



**TENDER NO.:**  
**GF-KEMSA/CONST 03/ONT 01/2022/2023**

**TENDER FOR SUPPLY,  
INSTALLATION, TESTING AND  
COMMISSIONING OF LIFTS AT  
KEMSA NEW WAREHOUSE**

**CLOSING DATE: 4th OCTOBER, 2022**

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# **INVITATION TO TENDER**

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## **INVITATION TO TENDER**

**PROCURING ENTITY:** Kenya Medical Supplies Authority  
13, Commercial Street, Industrial Area  
P.O B Box 47715-00100  
Telephone No.: +254 20 3922000/+254 719033000/+254 733606600  
Fax No.: +254203922400  
Email: [procure@kemsaco.ke](mailto:procure@kemsaco.ke)

### **CONTRACT NAME AND DESCRIPTION: TENDER FOR SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF LIFTS AT KEMSA NEW WAREHOUSE**

1. The Kenya Medical Supplies Authority invites sealed tenders for the supply, installation, testing and Commissioning of Lifts at KEMSA, Embakasi.
2. Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours *[0900 to 1600 hours]* at the address given below.

Kenya Medical Supplies Authority  
13, Commercial Street, Industrial Area  
P.O B Box 47715-00100  
Telephone No.: +254 20 3922000/+254 719033000/+254 733606600  
Fax No.: +254203922400  
Email: [procure@kemsaco.ke](mailto:procure@kemsaco.ke)

**except on Public Holidays or download at the IFMIS Supplier's Portal:**  
<http://supplier.treasury.go.ke/> KEMSA's website <https://www.kemsaco.ke> Documents downloaded are free of charge and bidders are advised to register at the Procurement Office or via email at [procure@kemsaco.ke](mailto:procure@kemsaco.ke).

4. Tenders shall be quoted be in Kenya Shillings and shall include all taxes. Tenders shall remain valid for **One Hundred and Twenty days (120)** days from the date of opening of tenders.
5. All Tenders must be accompanied by a **Tender Security of Ksh.350,000 (Kenya Shillings Three Hundred and Fifty Thousand )**
6. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
7. Complete serialized/paginated Bid Documents; One original and a copy in plain sealed envelopes clearly marked on top with the Tender Reference and Description and accompanied by a Bid Security of an amount as indicated should be addressed to:

**The Chief Executive Officer**  
**Kenya Medical Supplies Authority**  
**13, Commercial Street, Industrial Area**

**P.O B Box 47715-00100  
Nairobi, Kenya.**

And must be deposited in **Tender Box 1 Marked GOK / WORLD BANK at the reception on the Ground floor of KEMSA's Commercial Street Office in Nairobi** on or before **4<sup>th</sup> October 2022 at 10.00 a.m.** Bids will be opened immediately thereafter in the presence of Bidders' and or representatives who choose to attend.

8. Bulky tenders can be handed over to **KEMSA Procurement Director's** office for registration and safe keeping till the tender opening date.
9. Late tenders will be rejected.
10. There will be a **Site visit and Pre-bid conference for all prospective bidders on 21<sup>st</sup> September 2022 from 10:00am to 2:00pm at KEMSA warehouse in Embakasi, Nairobi.** Thereafter there will be a pre-bid meeting for those who wish to attend.

**Chief Executive Officer  
Kenya Medical Supplies Authority**

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**SECTION I: INSTRUCTIONS TO TENDERERS**

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# **SECTION I - INSTRUCTIONS TO TENDERERS**

## **A. GENERAL PROVISIONS**

### **1.1 Scope of tender**

**1.2** 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.

**1.3** Throughout this tendering document:

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

### **2.1 Fraud and corruption**

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

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

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

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

### **3.1 Eligible tenderers**

**3.2** A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.8, or an individual or any combination of such entities in the form of a

joint venture (JV) under an existing agree mentor with the intent to enter in to such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is 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**.

- 3.3 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.
- 3.4 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:
- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer;
  - b) Receives or has received any direct or indirect subsidy from another tenderer;
  - c) Has the same legal representative as another tenderer;
  - d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process;
  - e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;
  - f) Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as a consultant for Contract implementation;
  - g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;
  - h) Has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and:
    - i) Are directly or indirectly involved in the preparation of the Tender 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.
- 3.5 A tenderer shall not be involved in corrupt, coercive, obstructive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified
- 3.6 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all



Tenders in which the firm is involved. Members of a joint venture may not also make an individual tender, be a sub-contractor in a separate tender or be part of another joint venture for the purposes of the same Tender. A firm that is not a tenderer or a JV member may participate as a subcontractor in more than one tender.

- 3.7 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be. This criterion also shall apply to the determination of the nationality of proposed sub-contractors or sub-consultants for any part of the Contract including related Services.
- 3.8 A Tenderer that has been debarred from participating in public procurement shall be ineligible to tender or be awarded a contract. The list of debarred firms and individuals is available from the website of PPRA [www.ppra.go.ke](http://www.ppra.go.ke).
- 3.9 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 privates ect or on an equal basis.
- 3.10 Firms and individuals shall be ineligible if their countries of origin are:
- a) As a matter of law or official regulations, Kenya prohibits commercial relations with that country;
  - b) By an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, Kenya prohibits any import of goods or contracting of works or services from that country, or any 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.
- 3.11 Foreign tenderers are required to source at least forty (40%) percent of their contract inputs (in supplies, local sub-contracts and labor) from citizen suppliers and contractors. To this end, a foreign tenderer shall provide in its tender documentary evidence that this requirement is met. Foreign tenderers not meeting this criterion will be automatically disqualified. Information required to enable the Procuring Entity determine if this condition is met shall be provided for this purpose in “*SECTION II - EVALUATION AND QUALIFICATION CRITERIA, Item 9*”.
- 3.12 Pursuant to the eligibility requirements of ITT 3.10, a tender is considered a foreign tenderer, If it is registered in Kenya and has less than 51 percent ownership by nationals of Kenya and if it does not subcontract to foreign firms or individuals more than 10 percent of the contract price, excluding provisional sums. JVs are considered as foreign tenderers if the individual member firms registered in Kenya have less 51 percent ownership by nationals of Kenya. The JV shall not subcontract to foreign firms more than

10 percent of the contract price, excluding provisional sums.

- 3.13 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract. Application for registration with National Construction Authority may be accessed from the website [www.nca.go.ke](http://www.nca.go.ke).
- 3.14 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature. A JV tenderer shall be given opportunity to seek such exemption as a condition of award and signature of contract. Application for exemption from the Competition Authority of Kenya may be accessed from the website [www.cak.go.ke](http://www.cak.go.ke).

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

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

- 4.2 Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible under ITT 3.9. At the Procuring Entity's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.
- 4.3 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.

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

- 5.2 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.
- 5.3 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be the tenderer's own expense.
- 5.4 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 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.

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

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

### **6.1 Sections of Tender Document**

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

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

Section I – Instructions to Tenderers

Section II – Tender Data Sheet (TDS)

Section III- Evaluation and Qualification Criteria

Section IV – Tendering Forms

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

Section V - Bills of Quantities

Section VI - Specifications

Section VII - Drawings

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

Section VIII - General Conditions (GCC)

Section IX - Special Conditions of Contract

Section X- Contract Forms

#### **PART 4: Pricing Schedules**

- 6.3 The Invitation to Tender Notice issued by the Procuring Entity is not part of the Contract documents. Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.
- 6.4 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.
- ### **7.1 Clarification of Tender Document, Site Visit, Pre-tender Meeting**
- 7.2 A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring **Entity's** address specified in the **TDS** or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including

a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 8 and ITT 22.2.

- 7.3 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a **tender**. The costs of visiting the Site shall be at the Tenderer's own expense. The Procuring Entity shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 7.4 The Tenderer is requested to submit any questions in writing, to reach the Procuring Entity not later than the period specified in the **TDS** before the meeting.
- 7.5 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.
- 7.6 The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.

## **8.1 Amendment of Tender Documents**

- 8.2 At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documents by issuing addenda.
- 8.3 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's website in accordance with ITT 7.5.
- 8.4 To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity should extend the dead line for the submission of Tenders, pursuant to ITT 22.2.

## **C. PREPARATION OF TENDERS**

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

The Tenderer shall bear all costs associated with the preparation and submission of its

Tender, and the Procuring Entity shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

## **10. Language of Tender**

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

### **11.1 Documents Comprising the Tender**

11.2 The Tender shall comprise the following:

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

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

### **12.0 Form of Tender and Schedules**

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

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

## **13. Alternative Tenders**

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

13.2 When alternative times for completion are explicitly invited, a statement to that effect

will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.

- 13.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the Procuring Entity's design as described in the Tender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.
- 13.4 When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and described in Section VII, Works' Requirements.

#### **14.1 Tender Prices and Discounts**

- 14.2 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.
- 14.3 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.
- 14.4 The price to be quoted in the Form of Tender, in accordance with ITT 12.1, shall be the total price of the Tender, including any discounts offered.
- 14.5 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 12.1.
- 14.6 It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except in cases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Procuring Entity may require the Tenderer to justify its proposed indices and weightings.
- 14.7 Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time.

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

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

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

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

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

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

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

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

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

### **17.1 Documents Establishing the Eligibility and Qualifications of the Tenderer**

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

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

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

- 17.5 Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 17.6 The purpose of the information described in **ITT 17.4** above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the Procuring Entity as a justification for a Tenderer's failure to disclose, or failure to provide required information on its ownership and control.
- 17.7 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which in information on any changes to the information which was provided by the tenderer under ITT 6.4. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 17.8 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information required pursuant to these requirements, the Tenderer shall warrant that the information submitted is complete, current and accurate as at the date of submission to the Procuring Entity.
- 17.9 If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the Procuring Entity is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 17.10 If information submitted by a tenderer pursuant to these requirements, or obtained by the Procuring Entity (whether through its own enquiries, through notification by the public or otherwise), shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
  - ii) if the contract has been awarded to that tenderer, the contract award will be set aside depending the outcome of (iii),
  - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person have committed any criminal offence.
- 17.11 If a tenderer submits information pursuant to these requirements that is incomplete, inaccurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 17.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to



genuine error which was not attributable to the intentional act, negligence or recklessness of the tender.

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

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

18.2

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

## **19.1 Tender Security**

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

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

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

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

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

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

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

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

- 19.8 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension thereto provided by the Tenderer; or
  - b) if the successful Tenderer fails to: -
    - i) sign the Contract in accordance with ITT47; or
    - ii) furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.
- 19.9 Where tender securing declaration is executed, the Procuring Entity shall recommend to the PPRA to debar the Tenderer from participating in public procurement as provided in the law.
- 19.10 The Tender Security or the Tender-Securing Declaration of a JV shall be in the name of the JV that submits the Tender. If the JV has not been legally constituted into a legally enforceable JV at the time of tendering, the Tender Security or the Tender-Securing Declaration shall be in the names of all future members as named in the letter of intent referred to in ITT 4.1 and ITT 11.2.
- 19.11 A tenderer shall not issue a tender security to guarantee itself.

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

- 20.2 The Tenderer shall **prepare** one original of the documents comprising the Tender as described in ITT 11 and clearly mark it “ORIGINAL.” Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked “ALTERNATIVE.” In addition, the Tenderer shall submit copies of the Tender, in the number specified in the **TDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.3 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.
- 20.4 The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 20.5 In case the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 20.6 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

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

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

- 21.2 The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the Procuring Entity and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a) in an envelope or package or container marked “ORIGINAL”, all documents comprising the Tender, as described in ITT 11; and
  - b) in an envelope or package or container marked “COPIES”, all required copies of the Tender; and
  - c) if alternative Tenders are permitted in accordance with ITT 13, and if relevant:
    - i) in an envelope or package or container marked “ORIGINAL –ALTERNATIVE TENDER”, the alternative Tender; and
    - ii) in the envelope or package or container marked “COPIES- ALTERNATIVE TENDER”, all required copies of the alternative Tender.

The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity,
  - b) bear the name and address of the Tenderer; and
  - c) bear the name and Reference number of the Tender.
- 21.3 If an envelope or package or container is not sealed and marked as required, the *Procuring Entity* will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

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

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

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

### **23.0 Late Tenders**

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

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

- 24.2 A Tenderer may withdraw, substitute, or modify its Tender after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a

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

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

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

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

## **25. Tender Opening**

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

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

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

25.4 Next, envelopes marked “MODIFICATION” shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

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

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

by the members of the tender opening committee attending the opening.

- 25.7 At the Tender Opening, the Procuring Entity shall neither discuss the merits of any Tender nor reject any Tender (except for late Tenders, in accordance with ITT 23.1).
- 25.8 The Procuring Entity shall prepare minutes of the Tender Opening that shall include, as a minimum: -
- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
  - b) the Tender Price, per lot (contract) if applicable, including any discounts;
  - c) any alternative Tenders;
  - d) the presence or absence of a Tender Security, if new as required;
  - e) number of pages of each tender document submitted.
- 25.9 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers.

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

### **26 Confidentiality**

- 26.1 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 43.
- 26.2 Any effort by a Tenderer to influence the Procuring Entity in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.
- 26.3 Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

### **27.1 Clarification of Tenders**

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

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

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

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

## **29.1 Determination of Responsiveness**

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

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

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

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

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

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

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

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

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

### **31.1 Arithmetical Errors**

- 31.2 The tender sum as submitted and read out during the tender opening shall be absolute and final and shall not be the subject of correction, adjustment or amendment in any way by any person or entity.
- 31.3 Provided that the Tender is substantially responsive, the Procuring Entity shall handle errors on the following basis: -
- a) Any error detected if considered a major deviation that affects the substance of the tender, shall lead to disqualification of the tender as non-responsive.
  - b) Any errors in the submitted tender arising from a miscalculation of unit price, quantity, subtotal and total bid price shall be considered as a major deviation that affects the substance of the tender and shall lead to disqualification of the tender as non-responsive. and
  - c) if there is a discrepancy between words and figures, the amount in words shall prevail
- 31.4 Tenderers shall be notified of any error detected in their bid during the notification of award.

### **32.0 Conversion to Single Currency**

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

### **33.1 Margin of Preference and Reservations**

- 33.2 A margin of preference may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.
- 33.3 A margin of preference shall not be allowed unless it is specified so in the **TDS**.
- 33.4 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 33.4.
- 33.5 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** a 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 Daywork items, where priced competitively;
  - b) price adjustment due to discounts offered in accordance with ITT 14.4;
  - c) converting the amount resulting from applying (a) and (b) above, if relevant, to a 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 tenderer or tenderers base done lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

### **36.0 Comparison of tenders**

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



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

#### **Abnormally Low Tenders**

- 37.2 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.
- 37.3 In the event of identification of a potentially Abnormally Low Tender, the Procuring Entity shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 37.4 After evaluation of the price analyses, in the event that the Procuring Entity determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the Procuring Entity shall reject the Tender.

#### **Abnormally high tenders**

- 37.5 An abnormally high tender price is one where the tender price, in combination with other constituent elements of the Tender, appears unreasonably too high to the extent that the Procuring Entity is concerned that it (the Procuring Entity) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.
- 37.6 In case of a nab normally high price, the Procuring Entity shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The Procuring Entity may also seek written clarification from the tenderer on the reason for the high tender price. The Procuring Entity shall proceed as follows:
- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the Procuring Entity may accept or not accept the tender depending on the Procuring Entity's budget considerations.
  - ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the Procuring Entity shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.
- 37.7 If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

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

- 38.2 If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or frontloaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price

analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.

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

### **39.1 Qualifications of the tenderer**

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

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

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

### **40.1 Lowest evaluated tender**

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

- a) Most responsive to the Tender document; and
- b) the lowest evaluated price.

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

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

## **F. AWARD OF CONTRACT**

### **42.0 Award criteria**

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

### **43.1 Notice of Intention to Enter into a Contract/Notification of Award**

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

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

### **44.1 Stand still Period**

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

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

### **45.1 Debriefing by The Procuring Entity**

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

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

### **46.0 Letter of Award**

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

### **47.1**

## **Signing of Contract**

- 47.2 Upon the expiry of the fourteen days of the Notification of Intention to enter in to contract and upon the parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.
- 47.3 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return it to the Procuring Entity.
- 47.4 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

## **48.1 Performance Security**

- 48.2 Within twenty-one (21) days of the receipt of the Letter of Award from the Procuring Entity, the successful Tenderer shall furnish the Performance Security and, any other documents required in the **TDS**, in accordance with the General Conditions of Contract, subject to ITT 38.2 (b), using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the Procuring Entity. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the Procuring Entity has agreed in writing that a correspondent bank is not required.
- 48.3 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required in the **TDS** or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the Procuring Entity may award the Contract to the Tenderer offering the next Best Evaluated Tender.
- 48.4 Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.

## **49.1 Publication of Procurement Contract**

- 49.2 Within fourteen days after signing the contract, the Procuring Entity shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:
- a) name and address of the Procuring Entity;
  - b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
  - c) the name of the successful Tenderer, the final total contract price, the contract duration;
  - d) dates of signature, commencement and completion of contract;
  - e) names of all Tenderers that submitted Tenders, and their Tender prices as readout at Tender opening.

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

- 50.1 The procedures for making Procurement-related Complaints are as specified in the **TDS**.
- 50.2 A request for administrative review shall be made in the form provided under contract forms.

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## **SECTION II: TENDER DATA SHEET (TDS)**

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## **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.

<b>Reference to ITC Clause</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
<b>A. General</b>	
<b>ITT 1.1</b>	<p>The name of the contract is <b>TENDER FOR SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF LIFTS AT KEMSA NEW WAREHOUSE</b></p> <p>The reference number of the Contract is: <b>TENDER NO.: GF-KEMSA/CONST 03/ONT 01/2022/2023</b></p> <p>The number and identification of lots (contracts) comprising this Tender are <i>[insert number and identification of lots (contracts)]</i></p> <p>Lot 1- Name _____ <b>N/A</b> _____</p> <p>Lot 2- Name _____ <b>N/A</b> _____</p> <p>Lot... Name _____ <b>N/A</b> _____ ETC.</p>
<b>ITT 2.4</b>	<p>The Information made available on competing firms is as follows: N/A</p>
<b>ITT 2.4</b>	<p>The firms that provided consulting services for the contract being tendered for are:</p> <p><b>MAESTRO ARCHITECTS</b> <b>P. O. BOX 6644 – 00100</b> <b>NAIROBI.</b></p> <p><b>M &amp; M CONSTRUCTION CONSULTANTS</b> <b>P. O. BOX 4677 – 00506</b> <b>NAIROBI.</b></p> <p><b>KIRI CONSULT LTD.</b> <b>P. O. BOX 4125 – 00506</b> <b>NAIROBI.</b></p> <p><b>NORKUNS INTAKES LTD</b> <b>P. O. BOX 605 – 00100</b> <b>NAIROBI.</b></p>

<b>Reference to ITC Clause</b>	<b>PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS</b>
<b>ITT 3.1</b>	Maximum number of members in the Joint Venture (JV) shall be: 2
<b>B. Contents of Tender Document</b>	
<b>ITT 7.1</b>	<p>(i) The Tenderer will submit any request for clarifications in writing at the Address</p> <p><b>Kenya Medical Supplies Authority 13, Commercial Street, Industrial Area P. O. Box 47715 – 00100, Nairobi Telephone No.: +254 20 3922000/+254 719033000/+254 733606600 Fax No.: +254203922400 Email: <a href="mailto:procure@kemsaco.ke">procure@kemsaco.ke</a></b></p> <p>except on <b>Public Holidays</b> to reach the Procuring Entity not later than <b>19th September, 2022</b></p> <p>(ii) The Procuring Entity shall publish its response at the website <a href="http://www.kemsaco.ke">http://www.kemsaco.ke</a></p>
<b>ITT 7.2</b>	<p>(A) A pre-arranged pretender site visit shall take place at the following date, time and place:</p> <p><b>Date: 21<sup>st</sup> September 2022 Time: 10.00 AM – 2:00 PM Place: KEMSA Embakasi</b></p> <p>(B) Pre-Tender meeting shall take place at the following date, time and place:</p> <p><b>Date: 21<sup>st</sup> September 2022 Time: 10.00 AM – 2:00 PM Place: KEMSA Embakasi</b></p>
<b>ITT 7.3</b>	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than Two (2) days before the meeting.
<b>ITT 7.5</b>	The Procuring Entity’s website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is <a href="http://www.kemsaco.ke">http://www.kemsaco.ke</a>
<b>ITT 9.1</b>	<p>For <b>Clarification</b> of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity’s address is:</p> <p><b>Chief Executive Officer Kenya Medical Supplies Authority 13, Commercial Street, Industrial Area P. O. Box 47715 – 00100, Nairobi Telephone No.: +254 20 3922000/+254 719033000/+254 733606600 Fax No.: +254203922400 Email: <a href="mailto:procure@kemsaco.ke">procure@kemsaco.ke</a></b></p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
<b>C. Preparation of Tenders</b>	
ITT 11.1 (h)	<p>The Tenderer shall submit the following additional documents in its Tender:</p> <ol style="list-style-type: none"> <li>1. Coloured Technical Brochures</li> <li>2. Evidence of Personnel Academic &amp; Professional Qualifications</li> <li>3. Evidence of Ongoing Projects of similar nature, complexity or magnitude</li> <li>4. Evidence of Completed Projects of similar nature, complexity or magnitude in the last 5 years</li> <li>5. Proof / Evidence of Ownership for all the relevant equipment and transport</li> <li>6. Audited Financial reports for the last three (3) years</li> <li>7. Evidence of financial resources (Cash in Hand, Lines of Credit, Overdraft, etc.)</li> </ol>
ITT 13.1	Alternative Tenders shall NOT be considered.
ITT 13.2	Alternative times for completion shall NOT be permitted.
ITT 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: N/A
ITT 14.5	The prices quoted by the Tenderer shall be: <b>Fixed</b>
ITT 15.2 (a)	Foreign currency requirements <b>not allowed</b> .
ITT 18.1	The <b>Tender validity</b> period shall be <b>One Hundred &amp; Twenty (120) days</b> .
ITT 19.1	<p>Tender shall provide a <b>Tender Security</b>  The type of Tender security shall be in the amount of <b>Kenya shillings Three Hundred and Fifty Thousand (Ksh.350,000.00)</b></p>
ITT 20.1	In addition to the original of the Tender, the number of copies is: <b>one (1)</b>
ITT 20.3	<p>The written confirmation of authorization to sign on behalf of the Tenderer shall consist of:  <i>Power of Attorney for the Authorized Representative</i></p>
<b>D. Submission and Opening of Tenders</b>	
ITT 22.1	<p>(A) <u>For Tender submission purposes only</u>, the Procuring Entity's address is:</p> <p><b>Kenya Medical Supplies Authority  13, Commercial Street, Industrial Area  P. O. Box 47715-00100  Nairobi, Kenya.</b></p> <p>And must be deposited in <b>Tender Box 1 Marked GOK / WORLD BANK at the reception on the Ground floor of KEMSA's Commercial Street Office in Nairobi</b> on or before <b>4<sup>th</sup> October, 2022 at 10.00 a.m.</b></p> <p>Tenders <b><u>shall not submit</u></b> tenders electronically.</p>



Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 25.1	<p>The Tender opening shall take place at the time and the address for Opening of Tenders provided below:</p> <p><b>Kenya Medical Supplies Authority 13, Commercial Street, Industrial Area P.O B Box 47715-00100 Nairobi, Kenya.</b></p> <p>And must be deposited in <b>Tender Box 1 Marked GOK / WORLD BANK at the reception on the Ground floor of KEMSA's Commercial Street Office in Nairobi</b> on or before <b>4<sup>th</sup> October, 2022 at 10.00 a.m.</b> Tenders <b>shall not submit</b> tenders electronically.</p>
ITT 25.1	<p>If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures <b>specified below</b> <i>[insert a description of the electronic Tender opening procedures]</i>:</p> <p style="text-align: center;">N/A</p>
<b>E. Evaluation, and Comparison of Tenders</b>	
ITT 30.3	<p>The adjustment shall be based on the average 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.</p>
TT 32.1	<p>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: <b>Kenya Shillings</b></p> <p>The source of exchange rate shall be: <b>The Central bank of Kenya</b> (mean rate)</p> <p>The date for the exchange rate shall be: <b>the deadline date for Submission of the Tenders.</b></p>
ITT 33.2	<p>A margin of preference shall NOT apply.</p>
ITT 33.4	<p>The invitation to tender is extended to the following group that qualify for Reservations _____ <b>OPEN NATIONAL TENDER</b></p>
ITT 34.1	<p>At this time, the Procuring Entity <b>does not</b> intend to execute certain specific parts of the Works by subcontractors selected in advance.</p>
ITT 34.2	<p>Clause 34.2 Is NOT applicable</p>
ITT 34.3	<p><i>[Indicate N/A if not applicable]</i></p> <p>The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows:</p> <p style="text-align: center;">_____N/A_____</p> <p>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.</p>
ITT 35.2 (e)	<p>Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.</p>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 48.1	<p>Other documents required in addition to the Performance Security are:</p> <ol style="list-style-type: none"> <li>1. <b>Insurances</b></li> <li>2. <b>Works Program</b></li> </ol>
ITT 50.1	<p>The procedures for making a Procurement-related Complaint are detailed in the “Notice of Intention to Award the Contract” herein and are also available from the PPRA Website <a href="http://www.ppra.go.ke">www.ppra.go.ke</a> or email <a href="mailto:complaints@ppra.go.ke">complaints@ppra.go.ke</a>.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p style="text-align: center;"><b>Chief Executive Officer</b>  <b>Kenya Medical Supplies Authority</b>  <b>13, Commercial Street, Industrial Area</b>  <b>P. O. Box 47715 – 00100, Nairobi</b>  <b>Telephone No.: +254 20 3922000/+254 719033000/+254 733606600</b>  <b>Fax No.: +254203922400</b>  <b>Email: <a href="mailto:procure@kemsaco.ke">procure@kemsaco.ke</a></b></p> <p>In summary, a Procurement-related Complaint may challenge any of the following (among others):</p> <ol style="list-style-type: none"> <li>(i) the terms of the Tender Documents; and</li> <li>(ii) the Procuring Entity’s decision to award the contract.</li> </ol>

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**SECTION III: EVALUATION AND  
QUALIFICATION CRITERIA**

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

### **1.1 GENERAL PROVISIONS**

- 1.2 This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms. The Procuring Entity shall use **the Standard Tender Evaluation Document for Goods and Works** for evaluating Tenders.
- 1.3 Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
  - b) Value of single contract - Exchange rate prevailing on the date of the contract signature.
  - c) Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determining the exchange rates in the Tender may be corrected by the Procuring Entity.

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

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

### **2.0 PRELIMINARY EXAMINATION FOR DETERMINATION OF RESPONSIVENESS Preliminary examination for Determination of Responsiveness**

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

#### **Mandatory Requirements**

- a) Certificate of Registration/Incorporation
- b) Valid Registration with National Construction Authority (NCA 6 and above)
- c) Valid Tax Compliance Certificate
- d) Valid Tender Security of 150 days
- e) Pagination/Serialization of Tender Document
- f) Duly signed Form of Tender
- g) Valid Registration with Energy and Petroleum Regulatory Authority (EPRA) Class A-2 above

**30 TENDER EVALUATION (ITT 35)**

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

- (i) Alternative Completion Times, if permitted under ITT13.2, will be evaluated as follows:.....N/A.....
- (ii) Alternative Technical Solutions for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as follows: .....N/A.....
- (iii) Other Criteria; if permitted under ITT 35.2(j):  
.....N/A.....

**4.1 MULTIPLE CONTRACTS**

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

**OPTION 1**

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

**OPTION 2**

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

**5.0 ALTERNATIVE TENDERS (ITT 13.1)**

**Alternative Tenders (ITT 13.1)**

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

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

**6.1 MARGIN OF PREFERENCE**

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

- 6.3 Contractors shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference.
- 6.4 After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:
- i) *Group A*: tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty one percent (51%).
  - ii) *Group B*: tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty one percent (51%).
- 6.5 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award of contract. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 6.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected forward. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.
7. **Post qualification and Contract ward (ITT 39), more specifically,**
- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
  - b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
    - i) The 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 of **Kenya Shillings Twenty Million (Ksh.20,000,000.00)**
    - ii) Minimum average annual construction turnover of **Kenya Shillings Thirty Million (Ksh.30,000,000.00)**, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last Five years.
    - iii) At least Five No. contract(s) of a similar nature executed within Kenya, or the East African Community or abroad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya Shillings Fifty Million equivalent.
    - iv) Contractor's Representative and Key Personnel, which are specified but not limited to Directors of the firm, Foremen, Specialist Key personnel such as Engineers, Artisans with relevant trade test certificates in the relevant field.
    - v) Contractors key equipment listed on the table "Contractor's Equipment" below
    - vi) Other conditions depending on their seriousness.

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

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

b) **Pending Litigation**

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

c) **Litigation History**

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

**QUALIFICATION FORM\***

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Item No.</b>	<b>Qualification Subject</b>	<b>Qualification Requirement</b>	<b>Document To be Completed by Tenderer</b>	<b>For Procuring Entity's Use (Qualification met or Not Met)</b>
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 <b>1<sup>st</sup> January 2017</b>	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 <b>1<sup>st</sup> January 2017</b>	Form CON – 2	



1 Item No.	2 Qualification Subject	3 Qualification Requirement	4 <i>Document To be Completed by Tenderer</i>	5 <i>For Procuring Entity's Use (Qualification met or Not Met)</i>
11	Financial Capabilities	<p>(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as <b>Kenya Shillings Twenty Million</b> equivalent for the subject contract(s) net of the Tenderer's other commitments.</p> <p>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.</p> <p>(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 Five years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.</p>	Form FIN – 3.1, with attachments	
12	Average Annual Construction Turnover	Minimum average annual construction turnover of <b>Kenya Shillings Thirty Million</b> equivalent calculated as total certified payments received for contracts in progress and/or completed within the last Five 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 Five years, starting 1 <sup>st</sup> January 2017	Form EXP – 4.1	
14	Specific Construction & Contract Management Experience	<p>A minimum number of FIVE 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 2017 and tender submission deadline i.e Five contracts, each of minimum value <b>Kenya shillings Twenty Million</b> equivalent.</p> <p>The works should be of similar size and nature as specified in the Bills of Quantities</p>	Form EXP 4.2(a)	

### APPENDIX TO SECTION III

ADD TO CLAUSE 2.0 AND 3.0

### MANDATORY EVALUATION

ITEM	MANDATORY REQUIREMENT (MR)	SUBMITTED (YES / NO)
MR 1	Certificate of Registration/Incorporation	
MR 2	Valid Registration with National Construction Authority (NCA 6 and above) in <i>Lift Installation works</i>	
MR 3	Valid Tax Compliance Certificate	
MR 4	Valid Tender Security of 150 days as per the required format & amount	
MR 5	Pagination/Serialization of Tender Document	
MR 6	Duly Filled, Signed & Stamped Form of Tender	
MR 7	Valid Registration with Energy and Petroleum Regulatory Authority (EPRA) Class A-2 above	
MR 8	Power of Attorney / Authorization letter duly signed (signed by directors appearing in CR12/13) indicating the name of the person who has been authorized to submit / execute this agreement as a binding document and this person shall sign all the documents related to this tender.	
MR 9	Attach a duly filled, signed & stamped declaration and Commitment to the code of ethics.	
MR 10	Bidders to Attach Manufacturers authorization letter for Lifts they propose to Supply.	
MR 11	Catalogues for Equipment to be supplied	
<b>QUALIFIED: YES / NO</b>		

***N/B: Full Compliance by the tenderers shall be required to proceed to the next stage of evaluation. Failure to provide any of the listed requirements shall lead to disqualification.***

## TECHNICAL EVALUATION

ITEM	DESCRIPTION	COMPLIANCE (YES / NO)
<b>1</b>	<b>Compliance With Technical Specifications</b> (Note: Tender Evaluation Committee to carryout analysis showing how decision on this requirement has been arrived at	
<i>1a</i>	<i>Manufacturers Compliance and Certificate attached:</i> • <i>EN81-20/50:2017</i>	
<i>1b</i>	<i>Lift Motor System: VVVF</i>	
<i>1c</i>	<i>Lift Drive System: Machine Room less</i>	
<i>1d</i>	<i>Lift Capacity: 2000Kgs Minimum</i>	
<i>1e</i>	<i>Lift Speed: 1.0m/s</i>	
<i>1f</i>	<i>Landing Door Dimensions: 1200mm Width, 2100mm Height</i>	
<b>2</b>	<b>Qualification And Experience of KEY Personnel</b> • Academic Qualifications and Experience (Evidence to be provided)	
<i>2a</i>	Director of the firm: - 1No. • Holder of at least a degree with 10yrs experience in relevant Engineering field	
<i>2b</i>	Project Managers: - 2No. • Holder of at least a Diploma with 5yrs experience in relevant Engineering field	
<i>2c</i>	Artisans with Trade Test Certificate in Relevant Field: - 3No. • Holder of at least a Certificate with 5yrs experience in relevant Engineering field	
<b>3</b>	<b>Experience of the firm in similar services: Lift Installations</b> • Provide Five (5No.) projects of similar nature, complexity or magnitude in the last 5 years (Evidence to be Provided in form of completion letters or equivalent)	
<b>4</b>	<b>Financial Reports</b>	
<i>4a</i>	Audited Financial report (Certified on each page) – Last 3 Years • Average Annual Turn-over equal to or greater than the cost of the project	
<i>4b</i>	Evidence of Financial Resources (Cash in Hand, Lines of Credit, Overdraft Facilities, etc.): • Financial Resources should finance the projected monthly cash flow for three months.	

<b>5</b>	<b>Adequacy of Tools and Equipment</b> <ul style="list-style-type: none"> <li>• Bidder must give proof of ownership or leasing of equipment</li> </ul>	
<i>5a</i>	Transport: <ul style="list-style-type: none"> <li>• 1No. Truck</li> <li>• 2No. Pickups'</li> </ul>	
<i>5b</i>	Equipment: <ul style="list-style-type: none"> <li>• Drills</li> <li>• Electric Measuring tools i.e., Multimeters, etc.</li> <li>• PPE Equipment</li> </ul>	
<b>6</b>	<b>Litigation History</b> <ul style="list-style-type: none"> <li>• Tenderer MUST fill the forms listed in format provided</li> </ul>	
<b>QUALIFIED: YES / NO</b>		

*N/B: Full Compliance by the tenderers shall be required. Failure to provide any of the listed requirements shall lead to disqualification. Hence, the tenderer shall not proceed to financial evaluation.*

**FINANCIAL EVALUATION**

Bidders who qualify at the technical evaluation shall be evaluated at this stage as per the conditions stated herewith.

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## **SECTION IV: TENDERING FORMS**

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# **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.

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

## 2. FORM EQU: EQUIPMENT

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

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



### 3. FORM PER-1: CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL SCHEDULE

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

#### 4. FORM PER-2: RESUME AND DECLARATION - CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL

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Name of Tenderer
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Position [#1]: <i>[title of position from Form PER-1]</i>		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
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
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

**Declaration**

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

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

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

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

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

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

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

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

Countersignature of authorized representative of the Tenderer:

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

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

## 5. TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

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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.

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

**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 <input type="checkbox"/> Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above, in accordance with ITT 3.6. <input type="checkbox"/> In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the Procuring Entity, in accordance with ITT 3.5.
2. Included are the organizational chart and a list of Board of Directors.

**21 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			
<input type="checkbox"/> Contract non-performance did not occur since 1 <sup>st</sup> January 2012 specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.			
<input type="checkbox"/> Contract(s) not performed since 1 <sup>st</sup> January 2012 specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
<input type="checkbox"/> Contract(s) withdrawn since 1 <sup>st</sup> January 2012 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)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: <i>[indicate complete contract name/ number, and any other identification]</i> Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Reason(s) for nonperformance: <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.			
<input type="checkbox"/> 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: _____	

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:	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4. <input type="checkbox"/> Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: [indicate complete contract name, number, and any other identification] Name of Procuring Entity: <i>[insert full name]</i> Address of Procuring Entity: <i>[insert street/city/country]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Procuring Entity" or "Contractor"]</i> Reason(s) for Litigation and award decision <i>[indicate main reason(s)]</i>	<i>[insert amount]</i>

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

**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



### 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 Five 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<sup>1</sup> for the Five years required above; and complying with the requirements

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<sup>1</sup> 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.

**5.6 FORM FIN – 3.2:**

**Average Annual Construction Turnover**

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

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

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

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

<b>Annual turnover data (construction only)</b>			
<b>Year</b>	<b>Amount Currency</b>	<b>Exchange rate</b>	<b>Kenya Shilling equivalent</b>
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
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

<b>Financial Resources</b>		
<b>No.</b>	<b>Source of financing</b>	<b>Amount (Kenya Shilling equivalent)</b>
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.

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

**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 <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount				<b>Kenya Shilling</b>
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				

**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 <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount				<b>Kenya Shilling</b>
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				

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

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

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

**5.10 FORM EXP - 4.2(b)**

**Construction Experience in Key Activities**

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

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

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

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

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

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

1. Key Activity No One: \_

<b>Information</b>				
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor <input type="checkbox"/>	Member in JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>	Sub-contractor <input type="checkbox"/>
Total Contract Amount			<b>Kenya Shilling</b>	
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:				

<sup>2</sup> If applicable



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

2. Activity No. Two

3. ....

# OTHER FORMS

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## 1. FORM OF TENDER

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

### **INSTRUCTIONS TO TENDERERS**

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

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

**Tender Name and Identification:** ..... [insert identification]

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

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

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

**Request for Tender No.:** [insert identification]

**Name and description of Tender** [Insert as per ITT)

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

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

Dear Sirs,

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

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

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Architect notice to commence, and to complete the whole of the Works comprised in the Contract within \_\_\_\_\_ (in \_\_\_\_\_)

<sup>3</sup> This sum should be carried forward from the Summary of the Bills of Quantities.

<sup>4</sup> The percentage quoted above should not include provisional sums, and not more than two foreign currencies are allowed.

Words) (\_\_\_\_) (in Figures) Weeks.

3. We agree to adhere by this tender until\_\_\_\_*[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. We understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the under signed, further declare that:
  - i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
  - ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
  - iii) Tender - Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;
  - iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: *[insert a brief description of the Works]*;
  - v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*
  - vi) Option 1, 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:
    - (c) The discounts offered are: *[Specify in detail each discount offered.]*
    - (d) The exact method of calculations to determine the net price after application of discounts is shown below: *[Specify in detail the method that shall be used to apply the discounts]*;
  - viii) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
  - ix) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
  - x) One Tender Per Tender: We are not submitting any other Tender(s) as an individual Tender, and we are not participating in any other Tender(s) as a Joint Venture member or as a sub-contractor, and meet the requirements of ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;
  - xi) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Engineer, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
  - xii) State-owned enterprise or institution: *[select the appropriate option and delete the*

other] [We are not a state- owned enterprise or institution]/[We are a state-owned enterprise or institution but meet the requirements of ITT3.8];

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

Name of Recipient	Address	Reason	Amount

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

- xiv) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- xv) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;
- xvi) Fraud and Corruption: We here by certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption; and
- xvii) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the “Certificate of Independent Tender Determination” attached below.
- xviii) We undertake to adhere by the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal, copy available from *(specify website)* during the procurement process and the execution of any resulting contract.
- xix) **Beneficial Ownership Information:** We commit to provide to the procuring entity the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.

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

- a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are not in any conflict to interest.
- b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.
- c) Self-Declaration of the Tenderer - to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
- d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

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

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

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

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

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

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

Date signed \_\_\_\_\_ day of \_\_\_\_\_.

Notes

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

*\*\*Person signing the Tender shall have the power of attorney given by the Tenderer to be attached with the Tender.*

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

**Instruction to Tenderer**

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

**A. TENDERER'S DETAILS**

	<b>ITEM</b>	<b>DESCRIPTION</b>
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 ( <i>postal and physical addresses, email, and telephone number</i> ) of Registering Body/Agency	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address ( <i>postal and physical addresses, email, and telephone number</i> ) of state which stock exchange	

**General and Specific Details**

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

Name in full

Age

Nationality

Country of Origin

Citizenship

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

	<b>Names of Partners</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

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

- i) Private or public Company \_\_\_\_\_
- ii) State the nominal and issued capital of the Company \_\_\_\_\_
- iii)
  - Nominal Kenya Shillings (Equivalent).....
  - Issued Kenya Shillings (Equivalent).....
- iv) Give details of Directors as follows.

	<b>Names of Director</b>	<b>Nationality</b>	<b>Citizenship</b>	<b>% Shares owned</b>
1				
2				
3				

**B. DISCLOSURE OF INTEREST - Interest of the Firm in the Procuring Entity.**

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

If yes, provide details as follows.

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

**C. CONFLICT OF INTEREST DISCLOSURE**

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



**Certification**

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

Full Name: \_\_\_\_\_

Title or Designation: \_\_\_\_\_

(Signature)\_\_\_\_\_

(Date)\_\_\_\_\_

## **b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION**

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

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

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

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

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

**c) SELF- DECLARATION FORMS**

**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 or of ..... (*insert name of the Company*) who is a Bidder in respect of **Tender No.**

..... for ..... (*insert tender title/description*) for ..... (*insert name of the Procuring entity*) and duly authorized and competent to make this statement.

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

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

.....

.....

..... (Title)

(Signature)

(Date)

Bidder Official Stamp

**FORM SD2**

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

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

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

.....  
(Title)

.....  
(Signature)

.....  
(Date)

Bidder's Official Stamp

**DECLARATION AND COMMITMENT TO THE CODE OF ETHICS**

I ..... (person) on behalf of *(Name of the Business/ Company/Firm)* .....

..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

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

Name of Authorized signatory .....

Sign.....

Position.....

Office address.....

Telephone..... E-mail.....

Name of the Firm/Company.....

Date.....

**(Company Seal/ Rubber Stamp where applicable)**

Witness Name .....

Sign.....

Date.....

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

*(Appendix 1 shall not be modified)*

### **1. Purpose**

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

### **2. Requirements**

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

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

- 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or as set disposal proceeding;
- 2) A person referred to under subsection (1) who contravenes the provisions of that subsection commits an offence;
- 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
  - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
  - b) if a contract has already been entered into with the person, the contract shall be voidable;
- 4) The voiding of a contract by the procuring entity under subsection (7) does not limit any legal remedy the procuring entity may have;
- 5) An employee or agent of the procuring entity or a member of the Board or committee of the procuring entity who has a conflict of interest with respect to a procurement: -
  - a) Shall not take part in the procurement proceedings;
  - b) shall not, after a procurement contract has been entered in to, take part in any decision relating to the procurement or contract; and
  - c) shall not be a subcontract or for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

- 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been within his or her duties shall disclose the conflict of interest to the procuring entity;
- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

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

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal processor the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.
- c) Rejects a proposal for award<sup>1</sup> of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or



indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;

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

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

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

## 2. FORM OF TENDER SECURITY [OPTION 1: DEMAND BANK GUARANTEE]

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

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

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

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

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (hereinafter called "the Tender") for the execution of \_\_\_\_\_ under Request for Tenders No. \_\_\_\_\_ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
  - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
  - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension 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 on or before that date.

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

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

### 3. 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.*

#### 4. FORM OF TENDER - SECURING DECLARATION

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

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

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

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

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

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

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

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

## 5. APPENDIX TO TENDER

### Schedule of Currency requirements

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

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

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## **SECTION V - BILLS OF QUANTITIES**

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### **CONTENTS**

- 1. PARTICULAR PRELIMINARIES**
- 2. PRICE SCHEDULES**

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**1. PARTICULAR PRELIMINARIES**

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## **PARTICULAR PRELIMINARIES**

### **SUB-CONTRACT PRELIMINARIES AND GENERAL CONDITIONS**

#### **1.01 Examination of Tender Documents**

The tenderer is required to check the number of pages of this document and should he find any missing or indistinct, he must inform the Engineer at once and have the same rectified.

All tenderers shall be deemed to have carefully examined the following:

- a) Work detailed in the Specification and in the Contract Drawings.
- b) The Republic of Kenya Document “General Conditions of Contract for Electrical and Mechanical Works”.
- c) Other documents to which reference is made.

He shall also be deemed to have included for any expenditure which may be incurred in conforming to the above items (a), (b), (c) and observe this expense as being attached to the contract placed for the whole or any part of the work.

The tenderer shall ensure that all ambiguities, doubts or obscure points of detail, are clarified with the Engineer before submission of his tender, as no claims for alleged deficiencies in the information given shall be considered after this date.

#### **1.02 Discrepancies**

The Sub-contractor shall include all work either shown on the Contract Drawings or detailed in the specification. No claim or extra cost shall be considered for works which has been shown on the drawings or in the specification alone.

Should the drawing and the specification appear to conflict, the Sub-contractor shall query the points at the time of tendering and satisfy himself that he has included for the work intended, as no claim for extra payment on this account shall be considered after the contract is awarded.

#### **1.03 Conditions of Sub-Contract Agreement**

The Sub-contractor shall be required to enter into a Sub-contract with the Main Contractor.

The Conditions of the Contract between the Main Contractor and the Sub-contractor as hereinafter defined shall be the latest edition of the Agreement and Schedule of Conditions of Kenya Association of Building and Civil Engineering Contractors as particularly modified and amended hereinafter.

For the purpose of this contract the Agreement and Schedule of Conditions and any such modifications and amendments shall read and construed together. In any event of discrepancy the modifications and amendments shall prevail.

#### **1.04 Payment**

Payment will be made through certificates direct to the subcontractor. All the subcontractors valuations claim must done through the main contractor and subsequently forwarded to the consultants. All payments will be less retention as specified in the Main Contract. No payment will become due until materials are delivered to site.

#### **1.05 Definition of Terms**

Throughout these contract documents units of measurements, terms and expressions are abbreviated and wherever used hereinafter and in all other documents they shall be interpreted as follows:

- i. The term “**Employer**” shall mean **Kenya Medical Supplies Authority**



- ii. The Term “**Project Manager** ” Shall Mean **Works secretary, State Department of Public Works, Ministry of Transport, Infrastructure, Housing and Urban Development**
- iii. The term “**Architect:** ” shall mean **Maestro Architects Ltd**
- iv. The term “**Quantity Surveyor**” shall mean **M & M Construction Consultants.**
- v. The term “**Civil/Structural Engineers** ” shall mean **Kiri Consult Ltd**
- vi. **Engineer:** The term “**Engineer**” shall mean **Norkun Intakes Ltd**
- vii. **Main Contractor:** The term “**Main Contractor**” shall mean the firm or company appointed to carry out the Building Works and shall include his or their heir, executors, assigns, administrators, successors, and duly appointed representatives.
- vii) **Sub-contractor:** The term “**Sub-contractor**” shall mean the persons or person, firm or Company whose tender for this work has been accepted, and who has entered into a contract agreement with the Contractor for the execution of the Sub-contract Works, and shall include his or their heirs, executors, administrators, assigns, successors and duly appointed representatives.
- viii) **Sub-contract Works:** The term “**Sub-contract Works**” shall mean all or any portion of the work, materials and articles, whether the same are being manufactured or prepared, which are to be used in the execution of this Sub-contract and whether the same may be on site or not.
- ix) **Contract Drawings:** The term “**Contract Drawings**” shall mean those drawings required or referred to herein and forming part of the Bills of Quantities.
- x) **Working Drawings:** The term “**Working Drawings**” shall mean those drawings required to be prepared by the Sub-contractor as hereinafter described.
- xi) **Record Drawings:** The term “**Record Drawings**” shall mean those drawings required to be prepared by the Sub-contractor showing “as installed” and other records for the Sub-contract Works.
- xii) **Abbreviations:**
  - CM** shall mean **Cubic Metre**
  - SM** shall mean **Square Metre**
  - LM** shall mean **Linear Metre**
  - M** shall mean **Metre**
  - LS** shall mean **Lump Sum**
  - mm** shall mean **Millimetres**
  - No.** shall mean **Number**
  - Kg.** shall mean **Kilogramme**
  - KEBS** shall mean **Kenya Bureau of Standards**
  - BS** shall mean. **Current standard British Standard Specification published by the British Standard Institution, 2 Park Street, London W1, England**
  - “**Ditto**” shall mean the whole of the preceding description in which it occurs.
  - Where it occurs in description of succeeding item it shall mean the same as in the first description of the series in which it occurs except as qualified in the description concerned.
  - Where it occurs in brackets it shall mean the whole of the preceding description which is contained within the appropriate brackets.

**1.06 Site Location**

The site of the Sub-contract Works is situated **at Embakasi Nairobi**

The tenderer is recommended to visit the site and shall be deemed to have satisfied himself with regard to access, possible conditions, the risk of injury or damage to property on/or adjacent to the site, and the conditions under which the sub-contract Works shall have to be carried out and no claims for extras will be considered on account of lack of knowledge in this respect.

**1.07 Duration of Sub-Contract**

The Sub-Contractor shall be required to phase his work in accordance with the Main contractor's program (or its revision). The program is to be agreed with the Main contractor.

**1.08 Scope of Sub-Contract Works**

The sub-contractor shall supply, deliver, unload, hoist, fix, test, commission and hand-over in satisfactory working order the complete installations specified hereinafter and/or as shown on the Contract Drawings attached hereto, including the provision of labour, transport and plant for unloading material and storage, and handling into position and fixing, also the supply of ladders, scaffolding the other mechanical devices to plant, installation, painting, testing, setting to work, the removal from site from time to time of all superfluous material and rubbish caused by the works.

The sub-contractor shall supply all accessories, whether of items or equipment supplied by the Main Contractor but to be fixed and commissioned under this Sub-contract.

**1.09 Extent of the Sub-contractor's Duties**

At the commencement of the works, the Sub-contractor shall investigate and report to the Engineer if all materials and equipment to be used in the work and not specified as supplied by the others are available locally. If these materials and equipment are not available locally, the Sub-contractor shall at this stage place orders for the materials in question and copy the orders to the Engineer. Failure to do so shall in no way relieve the Sub-contractor from supplying the specified materials and equipment in time.

Materials supplied by others for installation and/or connection by the Subcontractor shall be carefully examined in the presence of the supplier before installation and connection. Any defects noted shall immediately be reported to the Engineer.

The Sub-contractor shall be responsible for verifying all dimensions relative to his work by actual measurements taken on site.

The Sub-contractor shall mark accurately on one set of drawings and indicate all alterations and/or modifications carried out to the designed system during the construction period. This information must be made available on site for inspection by the Engineer.

**1.10 Execution of the Works**

The works shall be carried out strictly in accordance with:

- a) All relevant Kenya Bureau of Standards Specifications.
- b) All relevant British Standard Specifications and Codes of Practice (hereinafter referred to as B.S. and C.P. respectively).
- c) This Specification.
- d) The Contract Drawings.
- e) The Bye-laws of the Local Authority.
- f) The Architect's and/or Engineer's Instructions.

The Contract Drawings and Specifications to be read and construed together.

**1.11 Validity of Tender**

The tender shall remain valid for acceptance within 120 days from the final date of submission of the

tender, and this has to be confirmed by signing the Tender Bond. The tenderer shall be exempted from this Bond if the tender was previously withdrawn in writing to the Employer before the official opening.

1.12 **Firm – Price Sub-contract**

Unless specifically stated in the documents or the invitation to tender, this is a firm-price Contract and the Sub-contractor must allow in his tender for the increase in the cost of labour and/or materials during the duration of the contract. No claims will be allowed for increased costs arising from the fluctuations in duties and/or day to day currency fluctuations. The Sub-contractor will be deemed to have allowed in his tender for any increase in the cost of materials which may arise as a result of currency fluctuation during the contract period.

1.13 **Variation**

No alteration to the Sub-contract Works shall be carried out until receipt by the Sub-contractor of written instructions from the Project Manager.

Any variation from the contract price in respect of any extra work, alteration or omission requested or sanctioned by the Project Manager or Engineer shall be agreed and confirmed in writing at the same time such variations are decided and shall not affect the validity of the Contract. Schedule of Unit Rates shall be used to assess the value of such variations. No allowance shall be made for loss of profit on omitted works.

Where the Project Manager requires additional work to be performed, the Sub-contractor, if he considers it necessary, will give notice within seven (7) days to the Main Contractor of the length of time he (the Sub-contractor) requires over and above that allotted for completion of the Sub-contract.

If the Sub-contractor fails to give such notice he will be deemed responsible for the claims arising from the delay occasioned by reason of such extension of time.

1.14 **Prime Cost and Provisional Sums**

A specialist Sub-contractor may be nominated by the Project Manager to supply and/or install any equipment covered by the Prime Cost or Provisional Sums contained within the Sub-contract documents.

The work covered by Prime Cost and Provisional Sums may or may not be carried out at the discretion of the Architect.

The whole or any part of these sums utilized by the Sub-contractor shall be deducted from the value of the Sub-contract price when calculating the final account.

1.15 **Bond**

The tenderer must submit with his tender the name of one Surety who must be an established Bank only who will be willing to be bound to the Main Contractor for an amount equal to 5 % of the Sub-contract amount as per the Main Contract condition of contract.

1.16 **Government Legislation and Regulations**

The Sub-contractor's attention is called to the provision of the Factory Act 1972 and subsequent amendments and revisions, and allowance must be made in his tender for compliance therewith, in so far as they are applicable.

The Sub-contractor must also make himself acquainted with current legislation and any Government regulations regarding the movement, housing, security and control of labour, labour camps, passes for transport, etc.

The Sub-contractor shall allow for providing holidays and transport for work people, and for complying with Legislation, Regulations and Union Agreements.

1.17 **Import Duty and Value Added Tax**

The Sub-contractor will be required to pay full Import Duty and Value Added Tax on all items of equipment, fittings and plant, whether imported or locally manufactured. The tenderer shall make full

allowance in his tender for all such taxes

**1.18 Insurance Company Fees**

Attention is drawn to the tenderers to allow for all necessary fees, where known, that may be payable in respect of any fees imposed by Insurance Companies or statutory authorities for testing or inspection.

No allowance shall be made to the Sub-contractor with respect to fees should these have been omitted by the tenderer due to his negligence in this respect.

**1.19 Provision of Services by the Main Contractor**

In accordance with Clause 1.08 of this Specification the Main Contractor shall make the following facilities available to the Sub-contractor:

- a) Attendance on the Sub-contractor and the carrying out of all work affecting the structure of the building which may be necessary, including all chasing, cutting away and making good brickwork, etc., except that all plugging for fixing, fittings, machinery, fan ducting, etc., and all drilling and tapping of steel work shall be the responsibility of the Sub-contractor. Any purpose made fixing brackets shall not constitute Builder's Work and shall be provided and installed by the Sub-contractor unless stated hereinafter otherwise.
- b) The provision of temporary water, lighting and power: All these services utilized shall be paid for by the Main Contractor. The Sub-contractor shall, however, allow for additional connections/extensions required for his purposes.
- c) Fixing of anchorage and pipe supports in the shuttering, except that all anchorage shall be Supplied by the Sub-contractor who shall also supply the Main Contractor with fully dimensioned drawings detailing the exact locations.
- d) i) Provision of scaffolding, cranes, etc. but only in so far as it is required for the Main Contract Works. It shall be the Sub-contractor's responsibility to liaise with the Main Contractor to ensure that there is maximum co-operation with other Sub-contractors in the use of scaffolding, cranes, etc.  
ii) Any specialist scaffolding, cranes, etc. by the Sub-contractor for his own exclusive use shall be paid for by the Sub-contractor.

**1.20 Suppliers**

The Sub-contractor shall submit names of any supplier for the materials to be incorporated, to the Engineer for approval. The information regarding the names of the suppliers may be submitted at different times, as may be convenient, but no sources of supply will be changed without prior approval.

Each supplier must be willing to admit the Engineer or his representative to his premises during working hours for the purpose of examining or obtaining samples of the materials in question.

**1.21 Samples and Materials Generally**

The Sub-contractor shall, when required, provide for approval at no extra cost, samples of all materials to be incorporated in the works. Such samples, when approved, shall be retained by the Engineer and shall form the standard for all such materials incorporated.

**1.22 Administrative Procedure and Contractual Responsibility**

Wherever within the Specification it is mentioned or implied that the Sub-contractor shall deal direct with the Employer or Engineer, it shall mean "through the Contractor" who is responsible to the Employer for the whole of the works including the Sub-contract Works.

### 1.23 **Bills of Quantities**

The Bills of Quantities have been prepared in accordance with the standard method of measurement of Building Works for East Africa, first Edition, Metric, 1970. All the Quantities are based on the Contract Drawings and are provisional and they shall not be held to gauge or to limit the amount or description of the work to be executed by the Sub-contractor but the value thereof shall be deducted from the Sub-contract Sum and the value of the work ordered by the Engineer and executed there under shall be measured and valued by the Engineer in accordance with the conditions of the Sub-contract.

All work liable to adjustment under this Sub-contract shall be left uncovered for a reasonable time to allow measurements needed for such adjustment to be taken by the Quantity Surveyor or Engineer. Immediately the work is ready for measuring the Sub-contractor shall give notice to the Quantity Surveyor or Engineer to carry out measurements before covering up. If the Sub-contractor shall make default in these respects he shall, if the Project Manager so directs, uncover the work to enable the necessary measurements to be taken and afterwards reinstate at his own expense.

### 1.24 **Sub-contractor's Office in Kenya**

The Sub-contractor shall maintain (after first establishing if necessary) in Kenya an office staffed with competent Engineer Manager and such supporting technical and clerical staff as necessary to control and coordinate the execution and completion of the Sub-contract Works.

The Engineer Manager and his staff shall be empowered by the Sub-contractor to represent him at meetings and in discussions with the Main Contractor, the Engineer and other parties who may be concerned and any liaison with the Sub-contractor's Head Office on matters relating to the design, execution and completion of the Sub-contract Works shall be effected through his office in Kenya.

It shall be the Sub-contractor's responsibility to procure work permits, entry permits, licenses, registration, etc., in respect of all expatriate staff.

The Sub-contractor shall prepare a substantial proportion of his Working Drawings at his office in Kenya. No reasons for delays in the preparation or submission for approval or otherwise of such drawings or proposals will be accepted on the grounds that the Sub-contractor's Head Office is remote from his office in Nairobi or the site of the Sub-contract Works or otherwise.

### 1.25 **Builder's Work**

All chasing, cutting away and making good will be done by the Main Contractor but the Sub-contractor shall mark out in advance and shall be responsible for accuracy of the size and position of all holes and chases required.

The Sub-contractor shall drill and plug holes in floors, walls, ceiling and roof for securing services and equipment requiring screw or bolt fixings.

Any purpose made fixing brackets shall not constitute builder's work and shall be provided and installed by the Sub-contractor unless stated hereinafter to the contrary.

### 1.26 **Structural Provision for the Works**

Preliminary major structural provision has been made for the Sub-contract Works based on outline information ascertained during the preparation of the Specification.

The preliminary major structural provision made will be deemed as adequate unless the Sub-contractor stated otherwise when submitting his tender.

Any major structural provision or alteration to major structural provisions required by the Sub-contractor shall be shown on Working Drawings to be submitted to the Engineer within 30 days of being appointed.

No requests for alterations to preliminary major structural provisions will be approved except where they are considered unavoidable by the Engineer. In no case will they be approved if building work is

so far advanced as to cause additional costs or delays in the work of the Main Contractor.

### **1.27 Position of Services, Plant, Equipment, Fittings and Apparatus**

The Contract Drawings give a general indication of the intended layout. The position of the equipment and apparatus, and also the exact routes of the ducts, main and distribution pipework shall be confirmed before installation is commenced. The exact siting of appliances, pipework, etc., may vary from that indicated.

The routes of services and positions of apparatus shall be determined by the approved dimensions detailed in the Working Drawings or on site by the Engineer in consultation with the Sub-contractor or the Main Contractor.

Services throughout the ducts shall be arranged to allow maximum access along the ducts and the services shall be readily accessible for maintenance. Any work which has to be re-done due to negligence in this respect shall be the Sub-contractor's responsibility.

The Sub-contractor shall be deemed to have allowed in his Sub-contract Sum for locating terminal points of services (e.g. lighting, switches, socket outlets, lighting points, control switches, thermostats and other initiating devices, taps, stop cocks) in positions plus or minus 1.2m horizontally and vertically from the locations shown on Contract Drawings. Within these limits no variations in the Sub-contract Sum will be made unless the work has already been executed in accordance with previously approved Working Drawings and with the approval of the Engineer.

### **1.28 Checking of Work**

The Sub-contractor shall satisfy himself to the correctness of the connections he makes to all items of equipment supplied under the Sub-contract agreement and equipment supplied under other contracts before it is put into operation. Details of operation, working pressures, temperatures, voltages, phases, power rating, etc., shall be confirmed to others and confirmation received before the system is first operated.

### **1.29 Setting to Work and Regulating System**

The Sub-contractor shall carry out such tests of the Sub-contract Works as required by British Standard Specifications or equal and approved codes as specified hereinafter and as customary.

No testing or commissioning shall be undertaken except in the presence of and to the satisfaction of the Engineer unless otherwise stated by him (Sub-contractor's own preliminary and proving tests excepted).

It will be deemed that the Sub-contractor has included in the Sub-contract Sum for the costs of all fuel, power, water and the like, for testing and commissioning as required as part of the Sub-contract Works. He shall submit for approval to the Engineer a suitable programme for testing and commissioning. The Engineer and Employer shall be given ample warning in writing, as to the date on which testing and commissioning will take place.

The Sub-contractor shall commission the Sub-contract Works and provide attendance during the commissioning of all services, plant and apparatus connected under the Sub-contract Agreement or other Sub-contract Agreements, related to the project.

Each system shall be properly balanced, graded and regulated to ensure that correct distribution is achieved and where existing installations are affected, the Sub-contractor shall also regulate these systems to ensure that their performance is maintained.

The proving of any system of plant or equipment as to compliance with the Specification shall not be approved by the Engineer, except at his discretion, until tests have been carried out under operating conditions pertaining to the most onerous conditions specified except where the time taken to obtain such conditions is unreasonable or exceeds 12 months after practical completion of the Sub-contract Works.

### 1.30 **Identification of Plant Components**

The Sub-contractor shall supply and fix identification labels to all plant, starters, switches and items of control equipment including valves, with white traffolyte or equal labels engraved in red lettering denoting its name, function and section controlled. The labels shall be mounted on equipment and in the most convenient positions. Care shall be taken to ensure the labels can be read without difficulty. This requirement shall apply also to major components of items of control equipment.

Details of the lettering of the labels and the method of mounting or supporting shall be forwarded to the Engineer for approval prior to manufacture.

### 1.31 **Contract Drawings**

The Contract Drawings when read in conjunction with the text of the Specification, have been completed in such detail as was considered necessary to enable competitive tenders to be obtained for the execution and completion of the Sub-contract works.

The Contract Drawings are not intended to be Working Drawings and shall not be used unless exceptionally they are released for this purpose.

### 1.32 **Working Drawings**

The Sub-contractor shall prepare such Working Drawings as may be necessary. The Working Drawings shall be complete in such detail not only that the Sub-contract Works can be executed on site but also that the Engineer can approve the Sub-contractor's proposals, detailed designs and intentions in the execution of the Sub-contract Works.

If the Sub-contractor requires any further instructions, details, Contract Drawings or information drawings to enable him to prepare his Working Drawings or proposals, the Sub-contractor shall accept at his own cost, the risk that any work, commenced or which he intends to commence at site may be rejected.

The Engineer, in giving his approval to the Working Drawings, will presume that any necessary action has been, or shall be taken by the Sub-contractor to ensure that the installations shown on the Working Drawings have been cleared with the Main Contractor and any other Sub-contractors whose installations and works might be affected.

If the Sub-contractor submits his Working Drawings to the Engineer without first liaising and obtaining clearance for his installations from the Main Contractor and other Sub-contractors whose installations and works might be affected, then he shall be liable to pay for any alterations or modification to his own, the Main Contractor's or other Sub-contractor's installations and works, which are incurred, notwithstanding any technical or other approval received from the Engineer.

Working Drawings to be prepared by the Sub-contractor shall include but not be restricted to the following:

- a) Any drawings required by the Main Contractor, or Engineer to enable structural provisions to be made including Builder's Working Drawings or Schedules and those for the detailing of holes, fixings, foundations, cables and paperwork ducting below or above ground or in or outside or below buildings.
- b) General Arrangement Drawings of all plant, control boards, fittings and apparatus or any part thereof and of installation layout arrangement of such plant and apparatus.
- c) Schematic Layout Drawings of services and of control equipment.
- d) Layout Drawings of all embedded and non-embedded paperwork, ducts and electrical conduits.
- e) Complete circuit drawings of the equipment, together with associated circuit description.
- f) Such other drawings as are called for in the text of the Specification or Schedules or as the Engineer may reasonably require.

Three copies of all Working Drawings shall be submitted to the Engineer for approval. One copy of the Working Drawings submitted to the Engineer for approval shall be returned to the Sub-contractor

indicating approval or amendment therein.

Six copies of the approved Working Drawings shall be given to the Main Contractor by the Sub-contractor for information and distribution to other Sub-contractors carrying out work associated with or in close proximity to or which might be affected by the Sub-contract Works.

Approved Working Drawings shall not be departed from except as may be approved or directed by the Engineer.

Approval by the Engineer of Working Drawings shall neither relieve the Sub-contractor of any of his obligations under the Sub-contract nor relieve him from correcting any errors found subsequently in the Approved Working Drawings or other Working Drawings and in the Sub-contract Works on site or elsewhere associated therewith.

The Sub-contractor shall ensure that the Working Drawings are submitted to the Project Manager for approval at a time not unreasonably close to the date when such approval is required. Late submission of his Working Drawings will not relieve the Sub-contractor of his obligation to complete the Sub-contract Works within the agreed Contract Period and in a manner that would receive the approval of the Architect.

### 1.33 **Record Drawings (As Installed) and Instructions**

During the execution of the Sub-contract Works the Sub-contractor shall, in a manner approved by the Engineer record on Working or other Drawings at site all information necessary for preparing Record Drawings of the installed Sub-contract Works. Marked-up Working or other Drawings and other documents shall be made available to the Engineer as he may require for inspection and checking.

Record Drawings, may, subject to the approval of the Engineer, include approved Working Drawings adjusted as necessary and certified by the Sub-contractor as a correct record of the installation of the Sub-contract Works.

They shall include but not restricted to the following drawings or information:

- a) Working Drawings amended as necessary but titled "Record Drawings" and certified as a true record of the "As Installed" Sub-contract Works. Subject to the approval of the Engineer such Working Drawings as may be inappropriate may be omitted.
- b) Fully dimensioned drawings of all plant and apparatus.
- c) General arrangement drawings of equipment, other areas containing plant forming part of the Sub-contract Works and the like, indicating the accurate size and location of the plant and apparatus suitability cross-referenced to the drawings mentioned in (b) above and hereinafter.
- d) Routes, types, sizes and arrangement of all pipework and ductwork including dates of installation of underground pipework.
- e) Relay adjustment charts and manuals.
- f) Routes, types, sizes and arrangement of all electric cables, conduits, ducts and wiring including the dates of installation of buried works.
- g) System schematic and trunking diagrams showing all salient information relating to control and instrumentation.
- h) Grading Charts.
- i) Valve schedules and locations suitability cross-referenced.
- j) Wiring and piping diagrams of plant and apparatus.
- k) Schematic diagrams of individual plant, apparatus and switch and control boards. These diagrams to include those peculiar to individual plant or apparatus and also those applicable to system operation as a whole.
- l) Operating Instruction

Schematic and wiring diagrams shall not be manufacturer's multipurpose general issue drawings. They shall be prepared specially for the Sub-contract Works and shall contain no spurious or irrelevant information.



Marked-up drawings of the installation of the Sub-contract Works shall be kept to date and completed by the date of practical or section completion. Two copies of the Record Drawings of Sub-contract Works and two sets of the relay adjustment and grading charts and schematic diagrams on stiff backing shall be provided not later than one month later.

The Sub-contractor shall supply for fixing in sub-stations, switch-rooms, boiler houses, plant rooms, pump houses, the office of the Maintenance Engineer and other places, suitable valve and instructions charts, schematic diagrams of instrumentation and of the electrical reticulation as may be requested by the Engineer providing that the charts, diagrams, etc., relate to installations forming part of the Sub-contract Works. All such charts and diagrams shall be of suitable plastic material on a stiff backing and must be approved by the Engineer before final printing.

Notwithstanding the Sub-contractor's obligations referred to above, if the Sub-contractor fails to produce to the Engineer's approval, either:-

- a) The Marked-up Drawings during the execution of the Sub-contract Works or
- b) The Record Drawings, etc., within one month of the Section or Practical Completion

The Engineer shall have these drawings produced by others. The cost of obtaining the necessary information and preparing such drawings, etc., will be recovered from the Sub-contractor.

#### 1.34 **Maintenance Manual**

Upon Practical Completion of the Sub-contract Works, the Sub-contractor shall furnish the Engineer four copies of a Maintenance Manual relating to the installation forming part of all of the Sub-contract Works.

The manual shall be loose-leaf type, International A4 size with stiff covers and cloth bound. It may be in several volumes and shall be sub-divided into sections, each section covering one Engineering service system. It shall have a ready means of reference and a detailed index.

There shall be a separate volume dealing with Air Conditioning and Mechanical Ventilation installation where such installations are included in the Sub-contract Works.

The manual shall contain full operating and maintenance instructions for each item of equipment, plant and apparatus set out in a form dealing systematically with each system. It shall include as may be applicable to the Sub-contract Works the following and any other items listed in the text of the Specifications:

- a) System Description.
- b) Plant
- c) Valve Operation
- d) Switch Operation
- e) Procedure of Fault Finding
- f) Emergency Procedures
- g) Lubrication Requirements
- h) Maintenance and Servicing Periods and Procedures
- i) Colour Coding Legend for all Services
- j) Schematic and Writing Diagrams of Plant and Apparatus
- k) Record Drawings, true to scale, folded to International A4 size
- l) Lists of Primary and Secondary Spares.

The manual is to be specially prepared for the Sub-contract Works and manufacturer's standard descriptive literature and plant operating instruction cards will not be accepted for inclusion unless exceptionally approved by the Engineer. The Sub-contractor shall, however, affix such cards, if suitable, adjacent to plant and apparatus. One spare set of all such cards shall be furnished to the Engineer.

### 1.35 **Hand-over**

The Sub-contract Works shall be considered complete and the Maintenance and Defects Liability Period shall commence only when the Sub-contract Works and supporting services have been tested, commissioned and operated to the satisfaction of the Engineer and officially approved and accepted by the Employer, provided always that the handing over of the Sub-contract Works shall be coincident with the handing over of the Main Contract Works.

The procedure to be followed will be as follows:

- a) On the completion of the Sub-contract Works to the satisfaction of the Engineer and the Employer, the Sub-contractor shall request the Engineer, at site to arrange for handing over.
- b) The Engineer shall arrange a Hand-over Meeting or a series thereof, at site.
- c) The Sub-contractor shall arrange with the Engineer and Employer for a complete demonstration of each and every service to be carried out and for instruction to be given to the relevant operation staff and other representatives of the Employer.
- d) In the presence of the Employer and the Engineer, Hand-over will take place, subject to Agreement of the Hand-over Certificates and associated check lists.

### 1.36 **Painting**

It will be deemed that the Sub-contractor allowed for all protective and finish painting in the Sub-contract Sum for the Sub-contract Works, including colour coding of service pipework to the approval of the Engineer. Any special requirements are described in the text of the Specifications.

### 1.37 **Spares**

The Sub-contractor shall supply and deliver such spares suitably protected and boxed to the Engineer's approval as are called for in the Specifications or in the Price Schedules.

### 1.38 **Testing and Inspection – Manufactured Plant**

The Engineer reserves the right to inspect and test or witness of all manufactured plant equipment and materials.

The right of the Engineer relating to the inspection, examination and testing of plant during manufacture shall be applicable to Insurance companies and inspection authorities so nominated by the Engineer.

The Sub-contractor shall give two week's notice to the Engineer of his intention to carry out any inspection or tests and the Engineer or his representative shall be entitled to witness such tests and inspections

Six copies of all test certificates and performance curves shall be submitted as soon as possible after the completion of such tests, to the Engineer for his approval.

Plant or equipment which is shipped before the relevant test certificate has been approved by the Engineer shall be shipped at the Sub-contractor's own risk and should the test certificate not be approved new tests may be ordered by the Engineer at the Sub-contractor's expense.

The foregoing provisions relate to tests at manufacturer's works and as appropriate to those carried out at site.

### 1.39 **Testing and Inspection -Installation**

Allow for testing each section of the Sub-contract Works installation as described hereinafter to the satisfaction of the Engineer.

### 1.40 **Labour Camps**

The Sub-contractor shall provide the necessary temporary workshop and mess-room in position to be approved by the Architect.

The work people employed by the Sub-contractor shall occupy or be about only that part of the site

necessary for the performance of the work and the Sub-contractor shall instruct his employees accordingly.

If practicable, W.C. accommodation shall be allocated for the sole use of the Sub-contractor's workmen and the Sub-contractor will be required to keep the same clean and disinfected, to make good any damage thereto and leave in good condition.

1.41 **Storage of Materials**

Space for storage will be provided by the Main contractor but the sub-contractor will be responsible for provision of any lock-up sheds or stores required.

Nominated Sub-contractors are to be made liable for the cost of any storage accommodation provided specially for their use. No materials shall be stored or stacked on suspended slabs without the prior approval of the Project manager.

1.42 **Initial Maintenance**

The sub-contractor shall make routine maintenance once a month during the liability for the Defects Period and shall carry out all necessary adjustments and repairs, cleaning and oiling of moving parts. A monthly report of the inspection and any works done upon the installation shall be supplied to the Engineer.

The sub-contractor shall also provide a 24 -hour break-down service to attend to faults on or malfunctioning of the installation between the routine visits of inspection.

The sub-contractor shall allow in the sub-contract Sum of the initial maintenance, inspection and break-down service and shall provide for all tools, instruments, plant and scaffolding and the transportation thereof, as required for the correct and full execution of these obligations and the provision, use or installation of all materials as oils, greases, sandpaper, etc., or parts which are periodically renewed such as brake linings etc., or parts which are faulty for any reason whatsoever excepting always Acts of God such as storm, tempest, flood, earthquake and civil revolt, acts of war and vandalism.

1.43 **Maintenance and Servicing After Completion of the Initial Maintenance**

The sub-contractor shall, if required, enter into a maintenance and service agreement with the employer for the installation for a period of up to five years from the day following the last day of the liability for Defects Period which offers the same facilities as specified in Clause 1.42 (Initial Maintenance).

The terms of any such agreement shall not be less beneficial to the employer than the terms of Agreements for either similar installation.

The sub-contractor shall submit with his tender for the works, where called upon a firm quotation for the maintenance and service of the installation as specified herein, which shall be based upon the present day costs and may be varied only to take into account increases in material and labour unit rate costs between the time of tendering and the signing of the formal maintenance and service agreement and which shall remain valid and open for acceptance by the Employer to and including the last day of the fifth complete calendar month following the end of the liability for Defects Period.

1.44 **Trade Names**

Where trade names of manufacturer's catalogue numbers are mentioned in the Specification or the Bills of Quantities, the reference is intended as a guide to the type of article or quality of material required. Alternate brands of equal and approved quality will be acceptable.

1.45 **Water and Electricity for the Works**

These will be made available by the Main Contractor. The Sub-contractor shall be liable for the cost

of any water or electric current used and for any installation provided especially for their own use by the Main Contractor.

**1.46 Protection**

The sub-contractor shall adequately cover up and protect his own work to prevent injury and also to cover up and protect from damage all parts of the building or premises where work is performed by him under the Contract.

**1.47 Defects After Completion**

The defects liability period will be 6 months from the date of completion of the Main Contract as certified by the Engineer.

**1.48 Damages for Delay**

Liquidated and Ascertained damages as stated in the Main Contract Agreement will be claimed against the Main Contract for any unauthorised delay in completion. The Sub-contractor shall be held liable for the whole or a portion of these damages should he cause delay in completion.

**1.49 Clear Away on Completion**

The sub-contractor shall, upon completion of the works, at his own expense, remove and clear away all plant, equipment, rubbish and unused materials, and shall leave the whole of the works in a clean and tidy state, to the satisfaction of the Engineer. On completion, the whole of the works shall be delivered up clean, complete and perfect in every respect to the satisfaction of the Engineer.

**1.50 Final Account**

On completion of the works the sub-contractor shall agree with the Engineer the value of any variations outstanding and as soon as possible thereafter submit to the Engineer his final statement of account showing the total sum claimed sub-divided as follows:

Statement A - detailing the tender amounts less the Prime Cost and Provisional Sums, included therein.

Statement B - detailing all the variation orders issued on the contract.

Statement C - Summarizing statement A and B giving the net grand total due to the Contractor for the execution of the Contract.

**1.51 Fair Wages**

The sub-contractor shall in respect of all persons employed anywhere by him in the execution of the sub-contract, in every factory, workshop or place occupied or used by him for execution of the Contract, observe and fulfill the following conditions:

- a) The sub-contractor shall pay rates of the wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where work is carried out.
- b) In the absence of any rates of wages, hours or conditions of labour so established the sub-contractor shall pay rates and observe hours and conditions of labour are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

**1.52 Supervision**

During the progress of the works, the Sub-contractor shall provide and keep constantly available for consultation on site an experienced English - speaking Supervisor and shall provide reasonable office facilities, attendance, etc., for the Supervisor.

In addition, during the whole of the time the works are under construction, the sub-contractor shall maintain on site one experienced foreman or charge-hand and an adequate number of fitters, etc., for the work covered by the Specification. The number of this staff shall not be reduced without the prior written approval of the Project manager or Engineer.

Any instructions given to the Supervisor on site shall be deemed to have been given to the sub-contractor.

One copy of this Specification and one copy of each of the Contract Drawings (latest issue) must be retained on site at all times, and available for reference by the Engineer or sub-contractor.

**1.53 Test Certificates**

The Sub-contractor shall provide the Engineer with three copies of all test reports or certificates that are or may be required by this Specification.

**1.54 Labour**

The Sub-contractor shall provide skilled and unskilled labour as may be necessary for completion of the contract.

**1.55 Discount to the Main Contractor**

No discount to the Main Contractor will be included in the tender for this installation.

**1.56 Guarantee**

The whole of the work will be guaranteed for a period of six months from the date of the Engineer's certification of completion and under such guarantee the Sub-contractor shall remedy at his expense all defects in materials and apparatus due to faulty design, construction or workmanship which may develop in that period.

**1.57 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 instance, profit relative to the P.C Sum in the priced Bills of Quantities will be adjusted as deserved for P.C Sum allowed.

**1.58 Attendance Upon the 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 the use of ordinary scaffolding. The contractor however, shall not be required to erect any special scaffolding for them.

**1.59 Trade Unions**

The contractor shall recognize the freedom of his work people to be members of trade unions.

**1.60 Local and other Authorities notices and fees**

The contractor shall comply with and give all notices required by any Regulations, Act or by Law of any Local Authority or of any Public Service, Company or Authority who have any jurisdiction with regard to the works or with those systems the same are or will be connected and he shall pay and indemnify the Government against any fees or charges legally demandable under any regulation or by-law in respect of the works; provided that the said fees and charges if not expressly included in the contract sum or stated by way of provisional sum shall be added to the contract sum.

The contractor before making any variation from the contract drawings or specification necessitated by such compliance shall give the Project Manager written notice specifying and giving the reason for such variation and applying for instructions in reference thereto.

If the contractor within seven days of having applied for the same does not receive such instructions, he shall proceed with the works in conforming to the provision regulation or by-law in question and any variation thereby necessitated shall be deemed to be a variation in accordance to the conditions of contract.

**1.61 Assignment or subletting**

The contractor shall not without the written consent of the Project Manager assign this contract or sublet any portion of the works, provided that such consent shall not be unreasonably withheld to the prejudice of the contractor.

### **1.62 Partial Completion**

If the Government shall take over any part or parts works, apparatus, equipment etc. then within seven days from the date on which the Government shall have taken possession of the relevant part, the Project Manager shall issue a Certificate stating his estimate of the approximate total value of the works which shall be the total value of that part and practical completion of the relevant part shall be deemed to have occurred, and the Defects Liability Period in respect of the relevant part be deemed to have commenced on the date Government shall have taken possession thereof.

The contractor shall make good any defects or other faults in the relevant part that had been deemed complete.

The contractor shall reduce the value of insurance by the full value of the relevant part

The contractor shall be paid for the part of works taken possession by the Government

### **1.63 Temporary Works**

Where temporary works shall be deemed necessary, such as Temporary lighting, the contractor shall take precaution to prevent damage to such works.

The contractor shall include for the cost of and make necessary arrangements with the Project Manager for such temporary works. For temporary lighting, electricity shall be metered and paid for by the contract

### **1.64 Patent Rights**

The contractor shall fully indemnify the Government of Kenya; against any action, claim or proceeding relating to infringement of any patent or design rights, and pay any royalties which may be payable in respect of any article or any part thereof, which shall have been supplied by the contractor to the Project Manager. In like manner the Government of Kenya shall fully indemnify the contractor against any such action, claim or proceedings for infringement under the works, the design thereof of which shall have been supplied by the Project Manager to the contractor, but this indemnify shall apply to the works only, and any permission or request to manufacture to the order of the Project Manager shall not relieve the contractor from liability should he manufacture for supply to other buyers.

### **1.65 Mobilization and Demobilization**

The contractor shall mobilize labour plant and equipment to site according to his programme and schedule of work. He shall ensure optimum presence and utilization of labour, plant and equipment. He should not pay and maintain unnecessary labour force or maintain and service idle plant and equipment. Where necessary he shall demobilize and mobilize the labour, plant and equipment, as he deems fit to ensure optimum progress of the works and this shall be considered to be a continuous process as works progress. He shall make provision for this item in his tender. No claim will be entertained where the contractor has not made any provision for mobilization and demobilization of labour, plant and equipment in the preliminary bills of quantities or elsewhere in this tender.

### **1.66 Extended Preliminaries**

Where it shall be necessary to extend the contract period by the Project manager the contractor shall still ensure availability on site, optimum labour, materials, plant and equipment. The contractor shall make provision for extended preliminaries, should the contract period be extended and this shall be in a form of a percentage of the total Contractor works. Where called upon in the Appendix to these Preliminaries the Contractor shall insert his percentage per month for extended preliminaries that shall form basis for compensation.

Lack of inserting the percentage shall mean that the sub-contractor has provided for this requirement elsewhere in the Bills of Quantities.

### **1.67 Supervision by Engineer and Site Meetings**

A competent Project Engineer appointed by the Engineer as his representative shall supervise the Contract works. The Project Engineer shall be responsible for issuing all the site instructions in any variations to the works and these shall be delivered through the Contractor with the authority of the

Project Manager. Any instructions given verbal shall be confirmed in writing.

The project engineer and (or) the Engineer shall attend management meetings arranged by the Project Manager and for which the Contractor or his representative shall also attend. For the purpose of supervising the project, provisional sums are provided to cover for transport and allowances. The Contractor shall in his tender allow for the provision of management meetings and site inspections, as instructed by the Engineer, and also profit and attendance on these funds. The funds shall be expended according to Project Manager's instructions to the contractor.

#### **1.68 Amendment to Scope of Contract Works**

No amendment to scope of sub-contract works is expected and in case of amendment or modification to scope of work, these shall be communicated to all tenderers in sufficient time before the deadline of the tender submission. However during the contract period and as the works progress the Project Manager may vary the works as per conditions of contract by issuing site instructions.

No claims shall be entertained on account of variation to scope of works either to increase the works (pre-financing) or reduction of works (loss of profit-see clause 1.70)

#### **1.69 Contractor Obligation and Employers Obligation**

The sub-contractor will finance all activities as part of his obligation to this contract. The employer shall pay interim payment for materials and work completed on site as his obligation in this contract, as the works progresses. No claims will be entertained for pre-financing of the project by the sub-contractor, or for loss of profit (expectation loss) in case of premature termination, reduction or increase of works as the sub-contractor shall be deemed to have taken adequate measures in programming his works and expenditure and taken necessary financial precaution while executing the works. No interest shall be payable to the Contractor, except as relates to late payment as in the conditions of contract clause 23.3. The contractor shall where called upon, insert his price to compensate for any of the occurrence stated here (premature termination, reduction or increase of works), as a percentage of the contract sum in the Appendix to this section.

#### **1.70 APPENDIX TO SUB-CONTRACT PRELIMINARIES AND GENERAL CONDITIONS**

##### **1. ADD TO CLAUSE 1.17**

Prices quoted shall include **16% VAT**

In accordance with current Government policy, the **3% Withholding Tax** and **6% advance V,A.T** shall be deducted from all payments made to the sub-contractor, and the same shall subsequently be forwarded to the Kenya Revenue Authority (KRA). The applicable taxes shall be varied according to the Act and Regulations in force.

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## **2. PRICE SCHEDULES**

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**NOTE: PRICING SCHEDULES ARE AS APPENDED TO THE LAST SECTION OF THIS DOCUMENT (SECTION XI)**



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**SECTION VI: SPECIFICATIONS (TRADE  
PREAMBLES)**

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## **2b. PARTICULAR SPECIFICATIONS FOR LIFT INSTALLATIONS**

### **1. SCOPE**

The Contractor shall supply labour and supply, deliver, install, fix, connect, test, label and commission the Lift works, clean, complete and working to every detail as described in the specification and by related specifications and on the drawings listed in the Schedule or Drawings to the satisfaction of the Consulting Engineers.

The Contractor shall be responsible for the supply, delivery, installation, connection, testing and setting to work of the entire Lift system in accordance with the Contract Documents.

The Contractor shall provide all the necessary tools, skilled and un-skilled labour to comply and complete in accordance with the main contractor's works program.

### **2. STANDARDS & CODES**

The Lift shall follow the latest EN81 Standard as a minimum for the lift installations i.e. incorporating:

- 2.1 **EN81-20/50:2017** - Safety rules for the construction and installation of lifts. Electric lifts.
- 2.2 **EN 12015:1998** - Electromagnetic compatibility. Product family standard for lifts, escalators and passenger conveyors. Emission.
- 2.3 **EN 12016:2004** - Electromagnetic compatibility. Product family standard for lifts, escalators and moving walks. Immunity.
- 2.4 **EN81-70** - Safety rules for the construction and installation of lifts. Particular applications for passenger and goods passenger lifts. Accessibility to lifts for persons including persons with disability.
- 2.5 **EN81-72** - Safety rules for the construction and installation of Firefighters lift.
- 2.6 **EN81-58** - Safety Rules for construction and installation of lifts -Examination and tests Part 58: Landing doors fire resistance test.
- 2.7 **EN81-73** - Behavior of Elevators in event of fire.

The Lift shall also follow the following Directives and Regulations

- 2.8 Lift Directive (2014/33/AB)
- 2.9 Regulation on Elevator Maintenance and Management
- 2.10 Regulation on the Fire Protection of Buildings.

The Lifts shall also comply with the latest KEBS & Other Government standards as stipulated.

### **3. GENERAL PROVISION**

The lifts shall be of the traction type and shall serve floors as indicated in Schedules & Specifications.

The Lifts shall be installed to serve all the floors the shaft exists but configured such that particular groups shall be serving specific floors.

#### 4. ENVIRONMENTAL CONDITIONS

- 4.1 The lifts shall operate in a stand-by mode during off-peak and idle periods. For example the power side of the lift controller and other auxiliary equipment such as lift car lighting and ventilation fan switch shall be off when the lift is not in motion
- 4.2 Minimum heat dissipation due to the energy consumption shall be provided
- 4.3 Drive System shall have:
  - 4.3.1 THD shall be  $\leq 3\%$
  - 4.3.2 Line impedance shall be  $< 50\text{m Ohm}$
- 4.4 Traction sheave ropes shall have large diameter to increase life time.
- 4.5 Amount of epoxy resin for stator winding shall be reduced.
- 4.6 Steel for balancing weight of traction sheave shall be provided.
- 4.7 MRL technology shall be used for elevators below 2.5m/s.
- 4.8 Regenerative drive technology shall be used for elevators with a speed of above 4m/s
- 4.9 All elevators traction machines shall not need lubrication.
- 4.10 Gearless drive system with frequency controller shall enable direct power transfer for highly efficient energy usage.
- 4.11 Major parts should be made of steel and cast iron. Therefore;
  - 4.11.1 DC-commuter carbon brushes shall not be used.
  - 4.11.2 Oil shall not be used.
  - 4.11.3 Brake lining shall be free of any harmful material.

## THE PLANT

### 5. LIFTS SPECIFIC DETAILS

The lift specific details shall be as summarized in “**SCHEDULE No. 1**” The bidder is to follow the guideline from the schedule and confirm by filling in the section to be filled by the bidder as a confirmation on the same.

### 6. TYPE

The lifts shall be electric and must comply with the current edition of the EN Standards safety standards code.

The lifting machine shall be electronically controlled via AC variable voltage, variable frequency, geared machine designed to give fully regulated direct landing approach, with motor, brake and driving sheave assembled on a steel bedplate.

The motor shall be particularly designed for general purpose duties with high starting torque and low starting current.

Sound reducing material shall be installed under the machine and suitable beams shall be provided for mounting the machine above the lift shaft in the machine room at the roof top.

The bidder must provide for a steel structure for both cars and counter weight guide rails.

### 7. TRAVEL HEIGHTS & LEVELS SERVED

The lift(s) travel height and Levels is as summarized in “**SCHEDULE No. 2**” The bidder is to follow the guideline from the schedule

### 8. CONTROL (MICROPROCESSOR BASED)

Lift Shall have Microprocessor based controls i.e. individual control, jerk less type with automatic leveling facilities.

**NOTE: The Bidder shall submit a brief summary of how their microprocessor shall behave, and shall be called upon to demonstrate at the time of commissioning of the lift that the system behaves as described below.**

### 9. BMS

The lift must be compatible with the Building Management System (BMS) by use of the BACNET IP protocol unless otherwise specified in the schedules. Both the software and hardware necessary for this MUST be supplied with the lift.

Where a different protocol is provided the cost of equipment must include the cost of providing the necessary gateway to convert to BACNET IP protocol with provisions for connection with the existing system in the building included in the costing.

### 10. MODE OF OPERATION

The lift Mode of Operation shall be as follows:

#### 10.1 Group Car Supervisory

The operation of the lifts shall be capable of group car supervisory full collective with Microprocessor programming unless specifically stated otherwise in schedule No.1 on lift Specific details.

## **10.2 Time Traffic Monitoring**

During morning, mid-day and evening peak times, the computer system shall monitor and analyze all car and hall calls and instantly assign the car to suit an unlimited number of varying passenger traffic patterns created during peak and non-peak periods.

## **10.3 Traffic Conditions assignment**

The system shall respond to traffic conditions and modify its assignment procedures to operate in the following modes.

### **a) Light/Intermittent/Up-Peak/Down Peak**

In the "Light" mode, the car is parked in predetermined zones of the building. The car will park at the main floor car park with its doors open.

### **b) Intermittent Peak**

In the "Intermittent" mode, the car will have split zones at the half-way point with the car serving the floors to which it is closest. Once a car is committed to travel in one direction it will become "Low bidder" for calls ahead, but "High bidder" for calls behind. Hall calls will be assigned to the lowest bidder.

The car will complete service in one direction before reversing and is permitted to reverse at the highest or lowest call. Cars will return to unoccupied parking zones when idle.

### **c) Down Peak**

The "Down-Peak" condition will be detected by monitoring the number of down hall calls, down boarding rates and down lobby arrival loadings. Under down peak traffic, hall calls are grouped in the sequence of registration and assigned to be served in this sequence, and approximate "first-in/first-out" pattern.

### **d) Up-Peak**

The "Up-peak" mode is initiated when the car leaves the main floor in the up-direction with loadings above predetermined level increasing. Cars are permitted to depart from the main floor without predetermined timing.

### **e) Non-Peak**

A "Non-Peak" Situation is recognized when both Up-Peak and Down -Peak conditions are detected. The car sent to the lobby to serve incoming traffic will be reduced compared to pure "Up -Peak" and no limitations will apply to service for downfalls

## **10.4 Priority Assignment**

The simplex supervisory system shall give priority to service designated floors where heavier traffic can be anticipated. The free car will park at these floors in anticipation of passenger requirements. The ground floor shall be regarded as the first priority floor but any floor experiencing a sudden high demand shall immediately be temporarily assigned as a priority floor.

## **10.5 Car Reservation**

A reservation control arrangement shall be provided for each car by means of a key Switch in the car operating panel. By operating this key, a car can be removed from Ground control and be operated by an attendant. When on reservation control, the car shall respond to a car button only.

### **10.6 Car Hold Time delay**

A time delay shall hold the car for an adjustable interval of a few seconds at the landings at which stops are made to enable passengers to enter or leave the car. Pressure of a car button for another landing before this time elapse shall cause the car to start, provided the car door and landing doors are closed.

### **10.7 Bypass Switch**

The lift shall be provided with automatic by-pass device to prevent unnecessary stops when the car is full.

### **10.8 Safety Controller**

The car shall be fitted with a lift system Controller / or safe landing device which shall stop the car and move it to the ground floor landing and open the car doors in case any of any of the safety devices failing to operate or power fails.

The controller must also stop the car whenever excessive descending or ascending speed is attained by cutting off power to the motor and activation of the brake. It shall also be able to bring the car to a stop at the upper ground floor landings independent of the regular operating device in the car.

Final limit switches shall be provided in the hoist way, operated by the car and arranged to stop the car, by cutting off power to the motor, and prevent normal stopping device.

The power packs to the Controller shall be provided with mains charging units which shall maintain them at peak power continually.

### **10.9 Maintenance Direction Controls**

To facilitate inspection, a manually operated switch on the controller connected to "UP" and "Down" directions buttons exposed on the top of the car shall be provided. The switch shall permit the car to be operated at slow speed from the top respond to any calls.

### **10.10 Self Levelling Controls**

The lift shall be provided with a self-leveling/landing feature that will automatically bring the car to the floor landings. The device shall be entirely automatic and independent of the operating device, and shall correct for over-travel or under-travel and rope stretch. The car shall also be maintained approximately level (within 6mm) with the landing, irrespective of load.

### **10.11 Manual Controls**

Provision shall be made for moving the car manually to the nearest landing in case of total failure of lift controller device or in an event of power outage.

## **11. EMERGENCY LANDING DEVICE**

All lifts shall be incorporated with an Automatic Transient safe landing device to stop the lift & move it to the next landing in event of a fault or power outage. The Elevator Emergency Landing Device shall only be in operation during an event of a power failure or blackouts occurring in a building.

Upon power failure, the elevator shall automatically move and stop at the nearest floor using a rechargeable battery (or uninterruptible power supply, UPS), and the doors open to ensure passenger safety.

## **12. AIR PRESSURE MITIGATION**

All lifts above 3m/s (Both Car & Hoist way) shall be incorporated with designs to reduce Air Pressure Effects i.e. Air pressure designed to have release holes.

## **CAR CONTROLS & INDICATORS**

### **13. CAR OPERATING PANEL (COP)**

An operating panel shall be fitted into each lift car. The panel shall be mounted flush with the car wall finish and shall be housed in a metal case fitted with silver anodized or a stainless steel case.

The COP shall include paraplegic facilities i.e.:

- i. All call buttons shall include instructions in Braille for the visually impaired
- ii. Panel shall be at a height where it can be operated from a wheelchair
- iii. Panel shall be incorporated with voice command for the visually impaired
- iv. Panel shall have incorporated visual graphics for the hearing impaired

The COP shall comprise of: -

- (a) A series of electronic touch buttons corresponding to the landings served. Each button shall illuminate to show the floor for which a car dispatch call is registered.
- (b) Switches for fan and lights.
- (c) Door OPEN button
- (d) Door CLOSE button
- (e) Overload indicator
- (f) Alarm button connected to a battery powered intercom systems
- (g) Intercom system
- (h) Car lights must be off when the lift is at standstill
- (i) Key switches to control;
  - Fire master Control
  - Independent service

As stated in the “CONTROL (MICROPROCESSOR BASED)” section above, the lift must be BMS compatible and ready. Both the software and hardware necessary for this must be supplied with the lift.

### **14. CAR POSITION AND DIRECTION INDICATOR**

A self-illuminated car position and direction indicator housed in a steel case, shall be mounted in the car door header and fitted with stainless steel cover plate. It shall be fitted at such an angle that it is easily visible and legible to any passenger in a full cabin. The display digits shall have a minimum height of 40 mm.

A similar direction indicator shall be mounted above each of the landing doors.

The lift to include voice synthesizers to give audible voice prompts giving the direction of travel, the opening and closing of doors and any other information useful to a visually impaired person.

### **15. LANDING CALL BUTTONS**

At each landing, one stainless steel flush-mounted panel, with a set of electronic touch buttons each for "Up" and "Down" shall be provided, having both visual and brailed signage. The buttons must light up when a call is registered. Direction arrow lights to be incorporated in all landing button plates, arranged so that when a button is pressed the corresponding arrow will illuminate indicating the direction of the call which is registered.

## LIFT DOORS ( CAR & LANDING )

### 16. LANDING & CAR DOORS TYPE

The doors shall be fully automatic two panels, center opening high speed sliding doors unless otherwise stated in the schedules

### 17. DOOR OPERATOR (CAR AND LANDING)

The Door Operator shall comprise of the following features:

- (a) An electric door operator shall be provided to open simultaneously the car and landing doors when the car is approximately 200mm from a landing. The operator shall be self-contained computer compatible electronic controlled drive system capable of communicating with the lift microprocessor equipment and passenger sensors and independently execute the opening and closing commands door. It shall have programmed closing and opening doors speeds that shall be traffic dependent. Highest door speeds shall be used during intensive peak traffic. Thus the opening, closing and dwell times shall be fully adjustable for speed and time.
- (b) The door dwell time shall be automatically reduced to approximately one second when a car floor button is pressed; also when a passenger leaves the car at his destination even when no incoming passenger presses a new car floor button.
- (c) Emergency key provision shall be made to open doors to all landings from outside the hoist way. It shall also be possible to open the doors manually from within the car, provided the car is within the landing zone.
- (d) An electronic contact for the lift car door shall be provided which shall prevent the lift movement away from the landing unless the car and landing doors are in the closed position. The landing door shall be equipped with a positive electro-mechanical interlock and auxiliary door closing device so that the lift can be operated only after the interlock circuit is established.
- (e) Should the load on the car exceed the maximum load, the car and landing doors shall not close, and an audible alarm shall be sounded.
- (f) The doors shall open automatically while the car is leveling at the respective landing. The doors shall automatically close after programmable traffic dependent time interval has elapsed; but momentary pressure on the "Door Open" button installed in the car shall reverse the motion and re-open the doors and reset the time interval.
- (g) The car landing door leading edge shall be provided with protective electronic sensing device extending the full height and projecting beyond the front edge of the door. This device shall be so arranged that, should it sense a person or any obstruction in its path while the doors are closing, it shall automatically cause both the car and the landing door to return to open position. The zone of protection shall be at least 100 mm in advance of the car and landing door edges.
- (h) Each car shall be equipped with sensor detecting passenger movements on the landing in front of the car, also when the car door is only partly open.
- (i) To prevent accidents when passengers intentionally put their hands between the doors to cause re-openings at least one detector shall cover the whole door area and remain active until the door is fully closed. The passenger detector and the electronic safety edge shall complement each other in such a way that should one fail, the other alone will assure a safe and comfortable door operation.
- (j) In intensive traffic situations when the lift stops for car call only and the probability exists that only one or a few of the passengers will leave the car, the doors shall be capable of partial



opening to provide for faster operation and optimum use of transportation capacity. Partial opening to be at least 800mm.

- (k) There shall be an invisible frequency source (e.g. infra-red rays) arrangement projecting a beam of electromagnetic waves across the lift car entrance. After a stop is made, the door shall remain open, as stated above, for a predetermined interval which should be adjustable, unless closing is initiated sooner by the interruption and re-establishment of the beam. The doors shall be prevented from closing as long as either beam is interrupted or the car door protective device is actuated, except as provided below.
- (l) If, while the doors are closing either electromagnetic wave beam is interrupted by a passenger entering or leaving the car, or the car door protective device is actuated, the doors shall stop and re-open, after which the doors shall again start to close.
- (m) The lift shall be fitted with an audible sounder that shall be triggered as and when the car and landing doors commence to swing open at a landing stop.
- (n) Nudging - If the doors are held open for a predetermined time (15 to 20 seconds; adjustable) by interrupting the light rays/detector "site", or by holding the door, or by pressing the door open button, a buzzer will sound and the doors shall start to close at a gentle slow speed.

## **18. LANDING DOORS & ARCHITRAVES**

### **18.1 Doors**

The doors shall be programmable high speed center opening as described above and shall have at least half an hour fire resistance. Copies of fire test certificate shall be submitted for the Engineer's approval prior to the installation of the doors.

The doors finishes shall be as per "Schedule No. 8"

The door shall have a suitable lining shall be used to avoid metallic ring all joints shall be reinforced, welded and finished flush and, where necessary, be reinforced to take hangers, closers hooks etc.

The doors shall be fitted with rubber bumpers at the back to avoid banging on the door frame when the door is fully open.

The door frames shall combine cabinets' jambs and strips, still tract hanger housing and smooth running of doors. Non-slip treads shall be provided where necessary.

On site, the architrave and landing doors shall be painted by at least three coats of high quality gloss paint of an approved color if required.

The sills shall have metallic self-cleansing groove to receive the door guides rubbing between guides and sill groove and shall be at minimum to ensure smooth and quiet operation.

The clearance between the car and landing sill shall be 20 mm maximum.

### **18.2 Architraves**

Architraves shall be supplied for all lifts, and shall be imported together with the lifts unless specifically stated otherwise in the schedules attached to this document.

Locally manufactured architraves SHALL NOT BE acceptable.

Architrave finishes shall be as per "Schedule No. 3"

Architraves shall be pressed to shape, and made integral to suit the full wall thickness and shall be subjected to approval by the Engineer.

### **18.3 Landing Door Installations**

Each landing door shall be equipped with main and emergency electro-mechanical interlocks operated by a retiring cam or other approved device on the car which shall prevent the car moving away from the landing unless all doors are in closed position.

The interlocks shall also prevent the opening of any landing door until the car has reached the landing.

### **19. CAR DOORS**

The doors shall be two speed electrically controlled A.C. motor driven center opening doors.

The door shall be fully automatic, power operated and cushioned so as to prevent slamming at the limits of movements.

The doors shall be of the hollow metal type pressed to shape and rolled so that it does not give sharp edges to AISI 304 or as specified in the in the car finishes and fittings schedule.

The door shall have a suitable lining shall be used to avoid metallic ring. All joints shall be reinforced, welded and finished flush and where necessary shall be reinforced to take hangers, closers, hooks, etc.

## CAR INSTALLATIONS

### 20. CAR FRAME

The car frame supporting the car platform and car superstructure shall be made of heavy duty solid structural steel designed for general purpose elevator, and shall be fitted with guides and safety devices mounted underneath the car platform. The steel shall be zinc coated at the factory. The car frame shall be braced and gusseted to relieve the car superstructure of strain. Application of the safety gear or uneven loading of the car shall not deform the car frame.

### 21. CAR FINISHES & FITTINGS

The car finishes are as summarized in “**SCHEDULE No. 3**”.

The bidder is to follow the guideline from the schedule and confirm by filling in the section to be filled by the bidder on the same or an equivalent to what is specified.

The following is a guideline on the same.

#### 21.1 General

The car shall be constructed from pressed sheet steel. The methods of construction and strength of the lift cars and the door panels shall comply with B.S. 2655; part 1: 1970 and current amendments. The top of the car shall be covered in the sheet steel capable of withstanding a load of 37kg per square meter of surface

#### 21.2 Skirting

The car should have a skirting provided around the inside perimeter of the cars as specified in “Schedule No.8”

#### 21.3 Hand Rail

A hand rail shall be provided inside the car at a height of 975 mm as specified in “Schedule No.8”

#### 21.4 Floor Covering

A floor covering shall be provided in the car as specified in “Schedule No. 8”. The material used should be Non-slip.

The color and type of finish should be approved by the Engineers/Architects before ordering.

#### 21.5 Ventilation

Ventilation shall be adequate, indirect and free from draughts an extract fan shall be provided which shall have sleeve bearings and be quiet in operation. The fan must be multi directional and super silent.

Ventilation openings in the car itself particularly in the upper portion shall not render the extract fan ineffective in providing forced ventilation of the car.

#### 21.6 Car Interior Lighting

Appropriate car lighting should be provided to give the required illumination levels inside the car.

Car lighting shall be >60Lumens per Watt.

All lighting shall be of LED or energy saving as per “Schedule No. 8”

Light fittings shall be installed in the false ceiling of the car.

### **21.7 Car Emergency Lighting**

In addition, the car should contain at least 2 No. self-charging non-maintained emergency lighting fitting with a minimum of 3-hour autonomy which shall be installed at the roof of the car. The light shall automatically light in the event of the power failure.

### **22. TOP OF CAR ACCESSORIES**

- a) The car top shall be kept free of all except the most necessary equipment and length of conduit runs shall be kept to a minimum.

The top shall be designed to carry the weight of at least two men.

- b) An engineer's maintenance control station on top of the car shall be provided, consisting of adequate lighting (which can be on and off), and a proper socket outlet to power other maintenance equipment e.g. drilling machines, extension lead, blower etc.
- c) Test up and down push buttons shall be as provided on a panel located on top of the car door for operation during maintenance work.
- d) When the station is switched to inspection, the Elevator speed shall not exceed 0.63 m/s and all operating devices in the cab shall be inoperative.

## LIFT SHAFT

### 23. LIFT SHAFT INSTALLATIONS

#### 23.1 Guide Rails

Guide rails for the car and counter weights shall be T-Section steel guide rails planned on three edges with Tongue & grooved joints for the car and counterweight. Rails shall be placed accurately and fixed firmly to the shaft walls with sufficient spacing between brackets. Rails shall be of a size as recommended by the EN81-20/50 standard and nothing smaller.

The fixing of rails and connection between two or more sections of rail shall be in such a manner that the straight and vertical position is not influenced by changes in temperature or ordinary settlement of the structure.

#### 23.2 Car & Counter Weight Guiding Shoes

Spring loaded roller type of guide shoes mounted on ball bearings shall be supplied and installed on both the car and counterweight. Each wheel shall be provided with a renewable solid neoprene type and shall be accurately aligned to achieve smooth rolling action

#### 23.3 Counterweight

A suitable adjustable counter weight shall be fitted and installed for each lift. The filler weights shall be of cast iron of known weight securely housed in a rigid fabricated frame fitted with four guide shoes. The counter weights for panoramic lift must be concealed at the back.

#### 23.4 Terminal Buffers

Hydraulic, energy absorbing spring return buffers or robust design shall be installed in the pits under each car and its counter weight. The buffers shall bring the car to a stop should the car or counterweight overrun, without permanent damage or deformation when the lift is operating at 10% above the contract speed and 10% in excess of the Contract load. The buffers shall be of self-resetting type. The Contractor shall provide to the Engineer manufacturer's certificates for scrutiny and retention.

#### 23.5 Terminal & Final Limits

The car shall be slowed down and stopped automatically at the terminal landings. Should the car travel beyond the terminal landings, final lift shaft limit switches shall automatically cut off the power to the motor and controller and apply the lift machine's brakes. These switches shall not depend on the action of a spring for their operation.

#### 23.6 Other Provisions in Shaft

- i) Lighting or provision for lighting shall be allowed for in the shaft to assist maintenance personnel. The lights shall be controlled by two way switches mounted on top and bottom entrances.
- ii) An emergency stop switch shall be provided in the shaft for maintenance purposes. The position of the switch shall be such that it can be easily switched off before getting into the shaft.

- iii) A screen shall be provided to seal off the counterweight so that nobody can gain access to its path. A red engraved sign written "DANGER-BEWARE OF DESCENDING COUNTERWEIGHT" shall be fitted on the screen.
- iv) The screen should cover the full length of the counterweight at midway point of the shaft so that the chances of the counterweight knocking someone working on the car are reduced to a minimum.
- v) All the rotating pulleys (diverted, main sheave, etc.) shall be covered such that nobody is in danger of being trapped between the ropes and the pulley when the lift is in motion and the rotating parts should be painted yellow.

## **24. LIFT MACHINERY**

### **24.1 Motor Drive System**

Bidders shall be required to give details of the Machine Room and Operational details to be enclosed

**NOTE:**

**CARS QUOTED MUST BE MACHINEROOMLESS UNLESS THE BIDDER ATTACHES CONTRAINDICATION DATA FROM THE MANUFACTURER ON THE SAME**

The lifting machinery shall be located appropriately as per manufacturer's recommendation. The motor shall be of the screened silent type with 2 speed winding capable of a minimum of 180 starts per hour continuously. The motor shall comply with B.S. 2617: 1957 and bear the actual manufacturer's name plates. They shall be tested at the manufacturer's works for insulation resistance. The direction of rotation of the motor for "UP" and "DOWN" motion of the car shall be indicated by an engraved label fixed by four screws to the frame of the motor.

Direct floor approach without a creeping speed is required. A maximum tolerance of 5 mm shall be guaranteed.

The running speed between floors shall be the maximum attainable relative to the distance traveled, a fixed secondary speed for shorter journeys is not acceptable.

Smooth and accurate stopping will be achieved by the injection of D.C. current into the secondary winding. To achieve minimum power consumption, the motor system will be capable of smooth operation without the fitting of a flywheel or other mass weight.

The drive system shall be capable of fast single floor speeds and shall not utilize only the slow speed winding on single floor jumps. The tenderer will fully describe the system offered.

The proposed drive system shall not utilize field weakening. Dynamic braking shall not be utilized. If it is used all main D.C. current circuit components shall be solid state.

The drive system shall be capable of operating the car and inspection made without the lift control computer being active. When active, it shall monitor the operation, collect statistics and display the car position.

The motor shall be provided with a manually operated turning device for lowering the car to the nearest landing in case the automatic controller fails in the event of power failure. The system must prevent engaging of the turning device, until the power supply for the motor is switched off.

The machinery and controllers shall be placed on vibration dampers in the machine room above the lift shaft. Any steel structures or supporting beams for machinery are included in the Contract. If the Contractor finds it necessary to place the machinery on special concrete foundation these will

be furnished to the Engineer, but the Contractor must produce sufficient drawings for such work. The aggregate must be dimensioned for the full load in continuous operation and for a temporary overload of 10%.

## **24.2 Brakes**

The brakes shall be spring applied and shall be fitted with two springs. Self-aligning easily adjustable shoes with renewable linings shall be provided. The brakes shall operate on a brake pulley forming part of the driving shaft and shall be electrically released using a D.C. solenoid. The brake system will only act as holding brakes in normal operation. Deceleration will normally be carried out by the variable voltage control system.

## **24.3 Hoisting Ropes**

The lifts shall be provided with suitable car and counter-weight hoisting ropes manufactured, tested and handled in accordance with the relevant British Standards.

A test shall be made at the manufacturer's workshop for tension, tensile and breaking load of the rope as set out in relevant British or French Standards and the Contractor shall supply certified copies of test certificates to the Engineer. Sheaves shall be made of best grade iron, turned true and grooved for the ropes.

## **24.4 Sheaves**

The sheaves shall be of ample diameter for the ropes used. The traction shall be accurately machined from a semi-steel casting, properly grooved for the appropriate number and size of hoist ropes, of ample diameter.

The diverting sheave and the lift and counterweight sheaves shall comply with the same requirements as the traction sheave and shall be either of semi-steel or best grade close-grained cast iron.

The traction sheave, brake pulley and drive motor armature shall be mounted on a single one-piece sheave shaft turned from a single heat-treated steel bar. Beams shall be sound insulated from structure parts.

## **24.5 Electrical Installation**

All motors and switchgear shall be rated for operating at 240/415V 50 Hertz A.C power supply.

The installation must comply with the IEE regulations. All wiring shall be carried out in a neat and orderly manner. Cable run on walls all or ceilings to be in a straight line and right angle bends enclosed in steel ducting.

Connections to equipment more than 400 mm from walls shall be run from the wall in conduit cast in the floor to a connector box fixed upright adjacent to the equipment and through flexible conduit to the equipment.

All electrical switchgear must be clearly labeled. The trailing cable shall be of stranded flame proof lift type and flexible; so installed as to prevent mechanical stress on conductors and terminations. It shall be free from twist, kinks, abrasion and any other mechanical damage.

## **24.6 Alarm Emergency System**

An alarm button in the car shall simultaneously activate an audible alarm situated on the car, and supervisory board near reception desk. The alarm shall be supplied with back up rechargeable battery electricity from a Maintained trickle charger supplied by the Contractor. All wiring and installation of the alarm and intercom system shall be done by the Contractor.

#### **24.7 Car Safety Device Governors**

A sliding or approved type of car safety device shall be mounted beneath each car platform. The safety device shall be operated by a centrifugal speed governor to which it shall be connected through a continuous stranded steel rope. The governor shall be located on the machine platform. Prior to the application of the safety device all electric power shall be positively cut off from the lift motor. The gradual application of the safety device shall bring the car to a smooth sliding stop.

The following safety devices shall also be incorporated: -

- i) Car door closing-force limiter to prevent accidents.
- ii) Emergency unlocking of the car door from the landing for evacuation as well as for maintenance using special key.

#### **24.8 Controller**

The controller shall be enclosed in a freestanding floor mounted and totally enclosed steel framed cabinet with hinged doors at the front and detachable panel at the rear. All the necessary relays, contactors, meters, fuses, rectifiers, resistors, etc. forming part of the controller shall be accessible from both the front and rear. All components shall be clearly labeled as to their function and shall readily be accessible for easy maintenance and inspection.

#### **24.9 Manual Operation**

As stated under Safety Devices, a provision shall be made for manual lifting and lowering of the lift by means of spoke less wheel or flywheel permanently fixed at the end of the hoisting motor shaft. The wheel, where it is not fitted permanently to the motor, shall be mounted on a tool board together with the brake-release lever. The landing door emergency key shall be supplied and fixed by the Contractor.

#### **24.10 Testing and Commissioning**

The contractor/supplier shall supply at his own cost all test equipment necessary for the testing and commissioning of the system. The contractor/supplier shall provide the personnel to do the necessary tests and commissioning and shall notify the Engineer and all other before the commencement of tests.

All necessary tests including safety-gear test at full load in the car shall be carried out. Two copies of certified tests results shall be forwarded to the Engineer before handing over the lift installation.

#### **24.11 Statutory Inspection**

Inspection and registration of the lifts shall be carried out by an authorized government inspector who shall prepare a certificate before the acceptance by the engineer. The inspector must be approved / appointed by the Services Engineer/client. All the associated cost shall be met from the contract sum.

#### **24.12 Fireman's switch.**

The lift shall come complete with a Fireman's switch and any other related necessary controls and accessories for fireman's use in the event of fire.

#### **24.13 Elevator controls.**

The emergency controls and door operating controls shall be grouped together at the bottom of the control panel for ease of access by the physically challenged in a wheel chair.



The center line of the Emergency stop button shall not be less than 890mm from the lift car floor while the center line of the highest button shall not be more than 1370mm high from the car floor.

Arabic numerals shall be adjacent preferably to the left of the operating buttons on a distinct contrasting background.

The Braille version of all controls should be added to all of the interior and exterior call buttons and controls to enable the visually impaired travel independently.

The control panel shall be located on the front wall of the next to the entrance.

**2c. PARTICULAR QUALIFICATION FOR BIDDERS**

**TABLE 01:**

**NOTE:** All Attachments should be bound in 1 No. document with fliers separating the particular sections which shall be presented as part of the Bid. **Presentation shall follow the order stated below.**

BIDDERS REQUIREMENTS			
Item	Feature	Minimum Requirements	Bidder's Response / Comment (√ or X)
<b>A</b>	<b><u>MANDATORY REQUIREMENTS FOR BID EVALUATION</u></b>		
<b>A1</b>	<b>Company / Firm Registration Certificate</b>	Attach Certificate	
<b>A2</b>	<b>Registration with Relevant Bodies &amp; Category as Applicable</b>		
	<b>(Note: For any document Listed, Documentary Evidence of the Certificate Should be attached)</b>		
		NCA	
		LOCAL AUTHORITY	
		P.I.N. Registration Certificate	
		VAT Registration Certificate	
		Tax Compliance Certificate	
		<b>EPRA</b>	
		<b>Manufacturers Authorization Letter</b>	
		OTHER (Fill in Pen)	
<b>A3</b>	<b>Company Profile</b> A detailed soft company profile indicating the principle place of business MUST be attached to the Bid (Hard Copy or Soft copy in CD / USB Flash drive)	Attach Copy	
<b>A4</b>	<b>Power of attorney of signatory of Bid (if Joint Venture)</b>	Attach Copy	
<b>A5</b>	<b>Long Lead Items Program of Works:</b> Bidder to attach a Proposed program (Work method and schedule), Descriptions, drawings, and charts, as necessary, which show the lead times for the long lead items timelines	Attach	

BIDDERS REQUIREMENTS			
Item	Feature	Minimum Requirements	Bidder's Response / Comment (✓ or X)
A6	<b>Indicate Total Annual Revenue of Construction work performed in the last 3 years in KShs.</b> <ul style="list-style-type: none"> <li>Attach Proof of Financial Statements</li> <li>Attach Bank Contacts: Name, Address &amp; Telephone Numbers of the banks that may provide references if contacted by Employer</li> </ul>	2019	
		2020	
		2021	
<b>B</b>	<b><u>OTHER REQUIREMENTS</u></b>		
B1	<b>Brochures of Equipment's offered</b>	Attach with all details	
B2	<b>Financial Resources Access:</b> <ul style="list-style-type: none"> <li>Evidence of access to Financial Resources to meet the qualification requirements: cash in hand, lines of credit, etc.</li> <li>List here as appropriate &amp; Note that Proof in Documentary Evidence may be require to be provided upon request</li> </ul>	Attach	
B3	<b>Equipment Guarantee (By bidder) and warranty period specified by manufacturer</b> <b>Note:</b> Minimum of 24 Months is required <b>Note:</b> Schedule to be attached of all equipment on warranty	Attach:  Note: Warranty shall be specific from date of completion of project.	
B4	<b>Annual Maintenance Charges</b> <ul style="list-style-type: none"> <li>After Expiry of DLP and Warranty Period, Indicate the proposed charges to be levied for annual maintenance of equipment &amp; accessories</li> <li>NOTE: The above are to be Labour only charges excluding parts which shall be fitted only with prior approval by the client.</li> </ul>	1 <sup>st</sup> Year (KShs.)	<u>Kshs.</u>
		2 <sup>nd</sup> Year (KShs.)	<u>Kshs.</u>
		3 <sup>rd</sup> Year (KShs.)	<u>Kshs.</u>
B5	<b>Foreign Currency</b>	State Foreign currency used in the pricing (if any) and rate of exchange to KShs.	1..... (Foreign Currency)  = ..... KShs.

BIDDERS REQUIREMENTS			
Item	Feature	Minimum Requirements	Bidder's Response / Comment (✓ or X)
B6	Response Time	In event of emergency, the response time shall be how many hours (Preferred is 3 Hours)	..... Hours
B7	Delivery Period of Equipment from Date of Award (Fill Where Applicable)		
		Days	
		Weeks	
		Months	
		Years	
B8	Delivery Period of Site Works from Date of Award (Fill Where Applicable)		
		Days	
		Weeks	
		Months	
		Years	

**TABLE 02:**

<b>1.11</b>		<b>Work of a similar nature and volume performed as Prime Contractor over the last five years. The values should be indicated in the same currency used above. Also list details of work under way or committed, including expected completion date.</b>		
<b>PROJECT NAME &amp; COUNTRY</b>	<b>CLIENT / CONTACT PERSON</b>	<b>LEAD CONSULTANT</b>	<b>TYPE OF WORK DONE &amp; YEAR OF COMPLETION</b>	<b>CONTRACT VALUE (KShs.)</b>

**TABLE 03:**

<b>1.12</b>		<b>Qualification and experience of key personnel proposed for administration and execution of the Contract. Attach biographical data.</b>		
<b>POSITION</b>	<b>NAME</b>	<b>QUALIFICATIONS</b>	<b>YEARS OF EXPERIENCE IN PROPOSED POSITION</b>	
<b>PROJECT MANAGER</b>				
<b>SITE FOREMAN</b>				
<b>OTHER(S)</b>				

**TABLE 04:**

<b>1.13 Proposed contracts and firms involved.</b>			
<b>SECTION OF THE WORKS</b>	<b>VALUE OF CONTRACT</b>	<b>CONTRACTOR (NAME &amp; ADDRESS)</b>	<b>EXPIRIENCE IN SIMILAR WORK</b>

**TABLE 05:**

<b>1.14 Information on current litigation in which the Bidder is involved.</b>		
<b>OTHER PARTY(IES)</b>	<b>CAUSE OF DISPUTE</b>	<b>AMOUNT INVOLVED</b>

**TABLE 06:**

<b>1.15</b>	<b>Additional Requirements:</b> Bidders should provide any additional information required in these documents to fulfill the requirements thereof if applicable	

Signed (As in form of Tender) \_\_\_\_\_

Official Stamp & Date \_\_\_\_\_

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## **SECTION VII - DRAWINGS**

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**N/A**



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

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

### 1. GENERAL PROVISIONS

#### 1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**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.

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

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

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

“**Final Statement**” means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate]. “**Force Majeure**” is defined in Clause 19 [Force Majeure].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **1.2 Interpretation**

In the Contract, except where the context requires otherwise:

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

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

## **1.3 Communications**

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

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

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

## **1.4 Law and Language**

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

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

## **1.5 Priority of Documents**

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

- a) The Contract Agreement,
- b) The Letter of Acceptance,
- c) The Special Conditions – Part A,
- d) the Special Conditions – Part B
- e) the General Conditions of Contract
- f) the Form of Tender,
- g) the Specifications and Bills of Quantities
- h) the Drawings, and
- i) the Schedules and any other documents forming part of the Contract.

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

## **1.6 Contract Agreement**

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

## **1.7 Assignment**

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

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

## **1.8 Care and Supply of Documents**

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

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

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

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

### **1.9 Timely provision of Drawings or Instructions**

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

1.9.2 If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Architect to issue the notified drawing or instruction within a time which is reasonable and is specified in the notice with supporting details, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

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

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

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, including making and using modifications of them. This license shall:

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

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



permitted under Sub-Clause 1.10.2.

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

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

### **1.12 Confidential Details**

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

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

### **1.13 Compliance with Laws**

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

- a) The Procuring Entity shall have obtained (or shall obtain) the planning, zoning, building permit or similar permission for the Permanent Works, and any other permissions described in the Specifications as having been (or to be) obtained by the Procuring Entity; and the Procuring Entity shall indemnify and hold the Contractor harmless against and from the consequences of any failure to do so; and
- b) the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licenses and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Procuring Entity harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

### **1.14 Joint and Several Liability**

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

- a) These persons shall be deemed to be jointly and severally liable to the Procuring Entity for the performance of the Contract;
- b) these persons shall notify the Procuring Entity of their leader who shall have authority to bind the Contractor and each of these persons; and

- c) the Contractor shall not alter its composition or legal status without the prior consent of the Procuring Entity.

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

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

## **2 THE PROCURING ENTITY**

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

- 2.1.1 The Procuring Entity shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the **Special Conditions of Contract**. The right and possession may not be exclusive to the Contractor. If, under the Contract, the Procuring Entity is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the Procuring Entity shall do so in the time and manner stated in the Specification. However, the Procuring Entity may withhold any such right or possession until the Performance Security has been received.
- 2.1.2 If no such time is stated in the Special Conditions of Contract, the Procuring Entity shall give the Contractor right of access to, and possession of, the Site within such times as required to enable the Contractor to proceed without disruption in accordance with the programme submitted under Sub-Clause 8.3 [Programme].
- 2.1.3 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the Procuring Entity to give any such right or possession within such time, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
  - a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) payment of any such Cost-plus profit, which shall be included in the Contract Price.
- 2.1.4 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 2.1.5 However, if and to the extent that the Procuring Entity's failure was caused by any error or delay by the Contractor, including an error in, or delay in the submission of, any of the Contractor's Documents, the Contractor shall not be entitled to such extension of time, Cost or profit.

## **2.2 Permits, Licenses or Approvals**

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

## **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 contractor son the Site:

- a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- b) take action ssimilar to those which the Contractor is required to take under subparagraphs (a), (b) and (c) ofSub-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 as signed 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 The following provisions shall apply:

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

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

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

## **3.2 Delegation by the Engineer**

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

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

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

### **3.3 Instructions of the Engineer**

- 3.3.1 The Architect may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under Clause 3.2.1.
- 3.3.2 The Contractor shall comply with the instructions given by the Architect or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Architect or a delegated assistant:
  - a) Gives an oral instruction,
  - b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
  - c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

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

### **3.4 Replacement of the Engineer**

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

### **3.5 Determinations**

- 3.5.1 Whenever these Conditions provide that the Architect shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Architect shall consult with each Party in an endeavor to reach agreement. If agreement is not achieved, the Architect shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- 3.5.2 The Architect shall give notice to both Parties of each agreement determination, with supporting particulars, within 30 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

## **4 THE CONTRACTOR**

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

- 4.1.1 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Architect instructions, and shall remedy any defects in the Works.
- 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 permanent nature, required in and for this design, execution, completion and remedying of defects.
- 4.1.3 All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country.
- 4.1.4 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractor's Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.
- 4.1.5 The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.
- 4.1.6 If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Special Conditions:
- a) The Contractor shall submit to the Architect the Contractor's Documents for this part in accordance with the procedures specified in the Contract;
  - b) these Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Architect to add to the Drawings for co-ordination of each Party's designs;
  - c) the Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and
  - d) prior to the commencement of the Tests on Completion, the Contractor shall submit to the Architect the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Procuring Entity to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

### **4.2 Performance Security**

- 4.2.1 The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the **Special Conditions of Contract** and denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the

Procuring Entity. If an amount is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

- 4.2.2 The Contractor shall deliver the Performance Security to the Procuring Entity within 30 days after receiving the Notification of Award and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to the Special Conditions, as stipulated by the Procuring Entity in the Special Conditions of Contract, or in another form approved by the Procuring Entity.
- 4.2.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.
- 4.2.4 The Procuring Entity shall not make a claim under the Performance Security, except for amounts to which the Procuring Entity is entitled under the Contract.
- 4.2.5 The Procuring Entity shall indemnify and hold the Contractor harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from a claim under the Performance Security to the extent to which the Procuring Entity was not entitled to make the claim.
- 4.2.6 The Procuring Entity shall return the Performance Security to the Contractor within 14 days after receiving a copy of the Taking-Over Certificate.
- 4.2.7 Without limitation to the provisions of the rest of this Sub-Clause, whenever the Architect determines an addition or a reduction to the Contract Price as a result of a change in cost and/ or legislation, or as a result of a Variation, amounting to more than 25 percent of the portion of the Contract Price payable in a specific currency, the Contractor shall at the Architect request promptly increase, or may decrease, as the case may be, the value of the Performance Security in that currency by an equal percentage.

#### **4.3 Contractor's Representative**

- 4.3.1 The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be provided in the **Special Conditions of Contract**.
- 4.3.2 Unless the Contractor's Representative **is named in the Contract**, the Contractor shall, prior to the Commencement Date, submit to the Architect for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked in terms of Sub-Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.
- 4.3.3 The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint are placement.

- 434 The whole time of the Contractor's Representative shall be given to directing the Contractor's performance of the Contract. If the Contractor's Representative is to be temporarily absent from the Site during the execution of the Works, a suitable replacement person shall be appointed, subject to the Architect prior consent, and the Architect shall be notified accordingly.
- 435 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [Instructions of the Engineer].
- 436 The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Architect has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
- 437 The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

#### **4.4 Sub-contractors**

- 441 The Contractor shall not subcontract the whole of the Works. The contractor may however subcontract the works as provided in Clause 34.2.
- 442 The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Special Conditions:
- a) The Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
  - b) The prior consent of the Procuring Entity shall be obtained to other proposed Subcontractors;
  - c) the Contractor shall give the Procuring Entity not less than 14 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
  - d) each subcontract shall include provisions which would entitle the Procuring Entity to require the subcontract to be assigned to the Procuring Entity under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Procuring Entity].
- 443 The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.
- 444 Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from Kenya to be appointed as Subcontractors.

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

If a Subcontractor's obligations extend beyond the expiry date of the relevant Defects Notification Period and the Engineer, prior to this date, instructs the Contractor to assign the benefit of such obligations to the Procuring Entity, then the Contractor shall do so.



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

#### **4.6 Co-operation**

- 4.6.1 The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:
- a) The Procuring Entity's Personnel,
  - b) Any other contractors employed by the Procuring Entity, and
  - c) The personnel of any legally constituted public authorities, who may be employed in the execution on or near the Site of any work not included in the Contract.
- 4.6.2 Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.
- 4.6.3 If, under the Contract, the Procuring Entity is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Architect in the time and manner stated in the Specification.

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

- 4.7.1 The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.
- 4.7.2 The Procuring Entity shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.
- 4.7.3 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/ or Cost, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) payment of any such costs accrued, which shall be included in the Contract Price.
- 4.7.4 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent the error could not reasonably have been discovered, and (ii) the matters described in subparagraphs (a) and (b) above related to this.

#### **4.8 Safety Procedures**

The Contractor shall:

- a) Comply with all applicable safety regulations,

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

#### **4.9 Quality Assurance**

- 4.9.1 The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Architect shall be entitled to audit any aspect of the system.
- 4.9.2 Details of all procedures and compliance documents shall be submitted to the Architect for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor itself shall be apparent on the document itself.

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

#### **4.10 Site Data**

- 4.10.1 The Procuring Entity shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Procuring Entity's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Procuring Entity shall similarly make available to the Contractor all such data which come into the Procuring Entity's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.
- 4.10.2 To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):
  - a) The form and nature of the Site, including sub-surface conditions,
  - b) the hydrological and climatic conditions,
  - c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
  - d) the Laws, procedures and labour practices of Kenya, and
  - e) the Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

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

- 4.11.1 The Contractor shall be deemed to:
  - a) Have satisfied itself as to the correctness and sufficiency of the Accepted Contract Amount, and

- b) have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].
- 4.112 Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.
- 4.12 Unforeseeable Physical Conditions**
- 4.121 In this Sub-Clause, “physical conditions” means natural physical conditions and man-made and other physical obstructions and pollutants, which the Contractor encounters at the Site when executing the Works, including sub-surface and hydrological conditions but excluding climatic conditions.
- 4.122 If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Architect as soon as practicable.
- 4.123 This notice shall describe the physical conditions, so that they can be inspected by the Architect and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Architect may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.
- 4.124 If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) payment of any such Cost, which shall be included in the Contract Price.
- 4.125 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.
- 4.126 However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect may also review whether other physical conditions in similar parts of the Works (if any) were more favorable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favorable conditions were encountered, the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

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

#### **4.13 Rights of Way and Facilities**

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

#### **4.14 Avoidance of Interference**

- 4.14.1 The Contractor shall not interfere unnecessarily or improperly with:
- a) The convenience of the public, or
  - b) The access to and use and occupation of all roads and foot paths, irrespective of whether they are public or in the possession of the Procuring Entity or of others.
- 4.14.2 The Contractor shall indemnify and hold the Procuring Entity harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

#### **4.15 Access Route**

- 4.15.1 The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.
- 4.15.2 Except as otherwise stated in these Conditions:
- a) The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
  - b) the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
  - c) the Procuring Entity shall not be responsible for any claims which may arise from the use or otherwise of any access route;
  - d) the Procuring Entity does not guarantee the suitability or availability of particular access routes; and
  - e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

#### **4.16 Transport of Goods**

Unless otherwise stated in the Special Conditions:

- a) the Contractor shall give the Architect not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
- b) the Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works;

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

#### **4.17 Contractor's Equipment**

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

#### **4.18 Protection of the Environment**

- 4.18.1 The contractor shall comply with the applicable environmental laws, regulations and policies.
- 4.18.2 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 4.18.3 The Contractors shall ensure that emissions, surfaced is charges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

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

- 4.19.1 The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services he may require for his construction activities and to the extent defined in the Specifications, for the tests.
- 4.19.2 The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the Specifications. The Contractor shall, at his risk and cost, provide any apparatus necessary for his use of these services and for measuring the quantities consumed.
- 4.19.3 The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Architect in accordance with Sub-Clause 2.5 [Procuring Entity's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Procuring Entity.

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

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

- b) the Contractor shall be responsible for each item of Procuring Entity's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.
- 4.202 The appropriate quantities and the amounts due (at such stated prices) for the use of Procuring Entity's Equipment shall be agreed or determined by the Architect in accordance with Sub-Clause 2.5 [Procuring Entity's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Procuring Entity.
- 4.203 The Procuring Entity shall supply, free of charge, the "free-issue materials" (if any) in accordance with the details stated in the Specification. The Procuring Entity shall, at his risk and cost, provide these materials at the time and place specified in the Contract. The Contractor shall then visually inspect them and shall promptly give notice to the Architect of any shortage, defect or default in these materials. Unless otherwise agreed by both Parties, the Procuring Entity shall immediately rectify the notified shortage, defect or default.
- 4.204 After this visual inspection, the free-issue materials shall come under the care, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Procuring Entity of liability for any shortage, defect or default not apparent from a visual inspection.

#### **4.21 Progress Reports**

- 4.21.1 Unless otherwise stated in the Special Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Architect in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.
- 4.21.2 Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works. Each report shall include:
  - a) charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
  - b) photographs showing the status of manufacture and of progress on the Site;
  - c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
    - i) commencement of manufacture,
    - ii) Contractor's inspections,
    - iii) tests, and
    - iv) shipment and arrival at the Site;
  - d) the details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
  - e) copies of quality assurance documents, test results and certificates of Materials;
  - f) list of notices given under Sub-Clause 2.5 [Procuring Entity's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
  - g) safety statistics, including details of any hazardous incidents and activities relating

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

#### **4.22 Security of the Site**

Unless otherwise stated in the Special Conditions:

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

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

- 4.23.1 The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Architect as additional working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.
- 4.23.2 During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.
- 4.23.3 Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

#### **4.24 Fossils**

- 4.24.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Procuring Entity. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.
- 4.24.2 The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub- Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
- b) payment of any such Cost, which shall be included in the Contract Price.
- After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

## **5 NOMINATED SUBCONTRACTORS**

### **5.1 Definition of “nominated Subcontractor”**

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

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

### **5.2 Objection to Nomination**

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

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

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

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

### **5.4 Evidence of Payments**

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



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

## **6 STAFF AND LABOR**

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

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

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

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

62.2 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 deductions there of as may be imposed on him by such Laws.

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

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

### **6.4 Labor Laws**

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

## **6.5 Working Hours**

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

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

## **6.6 Facilities for Staff and Labor**

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

## **6.7 Health and Safety**

- 6.7.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Procuring Entity's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 6.7.2 The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- 6.7.3 The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Architect may reasonably require.
- 6.7.4 The Contractor shall conduct an awareness programme on HIV and other sexually transmitted diseases via an approved service provider and shall undertake such other measures taken to reduce the risk of the transfer of these diseases between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

## **6.8 Contractor's Superintendence**

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

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

## **6.9 Contractor's Personnel**

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

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

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

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

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

## **6.11 Disorderly Conduct**

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

## **6.12 Foreign Personnel**

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

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

## **6.13 Supply of Water**

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

#### **6.14 Measures against Insect and Pest Nuisance**

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

#### **6.15 Alcoholic Liquor or Drugs**

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

#### **6.16 Prohibition of Forced or Compulsory Labour**

The Contractor shall not employ forced labor, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labor, such as indentured labor, bonded labor or similar labor-contracting arrangements.

#### **6.17 Prohibition of Harmful Child Labor**

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

#### **6.18 Employment Records of Workers**

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

#### **6.19 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-Discrimination and Equal Opportunity**

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

## **7. PLANT, MATERIALS AND WORKMANSHIP**

### **7.1 Manner of Execution**

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

- a) In the manner (if any) specified in the Contract,
- b) in a proper workman like and careful manner, in accordance with recognized good practice, and
- c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

### **7.2 Samples**

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

- a) manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost, and
- b) additional samples instructed by the Architect as a Variation.

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

### **7.3 Inspection**

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

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

73.2 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 Contractor from any obligation or responsibility.

73.3 The Contractor shall give notice to the Architect whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Architect shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Architect does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and there after reinstate and make good, all at the Contractor's cost.

### **7.4 Testing**

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

74.2 Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the

Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

- 7.4.3 The Architect may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.
- 7.4.4 The Architect shall give the Contractor not less than 24 hours' notice of the Architect intention to attend the tests. If the Architect does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Architect presence.
- 7.4.5 If the Contractor suffers delay and/ or incurs Cost from complying with these instructions or as a result of a delay for which the Procuring Entity is responsible, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) payment of any such Cost-plus profit, which shall be included in the Contract Price.
- 7.4.6 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 7.4.7 The Contractor shall promptly forward to the Architect duly certified reports of the tests. When the specified tests have been passed, the Architect shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Architect has not attended the tests, he shall be deemed to have accepted the readings as accurate.

## **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, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.
- 7.5.2 If the Architect requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Procuring Entity to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs to the Procuring Entity.

## **7.6 Remedial Work**

- 7.6.1 Notwithstanding any previous test or certification, the Architect may instruct the Contractor to:
- a) Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,
  - b) remove and re-execute any other work which is not in accordance with the Contract, and
  - c) execute any work which is urgently required for the safety of the Works, whether

because of an accident, unforeseen able event or otherwise.

- 7.62 The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).
- 7.63 If the Contractor fails to comply with the instruction, the Procuring Entity shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Procuring Entity's Claims] pay to the Procuring Entity all costs arising from this failure.
- 7.64 If the contractor repeatedly delivers defective work, the Procuring Entity may consider termination in accordance with Clause 15.

## **7.7 Ownership of Plant and Materials**

Except as otherwise provided in the Contract, each item of Plant and Materials shall become the property of the Procuring Entity at whichever is the earlier of the following times, free from liens and other encumbrances:

- a) When it is incorporated in the Works;
- b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

## **7.8 Royalties**

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

- a) Natural materials obtained from outside the Site, and
- b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal are as within the Site are specified in the Contract.

## **8 COMMENCEMENT, DELAYS AND SUSPENSION**

### **8.1 Commencement of Works**

- 8.1.1 Except as otherwise specified in the Special Conditions of Contract, the Commencement Date shall be the date at which the following precedent condition have all been fulfilled and the Architect notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:
- a) Signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of Kenya;
  - b) except if otherwise specified in the Special Conditions of Contract, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works.
  - c) Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

8.12 If the said Architect instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 6.2 [Termination by Contractor].

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

## **8.2 Time for Completion**

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

- a) Achieving the passing of the Tests on Completion, and
- b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

## **8.3 Programme**

8.3.1 The Contractor shall submit a detailed time programme to the Architect within 4 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- a) The order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,
- b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
- c) the sequence and timing of inspections and tests specified in the Contract, and
- d) a supporting report which includes:
  - i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
  - ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

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

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

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



## **8.4 Extension of Time for Completion**

- 8.4.1 The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:
- a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,
  - b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
  - c) exceptionally adverse climatic conditions,
  - d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
  - e) any delay, impediment or prevention caused by or attributable to the Procuring Entity, the Procuring Entity's Personnel, or the Procuring Entity's other contractors.
- 8.4.2 If the Contractor considers itself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Architect in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Architect shall review previous determinations and may increase, but shall not decrease, the total extension of time.

## **8.5 Delays Caused by Authorities**

If the following conditions apply, namely:

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

## **8.6 Rate of Progress**

- 8.6.1 If, at any time:
- a) Actual progress is too slow to complete within the Time for Completion, and/or
  - b) Progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme], other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Architect may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.
- 8.6.2 Unless the Architect notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Procuring Entity to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs to the Procuring Entity, in addition to delay damages (if any) under Sub-Clause 8.7 below.

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

## **8.7 Delay Damages**

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

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

## **8.8 Suspension of Work**

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

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

## **8.9 Consequences of Suspension**

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

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

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

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

## **8.10 Payment for Plant and Materials in Event of Suspension**

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

Plant and/ or Materials which have not been delivered to Site, if:

- a) The work on Plant or delivery of Plant and/ or Materials has been suspended for more than 30 days, and
- b) the Contractor has marked the Plant and/or Materials as the Procuring Entity's property in accordance with the Architect instructions.

### **8.11 Prolonged Suspension**

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Architect permission to proceed. If the Architect does not give permission within 30 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

### **8.12 Resumption of Work**

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

## **9. TESTS ON COMPLETION**

### **9.1 Contractor's Obligations**

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

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

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

### **9.2 Delayed Tests**

9.2.1 If the Tests on Completion are being unduly delayed by the Procuring Entity, Sub-Clause 7.4 [Testing] (fifth paragraph) and/ or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

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

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

### **9.3 Retesting of related works**

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Architect or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

### **9.4 Failure to Pass Tests on Completion**

9.4.1 If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Architect shall be entitled to:

- a) Order further repetition of Tests on Completion under Sub-Clause 9.3; or
- b) if the failure deprives the Procuring Entity of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Procuring Entity shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 1.4 [Failure to Remedy Defects].

## **10. PROCURING ENTITY'S TAKING OVER**

### **10.1 Taking Over of the Works and Sections**

10.1.1 Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Procuring Entity when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

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

10.1.3 The Architect shall, within 30 days after receiving the Contractor's application:

- a) Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

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

## **102 Taking Over of Parts of the Works**

- 102.1 The Architect may, at the sole discretion of the Procuring Entity, issue a Taking-Over Certificate for any part of the Permanent Works.
- 102.2 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 Certificate for this part. However, if the Procuring Entity does use any part of the Works before the Taking-Over Certificate is issued:
- a) The part which is used shall be deemed to have been taken over as from the date on which it is used,
  - b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Procuring Entity, and
  - c) if requested by the Contractor, the Architect shall issue a Taking-Over Certificate for this part.
- 102.3 After the Architect has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.
- 102.4 If the Contractor incurs Cost as a result of the Procuring Entity taking over and/or using a part of the Works, other than such use as is specified in the Contractor agreed by the Contractor, the Contractor shall (i) give notice to the Architect and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such accrued costs, which shall be included in the Contract Price. After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this accrued cost.
- 102.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages] and shall not affect the maximum amount of these damages.

## **103 Interference with Tests on Completion**

- 103.1 If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Procuring Entity is responsible, the Procuring Entity shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.
- 103.2 The Architect shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of

the Defects Notification Period. The Architect shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

- 1033 If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) payment of any such accrued costs, which shall be included in the Contract Price.
- 1034 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

#### **104 Surfaces Requiring Reinstatement**

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

### **11. DEFECTS LIABILITY**

#### **11.1 Completion of Outstanding Work and Remedying Defects**

- 11.1.1 In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:
- a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
  - b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Procuring Entity on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

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

#### **11.2 Cost of Remedying Defects**

- 11.2.1 All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:
- a) Any design for which the Contractor is responsible,
  - b) Plant, Materials or workmanship not being in accordance with the Contract, or
  - c) Failure by the Contractor to comply with any other obligation.
- 11.2.2 If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Procuring Entity, and Sub-Clause 13.3 [Variation Procedure] shall apply.

### **11.3 Extension of Defects Notification Period**

- 11.3.1 The Procuring Entity shall be entitled subject to Sub-Clause 2.5 [Procuring Entity's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.
- 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 Contractor 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 defect or damage is remedied.

- 11.62 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 parts of the works that have already accepted, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the 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**

- 11.91 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.

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

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

#### **11.10 Unfulfilled Obligations**

After the Completion Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

#### **11.11 Clearance of Site**

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

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



11.113 Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Procuring Entity's costs, the Contractor shall pay the outstanding balance to the Procuring Entity.

## **12 MEASUREMENT AND DEVALUATION**

### **12.1 Works to be Measured**

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

12.1.2 Whenever the Architect requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

- a) promptly either attend or send another qualified representative to assist the Architect in making the measurement, and
- b) supply any particulars requested by the Engineer.

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

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

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

### **12.2 Method of Measurement**

Except as otherwise stated in the Contract:

- a) Measurement shall be made of the net actual quantity of each item of the Permanent Works, and
- b) the method of measurement shall be in accordance with the Bill of Quantities or 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] to agree or determine the value of work done by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

- 1232 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contractor, if there is no such item, specified for similar work.
- 1233 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.
- 1234 However, for a new item of work, a new rate or price shall be appropriate for such item of work if:
- a) The work is instructed under Clause 13 [Variations and Adjustments],
  - b) no rate or price is specified in the Contract for this item, and
  - c) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.
- 1235 Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no rates or prices are relevant for the new item of work, it shall be derived from the reasonable Cost of executing such work, prevailing market rates, together with profit, taking account of any other relevant matters.
- 1236 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.
- 1237 Where the contract price is different from the corrected tender price, in order to ensure the contractor is not paid less or more relative to the contract price (*which would be the tender price*), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Tender, will be adjusted by a plus or minus percentage. The percentage already worked out during tender evaluation is worked out as follows:  $(\text{corrected tender price} - \text{tender price}) / \text{tender price} \times 100$ .

## **12.4 Omissions**

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- a) The Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;
- b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- c) this cost is not deemed to be included in the evaluation of any substituted work; then the Contractor shall give notice to the Architect accordingly, with supporting particulars. Upon receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

## **13. VARIATIONS AND ADJUSTMENTS**

### **13.1 Right to Vary**

- 13.1.1 Variations may be initiated by the Architect at any time prior to issuing the Taking-Over

Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. No Variation instructed by the Architect under this Clause shall in any way vitiate or invalidate the Contract.

- 13.12 The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Architect stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Architect shall cancel, confirm or vary the instruction.
- 13.13 Each Variation may include:
- a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
  - b) changes to the quality and other characteristics of any item of work,
  - c) changes to the levels, positions and/ or dimensions of any part of the Works,
  - d) omission of any work unless it is to be carried out by others,
  - e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
  - f) changes to the sequence or timing of the execution of the Works.
- 13.14 The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Architect instructs after obtaining approval of the Procuring Entity.

## **13.2 Variation Order Procedure**

- 13.2.1 Prior to any Variation Order under Sub-Clause 13.1.4 the Architect shall notify the Contractor of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Engineer:
- a) A description of work, if any, to be performed and a programme for its execution, and
  - b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 8.3 or to any of the Contractor's obligations under the Contract, and
  - c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Architect shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out. If the Architect decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement.

If the Architect and the Contractor are unable to agree the adjustment of the Contract Price, the provisions of Sub-Clause 13.2.2 shall apply.

## **13.2.2 Disagreement on Adjustment of the Contract Price**

If the Contractor and the Architecture unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Bills of Quantities or Schedule of Daywork Prices. If the rates contained in the Bills of Quantities or Dayworks Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing in the

Dayworks Prices. Where rates are not contained in the said Prices, the amount shall be such as is in all the circumstances reasonable, reflecting a market price. Due account shall be taken of any over-or under-recovery of overheads by the Contractor in consequence of the variation. The Contractor shall also be entitled to be paid:

- a) The cost of any partial execution of the Works rendered useless by any such variation,
- b) The cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation,
- c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and
- d) the net effect of the Contractor's finance costs, including interest, caused by the variation.

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

### **1323 Contractor to Proceed**

On receipt of a Variation Order, the Contractor shall forth with proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 31.3.

### **1324 Value Engineering**

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

13.3.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

13.3.3 If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

- a) The Contractor shall design this part,
- b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply, and
- c) if this change results in a reduction in the contract value of this part, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
  - i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and
  - ii) the reduction (if any) in the value to the Procuring Entity of the varied works, taking account of any improvement in quality, anticipated life or operational efficiencies.

13.3.4 However, if the amount established in item 13.2.3 (c) (i) is less than amount established in item 13.2.3 (c) (ii), there shall not be a fee. However, if the amount established in item

13.2.3 (c) (i) is more than amount established in item 13.2.3 (c) (ii), it shall result in a price variation to the Procuring Entity.

#### **134 Variation Procedure for Value Engineering proposal**

- 134.1 If the Architect requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:
- a) A description of the proposed work to be performed and a programme for its execution,
  - b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and
  - c) the Contractor's proposal for evaluation of the Variation.
- 134.2 The Architect shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Project Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.
- 134.3 Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Architect to the Contractor, who shall acknowledge receipt.
- 134.4 Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Architect instructs or approves otherwise in accordance with this Clause.

#### **135 Payment in Applicable Currencies**

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

#### **136 Provisional Sums**

- 136.1 Each Provisional Sum shall only be used, in whole or in part, in accordance with the Architect instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Architect shall have instructed. For each Provisional Sum, the Architect May instruct:
- a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or
  - b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
    - i) The actual amounts paid (or due to be paid) by the Contractor, and
    - ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in **the Special Conditions of Contract** shall be applied.

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

### **13.7 Dayworks**

13.7.1 For work of a minor or incidental nature, the Architect may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

13.7.2 Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

13.7.3 Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Architect accurate statements induplicate which shall include the following details of the resources used in executing the previous day's work:

- a) The names, occupations and time of Contractor's Personnel,
- b) the identification, type and time of Contractor's Equipment and Temporary Works, and
- c) the quantities and types of Plant and Materials used.

13.7.4 One copy of each statement will, if correct, or when agreed, be signed by the Architect and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

### **13.8 Adjustments for Changes in Legislation**

13.8.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

13.8.2 If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

13.8.4 Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for

Changes in Cost].

**139 Adjustments for Changes in Cost**

- 139.1 In this Sub-Clause, “table of adjustment data” means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.
- 139.2 If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included a mounts to cover the contingency of other rises and falls in costs.
- 139.3 The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

**Price Adjustment Formula**

Prices shall be adjusted for fluctuations in the cost of 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:

$$P = A + B \frac{I_m}{I_o}$$

where:

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

**A** and **B** are coefficients **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 **I o** 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.

- 139.4 The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. Forth is purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.
- 139.5 In cases where the “currency of index” is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate,

established by the Central Bank of Kenya, of this relevant currency on the above date for which the index is required to be applicable.

- 1396 Until such time as each current cost index is available, the Architect shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.
- 1397 If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices there after shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favorable to the Procuring Entity.
- 1398 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or in applicable, as a result of Variations.

## **14 CONTRACT PRICE AND PAYMENT**

### **14.1 The Contract Price**

14.1.1 Unless otherwise stated in the Special Conditions:

- a) The value of the payment certificate shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
  - i) of the Works which the Contractor is required to execute, or
  - ii) for the purposes of Clause 12 [Measurement and Evaluation]; and
- d) the Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Architect may take account of the break down when preparing Payment Certificates but shall not be bound by it.

14.1.2 Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts there for, imported by the Contractor for the sole purpose of executing the Contract shall not be exempt from the payment of import duties and taxes upon importation.

### **14.2 Advance Payment**

14.2.1 The Procuring Entity shall make an advance payment, as an interest-free loan for mobilization and cashflow support, when the Contractor submits a guarantee in accordance with this Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the **Special Conditions of Contract**.



- 14.2.2 Unless and until the Procuring Entity receives this guarantee, or if the total advance payment is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.
- 14.2.3 The Architect shall deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Procuring Entity receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a reputable bank or financial institutions elected by the Contractor and shall be in the form annexed to the Special Conditions or in another form approved by the Procuring Entity.
- 14.2.4 The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.
- 14.2.5 Unless stated otherwise in **the Special Conditions of Contract**, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Architect in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:
- a) Deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
  - b) deductions shall be made at the amortization rate stated in the **Special Conditions of Contract** of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.
- 14.2.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Procuring Entity], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Procuring Entity], except for Sub-Clause 14.2.7 [Procuring Entity's Entitlement to Termination for Convenience], payable by the Contractor to the Procuring Entity.

### **14.3 Application for Interim Payment Certificates**

- 14.3.1 The Contractor shall submit a Statement (in number of copies indicated in the **Special Conditions of Contract**) to the Architect after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers itself to be entitled, together with supporting documents which shall include there portion the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

- 14.3.2 The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:
- a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
  - b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
  - c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in **the Special Conditions of Contract** to the total of the above amounts, until the amount so retained by the Procuring Entity reaches the limit of Retention Money (if any) stated in **the Special Conditions of Contract**;
  - d) any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];
  - e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
  - f) any other additions or deductions which may have become due under the Contractor otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
  - g) the deduction of amounts certified in all previous Payment Certificates.

#### **14.4 Schedule of Payments**

- 14.4.1 If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:
- a) The instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];
  - b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and
  - c) If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.
- 14.4.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

#### **14.5 Plant and Materials intended for the Works**

- 14.5.1 If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

- 14.52 If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.
- 14.53 The Architect shall determine and certify each addition if the following conditions are satisfied:
- a) The Contractor has:
    - i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and
    - ii) submitted statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;and either:
  - b) the relevant Plant and Materials:
    - i) are those listed in the Schedules for payment when shipped,
    - ii) have been shipped to Kenya, enroute to the Site, in accordance with the Contract; and
    - iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Architect together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Procuring Entity in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration; or
  - c) the relevant Plant and Materials:
    - i) are those listed in the Schedules for payment when delivered to the Site, and
    - ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration and appear to be in accordance with the Contract.
- 14.54 The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Architect determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.
- 14.55 The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

#### **14.6 Issue of Interim Payment Certificates**

- 14.61 No amount will be certified or paid until the Procuring Entity has received and approved the Performance Security. Thereafter, the Architect shall, within 30 days after receiving a Statement and supporting documents, deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate which shall state the amount which the Architect fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Architect on the Statement if any.
- 14.62 However, prior to issuing the Taking-Over Certificate for the Works, the Architect shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment

Certificates (if any) stated **in the Special Conditions of Contract**. In this event, the Architect shall give notice to the Contractor accordingly.

- 14.63 An Interim Payment Certificate shall not be withheld for any other reason, although:
- a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
  - b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.
- 14.64 The Architect may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Architect acceptance, approval, consent or satisfaction.

## **14.7 Payment**

- 14.7.1 The Procuring Entity shall pay to the Contractor:
- a) The advance payment shall be paid within 60 days after signing of the contract by both parties or within 60 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub- Clause 14.2 [Advance Payment], whichever is later;
  - b) The amount certified in each Interim Payment Certificate within 60 days after the Architect Issues Interim Payment Certificate; and
  - c) the amount certified in the Final Payment Certificate within 60 days after the Procuring Entity Issues Interim Payment Certificate; or after determination of any disputed amount shown in the Final Statement in accordance with Sub-Clause 16.2 [Termination by Contractor].
- 14.7.2 Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (forth is currency) specified in the Contract.

## **14.8 Delayed Payment**

- 14.8.1 If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges (simple interest) monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b) of the date on which any Interim Payment Certificate is issued.
- 14.8.2 These financing charges shall be calculated at the annual rate of three percentage points above the mean rate of the Central Bank in Kenya of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.
- 14.8.3 The Contractor shall be entitled to this payment without formal notice and certification, and without prejudice to any other right or remedy.

## **14.9 Payment of Retention Money**

- 14.9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.
- 14.9.2 Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the Retention Money shall be certified by the Architect for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.
- 14.9.3 However, if any work remains to be executed under Clause 11 [Defects Liability], the Architects shall be entitled to withhold certification of the estimated cost of this work until it has been executed.
- 14.9.4 When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].
- 14.9.5 Unless otherwise stated in the Special Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a Retention Money Security guarantee, in the form annexed to the Special Conditions or in another form approved by the Procuring Entity and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money.
- 14.9.6 The Procuring Entity shall return the Retention Money Security guarantee to the Contractor within 14 days after receiving a copy of the Completion Certificate.

## **14.10 Statement at Completion**

- 14.10.1 Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Architect three copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:
- a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
  - b) any further sums which the Contractor considers to be due, and
  - c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.
- 14.10.2 The Architect shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

#### **14.11 Application for Final Payment Certificate**

- 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) The value of all work done in accordance with the Contract, and
  - b) Any further sums which the Contractor considers to be due to him under the Contract otherwise.
- 14.11.2 If the Architect disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Architect may reasonably require within 30 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Architect the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".
- 14.11.3 However, if, following discussions between the Architect and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Architect shall deliver to the Procuring Entity (with a copy to the Contractor) an Interim Payment Certificate for the agreed 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 Procuring Entity (with a copy to the Engineer) a Final Statement.

#### **14.12 Discharge**

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

#### **14.13 Issue of Final Payment Certificate**

- 14.13.1 Within 30 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall deliver, to the Procuring Entity and to the Contractor, the Final Payment Certificate which shall state:
- a) The amount which he fairly determines is finally due, and
  - b) After giving credit to the Procuring Entity for all amounts previously paid by the Procuring Entity and for all sums to which the Procuring Entity is entitled, the balance (if any) due from the Procuring Entity to the Contractor or from the Contractor to the Procuring Entity, as the case may be.
- 14.13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Architect shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 30 days, the Architect shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

#### **14.14 Cessation of Procuring Entity's Liability**

- 14.14.1 The Procuring Entity shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:
- a) in the Final Statement and also,
  - b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].
- 14.14.2 However, this Sub-Clause shall not limit the Procuring Entity's liability under his indemnification obligations, or the Procuring Entity's liability in any case of fraud, deliberate default or reckless misconduct by the Procuring Entity.

#### **14.15 Currencies of Payment**

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

- a) If the Accepted Contract Amount was expressed in Local Currency only:
  - i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
  - ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
  - iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a) (i) above;
- b) payment of the damages specified in the Special Conditions of Contract, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- c) other payments to the Procuring Entity by the Contractor shall be made in the currency in which the sum was expended by the Procuring Entity, or in such currency as may be agreed by both Parties;
- d) if any amount payable by the Contractor to the Procuring Entity in a particular currency exceeds the sum payable by the Procuring Entity to the Contractor in that currency, the Procuring Entity may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the Central Bank of Kenya.

### **15 TERMINATION BY PROCURING ENTITY**

#### **15.1 Notice to correct any defects or failures**

If the Contractor fails to carry out any obligation under the Contract, the Architect may by notice require the Contractor to make good the failure and to remedy it within 30 days.

## 152 Termination by Procuring Entity

- 152.1 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) without reasonable excuse fails:
    - i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or
    - ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 30 days after receiving it,
  - d) subcontracts the major part or whole of the Works or assigns the Contract without the consent of the Procuring Entity,
  - e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or
  - f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an induce mentor reward:
    - i) for doing or for bearing to do any action in relation to the Contract, or
    - ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract, or
    - iii) if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such induce mentor reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or
  - g) If the contract or repeatedly fails to remedy delivers defective work,
  - h) based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Appendix B to these General Conditions, in competing for or in executing the Contract.
- 152.2 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), the Procuring Entity may by notice terminate the Contract immediately.
- 152.3 The Procuring Entity's election to terminate the Contract shall not prejudice any other rights of the Procuring Entity, under the Contractor otherwise.
- 152.4 The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However,



the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

- 1525 After termination, the Procuring Entity may complete the Works and/ or arrange for any other entities to do so. The Procuring Entity and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.
- 1526 The Procuring Entity shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Procuring Entity, these items may be sold by the Procuring Entity in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

### **153 Valuation at Date of Termination**

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Procuring Entity] has taken effect, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

### **154 Payment after Termination**

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

- a) Proceed in accordance with Sub-Clause 2.5 [Procuring Entity's Claims],
- b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Procuring Entity, have been established, and/ or
- c) recover from the Contractor any losses and damages incurred by the Procuring Entity and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Procuring Entity shall pay any balance to the Contractor.

### **155 Procuring Entity's Entitlement to Termination for Convenience**

The Procuring Entity shall be entitled to terminate the Contract, at any time at the Procuring Entity's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 30 days after the later of the dates on which the Contractor receives this notice or the Procuring Entity returns the Performance Security. The Procuring Entity shall not terminate the Contract under this Sub-Clause in order to execute the Works itself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor]. After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

## **15.6 Fraud and Corruption**

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and its prevailing sanctions.

## **15.7 Corrupt gifts and payments of commission**

15.7.1 The Contractor shall not;

- a) Offer or give or agree to give to any person in the service of the Procuring Entity any gift or consideration of any kind as an inducement or reward for doing or for bearing to door for having done or for borne to do any act in relation to the obtaining or execution of this or any other Contract for the Procuring Entity or for showing or for bearing to show favor or disfavor to any person in relation to this or any other contract for the Procuring Entity.
- b) Enter into this or any other contract with the Procuring Entity in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment there of have been disclosed in writing to the Procuring Entity.

15.7.2 Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement and Asset Disposal Act (2015) and the Anti-Corruption and Economic Crimes Act (2003) of the Laws of Kenya.

## **16 SUSPENSION AND TERMINATION BY CONTRACTOR**

### **16.1 Contractor's Entitlement to Suspend Work**

16.1.1 If the Architect fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or Sub-Clause 14.7 [Payment], or not receiving instructions that would enable the contractor to proceed with the works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to the Procuring Entity, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

16.1.2 The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor]

16.1.3 If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

16.1.4 If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

### **163 Termination by Contractor**

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

- a) the Architect fails, within 60 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,
- b) the Contractor does not receive the amount due under an Interim Payment Certificate within 90 days after the expiry of the time stated in Sub-Clause 4.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Procuring Entity's Claims]),
- c) the Procuring Entity substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,
- d) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- e) the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.
- f) the Contractor does not receive the Architect instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

163.2 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.

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

### **164 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 what so ever arising outo for in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful actor breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and
- b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

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 actor breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

### **17.2 Contractor's Care of the Works**

17.2.1 The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the 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.

- 17.22 After responsibility has accordingly passed to the Procuring Entity, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.
- 17.23 If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.
- 17.24 The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

### **17.3 Procuring Entity's Risks**

The risks referred to in Sub-Clause 17.4 [Consequences of Procuring Entity's Risks] below, in so far as they directly affect the execution of the Works in Kenya, are:

- a) War hostilities (whether war be declared or not),
- b) rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's Personnel,
- c) explosive materials, ionizing gradiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such explosives, radiation or radio-activity,
- d) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,
- e) use or occupation by the Procuring Entity of any part of the Permanent Works, except as may be specified in the Contract,
- f) design of any part of the Works by the Procuring Entity's Personnel or by others for whom the Procuring Entity is responsible, and
- g) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

### **17.4 Consequences of Procuring Entity's Risks**

- 17.4.1 If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Architect and shall rectify this loss or damage to the extent required by the Engineer.
- 17.4.2 If the Contractor suffers delay and/ or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- (a) An extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - (b) Payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (e) and
  - (g) of Sub-Clause 17.3 [Procuring Entity's Risks], Accrued Costs shall be payable.

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

## **17.5 Intellectual and Industrial Property Rights**

17.5.1 In this Sub-Clause, “infringement” shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and “claim” shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.

17.5.2 Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

17.5.3 The Procuring Entity shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

- a) An unavoidable result of the Contractor's compliance with the Contract, or
- b) A result of any Works being ingused by the Procuring Entity:
  - i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
  - ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

17.5.4 The Contractor shall indemnify and hold the Procuring Entity harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

17.5.5 If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.5.6 For operation and maintenance of any plant or equipment installed, the contractor shall grant a non-exclusive and non-transferable license to the Procuring Entity under the patent, utility models, or other intellectual rights owned by the contractor or a third party from whom the contractor has received the rights to grant sub-licenses and shall also grant to the Procuring Entity a non-exclusive and non-transferable right (without the right to sub-license) to use the know-how and other technical information disclosed to the contractor or under the contract. Nothing contained here-in shall be construed as transferring ownership of any patent, utility model, trademark, design, copy right, know-how or other intellectual rights from the contractor or any other third party to the Procuring Entity.

## **17.6 Limitation of Liability**

17.6.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contractor for any consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying

Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Procuring Entity's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

- 17.62 The total liability of the Contractor to the Procuring Entity, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Procuring Entity's Equipment and Free- Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in **the Special Conditions of Contract**, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.
- 17.63 This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

#### **17.7 Use of Procuring Entity's Accommodation/Facilities**

- 17.7.1 The Contractor shall take full responsibility for the care of the Procuring Entity provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).
- 17.7.2 If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Procuring Entity is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

### **18 INSURANCE**

#### **18.1 General Requirements for Insurances**

- 18.1.1 In this Clause, “insuring Party” means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.
- 18.1.2 Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Procuring Entity. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.
- 18.1.3 Wherever the Procuring Entity is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.
- 18.1.4 If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Procuring Entity shall act for Procuring Entity's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer

- or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.
- 18.15 Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- 18.16 The relevant insuring Party shall, within the respective periods stated in **the Special Conditions of Contract** (calculated from the Commencement Date), submit to the other Party:
- a) Evidence that the insurances described in this Clause have been affected, and
  - b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].
- 18.17 When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.
- 18.18 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
- 18.19 Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or at tempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.
- 18.110 If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contractor fails to provide satisfactory evidence and copies of policies in accordance with this Sub- Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.
- 18.111 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring Entity, under the other terms of the Contractor otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Procuring Entity.
- 18.112 Procuring Entity in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.
- 18.113 Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Procuring Entity's Claims] or Sub- Clause 20.1 [Contractor's Claims], as applicable.



18.1.14 The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

## **18.2 Insurance for Works and Contractor's Equipment**

18.2.1 The insuring Party shall insure the Works, Plant, Material and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

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 loss or damage,
- c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Procuring Entity's Risks],
- d) shall also cover, to the extent specifically required in the tendering documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Procuring Entity of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Procuring Entity's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated **in the Special Conditions** of Contract (if an amount is not so stated, this sub-paragraph (d) shall not apply), and
- e) may however exclude loss of, damage to, and reinstatement of:
  - i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but 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) apart of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,
  - iii) apart 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].

1825 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].

### **183 Insurance against Injury to Persons and Damage to Property**

183.1 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.

183.2 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.

183.3 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 available at commercially reasonable terms.

### **184 Insurance for Contractor's Personnel**

184.1 The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

184.2 The insurance shall cover the Procuring Entity and the Architect against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from

injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Procuring Entity or of the Procuring Entity's Personnel.

- 18.43 The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

## **19. FORCE MAJEURE**

### **19.1 Definition of Force Majeure**

- 19.1.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:
- a) Which is beyond a Party's control,
  - b) Which such Party could not reasonably have provided against before entering into the Contract,
  - c) which, having arisen, such Party could not reasonably have avoided or overcome, and
  - d) which is not substantially attributable to the other Party.
- 19.1.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:
- a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
  - b) rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war,
  - c) riot, commotion, disorder, strike or lock out by persons other than the Contractor's Personnel,
  - d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
  - e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

### **19.2 Notice of Force Majeure**

- 19.2.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 19.2.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- 19.2.3 Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

### **19.3 Duty to Minimize Delay**

Each Party shall at all times use all reasonable endeavors to minimize any delay in the performance of the Contract as a result of Force Majeure. A Party shall give notice to the

other Party when it ceases to be affected by the Force Majeure.

#### **194 Consequences of Force Majeure**

- 194.1 If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/ or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:
- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion], and
  - b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in Kenya, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].
- 194.2 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

#### **195 Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

#### **196 Optional Termination, Payment and Release**

- 196.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].
- 196.2 Upon such termination, the Architect shall determine the value of the work done and issue a Payment Certificate which shall include:
- a) the amount payable for any work carried out for which a price is stated in the Contract;
  - b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Procuring Entity when paid for by the Procuring Entity, and the Contractor shall place the same at the Procuring Entity's disposal;
  - c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
  - d) the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
  - e) the Cost of repatriation of the Contractor's staff and lab or employed wholly in

connection with the Works at the date of termination.

## **19.7 Release from Performance**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and
- b) The sum payable by the Procuring Entity to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

## **20. SETTLEMENT OF CLAIMS AND DISPUTES**

### **20.1 Contractor's Claims**

- 20.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 20.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Procuring Entity shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.
- 20.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 20.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Procuring Entity's liability, the Architect may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/ or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Architect to inspect all these records and shall (if instructed) submit copies to the Engineer.
- 20.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Architect fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/ or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:
  - a) This fully detailed claim shall be considered as interim;
  - b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/ or amount claimed, and such further particulars as the Architect may reasonably require; and

- c) The Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.
- 20.16 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Architect and approved by the Contractor, the Architect shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within the above defined time period.
- 20.17 Within the above defined period of 42 days, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 20.18 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- 20.19 If the Architect does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordance with Clause 20.3.
- 20.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/ or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause 20.3.

## **20.2 Procuring Entity's Claims**

- 20.21 If the Procuring Entity considers itself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Procuring Entity or the Architect shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Procuring Entity's Equipment and Free-Issue Materials], or for other services requested by the Contractor.
- 20.22 The notice shall be given as soon as practicable and no longer than 30 days after the Procuring Entity became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.
- 20.23 The particulars shall specify the Clause or other basis of the claim and shall include substantiation of the amount and/or extension to which the Procuring Entity considers itself to be entitled in connection with the Contract. The Architect shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if

any) which the Procuring Entity is entitled to be paid by the Contractor, and/ or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

- 2024 This amount may be included as a deduction in the Contract Price and Payment Certificates. The Procuring Entity shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

### **20.3 Amicable Settlement**

Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 20.1 above should move to commence arbitration after 60 days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

### **20.4 Matters that may be referred to arbitration**

Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

- a) Whether or not the issue of an instruction by the Architect is empowered by these Conditions.
- b) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- c) Any dispute arising in respect risks arising from matters referred to in Clause 17.3 and Clause 19.
- d) 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 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.3 shall be finally settled by arbitration.
- 20.5.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 20.5.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 20.5.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may, in his opinion, be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

- 20.5.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision require mentor notice had been given.
- 20.5.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Architect from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 20.5.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 20.5.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Architect shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 20.5.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

## **20.6 Arbitration with National Contractors**

- 20.6.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- i) Architectural Association of Kenya
  - ii) Institute of Quantity Surveyors of Kenya
  - iii) Association of Consulting Engineers of Kenya
  - iv) Chartered Institute of Arbitrators (Kenya Branch)
  - v) Institution of Engineers of Kenya
- 20.6.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

## **20.7 Arbitration with Foreign Contractors**

- 20.6.3 Arbitration with foreign contractors shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.
- 20.6.4 The place of arbitration shall be a location specified in the SCC; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].



## **20.8 Alternative Arbitration Proceedings**

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

## **20.9 Failure to Comply with Arbitrator's Decision**

209.1 The award of such Arbitrator shall be final and binding up on the parties.

209.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

## **20.10 Contract operations to continue**

Notwithstanding any reference to arbitration herein,

20.10.1 the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

20.10.2 the Procuring Entity shall pay the Contractor any monies due the Contractor.

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**SECTION IX: SPECIAL CONDITIONS OF CONTRACT**

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## Section IX - Special Conditions of Contract

The following Special Conditions shall supplement the GCC. Whenever there is a conflict, the provisions here in shall prevail over those in the GCC.

Conditions	Sub- Clause	Data
<b>Part A - Contract Data</b>		
Procuring Entity's name and address	Heading	Kenya Medical Supplies Authority 13, Commercial Street, Industrial Area P.O B Box 47715-00100 Telephone No.: +254 20 3922000 / +254 719033000/+254 733606600 Fax No.: +254203922400 Email: <a href="mailto:procure@kemsaco.ke">procure@kemsaco.ke</a>
Name and Reference No. of the Contract	Heading and 1.1	Tender No.: <b>GF-KEMSA/CONST 03/ONT 01/2022/2023</b>  <b>TENDER FOR SUPPLY, INSTALLATION, TESTING AND COMMISSIONING OF LIFTS</b>
Engineers Name and address	Heading and 3.1.1	MAESTRO ARCHITECTS P. O. BOX 6644 – 00100 NAIROBI.  M & M CONSTRUCTION CONSULTANTS P. O. BOX 4677 – 00506 NAIROBI.  KIRI CONSULT LTD. P. O. BOX 4125 – 00506 NAIROBI.  NORKUN INTAKES LTD P. O. BOX 605 – 00100 NAIROBI.
Contractor's Representative's name	4.3.1	<i>[TO BE AGREED]</i>
Key Personnel names	16.9.1	<i>[TO BE AGREED]</i>
Time for Completion	1.1.	AS PER THE FORM OF TENDER
Defects Notification Period	1.1	365 days
Sections	1.1	N/A
Electronic transmission systems	1.3	N/A
Time for the Parties entering into a Contract Agreement	1.6	Within 30days
Commencement Date	8.1.1	TO BE AGREED

Conditions	Sub- Clause	Data
Time for access to the Site	2.1.1	No later than the Commencement Date, and not later than 14 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 25% shall require approval of the Procuring Entity.
Performance Security	4.2.1	The performance security will be in the form of a Performance bond in the amount(s) of ten percent (10%) of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount.
Normal working hours	6.5	8A.M – 5P.M
Delay damages for the Works	8.7 & 14.15(b)	0.1 % of the Contract Price per day. N/A
Maximum amount of delay damages	8.7.1	10 % of the final Contract Price.
Provisional Sums	13.6. (b)(ii)	N/A
Adjustments for Changes in Cost	13.9	N/A
Total advance payment	14.2.1	Substitute “The Procuring Entity <b>shall....</b> ” with “The Procuring Entity <b>may...</b> ” 20% Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable
Repayment amortization rate of advance payment	14.2.5 (b)	The amount to be repaid by way of successive deductions shall be calculated by means of the formula:  $R = \frac{A(x^1 - x^{11})}{90 - 30}$ <p><u>Where:</u>  R =the amount to be reimbursed  A =the amount of the advance which has been granted  X<sup>1</sup> = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 30% but not exceed 90%.  X<sup>11</sup> = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 90%but not less than 30%.</p>
Percentage of Retention	14.3.2 (c)	10%
Limit of Retention Money	14.3.2 (c)	5% of the Accepted Contract Amount

Conditions	Sub-Clause	Data
Plant and Materials	14.5.3(b)(i) )	If Sub-Clause 14.5 applies: Plant and Materials for payment Free on Board _____N/A_____ [list].
	14.5.3(c)(i) )	Plant and Materials for payment when delivered to the Site _____N/A_____ [list].
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	three percentage points above the mean rate of the Central Bank in Kenya of the currency of payment
Maximum total liability of the Contractor to the Procuring Entity	17.6.2	Full Contract Amount including any approved Variations
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1.6	21 days from commencement date 21 days from commencement date
Maximum amount of deductibles for insurance of the Procuring Entity's risks	18.2.4 (d)	[Insert maximum amount of deductibles]
Minimum amount of third-party insurance	18.3.2	The minimum insurance covers shall be;  1. The minimum cover for insurance of the Works and of plant and Materials in respect of the Contractor's faulty design is:10% CONTRACT SUM 2. The minimum cover for loss or damage to Equipment is:10% CONTRACT SUM 3. The minimum for insurance of other property is:10% CONTRACT SUM 4. The minimum cover for personal injury or death insurance 5. For the Contractor's employees: AS PER WORKMAN'S COMPENSATION 6. And for other people is:5% CONTRACT SUM
The place of arbitration	20.7.2	Nairobi, KENYA

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## **SECTION X: CONTRACT FORMS**

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FORM No. 1 - NOTIFICATION OF INTENTION TO AWARD

FORM NO. 2 – REQUEST FOR REVIEW

FORM No. 3 - LETTER OF AWARD

FORM No. 4 - CONTRACT AGREEMENT

FORM No. 5 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank  
Guarantee]

FORM No. 6- PERFORMANCE SECURITY [Option 2– Performance Bond] FORM No. 7 -  
ADVANCE PAYMENT SECURITY

FORM No. 8 - RETENTION MONEY SECURITY

**FORM NO.1: NOTIFICATION OF INTENTION TOAWARD OF CONTRACT**

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

**FORMAT**

1. For the attention of Tenderer's Authorized Representative
  - i) Name: *[insert Authorized Representative's name]*
  - ii) Address: *[insert Authorized Representative's Address]*
  - iii) Telephone: *[insert Authorized Representative's telephone/fax numbers]*
  - iv) Email Address: *[insert Authorized Representative's email address]*

*[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]*
  
2. Date of transmission: *[email]* on *[date]* (local time)  
 This Notification is sent by *(Name and designation)* \_\_\_\_\_
  
3. Notification of Award
  - i) Procuring Entity: *[insert the name of the Procuring Entity]*
  - ii) Project: *[insert name of project]*
  - iii) Contract title: *[insert the name of the contract]*
  - iv) ITT No: *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:
  
4. Request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related Complaint in relation to the decision to award the contracts.
  - a) The successful tenderers
    - i) Name of successful Tender \_\_\_\_\_
    - ii) Address of the successful Tender \_\_\_\_\_
    - iii) Contract price of the successful Tender Kenya Shillings \_\_\_\_\_ (in words \_\_\_\_\_)
  - b) The reasons for your tender being unsuccessful are as follows:
  - c) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.

No	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

*(Note a) State NE if not evaluated*

5. How to request a debriefing

- a) DEADLINE: The dead line to request a debriefing expires at midnight on [*insert date*] (*local time*).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
  - i) Attention: [*insert full name of person, if applicable*]
  - ii) Title/position: [*insert title/position*]
  - iii) Agency: [*insert name of Procuring Entity*]
  - iv) Email address: [*insert email address*]
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insert date*] (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
  - i) Attention: [*insert full name of person, if applicable*]
  - ii) Title/position: [*insert title/ position*]
  - iii) Agency: [*insert name of Procuring Entity*]
  - iv) Email address: [*insert email address*]
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website [www.ppra.go.ke](http://www.ppra.go.ke).



You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
  - i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process and is the recipient of a Notification of Intention to Award.
  - ii) The complaint can only challenge the decision to award the contract.
  - iii) You must submit the complaint within the period stated above.
  - iv) You must include, in your complaint, all of the information required to support your complaint.

**7. Standstill Period**

- i) **DEADLINE:** The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate to contact us.

On behalf of the Procuring Entity:

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

**Name:** \_\_\_\_\_

**Title/position:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**FORM NO.2: REQUEST FOR REVIEW**

**FORM FOR REVIEW (r.203(1))**

**PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD  
APPLICATION NO.....OF.....20.....**

**BETWEEN**

.....**APPLICANT**

**AND**

.....**RESPONDENT (Procuring Entity)**

Request for review of the decision of the..... (Name of the Procuring Entity of .....dated the...day of .....20.....in the matter of Tender No.....of .....20..... for ..... (Tender description).

**REQUEST FOR REVIEW**

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email ....., hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

- 1.
- 2.

By this memorandum, the Applicant requests the Board for an order/orders that:

- 1.
- 2.

SIGNED .....(Applicant) Dated on.....day of ...../...20.....

---

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of .....20.....

**SIGNED  
Board Secretary**

**FORM NO.3: LETTER OF AWARD**

*letterhead paper of the Procuring Entity]*

*[date]*

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

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amoun tin numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is here by accepted by..... *(name of Procuring Entity)*.

You are requested to furnish the Performance Security within in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of Procuring Entity: .....

Attachment: *Contract Agreement*: .....

**FORM NO.4: CONTRACT AGREEMENT**

THIS AGREEMENT made the day of..... 20.....,

between.....of.....

..... (hereinafter “the Procuring Entity”), of the one part, and of  
.....(hereinafter “the Contractor”), of the other part:

WHEREAS the Procuring Entity desires that the Works known as \_\_\_\_\_ should be

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - a) the Notification of Award
  - b) the Form of Tender
  - c) the addenda Nos \_\_\_\_\_(if any)
  - d) the Special Conditions of Contract
  - e) the General Conditions of Contract;
  - f) the Specifications
  - g) the Drawings; and
  - h) the completed Schedules and any other documents forming part of the contract.
3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor here by covenants with the Procuring Entity to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Entity here by covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects there in, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

INWITNESS where of the parties here to have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by \_\_\_\_\_(for the Procuring Entity)

Signed and sealed by \_\_\_\_\_(for the Contractor).

**FORM NO.5: PERFORMANCE SECURITY**

**[Option 1 - Unconditional Demand Bank Guarantee]**  
*[Guarantor letterhead]*

**Beneficiary:** *[insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with *(name of Procuring Entity)* (the Procuring Entity as the Beneficiary), for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ *(in words)*,<sup>1</sup> such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the.....Day of.....,2.....<sup>2</sup>, and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months] [one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”  
.....

*[Name of Authorized Official, signature(s) and seals/stamps]*

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

<sup>1</sup>The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.

<sup>2</sup>Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

## **FORM NO.6: PERFORMANCE SECURITY**

### **[Option 2– Performance Bond]**

*[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee instead of Performance Bond due to difficulties involved in calling Bond holder to action]*

*[Guarantor letterhead or SWIFT identifier code]*

**Beneficiary:** *[insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**PERFORMANCE BOND No.:** \_\_\_\_\_

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

1. By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_] as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_] as Obligee (hereinafter called “the Procuring Entity”) in the amount of \_\_\_\_\_ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments there to, which to the extent here in provided for, are by reference made part here of and are here in after referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:
  - a) Complete the Contract in accordance with its terms and conditions; or
  - b) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or

- c) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions upto a total not exceeding the amount of this Bond.
- 4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.
- 5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
- 6. In testimony whereof, the Contractor has here unto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly at tested by the signature of his legal representative, this day \_\_\_\_\_ of 20.

SIGNED ON\_\_on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

SIGNED ON \_\_\_\_\_ on behalf of \_\_\_\_\_

By \_\_\_\_\_ in the capacity of \_\_\_\_\_

In the presence of \_\_\_\_\_

**FORM NO.7: ADVANCE PAYMENT SECURITY**  
**[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[Insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** \_\_\_\_\_ *[Insert guarantee reference number]*

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

1. We have been informed that \_\_\_\_\_ (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum \_\_\_\_\_ (*in words*) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of \_\_\_\_\_ (*in words*)<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
  - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
  - b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number at \_\_\_\_\_.
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the day of \_\_\_\_\_, 2<sup>nd</sup>, 2<sup>nd</sup> whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.



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*[Name of Authorized Official, signature(s) and seals/stamps]*

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

<sup>1</sup>*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

<sup>2</sup>*Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

**FORM NO.8: RETENTION MONEY SECURITY**

**[Demand Bank Guarantee]**

*[Guarantor letterhead]*

**Beneficiary:** \_\_\_\_\_ *[Insert name and Address of Procuring Entity]*

**Date:** \_\_\_\_\_ *[Insert date of issue]*

**Advance payment guarantee no.** *[Insert guarantee reference number]*

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

1. We have been informed that \_\_\_\_\_ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. \_\_\_\_\_ *[insert reference number of the contract]* dated \_\_\_\_\_ with the Beneficiary, for the execution of \_\_\_\_\_ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys upto the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[insert the second half of the Retention Money]* is to be made against a Retention Money guarantee.
3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* \_\_\_\_\_ *[insert amount in words\_\_\_\_\_]*<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or showgrounds for your demand or the sum specified there in.
4. A demand under *this* guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number at \_\_\_\_\_ *[insert name and address of Applicant's bank]*.
5. This guarantee shall expire no later than the.....Day of.....<sup>2</sup>, and any demand for *payment* under it must be received by us at the office indicated above on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

\_\_\_\_\_  
*[Name of Authorized Official, signature(s) and seals/stamps]*

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

<sup>1</sup>*The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.*

<sup>2</sup>*Insert a date that is twenty-eight days after the expiry of retention period after the actual completion date of the contract. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

**FORM NO.9: BENEFICIAL OWNERSHIP DISCLOSURE FORM**  
**(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)**

***INSTRUCTIONS TO TENDERERS: DELETE THIS BOX ONCE YOU HAVE COMPLETED THE FORM***

*This Beneficial Ownership Disclosure Form ("Form") is to be completed by the successful tenderer pursuant to Regulation 13 (2A) and 13 (6) of the Companies (Beneficial Ownership Information) Regulations, 2020. In case of joint venture, the tenderer must submit a separate Form for each member. The beneficial ownership information to be submitted in this Form shall be current as of the date of its submission.*

*For the purposes of this Form, a Beneficial Owner of a Tenderer is any natural person who ultimately owns or controls the legal person (tenderer) or arrangements or a natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person (Tenderer) or arrangement.*

Tender Reference No.: \_\_\_\_\_ [insert identification no]  
 Name of the Tender Title/Description: \_\_\_\_\_ [insert name of the assignment] to: \_\_\_\_\_ [insert complete name of Procuring Entity]

In response to the requirement in your notification of award dated \_\_ [insert date of notification of award] to furnish additional information on beneficial ownership: \_\_ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.

**Details of Beneficial ownership**

	<b>Details of all Beneficial Owners</b>	<b>% of shares a person holds in the company Directly or indirectly</b>	<b>% of voting rights a person holds in the company</b>	<b>Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)</b>	<b>Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)</b>	
<b>1.</b>	Full Name	Directly---- ----- % of shares	Directly... ..... % of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----No----	1. Exercises significant influence or control over the Company body of the Company (tenderer)  Yes ----No----	
	National identity card number or Passport number					
	Personal Identification Number (where applicable)	Indirectly-- ----- % of shares	Indirectly-- -----% of voting rights			
	Nationality					
	Date of birth [dd/mm/yyyy]					2. Is this influence or control exercised
	Postal address					
	Residential					

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	address				Direct.....	directly or indirectly?
	Telephone number				.....	Direct.....
	Email address					
	Occupation or profession				Indirect.....	Indirect.....
<b>2.</b>	Full Name		Directly---- ----- % of shares	Directly... ..... % of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----No----	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No----
	National identity card number or Passport number					
	Personal Identification Number (where applicable)		Indirectly-- ----- % of shares	Indirectly-- -----% of voting rights	2. Is this right held directly or indirectly?:	2. Is this influence or control exercised directly or indirectly?
	Nationality(ies)				Direct.....	Direct.....
	Date of birth [dd/mm/yyyy]				.....	
	Postal address					
	Residential address					
	Telephone number				Indirect.....	Indirect.....
	Email address				.....	
	Occupation or profession					
<b>3.</b>						
<b>e.</b>						
<b>t.</b>						
<b>c</b>						

- II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public). *Note that Personally Identifiable Information (PII) is defined as any information that can be used to distinguish one person from another and can be used to deanonymize previously anonymous data. This information includes National identity card number or Passport number, Personal Identification Number, Date of birth, Residential address, email address and Telephone number.*
- III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:
- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
  - (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
  - (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
  - (d) exercises significant influence or control, directly or indirectly, over the company.
- IV) What is stated to herein above is true to the best of my knowledge, information and belief.

*Name of the Tenderer: .....\*[insert complete name of the Tenderer]\_\_\_\_\_*

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

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

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

*Date this ..... [insert date of signing] day of..... [Insert month], [insert year]*

Bidder Official Stamp

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## **SECTION XI: PRICING SCHEDULES**

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## LIFT INSTALLATIONS

*The Contractor shall supply labour and supply, deliver, install, fix, connect, test, label and commission the works, clean, complete and working to every detail as described below and in the related specifications and /or on the drawings to the satisfaction of the Consulting Engineers.*

*Technical product catalogues and specifications for quoted models to be attached*

### **LIFT INSTALLATIONS NOTES:**

#### **Please note that the Lifts shall be:**

- 1 Lifts including doors (Car & Landing) shall be Electrically driven & electronically controlled via AC variable voltage with full length infrared sensor for the door as described.
- 2 Lifts shall have Variable voltage variable frequency geared machine designed such as to give fully regulated landing approach
- 3 All Lifts to come complete with their computer control equipment, hoists and counter-weights.
- 4 Car shall be complete with internal furnishings, fan, control panel and LED lighting fittings
- 5 Car to be complete with hoistway doors & entrances, necessary control and power cables,
- 6 Car to be complete with installations materials and all accessories and complying with the specification
- 7 The imported and local components to be apportioned in pricing as outlined in the schedules.
- 8 Each car / Lift will have a display unit on top of the door in each floor indicating the position of the lift in terms of the floors.
- 9 Each Car to have voice notifications replicating the visual displays.
- 10 Passenger standing on any floor will have the benefit of viewing on the display the movement and position of the lift .
- 11 For virtual acquity the display should have a distinct colour.
- 12 Grouped Lifts - A set of more than 4No. Lifts should have a **Traffic Management system** such as MICONIC 10 to enable automatic selection of Lift as per tenant floor demand
- 13 Grouped Lifts - All lifts call buttons to be linked for central group operation on each floor.
- 14 All buttons to incorporate Braille type functions
- 15 All lifts to have Cabled provision for installation of CCTV Cameras. Cameras to be installed by others.
- 16 All lifts to have Cabled provision for installation of Speakers. Speakers to be installed by others.
- 17 All lifts to come with the Detachable canvas for Protection. Canvas should have factory fabricated provision for hooking canvas. (Lift Hooks shall be as DOT Studs Mechanically fixed with bolts & nuts)
- 18 Lift to come factory fitted with own power factor correction [PFC] to 0.98 or better.
- 19 Lift to have its own automatic voltage stabilizer and Transcient voltage surge suppression circuitry.
- 20 All lifts above 3m/s (Both Car & Hoistway) shall be incorporated with designs to Mitigate Air Pressure Effects / Imbalance
- 21 The car shall be fitted with a lift system Controller / or safe landing device which shall stop the car and move it to the ground floor landing and open the car doors in case any of any of the safety devices failing to operate or power fails

**SECTION A- PATIENT & PASSENGER LIFT****SCHEDULE No. 1A: LIFT SPECIFIC DETAILS****NOTE: To be read in Conjunction with the Particular Specifications****A Engineers Specifications**

ITEM	DESCRIPTION	LIFT DETAILS	
		LIFT 1 - PASSENGER	LIFT 2 - GOODS / PASSENGER
<b>A1</b>	<b>GENERAL SPECIFICATIONS</b>		
a1.01	Lift Nomenclature	Conventional	Conventional
a1.02	Type of Lift	Passenger	Hoist
a1.03	Special Requirements	Normal	Normal
a1.04	No Of Lifts	1No.	1No.
a1.05	Configuration	1No. Simplex	1No. Simplex
a1.06	Capacity (Occupancy)	26 Pax	26 Pax
a1.07	Capacity (Weight)	2000 Kgs	2000 Kgs
a1.08	Travel (m)	7.5m	10.5m
a1.09	No. of Stops / openings (Installed)	2 Landings	3 Landings
a1.10	No. of Stops / openings (Configured)	2 Stops	3 Stops
<b>A2</b>	<b>DRIVE SPECIFICATIONS</b>		
a2.01	Drive (Motor) System	Machine room-less	Machine room-less
a2.02	Engine Type	VVVF	VVVF
a2.03	Speed (m/s) - Minimum	1.0m/s	1.0m/s
a2.04	Acceleration (m/s) - Min	0.6m/s	0.6m/s
<b>A3</b>	<b>SHAFT SPECIFICATIONS</b>		
a3.01	Existing Shaft Dimensions	1No. SIMPLEX SHAFT	1No. SIMPLEX SHAFT
		W =2500mm	W =2500mm
		D = 3000mm	D = 3000mm
a3.02	Existing Pit Depth	D = 1500mm	D = 1500mm
<b>A4</b>	<b>CABIN SPECIFICATIONS</b>		
a4.01	Car (Cabin) Access	1No. Access	1No. Access
a4.02	Car (Cabin) Height	2600mm	2600mm
a4.03	Car (Cabin) Height - Internal Clear	2400mm	2400mm
a4.04	Car Fit-Out Decoration Allowance	Factory Fitted	Factory Fitted
a4.05	Car Floor Finish Allowance	Factory Fitted	Factory Fitted
a4.06	Car Walls Finish Allowance	Factory Fitted	Factory Fitted
a4.07	Car Floor Display Position	On COP (Top)	On COP (Top)
a4.08	Car Ventillation	2No. Fans Min.	2No. Fans Min.
a4.09	Car Lighting	LED	LED
a4.10	Buffer rails	Required	Required



ITEM	DESCRIPTION	LIFT DETAILS	
		LIFT 1 - PASSENGER	LIFT 2 - GOODS / PASSENGER
<b>A5</b>	<b>DOOR SPECIFICATIONS</b>		
a5.01	Door Opening Type	Center Opening	Center Opening
a5.02	Door Operations / Hour (Minimum)	240 O/H	240 O/H
A5.03	Door Opening Required (Minimum)	W = 1200mm	W = 1200mm
		H = 2100mm	H = 2100mm
A5.04	Landing Floor Display Position	Side of Lift	Side of Lift
A5.05	Landing Movement Indication Position	Side of Lift	Side of Lift
<b>A6</b>	<b>LANDING OPERATING PANEL</b>		
a6.01	Landing Operating Panel Position	1100mm AFFL	1100mm AFFL
a6.02	Type of Buttons	Square	Square
a6.03	Finish on Buttons	Stainless Steel	Stainless Steel
a6.04	Braille Input on Buttons	Required	Required
a6.05	Buttons Illumination	Required	Required
a6.06	Arrival Gong Sound	Required	Required
<b>A7</b>	<b>CAR OPERATING PANEL</b>		
a7.01	Car COP 01 Position	Right of door	Right of door
a7.02	Car COP 02 Position	Not Required	Not Required
a7.03	Type of Buttons	Square	Square
a7.04	Buttons Finish	Stainless Steel	Stainless Steel
a7.05	Braille Input on Buttons	Required	Required
a7.06	Buttons Illumination	Required	Required
a7.07	Key Switch	Required	Required
a7.08	Alarm Button	Required	Required
a7.09	Close Door Button	Required	Required
a7.10	Open Door Button	Required	Required
a7.11	Arrival Gong & floor announcement	Required	Required
a7.12	Intercom Speaker	Required	Required
<b>A8</b>	<b>OPERATION FUNCTIONS</b>		
a8.01	Anti Disturbance Function	Required	Required
a8.02	Bypass Overload	Required	Required
a8.03	Cabin Overload Indication	Required	Required
a8.04	Landing Overload Indication	Not Required	Not Required
a8.05	Force Closing	Required	Required
a8.06	Advance Door Opening (ADO)	Required	Required

ITEM	DESCRIPTION	LIFT DETAILS	
		LIFT 1 - PASSENGER	LIFT 2 - GOODS / PASSENGER
a8.07	Automatic Power Off in Idle Mode	Required	Required
a8.08	Car Call Cancellation	Required	Required
a8.09	2nd Car Operating Panel (COP)	Not Required	Not Required
a8.10	Dynamic dispersion standby	Required	Required
a8.11	Releveling	Required	Required
a8.12	Attendant Service / Manual Operation	Required	Required
a8.13	Door Holding Button	Required	Required
a8.14	Door closing time protection	Required	Required
a8.15	Door opening time protection	Required	Required
a8.16	Service floor setting	Required	Required
a8.17	Non-stop service	Required	Required
a8.18	Energy saving mode in main landing	Required	Required
a8.19	Cabin Air Conditioning	Fans Only	Fans Only
a8.20	Cabin Air Purification	Required	Required
a8.21	Air pressure control system	Not Required	Not Required
a8.22	Automatic damping system	Required	Required
<b>A9</b>	<b>SAFETY FUNCTIONS</b>		
a9.01	ARD (Automatic Rescue Device) for Power failure	Required	Required
a9.02	Counter-weight Safety Gear	Not Required	Not Required
a9.03	Door light curtain protection/Sensor	Required	Required
a9.04	Cabin Emergency Light	Required	Required
a9.05	Pre-load starting torque	Required	Required
a9.06	Emergency Power Operation	Required	Required
a9.07	Emergency alarm function	Required	Required
a9.08	Earthquake Protection	Required	Required
a9.09	Anti-burglar Function	Not Required	Not Required
a9.10	Access Control System	None but Provisions to be in place for future addition	None but Provisions to be in place for future addition

ITEM	DESCRIPTION	LIFT DETAILS	
		LIFT 1 - PASSENGER	LIFT 2 - GOODS / PASSENGER
<b>A10 COMMUNICATION FUNCTIONS</b>			
a10.01	Intercom System	5-Way Intercom Required	5-Way Intercom Required
a10.02	Arrival Gong & floor announcement	Required	Required
a10.03	EVAC/ Background music	Not Required	Not Required
a10.04	Arrival Lamp	Required	Required
a10.05	Cabin Lift Floor Number Indication	Required	Required
a10.06	Landing Lift Floor Number & Direction Indication	Required	Required
a10.07	Voice announcement	Required	Required
a10.08	Fire Evacuation	Required	Required
a10.09	BMS Interface	Required	Required
a10.10	CCTV Provision & Cabled	Required	Required
a10.11	Speakers Provision & Cabled	Required	Required
a10.12	Cabin Multi-media Information System	Not Required	Not Required
<b>A11 FIRE FIGHTING FUNCTIONS</b>			
a11.01	Automatic return to pre-setted floor in case of fire (automatic homing)	Required	Required
a11.02	Second Homing	Not Required	Not Required
a11.03	Fireman Operation	Not Required	Not Required
<b>A12 GROUP CONTROL FUNCTIONS</b>			
a12.01	Group Control	Required	Required
a12.02	Control mode Automatic switch	Not Required	Not Required
a12.03	Peak hour Control function	Required	Required
a12.04	Group control backup operation	Not Required	Not Required
a12.05	Learning Function	Not Required	Not Required
a12.06	Lift Monitoring	Required	Required

ITEM	DESCRIPTION	LIFT DETAILS	
		LIFT 1 - PASSENGER	LIFT 2 - GOODS / PASSENGER
<b><i>B1 Bidders Specific Particulars for model (MUST Be Filled By Bidder)</i></b>			
ITEM	DESCRIPTION	LIFT DETAILS	LIFT DETAILS
b1.01	Lift Model		
b1.02	Lift Code		
b1.03	Proposed Shaft Dimensions (mm)	N/A - As per existing Shaft	N/A - As per existing Shaft
		N/A - As per existing Shaft	N/A - As per existing Shaft
b1.04	Car Cabin Dimensions (mm)		
b1.05	Pit Depth (mm)	N/A - As per existing Pit	N/A - As per existing Pit
b1.06	Lift Shaft Overhead (From Last slab)	N/A - As per existing Shaft	N/A - As per existing Shaft
b1.06	Machine room Height (From Last slab)	N/A - As per existing Shaft	N/A - As per existing Shaft
b1.07	Power Rating (KW) - For Each Lift		
b1.08	Voltage Range (V)		
b1.09	Starting Current (A) - For Each Lift		
b1.10	Operating Current (A) - For Each Lift		
b1.11	Power Factor		

<b>SCHEDULE No. 2A: LIFT TRAVEL HEIGHTS AND LEVELS SERVED</b>					
<b>ITEM</b>	<b>FLOOR SERVED</b>	<b>LIFT HEIGHT ( FLOOR TO FLOOR ) DETAILS</b>			
		<b>LIFT 1 - PASSENGER</b>		<b>LIFT 2 - GOODS / PASSENGER</b>	
		<b>HEIGHT (mm)</b>	<b>FLOORS SERVED</b>	<b>HEIGHT (mm)</b>	<b>FLOORS SERVED</b>
aa1	<b>GROUND</b>	4,500	SERVED	4,500	SERVED
aa2	<b>1st FLOOR</b>	3,000	SERVED	3,000	SERVED
aa3	<b>2nd FLOOR</b>		NOT SERVED	3,000	SERVED
aa9	<b>ROOF</b>		NOT SERVED		NOT SERVED

**SCHEDULE No. 3A: LIFT FINISHES (PROVISIONAL) - LIFT 01**

ITEM	DESCRIPTION	PROPOSED FINISH	BIDDER CONFIRMATION
a1	Landing Door Architraves (Lobby)	NOT APPLICABLE ( BUILDERS WORK)	
a2	Car Door Finish (Internal)	Silver Brushed Stainless Steel	
a3	Car Door Finish (External)	Silver Brushed Stainless Steel	
a4	Side Walls	Silver Brushed Stainless Steel	
a5	Rear Walls	Silver Brushed Stainless Steel	
a6	Front Wall (Sides of Door)	Silver Brushed Stainless Steel	
a7	Ceiling Finish	Silver Brushed Stainless Steel (ST4)	
a8	Floor Finish	Real Stone (Gray Black G4R)	
a9	Floor Skirting	Finish = Stainless Steel (ST4)	
		Gauge = Bidder to specify	
		Height - 100mm	
a10	Handrail	Position = Rear & 2No. Side Walls	
		Finish = Silver Brushed Stainless Steel	
		Type = Bended & Round	
		Dimension = Bidder to specify appropriate as per safety standards	
a11	Mirror	Position = Side Wall	
		Size = Partial Width Three quarter Height	
		Thickness = Bidder to Specify as per Safety	
a12	Interior Lighting	Square Shaped LED Lights	
		2No. Emergency Lights to be Incorporated	
a13	Air purification	Lifts to have air purification	
a14	Any other Detailed Finishes ( Please Specify Below)		

**SCHEDULE No. 3B: LIFT FINISHES (PROVISIONAL) - LIFT 02**

ITEM	DESCRIPTION	PROPOSED FINISH	BIDDER CONFIRMATION
a1	Landing Door Architraves (Lobby)	NOT APPLICABL ( BUILDERS WORK)	
a2	Car Door Finish (Internal)	Silver Brushed Stainless Steel	
a3	Car Door Finish (External)	Silver Brushed Stainless Steel	
a4	Side Walls	Silver Brushed Stainless Steel	
a5	Rear Walls	Silver Brushed Stainless Steel	
a6	Front Wall (Sides of Door)	Silver Brushed Stainless Steel	
a7	Ceiling Finish	Silver Brushed Stainless Steel (ST4)	
a8	Floor Finish	Granite	
a9	Floor Skirting	Finish = Stainless Steel (ST4)	
		Gauge = Bidder to specify	
		Height - 100mm	
a10	Handrail	Position = 2No. Side Walls	
		Finish = Silver Brushed Stainless Steel	
		Type = Bended & Round	
		Dimension = Bidder to specify appropriate as per safety standards	
a11	Mirror	Position = Side Wall	
		Size = Partial Width Three quarter Height	
		Thickness = Bidder to Specify as per Safety	
a12	Interior Lighing	Square Shaped LED Lights	
		2No. Emergency Lights to be Incorporated	
a13	Buffer rails	Goods Lift to have buffer rails	
a14	Air purification	Lifts to have air purification	
a15	Any other Detailed Finishes ( Please Specify Below)		

**LIFT SCHEDULES****A1 LIFT 01 - PASSENGER LIFT**

ITEM	DESCRIPTION	UNIT	QTY	Rates (Kshs.)	Costs (Kshs)
a1.01	<b>Hoist Materials (FOB)-</b> FOB Cost of lift Hoist materials at country of origin [As per the particular Specifications] i.e. Imported component	No.	1		
a1.02	<b>Hoist Materials (Freight) -</b> Insuarance and Freight Cost i.e. Landed cost without duties and taxes [As per the particular Specifications] i.e. Imported component	No.	1		
a1.03	<b>Car Structure Materials (FOB)-</b> FOB Cost of lift Hoist materials at country of origin [As per the particular Specifications] i.e. Imported component	No.	1		
a1.04	<b>Car Structure Materials (Freight) -</b> Insuarance and Freight Cost i.e. Landed cost without duties and taxes [As per the particular Specifications] i.e. Imported component	No.	1		
a1.05	<b>Car Finishes Materials (FOB)-</b> FOB Cost of lift Hoist materials at country of origin [As per the particular Specifications] i.e. Imported component	No.	1		
a1.06	<b>Car Finishes Materials (Freight) -</b> Insuarance and Freight Cost i.e. Landed cost without duties and taxes [As per the particular Specifications] i.e. Imported component	No.	1		



ITEM	DESCRIPTION	UNIT	QTY	Rates (Kshs.)	Costs (Kshs)
a1.07	<b>Import Duty:</b> Price for import duty on all imported materials (i.e. Local Component)	No.	1		
a1.08	<b>Insurance &amp; Clearance:</b> Cost of Marine insurance, clearing and handling charges, inland transportation and off-loading at site, and all other local costs (i.e. local component)	No.	1		
a1.09	<b>Local Materials:</b> Cost of lift materials purchased locally and delivered to site (i.e. local component)	No.	1		
a1.10	<b>Installation &amp; Commissioning:</b> Sum for Installation, testing and commissioning (i.e. local component on labour & Expertise cost).	No.	1		
a1.11	<b>Canvas:</b> Supply and installation of standard lift canvas complete with hooking provisions and mountings to cover the entire lift car interior walls. (Lift Hooks shall be as DOT Studs Mechanically fixed with bolts & nuts)	No.	1		
a1.12	<b>Automatic Emergency Landing Device:</b> Transient safe landing device to stop the lift & move it to the next landing in event of a fault or power outage.	No.	1		
a1.13	<b>Lift Safety Equipment:</b> PFC & transient Protection Devices to protect the lift equipment from voltage surge, sags, swells, swings & spikes. This is to be incorporated in Lift and should be factory fitted. To be part of the shop drgs submitted.	No.	1		
a1.14	<b>AVS:</b> Automatic Voltage stabilizer for the lift(s) with a range of $\pm 20\%$ Minimum to cater for any Over / Under Voltages within the power system for the building. To be part of the shop drgs submitted.	No.	0		
a1.15	<b>Access Control:</b> Installation of Programmable Card access control to the lift.	No.	1		
<b>a1.16</b>	<b>Sub-Total c/f to LIFT INSTALLATIONS PRICE SUMMARY PAGE</b>				

**A2 LIFT 02 - GOODS / PASSENGER LIFT**

ITEM	DESCRIPTION	UNIT	QTY	Rates (Kshs.)	Costs (Kshs)
a2.01	<b>Hoist Materials (FOB)</b> - FOB Cost of lift Hoist materials at country of origin [As per the particular Specifications] i.e. Imported component	No.	1		
a2.02	<b>Hoist Materials (Freight)</b> - Insuarance and Freight Cost i.e. Landed cost without duties and taxes [As per the particular Specifications] i.e. Imported component	No.	1		
a2.03	<b>Car Structure Materials (FOB)</b> - FOB Cost of lift Hoist materials at country of origin [As per the particular Specifications] i.e. Imported component	No.	1		
a2.04	<b>Car Structure Materials (Freight)</b> - Insuarance and Freight Cost i.e. Landed cost without duties and taxes [As per the particular Specifications] i.e. Imported component	No.	1		
a2.05	<b>Car Finishes Materials (FOB)</b> - FOB Cost of lift Hoist materials at country of origin [As per the particular Specifications] i.e. Imported component	No.	1		
a2.06	<b>Car Finishes Materials (Freight)</b> - Insuarance and Freight Cost i.e. Landed cost without duties and taxes [As per the particular Specifications] i.e. Imported component	No.	1		
a2.07	<b>Import Duty:</b> Price for import duty on all imported materials (i.e. Local Component)	No.	1		

ITEM	DESCRIPTION	UNIT	QTY	Rates (Kshs.)	Costs (Kshs)
a2.08	<b>Insurance &amp; Clearance:</b> Cost of Marine insurance, clearing and handling charges, inland transportation and off-loading at site, and all other local costs (i.e. local component)	No.	1		
a2.09	<b>Local Materials:</b> Cost of lift materials purchased locally and delivered to site (i.e. local component)	No.	1		
a2.10	<b>Installation &amp; Commissioning:</b> Sum for Installation, testing and commissioning (i.e. local component on labour & Expertise cost).	No.	1		
a2.11	<b>Canvas:</b> Supply and installation of standard lift canvas complete with hooking provisions and mountings to cover the entire lift car interior walls. (Lift Hooks shall be as DOT Studs Mechanically fixed with bolts & nuts)	No.	1		
a2.12	<b>Automatic Emergency Landing Device:</b> Transient safe landing device to stop the lift & move it to the next landing in event of a fault or power outage.	No.	1		
a2.13	<b>Lift Safety Equipment:</b> PFC & transient Protection Devices to protect the lift equipment from voltage surge, sags, swells, swings & spikes. This is to be incorporated in Lift and should be factory fitted. To be part of the shop drgs submitted.	No.	1		
a2.14	<b>AVS:</b> Automatic Voltage stabilizer for the lift(s) with a range of $\pm 25\%$ Minimum to cater for any Over / Under Voltages within the power system for the building. To be part of the shop drgs submitted.	No.	0		
a2.15	<b>Access Control:</b> Installation of Programmable Card access control to the lift.	No.	1		
a2.16	<b>Sub-Total c/f to LIFT INSTALLATIONS PRICE SUMMARY PAGE</b>				

**LIFT INSTALLATIONS PRICE SUMMARY PAGE**

<b>ITEM</b>	<b>DESCRIPTION</b>			<b>Costs (Kshs)</b>
A1	LIFT 01 - PASSENGER LIFT			
A2	LIFT 02 - GOODS / PASSENGER LIFT			
A3	<b>ADDITIONS:</b> Any other equipment or work necessary for the satisfactory completion of the sub-contract works. List on a separate sheet showing the various items and their individual costs only give lumpsum here (If none, write NIL)	Item	1	
A4	<b>ATTENDANCE:</b> Allow sum for attendance to other specialists e.g. Electrical, Building management, etc.	Item	1	
A5	<b>DOCUMENTATION:</b> Sum for Completion documents: Comprising Workshop drawings, manufacturer's technical product catalogues, users manuals, maintenance manuals, as installed drawings, test certificates, etc. { <b>NOTE: Penultimate Valuation will not be paid until these are fully availed &amp; signed off by the engineer }</b>	Item	1	
A6	<b>TESTING &amp; COMMISSIONING:</b> Sum for Testing and commissioning of the entire installations set complete with all accessories, interconnections, controls, BMS link & activation and the necessary programming.	Item	1	
A7	<b>TRAINING:</b> Sum for Training of client personel / users ( At least 5No Staff for 1Week )	Item	1	

ITEM	DESCRIPTION	UNIT	QTY	Rates (Kshs.)	Costs (Kshs)
A8	<b>DLP SUM:</b> Sum for 12 months comprehensive maintenance from date of practical completion i.e. for maintainance and replacement of consumables such as blown out devices	Item	1		
A9	<b>FACTORY INSPECTION:</b> Allow for the factory material Pre-Shipment inspection and approvals (Lifts) for 2No Project managers 2No Client and 2No Engineers. The cost shall cover Air Flight, accomodation, meals and subsistence allowance as per SRC guidelines for Directors Range	Item	1		
A10	Preliminaries and General Conditions	Item	1		
A11	Contingency				1,500,000
<b>A12</b>	<b>TOTAL Exclusive of VAT</b>				
A13	<b>Add:</b> 16% VAT including all PC sums & Contingencies				
<b>A14</b>	<b>TOTAL Inclusive OF VAT c/f to Form of Tender</b>				