuestionnaire*
- *CertificateofIndependentTenderDetermination*
- *Self-DeclarationoftheTenderer*

Dateof this Tender submission:.....

RequestforTenderNo.:.....

Name anddescriptionofTender.....

AlternativeNo.:.....

To:.....

DearSirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the executionoftheabovenamedWorks,we,theundersignedoffertoconstructandcompletetheWorksandremedy anydefectstherein forthesumofKenyaShillings[*[*_____Kenya Shillings*[amountinwords]*_____.

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

   Thepercentageoramountquotedabovedoesnotincludeprovisionalsums,andonlyallowsnotmorethantwo foreigncurrencies.

2. Weundertake,ifourtenderisaccepted,tocommencetheWorksassoonasisreasonablypossibleafterthereceipt oftheProjectManager'snoticetocommence,andtocompletethewholeoftheWorkscomprisedintheContract withinthetimestatedintheSpecialConditionsofContract.

3. WeagreetoadherebythistenderuntilTender Validity Period_____*[Insertdate],*anditshallremainbindinguponusand maybeacceptedatanytimebeforethatdate.

4. UnlessanduntilaformalAgreementispreparedandexecutedthistendertogetherwithyourwrittenacceptance thereof,shallconstituteabindingContractbetweenus.Wefurtherunderstandthatyouarenotboundtoaccept thelowestoranytenderyoumayreceive.

5. We,theundersigned,furtherdeclarethat:
   i) *Noreservations:*WehaveexaminedandhavenoreservationstothetenderdocumentincludingAddenda issuedinaccordancewithITT28;
   ii) *Eligibility:*WemeettheeligibilityrequirementsandhavenoconflictofinterestinaccordancewithITT3 and4;
   iii) *Tender-SecuringDeclaration:*WehavenotbeensuspendednordeclaredineligiblebytheProcuringEntity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's CountryinaccordancewithITT19.8;

iv) *Conformity:* We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works:
Brief description of the Works.....

v) *Tender Price:* The total price of our Tender, excluding any discounts offered in item 1 above is:.....
.....

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

.....
.....
.....
.....
.....
.....

Option2, in case of multiple lots:

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

.....
.....
.....
.....
.....
.....
.....

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

.....
.....
.....
.....
.....
.....
.....

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

viii) The discounts offered are:

.....
.....
.....
.....
.....
.....
.....

The exact method of calculations to determine the net price after application of discounts is shown below:

.....
.....
.....
.....
.....
.....
.....

ix) *Tender Validity Period:* Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if

applicable)fromthedatefixedfortheTendersubmissiondeadlinespecifiedinTDS22.1(asamended,if applicable),anditshallremainbindinguponusandmaybeacceptedatanytimebeforetheexpirationof thatperiod;

x) *Performance Security:*If our Tender is accepted, we commit to obtain a Performance Security in accordancewiththeTenderingdocument;

xi) *OneTenderPerTender:*WearenotsubmittinganyotherTender(s)asanindividualTender,andwearenot participating in any other Tender(s) as a Joint Venture member or as a subcontractor, and meet the requirementsofITT3.4,otherthanalternativeTenderssubmittedinaccordancewithITT13.3;

xii) *Suspension and Debarment:* We, along with any of our subcontractors, suppliers, Project Manager, manufacturers,orserviceprovidersforanypartofthecontract,arenotsubjectto,andnotcontrolledby anyentityorindividualthatissubjectto,atemporarysuspensionoradebarmentimposedbythePublic ProcurementRegulatoryAuthorityoranyotherentityoftheGovernmentofKenya,oranyinternational organization.

xiii) *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 requirementsofITT3.8*];

xiv) Commissions, gratuities, fees: We have paid, or will pay the following commissions, gratuities, or fees withrespecttothetenderprocessorexecutionoftheContract:*[insertcompletenameofeachRecipient,its fulladdress,thereasonforwhicheachcommissionorgratuitywaspaidandtheamountandcurrencyof eachsuchcommissionorgratuity].*

Name of Recipient	Address	Reason	Amount

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

xv) BindingContract:WeunderstandthatthisTender,togetherwithyourwrittenacceptancethereofincluded in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is preparedandexecuted;

xvi) NotBoundtoAccept:WeunderstandthatyouarenotboundtoacceptthelowestevaluatedcostTender,the MostAdvantageousTenderoranyotherTenderthatyoumayreceive;

xvii) FraudandCorruption:WeherebycertifythatwehavetakenstepstoensurethatnopersonactingforusoronourbehalfengagesinanytypeofFraudandCorruption;

xviii) Collusivepractices:Weherebycertifyandconfirmthatthetenderisgenuine,non-collusiveandmadewith the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of IndependentTenderDetermination"attachedbelow.

xix) WeundertaketoadherebytheCodeofEthicsforPersonsParticipatinginPublicProcurementandAsset Disposal, copyavailablefrom _____(*specifywebsite*)duringtheprocurementprocessandt heexecutionofanyresultingcontract.

xx) We,theTenderer,havecompletedfullyandsignedthefollowingFormsaspartofourTender:
   a) Tenderer'sEligibility;ConfidentialBusinessQuestionnaire–toestablishwearenotinanyconflict tointerest.
   b) CertificateofIndependentTenderDetermination–todeclarethatwecompletedthetenderwithout colludingwithothertenderers.
   c) Self-DeclarationoftheTenderer–todeclarethatwewill,ifawardedacontract,notengageinany formoffraudandcorruption.
   d) DeclarationandcommitmenttotheCodeofEthicsforPersonsParticipatinginPublicProcurement andAssetDisposal

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: .....

NameofthepersondulyauthorizedtosigntheTenderonbehalfoftheTenderer:**.....
.....
.....

TitleofthepersonsigningtheTender:.....

.....

Signatureof the person

namedabove:.....

.....

.....

Date signed

Date signed_____dayof_____,_____

(a) TENDERER'SELIGIBILITY-CONFIDENTIALBUSINESSQUESTIONNAIRE

Instruction to Tenderer

Tenderisinstructedtocompletetheparticularsrequiredin thisForm,*oneformforeachentityifTenderisaJV.*Tenderer isfurtherremindedthatitisanoffencetogivefalseinformationonthisForm.

(a) Tenderer'sdetails

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

(b) Sole Proprietor, provide the followingdetails.

Name in full_____Age_____
Nationality_____Country of Origin_____
Citizenship_____

(c) Partnership, provide the followingdetails.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) Registered Company, provide the followingdetails.

I) Private or public Company _____

ii) State the nominal and issued capital of the Company_____

Nominal Kenya Shillings (Equivalent).....

Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) DISCLOSUREOFINTEREST-InterestoftheFirmintheProcuringEntity.

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

If yes, provide details as follows.

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

(i) Conflict of interestdisclosure

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

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

Certification

OnbehalfoftheTenderer,Icertifythattheinformationgivenaboveiscomplete,currentandaccurateasatthedateof submission.

FullName

_____

_____ _____

TitleorDesignation_____

(Signature) *(Date)*

a) CERTIFICATEOFINDEPENDENTTENDERDETERMINATION

I, the undersigned, in submitting the accompanyingLetterofTendertothe_____
_____[Name of ProcuringEntity]for:_____[Name and number of tender] in responsetotherequestfortendersmadeby:_____
_____[NameofTenderer]dohereby makethefollowingstatementsthatIcertifytobetrueandcompleteineveryrespect:

Icertify,onbehalfof_____[NameofTenderer]that:

1. IhavereadandIunderstandthecontentsofthisCertificate;

2. IunderstandthattheTenderwillbedisqualifiedifthisCertificateisfoundnottobetrueandcompleteinevery respect;

3. IamtheauthorizedrepresentativeoftheTendererwithauthoritytosignthisCertificate,andtosubmittheTender onbehalfoftheTenderer;

4. For the purposes of this Certificate and the Tender, I understand that the word "competitor" shall include any individualororganization,otherthantheTenderer,whetherornotaffiliatedwiththeTenderer,who:
   a) hasbeenrequestedtosubmitaTenderinresponsetothisrequestfortenders;
   b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities orexperience;

5. TheTendererdisclosesthat[checkoneofthefollowing,asapplicable:
   a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreementorarrangementwith,anycompetitor;
   b) the Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasonsfor,suchconsultations,communications,agreementsorarrangements;

6. Inparticular,withoutlimitingthegeneralityofparagraphs(5)(a)or(5)(b)above,therehasbeennoconsultation, communication,agreementorarrangementwithanycompetitorregarding:
   a) prices;
   b) methods,factorsorformulasusedtocalculateprices;
   c) theintentionordecisiontosubmit,ornottosubmit,atender;or
   d) the submission of a tender which does not meet the specifications of the request for Tenders; except as specificallydisclosedpursuanttoparagraph(5)(b)above;

7. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regardingthequality,quantity,specificationsordeliveryparticularsoftheworksorservicestowhichthisrequest for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuanttoparagraph(5)(b)above;

8. thetermsoftheTenderhavenotbeen,andwillnotbe,knowinglydisclosedbytheTenderer,directlyorindirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of theContract, whichevercomesfirst,unlessotherwiserequiredbylaworasspecificallydisclosedpursuanttoparagraph(5)(b) above.

Name_____
Title_____
Date _____

(c) SELF-DECLARATIONFORMS

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: -

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Direct orof ..... who is a Bidder in respect of **Tender No.** ..... for ..... for ..... and duly authorized and competent to make this statement.

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

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

..... (Title) ..... (Signature) ..... (Date)

Bidder Official Stamp

FORM SD2

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

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

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of ..... (insertnameoftheCompany)whoisaBidderinrespect of**TenderNo.**.....for .....for .....and duly authorized and competent to make this statement.

2. THATtheaforesaidBidder,itsservantsand/oragents/subcontractorswillnotengageinanycorruptorfraudulent practiceandhasnotbeenrequestedtopayanyinducementtoanymemberoftheBoard,Management,Staffand/or employees and/or agents of .....which is the procuring entity.

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

4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participatinginthesubjecttender

5. THATwhatisdeponedtohereinaboveistruetothebestofmyknowledgeinformationandbelief.

.....	.....	.....
(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 PublicProcurement&AssetDisposalAct,2015,RegulationsandtheCodeofEthicsforpersonsparticipatinginPublic ProcurementandAssetDisposalandmyresponsibilitiesundertheCode.

IdoherebycommittoabidebytheprovisionsoftheCodeofEthicsforpersonsparticipatinginPublicProcurementand AssetDisposal.

Name of Authorized signatory.....

Sign.....

Position.....

Office address..... Telephone.....

E-mail.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....

Sign.....

Date.....

(d) APPENDIX1-FRAUDANDCORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service 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.

2.2 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:

1) A persontowhomthisActappliesshallnotbeinvolvedinanycorrupt,coercive,obstructive,collusiveor fraudulentpractice;orconflictsofinterestinanyprocurementorassetdisposalproceeding;

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

3) Withoutlimitingthegeneralityofthesubsection(1)and(2),thepersonshallbe: -

   a) disqualifiedfromenteringintoacontractforaprocurementorassetdisposalproceeding;or

   b) ifacontracthasalreadybeenenteredintowiththeperson,thecontractshallbevoidable;

4) Thevoidingofacontractbytheprocuringentityundersubsection(7)doesnotlimitanylegalremedythe procuringentitymayhave;

5) Anemployeeoragentoftheprocuringentityoramemberoftheboardorcommitteeoftheprocuringentity whohasaconflictofinterestwithrespecttoaprocurement: -

   a) Shallnottakepartintheprocurementproceedings;

   b) shallnot,afteraprocurementcontracthasbeenenteredinto,takepartinanydecisionrelatingtothe procurementorcontract;and

   c) shallnotbeasubcontractorforthetendertowhomwasawardedcontract,oramemberofthegroupof tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirementsofthisAct.

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

7) Ifapersoncontravenessubsection(1)withrespecttoaconflictofinterestdescribedinsubsection(5)(a)and thecontractisawardedtothepersonorhisrelativeortoanotherpersoninwhomoneofthemhadadirector indirectpecuniaryinterest,thecontractshallbeterminatedandallcostsincurredbythepublicentityshallbe madegoodbytheawardingofficer.Etc.

3. IncompliancewithKenya'slaws,regulationsandpoliciesmentionedabove,theProcuringEntity:

a) Definesbroadly, for the purposesoftheaboveprovisions,thetermssetforthbelowasfollows:

i) "corruptpractice" is the offering,giving,receiving,orsoliciting,directlyorindirectly,ofanythingof valuetoinfluenceimproperlytheactionsofanotherparty;

ii) "fraudulentpractice"isanyactoromission, including isrepresentation,thatknowinglyorrecklessly misleads,orattemptstomislead,apartytoobtainfinancialorotherbenefitortoavoidanobligation;

iii) "collusivepractice"isanarrangementbetweentwoormorepartiesdesignedtoachieveanimproper purpose,includingtoinfluenceimproperlytheactionsofanotherparty;"coercivepractice"isimpairingorh arming,orthreateningtoimpairorharm,directlyorindirectly,any partyorthepropertyofthepartytoinfluenceimproperlytheactionsofaparty;

iv) "obstructivepractice"is:

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

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

b) Definesmorespecifically,inaccordancewiththeaboveprocurementActprovisionssetforthforfraudulent andcollusivepracticesasfollows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal processortheexerciseofacontracttothedetrimentoftheprocuringentityorthetendererorthecontractor, andincludescollusivepracticesamongsttendererspriortooraftertendersubmissiondesignedtoestablish tenderpricesatartificialnon-competitivelevelsandtodeprivetheprocuringentityofthebenefitsoffreeand opencompetition.

c) Rejectsaproposalforaward[1]ofacontractifPPRAdeterminesthatthefirmorindividualrecommendedfor award,anyofitspersonnel,oritsagents,oritssub-consultants,sub-contractors,serviceproviders,suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructivepracticesincompetingforthecontractinquestion;

d) Pursuant to the Kenya's above stated Acts and Regulations, may recommend to appropriateauthority(ies)forsanctioninganddebarmentofafirmorindividual, as applicable undertheActs andRegulations;

e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring(i) Tenderers(applicants/proposers),Consultants,Contractors,andSuppliers,andtheir Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authorityappointedbyGovernmentofKenyatoinspect[2]allaccounts,recordsandotherdocumentsrelating to the procurement process, selection and/or contract execution, and to have them audited by auditorsappointedbythePPRAoranyotherappropriateauthorityappointedbyGovernmentofKenya;and

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

---

[1] Fortheavoidanceofdoubt,aparty'sineligibilitytobeawardedacontractshallincludee,withoutlimitation,(i)applyingforpre-qualification,expressinginterestin a consultancy,andtendering,eitherdirectlyorasanominatedsub-contractor,nominatedconsultant,nominatedmanufacturerorsupplier,ornominatedservice provider,inrespectofsuchcontract,and(ii)enteringintoanaddendumoramendmentintroducingamaterialmodificationtoanyexistingcontract.

[2] Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or personsappointedbythePˈrocuringEntitytoaddressspecificmattersrelatedtoinvestigations/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 forTendersNo:

_____

Date:_____

TENDER GUARANTEE No.:_____

Guarantor: _____

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

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

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

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

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

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

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

_____

[signature(s)]

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

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

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

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

   Sealed with the Common Seal of the said Guarantor this ___ day of _____ 20 __.

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

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

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

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

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

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

_____ _____

[Date] *[Signature of the Guarantor]*

_____ _____

[Witness] *[Seal]*

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

FORMOFTENDER-SECURINGDECLARATION

[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,theundersigned,declarethat:

1. I/Weunderstandthat, according to yourconditions,bidsmustbesupportedbyaTender-SecuringDeclaration.

2. I/We accept that I/we will automatically be suspended from being eligible for tendering in any contract with the Purchaserfortheperiodoftimeof[insertnumberofmonthsoryears]startingon[insertdate],ifweareinbreachof ourobligation(s)underthebidconditions,becausewe–(a)havewithdrawnourtenderduringtheperiodoftender validityspecifiedbyusintheTenderingDataSheet;or(b)havingbeennotifiedoftheacceptanceofourBidbythe Purchaserduringtheperiodofbidvalidity,(i)failorrefusetoexecutetheContract,ifrequired,or(ii)failorrefuse tofurnishthePerformanceSecurity,inaccordancewiththeinstructionstotenders.

3. I/WeunderstandthatthisTenderSecuringDeclarationshallexpireifwearenotthesuccessfulTenderer(s),upon theearlierof:
   a) Ourreceiptofacopyofyournotificationofthenameofthesuccessful Tenderer;or
   b) thirtydaysaftertheexpirationofourTender.

4. I/Weunderstandthatiflam/weare/inaJointVenture,theTenderSecuringDeclarationmustbeinthenameofthe JointVenturethatsubmitsthebid, and the JointVenturehasnotbeenlegallyconstitutedatthetimeofbidding,the TenderSecuringDeclarationshallbeinthenamesofallfuturepartnersasnamedintheletterofintent.

Signed:.....

Capacity/title(directororpartnerorsoleproprietor,etc.) .....

Name:.....

Dulyauthorizedtosignthebidforandonbehalfof:*[insertcompletenameofTenderer]*

Dated on ..... day of ....., ... *[Insertdateofsigning]* Seal orstamp

Appendix toTender

Schedule of Currency requirements

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

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

PARTII - WORKSREQUIREMENTS

SECTION V - BILLS OF QUANTITIES

(a) Preambles

1. The method of measurement of completed work for payment shall be in accordance with the metric standard units of measurement.

2. The Site is situated within Bungoma County.

3. The Contractor shall obtain the Architect's approval on the siting of all temporary buildings, spoil heaps, temporary access path, and storage of materials. The Contractor shall also obtain the Architect approval and directionregardingtheuseofanymaterialsfoundontheSite.

4. ThedrawingsusedinthepreparationoftheseBillsofQuantitiescanbeinspectedattheofficesoftheProcuring EntityorProcuringEntity'sRepresentativeduringnormalworkinghours.TwosetsoftheWorkingDrawingsshall beprovidedtothecontractorbutadditionalcopiesshallbeprovidedatacosttobedeterminedbytheEngineer.

5. The Contractor shall allow for the payment of all bank charges in connection with the procurement of Bank Guaranteesandstampchargesinconnectionwiththiscontract Agreement.

6. TheContractorshallcarryoutthevarioussectionsoftheWorksinsuchanorderastheArchitectMaydirect.The ProcuringEntityreservestherighttooccupytheWorksbysectionsoncompletionprovidedthatsuchoccupation isconsideredtobebothpracticalandreasonableandwillnotinterferewiththeWorks.TheContractorshallallow anycostsassociatedwithsuchoccupation.
7. ThemainContractorwillbefullyresponsibleforpayinghisSub-ContractorbuttheProcuringEntityreservesthe right in very exceptional circumstances to make such payments direct in the interests of the project where the completion thereof might be jeopardized by any dispute or vicariousness between the Contractor and the Sub-Contractorinvolve.
8. TheContractorshallcompleteanddelivertheWorks in the periodinsertedintheFormofTenderashistimefor completion of the Works from the date for Possession, to be agreed with the Engineer. The Contract Period is presumedtohavebeencalculatedmakingdueallowanceforseasonalinclementweatherconditions.Noclaimfor extensionoftimeduetothenormalinclementweatherforthisareashallbeentertained.

9. TheContractorshall,uponreceivinginstructionstoproceedwiththeWorks,drawupaProgrammeandProgress Chartsettingouttheorderinwhichthe Worksaretobecarriedout, with the appropriatedatesthereof.ThisChart shallbeagreedwiththeArchitectandnodeviationfromtheordersetoutinitwillbepermittedwithoutthewritten consentoftheEngineer.TheContractorwillberesponsibleforarrangingtheaboveprogrammewithallhis sub-ContractorsandSpecialties.TheContractorshallallowinhisratesforcarryingoutthisexercise,andforupdating it asrequired.

10. TheContractorshallsubmittotheArchitectonthefirstdayofeachweekorsuchlongerperiodastheArchitect fromtimetotimedirect,aProgressReportandanyinformationfortheproceedingperiod,showingtheprogress duringtheperiodandtheup-to-datecumulativeprogressonallimportantitemsofeachsectionorportionofthe Works.

11. TheContractorshallarrangeforphotographsoftheSitetobetakenbyaprofessionalphotographerapprovedby theEngineer.ThePhotographsshallprovidearecordoftheSiteandadjacentareaspriortothecommencementof theWorksandshallcoversuchportionoftheworksinprogressandcompletionastheArchitectshalldirect.All printsshallbefullplatesize,unmounted,andmarkedonthereversesidewiththedateofexposure,identification reference and brief description. The copyright of all photographs shall be vested in the Procuring Entity. The negativesandfourprintsfromeachnegativeshallbedeliveredtotheArchitectwithintwoweeksofexposure.

12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but whenever possible dimensions are to be taken on the Site or from the buildings. Before any work is commenced by Sub-Contractors or Specialist Firms, dimensions must be checked on the site comparable dimensions shown on the drawings.TheContractorshallberesponsiblefortheaccuracyofsuchdimensions.

13. PriortocommencementofanyworktheContractoristoascertainfromtherelevantAuthoritiestheexactposition, depthandlevelofallexistingelectriccables,waterpipesorotherservicesintheareaandheshallmakewhatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Architect and the relevant Authority and shall be made good to their satisfaction at the Contractor's expense. Where appropriate the Contractorshallopenupthegroundinadvanceofthemainworkbyhanddiggingifnecessary,tolocateprecisely thepositionanddetailsoftheserviceswhicharelikelytoaffecthisoperations.

14. TheContractorshallincludeinhispricesforthetransportofmaterials,workmen,etc./,toandfromthesiteofthe proposedworks,atsuchhoursandbysuchrouteasarepermittedbytheAuthorities.

15. TheContractorwillberequiredtomakegood,athisownexpenseanddamagehemaycausetothepresentroad surface and pavements within or beyond the boundary of the Site, during the period of the works. All existing paths, storm water channels, etc., that may be destroyed or damaged during the progress of the Works shall be reinstatedbytheContractortothesatisfactionoftheEngineer.

16. TheContractoristoallowforcomplyingwithallinstructionsandregulationsofthePoliceAuthorities.

17. Allwatershallbefresh,cleanandpure,freefromearthly,vegetableororganicmatter,acidoralkalinesubstancein solution. The Contractor shall provide at his own risk and cost all water for use in connection with the Works, (includingworksofsub–contractors).Ifneedbe,heshallmakearrangementswiththeLocalWaterAuthorityfor theinstallationofaseparatemeterforallwaterusedbyhimthroughouttheContractandpayallcostandfeesin connection therewith. He shall also provide temporary storage tanks and tubing, etc., as may be necessary,and clearawayatcompletion.

18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub – Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion. The Contractorshallpayallfeesandobtainallpermitsinconnectiontherewith.

19. The Contractor shall constantly keep on the Works a Literate English-speaking Agent or Representative, competentandexperiencedinthekindofworkinvolved,whoshallgivehiswholetimetothesuperintendenceof the works. (Including works of sub – contractors). Such Agent or Representative shall receive on behalf of the ContractordirectionsandinstructionfromtheEngineer,andsuchdirectionsandinstructionsshallbedeemedtobe giventothecontractorinaccordancewiththeConditionsofContract.TheAgentshallnotbereplacedwithoutthe specificapprovaloftheEngineer.

20. TheContractorshallensurethatthesafetyofhisworkpeopleandallauthorizedvisitorstothesiteareprotectedat alltimes.Inparticular,thereshallbetheproperprovisionofguard–railstoscaffolding,protectionagainstfalling materials,toolsonsite,dust,nailandothersharpobjects.Thesiteshallbekepttidyandclearofdangerousrubbish. The Architect shall be empowered to suspend work on site should it be considered this condition is not being observedandnoclaimarisingfromsuchsuspensionwillbeallowed.

21. TheareasavailabletotheContractorforworkyards,officesandotherfacilitiesshallbedirectedbytheArchitect and any existing features to remain shall be protected from damage throughout the Contract Period and handed back in good condition when they are vacated at the end of the Contract. If additional areas are required, the contractorshallsourcethenatowncost.

22. TheContractorshallgivetheArchitectreasonablenoticeoftheintentiontosetoutortakelevelsforanypartofthe Workssothatarrangementsmaybemadeforcheckingthework.Theaccuracyofsettingoutandlevelingshallbe withinthetolerancesspecifiedintheSpecificationsorontheDrawings.Thecheckingofsettingoutorlevelingby theArchitectshallnotrelievetheContractorofhisdutiesorresponsibilitiesundertheContract.

23. TheContractormusttakestepsnecessarytosafeguardandshallbeheldfullyresponsibleforanydamagecausedto existingandadjacentproperty,includingbuildingsthatarenotasubjectofdemolition.Heshallmakegoodathis owncostdamagetopersonsandpropertycausedthereon,andheshallindemnifytheProcuringEntityagainstany lossorclaimthatmayarise.

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

25. The Contractors attention is drawn to the standards levy order which was amended on 15th October 1998.Legal notice No.154 of 1998. The Contractor is required to pay a monthly level of 0.2% of his factory price of constructionworkswitheffectfromJanuary1999.Tenderershallallowforthisinthebuild-upofhisrates.

26. TheContractorshallprovidetemporarysheds,officesmeshrooms,sanitary,accommodationandothertemporary buildingsfortheuseofthecontractorandsub-contractors,includinglightingfurnitureequipmentandattendance.

27. Contractorshallprovide/buildlaborcampsatareastobeagreedwiththeEngineer.Laborcampsshallbecomplete withsanitaryaccommodationandfencinggates.

28. The Contractor must provide the necessary toilet facilities to the requirement and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees duringtheperiodoftheWorksandremovewhennolongerrequired.

29. TheContractorshallprovideathisownriskandcostallwatchingandlightingasnecessarytosafeguardtheWorks, Plantandmaterialsagainstdamageandtheft.

30. TheContractorshallprovideallnecessaryhoists,tackle,plant,equipment,vehicles,toolsandappliancesofevery description for the due and satisfactory completion of the Works and shall remove the same on completion.All suchplant,toolsandequipmentshallcomplywithallregulationsinforcethroughouttheperiodoftheContract andshallbealteredoradoptedduringtheContractperiodasmaybenecessarytocomplywithanyamendmentsin oradditionstosuchregulations.

31. Provide,erectandmaintainallnecessaryscaffolding,sufficientlystrongandefficientfortheduеperformanceof theworks,includingSub-ContractWorks,providespecialscaffoldingasrequiredbySub-Contractors,alterand adopt all scaffolding as and when required during the Works, and remove on completion. No scaffolding is measuredhereinafterandtheContractormustallowinhisratesforthis.

32. TheContractorshalltakeallnecessaryprecautionssuchastemporaryfencing,hoardingfans,plankedfootways, guard–railsgantriesscreen,etc., for the safecustodyoftheWorks,materialsandpublicprotectionandadjacent properties.

33. Coverupallandprotectfromdamage,includingdamagefrominclementweather,allfinishedworkandunfixed materials, including that of Sub-Contractors, etc., to the satisfaction of the Architect until the completion ofthe Contract.

34. The Contractor shall, after completion of the works, at his own expense, remove and clear away all surplus excavated demolition materials, plant, rubbish and unused materials and shall leave the whole of the Site and Worksinacleanandtidystatetothesatisfactionoftheengineer,sheds,camps,etc.Particularcareshallbetaken toleavecleanallfloorsandwindowsandtoremoveallpaintandcementallrubbishanddirtasitaccumulates.The Contractoristofindhisowndumpandshallpayallchargesinconnectiontherewith.

35. Concrete test cubes shall be prepared in a set of three, as described including testing fees, labor and materials, makingmolds,transport,handling,etc.Allowinyourratesformakingatleastfourcubesoneachoccasion,from differentbatches;theconcretebeingtakenfromthepointofdeposit.

36. TheContractorshallfurnishattheearliestpossibleopportunitybeforeworkcommences,andathisowncost,any samplesofmaterialsandworkmanshipthatmaybecalledforbytheArchitectfortheapprovalorrejection,and anyfurthersamples in the caseofrejection,untilsuchsamplesareapprovedbytheEngineer.Suchsamples,when approved,shallbetheminimumstandardfortheworktowhichtheyapply.Theprocedureforsubmittingsamples of materials for testing or approval and the method of marking for identification shall be as laid down by the Engineer.TheContractorshallallowinhisTenderforsuchsamplesandtests,includingthoseinconnectionwith his Sub-Contractorswork.

37. The Contractors attention is drawn to the Finance Bill of the year 2000/2001 on withholding tax on contractual paymentsection35(7)(i)(ii)whichbecameeffectiveon1stJuly2000.A3%withholdingtaxwillbeapplicableto allinterimpaymentsexceedingKshs……forworkdoneinrespectofbuildingorcivilworks.The contractorshallallowforanycostsarisingresultingtherefrominthebuild-upofrates.

38. Blastingwillonlybeallowedwiththeexpresspermissionofthe Architectinwriting.Allblastingoperationsshall becarriedoutattheContractor'ssoleriskandcost,inaccordancewithanyGovernmentregulationsinforceforthe timebeing,andanyspecialregulationslaiddownbytheArchitectgoverningtheuseandstorageofexplosives.

39. The National Construction Authority is a state corporation established under the national constructionauthority ActNo.14of2011.ThebroadMandateoftheAuthorityistooverseetheconstructionindustryandcoordinateits development. The National Construction Authority Regulations 2014 with an effective date of 6th June 2014, regulation25,-Allow0.5%ofthetendersum/contractsumforconstructionlevy.

40. The Contractor attention is drawn to Finance Bill of 1993 where VAT was introduced in all contracts for constructionservices.Thetendererisalsodrawnto VATActCap476clause19(9).Thetenderermustallowfor VAT1.19asinstructedelsewhere.

41. Thecontractorshallallowandpayforallinsurancetocoverrisksandindemnitiesrequired Items17and18ofthe ConditionsofcontractandalsospecifiedintheSpecialConditionsofContract.

SECTION VI - SPECIFICATIONS

SECTION VIII - GENERAL CONDITIONS OF CONTRACT (GCC)

Name of Procuring Entity.....

Name of Contract .....

The Engineer is,

County works Officer,

Ministry of Roads, Infrastructure And Public Works

P.O Box 763, Bungoma

General Conditions of Contract

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1. GENERALPROVISIONS

1.1 Definitions

InthisContract,exceptwherecontextotherwiserequires,thefollowingtermsshallbeinterpretedasindicatedbelow. 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.

"BillofQuantities"meansthepricedandcompletedBillofQuantitiesformingpartofthetender.

"CompletionDate"meansthedateofcompletionoftheWorksascertifiedbytheEngineer.

"ContractPrice"meansthepricedefinedinthecontractandthereafterasadjustedinaccordancewiththeprovisions of theContract.

"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'sEquipment"meansallapparatus,machinery,vehiclesandotherthingsrequiredfortheexecutionand completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works,ProcuringEntity'sEquipment(ifany),Plant,Materialsandanyotherthingsintendedtoformorformingpartof thePermanentWorks.

"Contractor'sPersonnel"meanstheContractor'sRepresentativeandallpersonnelwhomtheContractorutilizeson Site,whomayincludethestaff,laborandotheremployeesoftheContractorandofeachSubcontractor;andanyother personnelassistingtheContractorintheexecutionoftheWorks.

"Contractor'sRepresentative"meansthepersonnamedbytheContractorintheContractorappointedfromtimeto timebytheContractorwhoactsonbehalfoftheContractor.

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

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

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

"Dayworks" means Work 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.

"DefectsNotificationPeriod"meanstheperiodfornotifyingdefectsintheWorks oraSection(asthecasemaybe) underSub-Clause11.1[CompletionofOutstandingWorkandRemedyingDefects],whichextendsoverthedaysstatedintheSpecialConditionsofContract.

"Drawings"meansthedrawingsoftheWorks,asincludedintheContract,andanyadditionalandmodifieddrawings issuedby(oronbehalfof)theProcuringEntityinaccordancewiththeContract.

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

"FinalStatement"meansthestatementdefinedinSub-Clause14.11[ApplicationforFinalPaymentCertificate].

"ForceMajeure"isdefinedinClause19[ForceMajeure].

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

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

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

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

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

"Local Currency" means the currency of Kenya.

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

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

"SpecialConditionsofContract"meansthepagescompletedbytheProcuringEntityentitledSpecialConditionsof ContractwhichconstitutePartAoftheSpecialConditions.

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

"Payment Certificate" means a payment certificate issued under Clause 14 [ContractPriceandPayment].

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

"PerformanceSecurity"meansthesecurity(orsecurities,ifany)underSub-Clause4.2[PerformanceSecurity].

"PermanentWorks"meansthepermanentworkstobeexecutedbytheContractorundertheContract.

"Plant" means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works,includingvehiclespurchasedfortheProcuringEntityandrelatingtotheconstructionoroperationoftheWorks.

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

ProcuringEntityfortheuseoftheContractorintheexecutionoftheWorks,asstatedintheSpecification;butdoesnot includePlantwhichhasnotbeentakenoverbytheProcuringEntity.

"ProcuringEntity'sPersonnel"meanstheEngineer,theEngineer,theassistantsandallotherstaff,laborandother employees of the Architect and of the Procuring Entity; and any other personnel notified to the Contractor, by the ProcuringEntityortheEngineer,asProcuringEntity'sPersonnel.

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

"Engineer"is the personnamedintheAppendixtoConditionsofContract(oranyothercompetentpersonappointed 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 EngineersRegistrationActCap530.

"Engineer"meansthepersonappointedbytheProcuringEntitytoactastheArchitectforthepurposesoftheContract andnamedintheSpecialConditionsofContract,orotherpersonappointedfromtimetotimebytheProcuringEntity andnotifiedtotheContractor

"ProvisionalSum"meansasum(ifany)whichisspecifiedintheContractasaprovisionalsum, for the executionof anypartoftheWorksorforthesupplyofPlant,MaterialsorservicesunderSub-Clause13.5[ProvisionalSums].

"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"meansthedocument(s)entitledschedules,completedbytheContractorandsubmittedwiththeFormof Tender,asincludedintheContract.

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

"SiteInvestigationReports"arethosereportsthatmaybeincludedinthetenderingdocumentswhicharefactualand interpretativeaboutthesurfaceandsub-surfaceconditionsattheSite.

"Site"meanstheplaceswherethePermanentWorksaretobeexecuted,includingstorageandworkingareas,andto whichPlantandMaterialsaretobedelivered,andanyotherplacesasmaybespecifiedintheContractasformingpartof theSite.

"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"meansastatementsubmittedbytheContractoraspartofanapplication,underClause14[ContractPrice andPayment], for a paymentcertificate.

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

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

"TemporaryWorks"meansalltemporaryworksofeverykind(otherthanContractor'sEquipment)requiredonSite for the executionandcompletionofthePermanentWorksandtheremedyingofanydefects.

"Temporaryworks"meansworksdesigned,constructed,installed,andremovedbytheContractorwhichareneeded forconstructionorinstallationoftheWorks.

"Tender"meanstheFormofTenderandallotherdocumentswhichtheContractorsubmittedwiththeFormofTender, asincludedintheContract.

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

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

"TestsonCompletion"meansthetestswhicharespecifiedintheContractoragreedbybothPartiesorinstructedasa Variation,andwhicharecarriedoutunderClause9[TestsonCompletion]beforetheWorksoraSection(as the case maybe)aretakenoverbytheProcuringEntity.

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

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

"Variation"meansanychangetotheWorks,whichisinstructedorapprovedasavariationunderClause13[Variations andAdjustments].

"Works" means the items the Procuring Entity requires the Contractor to undertake as defined in the Appendix to ConditionsofContract.**"Works"may**alsomeanthePermanentWorksandtheTemporaryWorks,oreitherofthemas appropriate.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

a) Wordsindicatingonegenderincludeallgenders;
b) words indicating the singular also include the plural and words indicating the plural also include the singular;
c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting inapermanentrecord;and

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

1.3 Communications

13.1 WherevertheseConditionsprovideforthegivingorissuingofapprovals,certificates,consents,determinations, notices,requestsanddischarges,thesecommunicationsshallbe:

a) Inwritinganddeliveredbyhand(againstreceipt),sentbymailorcourier,or transmitted using any of theagreedsystemsofelectronictransmissionasstatedintheSpecialConditionsofContract;and
b) delivered,sentortransmittedtotheaddressfortherecipient'scommunicationsasstated inthe SpecialConditionsofContract.However:

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

13.2 Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificateisissuedtoaParty,thecertifiershallsendacopytotheotherParty.Whenanoticeisissuedtoa Party, bytheotherPartyortheEngineer,acopyshallbesenttotheArchitectortheotherParty,as the casemaybe.

1.4 Law andLanguage

1.4.1 TheContractshallbegovernedbythelawsof**Kenya.**

1.4.2 TherulinglanguageoftheContractshallbe**English.**

1.5 PriorityofDocuments

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

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

Ifanambiguityordiscrepancyisfoundinthedocuments,theArchitectshallissueanynecessaryclarificationor instruction.

1.6 ContractAgreement

The Parties shall enter into a Contract Agreement within 14 days after the Contractor receives the Contract Agreement,unlesstheSpecialConditionsestablishotherwise.TheContractAgreementshallbebaseduponthe formannexedtotheSpecialConditions.Thecostsofstampdutiesandsimilarcharges(ifany)imposedbylawin connectionwithentryintotheContractAgreementshallbebornebytheProcuringEntity.

1.7 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:

a) MayassignthewholeoranypartwiththepriorconsentoftheprocuringEntity,and
b) may,assecurityinfavorofabankorfinancialinstitution,assignitsrighttomoneysdue,ortobecomedue, undertheContract.

1.8 CareandSupplyofDocuments

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

1.8.2 EachoftheContractor'sDocumentsshallbeinthecustodyandcareoftheContractor,unlessanduntiltakenover bytheProcuringEntity.UnlessotherwisestatedintheContract,theContractorshallsupplytotheArchitecttwo copiesofeachoftheContractor'sDocuments.

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

1.8.4 IfaPartybecomesawareofanerrorordefectinadocumentwhichwaspreparedforuseinexecutingtheWorks, thePartyshallpromptlygivenoticetotheotherPartyofsucherrorordefect.

1.9 TimelyprovisionofDrawingsorInstructions

1.9.1 TheContractorshallgivenoticetotheArchitectwhenevertheWorksarelikelytobedelayedordisruptedifany necessary drawing or instruction is not issued to the Contractor within a particular time, which shall be reasonable.Thenoticeshallincludedetailsofthenecessarydrawingorinstruction,detailsofwhyandbywhen itshouldbeissued, and the natureandamountofthedelayordisruptionlikelytobesufferedifitislate.

1.9.2 If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Architect to issue the notified drawingorinstructionwithinatimewhichisreasonableandisspecifiedinthenoticewithsupportingdetails,the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor'sClaims]to:

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

b) paymentofanyotherassociatedcostsaccrued,whichshallbeincludedintheContractPrice.

1.9.3 After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations]toagreeordeterminethesematters.

1.9.4 However, if and to the extent that the Architect failure was caused by any error or delay by the Contractor, includinganerrorin,ordelayinthesubmissionof,anyoftheContractor'sDocuments,theContractorshallnot beentitledtosuchextensionoftime,orcostsaccrued.

1.10 ProcuringEntity'sUseofContractor'sDocuments

1.10.1 AsagreedbetweentheParties,theContractorshallretainthecopyrightandotherintellectualpropertyrightsin theContractor'sDocumentsandotherdesigndocumentsmadeby(oronbehalfof)theContractor.

1.10.2 The Contractor shall be deemed (by signing the Contract) to give to the Procuring Entity a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, includingmakingandusingmodificationsofthem.Thislicenseshall:

a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
b) entitleanypersoninproperpossessionoftherelevantpartoftheWorkstocopy,useandcommunicatethe Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairinganddemolishingtheWorks,and
c) in the caseofContractor'sDocumentswhichareintheformofcomputerprogramsandothersoftware, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacementsofanycomputerssuppliedbytheContractor.

1.10.3 TheContractor'sDocumentsandotherdesigndocumentsmadeby(oronbehalfof)theContractorshallnot, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) the ProcuringEntityforpurposesotherthanthosepermittedunderSub-Clause1.10.2.

1.11 Contractor'sUseofProcuringEntity'sDocuments

AsagreedbetweentheParties,theProcuringEntityshallretainthecopyrightandotherintellectualproperty rightsintheSpecification,theDrawingsandotherdocumentsmadeby(oronbehalfof)theProcuringEntity.TheCon tractormay,athiscost,copy,use,andobtaincommunicationofthesedocumentsforthepurposesof the Contract. They shall not, without the Procuring Entity's consent, be copied, used or communicated to a thirdpartybytheContractor,exceptasnecessaryforthepurposesoftheContract.

1.12 ConfidentialDetails

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

1.12.2 TheContractor'sandtheProcuringEntity'sPersonnelshallalsotreatthedetailsoftheContractasprivateand confidential, except to the extent necessary to carry out their respective obligations under the Contract or to complywithapplicableLaws.EachofthemshallnotpublishordiscloseanyparticularsoftheWorksprepared 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 qualificationstocompeteforotherprojects.

1.13 Compliance withLaws

TheContractorshall,inperformingtheContract,complywithapplicableLaws.Unlessotherwisestatedinthe SpecialConditionsofContract:

a) TheProcuringEntityshallhaveobtained(orshallobtain)theplanning,zoning,buildingpermitorsimilar permissionforthePermanentWorks,andanyotherpermissionsdescribedintheSpecificationsashaving been(ortobe)obtainedbytheProcuringEntity; and the ProcuringEntityshallindemnifyandholdthe Contractorharmlessagainstandfromtheconsequencesofanyfailuretodoso;and

b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Procuring Entity harmless againstandfromtheconsequencesofanyfailuretodoso,unlesstheContractorisimpededtoaccomplish theseactionsandshowsevidenceofitsdiligence.

1.14 JointandSeveralLiability

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

a) Thesepersonsshallbedeemedtobejointlyandseverallyliabletothe ProcuringEntityfortheperformance of the Contract;
b) these persons shall notify the Procuring Entity of their leader who shall have authority to bind the Contractorandeachofthesepersons;and
c) the Contractor shall not alter its composition or legal status without the prior consent of the Procuring Entity.

1.15 InspectionsandAuditbytheProcuringEntity

Pursuanttoparagraph2.2(e).ofAppendixBtotheGeneralConditions,theContractorshallpermitandshall cause its subcontractors and sub-consultants to permit, the Public Procurement RegulatoryAuthority, ProcuringEntityand/orpersonsappointedordesignatedbytheGovernmentofKenyatoinspecttheSiteand/or theaccountsandrecordsrelatingtotheprocurementprocess,selectionand/orcontractexecution,andtohavesuchacc ountsandrecordsauditedbyauditorsappointedbytheProcuringEntityifrequestedbytheProcuring 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 ofthe ProcuringEntity'sinspectionandauditrightsconstituteaprohibitedpracticesubjecttocontracttermination(as wellastoadetermination ofineligibilitypursuanttotheProcuringEntity'sprevailingsanctionsprocedures).

2 THE PROCURINGENTITY

2.1 RightofAccesstotheSite

2.1.1 TheProcuringEntityshallgivetheContractorrightofaccessto,andpossessionof,allpartsoftheSitewithin thetime(ortimes)statedinthe**SpecialConditionsofContract.**Therightandpossessionmaynotbeexclusive to the Contractor.If,undertheContract,theProcuringEntityisrequiredtogive(to the Contractor)possession ofanyfoundation,structure,plantormeansofaccess,theProcuringEntityshalldosointhetimeandmanner statedintheSpecification.However,theProcuringEntitymaywithholdanysuchrightorpossessionuntilthe PerformanceSecurityhasbeenreceived.

2.1.2 If no such time is stated in the Special Conditions of Contract, the Procuring Entity shall give the Contractor rightofaccessto,andpossessionof,theSitewithinsuchtimesasrequiredtoenabletheContractortoproceed withoutdisruptioninaccordancewiththeprogrammesubmittedunderSub-Clause8.3[Programme].

2.1.3 IftheContractorsuffersdelayand/orincursCostasaresultofafailurebytheProcuringEntitytogiveanysuch right or possession within such time, the Contractor shall give notice to the Architect and shall be entitled subjecttoSub-Clause20.1[Contractor'sClaims]to:
a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [ExtensionofTimeforCompletion],and
b) paymentofanysuchCost-plusprofit,whichshallbeincludedintheContractPrice.

2.1.4 Afterreceivingthisnotice,theArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]to agreeordeterminethesematters.

2.1.5 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 Contractorshallnotbeentitledtosuchextensionoftime,Costorprofit.

2.2 Permits, Licenses or Approvals

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

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

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

2.3 Procuring Entity's Personnel

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

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

b) take actions similar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) of Sub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

2.4 Procuring Entity's Financial Arrangements

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

3 THE ENGINEER

3.1 Architect Duties and Authority

3.1.1 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.**

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

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

3.1.4 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.

3.1.5 Except as otherwise stated in these Conditions:

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

3.1.6 Thefollowingprovisionsshallapply:

TheArchitectshallobtainthespecificapprovaloftheProcuringEntitybeforetakingactionunderthe-following Sub-ClausesoftheseConditions:

a) Sub-Clause4.12:agreeingordeterminingan extensionoftimeand/oradditionalcost.

b) Sub-Clause13.1:instructingaVariation,except;

i) Inanemergencysituationasdeterminedbytheengineer,or

ii) IfsuchaVariationwouldincreasetheAcceptedContractAmountbylessthanthepercentagespecified in the **SpecialConditionsofContract.**

c) Sub-Clause13.3:ApprovingaproposalforVariationsubmittedbytheContractorinaccordancewithSub Clause13.1or13.2.

d) Sub-Clause13.4:Specifyingtheamountpayableineachoftheapplicablethreecurrencies.

3.1.7 Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergencyoccursaffectingthesafetyoflifeoroftheWorksorofadjoiningproperty,hemay,withoutrelieving theContractorofanyofhisdutiesandresponsibilityundertheContract,instructtheContractortoexecuteall suchworkortodoallsuchthingsasmay,in the opinionoftheEngineer,benecessarytoabateorreducetherisk. TheContractorshallforthwithcomply,despitetheabsenceofapprovaloftheProcuringEntity,withanysuch instructionoftheEngineer.TheArchitectshalldetermineanadditiontotheContractPrice,inrespectofsuch instruction, in accordance with Clause 13 and shall notify the Contractor accordingly, with a copy to the ProcuringEntity.

3.2 DelegationbytheEngineer

3.2.1 TheArchitectmayfromtimetotimeassigndutiesanddelegateauthoritytoassistantsandmayalsorevokesuch assignment or delegation. These assistants may include a resident Engineer, and/or independent inspectors appointedtoinspectand/ortestitemsofPlantand/orMaterials.Theassignment,delegationorrevocationshall be in writing and shall not take effect until copies have been received by both Parties. However, unless otherwise agreed by both Parties, the Architect shall not delegate the authority to determine any matter in accordancewithSub-Clause3.5[Determinations].

3.2.2 Eachassistant,towhomdutieshavebeenassignedorauthorityhasbeendelegated,shallonlybeauthorizedto issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

a) Anyfailuretodisapproveanywork,PlantorMaterialsshallnotconstituteapproval,andshallthereforenot prejudicetherightoftheArchitecttorejectthework,PlantorMaterials;

b) IftheContractorquestionsanydeterminationorinstructionofanassistant,theContractormayreferthe mattertotheEngineer,whoshallpromptlyconfirm,reverseorvarythedeterminationorinstruction.

3.3 InstructionsoftheEngineer

3.3.1 TheArchitectmayissuetotheContractor(atanytime)instructionsandadditionalormodifiedDrawingswhich maybenecessaryfortheexecutionoftheWorksandtheremedyingofanydefects,allinaccordancewiththe Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriateauthorityhasbeendelegatedunderClause3.2.1.

3.3.2 TheContractorshallcomplywiththeinstructionsgivenbytheArchitectordelegatedassistant,onanymatter relatedtotheContract.Wheneverpracticable,theirinstructionsshallbegiveninwriting.IftheArchitectora delegatedassistant:

a) Givesanoralinstruction,

b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two workingdaysaftergivingtheinstruction,and

c) doesnotreplybyissuingawrittenrejectionand/orinstructionwithintwoworkingdaysafterreceivingthe confirmation,

Thentheconfirmationshallconstitutethewritteninstructionof theArchitectordelegatedassistant(as the case maybe).

3.4 ReplacementoftheEngineer

IftheProcuringEntityintendstoreplacetheEngineer,theProcuringEntityshall,innotlessthan21daysbefore theintendeddateofreplacement,givenoticetotheContractorofthename,addressandrelevantexperienceof theintendedpersontoreplacetheEngineer.

3.5 Determinations

3.5.1 WhenevertheseConditionsprovidethattheArchitectshallproceedinaccordancewiththisSub-Clause3.5to agreeordetermineanymatter,theArchitectshallconsultwitheachPartyinan endeavor toreachagreement.If agreementisnotachieved,theArchitectshallmakeafairdeterminationinaccordancewiththeContract,taking dueregardofallrelevantcircumstances.

3.5.1 TheArchitectshallgivenoticetobothPartiesofeachagreementordetermination,withsupportingparticulars, within 30days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, DisputesandArbitration].

4 THECONTRACTOR

4.1 Contractor'sGeneralObligations

4.1.1 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordancewiththeContractandwiththeArchitectinstructions,andshallremedyanydefectsintheWorks.

4.1.2 The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanentnature,requiredinandforthisdesign,execution,completionandremedyingofdefects.

4.1.3 Allequipment,material,andservicestobeincorporatedinorrequiredfortheWorksshallhavetheiroriginin anyeligiblesourcecountry.

4.1.4 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methodsofconstruction.ExcepttotheextentspecifiedintheContract,theContractor(i)shallberesponsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is requiredfortheitemtobeinaccordancewiththeContract,and(ii)shallnototherwiseberesponsibleforthe designorspecificationofthePermanentWorks.

4.1.5 The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangementsandmethodsshallbemadewithoutthishavingpreviouslybeennotifiedtotheEngineer.

4.1.6 IftheContractspecifiesthattheContractorshalldesignanypartofthePermanentWorks,thenunlessotherwise statedintheSpecialConditions:

a) TheContractorshallsubmittotheArchitecttheContractor'sDocumentsforthispartinaccordancewith theproceduresspecifiedintheContract;

b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall includeadditionalinformationrequiredbytheArchitecttoaddtotheDrawingsforco-ordinationofeach Party'sdesigns;

c) theContractorshallberesponsibleforthispartanditshall,whentheWorksarecompleted,befitforsuch purposesforwhichthepartisintendedasarespecifiedintheContract;and

d) priortothecommencementoftheTests onCompletion,theContractorshallsubmittotheArchitectthe "as-built"documentsand,ifapplicable,operationandmaintenancemanualsinaccordancewiththeSpecificationa ndinsufficientdetailfortheProcuringEntitytooperate,maintain,dismantle,reassemble, adjustandrepairthispartoftheWorks.Suchpartshallnotbeconsideredtobecompletedforthepurposes oftaking-overunderSub-Clause10.1[TakingOveroftheWorksandSections]untilthesedocumentsand manualshavebeensubmittedtotheEngineer.

42 PerformanceSecurity

42.1 TheContractorshallobtain(athiscost)aPerformanceSecurityforproperperformance, in the amountstatedin the **Special Conditions of Contract** and denominated in the currency (ies) of the Contract or in a freely convertiblecurrencyacceptabletotheProcuringEntity.IfanamountisnotstatedintheSpecialConditionsof Contract,thisSub-Clauseshallnotapply.

42.2 TheContractorshalldeliverthePerformanceSecuritytotheProcuringEntitywithin30daysafterreceivingthe 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 ProcuringEntity.

42.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executedandcompletedtheWorksandremediedanydefects.IfthetermsofthePerformanceSecurityspecify itsexpirydate, and the Contractorhasnotbecomeentitledtoreceivethe PerformanceCertificatebythedate30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Workshavebeencompletedandanydefectshavebeenremedied.

42.4 TheProcuringEntityshallnotmakeaclaimunderthePerformanceSecurity,exceptforamountstowhichthe ProcuringEntityisentitledundertheContract.

42.5 The Procuring Entity shall indemnify and hold the Contractor harmless against and from all damages, losses andexpenses(includinglegalfeesandexpenses)resultingfromaclaimunderthePerformanceSecuritytothe extenttowhichtheProcuringEntitywasnotentitledtomaketheclaim.

42.6 TheProcuringEntityshallreturnthePerformanceSecuritytotheContractorwithin14daysafterreceivinga copyoftheTaking-OverCertificate.

42.7 Without limitation to the provisions of the rest of this Sub-Clause, whenever the Architect determines an additionorareductiontotheContractPriceasaresultofachangeincostand/orlegislation,orasaresultofa Variation,amountingtomorethan25percentoftheportionoftheContractPricepayableinaspecificcurrency, theContractorshallattheArchitectrequestpromptlyincrease,ormaydecrease, as the casemaybe,thevalueof thePerformanceSecurityinthatcurrencybyanequalpercentage.

43 Contractor'sRepresentative

43.1 TheContractorshallappointtheContractor'sRepresentativeandshallgivehimallauthoritynecessarytoacton the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be providedintheSpecialConditionsofContract.

43.2 Unless the Contractor's Representative **is named in the Contract**, the Contractor shall, prior to the CommencementDate,submittotheArchitectforconsentthenameandparticularsofthepersontheContractor proposestoappointasContractor'sRepresentative.Ifconsentiswithheldorsubsequentlyrevokedintermsof Sub-Clause6.9[Contractor'sPersonnel],oriftheappointedpersonfailstoactasContractor'sRepresentative, theContractorshallsimilarlysubmitthenameandparticularsofanothersuitablepersonforsuchappointment.

43.3 TheContractorshallnot,withoutthepriorconsentoftheEngineer,revoketheappointmentoftheContractor's Representativeorappointareplacement.

43.4 ThewholetimeoftheContractor'sRepresentativeshallbegiventodirectingtheContractor'sperformanceof theContract.IftheContractor'sRepresentativeistobetemporarilyabsentfromtheSiteduringtheexecutionof the Works, a suitable replacement person shall be appointed, subject to the Architect prior consent, and the Architectshallbenotifiedaccordingly.

43.5 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause3.3 [InstructionsoftheEngineer].

43.6 The Contractor's Representative may delegate any powers, functions and authority to any competent person, andmayatanytimerevokethedelegation.AnydelegationorrevocationshallnottakeeffectuntiltheArchitect has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers,functionsandauthoritybeingdelegatedorrevoked.

43.7 TheContractor'sRepresentativeshallbefluentinthelanguageforcommunicationsdefinedinSub-Clause1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the

Contractorshallmakecompetentinterpretersavailableduringallworkinghoursinanumberdeemedsufficient bytheEngineer.

4.4 Sub-contractors

4.4.1 The Contractor shall not subcontract the whole of the Works. The contractor may however subcontract the worksasprovidedinClause34.2.

4.4.2 TheContractorshallberesponsiblefortheactsordefaultsofanySubcontractor,hisagentsoremployees,asif theyweretheactsordefaultsoftheContractor.UnlessotherwisestatedintheSpecialConditions:

a) TheContractorshallnotberequiredtoobtainconsenttosupplierssolelyofMaterials,ortoasubcontract forwhichtheSubcontractorisnamedintheContract;
b) TheprirorconsentoftheProcuringEntityshallbeobtainedtootherproposedSubcontractors;
c) the Contractor shall give the Procuring Entity not less than 14 days' notice of the intended date of the commencementofeachSubcontractor'swork,andofthecommencementofsuchworkontheSite;and
d) each subcontract shall include provisions which would entitle the Procuring Entity to require the subcontract to be assigned to the Procuring Entity under Sub-Clause 4.5 [Assignment of Benefit of Subcontract](iforwhenapplicable)orintheeventofterminationunderSub-Clause15.2[Terminationby ProcuringEntity].

4.4.3 TheContractorshallensurethattherequirementsimposedontheContractorbySub-Clause1.12[Confidential Details]applyequallytoeachSubcontractor.

4.4.4 Wherepracticable,theContractorshallgivefairandreasonableopportunityforcontractorsfromKenyatobe appointedasSubcontractors.

4.5 AssignmentofBenefitofSubcontract

IfaSubcontractor'sobligationsextendbeyondtheexpirydateoftherelevantDefectsNotificationPeriodand theEngineer,priortothisdate,instructstheContractortoassignthebenefitofsuchobligationstotheProcuring Entity,thentheContractorshalldoso.Unlessotherwisestatedintheassignment,theContractorshallhaveno liabilitytotheProcuringEntityfortheworkcarriedoutbytheSubcontractoraftertheassignmenttakeseffect.

4.6 Co-operation

4.6.1 The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunitiesforcarryingoutworkto:

a) TheProcuringEntity'sPersonnel,
b) AnyothercontractorsemployedbytheProcuringEntity,and
c) Thepersonnelofanylegallyconstitutedpublicauthorities,whomaybeemployedintheexecutiononor nearthesiteofanyworknotincludedintheContract.

4.6.2 AnysuchinstructionshallconstituteaVariationifandtotheextentthatitcausestheContractortosufferdelays and/ortoincurUnforeseeableCost.ServicesforthesepersonnelandothercontractorsmayincludetheuseofContractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.

4.6.3 If,undertheContract,theProcuringEntityisrequiredtogivetotheContractorpossessionofanyfoundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit suchdocumentstotheArchitectinthetimeandmannerstatedintheSpecification.

4.7 SettingOutoftheWorks

4.7.1 TheContractorshallsetouttheWorksinrelationtooriginalpoints,linesandlevelsofreferencespecifiedinthe Contractornotifiedbytheengineer.TheContractorshallberesponsibleforthecorrectpositioningofallparts of the Works,andshallrectifyanyerrorinthepositions,levels,dimensionsoralignmentoftheWorks.

4.7.2 TheProcuringEntityshallberesponsibleforanyerrorsinthesespecifiedornotifieditemsofreference,butthe Contractorshallusereasonableeffortstoverifytheiraccuracybeforetheyareused.

4.7.3 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 error and avoidedthisdelayand/orCost,theContractorshallgivenoticetotheArchitectandshallbeentitledsubjectto Sub-

Clause20.1[Contractor'sClaims]to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [ExtensionofTimeforCompletion],and
b) paymentofanysuchcostsaccrued,whichshallbeincludedintheContractPrice.

4.7.4 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations]toagreeordetermine(i)whetherand(ifso)towhatextenttheerrorcouldnotreasonablyhave beendiscovered,and(ii)themattersdescribedinsub-paragraphs(a)and(b)aboverelatedtothise.

4.8 SafetyProcedures

The Contractor shall:
a) Complywithallapplicablesafetyregulations,
b) Takecareforthesafetyofallpersonsentitledtobeonthesite,
c) UsereasonableeffortstokeeptheSiteandWorksclearofunnecessaryobstructionsoastoavoiddangerto thesepersons,
d) provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause10[ProcuringEntity'sTakingOver],and
e) provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of theexecutionoftheWorks,for the useandprotectionofthepublicandofowners andoccupiersofadjacentland.

4.9 QualityAssurance

4.9.1 TheContractorshallinstituteaqualityassurancesystemtodemonstratecompliancewiththerequirementsof theContract.Thesystemshallbeinaccordancewiththedetailsstatedin theContract.TheArchitectshallbe entitledtoauditanyaspectofthesystem.

4.9.2 Detailsofallproceduresandcompliancedocumentsshallbesubmittedtothe Architectforinformationbefore each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer,evidenceofthepriorapprovalbytheContractoritselfshallbeapparentonthedocumentitself.

CompliancewiththequalityassurancesystemshallnotrelievetheContractorofanyofhisduties,obligations orresponsibilitiesundertheContract.

4.10 SiteData

4.10.1 TheProcuringEntityshallhavemadeavailabletotheContractorforhisinformation,priortotheBaseDate,all relevant data in the Procuring Entity's possession on sub-surface and hydrological conditions at the Site, includingenvironmentalaspects.TheProcuringEntityshallsimilarlymakeavailabletotheContractorallsuch datawhichcomeintotheProcuringEntity'spossessionaftertheBaseDate.TheContractorshallberesponsible forinterpretingallsuchdata.

4.10.2 To theextentwhichwaspracticable(takingaccountofcostandtime),theContractorshallbedeemedtohave obtainedallnecessaryinformationastorisks,contingenciesandothercircumstanceswhichmayinfluenceor affecttheTenderorWorks.Tothesameextent,theContractorshallbedeemedtohaveinspectedandexaminedthe Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):

a) Theformandnatureofthesite,includingsub-surfaceconditions,
b) thehydrologicalandclimaticconditions,
c) theextentandnatureoftheworkandGoodsnecessaryfortheexecutionandcompletionoftheWorksand theremedyingofanydefects,
d) theLaws,proceduresandlabourpracticesofKenya,and
e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water andotherservices.

4.11 SufficiencyoftheAcceptedContractAmount

4.11.1 TheContractorshallbedeemedto:

a) HavesatisfieditselfastothecorrectnessandsufficiencyoftheAcceptedContractAmount,and

b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections,examinationsandsatisfactionastoallrelevantmattersreferredtoinSub-Clause4.10[Site Data].

4.11.2 UnlessotherwisestatedintheContract,theAcceptedContractAmountcoversalltheContractor'sobligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper executionandcompletionoftheWorksandtheremedyingofanydefects.

4.12 UnforeseeablePhysicalConditions

4.12.1 InthisSub-Clause,"physicalconditions"meansnaturalphysicalconditionsandman-madeandotherphysical obstructionsandpollutants,whichtheContractorencountersattheSitewhenexecutingtheWorks,including sub-surfaceandhydrologicalconditionsbutexcludingclimaticconditions.

4.12.2 IftheContractorencountersadversephysicalconditionswhichheconsiderstohavebeenUnforeseeable,the ContractorshallgivenoticetotheArchitectassoonaspracticable.

4.12.3 Thisnoticeshalldescribethephysicalconditions,sothattheycanbeinspectedbytheArchitectandshallsetout thereasonswhytheContractorconsidersthemtobeUnforeseeable.TheContractorshallcontinueexecuting theWorks,usingsuchproperandreasonablemeasuresasareappropriateforthephysicalconditions,andshall complywithanyinstructionswhichtheArchitectmaygive.IfaninstructionconstitutesaVariation,Clause13 [VariationsandAdjustments]shallapply.

4.12.4 If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives sucha notice,andsuffersdelayand/orincursCostduetotheseconditions,theContractorshallbeentitledsubjectto noticeunderSub-Clause20.1[Contractor'sClaims]to:

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

b) paymentofanysuchCost,whichshallbeincludedintheContractPrice.

4.12.5 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Architectshall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to whatextentthesephysicalconditionswereUnforeseeable,and(ii)thematterssdescribedinsub-paragraphs(a) and(b)aboverelatedtothisextent.

4.12.6 However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect may alsoreviewwhetherotherphysicalconditionsinsimilarpartsoftheWorks(ifany)weremorefavorablethan couldreasonablyhavebeenforeseenwhentheContractorsubmittedtheTender.IfandtotheextentthatthesemoreFavorable conditions were encountered, the Architect may proceed in accordance with Sub-Clause3.5[Determinations]toagreeordeterminethereductionsinCostwhichwereduetotheseconditions,whichma y 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 similarpartsoftheWorks,shallnotresultinanetreductionintheContractPrice.

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

4.13 RightsofWayandFacilities

UnlessotherwisespecifiedintheContracttheProcuringEntityshallprovideeffectiveaccesstoandpossession of the Siteincludingspecialand/ortemporaryrights-of-waywhicharenecessaryfortheWorks.TheContractor shallobtain,athisriskandcost,anyadditionalrightsofwayorfacilitiesoutsidetheSitewhichhemayrequire for the purposesoftheWorks.

4.14 Avoidanceof Interference

4.14.1 TheContractorshallnotinterfereunnecessarilyorimproperlywith:

a) Theconvenienceofthepublic,or

b) Theaccesstoanduseandoccupationofallroadsandfootpaths,irrespectiveofwhethertheyarepublicor in the possessionoftheProcuringEntityorofothers.

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

4.15 AccessRoute

4.15.1 TheContractorshallbedeemedtohavebeensatisfiedastothesuitabilityandavailabilityofaccessroutestothe SiteatBaseDate.TheContractorshallusereasonableeffortstopreventanyroadorbridgefrombeingdamaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriatevehiclesandroutes.

4.15.2 ExceptasotherwisestatedintheseConditions:

a) TheContractorshall(asbetweentheParties)beresponsibleforanymaintenancewhichmayberequired forhisuseofaccessroutes;

b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permissionwhichmayberequiredfromtherelevantauthoritiesforhisuseofroutes,signsanddirections;

c) theProcuringEntityshallnotberesponsibleforanyclaimswhichmayarisefromtheuseorotherwiseof anyaccessroute;

d) theProcuringEntitydoesnotguaranteethesuitabilityoravailabilityofparticularaccessroutes;and

e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of accessroutes shallbebornebytheContractor.

4.16 Transport ofGoods

Unless otherwise stated in the Special Conditions:

a) the Contractor shall give the Architect not less than 21 days' notice of the date on which any Plant or a majoritemofotherGoodswillbedeliveredtotheSite;

b) theContractorshallberesponsibleforpacking,loading,transporting,receiving,unloading,storingand protectingallGoodsandotherthingsrequiredfortheWorks;and

c) the Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from thetransportof Goods and shallnegotiateandpayallclaimsarisingfromtheirtransport.

4.17 Contractor'sEquipment

TheContractorshallberesponsibleforallContractor'sEquipment.WhenbroughtontotheSite,Contractor's Equipmentshallbedeemedtobeexclusivelyintendedfortheexecutionoftheworks.TheContractorshallnot removefromtheSiteanymajoritemsofContractor'sEquipmentwithouttheconsentoftheEngineer.However, consentshallnotberequiredforvehiclestransportingGoodsorContractor'sPersonneloffSite.

4.18 ProtectionoftheEnvironment

4.18.1 Thecontractorshallcomplywiththeapplicableenvironmentallaws,regulationsandpolicies.

4.18.2 TheContractorshalltakeallreasonablestepstoprotecttheenvironment(bothonandofftheSite)andtolimit damageandnuisancetopeopleandpropertyresultingfrompollution,noiseandotherresultsofhisoperations.

4.18.3 TheContractorshallensurethatemissions,surfacedischargesandeffluentfromtheContractor'sactivitiesshall notexceedthevaluesstatedintheSpecificationorprescribedbyapplicableLaws.

4.19 Electricity,WaterandGas

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

4.192 TheContractorshallbeentitledtouseforthepurposesoftheWorkssuchsuppliesofelectricity,water,gasand otherservicesasmaybeavailableontheSiteandofwhichdetailsandpricesaregivenintheSpecifications.The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuringthequantitiesconsumed.

4.193 Thequantitiesconsumedandtheamountsdue(attheseprices)forsuchservicesshallbeagreedordetermined by the Architect in accordance with Sub-Clause 2.5 [Procuring Entity's Claims] and Sub-Clause 3.5 [Determinations].TheContractorshallpaytheseamountstotheProcuringEntity.

4.20 ProcuringEntity'sEquipmentandFree-IssueMaterials

4.20.1 The Procuring Entity shall make the Procuring Entity's Equipment (if any) available for the use of the ContractorintheexecutionoftheWorksinaccordancewiththedetails,arrangementsandpricesstatedinthe Specification.UnlessotherwisestatedintheSpecification:

a) TheProcuringEntityshallberesponsiblefortheProcuringEntity'sEquipment,exceptthat

b) the Contractor shall be responsible for each item of Procuring Entity's Equipment whilst any of the Contractor'sPersonnelisoperatingit,drivingit,directingitorinpossessionorcontrolofit.

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

4.20.2 The Procuring Entity shall supply, free of charge, the "free-issue materials" (if any) in accordance with the detailsstatedintheSpecification.TheProcuringEntityshall,athisriskandcost,providethesematerialsatthe timeandplacespecifiedintheContract.TheContractorshallthenvisuallyinspectthemandshallpromptlygive notice to the Architect of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties,theProcuringEntityshallimmediatelyrectifythenotifiedshortage,defectordefault.

4.20.3 After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor.TheContractor'sobligationsofinspection,care,custodyandcontrolshallnotrelievetheProcuring Entityofliabilityforanyshortage,defectordefaultnotapparentfromavisualinspection.

4.21 ProgressReports

4.21.1 Unless otherwise stated in the Special Conditions, monthly progress reports shall be prepared by the ContractorandsubmittedtotheArchitectinsixcopies.Thefirstreportshallcovertheperioduptotheend of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter,eachwithin7daysafterthelastdayoftheperiodtowhichitrelates.

4.21.2 ReportingshallcontinueuntiltheContractorhascompletedallworkwhichisknowntobeoutstandingat thecompletiondatestatedintheTaking-OverCertificatefortheWorks.Eachreportshallinclude:

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

b) photographsshowingthestatusofmanufactureandofprogressontheSite;

c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacturelocation,percentageprogress, and the actualorexpecteddatesof:

   i) commencementofmanufacture,

   ii) Contractor'sinspections,

   iii) tests,and

   iv) shipmentandarrivalattheSite;

d) thedetailsdescribedinSub-Clause6.10[RecordsofContractor'sPersonnelandEquipment];

e) copiesofqualityassurancedocuments,testresultsandcertificatesofMaterials;

f) listofnoticesgivenunderSub-Clause2.5[ProcuringEntity'sClaims]andnoticesgivenunderSub-Clause20.1[Contractor'sClaims];

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

environmentalaspectsandpublicrelations;and

h) comparisonsofactualandplannedprogress,withdetailsofanyeventsorcircumstanceswhichmay jeopardize the completion in accordance with the Contract, and the measures being (or to be) adoptedtoovercomedelays.

4.22 SecurityoftheSite

Unless otherwise stated in the Special Conditions:

a) TheContractorshallberesponsibleforkeepingunauthorizedpersonsofftheSite,and

b) authorized persons shall be limited to the Contractor's Personnel and the Procuring Entity's Personnel; and to any other personnel notified to the Contractor, by the Procuring Entity or the Engineer, as authorized personneloftheProcuringEntity'sothercontractorsontheSite.

4.23 Contractor'sOperationsonSite

423.1 TheContractorshallconfinehisoperationstotheSite,andtoanyadditionalareaswhichmaybeobtained bytheContractorandagreedbytheArchitectasadditionalworkingareas.TheContractorshalltakeall necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and theseadditionalareas,andtokeepthemoffadjacentland.

423.2 DuringtheexecutionoftheWorks,theContractorshallkeeptheSitefreefromallunnecessaryobstruction andshallstoreordisposeofanyContractor'sEquipmentorsurplusmaterials.TheContractorshallclear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

423.3 UpontheissueofaTaking-OverCertificate,theContractorshallclearawayandremove,fromthatpartof the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material,wreckage,rubbishandTemporaryWorks.TheContractorshallleavethatpartoftheSiteandthe Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects NotificationPeriod,suchGoodsasarerequiredfortheContractortofulfilobligationsundertheContract.

4.24 Fossils

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

424.2 TheContractorshall,upondiscoveryofanysuchfinding,promptlygivenoticetotheEngineer,whoshallissue 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'sClaims]to:

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

b) paymentofanysuchCost,whichshallbeincludedintheContractPrice.

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

5 NOMINATEDSUBCONTRACTORS

5.1 Definitionof"nominatedSubcontractor"

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

a) WhoisnominatedbytheProcuringEntity,or

b) ContractorhasnominatedasaSubcontractorsubjecttoSub-Clause5.2[ObjectiontoNotification].

5.2 ObjectiontoNomination

The Contractor shall not be under any obligation to employ a nominated Subcontractor against whom the Contractorraisesreasonableobjectionbynoticetothe ProcuringEntityassoonaspracticable,withsupporting particulars.Anobjectionshallbedeemedreasonableifitarisesfrom(amongotherthings)anyofthefollowing matters, unless the Procuring Entity agrees in writing to indemnify the Contractor against and from the consequencesofthematter:

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

financialstrength;

b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligenceormisuseofGoodsbythenominatedSubcontractor,hisagentsandemployees;or

c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontractedwork(includingdesign,ifany),thenominatedSubcontractorshall:

i) undertaketotheContractorsuchobligationsandliabilitiesaswillenabletheContractortodischarge hisobligationsandliabilitiesundertheContract;

ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to performtheseobligationsortofulfiltheseliabilities,and

iii) bepaidonlyifandwhentheContractorhasreceivedfromtheProcuringEntitypaymentsforsums dueundertheSubcontractreferredtounderSub-Clause5.3[PaymenttonominatedSubcontractors].

5.3 PaymentstonominatedSubcontractors

TheContractorshallpaytothenominatedSubcontractortheamountsshownonthenominatedSubcontractor's invoicesapprovedbytheContractorwhichtheArchitectcertifiestobedueinaccordancewiththesubcontract. Theseamountsplusotherchargesshallbeincludedin theContractPriceinaccordancewithsub-paragraph(b) ofSub-Clause13.5[ProvisionalSums],exceptasstatedinSub-Clause5.4[EvidenceofPayments].

5.4 Evidence ofPayments

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

(a) SubmitsthisreasonableevidencetotheEngineer,or

(b) i) SatisfiestheArchitectinwritingthattheContractorisreasonablyentitledtowithholdorrefuseto paytheseamounts,and

ii) SubmitstotheArchitectreasonableevidencethatthenominatedSubcontractorhasbeennotifiedof theContractor'sentitlement,thentheProcuringEntitymay(athissolediscretion)pay,directtothe 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 submittheevidencedescribedinsub-paragraphs(a)or(b)above.TheContractorshallthenrepay, to the Procuring Entity, the amount which the nominated Subcontractor was directly paid by the ProcuringEntity.

6 STAFFANDLABOR

6.1 EngagementofStaffandLabor

ExceptasotherwisestatedintheSpecification,theContractorshallmakearrangementsfortheengagementof allstaffandlabor,localorotherwise,andfortheirpayment,feeding,transport,and,whenappropriate,housing. The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labor with appropriatequalificationsandexperiencefromsourceswithinKenya.

6.2 RatesofWagesandConditionsofLabor

6.2.1 The Contractor shall pay rates of wages, and observe conditions of labor, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable,theContractorshallpayratesofwagesandobserveconditionswhicharenotlowerthanthegeneral levelofwagesandconditionsobservedlocallybyProcuringEntity'swhosetradeorindustryissimilartothatof theContractor.

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

6.3 PersonsintheServiceofProcuringEntity

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

6.4 LaborLaws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, includingLawsrelatingtotheiremployment,employmentofchildren,health,safety,welfare,immigrationand emigration, and shall allow them all their legal rights. The Contractor shall require his employees to obey all applicableLaws,includingthoseconcerningsafetyatwork.

6.5 WorkingHours

NoworkshallbecarriedoutontheSiteonlocallyrecognizeddaysofrest,oroutsidethenormalworkinghours statedintheSpecialConditionsofContract,unless:

a) OtherwisestatedintheContract,
b) TheArchitectgivesconsent,or
c) Theworkisunavoidable,ornecessaryfortheprotectionoflifeorpropertyorforthesafetyoftheWorks,in which case the Contractor shall immediately advise the Engineer, provided that work done outside the normalworkinghoursshallbeconsideredandpaidforasovertime.

6.6 FacilitiesforStaffandLabor

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodationandwelfarefacilitiesonsitefortheContractor'sPersonnel.TheContractorshallalsoprovide facilitiesfortheProcuringEntity'sPersonnelasstatedintheSpecifications.TheContractorshallnotpermitany of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures formingpartofthePermanentWorks.

6.7 Health andSafety

6.7.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor'sPersonnel.Incollaborationwithlocalhealthauthorities,theContractorshallensurethatmedical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodationforContractor'sandProcuringEntity'sPersonnel,andthatsuitablearrangementsaremadefor allnecessarywelfareandhygienerequirementsandforthepreventionofepidemics.

6.7.2 TheContractorshallappointanaccidentpreventionofficerattheSite,responsibleformaintainingsafetyand protectionagainstaccidents.Thispersonshallbequalifiedforthisresponsibilityandshallhavetheauthorityto issue instructions and take protective measures to prevent accidents. Throughout the execution of theWorks, theContractorshallprovidewhateverisrequiredbythispersontoexercisethisresponsibilityandauthority.

6.7.3 The Contractor shall send, to the Engineer, details of any accident as soon as practicable after itsoccurrence. TheContractorshallmaintainrecordsandmakereportsconcerninghealth,safetyandwelfareofpersons,and damagetoproperty, as the Architectmayreasonablyrequire.

6.7.4 TheContractorshallconductanawarenessprogrammeonHIVandothersexuallytransmitteddiseasesviaan approved service provider and shall undertake such other measures taken to reduce the risk of the transfer of these diseases between and among the Contractor's Personnel and the local community, to promote early diagnosisandtoassistaffectedindividuals.

6.8 Contractor'sSuperintendence

6.8.1 Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations,theContractorshallprovideallnecessarysuperintendencetoplan,arrange,direct,manage,inspect andtestthework.

6.8.2 Superintendenceshallbegivenbyasufficientnumberofpersonshavingadequateknowledgeofthelanguage for communications (defined in Sub-Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventingaccidents), for the satisfactoryandsafeexecutionoftheWorks.

6.9 Contractor'sPersonnel

6.9.1 TheContractor'sPersonnelshallbeappropriatelyqualified,skilledandexperiencedintheirrespectivetradesor occupations. The Contractors Key personnel shall be named in the Special Conditions of Contract. The ArchitectmayrequiretheContractortoremove(orcausetoberemoved)anypersonemployedontheSiteor Works,includingtheContractor'sRepresentativeifapplicable,who:

a) Persistsinanymisconductorlackofcare,
b) Carriesoutdutiesincompetentlyornegligently,
c) failstoconformwithanyprovisionsoftheContract,
d) persistsinanyconductwhichisprejudicialtosafety,health,ortheprotectionoftheenvironment,or
e) based on reasonable evidence, is determined to have engaged in Fraud and Corruption during the executionoftheWorks.

6.9.2 Ifappropriate,theContractorshallthenappoint(orcausetobeappointed)asuitablereplacementperson.

6.10 RecordsofContractor'sPersonnelandEquipment

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,inaformapprovedbytheEngineer,untiltheContractorhascompletedallworkwhichisknowntobe outstandingatthecompletiondatestatedintheTaking-OverCertificatefortheWorks.

6.11 DisorderlyConduct

TheContractorshallatalltimestakeallreasonableprecautionstopreventanyunlawful,riotousordisorderly conductbyoramongsttheContractor'sPersonnel,andtopreservepeaceandprotectionofpersonsandproperty onandneartheSite.

6.12 ForeignPersonnel

6.12.1 TheContractorshallnotemployforeignpersonnelunlessthecontractordemonstratesthattherearenoKenyans with the requiredskills.

6.12.2 The Contractor shall be responsible for the return of any foreign personnel to the place where they were recruitedortotheirdomicile.IntheeventofthedeathinKenyaofanyofthesepersonnelormembersoftheir families,theContractorshallsimilarlyberesponsibleformakingtheappropriatearrangementsfortheirreturn orburial.

6.13 SupplyofWater

TheContractorshall,havingregardtolocalconditions,provideontheSiteanadequatesupplyofdrinkingand otherwaterfortheuseoftheContractor'sPersonnel.

6.14 MeasuresagainstInsectandPestNuisance

TheContractorshallatalltimestakethenecessaryprecautionstoprotecttheContractor'sPersonnelemployed on the Sitefrominsectandpestnuisance,andtoreducethedangertotheirhealth.TheContractorshallcomply with all theregulationsofthelocalhealthauthorities,includinguseofappropriateinsecticide.

6.15 AlcoholicLiquororDrugs

TheContractorshallnot,otherwisethaninaccordancewiththeLawsofKenya,onsite,import,sell,give,barter orotherwisedisposeofanyalcoholicliquorordrugs,orpermitorallowimportation,sale,gift,barterordisposal thereofbyContractor'sPersonnel.

6.16 ProhibitionofForcedorCompulsoryLabour

TheContractorshallnotemployforcedlabor,whichconsistsofanyworkorservice,notvoluntarilyperformed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsorylabor,suchasindenturedlabor,bondedlabororsimilarlabor-contractingarrangements.

6.17 ProhibitionofHarmfulChildLabor

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous,ortointerferewith,thechild'seducation,ortobeharmfultothechild'shealthorphysical,mental, spiritual, moral, or social development. Where the relevant labour laws of Kenya have provisions for employmentofminors,theContractorshallfollowthoselawsapplicabletotheContractor.Childrenbelowthe ageof18yearsshallnotbeemployedindangerouswork.

6.18 EmploymentRecordsofWorkers

TheContractorshallkeepcompleteandaccuraterecordsoftheemploymentoflabourattheSite.Therecords shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarizedonamonthlybasisandsubmittedtotheEngineer.Theserecordsshallbeincludedinthedetailsto besubmittedbytheContractorunderSub-Clause6.10[RecordsofContractor'sPersonnelandEquipment].

6.19 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.

6.20 Non-DiscriminationandEqualOpportunity

TheContractorshallbasethelabouremploymentontheprincipleofequalopportunityandfairtreatmentand shallnotdiscriminatewithrespecttoaspectsoftheemploymentrelationship,includingrecruitmentandhiring, compensation(includingwagesandbenefits),workingconditionsandtermsofemployment,accesstotraining, promotion,terminationofemploymentorretirement,anddiscipline.

7. PLANT,MATERIALSANDWORKMANSHIP

7.1 MannerofExecution

TheContractorshallcarryoutthemanufacture/assembleofplant,theproductionandmanufactureofMaterials, andallotherexecutionoftheWorks:

a) In the manner(ifany)specifiedintheContract,
b) inaproperworkmanlikeandcarefulmanner,inaccordancewithrecognizedgoodpractice,and
c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

TheContractorshallsubmitthefollowingsamplesofMaterials,andrelevantinformation, to the Architectfor consentpriortousingtheMaterialsinorfortheWorks:

a) manufacturer'sstandardsamplesofMaterialsandsamplesspecifiedintheContract,allattheContractor's cost,and
b) additionalsamplesinstructedbytheArchitectasaVariation.

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

7.3 Inspection

7.3.1 ThePrOcuringEntity'sPersonnelshallatallreasonabletimes:

a) HavefullaccesstoallpartsoftheSiteandtoallplacesfromwhichnaturalMaterialsarebeingobtained, and
b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plantandproductionandmanufactureof Materials.

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

7.3.3 TheContractorshallgivenoticetotheArchitectwheneveranyworkisreadyandbeforeitiscoveredup,putout of sight, or packaged for storage or transport. The Architect shall then either carry out the examination, inspection,measurementortestingwithoutunreasonabledelay,orpromptlygivenoticetotheContractorthat theArchitectdoesnotrequiretodoso.IftheContractorfailstogivethenotice,heshall,ifandwhenrequiredby theEngineer,uncovertheworkandthereafterreinstateandmakegood,allattheContractor'scost.

7.4 Testing

7.4.1 ThisSub-ClauseshallapplytoalltestsspecifiedintheContract.

7.4.2 ExceptasotherwisespecifiedintheContract,theContractorshallprovideallapparatus,assistance,documents and

other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualifiedandexperiencedstaff,asarenecessarytocarryoutthespecifiedtestsefficiently.TheContractorshall agree, with the Engineer,thetimeandplaceforthespecifiedtestingofanyPlant,Materialsandotherpartsofthe Works.

7.4.3 TheArchitectmay,underClause13[VariationsandAdjustments],varythelocationordetailsofspecifiedtests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant,Materialsorworkmanshipisnotinaccordancewiththe Contract,thecostofcarryingoutthisVariation shallbebornebytheContractor,notwithstandingotherprovisionsoftheContract.

7.4.4 TheArchitectshallgivetheContractornotlessthan24hours'noticeoftheArchitectintentiontoattendthetests. IftheArchitectdoesnotattendatthetimeandplaceagreed,theContractormayproceedwiththetests,unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Architect presence.

7.4.5 IftheContractorsuffersdelayand/orincursCostfromcomplyingwiththeseinstructionsorasaresultofadelay for which the Procuring Entity is responsible, the Contractor shall give notice to the Architect and shall be entitledsubjecttoSub-Clause20.1[Contractor'sClaims]to:

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

b) paymentofanysuchCost-plusprofit,whichshallbeincludedintheContractPrice.

7.4.6 Afterreceivingthisnotice,theArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]to agreeordeterminethesematters.

7.4.7 The Contractor shall promptly forward to the Architect duly certified reports of the tests. When thespecified testshavebeenpassed,theArchitectshallendorsetheContractor'stestcertificate,orissueacertificatetohim, to that effect. If the Architect has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5 Rejection

7.5.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Architect may reject the Plant, Materialsorworkmanshipbygivingnoticetothe Contractor,withreasons.TheContractorshallthenpromptly makegoodthedefectandensurethattherejecteditemcomplieswiththeContract.

7.5.2 IftheArchitectrequiresthisPlant,Materialsorworkmanshiptoberetested,thetestsshallberepeatedunderthe sametermsandconditions.Iftherejectionandretestingcausethe ProcuringEntitytoincuradditionalcosts,the Contractorshallsubjecttosub-Clause2.5[ProcuringEntity'sClaims]paythesecoststothe ProcuringEntity.

7.6 RemedialWork

7.6.1 Notwithstandinganyprevioustestorcertification,theArchitectmayinstructtheContractorto:

a) RemovefromtheSiteandreplaceanyPlantorMaterialswhichisnotinaccordancewiththeContract,

b) removeandre-executeanyotherworkwhichisnotinaccordancewiththeContract,and

c) executeanyworkwhichisurgentlyrequiredforthesafetyoftheWorks,whetherbecauseofanaccident, unforeseen ableeventorotherwise.

7.6.2 The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specifiedintheinstruction,orimmediatelyifurgencyisspecifiedundersub-paragraph(c).

7.6.3 IftheContractorfailstocomplywiththeinstruction,theProcuringEntityshallbeentitledtoemployandpay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the ProcuringEntityallcostsarisingfromthisfailure.

7.6.4 If the contractor repeatedly delivers defective work, the Procuring Entity may consider termination in accordancewithClause15.

7.7 OwnershipofPlantandMaterials

ExceptasotherwiseprovidedintheContract,eachitemofPlantandMaterialsshallbecomethepropertyofthe ProcuringEntityatwhicheveristheearlierofthefollowingtimes,freefromliensandotherencumbrances:

a) WhenitisincorporatedintheWorks;

b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [PaymentforPlantandMaterialsinEventofSuspension].

7.8 Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

a) Naturalmaterialsobtainedfromoutsidethe Site,and

b) thedisposalofmaterialfromdemolitionsandexcavationsandofothersurplusmaterial(whethernatural orman-made),exceptto theextentthatdisposalareaswithintheSitearespecifiedintheContract.

8 COMMENCEMENT,DELAYSANDSUSPENSION

8.1 CommencementofWorks

8.1.1 ExceptasotherwisespecifiedintheSpecialConditionsofContract,theCommencementDateshallbethedate atwhichthefollowingprecedentconditionshaveallbeenfulfilledandtheArchitectnotificationrecordingthe agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:

a) SignatureoftheContractAgreementbybothParties,andifrequired,approvaloftheContractbyrelevant authoritiesofKenya;

b) exceptifotherwisespecifiedintheSpecialConditionsofContract,effectiveaccesstoandpossessionof the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause1.13 [CompliancewithLaws]asrequiredforthecommencementoftheWorks.

c) ReceiptbytheContractoroftheAdvancePaymentunderSub-Clause14.2[AdvancePayment]provided that the correspondingbankguaranteehasbeendeliveredbytheContractor.

8.1.2 IfthesaidArchitectinstructionisnotreceivedbytheContractorwithin180daysfromhisreceiptoftheLetterof Acceptance,theContractorshallbeentitledtoterminatetheContractunderSub-Clause16.2[Terminationby Contractor].

8.1.3 The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the CommencementDateandshallthenproceedwiththeWorkswithdueexpeditionandwithoutdelay.

8.2 TimeforCompletion

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

a) AchievingthepassingoftheTestsonCompletion,and

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

8.3 Programme

8.3.1 TheContractorshallsubmitadetailedtimeprogrammetotheArchitectwithin14daysafterreceivingthenotice 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. Eachprogrammeshallinclude:

a) TheorderinwhichtheContractorintendstocarryouttheWorks,includingtheanticipatedtimingofeach stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction,erectionandtesting,

b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),

c) thesequenceandtimingofinspectionsandtestsspecifiedintheContract,and

d) asupportingreportwhichincludes:

i) ageneraldescriptionofthemethodswhichtheContractorintendstoadopt,andofthemajorstages, in the executionoftheWorks,and

ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

8.3.2 Unless the Engineer, within 14 days after receiving a programme, gives notice to the Contractor stating the

whichhavenotbeendeliveredtoSite,if:

a) TheworkonPlantordeliveryofPlantand/orMaterialshasbeensuspendedformorethan30days,and

b) the Contractor has marked the Plant and/or Materials as the Procuring Entity's property in accordance with the Architectinstructions.

8.11 ProlongedSuspension

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 permissionwithin 30daysafterbeingrequestedtodoso,theContractormay,bygivingnoticetotheEngineer,treatthesuspension asanomissionunderClause13[VariationsandAdjustments] of the affectedpartoftheWorks.Ifthesuspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [TerminationbyContractor].

8.12 ResumptionofWork

After the permissionorinstructiontoproceedisgiven,theContractorandtheArchitectshalljointlyexamine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deteriorationordefectinorlossoftheWorksorPlantorMaterials,whichhasoccurredduringthesuspension afterreceivingfromtheArchitectaninstructiontothiseffectunderClause13[VariationsandAdjustments].

9. TESTS ONCOMPLETION

9.1 Contractor'sObligations

9.1.1 The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing],afterprovidingthedocumentsinaccordancewithsub-paragraph(d)ofSub-Clause4.1[Contractor's GeneralObligations].

9.1.2 TheContractorshallgivetotheArchitectnotlessthan21days'noticeofthedateafterwhichtheContractorwill bereadytocarryouteachoftheTestsonCompletion.Unlessotherwiseagreed,TestsonCompletionshallbe carriedoutwithin14daysafterthisdate,onsuchdayordaysastheArchitectshallinstruct.

9.1.3 InconsideringtheresultsoftheTestsonCompletion,theArchitectshallmakeallowancesfortheeffectofany useoftheWorksbytheProcuringEntityontheperformanceorothercharacteristicsoftheWorks.Assoonasthe Works,oraSection,havepassedanyTestsonCompletion,theContractorshallsubmitacertifiedreportofthe resultsoftheseTeststotheEngineer.

9.2 DelayedTests

9.2.1 If the Tests on Completion are being unduly delayed by the Procuring Entity, Sub-Clause 7.4 [Testing] (fifth paragraph)and/orSub-Clause10.3[InterferencewithTestsonCompletion]shallbeapplicable.

9.2.2 IftheTestsonCompletionarebeingundulydelayedbytheContractor,theArchitectmaybynoticerequirethe Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Testsonsuchdayordayswithinthatperiodasthecontractormayfixandofwhichheshallgivenoticetothe Engineer.

9.2.3 IftheContractorfailstocarryouttheTestsonCompletionwithintheperiodof21days,theProcuringEntity's Personnelmayproceedwiththe Testsattheriskandcostofthe Contractor.TheTestsonCompletionshallthen bedeemedtohavebeencarriedoutinthepresenceoftheContractorandtheresultsoftheTestsshallbeaccepted asaccurate.

9.3 Retestingofrelatedworks

IftheWorks,oraSection,failtopasstheTestsonCompletion,Sub-Clause7.5[Rejection]shallapply,andthe Architect or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeatedunderthesametermsandconditions.

9.4 FailuretoPassTestsonCompletion

9.4.1 IftheWorks,oraSection,failtopasstheTestsonCompletionrepeatedunderSub-Clause9.3[Retesting],the Architectshallbeentitledto:

a) OrderfurtherrepetitionofTestsonCompletionunderSub-Clause9.3;or

b) if the failure deprives the Procuring Entity of substantially the whole benefit of the Works or Section, rejecttheWorksorSection(as the casemaybe),inwhicheventtheProcuringEntityshallhavethesame remediesasareprovidedinsub-paragraph(c)ofSub-Clause11.4[FailuretoRemedyDefects].

10 PROCURINGENTITY'STAKINGOVER

10.1 TakingOveroftheWorksandSections

10.1.1 ExceptasstatedinSub-Clause9.4[FailuretoPassTestsonCompletion],theWorksshallbetakenoverbythe Procuring Entity when (i) the Works have been completed in accordance with the Contract, including the mattersdescribedinSub-Clause8.2[TimeforCompletion]andexceptasallowedinsub-paragraph(a)below, and(ii)aTaking-OverCertificatefortheWorkshasbeenissued,orisdeemedtohavebeenissuedinaccordance withthisSub-Clause.

10.1.2 TheContractormayapplybynoticetotheArchitectforaTaking-OverCertificatenotearlierthan14daysbefore theWorkswill, in the Contractor'sopinion,becompleteandreadyfortakingover.IftheWorksaredividedinto Sections,theContractormaysimilarlyapplyforaTaking-OverCertificateforeachSection.

10.1.3 TheArchitectshall,within30daysafterreceivingtheContractor'sapplication:

a) IssuetheTaking-OverCertificatetotheContractor,statingthedateonwhichtheWorksorSectionwere completedinaccordancewiththeContract,exceptforanyminoroutstandingworkanddefectswhichwill notsubstantiallyaffecttheuseoftheWorksorSectionfortheirintendedpurpose(eitheruntilorwhilstthis workiscompletedandthesedefectsareremedied);or

b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuingafurthernoticeunderthisSub-Clause.

10.1.4 IftheArchitectfailseithertoissuetheTaking-OverCertificateortorejecttheContractor'sapplicationwithin theperiodof30days,andiftheWorksorSection(as the casemaybe)aresubstantiallyinaccordancewiththe Contract,theTaking-OverCertificateshallbedeemedtohavebeenissuedonthelastdayofthatperiod.

10.2 TakingOverofPartsoftheWorks

10.2.1 TheArchitectmay,atthesolediscretionoftheProcuringEntity,issueaTaking-OverCertificateforanypartof thePermanentWorks.

10.2.2 The Procuring Entity shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Architect has issued a Taking-Over Certificateforthispart.However,iftheProcuringEntitydoesuseanypartoftheWorksbeforetheTaking-Over Certificate isissued:

a) Thepartwhichisusedshallbedeemedtohavebeentakenoverasfromthedateonwhichitisused,

b) theContractorshallceasetobeliableforthecareofsuchpartasfromthisdate,whenresponsibilityshall passtotheProcuringEntity,and

c) ifrequestedbytheContractor,theArchitectshallissueaTaking-OverCertificateforthispart.

10.2.3 After the ArchitecthasissuedaTaking-OverCertificateforapartoftheWorks,theContractorshallbegiventhe earliestopportunitytotakesuchstepsasmaybenecessarytocarryoutanyoutstandingTestsonCompletion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevantDefectsNotificationPeriod.

10.2.4 If the Contractor incurs Cost as a result of the Procuring Entity taking over and/or using a part of the Works, otherthansuchuseasisspecifiedintheContractoragreedbytheContractor,theContractorshall(i)givenotice 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 proceedinaccordancewithSub-Clause3.5[Determinations]toagreeordeterminethisaccruedcost.

10.2.5 IfaTaking-OverCertificatehasbeenissuedforapartoftheWorks (otherthanaSection),thedelaydamages thereafterforcompletionoftheremainderoftheWorksshallbereduced.Similarly,thedelaydamagesforthe remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the datestatedinthisTaking-OverCertificate,theproportionalreductioninthesedelaydamagesshallbe calculatedastheproportionwhichthevalueofthepartsocertifiedbearstothevalueoftheWorksorSection(as thecasemaybe)asawhole.TheArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]to agreeordeterminetheseproportions.Theprovisionsofthisparagraphshallonlyapplytothedailyrateofdelay damagesunderSub-Clause8.7[DelayDamages]andshallnotaffectthemaximumamountofthesedamages.

10.3 InterferencewithTestsonCompletion

10.3.1 IftheContractorisprevented,formorethan14days,fromcarryingouttheTestsonCompletionbyacausefor whichtheProcuringEntityisresponsible,theProcuringEntityshallbedeemedtohavetakenovertheWorksor Section(as the casemaybe) on the datewhentheTestsonCompletionwouldotherwisehavebeencompleted.

10.3.2 TheArchitectshallthenissueaTaking-OverCertificateaccordingly, and the ContractorshallcarryouttheTests onCompletionassoonaspracticable,beforetheexpirydateoftheDefectsNotificationPeriod.TheArchitect shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevantprovisionsoftheContract.

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

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

b) paymentofanysuchaccruedcosts,whichshallbeincludedintheContractPrice.

10.3.4 Afterreceivingthisnotice,theArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]to agreeordeterminethesematters.

10.4 SurfacesRequiringReinstatement

ExceptasotherwisestatedinaTaking-OverCertificate,acertificateforaSectionorpartoftheWorksshallnot bedeemedtocertifycompletionofanygroundorothersurfacesrequiringreinstatement.

11. DEFECTSLIABILITY

11.1 CompletionofOutstandingWorkandRemedyingDefects

11.1.1 InorderthattheWorksandContractor'sDocuments,andeachSection,shallbeintheconditionrequiredbythe Contract(fairwearandtearexcepted)bytheexpirydateoftherelevantDefectsNotificationPeriodorassoonas practicablethereafter,theContractorshall:

a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonabletimeasisinstructedbytheEngineer,and

b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the ProcuringEntityonorbeforetheexpirydateoftheDefectsNotificationPeriodfortheWorksorSection (as the casemaybe).

11.1.2 Ifadefectappearsordamageoccurs,theContractorshallbenotifiedaccordinglybytheEngineer.

11.2 CostofRemedyingDefects

11.2.1 All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and RemedyingDefects]shallbeexecutedattheriskandcostoftheContractor,ifandtotheextentthattheworkis attributableto:

a) AnydesignforwhichtheContractorisresponsible,

b) Plant,Materialsorworkmanshipnotbeinginaccordancewiththe Contract,or

c) FailurebytheContractortocomplywithanyotherobligation.

11.2.2 Ifandtotheextentthatsuchworkisattributabletoanyothercause,theContractorshallbenotifiedpromptlyby (oronbehalfof)theProcuringEntity,andSub-Clause13.3[VariationProcedure]shallapply.

11.3 ExtensionofDefectsNotificationPeriod

11.3.1 TheProcuringEntityshallbeentitledsubjecttoSub-Clause2.5[ProcuringEntity'sClaims]toanextensionof theDefectsNotificationPeriodfortheWorksoraSectionifandtotheextentthattheWorks,Sectionoramajor item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects NotificationPeriodshallnotbeextendedbymorethantwoyears.

11.3.2 If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4 Failure to Remedy Defects

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

11.4.2 If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Procuring Entity may (at his option):

(a) Carry out the work itself or by others, in a reasonable manner and at the Contractor's cost, 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;

(b) Require the Architect to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or

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

11.5 Removal of Defective Work

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

11.6 Further Tests

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

11.6.2 These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under Sub-Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

11.7 Right of Access

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

11.8 Contractor to Search

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

11.9 Completion Certificate

11.9.1 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.

11.9.2 The Architect shall issue the Completion Certificate within 30 days after the latest of the expiry dates of the

DefectsLiabilityPeriod,orassoonthereafterastheContractorhassuppliedalltheContractor'sDocumentsand completed and tested all the Works, including remedying any defects. A copy of the Completionn Certificate shallbeissuedtotheProcuringEntity.

11.93 OnlytheCompletionCertificateshallbedeemedtoconstituteacceptanceoftheWorks.

11.10 UnfulfilledObligations

After the Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligationwhichremainsunperformedatthattime.Forthepurposesofdeterminingthenatureandextentof unperformedobligations,theContractshallbedeemedtoremaininforce.

11.11 ClearanceofSite

11.11.1 Upon receiving the Completion Certificate, the Contractor shall remove any remaining Contractor's Equipment,surplusmaterial,wreckage,rubbishandTemporaryWorksfromtheSite.

11.112 If all these items have not been removed within 30days after receipt by the Contractor of the Completion Certificate,theProcuringEntitymaysellorotherwisedisposeofanyremainingitems.TheProcuringEntity shallbeentitledtobepaidthecostsincurredinconnectionwith,orattributableto,suchsaleordisposaland restoringtheSite.

11.113 Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the ProcuringEntity'scosts,theContractorshallpaytheoutstandingbalancetotheProcuringEntity.

12 MEASUREMENTANDEVALUATION

12.1 WorkstobeMeasured

12.1.1 TheWorks shallbemeasured,andvaluedforpayment,inaccordancewiththisClause.TheContractorshall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particularsdetailingtheamountswhichheconsiderstobeentitledundertheContract.

12.12 WhenevertheArchitectrequiresanypartoftheWorkstobemeasured,reasonablenoticeshallbegiventothe Contractor'sRepresentative,whoshall:

a) promptly either attend or send another qualified representative to assist the Architect in making the measurement,and
b) supplyanyparticularsrequestedbytheEngineer.

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

12.14 ExceptasotherwisestatedintheContract,whereveranyPermanentWorksaretobemeasuredfromrecords, theseshallbepreparedbytheEngineer.TheContractorshall,asandwhenrequested,attendtoexamineand agreetherecordswiththeEngineer,andshallsignthesamewhenagreed.IftheContractordoesnotattend,the recordsshallbeacceptedasaccurate.

12.15 IftheContractorexaminesanddisagreestherecords,and/ordoesnotsignthemasagreed,thentheContractor shall give notice to the Architect of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Architect shall review the records and either confirm or vary them and certify the paymentoftheundisputedpart.IftheContractordoesnotsogivenoticetotheArchitectwithin14daysafter beingrequestedtoexaminetherecords,theyshallbeacceptedasaccurate.

12.2 MethodofMeasurement

Except as otherwise stated in the Contract:

a) Measurementshallbemadeofthenetactualquantityofeachitemofthe PermanentWorks,and
b) the method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

12.3 Evaluation

12.3.1 Except as otherwise stated in the Contract, the Architect shall proceed in accordance with Sub-Clause 3.5

[Determinations]toagreeordeterminethevalueofworkdonebyevaluatingeachitemofwork,applyingthe measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriaterateorpricefortheitem.

12.3.2 Foreachitemofwork,theappropriaterateorpricefortheitemshallbetherateorpricespecifiedforsuchitem in the Contractor,ifthereisnosuchitem,specifiedforsimilarwork.

12.3.3 AnyitemofworkincludedintheBillofQuantitiesforwhichnorateorpricewasspecifiedshallbeconsidered asincludedinotherratesandpricesintheBillofQuantitiesandwillnotbepaidforseparately.

12.3.4 However, for a newitemofwork,anewrateorpriceshallbeappropriateforsuchitemofworkif:

a) TheworkisinstructedunderClause13[VariationsandAdjustments],
b) norateorpriceisspecifiedintheContractforthisitem,and
c) no specified rate or price is appropriate because the item of work is not of similar character, or is not executedundersimilarconditions,asanyitemintheContract.

12.3.5 Eachnewrateorpriceshallbederivedfromanyrelevantratesorpricesinthecontract.Ifnoratesorpricesare relevantforthenewitemofwork,itshallbederivedfromthereasonableCostofexecutingsuchwork,prevailing marketrates,togetherwithprofit,takingaccountofanyotherrelevantmatters.

12.3.6 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.

12.3.7 Wherethecontractpriceisdifferentfromthecorrectedtenderprice,inordertoensurethecontractorisnotpaid lessormorerelativetothecontractprice(*whichwouldbethetenderprice*),paymentvaluationcertificatesand variationordersonomissionsandadditionsvaluedbasedonratesintheBillofQuantitiesorscheduleofratesin the Tender, will be adjusted by a plusorminus percentage. The percentage already worked out during tender evaluationisworkedoutasfollows:*(correctedtenderprice–tenderprice)/tenderpriceX100*.

12.4 Omissions

Whenevertheomissionofanyworkformspart(orall)ofaVariation,thevalueofwhichhasnotbeenagreed,if:

a) TheContractorwillincur(orhasincurred)costwhich,iftheworkhadnotbeenomitted,wouldhavebeen deemedtobecoveredbyasumformingpartoftheAcceptedContractAmount;
b) Theomissionoftheworkwillresult(orhasresulted)inthissumnotformingpartoftheContractPrice;and
c) thiscostisnotdeemedtobeincludedintheevaluationofanysubstitutedwork;thentheContractorshall 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,whichshallbeincludedintheContractPrice.

13. VARIATIONSANDADJUSTMENTS

13.1 RighttoVary

13.1.1 Variations may be initiated by the Architect at any time prior to issuing the Taking-Over Certificate for the Works,eitherbyaninstructionorbyarequestfortheContractortosubmitaproposal.NoVariationinstructed bytheArchitectunderthisClauseshallinanywayvitiateorinvalidatetheContract.

13.1.2 TheContractorshallexecuteandbeboundbyeachVariation,unlesstheContractorpromptlygivesnoticetothe Architectstating(withsupportingparticulars)that(i)theContractorcannotreadilyobtaintheGoodsrequired for the Variation,or(ii)suchVariationtriggersasubstantialchangeinthesequenceorprogressoftheWorks. Uponreceivingthisnotice,theArchitectshallcancel,confirmorvarytheinstruction.

13.1.3 EachVariationmayinclude:

a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarilyconstituteaVariation),
b) changestothequalityandothercharacteristicsofanyitemofwork,
c) changestothelevels,positionsand/ordimensionsofanypartoftheWorks,
d) omissionofanyworkunlessitistobecarriedoutbyothers,
e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associatedTestsonCompletion,boreholesandothertestingandexploratorywork,or
f) changestothesequenceortimingoftheexecutionoftheWorks.

13.1.4 TheContractorshallnotmakeanyalterationand/ormodificationofthePermanentWorks,unlessanduntilthe ArchitectinstructsafterobtainingapprovaloftheprocuringEntity.

13.2 VariationOrderProcedure

13.2.1 PriortoanyVariationOrderunderSub-Clause13.1.4theArchitectshallnotifytheContractorofthenatureand formofsuchvariation.Assoonaspossibleafterhavingreceivedsuchnotice,theContractorshallsubmittothe Engineer:

a) A descriptionofwork,ifany,tobeperformedandaprogrammeforitsexecution,and

b) theContractor'sproposalsforanynecessarymodificationstotheProgrammeaccordingtoSub-Clause8.3 ortoanyoftheContractor'sobligationsundertheContract,and

c) theContractor'sproposalsforadjustmenttotheContractPrice.

Following the receipt of the Contractor's submission the Architect shall, after due consultation with the EmployerandtheContractor,decideassoonaspossiblewhetherornotthevariationshallbecarriedout.Ifthe Architectdecidesthatthevariationshallbecarriedout,heshallissueaVariationOrderclearlyidentifiedassuch inaccordancewiththeContractor'ssubmissionorasmodifiedbyagreement.

If the Architect and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause13.2.2 shall apply.

13.2.2 DisagreementonAdjustmentoftheContractPrice

IftheContractorandtheArchitectureunabletoagreeontheadjustmentoftheContractPrice,theadjustment shall be determined in accordance with the rates specified in the Bills of Quantities or Schedule of Daywork Prices. If the rates contained in the Bills of Quantities or Dayworks Prices are not directly applicable to the specificworkinquestion,suitableratesshallbeestablishedbytheArchitectreflectingthelevelofpricinginthe Dayworks Prices. Where rates are not contained in the said Prices, the amount shall be such as is in all the circumstancesreasonable,reflectingamarketprice.Dueaccountshallbetakenofanyover-orunder-recovery ofoverheadsbytheContractorinconsequenceofthevariation.TheContractorshallalsobeentitledtobepaid:

a) ThecostofanypartialexecutionoftheWorksrendereduselessbyanysuchvariation,

b) ThecostofmakingnecessaryalterationstoPlantalreadymanufacturedorinthecourseofmanufactureor ofanyworkdonethathastobealteredinconsequenceofsuchavariation,

c) anyadditionalcostsincurredbytheContractorbythedisruptionoftheprogressoftheWorksasdetailed in the Programme,and

d) theneteffectoftheContractor'sfinancecosts,includinginterest,causedbythevariation.

The Architect shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

13.2.3 ContractortoProceed

OnreceiptofaVariationOrder,theContractorshallforthwithproceedtocarryoutthevariationandbeboundto these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayedpendingthegrantingofanextensionoftheTimeforCompletionoranadjustmenttotheContractPriceunder Sub-Clause31.3.

13.3 ValueEngineering

13.3.1 TheContractor may, atanytime,submittotheArchitectwrittenproposalwhich(in the Contractor'sopinion) will,ifadopted,(i)acceleratecompletion,(ii)reducethecosttotheProcuringEntity ofexecuting,maintaining oroperatingtheWorks,(iii)improvetheefficiencyorvaluetotheProcuringEntityofthecompletedWorks,or (iv) otherwise be of benefit to the Procuring Entity.

13.3.2 Theproposalshallbepreparedatthecostofthecontractorandshallincludetheitemslistedin Sub-Clause13.3 [VariationProcedure].

13.2.3 If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works,thenunlessotherwiseagreedbybothParties:

a) TheContractorshalldesignthispart,

b) sub-paragraphs(a)to(d)ofSub-Clause4.1[Contractor'sGeneralObligations]shallapply, and

c) if this change results in a reduction in the contract value of this part, the Architect shall proceed in accordancewithSub-Clause3.5[Determinations]toagreeordetermineafee,whichshallbeincludedin theContractPrice.Thisfeeshallbehalf(50%) of the differencebetweenthefollowingamounts:

i) suchreductionincontractvalue,resultingfromthechange,excludingadjustmentsunderSub-Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and

ii) thereduction(ifany) in the valuetotheProcuringEntityofthevariedworks,takingaccountofany improvementinquality,anticipatedlifeoroperationalefficiencies.

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.

13.4 VariationProcedureforValueEngineeringproposal

13.4.1 IftheArchitectrequestsaproposal,priortoinstructingaVariation, theContractorshallrespondinwritingas soonaspracticable,eitherbygivingreasonswhyhecannotcomply(ifthisisthecase)orbysubmitting:

a) A descriptionoftheproposedworktobeperformedandaprogrammeforitsexecution,

b) theContractor'sproposalforanynecessarymodificationstotheprogrammeaccordingtoSub-Clause8.3 [Programme]andtotheTimeforCompletion,and

c) theContractor'sproposalforevaluationoftheVariation.

13.4.2 TheArchitectshall,assoonaspracticableafterreceivingsuchproposal(underSub-Clause13.2[ValueProject Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall notdelay anyworkwhilstawaitingaresponse.

13.4.3 EachinstructiontoexecuteaVariation,withanyrequirementsfortherecordingofCosts,shallbeissuedbythe ArchitecttotheContractor,whoshallacknowledgereceipt.

13.4.4 Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Architectinstructsorapprovesotherwiseinaccordancewiththisclause.

13.5 PaymentinApplicableCurrencies

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 proportionsoftheCostofthevariedwork,andtotheproportionsofvariouscurrenciesspecifiedforpaymentof theContractPrice.

13.6 ProvisionalSums

13.6.1 EachProvisionalSumshallonlybeused,inwholeorinpart,inaccordancewiththeArchitectinstructions,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 Architect shall have instructed.ForeachProvisionalSum,theArchitectMayinstruct:

a) Worktobeexecuted(includingPlant,Materialsorservicestobesupplied)bytheContractorandvalued underSub-Clause13.3[VariationProcedure];and/or

b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as definedinClause5[NominatedSubcontractors])orotherwise;andforwhichthereshallbeincludedinthe ContractPrice:

i) Theactualamountspaid(orduetobepaid)bytheContractor,and

ii) asumforoverheadchargesandprofit,calculatedasapercentageoftheseactualamountsbyapplying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentageratestatedin**theSpecialConditionsofContract**shallbeapplied.

13.6.2 TheContractorshall,whenrequiredbytheEngineer,producequotations,invoices,vouchersandaccountsor receiptsinsubstantiation.

13.7 Dayworks

13.7.1 For work of a minor or incidental nature, the Architect may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the followingprocedureshallapply.IfaDayworkScheduleisnotincludedintheContract,this Sub-Clauseshallnotapply.

13.7.2 BeforeorderingGoodsforthework,theContractorshallsubmitquotationstotheEngineer.Whenapplyingfor payment,theContractorshallsubmitinvoices,vouchersandaccountsorreceiptsforanyGoods.

13.7.3 Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall delivereachdaytotheArchitectaccuratestatementsinduplicatewhichshallincludethefollowingdetailsofthe resourcesusedinexecutingthepreviousday'swork:

a) Thenames,occupationsandtimeofContractor'sPersonnel,
b) theidentification,typeandtimeofContractor'sEquipmentandTemporaryWorks,and
c) thequantitiesandtypesofPlantandMaterialsused.

13.7.4 One copy of each statement will, if correct, or when agreed, be signed by the Architect and returned to the Contractor.TheContractorshallthensubmitpricedstatementsoftheseresourcestotheEngineer,priortotheir inclusioninthenextStatementunderSub-Clause14.3[ApplicationforInterimPaymentCertificates].

13.8 AdjustmentsforChangesinLegislation

13.8.1 TheContractPriceshallbeadjustedtotakeaccountofanyincreaseordecreaseinCostresultingfromachange in the LawsofKenya(includingtheintroductionofnewLawsandtherepealormodificationofexistingLaws) orinthejudicialorofficialgovernmentalinterpretationofsuchLaws,madeaftertheBaseDate,whichaffectthe Contractorintheperformanceofobligationsunder theContract.

13.8.2 If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result ofthese changesintheLawsorinsuchinterpretations,madeaftertheBaseDate,theContractorshallgivenoticetothe Architectandshallbeentitledsubject toSub-Clause20.1[Contractor'sClaims]to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [ExtensionofTimeforCompletion],and
b) paymentofanysuchCost,whichshallbeincludedintheContractPrice.

13.8.3 Afterreceivingthisnotice,theArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]to agreeordeterminethesematters.

13.8.4 Notwithstandingtheforegoing,theContractorshallnotbeentitledtoanextensionoftimeiftherelevantdelay has already beentakenintoaccountinthedeterminationofapreviousextensionoftimeandsuchCostshallnot beseparatelypaidifthesameshallalreadyhavebeentakenintoaccountintheindexingof anyinputstothetable ofadjustmentdatainaccordancewiththeprovisionsofSub-Clause13.8[AdjustmentsforChangesinCost].

13.9 AdjustmentsforChangesinCost

13.9.1 In this Sub-Clause, "table of adjustment data" means the completed table of adjustment data for local and foreigncurrenciesincludedintheSchedules.Ifthereisnosuchtableofadjustmentdata,thisSub-Clauseshall notapply.

13.9.2 IfthisSub-Clauseapplies,theamountspayabletotheContractorshallbeadjustedforrisesorfallsinthecostof labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulaeprescribedinthisSub-Clause.Totheextentthatfullcompensationforanyriseorfallin Costsisnot covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have includedamountstocoverthecontingencyofotherrisesandfallsincosts.

13.9.3 Theadjustmenttobeappliedtotheamountotherwisepayabletothe Contractor,asvaluedinaccordancewith theappropriateScheduleandcertifiedinPaymentCertificates,shallbedeterminedfromformulaeforeachof thecurrenciesinwhichtheContractPriceispayable.Noadjustmentistobeappliedtoworkvaluedonthebasis ofCostorcurrentprices.Theformulaeshallbeofthefollowinggeneraltype:

Price Adjustment Formula

Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the SCC.** If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

P = A + B Im/Io

where:

P is the adjustment factor for the portion of the Contract Price payable.

A and **B** a recoefficients **specified in the SCC,** representing then on adjustable and adjustable portions, respectively, of the Contract Price payable and

I m is the index prevailing at the end of the month being invoiced and **Ioc** is the index prevailing 30 days before Bid opening for inputs payable.

NOTE: The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

13.9.4 Thecostindicesorreferencepricesstatedinthetableofadjustmentdatashallbeused.Iftheirsourceisindoubt, itshallbedeterminedbytheEngineer.Forthispurpose,referenceshallbemadetothevaluesoftheindicesat stateddates(quotedinthefourthandfifthcolumnsrespectivelyofthetable) for the purposesofclarificationof thesource;althoughthesedates(andthusthesevalues)maynotcorrespondtothebasecostindices.

13.9.5 Incaseswherethe"currencyofindex"isnottherelevantcurrencyofpayment,eachindexshallbeconverted into the relevant currency of payment at the selling rate, established by the Central Bank of Kenya, of this relevantcurrencyontheabovedateforwhichtheindexisrequiredtobeapplicable.

13.9.6 Untilsuchtimeaseachcurrentcostindexisavailable,theArchitectshalldetermineaprovisionalindexforthe issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculatedaccordingly.

13.9.7 IftheContractorfailstocompletetheWorkswithintheTimeforCompletion,adjustmentofpricesthereafter shallbemadeusingeither(i)eachindexorpriceapplicableonthedate49dayspriortotheexpiryoftheTime for Completion of the Works, or (ii) the current index or price, whichever is more favorable to the Procuring Entity.

13.9.8 Theweightings(coefficients)foreachofthefactorsofcoststatedinthetable(s)ofadjustmentdatashallonlybe adjustediftheyhavebeenrenderedunreasonable,unbalancedorinapplicable,asaresultofVariations.

14 CONTRACTPRICEANDPAYMENT

14.1 The ContractPrice

14.1.1 UnlessotherwisestatedintheSpecialConditions:

a) Thevalueofthepaymentcertificateshallbeagreedordeterminedunder Sub-Clause12.3[Evaluation]and besubjecttoadjustmentsinaccordancewiththeContract;

b) theContractorshallpayalltaxes,dutiesandfeesrequiredtobepaidbyhimundertheContract,andthe Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause13.7 [AdjustmentsforChangesinLegislation];

c) anyquantitieswhichmaybesetoutintheBillofQuantitiesorotherScheduleareestimatedquantitiesand arenottobetakenastheactualandcorrectquantities:

i) of the WorkswhichtheContractorisrequiredtoexecute,or
ii) for the purposesofClause12[MeasurementandEvaluation];and

d) the Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposed breakdownofeachlumpsumpriceintheSchedules.TheArchitectmaytakeaccountofthebreakdown whenpreparingPaymentCertificatesbutshallnotbeboundbyit.

14.12 Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefor,importedbytheContractorforthesolepurposeofexecutingtheContractshallnotbeexemptfromthe paymentofimportdutiesandtaxesuponimportation.

14.2 AdvancePayment

14.2.1 TheProcuringEntityshallmakeanadvancepayment,asaninterest-freeloanformobilizationandcashflow support,whentheContractorsubmitsaguaranteeinaccordancewiththisClause.Thetotaladvancepayment, thenumberandtimingofinstalments(ifmorethanone), and the applicablecurrenciesandproportions,shallbe asstatedintheSpecialConditionsofContract.

14.2.2 UnlessanduntiltheProcuringEntityreceivesthisguarantee,orifthetotaladvancepaymentisnotstatedinthe SpecialConditionsofContract,thisSub-Clauseshallnotapply.

14.2.3 TheArchitectshalldelivertotheProcuringEntityandtotheContractoranInterimPaymentCertificateforthe advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Procuring Entity receives (i) the Performance Security in accordancewithSub-Clause4.2[PerformanceSecurity]and(ii)aguaranteeinamountsandcurrenciesequalto theadvancepayment.Thisguaranteeshallbeissuedbyareputablebankorfinancialinstitutionselectedbythe Contractor and shall be in the form annexed to the Special Conditions or in another form approved by the ProcuringEntity.

14.2.4 The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid,butitsamountshallbeprogressivelyreducedbytheamountrepaidbytheContractorasindicatedinthe Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not beenrepaidbythedate30dayspriortotheexpirydate,theContractorshallextendthevalidityoftheguarantee untiltheadvancepaymenthasbeenrepaid.

14.2.5 UnlessstatedotherwiseintheSpecialConditionsofContract,theadvancepaymentshallberepaidthrough percentagedeductionsfromtheinterimpaymentsdeterminedbytheArchitectinaccordancewithSub-Clause14.6 [Issue of Interim Payment Certificates], as follows:

a) DeductionsshallcommenceinthenextinterimPaymentCertificatefollowingthatinwhichthetotalofall certifiedinterimpayments(excludingtheadvancepaymentanddeductionsandrepaymentsofretention) exceeds30percent(30%) of the AcceptedContractAmountlessProvisionalSums;and

b) deductions shall be made at the amortization rate stated in the **Special Conditions of Contract** of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repaymentsaswellasdeductionsforretentionmoney) in the currenciesandproportionsoftheadvance paymentuntilsuchtimeastheadvancepaymenthasbeenrepaid;providedthattheadvancepaymentshall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less ProvisionalSumshasbeencertifiedforpayment.

14.2.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Worksor prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension and TerminationbyContractor]orClause19[ForceMajeure](asthecasemaybe),thewholeofthebalancethen 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],payablebytheContractortotheProcuringEntity.

14.3 ApplicationforInterimPaymentCertificates

14.3.1 TheContractorshallsubmitaStatement(innumberofcopiesindicatedintheSpecialConditionsofContract) to the Architectaftertheendofeachmonth,inaformapprovedbytheEngineer,showingindetailtheamounts

towhichtheContractorconsidersitselftobeentitled,togetherwithsupportingdocumentswhichshallinclude thereportontheprogressduringthismonthinaccordancewithSub-Clause4.21[ProgressReports].

14.3.2 The Statement shall include the following items, as applicable, which shall be expressed in the various currenciesinwhichtheContractPriceispayable, in the sequencelisted:

a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the endofthemonth(includingVariationsbutexcludingitemsdescribedinsub-paragraphs(b)to(g)below);

b) anyamountstobeaddedanddeductedforchangesinlegislationandchangesincost,inaccordancewith Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for ChangesinCost];

c) anyamounttobedeductedforretention,calculatedbyapplyingthepercentageofretentionstatedin**the Special Conditions of Contract** to the total of the above amounts, until the amount so retained by the Procuring Entity reaches the limit of Retention Money (if any) stated **in the Special Conditions of Contract**;

d) anyamountstobeaddedfortheadvancepaymentand(ifmorethanoneinstalment)andtobedeductedfor itsrepaymentsinaccordancewithSub-Clause14.2[AdvancePayment];

e) anyamountstobeaddedanddeductedforPlantandMaterialsinaccordancewithSub-Clause14.5[Plant andMaterialsintendedfortheWorks];

f) anyotheradditionsordeductionswhichmayhavebecomedueundertheContractorotherwise,including thoseunderClause20[Claims,DisputesandArbitration];and

g) thedeductionofamountscertifiedinallpreviousPaymentCertificates.

14.4 Schedule ofPayments

14.4.1 IftheContractincludesascheduleofpaymentsspecifyingtheinstalmentsinwhichtheContractPricewillbe paid,thenunlessotherwisestatedinthisschedule:

a) Theinstalmentsquotedinthisscheduleofpaymentsshallbetheestimatedcontractvaluesforthepurposes ofsub-paragraph(a)ofSub-Clause14.3[ApplicationforInterimPaymentCertificates];

b) Sub-Clause14.5[PlantandMaterialsintendedfortheWorks]shallnotapply;and

c) Iftheseinstalmentsarenotdefinedbyreferencetotheactualprogressachievedinexecutingthe Works, andifactualprogressisfoundtobelessormorethanthatonwhichthisscheduleofpaymentswasbased, then the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more thanthatonwhichtheinstalmentswerepreviouslybased.

14.4.2 IftheContractdoesnotincludeascheduleofpayments,theContractorshallsubmitnon-bindingestimatesof 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,untiltheTaking-OverCertificatehasbeenissuedfortheWorks.

14.5 PlantandMaterialsintendedfortheWorks

14.5.1 IfthisSub-Clauseapplies,InterimPaymentCertificatesshallinclude,undersub-paragraph(e)ofSub-Clause 14.3,(i)anamountforPlantandMaterialswhichhavebeensenttotheSiteforincorporationinthePermanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the PermanentWorksundersub-paragraph(a)ofSub-Clause14.3[ApplicationforInterimPaymentCertificates].

14.5.2 Ifthelistsreferredtoinsub-paragraphs(b)(i)or(c)(i)belowarenotincludedintheSchedules,thisSub-Clause shallnotapply.

14.5.3 TheArchitectshalldetermineandcertifyeachadditioniftheFollowingconditionsaresatisfied:

a) TheContractorhas:

i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) whichareavailableforinspection,and

(ii) submitted statementoftheCostofacquiringanddeliveringthePlantandMaterialstotheSite, supportedbysatisfactoryevidence;

and either:

b) therelevantPlantandMaterials:

i) arethoselistedintheSchedulesforpaymentwhenshipped,

ii) have been shippedtoKenya,enroutetotheSite,inaccordancewiththeContract;and

iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Architect together with evidence of payment of freight and insurance, any other documentsreasonablyrequired,andabankguaranteeinaformandissuedbyanentityapprovedby theProcuringEntityinamountsandcurrenciesequaltotheamountdueunderthisSub-Clause:this guaranteemaybeinasimilarformtotheformreferredtoinSub-Clause14.2[AdvancePayment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss,damageordeterioration;or

c) therelevantPlantandMaterials:

i) arethoselistedintheSchedulesforpaymentwhendeliveredtotheSite,and

ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deteriorationandappeartobeinaccordancewiththeContract.

14.5.4 The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Architect determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documentsmentionedinthisSub-Clauseandofthecontractvalueofthe PlantandMaterials.

14.5.5 Thecurrenciesforthisadditionalamountshallbethesameasthoseinwhichpaymentwillbecomeduewhen 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 equivalentto,andinthesamecurrenciesandproportionsas,thisadditionalamountfortherelevantPlantand Materials.

14.6 IssueofInterimPaymentCertificates

14.6.1 No amount will be certified or paid until the Procuring Entity has received and approved the Performance Security.Thereafter,theArchitectshall,within30daysafterreceivingaStatementandsupportingdocuments, deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate which shall state the amount which the Architect fairly determines to be due, with all supporting particulars for any reduction or withholdingmadebytheArchitectontheStatementifany.

14.6.2 However,priortoissuingtheTaking-OverCertificatefortheWorks,theArchitectshallnotbeboundtoissuean InterimPaymentCertificateinanamountwhichwould(afterretentionandotherdeductions)belessthanthe minimumamountofInterimPaymentCertificates(ifany)stated**intheSpecialConditionsofContract**.Inthis event,theArchitectshallgivenoticetotheContractoraccordingly.

14.6.3 AnInterimPaymentCertificateshallnotbewithheldforanyotherreason,although:

a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

b) iftheContractorwasorisfailingtoperformanyworkorobligationinaccordancewiththeContract,and had been sonotifiedbytheEngineer,thevalueofthisworkorobligationmaybewithhelduntiltheworkor obligationhasbeenperformed.

4.6.4 The Architect may in any Payment Certificate make any correction or modification that should properly be madetoanypreviousPaymentCertificate.APaymentCertificateshallnotbedeemedtoindicatetheArchitect acceptance,approval,consentorsatisfaction.

14.7 Payment

14.7.1 TheProcuringEntityshallpaytotheContractor:

a) Theadvancepaymentshallbepaidwithin60daysaftersigningofthecontractbybothpartiesorwithin60 daysafterreceivingthedocumentsinaccordancewithSub-Clause4.2[PerformanceSecurity]andSub-Clause14.2[AdvancePayment],whicheverislater;

b) TheamountcertifiedineachInterimPaymentCertificatewithin60daysaftertheArchitectIssuesInterim PaymentCertificate;and

c) the amount certified in the Final Payment Certificate within 60 days after the Procuring Entity Issues InterimPaymentCertificate;orafterdeterminationofanydisputedamountshownintheFinalStatement inaccordancewithSub-Clause16.2[TerminationbyContractor].

14.7.2 Paymentoftheamountdueineachcurrencyshallbemadeintothebankaccount,nominatedbytheContractor, in the paymentcountry(forthiscurrency)specifiedintheContract.

14.8 DelayedPayment

14.8.1 IftheContractordoesnotreceivepaymentinaccordancewithSub-Clause14.7[Payment],theContractorshall be entitled to receive financing charges (simple interest) monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate isissued.

14.8.2 Thesefinancingchargesshallbecalculatedattheannualrateofthreepercentagepointsabovethemeanrateof theCentralBankinKenyaofthecurrencyofpayment,orifnotavailable,theinterbankofferedrate,andshallbe paidinsuchcurrency.

14.8.3 TheContractorshallbeentitledtothispaymentwithoutformalnoticeandcertification,andwithoutprejudice toanyotherrightorremedy.

14.9 PaymentofRetentionMoney

14.9.1 WhentheTaking-OverCertificatehasbeenissuedfortheWorks,thefirsthalfoftheRetentionMoneyshallbe certifiedbytheArchitectforpaymenttotheContractor.IfaTaking-OverCertificateisissuedforaSectionor part of theWorks,aproportionoftheRetentionMoneyshallbecertifiedandpaid.Thisproportionshallbehalf (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimatedfinalContractPrice.

14.9.2 Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the RetentionMoneyshallbecertifiedbytheArchitectforpaymenttotheContractor.IfaTaking-OverCertificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptlyaftertheexpirydateoftheDefectsNotificationPeriodfortheSection.Thisproportionshallbehalf (50%) of the proportioncalculatedbydividingtheestimatedcontractvalueoftheSectionbytheestimatedfinal ContractPrice.

14.9.3 However,ifanyworkremainstobeexecutedunderClause11[DefectsLiability],theArchitectshallbeentitled towithholdcertificationoftheestimatedcostofthisworkuntilithasbeenexecuted.

14.9.4 When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [AdjustmentsforChangesinLegislation]andSub-Clause13.8[AdjustmentsforChangesinCost].

14.9.5 Unless otherwise stated in the Special Conditions, when the Taking-Over Certificate has been issued for the WorksandthefirsthalfoftheRetentionMoneyhasbeencertifiedforpaymentbytheEngineer,theContractor 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 institutionselectedbytheContractor, for the secondhalfoftheRetentionMoney.

14.9.6 The Procuring Entity shall return the Retention Money Security guarantee to the Contractor within 14 days afterreceivingacopyoftheCompletionCertificate.

14.10 StatementatCompletion

14.10.1 Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit tothe Architect three copies of a Statement at completion with supporting documents, in accordance with Sub-Clause14.3[ApplicationforInterimPaymentCertificates],showing:

a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over CertificatefortheWorks,
b) anyfurthersumswhichtheContractorconsiderstobedue,and
c) an estimate of any other amounts which the Contractor considers will become due to him underthe Contract.Estimatedamountsshallbeshownseparatelyinthis Statementatcompletion.

14.10.2 TheArchitectshallthencertifyinaccordancewithSub-Clause14.6[IssueofInterimPaymentCertificates].

14.11 ApplicationforFinalPaymentCertificate

14.11.1 Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

a) Thevalueofallworkdoneinaccordancewiththe Contract,and
b) AnyfurthersumswhichtheContractorconsiderstobeduetohimundertheContractorotherwise.

14.11.2 IftheArchitectdisagreeswithorcannotverifyanypartofthedraftfinalstatement,theContractorshallsubmit suchfurtherinformationastheArchitectmayreasonablyrequirewithin30daysfromreceiptofsaiddraftand shallmakesuchchangesinthedraftasmaybeagreedbetweenthem.TheContractorshallthenprepareand submittotheArchitectthefinalstatementasagreed.Thisagreedstatementisreferredtointhese Conditionsas the"FinalStatement".

14.11.3 However,if,followingdiscussionsbetweentheArchitectandtheContractorandanychangestothedraftfinal statementwhichareagreed,itbecomesevidentthatadisputeexists,theArchitectshalldelivertotheProcuring Entity (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the ProcuringEntity(with a copytotheEngineer)aFinalStatement.

14.12 Discharge

WhensubmittingtheFinalStatement,theContractorshallsubmitadischargewhichconfirmsthatthetotalof 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 receivedthePerformanceSecurityandtheoutstandingbalanceofthistotal,inwhicheventthedischargeshall beeffectiveonsuchdate.

14.13 IssueofFinalPaymentCertificate

14.13.1 Within 30days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [ApplicationforFinalPaymentCertificate]andSub-Clause14.12[Discharge],theArchitectshalldeliver,to theProcuringEntityandtotheContractor,theFinalPaymentCertificatewhichshallstate:

a) Theamountwhichhefairlydeterminesisfinallydue,and
b) AftergivingcredittotheProcuringEntityforallamountspreviouslypaidbytheProcuringEntityandfor allsumstowhichtheProcuringEntityisentitled,thebalance(ifany)duefromtheProcuringEntitytothe ContractororfromtheContractortotheProcuringEntity,as the casemaybe.

14.13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [ApplicationforFinalPaymentCertificate]andSub-Clause14.12[Discharge],theArchitectshallrequesttheContractor to do so. If the Contractor fails to submit an application within a period of 30 days, the Architect shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14 CessationofProcuringEntity'sLiability

14.14.1 TheProcuringEntityshallnotbeliabletotheContractorforanymatterorthingunderorinconnectionwiththe Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly forit:

a) in the FinalStatementandalso,
b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statementatcompletiondescribedin Sub-Clause14.10[StatementatCompletion].

14.14.2 However,thisSub-ClauseshallnotlimittheProcuringEntity'sliabilityunderhisindemnificationobligations, or the Procuring Entity's liability in any case of fraud, deliberate default or reckless misconduct by the ProcuringEntity.

14.15 Currencies ofPayment

TheContractPriceshallbepaidinthecurrencyorcurrenciesnamedintheScheduleofPaymentCurrencies.If morethanonecurrencyissonamed,paymentsshallbemadeasfollows:

a) IftheAcceptedContractAmountwasexpressedinLocalCurrencyonly:
   i) theproportionsoramountsoftheLocalandForeignCurrencies, and the fixedratesofexchangetobe usedforcalculatingthepayments,shallbeasstatedintheScheduleofPaymentCurrencies,exceptas otherwiseagreedbybothParties;
   ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [AdjustmentsforChangesinLegislation]shallbemadeintheapplicablecurrenciesandproportions; and
   iii) otherpaymentsanddeductionsundersub-paragraphs(a)to(d)ofSub-Clause14.3[Applicationfor Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph(a)(i)above;
b) paymentofthedamagesspecifiedintheSpecialConditionsofContract,shallbemadeinthecurrencies andproportionsspecifiedintheScheduleofPaymentCurrencies;
c) otherpaymentstotheProcuringEntitybytheContractorshallbemadeinthecurrencyinwhichthesum wasexpendedbytheProcuringEntity,orinsuchcurrencyasmaybeagreedbybothParties;
d) ifanyamountpayablebytheContractortotheProcuringEntityinaparticularcurrencyexceedsthesum payablebytheProcuringEntitytotheContractorinthatcurrency,theProcuringEntitymayrecoverthe balanceofthisamountfromthesumsotherwisepayabletotheContractorinothercurrencies;and
e) ifnoratesofexchangearestatedintheScheduleofPaymentCurrencies,theyshallbethoseprevailingon theBaseDateanddeterminedbytheCentralBankofKenya.

15 TERMINATIONBYPROCURINGENTITY

15.1 Notice to correct any defects orfailures

If the Contractor fails to carry out any obligation under the Contract, the Architect may by notice require the Contractor to make good the failure and to remedy it within 30 days.

15.2 Termination by ProcuringEntity

15.2.1 The Procuring Entity shall be entitled to terminate the Contract if the Contractor breaches the contract based on following circumstances which shall include but not limited to:

a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,
c) withoutreasonableexcusefails:
   i) toproceedwiththeWorksinaccordancewithClause8[Commencement,DelaysandSuspension], or
   ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work],within30daysafterreceivingit,
d) subcontracts the major part or whole of the Works or assigns the Contract without the consent of the ProcuringEntity,
e) becomesbankruptorinsolvent,goesintoliquidation,hasareceivingoradministrationordermadeagainst him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefitofhiscreditors,orifanyactisdoneoreventoccurswhich(underapplicableLaws)hasasimilar effecttoanyoftheseactsorevents,or
f) givesorofferstogive(directlyorindirectly)toanypersonanybribe,gift,gratuity,commissionorother thingofvalue,asaninducementorreward:
i) fordoingorforbearingtodoanyactioninrelationtotheContract,or
ii) forshowingorforbearingtoshowfavorordisfavortoanypersoninrelationtotheContract,or
iii) ifanyoftheContractor'sPersonnel,agentsorSubcontractorsgivesorofferstogive(directlyorindirectly) toanypersonanysuchinducementorrewardasisdescribedinthissub-paragraph(f).However,lawful inducementsandrewardstoContractor'sPersonnelshallnotentitletermination,or
g) Ifthecontractorrepeatedlyfailstoremedydeliversdefectivework,
h) based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the AppendixBtotheseGeneralConditions,incompetingfororinexecutingtheContract.

15.2.2 In any of these events or circumstances, the Procuring Entity may, upon giving 14 days' notice to the

Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph(e)or(f)or(g)or(h),theProcuringEntitymaybynoticeterminatetheContractimmediately.

15.2.3 ThePro curingEntity'selectiontoterminatetheContractshallnotprejudiceanyotherrightsoftheProcuring Entity,undertheContractorotherwise.

15.2.4 TheContractorshallthenleavetheSiteanddeliveranyrequiredGoods,allContractor'sDocuments,andother design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract,and(ii) for the protectionoflifeorpropertyorforthesafetyoftheWorks.

15.2.5 Aftertermination,theProcuringEntitymaycompletetheWorksand/orarrangeforanyotherentitiestodoso. The Procuring Entity and these entities may then use any Goods, Contractor's Documents and other design documentsmadebyoronbehalfoftheContractor.

15.2.6 The Procuring Entity shall then give notice that the Contractor's Equipment and Temporary Works will be releasedtotheContractoratornearthe Site.TheContractorshallpromptlyarrangetheirremoval,attherisk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the ProcuringEntity,theseitemsmaybesoldbytheProcuringEntityinordertorecoverthispayment.Anybalance of the proceedsshallthenbepaidtotheContractor.

15.3 ValuationatDateofTermination

Assoonaspracticableafteranoticeofterminationunder Sub-Clause15.2[TerminationbyProcuringEntity] hastakeneffect,theArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]toagreeor determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractorforworkexecutedinaccordancewiththe Contract.

15.4 PaymentafterTermination

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

a) ProceedinaccordancewithSub-Clause2.5[ProcurinEntity'sClaims],
b) withhold further payments to the Contractor until the costs of execution, completion and remedying of anydefects,damagesfordelayincompletion(ifany),andallothercostsincurredbytheProcuringEntity, have been established,and/or

c) recoverfromtheContractoranylossesanddamagesincurredbytheProcuringEntityandanyextracosts of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the ProcuringEntityshallpayanybalancetotheContractor.

15.5 ProcuringEntity'sEntitlementtoTerminationforConvenience

The Procuring Entity shall be entitled to terminate the Contract, at any time at the Procuring Entity's convenience,bygivingnoticeofsuchterminationtotheContractor.Theterminationshalltakeeffect30days after the later of the dates on which the Contractor receives this notice or the Procuring Entity returns the PerformanceSecurity.TheProcuringEntityshallnotterminatetheContractunderthisSub-Clauseinorderto 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].

15.6 Fraud andCorruption

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and its prevailing sanctions.

15.7 Corruptgiftsandpaymentsofcommission

15.7.1 TheContractorshallnot;

a) Offerorgiveoragreetogivetoanypersonintheserviceofthe ProcuringEntityanygiftorconsideration ofanykindasaninducementorrewardfordoingorforbearingtodoorforhavingdoneorforbornetodo anyactinrelationtotheobtainingorexecutionofthisoranyotherContractfortheProcuringEntityorfor showingorforbearingtoshowfavorordisfavortoanypersoninrelationtothisoranyothercontractfor theProcuringEntity.

b) EnterintothisoranyothercontractwiththeProcuringEntityinconnectionwithwhichcommissionhas beenpaidoragreedtobepaidbyhimoronhisbehalfortohisknowledge,unlessbeforetheContractis made particulars of any such commission and of the terms and conditions of any agreement for the paymentthereofhavebeendisclosedinwritingtotheProcuringEntity.

15.7.2 AnybreachofthisConditionbytheContractororbyanyoneemployedbyhimoractingonhisbehalf(whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public ProcurementandAssetDisposalAct(2015) and the Anti-CorruptionandEconomicCrimesAct(2003)ofthe Laws ofKenya.

16 SUSPENSIONANDTERMINATIONBYCONTRACTOR

16.1 Contractor'sEntitlementtoSuspendWork

16.1.1 IftheArchitectfailstocertifyinaccordancewithSub-Clause14.6[IssueofInterimPaymentCertificates]or Sub-Clause14.7[Payment],ornotreceivinginstructionsthatwouldenablethecontractortoproceedwiththe works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to the Procuring Entity, suspend work (or reduce the rate of work) unless and until the Contractor has received the PaymentCertificate,reasonableevidenceorpayment, as the casemaybeandasdescribedinthenotice.

16.1.2 The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [DelayedPayment]andtoterminationunderSub-Clause16.2[TerminationbyContractor].

16.1.3 If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevantSub-Clauseandintheabovenotice)beforegivinganoticeoftermination,theContractorshallresume normalworkingassoonasisreasonablypracticable.

16.1.4 IftheContractorsuffersdelayand/orincursCostasaresultofsuspendingwork(orreducingtherateofwork) in accordance with this Sub-Clause, the Contractor shall give notice to the Architect and shall be entitled subjecttoSub-Clause20.1[Contractor'sClaims]to:

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

b) paymentofanysuchCost-plusprofit,whichshallbeincludedintheContractPrice.

16.2 AfterreceivingthisnoticetheArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]to agreeordeterminethesematters.

16.3 Terminationby Contractor

16.3.1 TheContractorshallbeentitledtoterminatetheContractif:

a) the Architect fails, within 60 days after receiving a Statement and supporting documents, to issue the relevantPaymentCertificate,

b) theContractordoesnotreceivetheamountdueunderanInterimPaymentCertificatewithin90daysafter theexpiryofthetimestatedinSub-Clause14.7[Payment]withinwhichpaymentistobemade(exceptfor deductionsinaccordancewithSub-Clause2.5[ProcuringEntity'sClaims]),

c) theProcuringEntitysubstantiallyfailstoperformhisobligationsundertheContractinsuchmannerasto materiallyandadverselyaffecttheeconomicbalanceoftheContractand/ortheabilityoftheContractorto performtheContract,

d) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension],or

e) the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (underapplicableLaws)hasasimilareffecttoanyoftheseactsorevents.

f) the Contractor does not receive the Architect instruction recording the agreement of both Parties onthe fulfilmentoftheconditionsfortheCommencementofWorksunderSub-Clause8.1[Commencementof Works].

16.3.2 In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Procuring Entity, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

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

16.4 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Procuring Entity's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

a) cease all further work, except for such work as may have been instructed by the Architect for the protection of life or property or for the safety of the Works,
b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment, and
c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.5 Payment on Termination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Procuring Entity shall promptly:

a) Return the Performance Security to the Contractor,
b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and
c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17. RISK AND RESPONSIBILITY

17.1 Indemnities

17.1.1 The Contractor shall indemnify and hold harmless the Procuring Entity, the Procuring Entity's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

a) Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and
b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, their respective agents, or any one directly or indirectly employed by any of them.

17.1.2 The Procuring Entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property], unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or any one directly or indirectly employed by any of them.

17.2 Contractor's Care of the Works

17.2.1 The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the 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.

17.2.2 Afterresponsibilityhasaccordinglypassedtothe ProcuringEntity,theContractorshalltakeresponsibilityfor thecareofanyworkwhichisoutstandingonthedatestatedinaTaking-OverCertificate,untilthisoutstanding workhasbeencompleted.

17.2.3 If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractorisresponsiblefortheircare,fromanycausenotlistedinSub-Clause17.3[ProcuringEntity'sRisks], theContractorshallrectifythelossordamageattheContractor'sriskandcost,sothattheWorks,Goodsand Contractor'sDocumentsconformwiththeContract.

17.2.4 TheContractorshallbeliableforanylossordamagecausedbyanyactionsperformedbytheContractoraftera 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 wasliable.

17.3 ProcuringEntity'sRisks

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

a) Warhostilities(whetherwarbedeclaredornot),
b) rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's Personnel,
c) explosivematerials, ionizing gradiationorcontaminationbyradio-activity,exceptasmaybeattributable to the Contractor'suseofsuchexplosives,radiationorradio-activity,
d) pressurewavescausedbyaircraftorotheraerialdevicestravelingatsonicorsupersonicspeeds,
e) useoroccupationbytheProcuringEntityofanypartofthePermanentWorks,exceptasmaybespecified in the Contract,
f) designofanypartoftheWorksbytheProcuringEntity'sPersonnelorbyothersforwhomtheProcuring Entityisresponsible,and
g) anyoperationoftheforcesofnaturewhichisUnforeseeableoragainstwhichanexperiencedcontractor couldnotreasonablyhavebeenexpectedtohavetakenadequatepreventiveprecautions.

17.4 ConsequencesofProcuringEntity'sRisks

17.4.1 IfandtotheextentthatanyoftherisklistedinSub-Clause17.3aboveresultsinlossordamagetotheWorks, GoodsorContractor'sDocuments,theContractorshallpromptlygivenoticetotheArchitectandshallrectify thislossordamagetotheextentrequiredbytheEngineer.

17.4.2 IftheContractorsuffersdelayand/orincursCostfromrectifyingthislossordamage,theContractorshallgive afurthernoticetotheArchitectandshallbeentitledsubjecttoSub-Clause20.1[Contractor'sClaims]to:

(a) Anextensionoftimeforanysuchdelay,ifcompletionisorwillbedelayed,underSub-Clause8.4[Extensionof TimeforCompletion],and
(b) paymentofanysuchCost,whichshallbeincludedintheContractPrice.Inthecaseofsub-paragraphs(e)and (g) of Sub-Clause 17.3 [Procuring Entity's Risks], Accrued Costs shall be payable.

17.4.3 After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations]toagreeordeterminethesematters.

17.5 IntellectualandIndustrialPropertyRights

17.5.1 In this Sub-Clause, "infringement" shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "claim" shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.

17.5.2 WheneveraPartydoesnotgivenoticetotheotherPartyofanyclaimwithin30daysofreceivingtheclaim,the firstPartyshallbedeemedtohavewaivedanyrighttoindemnityunderthisSub-Clause.

17.5.3 TheProcuringEntityshallindemnifyandholdtheContractorharmlessagainstandfromanyclaimallegingan infringementwhichisorwas:

a) AnunavoidableresultoftheContractor'scompliancewiththeContract,or
b) A resultofanyWorksbeingusedbytheProcuringEntity:
   i) for a purposeotherthanthatindicatedby,orreasonablytobeinferredfrom,theContract,or

ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the ContractorpriortotheBaseDateorisstatedintheContract.

17.5.4 TheContractorshallindemnifyandholdtheProcuringEntityharmlessagainstandfromanyotherclaimwhich arisesoutoforinrelationto(i)themanufacture,use,saleorimportofanyGoods,or(ii)anydesignforwhich theContractorisresponsible.

17.5.5 IfaPartyisentitledtobeindemnifiedunderthisSub-Clause,theindemnifyingPartymay(atitscost)conduct negotiationsforthesettlementoftheclaim,andanylitigationorarbitrationwhichmayarisefromit.Theother Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This otherParty (anditsPersonnel)shallnotmakeanyadmissionwhichmightbeprejudicialtotheindemnifyingParty,unless theindemnifyingPartyfailedtotakeovertheconductofanynegotiations,litigationorarbitrationuponbeing requestedtodosobysuchotherParty.

17.5.6 Foroperationandmaintenanceofanyplantorequipmentinstalled,thecontractorshallgrantanon-exclusive andnon-transferablelicensetotheProcuringEntityunderthepatent,utilitymodels,orotherintellectualrights ownedbythecontractororathirdpartyfromwhomthecontractorhasreceivedtherightstograntsub-licenses andshallalsogranttotheProcuringEntityanon-exclusiveandnon-transferablerights(withouttherightsto sub-license)tousetheknowhowandothertechnicalinformationdisclosedtothecontractorunderthecontract. Nothingcontainedhere-inshallbeconstruedastransferringownershipofanypatent,utilitymodel,trademark, design, copy right, know-how or other intellectual rights from the contractor or any other third party to the ProcuringEntity.

17.6 LimitationofLiability

17.6.1 NeitherPartyshallbeliabletotheotherPartyforlossofuseofanyWorks,lossofprofit,lossofanycontractor foranyindirectorconsequentiallossordamagewhichmaybesufferedbytheotherPartyinconnectionwith theContract,otherthanasspecificallyprovidedinSub-Clause8.7[DelayDamages];Sub-Clause11.2[Costof Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination];Sub-Clause17.1[Indemnities];Sub-Clause17.4(b)[ConsequencesofProcuringEntity'sRisks] andSub-Clause17.5[IntellectualandIndustrialPropertyRights].

17.6.2 ThetotalliabilityoftheContractortotheProcuringEntity,underorinconnectionwiththeContractotherthan underSub-Clause4.19[Electricity,WaterandGas],Sub-Clause4.20[ProcuringEntity'sEquipmentandFree-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights],shallnotexceedthesumresultingfromtheapplicationofamultiplier(lessorgreaterthanone)tothe Accepted Contract Amount, as stated in **the Special Conditions of Contract**, or (if such multiplier or other sumisnotsostated)theAcceptedContractAmount.

17.6.3 ThisSub-Clauseshallnotlimitliabilityinanycaseoffraud,deliberatedefaultorrecklessmisconductbythe defaultingParty.

17.7 UseofProcuringEntity'sAccommodation/Facilities

17.7.1 TheContractorshalltakefullresponsibilityforthecareoftheProcuringEntityprovidedaccommodationand facilities,ifany,asdetailedintheSpecification, from the respectivedatesofhand-overtotheContractoruntil cessationofoccupation(wherehand-overorcessationofoccupationmaytakeplaceafterthedatestatedinthe Taking-OverCertificatefortheWorks).

17.7.2 Ifanylossordamagehappenstoanyoftheaboveitemswhilethecontractorisresponsiblefortheircarearising fromanycausewhatsoeverotherthanthoseforwhichtheProcuringEntityisliable,theContractorshall,athis owncost,rectifythelossordamagetothesatisfactionoftheEngineer.

18 INSURANCE

18.1 GeneralRequirementsforInsurances

18.1.1 In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintainingtheinsurancespecifiedintherelevantSub-Clause.

18.1.2 Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approvedbytheProcuringEntity.Thesetermsshallbeconsistentwithanytermsagreedbybothpartiesbefore thedateoftheLetterofAcceptance.Thisagreementoftermsshalltakeprecedenceovertheprovisionsofthis Clause.

18.1.3 WhereverttheProcuringEntityistheinsuringParty,eachinsuranceshallbeeffectedwithinsurersandinterms

acceptabletotheContractor.Thesetermsshallbeconsistentwithanytermsagreedbybothpartiesbeforethe date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

18.1.4 Ifapolicyisrequiredtoindemnifyjointinsured,thecovershallapplyseparatelytoeachinsuredasthougha separate policy had been issued for each of the joint insured. If a policy indemnifies additional jointinsured, namelyinadditiontotheinsuredspecifiedinthisClause,(i)theContractorshallactunderthepolicyonbehalf oftheseadditionaljointinsuredexceptthattheProcuringEntityshallactforProcuringEntity'sPersonnel,(ii) additionaljointinsuredshallnotbeentitledtoreceivepaymentsdirectlyfromtheinsurerortohaveanyother directdealingswiththeinsurer,and(iii)theinsuringPartyshallrequirealladditionaljointinsuredtocomply with the conditionsstipulatedinthepolicy.

18.1.5 Eachpolicyinsuringagainstlossordamageshallprovideforpaymentstobemadeinthecurrenciesrequiredto rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

18.1.6 TherelevantinsuringPartyshall,withintherespectiveperiodsstatedin**theSpecialConditionsofContract** (calculatedfromtheCommencementDate),submittotheotherParty:

a) EvidencethattheinsurancesdescribedinthisClausehavebeenaffected,and
b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

18.1.7 Wheneachpremiumispaid,theinsuringPartyshallsubmitevidenceofpaymenttotheotherParty.Whenever evidenceorpoliciesaresubmitted,theinsuringPartyshallalsogivenoticetotheEngineer.

18.1.8 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 insuranceismaintainedinaccordancewiththisClause.

18.1.9 NeitherPartyshallmakeanymaterialalterationtothetermsofanyinsurancewithoutthepriorapprovalofthe otherParty.Ifaninsurermakes(orattemptstomake)anyalteration,thePartyfirstnotifiedbytheinsurershall promptlygivenoticetotheotherParty.

18.1.10 IftheinsuringPartyfailstoeffectandkeepinforceanyoftheinsurancesitisrequiredtoeffectandmaintain undertheContractorfailstoprovidesatisfactoryevidenceandcopiesofpoliciesinaccordancewiththisSub-Clause,theotherPartymay(atitsoptionandwithoutprejudicetoanyotherrightorremedy)effectinsurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiumstotheotherParty,and the ContractPriceshallbeadjustedaccordingly.

18.1.11 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring Entity,undertheothertermsoftheContractorotherwise.Anyamountsnotinsuredornotrecoveredfromthe insurersshallbebornebytheContractorand/ortheProcuringEntity.

18.1.12 ProcuringEntityinaccordancewiththeseobligations,liabilitiesorresponsibilities.However,iftheinsuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coveragerelevanttothisdefault,anymoneyswhichshouldhavebeenrecoverableunderthisinsuranceshallbe paidbytheinsuringParty.

18.1.13 PaymentsbyonePartytotheotherPartyshallbesubjecttoSub-Clause2.5[ProcuringEntity'sClaims]orSub-Clause20.1[Contractor'sClaims],asapplicable.

18.1.14 TheContractorshallbeentitledtoplaceallinsurancerelatingtotheContract(including,butnotlimitedtothe insurancereferredtoClause18)withinsurersfromanyeligiblesourcecountry.

18.2 InsuranceforWorksandContractor'sEquipment

18.2.1 TheinsuringPartyshallinsuretheWorks,Plant,MaterialsandContractor'sDocumentsfornotlessthanthefull reinstatementcostincludingthecostsofdemolition,removalofdebrisandprofessionalfeesandprofit.This insuranceshallbeeffectivefromthedatebywhichtheevidenceistobesubmittedundersub-paragraph(a)of Sub-Clause18.1[GeneralRequirementsforInsurances],untilthedateofissueoftheTaking-OverCertificate for the Works.

18.2.2 The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

18.2.3 The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

18.2.4 Unless otherwise stated in the Special Conditions, insurances under this Sub-Clause:

a) Shall be effected and maintained by the Contractor as insuring Party,

b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the lossor damage,

c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks],

d) shall also cover, to the extent specifically required in the tendering documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Procuring Entity of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Procuring Entity's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated **in the Special Conditions** of Contract (if an amount is not so stated, this sub-paragraph (d) shall not apply), and

e) may however exclude loss of, damage to, and reinstatement of:

i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),

ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, material or workmanship,

iii) a part of the Works which has been taken over by the Procuring Entity, except to the extent that the Contractor is liable for the loss or damage, and

iv) Goods while they are not in Kenya, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

18.2.5 If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Procuring Entity, with supporting particulars. The Procuring Entity shall then (i) be entitled subject to Sub-Clause 2.5 [Procuring Entity's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

18.3.1 The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

18.3.2 This insurance shall be for a limit per occurrence of not less than the amount stated in **the Special Conditions of Contract**, with no limit on the number of occurrences. If an amount is not stated in the **Special Conditions of Contract**, this Sub-Clause shall not apply.

18.3.3 Unless otherwise stated in the Special Conditions, the insurances specified in this Sub-Clause:

a) Shall be effected and maintained by the Contractor as insuring Party,

b) shall be in the joint names of the Parties,

c) shall be extended to cover liability for all loss and damage to the Procuring Entity's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract, and

d) may however exclude liability to the extent that it arises from:

i) the Procuring Entity's right to have the Permanent Works executed on, over, under, in or

ii) through any land, and to occupy this land for the Permanent Works,

iii) damage which is an unavoidable result of the Contractor's obligations to execute the

iv) Works and remedy any defects, and

v) a cause listed in Sub-Clause 17.3 [Procuring Entity's Risks], except to the extent that cover is availableatcommerciallyreasonableterms.

18.4 InsuranceforContractor'sPersonnel

18.4.1 TheContractorshalleffectandmaintaininsuranceagainstliabilityforclaims,damages,lossesandexpenses (includinglegalfeesandexpenses)arisingfrominjury,sickness,diseaseordeathofanypersonemployedby theContractororanyotheroftheContractor'sPersonnel.

18.4.2 TheinsuranceshallcovertheProcuringEntityandtheArchitectagainstliabilityforclaims,damages,losses andexpenses(includinglegalfeesandexpenses)arisingfrominjury,sickness,diseaseordeathof anyperson employedbytheContractororanyotheroftheContractor'sPersonnel,exceptthatthisinsurancemayexclude lossesandclaimstotheextentthattheyarisefromanyactorneglectoftheProcuringEntityoroftheProcuring Entity'sPersonnel.

18.4.3 The insurance shall be maintained in full force and effect during the whole time that these personnel are assistingintheexecutionoftheWorks.ForaSubcontractor'semployees,theinsurancemaybeeffectedbythe Subcontractor, but the Contractorshallberesponsibleforcompliancewiththisclause.

19. FORCEMAJEURE

19.1 DefinitionofForceMajeure

19.1.1 InthisClause,"ForceMajeure"meansanexceptionaleventorcircumstance:

a) WhichisbeyondaParty'scontrol,
b) WhichsuchPartycouldnotreasonablyhaveprovidedagainstbeforeenteringintotheContract,
c) which,havingarisen,suchPartycouldnotreasonablyhaveavoidedorovercome,and
d) whichisnotsubstantiallyattributabletotheotherParty.

19.1.2 ForceMajeuremayinclude,butisnotlimitedto,exceptionaleventsorcircumstancesofthekindlistedbelow, solongasconditions(a)to(d)abovearesatisfied:

a) war,hostilities(whetherwarbedeclaredornot),invasion,actofforeignenemies,
b) rebellion,terrorism,sabotagebypersonsotherthantheContractor'sPersonnel,revolution,insurrection, militaryorusurpedpower,orcivilwar,
c) riot,commotion,disorder,strikeorlockoutbypersonsotherthantheContractor'sPersonnel,
d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as maybeattributabletotheContractor'suseofsuchmunitions,explosives,radiationorradio-activity,and
e) naturalcatastrophessuchasearthquake,hurricane,typhoonorvolcanicactivity.

19.2 NoticeofForceMajeure

19.2.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure,thenitshallgivenoticetotheotherPartyoftheeventorcircumstancesconstitutingtheForceMajeure andshallspecifytheobligations,theperformanceofwhichisorwillbeprevented.Thenoticeshallbegiven within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstanceconstitutingForceMajeure.

19.2.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeurepreventsitfromperformingthem.

19.2.3 NotwithstandinganyotherprovisionofthisClause,ForceMajeureshallnotapplytoobligationsofeitherParty tomakepaymentstotheotherPartyundertheContract.

19.3 DutytoMinimizeDelay

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the ContractasaresultofForceMajeure.APartyshallgivenoticetotheotherPartywhenitceasestobeaffectedby theForceMajeure.

19.4 ConsequencesofForceMajeure

19.4.1 IftheContractorispreventedfromperforminghissubstantialobligationsundertheContractbyForceMajeure ofwhichnoticehasbeengivenunderSub-Clause19.2[NoticeofForceMajeure],andsuffersdelayand/orincurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4

[ExtensionofTimeforCompletion],and

b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [DefinitionofForceMajeure]and,insub-paragraphs(ii)to(iv),occursinKenya,paymentofanysuch 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[InsuranceforWorksandContractor'sEquipment].

19.4.2 Afterreceivingthisnotice,theArchitectshallproceedinaccordancewithSub-Clause3.5[Determinations]to agreeordeterminethesematters.

19.5 ForceMajeureAffectingSubcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeureontermsadditionaltoorbroaderthanthosespecifiedinthisClause,suchadditionalorbroaderforce majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief underthisClause.

19.6 OptionalTermination,PaymentandRelease

19.6.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reasonofForceMajeureofwhichnoticehasbeengivenunderSub-Clause19.2[NoticeofForceMajeure],or formultipleperiodswhichtotalmorethan140daysduetothesamenotifiedForceMajeure,theneitherParty maygivetotheotherPartyanoticeofterminationoftheContract.Inthisevent,theterminationshalltakeeffect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [CessationofWorkandRemovalofContractor'sEquipment].

19.6.2 Upon such termination, the Architect shall determine the value of the work done and issue a Payment Certificatewhichshallinclude:

a) theamountspayableforanyworkcarriedoutforwhichapriceisstatedintheContract;

b) theCostofPlantandMaterialsorderedfortheWorkswhichhavebeendeliveredtotheContractor,orof which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (andbeattheriskof)theProcuringEntitywhenpaidforbytheProcuringEntity,and the Contractorshall placethesameattheProcuringEntity'sdisposal;

c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractorintheexpectationofcompletingthe Works;

d) theCostofremovalofTemporaryWorksandContractor'sEquipmentfromtheSiteandthereturnofthese itemstotheContractor'sworksinhiscountry(ortoanyotherdestinationatnogreatercost);and

e) theCostofrepatriationoftheContractor'sstaffandlaboremployedwhollyinconnectionwiththeWorks atthedateoftermination.

19.7 ReleasefromPerformance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties(including,butnotlimitedto,ForceMajeure)ariseswhichmakesitimpossibleorunlawfulforeitheror bothPartiestofulfilitsortheircontractualobligationsorwhich,underthelawgoverningtheContract,entitles thePartiestobereleasedfromfurtherperformanceoftheContract,thenuponnoticebyeitherPartytotheother Partyofsucheventorcircumstance:

a) ThePartiesshallbedischargedfromfurtherperformance,withoutprejudicetotherightsofeitherPartyin respectofanypreviousbreachoftheContract,and

b) ThesumpayablebytheProcuringEntitytotheContractorshallbethesameaswouldhavebeenpayable underSub-Clause19.6[OptionalTermination,PaymentandRelease]iftheContracthadbeenterminated underSub-Clause19.6.

20 SETTLEMENTOFCLAIMSANDDISPUTES

20.1 Contractor'sClaims

20.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the ContractorshallgiveNoticetotheEngineer,describingtheeventorcircumstancegivingrisetotheclaim.The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware,or shouldhavebecomeaware, of the eventorcircumstance.

20.1.2 IftheContractorfailstogivenoticeofaclaimwithinsuchperiodof30days,theTimeforCompletionshallnot be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clauseshallapply.

20.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particularsfortheclaim,allasrelevanttosucheventorcircumstance.

20.1.4 TheContractorshallkeepsuchcontemporaryrecordsasmaybenecessarytosubstantiateanyclaim,eitheron theSiteoratanotherlocationacceptabletotheEngineer.WithoutadmittingtheProcuringEntity'sliability,the Architectmay,afterreceivinganynoticeunderthisSub-Clause,monitortherecord-keepingand/orinstructthe Contractortokeepfurthercontemporaryrecords.TheContractorshallpermittheArchitecttoinspectallthese recordsandshall(ifinstructed)submitcopiestotheEngineer.

20.1.5 Within42daysaftertheContractorbecameaware(orshouldhavebecomeaware) of the eventorcircumstance givingrisetotheclaim,orwithinsuchotherperiodasmaybeproposedbytheContractorandapprovedbythe Engineer, the Contractor shall send to the Architect fully detailed claim which includes full supporting particularsofthebasisoftheclaimandoftheextensionoftimeand/oradditionalpaymentclaimed.Iftheevent orcircumstancegivingrisetotheclaimhasacontinuingeffect:

a) Thisfullydetailedclaimshallbeconsideredasinterim;

b) TheContractorshallsendfurtherinterimclaimsatmonthlyintervals,givingtheaccumulateddelayand/or amountclaimed,andsuchfurtherparticularsastheArchitectmayreasonablyrequire;and

c) TheContractorshallsendafinalclaimwithin30daysaftertheendoftheeffectsresultingfromtheeventor circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

20.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Architect and approved by the Contractor, the Architect shall respond with approval, or with disapproval and detailed comments. He may also request anynecessary further particulars but shall nevertheless give his response on the principles of the claim within the above definedtimeperiod.

20.1.7 Within the above defined period of 42 days, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations]toagreeordetermine(i)theextension(ifany) of the TimeforCompletion(beforeorafterits expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment(ifany)towhichtheContractorisentitledundertheContract.

20.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiatedasdueundertherelevantprovisionoftheContract.Unlessanduntiltheparticularssuppliedare sufficienttosubstantiatethewholeoftheclaim,theContractorshallonlybeentitledtopaymentforsuchpartof theclaimashehasbeenabletosubstantiate.

20.1.9 IftheArchitectdoesnotrespondwithinthetimeframedefinedinthisClause,eitherPartymayconsiderthatthe claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordancewithClause20.3.

20.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim.IftheContractorfailstocomplywiththisoranotherSub-Clauseinrelationtoanyclaim,anyextension oftimeand/oradditionalpaymentshalltakeaccountoftheextent(ifany)towhichthefailurehaspreventedor prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph ofthis Sub-Clause20.3.

20.2 Procuring Entity'sClaims

20.2.1 IftheProcuringEntityconsidersitselftobeentitledtoanypaymentunderanyClauseofthesConditionsor 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 [ProcuringEntity'sEquipmentandFree-IssueMaterials],orforotherservicesrequestedbytheContractor.

20.2.2 Thenoticeshallbegivenassoonaspracticableandnolongerthan30daysafterthe ProcuringEntitybecame aware,orshouldhavebecomeaware, of the eventorcircumstancesgivingrisetotheclaim.Anoticerelatingto anyextensionoftheDefectsNotificationPeriodshallbegivenbeforetheexpiryofsuchperiod.

20.2.3 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)theamount(ifany)whichtheProcuringEntityisentitledtobepaidbytheContractor,and/or(ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of DefectsNotificationPeriod].

20.2.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. The Procuring Entity shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate,ortootherwiseclaimagainsttheContractor,inaccordancewiththisSub-Clause.

20.3 AmicableSettlement

Whereanoticeofaclaimhasbeengiven,bothPartiesshallattempttosettlethedisputeamicablybeforethe commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claiminaccordancewithSub-Clause20.1aboveshouldmovetocommencearbitrationafter60daysfromthe dayonwhichanoticeofaclaimwasgiven,evenifnoattemptatanamicablesettlementhasbeenmade.

20.4 Mattersthatmaybereferredtoarbitration

Notwithstanding anything stated herein the following matters may be referred to arbitration before the practicalcompletionoftheWorksorabandonmentoftheWorksorterminationoftheContractbyeitherparty:

a) Whetherornottheissueofaninstructionbythe Architectisempoweredbytheseconditions.
b) Whetherornotacertificatehasbeenimproperlywithheldorisnotinaccordancewiththese Conditions.
c) Anydisputearisinginrespectrisksarisingfrommattersreferredtoin Clause17.3and Clause19.
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.

20.5 Arbitration

20.5.1 AnyclaimordisputebetweenthePartiesarisingoutoforinconnectionwiththe Contractnotsettledamicably inaccordancewithSub-Clause20.3shallbefinallysettledbyarbitration.

20.5.2 Noarbitrationproceedingsshallbecommencedonanyclaimordisputewherenoticeofaclaimordisputehas notbeengivenbytheapplyingpartywithinninetydaysoftheoccurrenceordiscoveryofthematterorissue givingrisetothedispute.

20.5.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commenceunlessanattempthasinthefirstinstancebeenmadebythepartiestosettlesuchclaimordispute amicablywithorwithouttheassistanceofthirdparties.Proofofsuchattemptshallberequired.

20.5.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements,computations,testsorvaluationsasmayinhisopinionbedesirableinordertodeterminethe rightsofthepartiesandassessandawardanysumswhichoughttohavebeenthesubjectoforincludedinany certificate.

20.5.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shallbesubmittedtohiminthesamemannerasifnosuchcertificate,opinion,decisionrequirementornotice had been given.

20.5.6 Thearbitratorsshallhavefullpowertoopenup,reviewandreviseanycertificate,determination,instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the PartiesandtheArchitectfrombeingcalledasawitnessandgivingevidencebeforethearbitratorsonanymatter whatsoeverrelevanttothedispute.

20.5.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfactiongiveninitsNoticeofDissatisfaction.

20.5.7 ArbitrationmaybecommencedpriortooraftercompletionoftheWorks.TheobligationsoftheParties,andthe Architectshallnotbealteredbyreasonofanyarbitrationbeingconductedduringtheprogressoftheworks.

20.5.8 ThetermsoftheremunerationofeachoralltheMembersofArbitrationshallbemutuallyagreeduponbythe Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

20.6 ArbitrationwithNationalContractors

20.6.1 IftheContractiswithnationalcontractors,arbitrationproceedingswillbeconductedinaccordancewiththe ArbitrationLawsofKenya.Incaseofanyclaimordispute,suchclaimordisputeshallbenotifiedinwritingby either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitratorwithinthirtydaysofthenotice.Thedisputeshallbereferredtothearbitrationandfinaldecisionofa persontobeagreedbetweentheparties.Failingagreementtoconcurintheappointmentofan Arbitrator,the Arbitratorshallbeappointed, on the requestoftheapplyingparty,bytheChairmanorViceChairmanofanyof thefollowingprofessionalinstitutions;

i) ArchitecturalAssociationofKenya
ii) InstituteofQuantitySurveyorsofKenya
iii) AssociationofConsultingEngineersofKenya
iv) CharteredInstituteofArbitrators(KenyaBranch)
v) InstitutionofEngineersofKenya

20.6.2 Theinstitutionwrittentofirstbytheaggrievedpartyshalltakeprecedenceoverallotherinstitutions.

20.7 ArbitrationwithForeignContractors

20.7.1 Arbitrationwithforeigncontractorsshallbeconductedinaccordancewiththearbitrationrulesoftheunited Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the InternationalChamberofCommerce(ICC)andconductedundertheICCRulesofArbitration;byoneormore arbitratorsappointedinaccordancewithsaidarbitrationrules.

20.7.2 Theplaceofarbitrationshallbealocationspecifiedinthe**SCC;**and the arbitrationshallbeconductedinthe languageforcommunicationsdefinedinSub-Clause1.4[LawandLanguage].

20.8 AlternativeArbitrationProceedings

Alternatively,thePartiesmayreferthemattertotheNairobiCentreforInternationalArbitration(NCIA)which offersaneutralvenuefortheconductofnationalandinternationalarbitrationwithcommitmenttoproviding institutionalsupporttothearbitralprocess.

20.9 FailuretoComplywithArbitrator'sDecision

20.9.1 TheawardofsuchArbitratorshallbefinalandbindinguponthepartes.

20.9.2 In the eventthataPartyfailstocomplywithafinalandbindingArbitrator'sdecision,thentheotherPartymay, withoutprejudicetoanyotherrightsitmayhave,referthemattertoacompetentcourtoflaw.

20.10 Contractoperationstocontinue

Notwithstanding any reference to arbitration herein,

1.1.1 the parties shall continue to perform their respective obligations under the Contract unless they otherwiseagree;and

1.12 theProcuringEntityshallpaytheContractoranymoniesduetheContractor.

Section IX - Special Conditions of Contract

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

Conditions	Sub-Clause	Data
Part A - Contract Data		
Procuring Entity's name and address	Heading	.....
Name and Reference No. of the Contract	Heading and 1.1	.....
Engineers Name and address	Heading and 3.1.1	County Works Officer, Department of Infrastructure And Public Works P.O Box 763-50200 Bungoma
Contractor's Representative's name	4.3.1	.....
Key Personnel names	16.9.1	.....
Time for Completion	1.1.	.....
Defects Notification Period	1.1	*14 Days.*
Sections	1.1	_____days
Electronic transmission systems	1.3	_____days
Time for the Parties entering into a Contract Agreement	1.6	Within 30days
Commencement Date	8.1.1	
Time for access to the Site	2.1.1	No later than the Commencement Date, and not later than _____days after Commencement Date
Architect Duties and Authority	3.1.6 (b) (ii)	Variations resulting in an increase of the Accepted Contract Amount in excess of____% shall require approval of the Procuring Entity.
Performance Security	4.2.1	The performance security will be in the form of a ____ ____ in the amount(s) of _____ 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)	1 % of the Contract Price per day.
Maximum amount of delay damages	8.7.1	10% of the final Contract Price.
Provisional Sums	13.6. (b)(ii)	*100%*
Adjustments for Changes in Cost	13.9	N/A
Total advance payment	14.2.1	N/A

Conditions	Sub-Clause	Data
Repayment amortization rate of advance payment	14.2.5 (b)	N/A
Percentage of Retention	14.3.2 (c)	10%
Limit of Retention Money	14.3.2 (c)	10% of the Accepted Contract Amount
Plant and Materials	14.5.3(b)(i)	N/A
	14.5.3(c)(i)	N/A
Minimum Amount of Interim Payment Certificates	14.6.2	N/A
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	N/A
Maximum total liability of the Contractor to the Procuring Entity	17.6.2	*N/A*
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1.6	 30 days 30 days
Maximum amount of deductibles for insurance of the Procuring Entity's risks	18.2.4 (d)	*N/A*
Minimum amount of third-party insurance	18.3.2	*N/A*
The place of arbitration	20.7.2	*TO Be Agreed Upon.*

SECTION X - CONTRACT FORMS

FORM No. 1 - CONTRACT AGREEMENT

FORM No. 2 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]

FORM No. 3- PERFORMANCE SECURITY [Option 2– Performance Bond]

FORM No. 4 - ADVANCE PAYMENT SECURITY

FORM No. 5 - RETENTION MONEY SECURITY

FORM NO 1: CONTRACTAGREEMENT

THIS AGREEMENTmadethe_____dayof_____,20_____,between _____of _____(hereinafter "the Procuring Entity)
Oftheonepart,and_____of_____(hereinafter "theContractor"),oftheotherpart:

WHEREAS the Procuring Entity desires that the Worksknownas_____should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Worksandtheremedyingofanydefectstherein,

The Procuring Entity and the Contractor agree as follows:

1. InthisAgreementwordsandexpressionsshallhavethesamemeaningsasarerespectivelyassignedtothemin theContractdocumentsreferredto.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This AgreementshallprevailoverallotherContractdocuments.

   a) The Notification of Award
   b) The Form of Tender
   c) The addenda Nos_____(if any)
   d) The Special Conditions of Contract
   e) The General Conditions of Contract;
   f) The Specifications
   g) The Drawings;and
   h) The completed Schedules and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Procuring Entity to execute the Works and to remedy defectstherininconformityinallrespectswiththeprovisionsoftheContract.

4. TheProcuringEntityherebycovenantstopaytheContractorinconsiderationoftheexecutionandcompletionof the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable undertheprovisionsoftheContractatthetimesandinthemannerprescribedbytheContract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and year specified above.

Signedandsealedby_____(fortheProcuringEntity)

Signedandsealedby_____(fortheContractor).