THE KITALE NATIONAL POLYTECHNIC

TENDER DOCUMENT

FOR

PROPOSED COMPLETION FOR THE FOUR STOREY TUITION BLOCK AT THE KITALE NATIONAL POLYTECHNIC

TENDER NO.: KNP/OT/04/2020-2021

May 2021

PRINCIPAL
THE KITALE NATIONAL POLYTECHNIC
P. O. BOX 2162 – 30200
KITALE

INVITATION TO TENDER

PROCURINGENTITY:THE KITALE NATIONAL POLYTECHNIC

CONTRACT NAME AND DESCRIPTION: PROPOSED COMPLETION FOR THE FOUR STOREY TUITION BLOCK AT THE KITALE NATIONAL POLYTECHNIC

The Kitale National Polytechnicinvites sealed tenders for the construction of **PROPOSED COMPLETION FOR THE FOUR STOREY TUITION B LOCK AT THE KITALE NATIONAL POLYTECHNIC**

1. Tendering will be conducted under open competitive method National using a standardized tender document. The Tender is open to **all qualified and interested Tenderers with NCA - 6 and above.**

2. Qualified and interested tenderers may obtainfurtherinformationand inspect the Tender Documents during office hours8:00 am top 5:00 pm.

3. A complete set of tender documents may be purchased or obtained by interested tenders upon payment of a non- refundable fees of Kshs1000payable at ABSA Bank, Kitale Branch Account Name Kitale National Polytechnic, Account No. 003-8219650 and **shall**present the bank slip to accounts office for official receipt. Tender documents may be obtained electronically from theWebsite: www.kitalenationalpolytechnic.ac.ke. Tender documents obtained electronically will be free of charge.

4. Tender documents may be viewed and downloaded for free from the website www.kitalenationalpolytechnic.ac.ke.Tenderers who download the tender document must forward their particulars immediately to kitalenationalpolytechnic@gmail.comto facilitate any further clarification or addendum.

5. Tenders shall be quoted be in Kenya Shillings and shall include all taxes.Tendersshall remain valid for 90 days from the date of opening of tenders.

6. All Tenders must be accompanied by a "tender Security" of Kshs 400,000.0 in form of bank guarantee acceptable under Public Procurement and Asset Disposal Act 2015 and Public Procurement and Asset Disposal Regulations 2020 payable to The Principal, The Kitale National Polytechnic.

7. TheTenderer shall chronologically serialize all pages of the tender documents in the format 1,2,3,4…..n where n is the last page of the document submitted.

8. Completed tenders must be delivered to the address below on or before**21st May 2021 at 12:00 pm**. *E*lectronic Tenders **willnot**be permitted.

9. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later.Tenderswill be publicly opened in the presence of the Tenderers designated representatives who choose to attend at the **Polytechnic's Boardroom.**

10. Late tenders will be rejected.

11. The addresses referred to above are;
    The Kitale National Polytechnic
    P. O. Box 2162 – 30200
    Kitale
    Tel No. 0721379302
    Email: kitalenationalpolytechnic@gmail.com

A. Address for Submission of Tenders.

The Kitale National Polytechnic
P. O. Box 2162 – 30200
Kipsongo Road
Kitale

B. Address for Opening of Tenders.

The Kitale National Polytechnic
P. O. Box 2162 – 30200
Kitale
Polytechnic's Boardroom

Name **AKOLA JOHN OTIENO**

(*Official of the Procuring Entity issuing theinvitation)*

Designation **PRINCIPAL**

Signature

Date **23/04/2021**

KITALE NATIONAL POLYTECHNIC
PRINCIPAL
23 APR 2021
P. O. Box 2162 - 30200,
KITALE

PART1: TENDERINGPROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A GENERALPROVISIONS

1.0 Scope of tender

1.1 TheProcuringEntityasdefinedintheAppendixtoConditionsofContractinvitestendersforWorksContractas described in the tender documents. The name, identification and number of lots (contracts) of this Tender Document are specified in the TDS.

1.2 Throughout this tendering document:

a) Theterm"inwriting"meanscommunicatedinwrittenform(e.g.bymail,e-mail,fax,includingifspecified in the TDS,distributedorreceivedthroughtheelectronic-procurementsystemusedbytheProcuringEntity) with proof of receipt;

b) If the contexts or equires, "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 anofficialworkingdayoftheProcuringEntity.Itexcludesofficialpublicholidays.

2.0 Fraud and corruption

2.1 TheProcuringEntityrequirescompliancewiththeprovisionsofthePublicProcurementandAssetDisposalAct, 2015, Section 62 "Declaration not to engage in corruption". The tender submitted by a person shall include a declarationthatthepersonshallnotengageinanycorruptorfraudulentpracticeandadeclarationthattheperson orhisorhersub-contractorsarenotdebarredfromparticipatinginpublicprocurementproceedings.

2.2 TheProcuringEntityrequirescompliancewiththeprovisionsoftheCompetitionAct2010, 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 "CertificateofIndependentTenderDetermination"annexedtotheFormofTender.

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

2.4 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consultingservicesrelatedtothistender.Tothatend,theProcuringEntityshallindicateinthe**DataSheet**and makeavailabletoallthefirmstogetherwiththistenderdocumentallinformationthatwouldinthatrespectgive such firm any unfair competitive advantage over competing firms.

3.0 Eligible tenderers

3.1 ATenderermaybeafirmthatisaprivateentity,astate-ownedenterpriseorinstitutionsubjecttoITT3.8,oran individual or any combination of such entities in the form of a joint venture (JV)under an existing agreement or with the intenttoenterintosuchanagreementsupportedbyaletterofintent.Inthecaseofajointventure,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.**

3.2 PublicOfficersoftheProcuringEntity,theirSpouses,Child,Parent,BrothersorSister.Child,Parent, BrotherorSisterofaSpouse,theirbusinessassociatesoragentsandfirms/organizationsinwhichthey have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified.Atenderermaybeconsideredtohaveaconflictofinterestforthepurposeofthistenderingprocess, if the tenderer:

a) Directly or in directly controls ,is controlled or is under common control with another tenderer;

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

c) Has the same legal representative as another tenderer;

d) Has a relationship with another tenderer, directly or through common third parties, that put 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) Maybe involved in the implementation or supervision of such Contract unless he conflicts temming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

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

3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders.This includes participation as a sub contract or 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-contract or in a separate tender or be part of another joint venture for the purposes of the same Tender A firm that is not a tendere ror a JV member may participate as a sub contractor in more than one tender.

3.6 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 ,in corporate or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its article of in corporation (or equivalent documents of constitution or association) and its registration documents, as the case maybe. This criterion also shall apply to the determination of the nationality of proposed sub-contractor or sub-consultants for any part of the Contract including related Services.

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

3.8 A Tenderer that is a state-owned enterprise or a public institution in Kenya may be eligible to tender and be awarded Contract(s)onlyifitisdeterminedbytheProcuringEntitytomeetthefollowingconditions,i.e.ifitis:

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 enterprisetoenableitcompetewithfirmsintheprivatesectoronanequalbasis.

3.9 Firms and individuals shall be ineligible if thei rcountries of originare:

(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.

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

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

3.12 The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate 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.

3.13 The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will 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 websitewww.cak.go.ke.

4.14 A Kenyan tenderershallbeeligibletotenderifitprovidesevidenceofhavingfulfilledhis/hertaxobligationsby producing valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4.0 Eligible goods, equipment, and services

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

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

5.0 Tenderer's responsibilities

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

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

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

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

B. CONTENTSOF TENDER DOCUMENTS

6.0 Sections of Tender Document

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

PART 1: Tendering Procedures
Section I – Instructions to Tenderers
Section II – Tender Data Sheet(TDS)
SectionIII-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)
SectionIX-Special Conditions of Contract
Section X-Contract Forms

6.2 The Invitation to Tender Notice issued by the Procuring Entity is not part of the Contract documents. Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, response store quests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (If any), or Add end to the Tender document in accordance with ITT10. Incase of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

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

7.0 Clarification of Tender Document, SiteVisit, Pre-tenderMeeting

7.1 A Tenderer requiringa nyclarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's add ressspecified 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 theTender documents in accordance with ITT7. 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 ITT22 .2.

7.2 The Tenderer, at theTenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information tha 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.

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

7.4 Minutes of apre-arranged site visit and those of the pre-tender meeting ,if applicable ,including the text of the

questions asked by Tenderers and the responses given ,together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.

7.5 The Procuring Entity shall also promptly publish anonymized (*nonames*)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 ITT8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be acause for disqualification of aTenderer.

8.0 Amendment of ender Documents

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

8.2 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 ITT7.5.

8.3 To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity should extend the deadline for the submission of Tenders, pursuant to ITT22. 2.

C. PREPARATIONOFTENDERS

9. Cost of Tendering

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

10.0 Language of Tender

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

11.0 Documents Comprising the Tender

11.1 The Tender shall comprise the following:

a) Form of Tender prepared in accordance with ITT12;
b) Schedules including priced Bill of Quantities, completed in accordance with ITT12 and ITT14;
c) Tender Security or Tender-Securing Declaration, in accordance with ITT19.1;
d) AlternativeTender,ifpermissible,inaccordancewithITT13;
e) ***Authorization***: written confirmation authorizing the signatory of the Tender to commit the Tenderer, in accordance with ITT20.3;
f) *Qualifications:* documentary evidence in accordance with ITT17 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.**

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

12.0 Form of Tender and Schedules

12.1 TheForm of Tender and Schedules ,includingthe 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 withthe 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 informationon commissions and gratuities, if any ,paid or to be paid to agents or any other party relating on this Tender.

13. Alternative Tenders

13.1 UnlessotherwisespecifiedintheTDS,alternativeTendersshallnotbeconsidered.

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

13.3 Except as provided under ITT13.4below,Tenderers wishing to offer technical alternatives to there quirements of the Tender Documents must first price the Procuring Entity's design as described in theTender Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the Procuring Entity.

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

14.0 Tender Prices and Discounts

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

14.2 The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price Is entered by the Tenderer shall be deemed covered by the 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 not withstanding 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 Tenders determined will be used or price comparison.

14.3 The price to be quoted in the Form of Tender, in accordancewithITT12.1, shall be the total price of the Tender, including any discounts offered.

14.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT12.1.

14.5 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.

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

14.7 All duties ,taxes, and other levies payable by the Contract or 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.

15.0 Currencies of Tender and Payment

15.1 The currency of the Tender and the currency of payments shall be the same and **shall be in Ksh.**

15.2 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 Work 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.

15.3 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 breakdownoftheforeigncurrencyrequirementsshallbeprovidedbyTenderers.

16.0 Documents Comprising the Technical Proposal

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

17.0 DocumentsEstablishingtheEligibilityandQualificationsoftheTenderer

17.1 Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance withITT4.

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

17.3 If a margin of preference applies as specified in accordance with ITT33.1, 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 ITT33.1.

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

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

17.6 The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer under ITT6.4. The obligations to require this information shall continue for the duration o f 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.

17.7 All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the Procuring Entity. In submitting the information 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.

17.8 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.

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

17.10 If a tenderer submits information pursuant to these requirements that is incomplete, in accurate or out-of-date, or attempts to obstruct the verification process ,then the consequences ITT17.8 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 of 90 days**. The Tender Validity period starts from the date fixed for theTender submission deadline (as prescribed by the Procuring Entity in accordance with ITT22). A tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If aTender Security is requested in accordance with ITT19,it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without for feiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

19.0 Tender Security

19.1 The Tenderer shall furnish the institution with **bank guarantee ofKshs 400,000.00 (*Kenya Shillings Four Hundred Thousand Only)***as part of its Tender.

19.2 IfaTender Security is specified pursuant to ITT19. 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.

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

19.4 If a Tender Security or Tender-Securing Declaration is specified pursuant to ITT 19.1, any Tendernot accompaniedbyasubstantiallyresponsiveTenderSecurityorTender-SecuringDeclarationshallberejectedby theProcuringEntityasnon-responsive.

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

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

19.7 TheTenderSecuritymaybeforfeitedortheTender-SecuringDeclarationexecuted:

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

b) ifthesuccessfulTendererfailsto: -

   i) signtheContractinaccordancewithITT47;or

   ii) Furnish aPerformanceSecurityandifrequiredinthe TDS andanyotherdocuments required in the TDS.

19.8 Where tender securingdeclarationisexecuted,theProcuringEntityshallrecommendtothePPRAtodebarstheTendererfrompartici patinginpublicprocurementasprovidedinthelaw.

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

19.10 Atenderershallnotissueatender security toguaranteeitself.

20.0 FormatandSigningofTender

20.1 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked"ALTERNATIVE."Inaddition,theTenderershallsubmitcopiesoftheTender,in the numberspecified in the **TDS**andclearlymarkthem"COPY."Intheeventofanydiscrepancybetweentheoriginalandthecopies, theoriginalshallprevail.

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

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

20.4 IncasetheTendererisaJV,theTendershallbesignedbyanauthorizedrepresentativeoftheJVonbehalfoftheJV,andso astobelegallybindingonallthemembersasevidencedbyapowerofattorneysignedbytheirlegally authorizedrepresentatives.

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

D. SUBMISSION AND OPENING OF TENDERS

21.0 Sealing and Marking of Tenders

21.1 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 describedinITT11;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 ITT13, 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.

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

22.0 Deadline for Submission of Tenders

22.1 Tenders must be received by the Procuring Entity at the address specified in the **TDS** and no later than the date 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**.

22.2 The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT8, 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.

24.0 Withdrawal, Substitution, and Modification of Tenders

24.1 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 ITT22.

24.2 Tenders requested to be withdrawn in accordance with ITT24. 1shall be returned unopened to the Tenderers.

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

25. Tender Opening

25.1 Except in the cases specified in ITT23 and ITT24.2, 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 ITT22.1, 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. NoTender 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 ITT23.1).

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, perlot (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 in validate 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 ITT43.

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 ITT26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

27.0 Clarification of Tenders

27.1 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for 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, orpermitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT31.

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

28.0 Deviations, Reservations, and Omissions

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

a) *"Deviation"* is a departure from the requirements specified in the tender document;

b) *"Reservation"* is the setting of limiting conditions or withholding from complete acceptance 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.

29.0 Determination of Responsiveness

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

29.2 A substantially responsive Tender is one that meets the requirements of the Tender document 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.

29.3 The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT16, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.

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

30.0 Non-material Non-conformities

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

30.2 Provided that aTender is substantially responsive, the Procuring Entity may request that the tenderers ubmit 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 documentationon 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 theTDS.**

31.0 Arithmetical Errors

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

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

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

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

32.0 Conversion to Single Currency

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

33.0 Margin of Preference and Reservations

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

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

33.3 Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT33.4.

33.4 Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, YouthEnterprises 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 sub contractors selected/nominated by the Procuring Entity. Incase the Procuring Entity nominates a subcontractor; the subcontract agreement shall be signed by the Subcontractor and the Procuring Entity. The main contract shall specify the working arrangements between the main contractor and the nominated subcontractor.

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

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

35. Evaluation of Tenders

35.1 The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Lowest Evaluated Tender in accordance with ITT40.

35.2 To evaluate aTender, the Procuring Entity shall consider the following:

a) Price adjustment in accordance with ITT31.1(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 ITT14.4;

c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT32;

d) price adjustment due to quantifiable non material non-conformities in accordance with ITT30.3; 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 ITT35.2.The methodology to determine the lowest evaluated tenderer or tenderers based one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36.0 Comparison of tenders

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

37.0 Abnormally low tenders and abnormally high tenders

Abnormally Low Tenders

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

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

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

Abnormally high tenders

37.4 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.

37.5 In case of an abnormally 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.

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

38.0 Unbalancedand/orfront-loadedtenders

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

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

a) acceptheTender;

b) requirethatthetotalamountofthePerformanceSecuritybeincreasedattheexpenseoftheTenderertoa levelnotexceedinga30%oftheContractPrice;

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

d) rejectheTender,

39.0 Qualificationsofthetenderer

39.1 TheProcuringEntityshalldeterminetoitssatisfactionwhethertheeligibleTendererthatisselectedashaving submittedthelowestevaluatedcostandsubstantiallyresponsiveTender,meetsthequalifyingcriteriaspecifiedinSectionIII,EvaluationandQualificationCriteria.

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

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

40.0 Lowest evaluatedtender

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

a) MostresponsivetotheTenderdocument;and

b) thelowestevaluatedprice.

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

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

F. <u>AWARDOFCONTRACT</u>

42.0 Award criteria

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

43.0 NoticeofIntentiontoEnterintoaContract/Notification of Award

UponawardofthecontractandPriortotheexpiryoftheTenderValidityPeriodtheProcuringEntityshallissueaNotificationofIntentiontoEnterintoaContract/Notificationofawardtoalltendererswhichshallcontain,ataminimum,thefollowinginformation:

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

44.0 StandstillPeriod

44.1 TheContractshallnotbesignedearlierthantheexpiryofaStandstillPeriodof14daystoallowanydissatisfied tendertolaunchacomplaint.WhereonlyoneTenderissubmitted,theStandstillPeriodshallnotapply.

44.2 WhereaStandstillPeriodapplies,itshallcommencewhentheProcuringEntityhastransmittedtoeachTendertheNotificationofIntentiontoEnterintoaContractwiththesuccessfulTenderer.

45.0 DebriefingbyTheProcuringEntity

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

45.2 DebriefingsofunsuccessfulTenderersmaybedoneinwritingorverbally.TheTendershallbearitsowncosts ofattending such a debriefing meeting.

46.0 Letter of Award

PriortotheexpiryoftheTenderValidityPeriodanduponexpiryoftheStandstillPeriodspecifiedinITT42.1, uponaddressingacomplaintthathasbeenfiledwithintheStandstillPeriod,theProcuringEntityshalltransmit theLetterofAwardtothesuccessfulTenderer.Theletterofawardshallrequestthesuccessfultendertofurnish thePerformanceSecuritywithin21daysofthedateoftheletter.

47.0 Signing of Contract

47.1 UpontheexpiryofthefourteendaysoftheNotificationofIntentiontoenterintocontractanduponthe parties meeting their respective statutory requirements, the Procuring Entity shall send the successful Tenderer the Contract Agreement.

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

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

48.0 PerformanceS ecurity

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

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

Tenderer offering the next Best Evaluated Tender.

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

49.0 PublicationofProcurementContract

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

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

50.0 Procurement related Complaint

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

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.

A.General	
ITT1.1	The name of the contract is_____**PROPOSED COMPLETION FOR THE FOUR STOREY TUITION BLICK AT THE KITALE NATIONAL POLYTECHNIC** The reference numberof the Contract is **KNP/OT/04/2020-2021** The number and identification of lots (contracts)comprising this Tender are *[insert number and identification of lots (contracts)]* Lot1-Name _____N/A Lot2-Name _____N/A Lot… Name _____N/A ETC.
ITT2.3	The Information made available on competing firms is as follows:
ITT2.4	The firms that provided consulting services for the contract being tendered for are:
ITT3.1	Maximum number of members in the Joint Venture (JV) shall be: ***[insert a number].***

B. Contents of Tender Document	
ITT 7.1	(i) The Tenderer will submit any request for clarifications in writing at the Address **kitalenationalpolytechnic@gmail.com** To reach the Procuring Entity not later than **16th May 2021** (ii) The Procuring Entity shall publish its response at the website www.kitalenationalpolytechnic.ac.ke
ITT 7.2	(A) A pre-arranged pretender site visit *"shall"* take place at the following date, time and place: Date: _____17th May 2021__ Time: __10:00 am_____ Place: __Kitale National Polytechnic Grounds (B) Pre-Tender meeting ***"shall"***take place at the following date, time and place: Date: _____N/A_____ Time: ____N/A_____ Place: _____N/A
ITT 7.3	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than **16th May 2021** before the meeting.
ITT 7.5	The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender will be published is www.kitalenationalpolytechnic.ac.ke
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's addressis: (1) Name of Procuring Entity The Kitale National Polytechnic Physical address for hand Courier Delivery to an office or Tender Box at the Polytechnic Administration Block (3) Postal Address 2162 – 30200 - Kitale (4) Contact Person The Principal, 0721379304, kitalenationalpolytechnic@gmail.com
C. Preparation of Tenders	
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: **1. Form No. 8 – Certificate of Tenders visit to the site – being part of the mandatory requirements**
ITT 13.1	Alternative Tenders ***"shall not be"*** **considered.**
ITT 13.2	Alternative times for completion *"shall be"* **as directed by the Project Manager or as approved by the institution.**
ITT 13.4	Alternative technical solutions shall be permitted **or approved by the Project Manager**.
ITT 14.5	The prices quoted by the Tenderer shall be **As Allowable in Public Procurement and Public Disposal Act 2015**

ITT 15.2 (a)	Foreign currency requirements **not allowed.**
ITT 18.1	The Tender validity period shall be **90 days**.
ITT 18.3	(a) The Number of days beyond the expiry of the initial tender validity period will be **90** days. (b) The Tender price shall be adjusted by the following percentages of the tender price: *(i)* By.....N/A.....%*the local currency portion of the Contract price adjusted to reflect local inflation during the period of extension, and* *(ii) By N/A % the foreign currency portion of the Contract price adjusted to reflect the international inflation during the period of extension.*
ITT 19.1	Tender shall provide **a Tender** Security. The type of Tender security shall be a bank guarantee in the amount of **Kenya shillings Four Hundred Thousand Only.**
ITT 20.1	In addition to the original Tender, the number of copies is:**One Copy**
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall be as per attached in the **form ELI-1.1**
D. Submission and Opening of Tenders	
ITT 22.1	(A) For Tender submission purposes only, the Procuring Entity's address is: **The Principal** **The Kitale National Polytechnic** **P. O. Box 2162 – 30200** **Kitale** (1) Tenderers to submit their tenders by **21st May 2021at 12:00 pm** (2) Tenderers (3) **shall not submit** tenders electronically.
ITT 25.1	The Tender opening shall take place at the time and the address for Opening of Tenders at **The Kitale National Polytechnic – Administration Boardroom**
ITT 25.1	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic ~~tender submission procedures specified below *[insert a description of the electronic Tender opening procedures}*:~~**N/A**
ITT25.5	The number of representatives of the Procuring Entity to sign is **One**
E. Evaluation, and Comparison of Tenders	
ITT 30.3	The adjustment shall be based on the ***"average"*** price of the item or component as quoted 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 engineer's estimate

ITT 33.2	A margin of preference *"shall" or "shall not"]*_____apply. *[If a margin of preference applies, the application methodology shall be defined in Section III - Evaluation and Qualification Criteria.}*
ITT 33.4	The invitation to tender is extended to the following group that qualify for Reservations **N/A** *(These groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be; describe precisely which group qualifies).*
ITT 34.1	At this time, the Procuring Entity***" does not intend' '***to execute certain specific parts of the Works by subcontractors selected in advance.
ITT 34.2	Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is: 10%*of the total contract amount.* Tenderers planning to subcontract more than 10% of total volume of work shall specify, in the Form of Tender, the activity (ies) or parts of the Works to be subcontracted along with complete details of the subcontractors and their qualification and experience. **N/A**
ITT 34.3	The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows: **Mechanical Works** **Electrical Works** ~~For the above-designated parts of the Works that may require Specialized Subcontractors, the~~ relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Tenderer for the purpose of evaluation.
ITT 35.2 (d)	Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.
ITT 48.1	Other documents required in addition to the Performance Security are **Works insurance**
ITT 49.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA Website www.ppra.go.keor emailcomplaints@ppra.go.ke. If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to: For the attention: *[insert full name of person receiving complaints}* Title/position: *[insert title/position}* Procuring Entity: *[insert name of Procuring Entity]* Email address: *[insert email address}* In summary, a Procurement-related Complaint may challenge any of the following (among others): (i) the terms of the Tender Documents; and (ii) the Procuring Entity's decision to award the contract.

SECTIONIII-EVALUATIONANDQUALIFICATIONCRITERIA

1.0 GENERALPROVISIONS

1.1 ThissectioncontainsthecriteriathattheEmployershallusetoevaluatetenderandqualifytenderers.Noother factors,methodsorcriteriashallbeusedotherthanspecifiedinthistenderdocument.TheTenderershallprovide alltheinformationrequestedintheformsincludedinSectionIV,TenderingForms.TheProcuringEntityshall use**theStandardTenderEvaluationDocumentforGoodsandWorks**forevaluatingTenders.

1.2 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) Forconstructionturnoverorfinancialdatarequiredforeachyear-Exchangerateprevailingonthelastday of the respective calendar year (in which the amounts for that year is to be converted) was originally established.

b) Valueofsinglecontract-Exchangerateprevailingonthedateofthecontractsignature.

(c) Exchange rates shall be taken from the publicly available source identified in the ITT 14.3. Any error in determiningtheexchangeratesintheTendermaybecorrectedbytheProcuringEntity.

1.3 EVALUATIONANDCONTRACTAWARDCRITERIA

TheProcuringEntityshallusethecriteriaandmethodologieslistedinthisSectiontoevaluatetendersandarrive at the Lowest Evaluated Tender. Thetender that;
(i)meets the qualification criteria,
(ii)hasbeendeterminedtobesubstantiallyresponsivetotheTenderDocuments,and
(iii)isdeterminedtohavetheLowestEvaluatedTenderpriceshallbeselectedforawardofcontract.

2.0 PRELIMINARYEXAMINATIONFORDETERMINATIONOF RESPONSIVENESS

Preliminary examination for Determination of Responsiveness

The ProcuringEntitywillstartbyexaminingalltenders to ensuretheymeetinallrespectstheeligibilitycriteriaand other mandatory requirements in the ITT, and that the tender is complete in all aspects in meeting the requirementsprovidedforintheprelimnaryevaluationcriteriaoutlinedbelow.TheStandardTenderEvaluation 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-responsiveandwillnotbeconsideredfurther.

SEE ATTACHED APPENDIX II INSTRUCTION TO TENDERERS

3.0 TENDEREVALUATION(ITT35)

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

(i) AlternativeCompletionTimes,ifpermittedunderITT13.2,willbeevaluatedasfollows: ……

(ii) Alternative Technical Solutions for specified parts of the Works, if permitted under ITT 13.4, will be evaluatedasfollows:……

(iii) OtherCriteria;ifpermittedunderITT35.2(j): ……

4.0 MULTIPLECONTRACTS

4.1 MultiplecontractswillbepermittedinaccordancewithITT35.4.TenderersareevaluatedonbasisofLotsanda lowestevaluatedtendereridentifiedforeachLot.TheProcuringEntitywillselectoneOptionofthetwoOptions listedbelowforawardofContracts.

OPTION1

(i) IfatendererwinsonlyoneLot,thetendererwillbeawardedacontractforthatLot,providedthetenderer meetstheEligibilityandQualificationCriteriaforthatLot.

(ii) IfatendererwinsmorethanoneLot,thetenderwillbeawardedacontractforallwonLots,providedthetenderer meetstheaggregateEligibilityandQualificationCriteriaforallthewonLots.Thetendererwillbeawardedonly thecombinationsforwhichthetendererqualifiesandtheotherswillbeconsideredforawardtosecondlowest thetenderers.

OPTION2

The Procuring Entity will consider all possible combinations of won Lots [contract(s)] and determine the combinationwiththelowestevaluatedprice.TenderswillthenbeawardedtotheTendererorTenderersinthe combinationprovidedthetenderermeetstheaggregateEligibilityandQualificationCriteriaforallthewonLots.

5.0 ALTERNATIVETENDERS(ITT13.1)

AlternativeTenders(ITT13.1)

AnalternativeifpermittedunderITT3.1,willbeevaluatedasfollows:

TheProcuringEntityshallconsiderTendersofferedforalternativesasspecifiedinPart2-Worksrequirements. Onlythetechnicalalternatives,ifany,oftheTendererwiththeBestEvaluatedTenderconformingtothebasic technicalrequirementsshallbeconsideredbytheProcuringEntity.

6.0 MARGIN OF PREFERENCE

6.1 If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loadedonevaluatedpricesoftheforeigntenderers,wherethepercentageofshareholdingofKenyancitizensislessthan fifty-onepercent(51%).

6.2 Contractorsshallbeaskedtoprovide,aspartofthedataforqualification,suchinformation,includingdetailsof ownership,asshallberequiredtodeterminewhether, according to theclassificationestablishedbytheProcuringEntity,aparticularcontractororgroupofcontractorsqualifiesforamargi nofpreference.

6.3 AfterTendershavebeenreceivedandreviewedbytheProcuringEntity,responsiveTendersshallbeassessedto ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the followinggroups:

i) *GroupA:*tendersofferedbyKenyanContractorsandotherTendererswhereKenyancitizensholdsharesofoverfif tyonepercent(51%).

ii) *GroupB:*tendersofferedbyforeignContractorsandotherTendererswhereKenyancitizensholdsharesoflessth a nfiftyonepercent(51%).

6.4 Allevaluatedtendersineachgroupshall,asafirstevaluationstep,becomparedtodeterminethelowesttender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison,atenderfromGroupAisthelowest,itshallbeselectedfortheawardofcontract.Ifatenderfrom 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 addedtotheevaluatedpriceofferedineachtenderfromGroupB.Alltendersshallthenbecomparedusingnew priceswithaddedpricestoGroupBandthelowestevaluatedtenderfromGroupA.IfthetenderfromGroupAis stillthelowesttender,itshallbeselectedforaward.Ifnot,thelowestevaluatedtenderfromGroupBbasedonthe firstevaluationpriceshallbeselected.

7. PostqualificationandContractward(ITT39),morespecifically,

a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer,subjecttoconfirmationofpre-qualificationdata,ifsorequired.

b) In casethetenderwasnotubjecttopost-qualification, thetenderthathasbeendeterminedtobethelowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.

i) TheTendershalldemonstratethatithasaccessto,orhasavailable,liquidassets,unencumberedrea l assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficienttomeettheconstructioncashflowofKenyaShillings five million

ii) Minimum average annual construction turnover ofKenyaShillings Fifty million, equivalent calculated as total certified payments received for contracts in progress and/orcompletedwithinthelast three years.

iii) Atleastfourof contract(s) of a similar nature executed withinKenya,ortheEastAfricanCommunityorabroad,thathavebeensatisfactorilyandsubstantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenyashillings Fifteen Million and above

iv) Contractor'sRepresentativeandKeyPersonnel,whicharespecifiedas shown in appendix to ITT

v) Contractors key equipment listed on the table "Contractor's Equipment" below and more specifically listedasshown in appendix to ITT.

iv) Otherconditionsdependingontheirseriousness as may be shown in appendix to ITT.

a) **Historyofnon-performingcontracts**:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performanceofacontractdidnotoccurbecauseofthedefaultoftheTenderer,orthememberofaJV in the last five years Therequiredinformationshallbefurnishedintheappropriateform.

b) PendingLitigation

Financialpositionandprospectivelong-termprofitabilityoftheSingleTenderer,andinthecasethe TendererisaJV,ofeachmemberoftheJV,shallremainsoundaccordingtocriteriaestablishedwith respect to Financial Capability under Paragraph (i) above if all pending litigation will beresolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) LitigationHistory

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last Five years. Allpartiestothecontractshallfurnishtheinformationinthe appropriateformaboutanylitigationorarbitrationresultingfromcontractscompletedorongoing underitsexecutionovertheyearsspecified.AconsistenthistoryofawardsagainsttheTendereroranyme mberofaJVmayresultinrejectionofthetender.

QUALIFICATION FORM*

1	2	3	4	5
Item No.	**Qualification Subject**	**Qualification Requirement**	***Document To be Completed by Tenderer***	***For Procuring Entity's Use (Qualification met or Not Met)***
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI - 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority in accordance with ITT 3.14.	Attachment	
3	Conflict of Interest	No conflicts of interest in accordance with ITT 3.3	Form of Tender	
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.7	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.8	Forms ELI - 1.1 and 1.2, with attachments	
6	Goods, equipmentand 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 acontract did not occur as a result of contractor default since 1st January 2016	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.	FormCON-2	

1	2	3	4	5
Item No.	**Qualification Subject**	**Qualification Requirement**	***Document To be Completed by Tenderer***	***For Procuring Entity's Use (Qualification met or Not Met)***
10	LitigationHistory	against the Tenderer since 1st January *[insert year]*. No consistent history of court/arbitral award decisions against the Tenderer since 1stJanaury 2016	Form CON - 2	
11	Financial Capabilities	(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Kenya Shillings **fifteenmillion**equivalent for the subject contract(s) net of the Tenderer's othercommitments. (ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. (iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last 3 years shall be submitted and must demonstrate the current soundness of theTenderer's financial position and indicate its prospective long-term profitability.	Form FIN - 3.1, with attachments	
12	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings 50 million, equivalent calculated as total certified payments received for contracts in progress and/or completed within the last four years years, divided by four years	Form FIN - 3.2	

1	2	3	*4*	5
Item No.	**Qualification Subject**	**Qualification Requirement**	***Document To be Completed by Tenderer***	***For Procuring Entity's Use (Qualification met or Not Met)***
14	Specific Construction & Contract Management Experience	A minimum number of **four**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 2016and tender submission deadline i.e. **Four** contracts, each of minimum value Kenya shillingsfifteen million and above. *[In case the Works are to be tender as individual contracts under multiple contract procedure, the minimum number of contracts required for purposes of evaluating qualification shall be selected from the options mentioned in ITT 35.4}* The similarity of the contracts shall be based on the following: *[Based on Section VII, Scope of Works, specify the minimum key requirements in terms of physical size, complexity, construction method, technology and/or other characteristics including part of the requirements that may be met by specialized subcontractors, if permitted in accordance with ITT 34.3}*	Form EXP 4.2(a)	

SECTION IV - TENDERING FORMS

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE

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

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

2. FORMEQU:EQUIPMENT

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

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current	Current location	
	Indicate source of the equipment ☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured	
Omit the following information for equipment owned by the Tenderer.		
Owner	Name of owner	
	Address of owner	
	Telephone	Contact name and title
	Fax	Telex
Agreements	Details of rental / lease / manufacture agreements specific to the project	

3. FORM PER -1

Contractor'sRepresentativeandKeyPersonnel Schedule

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

4. FORM PER-2:

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

Name of Tenderer

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

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

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

Declaration

I, theunder signed *[inserteither"Contractor's Representative"or "KeyPersonnel"asapplicable]*, 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:

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

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

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

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

Signature:_____

Date: (day month year): _____

Counter signature of authorized representative of the Tenderer:

Signature:_____

Date: (day month year): _____

5. TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

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

5.1 FORM ELI -1.1

Tenderer InformationForm

Date:_____

ITT No. andtitle:_____

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

52 FORM ELI -1.2

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

Date:_____

ITT No. andtitle:_____

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

53 FORM CON –2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer'sName:_____Date:_____

JVMember's Name_____ITT No. andtitle:_____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria
☐ Contract non-performance did not occur since 1st January *[insert year]*specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1. ☐ Contract(s) not performed since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1 ☐ Contract(s) withdrawn since 1st January *[insert year]* specified in Section III, Evaluation and Qualification Criteria, requirement 2.1

Year	**Non- performed portion of contract**	**Contract Identification**	**Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)**
[insert year]	*[insert amount and percentage]*	Contract Identification: *[indicate complete contract name/ number, and any other identification]* Name of Procuring Entity: *[insert full name]* Address of Procuring Entity: *[insert street/city/country]* Reason(s) for nonperformance: *[indicate main reason(s)]*	*[insert amount]*

Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria
☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3. ☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification:_____ Name of Procuring Entity:_____ Address of Procuring Entity:_____ Matter in dispute:_____ Party who initiated the dispute:____ Status of dispute: _____	
		Contract Identification: Name of Procuring Entity: Address of Procuring Entity: Matter in dispute: Party who initiated the dispute: Status of dispute:	

Litigation History in accordance with Section III, Evaluation and Qualification Criteria

☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.
☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.

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

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

5.4 FORM FIN – 3.1:

Financial Situation and Performance

Tenderer'sName:_____
Date:_____
_____
JVMember'sName_____
ITT No. andtitle:_____

5.4.1. Financial Data

Type of Financial information in_____ (currency)	**Historic information for previous _____*years,* _____ (amount in currency, currency, exchange rate*, USD equivalent)**				
	Year1	Year2	Year 3	Year4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

**Refer to ITT 15 for the exchange rate*

5.4.2 FORM FIN – 3.1:

5.4.3 Sources ofFinance

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		

5.4.4 Financialdocuments

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

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

b) Be independently audited or certified inaccordance with local legislation.

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

d) Correspond to accounting periods already completed and audited.

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

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

5.5 FORM FIN – 3.2:

Average Annual Construction Turnover

Tenderer'sName:_____
Date:_____
_____
JVMember'sName_____
ITT No. andtitle:_____

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

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

5.6 FORMFIN–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 contractor contracts as specified in Section III, Evaluation and Qualification Criteria.

Financial Resources		
No.	**Source of financing**	**Amount (Kenya Shilling equivalent)**
1		
2		
3		
4		

5.7 FORM FIN – 3.2:

5.8 FORMFIN–3.4:

Current Contract Commitments / Works in Progress

Tenderers and each member to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

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

5.9 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: _____	

5.10 FORM EXP -4.2(a)

Specific Construction and Contract Management Experience

Tenderer'sName:_____
Date:_____
_____
JVMember'sName_____
ITT No. andtitle:_____

Similar Contract No.	**Information**			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount			**Kenya Shilling**	
If member in a JV or sub-contractor, specify participation in total Contract amount				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III:				
1 Amount				
2 Physical size of required works items				
3 Complexity				
4 Methods/Technology				
5 Construction rate for key activities				
6 Other Characteristics				

5.11 FORMEXP-4.2(b)

Construction Experience in Key Activities

Tenderer'sName:_____
Date:_____
_____
Tenderer'sJVMemberName:_____
Sub-contractor'sName[2](asperITT34):
_____I
TTNo.andtitle:_____

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

1. Key Activity No One:

	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount			**Kenya Shilling**	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year1				
Year 2				
Year 3				
Year 4				
Procuring Entity's Name:				
Address: Telephone/fax number E-mail:				
Description of the key activities in accordance with Sub-Factor 4.2(b) of Section III:				

[2] *If applicable*

OTHER FORMS

6. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

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

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

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

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

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

Date of thisTender submission:----------

Request forTender No.: ----------

Name and description of Tender----------

Alternative No.:……

To: ----------

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[3] of Kenya Shillings_____Kenya Shillings *[amount in words]*_____

   The above amount includes foreign currency[4] amount(s) of [*state figure or a percentage and currency*] [figures] __N/A_____[words]N/A _____The percentage or amount quoted above does not include provisional sums, and only allows not more than two foreign currencies.

2. We undertake, if our tender is accepted, to commence theWorks 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 the time stated in the Special Conditions of Contract.

3. We agree to adhere by this tender until_____,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 undersigned, further declare that:

   i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT28;

   ii) Eligibility:Wemeettheeligibilityrequirementsandhavenoconflictofinterestinaccordancewith ITT3and 4;

   iii) Tender-Securing Declaration:We have not been suspended nor declared in eligible by the Procuring Entity basedonexecutionofaTender-SecuringorProposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT19.8;

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

Option2, in case of multiple lots:

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

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

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

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

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

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

xii) 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 ITT3.4, other than alternative Tenders submitted in accordance with ITT13.3;

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

xiv) State-ownedenterpriseorinstitution:[*selecttheappropriateoptionanddeletetheother*][*Wearenotastate-ownedenterpriseorinstitution*]/[*Weareastate-ownedenterpriseorinstitutionbutmeettherequirementsof ITT3.8*];

xv) Commissions, gratuities, fees: We have paid, or will pay the following commissions, gratuities, or fees with respect to the tender process or execution of the Contract: *[insert complete name 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.")

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

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

xvi) 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;

xvii) 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;

xviii) Fraudand Corruption: We hereby 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

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

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

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

a) Tenderer's Eligibility; Confidential Business Questionnaire-to establish we are not in any conflict to interest.

(b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.

(a) Self-Declaration of theTenderer-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**"Appendix1-Fraudand 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

Tender 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

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

General and Specific Details

(b) Sole Proprietor, provide the following details.

Name in full_____Age_____
Nationality_____Country of Origin_____
Citizenship_____

(c) Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) Registered Company, provide the following details.

I) Private or public Company _____
ii) State the nominal and issued capital of the Company_____

Nominal Kenya Shillings (Equivalent).....
Issued Kenya Shillings (Equivalent).....

iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

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

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

If yes, provide details as follows.

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

(ii) **Conflict of interestdisclosure**

	Type of Conflict	Disclosure YES ORNO	IfYES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract Specifiedin this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the Procuring Entity who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

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:

Icertify, on behalf of_____*[NameofTenderer]*that:

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

2. I understand that the Tender will be disqualified if this Certificate is found not to be true and 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. Inparticular, without limiting the generality of paragraphs (5)(a)or(5)(b) above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:

   a) prices;
   b) methods, factors or formulas used to calculate prices;
   c) the 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 theTender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, prior to the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph(5)(b) above.

Name_____
Title_____
Date _____

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

(c) SELF-DECLARATIONFORMS

FORM SD1

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

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

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

2. THAT the aforesaid Bidder, its servants and/oragents/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 herein 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 hereby commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurementand 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) APPENDIX1-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 Ken ya'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 paragraphs1.1 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 asset disposal proceeding;

2) A person referred to under subsection (1) who contravenes the provisions of that sub-section commitsan 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 into, take part in any decision relating to the procurement or contract; and

   c) Shall not be a subcontractor 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 personin 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. Incompliance with Kenya's aws, regulations and policies mentioned above, the Procuring Entity:

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

i) “corruptpractice” 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 isrepresentation,thatknowinglyorrecklessly 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 2.3e.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 process or the exercise of a contract to the detriment of the procuring entity or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the procuring entity of the benefits of free and open competition.

c) Rejects a proposal for award[1] of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices incompeting 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,andSuppliers,andtheir Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect[2]allaccounts, 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.

---

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

[2] *Inspections in this context usually are investigative (i.e., forensic) in nature. They involve fact-finding activities undertaken by the Investigating Authority or personsappointedbytheProcuringEntitytoaddressspecificmattersrelatedtoinvestigations/audits,suchasevaluatingtheveracityofanallegationofpossible FraudandCorruption,throughtheappropriatemechanisms.Suchactivityincludesbutisnotlimitedto:accessingandexaminingafirm'sorindividual'sfinancial records and information, and making copies thereof as relevant; accessing and examining any other documents, data and information (whether in hard copyor electronicformat)deemedrelevantfortheinvestigation/audit,andmakingcopiesthereofasrelevant;interviewingstaffandotherrelevantindividuals;performing physicalinspectionsandsitevisits;andobtainingthirdpartyverificationofinformation.*

2. FORM OF TENDER SECURITY-DEMAND BANK GUARANTEE

Beneficiary:_____

_____

Request for TendersNo:

_____

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"theTender")for the execution of underRequestforTendersNo._____(“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 anysumor 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 underthis guarantee must be received by us at the office indicated above on or before that date.

_____

[signature(s)]

4. FORM OF TENDER SECURITY(TENDER BOND)

[The Surety shall fill in this Tender Bond Form in accordance with the instructions

indicated.] BONDNO._____

1. BY THIS BOND *[name of tenderer]* as Principal (hereinafter called "the Principal"), and *[name, legal title,and address of surety],***authorized to transact business in** *[name of country of Purchaser],* as Surety (hereinafter called "the Surety"), are held and firmly bound unto *[name of Purchaser]* as Obligee (hereinafter called "the Purchaser") in the sum of *[amount of Bond][amount in words]*,for the payment of which sum, well and truly tobe made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

2. WHEREAS the Principal has submitted or will submit a written Tender to the Purchaser dated the_____day of _____,20, for the supply of *[name of Contract]*(hereinafter called the"Tender").

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

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

   b) Having been notified of the acceptance of its Tender by the Purchaser during the Tender Validity Period or any extension thereto provided by the Principal ;(i)failed to execute the Contrac tagreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers ("ITT") of the Purchaser's Tendering document. then the Surety undertakes to immediately pay to the Purchaser up to the above amount upon receipt of the Purchaser's first written demand, without the Purchaser having to substantiate its demand, provided that in its demand the Purchaser shall state that the demand arises from the occurrence of any of the above events, specifying which event(s) has occurred.

4. The Surety hereby agrees that its obligation will remain in full force and effect upto and including the date 30days after the date of expiration of the Tender Validity Period set forth in the Principal's Letter of Tender or any extension thereto provided by the Principal.

5. IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this dayof_____20.

Principal: Surety:_____

_____

Corporate Seal*(where appropriate)*

_____ _____

(Signature) *(Signature)*

(Printed name and title) *(Printed name and title)*

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/Weunderstand that, according to your conditions, bids must be supported by aTender-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/Weunderstand 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/Weunderstand 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

soleproprietor,etc.) …….…….....…….

Name:…….. Duly authorized to sign the

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

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

5. Appendix toTender

Schedule of Currency requirements

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

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

APPENDIX TO INSTRUCTION TO TENDERERS
INDIVIDUAL EVALUTION SHEET
REFERENCE: TENDER NO.: KNP/0T/04/2020-2021 PROPOSED COMPLETION OF FOUR STOREY TUITION BLOCK AT KITALE NATIONAL POLYTECHNIC
Bidder no……..
EVALUATION CRITERIA

1. **Preliminary evaluation**

S//NO	PARTICULARS- **Mandatory documents**	YES	NO
1.	Form ELI 1.1&1.2 duly filled , signed and attached- Copy of certificate /reg under Company's act /business registration Act		
2.	Valid current trading license/single business permit		
3.	Copy of valid tax compliance certificate issued by KRA		
4.	Certificate of site visit attached – Form No. 8		
5.	Tender form duly completed, signed & stamped by the tenderer in the format provided		
6.	Form CON-2 duly filled , signed and stamped		
7.	Form FIN-3.1 duly filled signed and stamped and attachments provided		
8.	Form CON-2 duly filled ,signed, stamped and attachments provided.		
9.	Bill of quantities duly completed ,signed and stamped by the tenderer in the format provided		
10.	Properly bound, good presented document. The tender document paginated/serialized		
11.	Practicing and registration certificate from NCA – category 6 - 1		
	Tenders that are found responsive at the preliminary stage will be subject to technical and financial evaluation as per the criteria below COMMENTS PASS OR FAIL		

2. Technical evaluation

	Description	Scoring Breakdown	Max Points	Score
1.	Experience as a main contractor in works of similar nature and size completed over the last five years (attach completion certificate for the complete projects and award letters for the ongoing projects duly certified by the client) 4 projects and above successfully completed. 3 projects successfully completed 2 projects successfully completed 1 project successfully completed None or no relevant project	 20 15 10 5	 20	
2.	Names and address for clients who may be contacted for further information on the completed projects (Name, firm , postal address, email address, telephone number E.t.c) 4 clients and above 3 clients 2 clients 1 client None	 4 3 2 1 0	 10	
3.	Details of work underway or contractually committed (attach award letters or interim certificates or any other documentary proof) 4 projects and above ongoing well 3 projects ongoing well 2 projects ongoing well 1 project ongoing well None	 4 3 2 1 0	10	
4.	Major items of construction equipment proposed to carryout the contract (owned, leased or hired- provide proof) and an undertaking that they will be available for the contract i.e schedule of contractors equipment including but not limited to the listed items below: (attach logbooks or proof of ownership of five main equipments: for vehicles, purchase receipts for equipments or lease agreements. 1……. 2…….. 3……. 4……. 5…….	 2 2 2 2 2	10	
5.	Qualification and experience of key site management and technical personnel proposed for the contract and an undertaking that they shall be available for the contract. I e qualification and experience of key personnel (attach signed CVs) Project Manager to have atleast a degree in relevant field with seven years experience or a relevant diploma with 10 years experience in the proposed position or works of similar nature. *Academic qualifications* *Experience for the period indicated* *submission of detailed cv signed by both employee and bidding company* *while cv attached not signed by both employee and bidding company or both* *No cv attached*	 2 1 1 1	5	

		0		
6.	Audited financial reports will provide details to determine the liquidity and solvency status of the bidders. The applicable and acceptable ratios are as below and shall be obtained from FIN- forms attached i) Current ratio = current asset/current liabilities should meet the threshold of at least 1:1 ii) Solvency ratios= debt to asset ratio should meet the threshold of 1:1 iii) Turnover in the last financial year of at least 50 million iv) Cash assets: the tenderer should have at least 25% of the total tender value in cash assets in the last financial year balance sheet provided as part of the audited financial statements. v) Profitability margin= EBIT/Gross Revenue/sales- should meet the threshold of 1:1	4 4 4 4 4	20	
8.	Authority to seek references from the tenderers bankers with details of Name , address, telephone numbers and account numbers Provided and satisfactory None	2 0	2	
9.	Give a brief description of how you intend to carry out the work including, quality assurance of works , any designs to be carried out by the bidder, work plan/ program in not less than (5) pages and not more than fifteen (10) pages. The work plan shall be used during project implementation Provided and satisfactory None	3 0	3	
	Total		**80**	

- Bidders must score 56 points and above (70% of total) to be considered for further evaluation.
- The bidders who pass the technical criteria will be subjected to financial evaluation

3**) Financial Evaluation**

In addition to the financial assessment undertaken under technical evaluation, further financialevaluation will be done as below:

Stage 1

1) This will include the following:
   a) Confirmation of and considering of Bill of quantities completed and signed.
   b) Conducting a financial comparison for the firms that passed technical evaluation.
2) Tenders shall also be checked for errors, inconsistencies and **frontloading.**

The following tenders shall be automatically disqualified.

i) Tenders with an arithmetic error of more than 5% unless the tenderers demonstrate and confirm in writing that they will satisfactorily deliver.

ii) Tenders that are front loaded, unless the tenderer (if successful) agrees with the employer on interim certificates payment that will not disadvantage the employer and the enhancement of the performance security.

iii) The tenders that that have errors or inconsistencies in pricing that are significant enough to cause distortion in the successful contractor's cash flow or put the client in a contractually unfavorable or risky position.

Stage 2 and post qualification

- The lowest evaluated tender having passed stage 1 above shall be the winning bid subject to the employer's right to exercise due diligence relating to confirmation of information submitted by the bidder. Any bidder who shall be found to have supplied false or misleading information shall be disqualified and the next lowest tender that has passed stage 1 shall be considered.
- To be eligible for award, in addition to the requirements given, the tenderer if previously contracted by KNP to offer similar services or any other contract, must not have had any negative evaluation for poor performance and /or delayed delivery of contract. In addition, any contract terminated on grounds of integrity and/or fraud or corruption is ineligible to tender. These bidders shall be disqualified and the next lowest evaluated tender that has passed stage 1 shall be considered.

PARTII - WORKSREQUIREMENTS

SECTION V - BILLS OF QUANTITIES

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

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

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

3. The Bills of Quantities should be divided generally into the following sections:

   a) Preambles
   b) Preliminary items
   c) Work Items
   c) Day work Schedule;and
   d) Provisional items
   e) Summary.

4. NOTES TO PREPARING PREAMBLES

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

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

nit	Abbreviation	Unit	Abbreviation
cubic meter	m^3 *or* cu mt	millimetre	mm

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

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

Bills of Quantities, where applicable, and otherwise at such rates and prices as the Architect may fix within the terms of theContract.

4.5. The rates and prices tender in the priced Bills of Quantities shall, except in so far as it is otherwise provided under the Contract, include all Constructional Plant, labour, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.

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

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

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

4.9 Provisional Sums andc ontingency sums included and so designated in the Bills of Quantities shall be expended in whole or in part at the direction and discretion of the Architect in accordance with Sub-Clause13.5 and Clause13.6 of the General Conditions of contract.

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

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

5. NOTES ON PREPARING BILLS OF QUANTITIES

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

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

5.3 Quantities should be computed net from the Drawings, unless directed otherwise in the Contract, and no allowance should be made for bulking, shrinkage or waste. Quantities should be rounded up where appropriate.

5.4 Where the measured items are deemed not to be exact because of the likelihood that the scope can change during the execution of the works, such items could be subject to re-measurement, the word**"provisional"**should be used to identify such cases. Where wholes ections of the work items fall in this class, for example foundations, they should be labelled "Provisional Quantities" or "Provisional Items" so that the Tenderer/Contractor is advised up front that such items are subject to re-measuremen to done before such work is cover-up.

5.5 All items that have not been measured and therefore not subject to tenders pricing should be listed in the Bills of Quantities as **Provisional Sums** for particular item or class of Work, which may be subject to a nominated subcontract or separate measurements at a later date during the execution of the works. For example, if it is deemed not possible to measure electrical works before going to tender because detail designs are not ready, a provisional sum can be allowed in the Bills of Quantities for "Installation of Electrical Works" to be executed later when actual design details are completed. To the extent not covered above, there should be in the Bills of Quantities ageneral provision for physical and financial contingencies made as a "Provisional Sum for

Contingencies" and "Provisional Sum for Fluctuations". The inclusion of such provisional sums often facilitates budgetary approval by avoiding the need to request periodic supplementary approvals as the future need arises.

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

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

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

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

iii) A percentage to be entered by the tenderer against each basic Day work item.

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

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

BILLS OFQUANTITIES

(a) Preambles

1. The method of measurement of completed work for payment shall be in accordance with *prepared interim certificates by the project manager*.

2. The Site is situated in kitale national polytechnic. It is approximate three Kilometers from kitaleTown.AccesstothesiteshallbethroughKipsongo Road.

   Which is an existing public road. Any damage caused to the surfaces of this road shall be made good at the Contractor'sexpense.TheContractorshallvisitthesiteandacquaintitselfwithitsnatureandposition,thenature of the ground, substrata and other local conditions, positions of existing power, water and other services, access roads or any other limitations that might affect his cost or progress. No claim for extras shall be considered on accountoflackofknowledgeinthisrespect.

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

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

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

6. The Contractor shall carry out the various sections of the Works in such an order as the Architect May direct. The Procuring Entity reserves the right to occupy the Works by sections on completion provided that such occupation is considered to be both practical and reasonable and will not interfere with the Works. TheContractor shall allow any costs associated with such occupation.
7. The main Contractor will be fully responsible for paying his Sub-Contractor but the Procuring Entity reserves the right in very exceptional circumstances to make such payments direct in the interests of the project where the completion thereof might be jeopardized by any dispute or vicariousness between the Contractor and the Sub- Contractorinvolve.

8. The Contractor shall complete and deliver the Works in the period in serted in the Form of Tender as his time for completion of the Works from the date for Possession, to be agreed with the Engineer. The Contract Period is presumed to have been calculated making due allowance for seasonal inclement weather conditions. No claim for extension of time due to the normal inclement weather for this area shall be entertained.

9. The Contractor shall, upon receiving instructions to proceed with theWorks, draw up a Programme and Progress Chart setting out the orde in which the Works are to be carried out, with the appropriate dates thereof. This Chart shall be agreed with the Architect and nodeviationfromtheordersetoutinitwillbepermittedwithoutthe written consentoftheEngineer.TheContractorwillberesponsibleforarrangingtheaboveprogrammewithallhis sub-ContractorsandSpecialties.TheContractorshallallowinhisratesforcarryingoutthisexercise,andforupdating it asrequired.

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

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

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

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

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

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

16. TheContractoristoallowforcomplyingwithallinstructionsandregulationsofthe PoliceAuthorities.

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

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

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

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

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

22. TheContractorshallgivetheArchitectreasonablenoticeoftheintentiontosetoutortakelevelsforanypartofthe Workssothatarrangementsmaybemadeforcheckingthework.Theaccuracyofsettingoutandlevelingshallbe withinthetolerancesspecifiedintheSpecificationsorontheDrawings.Thecheckingofsettingoutorlevelingby theArchitectshallnotrelievetheContractorofhisdutiesorresponsibilitiesundertheContract.

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

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

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

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

27. Contractorshallprovide/buildlaborcampsatareastobeagreedwiththeEngineer.Laborcampsshallbecomplete withsanitaryaccommodationandfencinggates.

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

29. TheContractorshallprovideathisownriskandcostallwatchingandlightingasnecessarytosafeguardtheWorks, Plantandmaterialsagainstdamageandtheft.

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

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

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

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

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

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

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

37. The Contractors attention is drawn to the Finance Bill of the year 2000/2001 on withholding tax on contractual paymentsection35(7)(i)(ii)whichbecameeffectiveon1st July2000.A3%withholdingtaxwillbeapplicableto allinterimpaymentsexceedingKshs…….....…….forworkdoneinrespectofbuildingorcivilworks.The contractorshallallowforanycostsarisingresultingtherefrominthebuild-upofrates.

38. BlastingwillonlybeallowedwiththeexpresspermissionoftheArchitectinwriting.Allblastingoperationsshall becarriedoutattheContractor'ssoleriskandcost,inaccordancewithanyGovernmentregulationsinforceforthe timebeing,andanyspecialregulationslaiddownbytheArchitectgoverningtheuseandstorageofexplosives.

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

40. The Contractor attention is drawn to Finance Bill of 1993 where VAT was introduced in all contracts for constructionservices.ThetendererisalsodrawntoVATActCap476clause19(9).Thetenderermustallowfor VAT1.19asinstructedelsewhere.

41. ThecontractorshallallowandpayforallinsurancetocoverrisksandindemnitiesrequiredItems17and18ofthe ConditionsofcontractandalsospecifiedintheSpecialConditionsofContract.

BILL NO. 1 - PRELIMINARY ITEMS

ITEM No.	DESCRIPTION	AMOUNT
1.	The Contractor shall provide, or erect and maintain an approved lock-up office for the sole use of the Architect and his own site staff. The office, which will have a total floor area of not less than twenty square metres, will be divided into two separate interconnected offices. Services to be provided shall include a telephone, water sanitary and electrical supply and drainage.The offices shall be supplied with furniture and equipment that shall include: 4 No. desks with chairs; 1 No. large table with sufficient number of chairs; drawing table along the full length of one side with plan drawers and drawing stools: 4 No. waste paper baskets: sufficient number of pin boards: and any additional furniture and fittings as may reasonably be required during the Contract period. The Contractor shall provide the Architect and site staff with computer sets or laptops, printers and telephones all that are necessary for project use. The office furniture and equipment shall all be to the approval of the Engineer. The Contractor shall also provide all labor, equipment and consumable storesequipmentthroughoutthecurrencyofthecontract.	
2	[OPTIONAL] Contractor shall provide a house for Engineers site agent, which shall be one bedroomed temporary house with a sitting room, toilet, bathroom and a kitchen complete with electrical and sanitary installations and provide maintenance and paying of bills of water and electricity up to and including end of the contract period.	Not required
3	Provide a signboard notlessthan four square meters in size of a design type, and with lettering and coloring and in a position approved by the Engineer. The signboard shall be for the display of the Main Contractor's name and the names of all his Sub-Contractors, with the Procuring Entity's name painted thereon. All Consultants names be printed in letters not exceeding 50 mm high. No other signboard or advertising shall be allowed. The signboard shall be fully maintained during the Contract Period and shall be pulled down and removed at the end of thecontract.	
4	The contractor will be expected to erect a 2.5M normal corrugation irion sheets hoarding for the entire period of the contract. The hoarding to be on 100x50mm vertical studs and 75mmx 50mm horizontal runners	
5	The contractor must ensure security for all his equipments and materials at all times, this will also include making temporary stores for his works and those of any subcontractors on site.	
6	The contractor will be expected to facilitate all the project management activities such as site inspections by the engineers and the project manager including their allowances and refreshments during site meetings. This will also include any tests on any samples and taken from site e.g cube tests for structural concrete, airtime for the project monitoring staff e.g clerk of works.	
7	The contractor should take note that all the construction water and electricitywill be at his own cost. The contractor will also be expected to test all the services works and also train the clients personnel on the operations of any installations, provide as built drawings and manuals at his own cost.	
	TOTAL CARRIED TO GRAND SUMMARY	

BILL NO. 2: WORK ITEMS

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

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

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

Bill No. 3: Schedule of Daywork Rates - Labor

Itemno.	*Description*	*Unit*	*Nominal quantity*	*Rate*	*Amount*
	Subtotal				
	Allow ____ percent[a] of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 3 (b) above.				

a. To be entered by the Tenderer.

Bill No. 4: Schedule of Daywork Rates - Materials

Itemno.	*Description*	*Unit*	*Nominal quantity*	*Rate*	*Extended amount*
	Subtotal				
	Allow ____ percent a. of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 4 (b) above.				

a. To be entered by theTenderer.

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

Itemno.	*Description*	*Nominal quantity (hours)*	*Basic hourly rental rate*	*Extended amount*
	Allow ____ percent[a] of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 5 above.			
Total for Daywork: Contractor's Equipment (carried forward to Daywork Summary, p. _____)				

a. To be entered by theTenderer.

Bill No. 6: Daywork Summary

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

Bill No. 7: Provisional Sums

Billno.	*Itemno.*	*Description*	*Amount*
1			
2			
3			
4			
etc.			
Total for Specified Provisional Sums (carried forward to Grand Summary			

GRAND SUMMARY

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

(i) Ifapercentageused,itshouldbeindicatedonwhichBillNo.itemsbutonBillNo.4 – ProvisionalSums.

SECTION VI - SPECIFICATIONS

Notes for preparing Specifications

1. Specificationsmustbedraftedtopresentaclearandprecisestatementoftherequiredstandardsofmaterials,and workmanshipfortendererstorespondrealisticallyandcompetitivelytotherequirementsoftheProcuringEntity and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other suppliestobepermanentlyincorporatedintheWorksbenew,unused, of the mostrecentorcurrentmodels,and incorporatingallrecentimprovementsindesignandmaterialsunlessprovidedotherwiseintheContract.Where theContractorisresponsibleforthedesignofanypartofthepermanentWorks,theextentofhisobligationsmust bestated.

2. Specificationsfromprevioussimilarprojectsareusefulandmaynotbenecessarytore-writespecificationsfor everyWorksContract.

3. Thereareconsiderableadvantagesinstandardizing**GeneralSpecifications**forrepetitiveWorksinrecognized publicsectors,suchashighways,urbanhousing,irrigationandwatersupply.TheGeneralSpecificationsshould cover all classes of workmanship, materials and equipment commonly involved in constructions, althoughnot necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General SpecificationstotheparticularWorks.

4. CaremustbetakenindraftingSpecificationstoensuretheyarenotrestrictive.IntheSpecificationsofstandards formaterials,plantandworkmanship,existingKenyaStandardsshouldbeusedasmuchaspossible,otherwise recognizedinternationalstandardsmayalsobeused.

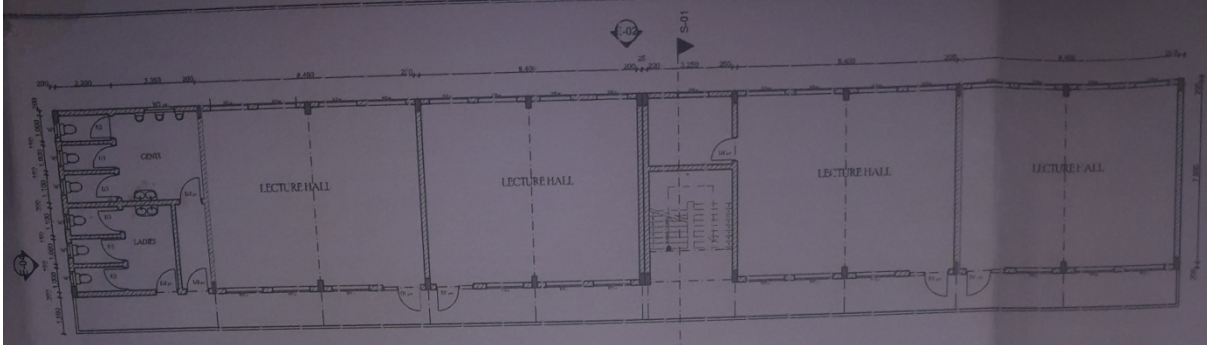
5. The Procuring Entity should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possibletothetechnicalsolutionsindicatedintenderdocumentsforcertainelementsoftheWorks,takinginto considerationthecomparativespecializedadvantageofpotentialtenderers.

6. TheProcuringEntityshouldprovideadescriptionoftheselectedpartsoftheWorkswithappropriatereferenceto Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.

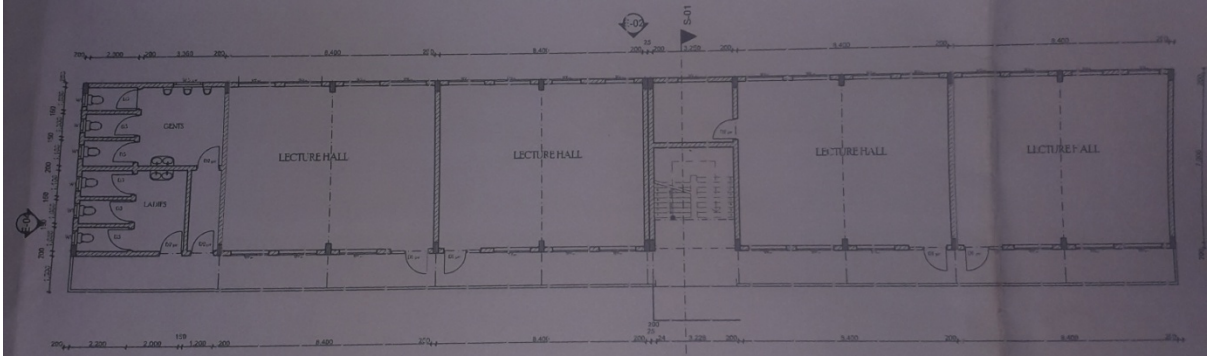
7. Such alternative solutions shall be accompanied by all information necessary for a complete evaluation bythe Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, proposedconstructionmethodology,andotherrelevantdetails.TechnicalalternativespermittedinthismannerShallbeconsideredbytheProcuringEntityeachonitsownmeritsandindependentlyofwhetherthetendererhas pricedtheitemasdescribedintheProcuringEntity'sdesignincludedwiththetenderdocuments.

SECTION VII - DRAWINGS

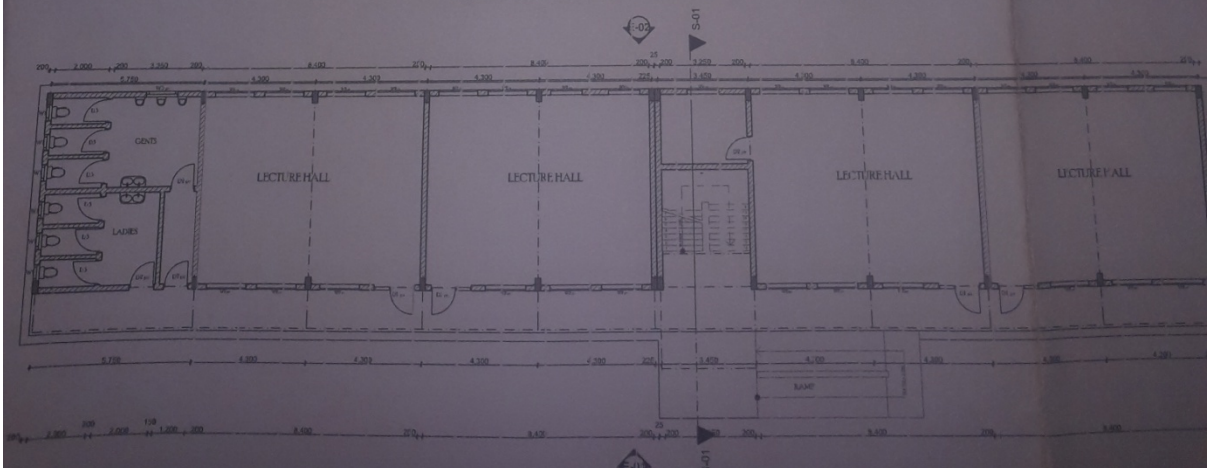
NoteA list of drawings should be inserted here. The actual drawings including Site plans should be annexed in a separate booklet.

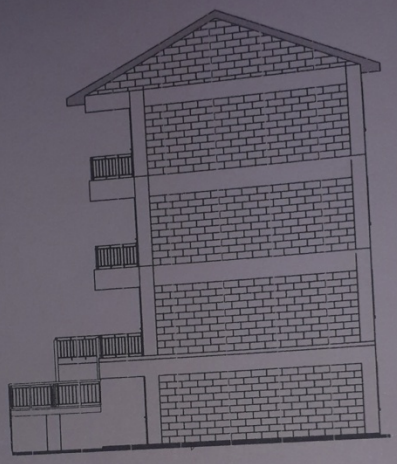


TYPICAL SECOND FLOOR PLAN LAYOUT 1:100

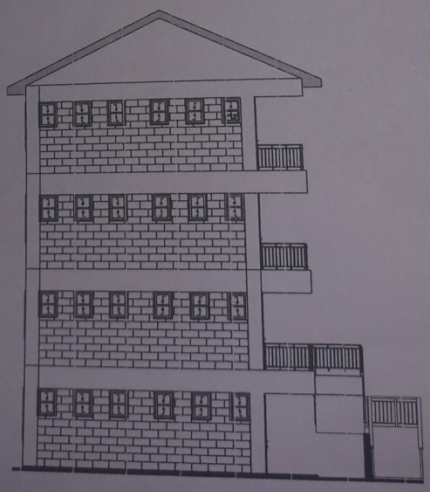


TYPICAL FIRST FLOOR PLAN LAYOUT 1:100





RIGHT ELEVATION 1:100

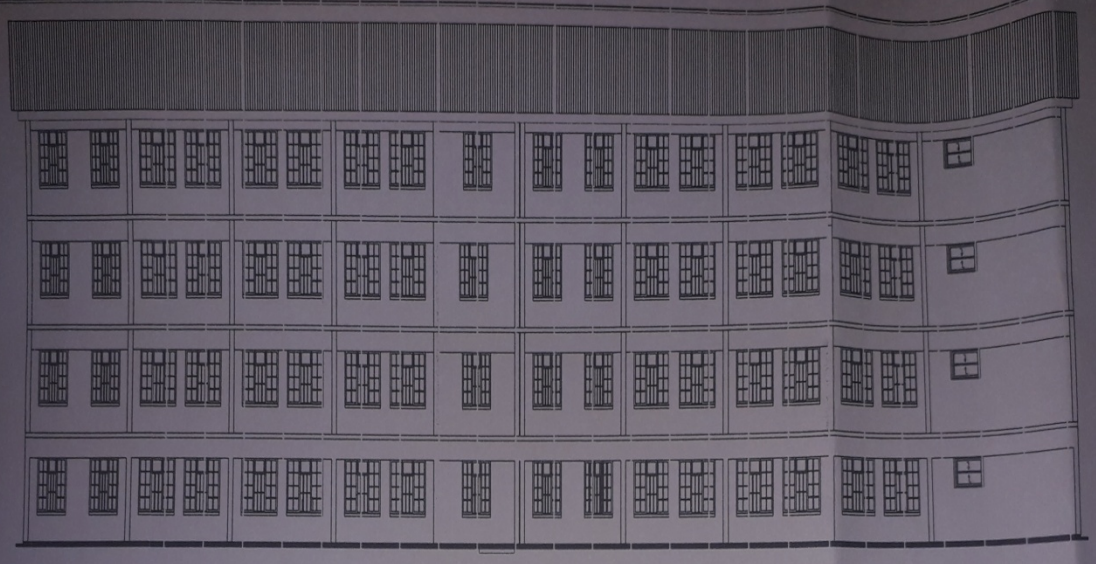


LEFT ELEVATION 1:100

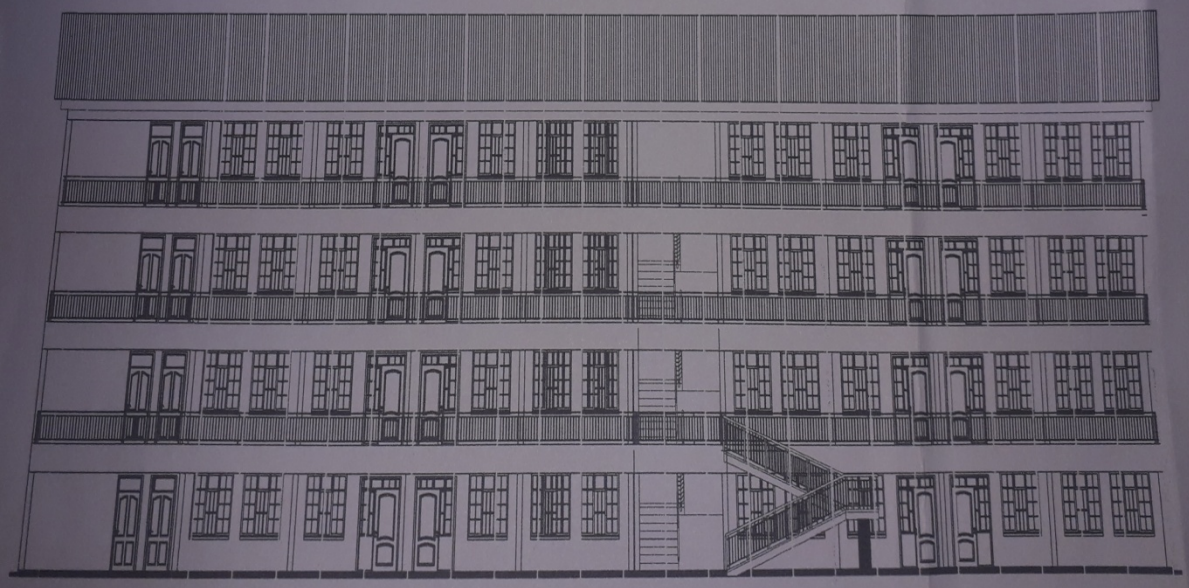
SITE NOTES

-All dimensions are in mm & to be used ONLY
-Use figured dimensions
-Foundation depth to be determined as according to
-Provide permanent vents above all openings except
-For all RC works refer to S.E details
-All walls less than 150 mm thick to be reinforced w
at every alternate course.
-All adjacent to wet areas and Masonry walls to be the
alternative course
-All cracks to be fair before plastering
-All plumbing and drainage to comply with Local

Project Title



REAR ELEVATION 1:100



FRONT ELEVATION 1:100

PART III - THE CONDITIONS OF CONTRACT AND CONTRACT

SECTION VIII - GENERAL CONDITIONS OF CONTRACT (GCC)

[Name of Procuring Entity]

[Name of Contract]

[ArchitectNameandAddress]

General Conditions of Contract

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1. GENERALPROVISIONS

1.1 Definitions

InthisContract,exceptwherecontextotherwiserequires,thefollowingtermsshallbeinterpretedasindicatedbelow. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

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

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

"BillofQuantities"meansthepricedandcompletedBillofQuantitiesformingpartofthetender.**"CompletionDa**

te"meansthedateofcompletionoftheWorksascertifiedbytheEngineer.

"ContractPrice"meansthepricedefinedinthecontractandthereafterasadjustedinaccordancewiththeprovisions of theContract.

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

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

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

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

"Contractor'sRepresentative"meansthepersonnamedbytheContractorintheContractorappointedfromtimeto timebytheContractorwhoactsonbehalfoftheContractor.

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

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

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

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

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

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

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

“DefectsNotificationPeriod”meanstheperiodfornotifyingdefectsintheWorksoraSection(asthecasemaybe) underSub-Clause11.1[CompletionofOutstandingWorkandRemedyingDefects],whichextendsoverthedaysstatedintheSpecialConditionsofContract.

“Drawings”meansthedrawingsoftheWorks,asincludedintheContract,andanyadditionalandmodifieddrawings issuedby(oronbehalfof)theProcuringEntityinaccordancewiththeContract.

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

“FinalStatement”meansthestatementdefinedinSub-Clause14.11[ApplicationforFinalPaymentCertificate].

“ForceMajeure”isdefinedinClause19[ForceMajeure].

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

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

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

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

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

“Local Currency” means the currency of Kenya.

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

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

“SpecialConditionsofContract”meansthepagescompletedbytheProcuringEntityentitledSpecialConditionsofContractwhichconstitutePartAoftheSpecialConditions.

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

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

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

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

“PermanentWorks”meansthepermanentworkstobeexecutedbytheContractorundertheContract.

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

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

ProcuringEntityfortheuseoftheContractorintheexecutionoftheWorks,asstatedintheSpecification;butdoesnot includePlantwhichhasnotbeentakenoverbytheProcuringEntity.

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

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

“Engineer”is the personnamedintheAppendixtoConditionsofContract(oranyothercompetentpersonappointed by the Procuring Entity and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under EngineersRegistrationActCap530.

“Engineer”meansthepersonappointedbytheProcuringEntitytoactastheArchitectforthepurposesoftheContract andnamedintheSpecialConditionsofContract,orotherpersonappointedfromtimetotimebytheProcuringEntity andnotifiedtotheContractor

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

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

“Schedules”meansthedocument(s)entitledschedules,completedbytheContractorandsubmittedwiththeFormofTender, asincludedintheContract.

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

“SiteInvestigationReports”arethosereportsthatmaybeincludedinthetenderingdocumentswhicharefactualandinterpre tativeaboutthesurfaceandsub-surfaceconditionsattheSite.

“Site”meanstheplaceswherethePermanentWorksaretobeexecuted,includingstorageandworkingareas,andto whichPlantandMaterialsaretobedelivered,andanyotherplacesasmaybespecifiedintheContractasformingpartof theSite.

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

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

“Statement”meansastatementsubmittedbytheContractoraspartofanapplication,underClause14[ContractPrice andPayment], for a paymentcertificate.

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

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

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

“Temporaryworks”meansworksdesigned,constructed,installed,andremovedbytheContractorwhichareneeded forconstructionorinstallationoftheWorks.

“Tender”meanstheFormofTenderandallotherdocumentswhichtheContractorsubmittedwiththeFormofTender, asincludedintheContract.

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

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

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

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

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

"Variation"meansanychangetotheWorks,whichisinstructedorapprovedasavariationunderClause13[Variations andAdjustments].

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

1.2 Interpretation

In the Contract, except where the context requires otherwise:

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

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

1.3 Communications

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

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

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

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

1.4 Law andLanguage

1.4.1 TheContractshallbegovernedbythelawsof**Kenya.**

1.4.2 TherulinglanguageoftheContractshallbe**English.**

1.5 PriorityofDocuments

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

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

Ifanambiguityordiscrepancyisfoundinthedocuments,theArchitectshallissueanynecessaryclarificationor instruction.

1.6 ContractAgreement

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

1.7 Assignment

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

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

1.8 CareandSupplyofDocuments

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

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

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

1.8.4 IfaPartybecomesawareofanerrororderfectinadocumentwhichwaspreparedforuseinexecutingtheWorks, thePartyshallpromptlygivenoticetotheotherPartyofsucherrororderfect.

1.9 TimelyprovisionofDrawingsorInstructions

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

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

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

b) paymentofanyotherassociatedcostsaccrued,whichshallbeincludedintheContractPrice.

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

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

1.10 ProcuringEntity'sUseofContractor'sDocuments

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

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

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

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

1.11 Contractor'sUseofProcuringEntity'sDocuments

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

1.12 ConfidentialDetails

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

1.12.2 TheContractor'sandtheProcuringEntity'sPersonnelshallalsotreatthedetailsoftheContractasprivateand confidential, except to the extent necessary to carry out their respective obligations under the Contract or to complywithapplicableLaws.EachofthemshallnotpublishordiscloseanyparticularsoftheWorksprepared by the other Party without the previous agreement of the other Party. However, the Contractor shall be permitted to disclose any publicly available information, or information otherwise required to establish his qualificationstocompeteforotherprojects.

1.13 Compliance withLaws

TheContractorshall,inperformingtheContract,complywithapplicableLaws.Unlessotherwisestatedinthe SpecialConditionsofContract:

a) TheProcuringEntityshallhaveobtained(orshallobtain)theplanning,zoning,buildingpermitorsimilar permissionforthePermanentWorks,andanyotherpermissionsdescribedintheSpecificationsashaving been(ortobe)obtainedbytheProcuringEntity; and the ProcuringEntityshallindemnifyandholdtheContractorharmlessagainstandfromtheconsequencesofanyfa iluretodoso;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 show evidence of its diligence.

1.14 Jointand 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,LicensesorApprovals

2.2.1 TheProcuringEntityshallprovide,attherequestoftheContractor,suchreasonableassistanceastoallowthe Contractortoobtainproperly:

a) CopiesoftheLawsofKenyawhicharerelevanttotheContractbutarenotreadilyavailable,and
b) anypermits,licensesorapprovalsrequiredbytheLawsofKenya:

i) whichtheContractorisrequiredtoobtainunderSub-Clause1.13[CompliancewithLaws],
ii) for the delivery of Goods, including clearance through customs, and
iii)for the exportofContractor'sEquipmentwhenitisremovedfromtheSite.

2.3 Procuring Entity'sPersonnel

TheProcuringEntityshallberesponsibleforensuringthattheProcuringEntity'sPersonnelandtheProcuring Entity'sothercontractorsontheSite:

a) co-operatewiththeContractor'seffortsunderSub-Clause4.6[Co-operation],and

b) takeactionssimilartothosewhichtheContractorisrequiredtotakeundersub-paragraphs(a),(b)and(c) ofSub-Clause4.8[SafetyProcedures]andunderSub-Clause4.18[ProtectionoftheEnvironment].

2.4 ProcuringEntity'sFinancialArrangements

The Procuring Entity shall make and maintain all necessary financial arrangements which will enable the ProcuringEntitytopaytheContractPricepunctually(asestimatedatthattime)inaccordancewithClause14 [ContractPriceandPayment].

3. THEENGINEER

3.1 ArchitectDutiesandAuthority

3.1.1 TheProcuringEntityshallappointtheArchitectwhoshallcarryoutthedutiesassignedtohimintheContract. 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 TheArchitectshallhavenoauthoritytoamendtheContract.

3.1.3 TheArchitectMayexercisetheauthorityattributabletotheArchitectasspecifiedinornecessarilytobeimplied from the Contract.IftheArchitectisrequiredtoobtaintheapprovaloftheProcuringEntitybeforeexercisinga specifiedauthority,therequirementsshallbeasstatedintheS**pecialConditionsofContract**.TheProcuring EntityshallpromptlyinformtheContractorofanychangetotheauthorityattributedtotheEngineer.

3.1.4 However, whenever the Architect exercises a specified authority for which the Procuring Entity's approvalisrequired,then(for the purposesoftheContract)thecontractorshallrequiretheArchitecttoprovideevidenceof suchapprovalbeforecomplyingwiththeinstruction.

3.1.5 ExceptasotherwisestatedintheseConditions:

a) WhenevercarryingoutdutiesorexercisingauthorityspecifiedinorimpliedbytheContract,theArchitect shallbedeemedtoactfortheProcuringEntity;
b) theArchitecthasnoauthoritytorelieveeitherPartyofanyduties,obligationsorresponsibilitiesunderthe Contract;
c) anyapproval,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, discrepanciesandnon-compliances;and
d) anyactbytheArchitectinresponsetoaContractor'srequestshallbenotifiedinwritingtotheContractor within14daysofreceipt.

3.1.6 Thefollowingprovisionsshallapply:

TheArchitectshallobtainthespecificapproval of the ProcuringEntitybeforetakingactionunderthe-following Sub-ClausesoftheseConditions:

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

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

i) InanemergencysituationasdeterminedbytheEngineer,or

ii) IfsuchaVariationwouldincreasetheAcceptedContractAmountbylessthanthepercentagespecified in the **SpecialConditionsofContract.**

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

d) Sub-Clause13.4:Specifyingtheamountpayableineachoftheapplicablethreecurrencies.

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

3.2 DelegationbytheEngineer

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

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

a) Anyfailuretodisapproveanywork,PlantorMaterialsshallnotconstituteapproval,andshallthereforenot prejudicetherightoftheArchitecttorejectthework,PlantorMaterials;

b) IftheContractorquestionsanydeterminationorinstructionofanassistant,theContractormayreferthe mattertotheEngineer,whoshallpromptlyconfirm,reverseorvarythedeterminationorinstruction.

3.3 InstructionsoftheEngineer

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

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

a) Givesanoralinstruction,

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

c) doesnotreplybyissuingawrittenrejectionand/orinstructionwithintwoworkingdaysafterreceivingthe confirmation,

ThentheconfirmationshallconstitutethewritteninstructionoftheArchitectordelegatedassistant(as the case maybe).

3.4 ReplacementoftheEngineer

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

3.5 Determinations

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

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

4 THECONTRACTOR

4.1 Contractor'sGeneralObligations

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

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

4.1.3 Allequipment,material,andservicestobeincorporatedinorrequiredfortheWorksshallhavetheiroriginin anyeligiblesourcecountry.

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

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

4.1.6 IftheContractspecifiesthattheContractorshalldesignanypartofthePermanentWorks,thenunlessotherwise statedintheSpecialConditions:

a) TheContractorshallsubmittotheArchitecttheContractor'sDocumentsforthispartinaccordancewith theproceduresspecifiedintheContract;

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

c) theContractorshallberesponsibleforthispartanditshall,whentheWorksarecompleted,befitforsuch purposesforwhichthepartisintendedasarespecifiedintheContract;and

d) priortothecommencementoftheTestsonCompletion,theContractorshallsubmittotheArchitectthe "as-built"documentsand,ifapplicable,operationandmaintenancemanualsinaccordancewiththe

Specificationandinsufficientdetailfortheprocuringentitytooperate,maintain,dismantle,reassemble, adjustandrepairthispartoftheWorks.Suchpartshallnotbeconsideredtobecompletedforthepurposes oftaking-overunderSub-Clause10.1 [TakingOveroftheWorksandSections]untilthesedocumentsandmanualshavebeensubmittedtotheEngineer.

4.2 PerformanceSecurity

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

4.2.2 TheContractorshalldeliverthePerformanceSecuritytotheProcuringEntitywithin30daysafterreceivingthe Notification of Award and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to the Special Conditions, as stipulated by the Procuring Entity in the Special Conditions of Contract, or in another form approved by the ProcuringEntity.

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

4.2.4 TheProcuringEntityshallnotmakeaclaimunderthePerformanceSecurity,exceptforamountstowhichthe ProcuringEntityisentitledundertheContract.

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

4.2.6 TheProcuringEntityshallreturnthePerformanceSecuritytotheContractorwithin14daysafterreceivinga copyoftheTaking-OverCertificate.

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

4.3 Contractor'sRepresentative

4.3.1 TheContractorshallappointtheContractor'sRepresentativeandshallgivehimallauthoritynecessarytoacton the Contractor's behalf under the Contract. The Contractor's Representative's Name and Address shall be providedinthe**SpecialConditionsofContract.**

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

4.3.3 TheContractorshallnot,withoutthepriorconsentoftheEngineer,revoketheappointmentoftheContractor's Representativeorappointareplacement.

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

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

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

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

4.4 Sub-contractors

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

4.4.2 TheContractorshallberesponsiblefortheactsordefaultsofanySubcontractor,hisagentsoremployees,asif theyweretheactsordefaultsoftheContractor.UnlessotherwisestatedintheSpecialConditions:

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

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

4.4.4 Wherepracticable,theContractorshallgivefairandreasonableopportunityforcontractorsfromKenyatobe appointedasSubcontractors.

4.5 AssignmentofBenefitofSubcontract

IfaSubcontractor'sobligationsextendbeyondtheexpirydateoftherelevantDefectsNotificationPeriodand theEngineer,priortothisdate,instructstheContractortoassignthebenefitofsuchobligationstotheProcuringEntity,t hentheContractorshalldoso.Unlessotherwisestatedintheassignment,theContractorshallhaveno liabilitytotheProcuringEntityfortheworkcarriedoutbytheSubcontractoraftertheassignmenttakeseffect.

4.6 Co-operation

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

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

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

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

4.7 SettingOutoftheWorks

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

4.7.2 TheProcuringEntityshallberesponsibleforanyerrorsinthesespecifiedornotifieditemsofreference,butthe Contractorshallusereasonableeffortstoverifytheiraccuracybeforetheyareused.

4.7.3 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an errorin these items of reference, and an experienced contractor could not reasonably have discovered such error and avoidedthisdelayand/orCost,theContractorshallgivenoticetotheArchitectandshallbeentitledsubjectto Sub-Clause20.1[Contractor'sClaims]to:

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

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

4.8 SafetyProcedures

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

4.9 QualityAssurance

4.9.1 TheContractorshallinstituteaqualityassurancesystemtodemonstratecompliancewiththerequirementsof theContract.Thesystemshallbeinaccordancewiththedetailsstatedinthecontract.TheArchitectshallbeentitledtoa uditanyaspectofthesystem.

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

CompliancewiththequalityassurancesystemshallnotrelievetheContractorofanyofhisduties,obligationsorrespon sibilitiesundertheContract.

4.10 SiteData

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

4.10.2 To theextentwhichwaspracticable(takingaccountofcostandtime),theContractorshallbedeemedtohave obtainedallnecessaryinformationastorisks,contingenciesandothercircumstanceswhichmayinfluenceor affectthetenderorWorks.Tothesameextent,theContractorshallbedeemedtohaveinspectedandexamined

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

4.11 SufficiencyoftheAcceptedContractAmount

4.11.1 TheContractorshallbedeemedto:

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

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

4.12 UnforeseeablePhysicalConditions

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

4.12.2 IftheContractorencountersadversephysicalconditionswhichheconsiderstohavebeenUnforeseeable,theContractorshallgivenoticetotheArchitectassoonaspracticable.

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

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

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

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

4.12.6 However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect may alsoreviewwhetherotherphysicalconditionsinsimilarpartsoftheWorks(ifany)weremorefavorablethan couldreasonablyhavebeenforeseenwhentheContractorsubmittedtheTender.Ifandtotheextentthatthese more favorable conditions were encountered, the Architect may proceed in accordance with Sub-Clause3.5

[Determinations]toagreeordeterminethereductionsinCostwhichwereduetotheseconditions,whichmay be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similarpartsoftheWorks,shallnotresultinanetreductionintheContractPrice.

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

4.13 RightsofWayandFacilities

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

4.14 Avoidanceof Interference

4.14.1 TheContractorshallnotinterfereunnecessarilyorimproperlywith:

a) Theconvenienceofthepublic,or

b) Theaccesstoanduseandoccupationofallroadsandfootpaths,irrespectiveofwhethertheyarepublicor in the possessionoftheProcuringEntityorofothers.

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

4.15 AccessRoute

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

4.15.2 ExceptasotherwisestatedintheseConditions:

a) TheContractorshall(asbetweentheParties)beresponsibleforanymaintenancewhichmayberequired forhisuseofaccessroutes;

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

c) theProcuringEntityshallnotberesponsibleforanyclaimswhichmayarisefromtheuseorotherwiseof anyaccessroute;

d) theProcuringEntitydoesnotguaranteethesuitabilityoravailabilityofparticularaccessroutes;and

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

4.16 Transport ofGoods

Unless otherwise stated in the Special Conditions:

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

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

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

4.17 Contractor'sEquipment

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

4.18 ProtectionoftheEnvironment

4.18.1 Thecontractorshallcomplywiththeapplicableenvironmentallaws,regulationsandpolicies.

4.18.2 TheContractorshalltakeallreasonablestepstoprotecttheenvironment(bothonandofftheSite)andtolimit damageandnuisancetopeopleandpropertyresultingfrompollution,noiseandotherresultsofhisoperations.

4.18.3 TheContractorshallensurethatemissions,surfacedischargesandeffluentfromtheContractor'sactivitiesshall notexceedthevaluesstatedintheSpecificationorprescribedbyapplicableLaws.

4.19 Electricity,WaterandGas

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

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

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

4.20 ProcuringEntity'sEquipmentandFree-IssueMaterials

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

a) TheProcuringEntityshallberesponsiblefortheProcuringEntity'sEquipment,exceptthat

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

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

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

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

4.21 ProgressReports

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

4.21.2 ReportingshallcontinueuntiltheContractorhascompletedallworkwhichisknowntobeoutstandingat thecompletiondatestatedintheTaking-OverCertificatefortheWorks.Eachreportshallinclude:

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

b) photographsshowingthestatusofmanufactureandofprogressontheSite;

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

   i) commencementofmanufacture,

   ii) Contractor'sinspections,

   iii) tests,and

   iv) shipmentandarrivalattheSite;

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

e) copiesofqualityassurancedocuments,testresultsandcertificatesofMaterials;

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

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

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

4.22 SecurityoftheSite

Unless otherwise stated in the Special Conditions:

a) TheContractorshallberesponsibleforkeepingunauthorizedpersonsofftheSite,and

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

4.23 Contractor'sOperationsonSite

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

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

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

4.24 Fossils

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

4.24.2 TheContractorshall,upondiscoveryofanysuchfinding,promptlygivenoticetotheEngineer,whoshallissue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Architect and shall be entitled subject to Sub-Clause20.1[Contractor'sClaims]to:

a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [ExtensionofTimeforCompletion],and
b) paymentofanysuchCost,whichshallbeincludedintheContractPrice.
After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

5. NOMINATEDSUBCONTRACTORS

5.1 Definitionof"nominatedSubcontractor"

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

a) WhoisnominatedbytheProcuringEntity,or
b) ContractorhasnominatedasaSubcontractorsubjecttoSub-Clause5.2[ObjectiontoNotification].

5.2 ObjectiontoNomination

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

a) there are reasons to believe that the Subcontractor does not have sufficient competence, resources or financialstrength;
b) the nominated Subcontractor does not accept to indemnify the Contractor against and from any negligenceormisuseofGoodsbythenominatedSubcontractor,hisagentsandemployees;or
c) the nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontractedwork(includingdesign,ifany),thenominatedSubcontractorshall:
   i) undertaketotheContractorsuchobligationsandliabilitiesaswillenabletheContractortodischarge hisobligationsandliabilitiesundertheContract;
   ii) indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to performtheseobligationsortofulfiltheseliabilities,and
   iii) bepaidonlyifandwhentheContractorhasreceivedfromtheProcuringEntitypaymentsforsums dueundertheSubcontractreferredtounderSub-Clause5.3[PaymenttonominatedSubcontractors].

5.3 PaymentstonominatedSubcontractors

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

5.4 Evidence ofPayments

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

(a) Submitsthisreasonableevidencetotheengineer,or
(b) i) SatisfiestheArchitectinwritingthattheContractorisreasonablyentitledtowithholdorrefuseto paytheseamounts,and
ii) SubmitstotheArchitectreasonableevidencethatthenominatedSubcontractorhasbeennotifiedof theContractor'sentitlement,thentheProcuringEntity may (athissolediscretion)pay,directtothe nominated Subcontractor, part or all of such amounts previously certified (less applicable deductions) as are due to the nominated Subcontractor and for which the Contractor has failed to submittheevidencedescribedinsub-paragraphs(a)or(b)above.TheContractorshallthenrepay, to the Procuring Entity, the amount which the nominated Subcontractor was directly paid by the ProcuringEntity.

6. STAFFANDLABOR

6.1 EngagementofStaffandLabor

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

6.2 RatesofWagesandConditionsofLabor

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

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

6.3 PersonsintheServiceofProcuringEntity

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

6.4 LaborLaws

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

6.5 WorkingHours

NoworkshallbecarriedoutontheSiteonlocallyrecognizeddaysofrest,oroutsidethenormalworkinghours statedinthe**SpecialConditionsofContract**,unless:
a) OtherwisestatedintheContract,
b) TheArchitectgivesconsent,or
c) Theworkisunavoidable,ornecessaryfortheprotectionoflifeorpropertyorforthesafetyoftheWorks,in which case the Contractor shall immediately advise the Engineer, provided that work done outside the normalworkinghoursshallbeconsideredandpaidforasovertime.

6.6 FacilitiesforStaffandLabor

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

6.7 Health andSafety

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

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

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

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

6.8 Contractor'sSuperintendence

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

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

6.9 Contractor'sPersonnel

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

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

6.9.2 Ifappropriate,theContractorshallthenappoint(orcausetobeappointed)asuitablereplacementperson.

6.10 RecordsofContractor'sPersonnelandEquipment

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month,inaformapprovedbytheEngineer,untiltheContractorhascompletedallworkwhichisknowntobe outstandingatthecompletiondatestatedintheTaking-OverCertificatefortheWorks.

6.11 DisorderlyConduct

TheContractorshallatalltimestakeallreasonableprecautionstopreventanyunlawful,riotousordisorderly conductbyoramongsttheContractor'sPersonnel,andtopreservepeaceandprotectionofpersonsandproperty onandneartheSite.

6.12 ForeignPersonnel

6.12.1 TheContractorshallnotemployforeignpersonnelunlessthecontractordemonstratesthattherearenoKenyans with the requiredskills.

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

6.13 SupplyofWater

TheContractorshall,havingregardtolocalconditions,provideontheSiteanadequatesupplyofdrinkingand otherwaterfortheuseoftheContractor'sPersonnel.

6.14 MeasuresagainstInsectandPestNuisance

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

6.15 AlcoholicLiquororDrugs

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

6.16 ProhibitionofForcedorCompulsoryLabour

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

6.17 ProhibitionofHarmfulChildLabor

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

6.18 EmploymentRecordsofWorkers

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

6.19 Workers'Organizations

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

6.20 Non-DiscriminationandEqualOpportunity

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

7. PLANT,MATERIALSANDWORKMANSHIP

7.1 MannerofExecution

TheContractorshallcarryoutthemanufacture/assembleofplant,theproductionandmanufactureofMaterials, andall other execution oftheWorks:

a) In the manner(ifany)specifiedintheContract,

b) Inaproperworkmanlikeandcarefulmanner,inaccordancewithrecognizedgoodpractice,and

c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

TheContractorshallsubmitthefollowingsamplesofMaterials,andrelevantinformation, to the ArchitectforconsentpriortousingtheMaterialsinorfortheWorks:

a) manufacturer'sstandardsamplesofMaterialsandsamplesspecifiedintheContract,allattheContractor's cost,and

b) additionalsamplesinstructedbytheArchitectasaVariation.

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

7.3 Inspection

7.3.1 TheProcuringEntity'sPersonnelshallatallreasonabletimes:

a) HavefullaccesstoallpartsoftheSiteandtoallplacesfromwhichnaturalMaterialsarebeingobtained, and

b) During production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of PlantandproductionandmanufactureofMaterials.

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

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

7.4 Testing

7.4.1 ThisSub-ClauseshallapplytoalltestsspecifiedintheContract.

7.4.2 ExceptasotherwisespecifiedintheContract,theContractorshallprovideallapparatus,assistance,documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials, and suitably qualifiedandexperiencedstaff,asarenecessarytocarryoutthespecifiedtestsefficiently.TheContractorshall agree, with the Engineer,thetimeandplaceforthespecifiedtestingofanyPlant,MaterialsandotherpartsoftheWorks.

7.4.3 TheArchitectmay,underClause13[VariationsandAdjustments],varythelocationordetailsofspecifiedtests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant,MaterialsorworkmanshipisnotinaccordancewiththeContract,thecostofcarryingoutthisVariationshallbeb ornebytheContractor,notwithstandingotherprovisionsoftheContract.

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

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

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

b) paymentofanysuchCost-plusprofit,whichshallbeincludedintheContractPrice.

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

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

7.5 Rejection

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

7.5.2 IftheArchitectrequiresthisPlant,Materialsorworkmanshiptoberetested,thetestsshallberepeatedunderthe sametermsandconditions.IftherejectionandretestingcausetheProcuringEntitytoincuradditionalcosts,the ContractorshallsubjecttoSub-Clause2.5[ProcuringEntity'sClaims]paythesecoststotheProcuringEntity.

7.6 RemedialWork

7.6.1 Notwithstandinganyprevioustestorcertification,theArchitectmayinstructtheContractorto:

a) RemovefromtheSiteandreplaceanyPlantorMaterialswhichisnotinaccordancewiththeContract,

b) Removeandre-executeanyotherworkwhichisnotinaccordancewiththeContract,and

c) ExecuteanyworkwhichisurgentlyrequiredforthesafetyoftheWorks,whetherbecauseofan accident, unforeseeableeventorotherwise.

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

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

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

7.7 OwnershipofPlantandMaterials

ExceptasotherwiseprovidedintheContract,eachitemofPlantandMaterialsshallbecometheropertyofthe ProcuringEntityatwhicheveristheearlierofthefollowingtimes,freefromliensandotherencumbrances:

a) WhenitisincorporatedintheWorks;

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

7.8 Royalties

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

a) NaturalmaterialsobtainedfromoutsidetheSite,and

b) Thedisposalofmaterialfromdemolitionsandexcavationsandofothersurplusmaterial(whethernatural orman-made),exceptttotheextentthatdisposalareaswithintheSitearespecifiedintheContract.

8 COMMENCEMENT,DELAYSANDSUSPENSION

8.1 CommencementofWorks

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

a) SignatureoftheContractAgreementbybothParties,andifrequired,approvaloftheContractbyrelevant authoritiesofKenya;

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

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

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

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

8.2 TimeforCompletion

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

a) AchievingthepassingoftheTestsonCompletion,and

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

8.3 Programme

8.3.1 TheContractorshallsubmitadetailedtimeprogrammetotheArchitectwithin14daysafterreceivingthenotice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Eachprogrammeshallinclude:

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

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

c) thesequenceandtimingofinspectionsandtestsspecifiedintheContract,and

d) asupportingreportwhichincludes:

   i) ageneraldescriptionofthemethodswhichtheContractorintendstoadopt,andofthemajorstages, in the executionoftheWorks,and

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

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

8.3.3 TheContractorshallpromptlygivenoticetotheArchitectofspecificprobablefutureeventsorcircumstances whichmayadverselyaffectthework,increasetheContractPriceordelaytheexecutionoftheWorks.

8.3.4 If,atanytime,theArchitectgivesnoticetotheContractorthataprogrammefails(totheextentstated)tocomply with the Contractortobeconsistentwithactualprogressandtheconstractor'sstatedintentions,theContractor shallsubmitarevisedprogrammetotheArchitectinaccordancewiththisSub-Clause.

8.4 ExtensionofTimeforCompletion

8.4.1 TheContractorshallbeentitledsubjecttoSub-Clause20.1[Contractor'sClaims]toanextensionoftheTimefor Completionifandtotheextentthatcompletionforthepurposesof Sub-Clause10.1[TakingOveroftheWorksandSections] isorwillbedelayedbyanyofthefollowingcauses:

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) acauseofdelaygivinganentitlementtoextensionoftimeunderaSub-ClauseoftheseConditions,

c) exceptionallyadverseclimaticconditions,

d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic orgovernmentalactions,or

e) Anydelay, impediment or prevention caused by or attributable to the Procuring Entity, the Procuring Entity'sPersonnel,ortheProcuringEntity'sothercontractors.

8.4.2 IftheContractorconsidersitselftobeentitledtoanextensionoftheTimeforCompletion,theContractorshall givenoticetotheArchitectinaccordancewithSub-Clause20.1[Contractor'sClaims].Whendeterminingeach extensionoftimeunderSub-Clause20.1,theArchitectshallreviewpreviousdeterminationsandmayincrease, butshallnotdecrease,thetotalextensionoftime.

8.5 DelaysCausedbyAuthorities

If the following conditions apply, namely:

a) TheContractorhasdiligentlyfollowedtheprocedureslaiddownbytherelevantlegallyconstitutedpublic authoritiesinKenya,

b) Theseauthoritiesdelayordisruptthe Contractor'swork,and

c) ThedelayordisruptionwasUnforeseeable,thenthisdelayordisruptionwillbeconsideredasacauseof delayundersub-paragraph(b)ofSub-Clause8.4[ExtensionofTimeforCompletion].

8.6 Rate ofProgress

8.6.1 If,atanytime:

a) ActualprogressistooslowtocompletewithintheTimeforCompletion,and/or

b) Progresshasfallen(orwillfall)behindthecurrent program eunderSub-Clause8.3[Programme],other thanasaresultofacauselistedinSub-Clause8.4[ExtensionofTimeforCompletion],thentheArchitect 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 expediteprogressandcompletewithintheTimeforCompletion.

8.6.2 Unless the Architect notifies otherwise, the Contractor shall adopt these revised methods, which mayrequire increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Procuring Entity to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Procuring Entity's Claims] pay these costs to the ProcuringEntity,inadditiontodelaydamages(ifany)underSub-Clause8.7below.

8.6.3 Additional costs of revised methods including acceleration measures, instructed by the Architect to reduce delaysresultingfromcauseslistedunderSub-Clause8.4[ExtensionofTimeforCompletion]shallbepaidby theProcuringEntity, without generating,however,anyotheradditionalpaymentbenefittotheContractor.

8.7 DelayDamages

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 paidforeverydaywhichshallelapsebetweentherelevantTimeforCompletionandthedatestatedinthe

Taking-OverCertificate.However,thetotalamountdueunderthisSub-Clauseshallnotexceedthemaximum amountofdelaydamages(ifany)statedintheSpecialConditionsofContract.

8.7.2 Thesedelaydamagesshallbetheonlydamagesduefromthe Contractorforsuchdefault,otherthanintheevent 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 anyother duties,obligationsorresponsibilitieswhichhemayhaveundertheContract.

8.8 SuspensionofWork

8.8.1 TheArchitectmayatanytimeinstructtheContractortosuspendprogressofpartoralloftheWorks.During suchsuspension,theContractorshallprotect,storeandsecuresuchpartortheWorksagainstanydeterioration, loss ordamage.

8.8.2 TheArchitectmayalsonotifythecauseforthesuspension.Ifandtotheextentthatthecauseisnotifiedandisthe responsibilityoftheContractor,thefollowingSub-Clauses8.9,8.10and8.11shallnotapply.

8.9 Consequences ofSuspension

8.9.1 If the Contractor suffers delay and/or incurs Cost from complying with the Architect instructions underSub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Architectandshallbeentitledsubjecttto Sub-Clause20.1[Contractor'sClaims]to:

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

b) PaymentofanysuchCost,whichshallbeincludedintheContractPrice.

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

8.9.3 TheContractorshallnotbeentitledtoanextensionoftimefor,ortopaymentoftheCostincurredin,making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failuretoprotect,storeorsecureinaccordancewithSub-Clause8.8[SuspensionofWork].

8.10 PaymentforPlantandMaterialsinEventofSuspension

TheContractorshallbeentitledtopaymentofthevalue(asatthedateofsuspension)ofPlantand/orMaterials whichhavenotbeendeliveredtoSite,if:

a) TheworkonPlantordeliveryofPlantand/orMaterialshasbeensuspendedformorethan30days,and

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

8.11 ProlongedSuspension

If the suspension under Sub-Clause 8.8 Suspension of Workhas continued for more than 84 days, the Contractor may request the Architect permission to proceed. If the Architect does not give permissionwithin 30daysafterbeingrequestedtodoso,theContractormay,bygivingnoticetotheEngineer,treatthesuspension asanomissionunderClause13[VariationsandAdjustments] of the affectedpartoftheWorks.Ifthesuspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [TerminationbyContractor].

8.12 ResumptionofWork

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

9. TESTS ONCOMPLETION

9.1 Contractor's Obligations

9.1.1 The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause4.1[Contractor's General Obligations].

9.1.2 The Contractor shall give to the Architect not less than 21days' 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 within14 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-Clause10.3[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 21days, the Procuring Entity's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3 Retesting of related works

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause7.5 [Rejection] shall apply, and the Architect or the Contractor may require the failed Tests, and Tests on Completion on any related work, to 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-Clause9.3 [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-Clause11.4 [FailuretoRemedyDefects].

10. PROCURING ENTITY'S TAKING OVER

10.1 Taking Over of the Works and Sections

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

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 Contract or 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 30days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2 Taking Over of Parts of the Works

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

10.2.2 The Procuring Entity shall not use any part of the Works (other than as a temporary measure 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.

10.2.3 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.

10.2.4 If the Contractor incurs Cost as a result of the Procuring Entity taking over and/or using a part of the Works, otherthansuchuseasisspecifiedintheContractoragreedbytheContractor,theContractorshall(i)givenotice to the Architect and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such accrued costs, which shall be included in the Contract Price. After receiving this notice, the Architect shall proceedinaccordancewithSub-Clause3.5[Determinations]toagreeordeterminethisaccruedcost.

10.2.5 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 partsocertified 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-Clause3.5[Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7[Delay Damages] and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

10.3.1 If the Contractor is prevented, for more than14 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.

10.3.2 The Architect shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects 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.

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

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

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

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

10.4 Surfaces Requiring Reinstatement

Except as otherwise stated in a Taking-Over Certificate, a certificate for a Section or part of the Works shall not be deemed to certify completion of any ground or other surfaces requiring reinstatement.

11. DEFECTS LIABILITY

11.1 Completion of Outstanding Work and Remedying Defects

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 Contract or 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-Clause13.3[Variation Procedure]shallapply.

11.3 Extension of Defects Notification Period

11.3.1 The Procuring Entity shall be entitled subject to Sub-Clause2.5[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] orSub-Clause16.1[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 Contract or under Sub-Clause11.2[Cost of Remedying Defects], the Procuring Entity may (at his option):

(a) Carryout 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) RequiretheArchitecttoagreeordeterminereasonablereductionintheContractPriceinaccordancewithSub-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 defect or damage cannot be remedied expeditiously on the Site and the Procuring Entity gives consent, the Contract or 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 defect or damage may affect the performance of the Works, the Architect may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within14 days after the defect or damage is remedied.

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

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

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

11.9.2 The Architect shall issue the Completion Certificate within 30days 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.

11.9.3 OnlytheCompletionCertificateshallbedeemedtoconstituteacceptanceoftheWorks.

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 30days 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.

11.11.3 Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Procuring Entity's costs, the Contractor shall pay the outstanding balance to the Procuring Entity.

12. MEASUREMENT AND EVALUATION

12.1 Works to be Measured

12.1.1 The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractors hall 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 Contract or does not attend, the records shall be accepted as accurate.

12.1.5 If the Contract or 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 within14 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.

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

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

12.3.4 However, for a new item of work, anew rate or price shall be appropriate for such item of work if:

a) The work is instructed under Clause13[Variations and Adjustments],

b) No rate or price is specified in the Contract for this item, and

c) No specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

12.3.5 Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no 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.

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

12.3.7 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 plusorminus percentage. The percentage already worked out during tender evaluation is worked out as follows:*(corrected tender price–tender price)/tender priceX100*.

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,eitherbyaninstructionorbyarequestfortheContractortosubmitaproposal.NoVariationinstructed bytheArchitectunderthisClauseshallinanywayviriateorinvalidatetheContract.

13.1.2 The Contractor shall execute and be bound by each Variation, unless the Contract or promptly gives notice to the Architect stating(with supporting particulars) that(i) the Contract or 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.

13.1.3 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.

13.1.4 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-Clause13.1.4 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-Clause8.3 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-Clause13.2.2 shall apply.

13.2.2 DisagreementonAdjustmentoftheContractPrice

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 Contract or by the disruption of the progress of the Works as detailed in the Programme, and

d) Then et 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.

13.2.3 Contractor to Proceed

On receipt of a Variation Order, the Contractor shall forth with proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause31.3.

13.3 Value Engineering

13.3.1 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
(iv) otherwise be of benefit to the Procuring Entity.

13.3.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed inSub-Clause13.3 [Variation Procedure].

13.2.3 If a proposal, which is approved by the Engineer, includes a change in the design of part of the Permanent Works, then unless otherwise agreed by both Parties:

a) The Contractor shall design this part,

b) sub-paragraphs (a)to(d)ofSub-Clause4.1[Contractor's General Obligations]shallapply, and
c) if this change results in a reduction in the contract value of this part, the Architect shall proceed in accordance with Sub-Clause3.5[Determinations]to agree or determine a fee, which shall be included in the Contract Price. This fee shall behalf(50%) of the difference between the following amounts:
   i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.8 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and
   ii) the reduction(if any) in the value to the Procuring Entity of the varied works, taking account of any improvement in quality, anticipated life or operational efficiencies.

13.3.4 However, if the amount established in item 13.2.3 (c) (i) is less than amount established in item 13.2.3 (c (ii), there shall not be a fee. However, if the if the amount established in item 13.2.3 (c) (i) is more than amount established in item 13.2.3 (c (ii), it shall result in a price variation to the Procuring Entity.

13.4 Variation Procedure for Value Engineering proposal

13.4.1 If the Architect requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply(if this is the case)or by submitting:
a) A descriptionoftheproposedworktobeperformedandaprogrammeforitsexecution,
b) The Contractor's proposal for any necessary modifications to the programme according to Sub-Clause8.3 [Programme]and to the Time for Completion, and
c) The Contractor's proposal for evaluation of the Variation.

13.4.2 The Architect shall, as soon as practicable after receiving such proposal (underSub-Clause13.2[Value Project Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

13.4.3 Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Architect to the Contractor, who shall acknowledge receipt.

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

13.5 Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.6 Provisional Sums

13.6.1 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-Clause13.3[Variation Procedure];and/or

b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause5[Nominated Sub contractors])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.

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

13.7 Day works

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 in duplicate which shall include the following details of the resources used in executing the previous day's work:

a) The names, occupations and time of Contractor's Personnel,
b) The identification, type and time of Contractor's Equipment and Temporary Works, and
c) The quantities and types of Plant and Materials used.

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-Clause14.3[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 Contract or 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 been titled subject toSub-Clause20.1[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-Clause3.5[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-Clause13.8[Adjustments for Changes in Cost].

13.9 Adjustments for Changes in Cost

13.9.1 In this Sub-Clause, “table of adjustment data” means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

13.9.2 If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labor, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

13.9.3 The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is 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 Im/Io

where:

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

A and **B** a recoefficients**specified in the SCC,** representing then on adjustable and adjustable portions, respectively, of the Contract Price payable and

I mis the index prevailing at the end of the month being invoiced and **Io**c is the index prevailing 30 days before Bid opening for inputs payable.

NOTE: The sum of the two coefficients A and B should be 1 (one) in the formula for each currency. Normally, both coefficients shall be the same in the formulae for all currencies, since coefficient A, for the non adjustable portion of the payments, is a very approximate figure (usually 0.15) to take account of fixed cost elements or other nonadjustable components. The sum of the adjustments for each currency are added to the Contract Price.

13.9.4 The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indicesat 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.

13.9.5 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.

13.9.6 Until such time as each current cost index is available, the Architect shall determine aprovisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

13.9.7 If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favorable to the Procuring Entity.

13.9.8 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14. CONTRACT PRICE AND PAYMENT

14.1 The Contract Price

14.1.1 Unless otherwise stated in the Special Conditions:

a) The value of the payment certificate shall be agreed or determined under Sub-Clause12.3[Evaluation]and be subject to adjustments in accordance with the Contract;

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-Clause13.7 [Adjustments for Changes in Legislation];

c) Any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:

i) Of the Works which the Contractor is required to execute, or

ii) for the purposes of Clause12[Measurement and Evaluation]; and

d) the Contractor shall submit to the Engineer, within 30 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Architect may take account of the breakdown 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 therefore, 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 installments (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-Clause4.2[Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by are put able 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 Unlessstatedotherwisein**theSpecialConditionsofContract**,theadvancepaymentshallberepaidthrough percentagedeductionsfromtheinterimpaymentsdeterminedbytheArchitectinaccordancewithSub-Clause14.6 [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 30percent(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 Clause19 [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 a mounts to which the Contractor considers itself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause4.21[ProgressReports].

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-Clause14.2[Advance Payment];

e) Any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause14.5[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 Clause20[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-Clause14.3[Application for Interim Payment Certificates];

b) Sub-Clause14.5[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-Clause14.3[Application for Interim Payment Certificates].

14.5.2 If the lists referred to in sub-paragraphs (b)(i)or(c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.

14.5.3 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-Clause14.2[Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration; or

c) The relevant Plant and Materials:

i) Are those listed in the Schedules for payment when delivered to the Site, and

ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration and appear to be in accordance with the Contract.

14.5.4 The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Architect determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documentsmentionedinthisSub-ClauseandofthecontractvalueofthePlantandMaterials.

14.5.5 The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application 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

14.6.1 No amount will be certified or paid until the Procuring Entity has received and approved the Performance Security. Thereafter, the Architect shall, within 30 days after receiving a Statement and supporting documents, deliver to the Procuring Entity and to the Contractor an Interim Payment Certificate which shall state the amount which the Architect fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Architect on the Statement if any.

14.6.2 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.

14.6.3 An Interim Payment Certificate shall not be withheld for any other reason, although:

a) If anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

b) If the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

4.6.4 The Architect may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Architect acceptance, approval, consent or satisfaction.

14.7 Payment

14.7.1 The Procuring Entity shall pay to the Contractor:

a) The advance payment shall be paid within 60 days after signing of the contract by both parties or within 60 days after receiving the documents in accordance with Sub-Clause4.2[Performance Security]andSub- Clause14.2[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-Clause16.2[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-Clause14.7 [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 inter bank offered rate, and shall be paid in such currency.

14.8.3 The Contractor shall been titled 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 WhentheTaking-OverCertificatehasbeenissuedfortheWorks,thefirsthalfoftheRetentionMoneyshallbe certifiedbytheArchitectforpaymenttotheContractor.IfaTaking-OverCertificateisissuedforaSectionor part of theWorks,aproportionoftheRetentionMoneyshallbecertifiedandpaid.Thisproportionshallbehalf (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimatedfinalContractPrice.

14.9.2 Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the 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 behalf (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

14.9.3 However, if any work remains to be executed under Clause11[Defects Liability], the Architect 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-Clause13.8[Adjustments for ChangesinCost].

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- Clause14.3[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-Clause14.6[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 Contractor 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 30days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final PaymentCertificate] and Sub-Clause14.12[Discharge],the Architect shall deliver, to the Procuring Entity and to the Contractor, the Final Payment Certificate which shall state:

a) The amount which he fairly determines is finally due, and
b) After giving credit to the Procuring Entity for all amounts previously paid by the Procuring Entity and 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-Clause14.12[Discharge], the Architect shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 30 days, 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 inconnection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly forit:

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-Clause14.10[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)ofSub-Clause14.3[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 Contract or 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.

15.2 Termination by Procuring Entity

15.2.1 The Procuring Entity shall be entitled to terminate the Contract if the Contractor breaches the contract based on following circumstances which shall include but not limited to:

a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],
b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,

c) without reasonable excuse fails:
   i) to proceed with theWorksin accordance with Clause8[Commencement, Delays and Suspension], or
   ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work],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 inducement or reward:

i) for doing or for bearing to do any action in relation to the Contract, or

ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract, or

iii) if any of the Contractor's Personnel, agents or Sub contractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph(f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, 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.

15.2.2 In any of these events or circumstances, the Procuring Entity may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph(e)or(f)or(g)or(h),theProcuringEntitymaybynoticeterminatetheContractimmediately.

15.2.3 TheProcuringEntity'selectiontoterminatetheContractshallnotprejudiceanyotherrightsoftheProcuringEntity, under the Contractor otherwise.

15.2.4 The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any sub contract, and(ii) for the protection of life or property or for the safety of the Works.

15.2.5 After termination, the Procuring Entity may complete the Works and/or arrange for any other entities to do so. The Procuring Entity and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

15.2.6 The Procuring Entity shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange the irremoval, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Procuring Entity, these items may be sold by the Procuring Entity in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause15.2[Termination by Procuring Entity] has taken effect, the Architect shall proceed in accordance with Sub-Clause3.5[Determinations]to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by Procuring Entity] has 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.

15.5 ProcuringEntity'sEntitlementtoTerminationforConvenience

The Procuring Entity shall be entitled to terminate the Contract, at any time at the Procuring Entity's convenience,bygivingnoticeofsuchterminationtotheContractor.Theterminationshalltakeeffect30days after the later of the dates on which the Contractor receives this notice or the Procuring Entity returns the PerformanceSecurity.TheProcuringEntityshallnotterminatetheContractunderthisSub-Clauseinorderto execute the Works itself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor]. After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

15.6 Fraud andCorruption

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and its prevailing sanctions.

15.7 Corruptgiftsandpaymentsofcommission

15.7.1 TheContractorshallnot;

a) Offerorgiveoragreetogivetoanypersonintheserviceoftheprocuringentityanygiftorconsideration ofanykindasaninducementorrewardfordoingorforbearingtodoorforhavingdoneorforbornetodo anyactinrelationtotheobtainingorexecutionofthisoranyotherContractfortheProcuringEntityorfor showingorforbearingtoshowfavorordisfavortoanypersoninrelationtothisoranyothercontractfor theProcuringEntity.

b) EnterintothisoranyothercontractwiththeProcuringEntityinconnectionwithwhichcommissionhas beenpaidoragreedtobepaidbyhimoronhisbehalfortohisknowledge,unlessbeforetheContractis made particulars of any such commission and of the terms and conditions of any agreement for the paymentthereofhavebeendisclosedinwritingtotheProcuringEntity.

15.7.2 AnybreachofthisConditionbytheContractororbyanyoneemployedbyhimoractingonhisbehalf(whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public ProcurementandAssetDisposalAct(2015) and the Anti-CorruptionandEconomicCrimesAct(2003)ofthe Laws ofKenya.

16. SUSPENSIONANDTERMINATIONBYCONTRACTOR

16.1 Contractor'sEntitlementtoSuspendWork

16.1.1 IftheArchitectfailstocertifyinaccordancewithSub-Clause14.6[IssueofInterimPaymentCertificates]or Sub-Clause14.7[Payment],ornotreceivinginstructionsthatwouldenablethecontractortoproceedwiththe works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to the Procuring Entity, suspend work (or reduce the rate of work) unless and until the Contractor has received the PaymentCertificate,reasonableevidenceorpayment, as the casemaybeandasdescribedinthenotice.

16.1.2 The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [DelayedPayment]andtoterminationunderSub-Clause16.2[TerminationbyContractor].

16.1.3 If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevantSub-Clauseandintheabovenotice)beforegivinganoticeoftermination,theContractorshallresume normalworkingassoonasisreasonablypracticable.

16.1.4 IftheContractorsuffersdelayand/orincursCostasaresultofsuspendingwork(orreducingtherateofwork) in accordance with this Sub-Clause, the Contractor shall give notice to the Architect and shall be entitled subjecttoSub-Clause20.1[Contractor'sClaims]to:

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

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

16.3 Terminationby Contractor

16.3.1 TheContractorshallbeentitledtoterminatetheContractif:

a) the Architect fails, within 60 days after receiving a Statement and supporting documents, to issue the relevantPaymentCertificate,
b) theContractordoesnotreceivetheamountdueunderanInterimPaymentCertificatewithin90daysafter theexpiryofthetimestatedinSub-Clause14.7[Payment]withinwhichpaymentistobemade(exceptfor deductionsinaccordancewithSub-Clause2.5[ProcuringEntity'sClaims]),
c) theProcuringEntitysubstantiallyfailstoperformhisobligationsundertheContractinsuchmannerasto materiallyandadverselyaffecttheeconomicbalanceoftheContractand/ortheabilityoftheContractorto performtheContract,
d) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension],or
e) the Procuring Entity becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (underapplicableLaws)hasasimilareffecttoanyoftheseactsorevents.
f) the Contractor does not receive the Architect instruction recording the agreement of both Parties onthe fulfilmentoftheconditionsfortheCommencementofWorksunderSub-Clause8.1[CommencementofWorks].

16.3.2 In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Procuring Entity,terminatetheContract.However, in the caseofsub-paragraph(f)or(g),theContractormaybynoticeterminatetheContractimmediately.

16.3.3 TheContractor'selectiontoterminatetheContractshallnotprejudiceanyotherrightsoftheContractor,under theContractorotherwise.

16.4 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [Procuring Entity's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

a) cease all further work, except for such work as may have been instructed by the Architect for the protectionoflifeorpropertyorforthesafetyoftheWorks,
b) hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has receivedpayment,and
c) removeallotherGoodsfromtheSite,exceptasnecessaryforsafety,andleavetheSite.

16.5 PaymentonTermination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Procuring Entity shall promptly:

a) ReturnthePerformanceSecuritytotheContractor,
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)inrespectof:

a) Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (ifany), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and

b) Damage to or loss of any property, real orpersonal (other than theWorks),to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, their respective agents, or any one directly or indirectly employed by any of them.

17.1.2 The Procuring Entity shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, willful act or breach of the Contract by the Procuring Entity, the Procuring Entity's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property], unless and to the extent that any such damage or loss is attributable to any negligence, willful act or breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or 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 theTaking-Over Certificate is issued (or is deemed to be issued under Sub-Clause10.1[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 aTaking-Over Certificate isissued (or is so deemed to be issued) for any Section or part of theWorks, responsibility for the care of the Section or part shall then pass to the Procuring Entity.

17.2.2 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 aTaking-Over Certificate, until this outstanding work has been completed.

17.2.3 If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause17.3 [Procuring Entity's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

17.2.4 The Contractor shall beliable for any loss ordamage caused by any actions performed by the Contractor aftera Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor wasliable.

17.3 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 asm ay be attributable to the Contractor's use of such explosives, radiationor radio-activity,

d) pressure waves caused by air craft or othera erial devices traveling at sonicor supersonics peeds,

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 theWorks 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 havet aken 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-Clause17.3 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-Clause8.4 [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.

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

17.5 Intellectual and Industrial Property Rights

17.5.1 In this Sub-Clause, “infringement” shall refer to an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and “claim” shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.

17.5.2 Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

17.5.3 The Procuring Entity shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:
a) An unavoidable result of the Contractor's compliance with the Contract, or
b) A result of any Works being used by the 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 inrelation 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 rights (without the rights to sub-license) to use the knowhow and other technical information disclosed to the contract or under the contract. Nothing contained here-in shall be construedastransferringownershipof 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 otheotherPartyforlossofuseofanyWorks,lossofprofit,lossofanycontractor for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause8.7[Delay Damages];Sub-Clause11.2[Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination];Sub-Clause17.1[Indemnities]; Sub-Clause17.4(b) [Consequences of Procuring Entity's Risks] and Sub-Clause17.5 [Intellectual and Industrial Property Rights].

17.6.2 The total liability of the Contractor to the Procuring Entity, under or inconnection with the Contract other than under Sub-Clause4.19 [Electricity, Waterand Gas],Sub-Clause 4.20 [Procuring Entity's Equipmentand 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.

17.6.3 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 abovei tems 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.

18.1.5 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.

18.1.6 The relevant insuring Party shall, within the respective periods stated in **the Special Conditions of Contract** (calculated from the Commencement Date), submit to the other Party:

a) Evidence that the insurances described in this Clause have been affected, and
b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

18.1.7 When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.

18.1.8 Each Party shall comply with the conditions stipulated in each of the insurance policies. The 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.

18.1.9 Neither Party shall make any material alteration to the terms of any insurance without the prior approvalof the other Party. If an insurer makes(or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

18.1.10 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 provides a tisfactory 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 premiumsto the other Party, and the Contract Price shall be adjusted accordingly.

18.1.11 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Procuring Entity, under the other terms of the Contractor otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Procuring Entity.

18.1.12 Procuring Entity in accordance with these obligations, 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.

18.1.13 Payments by one Party to the other Party shall be subject to Sub-Clause2.5 [Procuring Entity'sClaims]or Sub- Clause20.1[Contractor's Claims], asapplicable.

18.1.14 The Contractor shall been titled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause18) 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, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause18.1 [General Requirements for Insurances], until the date of issue of theTaking-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 Clause11 [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 nolonger required as Contractor's Equipment.

18.2.4 Unlessotherwise stated in the Special Conditions, insurances under thisSub-Clause:
a) Shall be effected and maintained by the Contractor as insuring Party,

b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers,payments being held or allocated to the Party actually bearing the costs of rectifying the lossor damage,

c) shall cover all loss and damage from any cause not listed in Sub-Clause17.3[Procuring Entity's Risks],

d) shall also cover, to the extent specifically required in the tendering documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Procuring Entity of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h)of Sub-Clause 17.3 [Procuring Entity's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated **in the Special Conditions** of Contract(if an amount is not so stated, this sub-paragraph(d)shall not apply), and

e) may however exclude loss of, damage to, and reinstatement of:

   i) a part of the Works which is in a defective condition due to a defect in its design, materials or workmanship(but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph(ii)below),

   ii) a part of theWorks which is lost or damaged inorder to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,

   iii) a part of the Works which has been taken over by the Procuring Entity, except to the extent that the Contractor is liable for the loss or damage,and

   iv) Goods while they are not in Kenya, subject to Sub-Clause14.5 [Plant and Materials intended for theWorks].

18.2.5 If, more than one year after the Base Date, the cover described in sub-paragraph(d)aboveceasestobe 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) been titled subject to Sub-Clause2.5 [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-Clause18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

18.3.1 The insuring Party shall insure against each Party's liability for any loss, damage,death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

18.3.2 This insurance shall be for a limit per occurrence of not less than the amount stated in **the Special Conditions of Contract**, with no limit on the number of occurrences. If an amount is not stated in the **Special Conditions of Contract**, this Sub-Clause shall not apply.

18.3.3 Unless otherwise stated in the Special Conditions, the insurances specified in this Sub-Clause:

a) Shall be effected and maintained by the Contractor as insuring Party,

b) Shall be in the joint names of the Parties,

c) shall be extended to cover liability for all loss and damage to the Procuring Entity's property (except things insured under Sub-Clause18.2) 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.

18.4 InsuranceforContractor'sPersonnel

18.4.1 The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

18.4.2 The insurance shall cover the Procuring Entity and the Architect against liability for claims, damages, losses and expenses (including legal fees and expenses)arising from injury, sickness, disease or death of any person employed by the Contractoror 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'sPersonnel.

18.4.3 The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may 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,"ForceMajeure"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 in to theContract,
c) which,havingarisen,suchPartycouldnotreasonablyhaveavoidedorovercome,and
d) whichisnotsubstantiallyattributabletotheotherParty.

19.1.2 ForceMajeuremayinclude,butisnotlimitedto,exceptionaleventsorcircumstancesofthekindlistedbelow, solongasconditions(a)to(d)abovearesatisfied:

a) war,hostilities(whetherwarbedeclaredornot),invasion,actofforeignenemies,
b) rebellion,terrorism,sabotagebypersonsotherthantheContractor'sPersonnel,revolution,insurrection, militaryorusurpedpower,orcivilwar,
c) riot,commotion,disorder,strikeorlockoutbypersonsotherthantheContractor'sPersonnel,
d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as maybeattributabletotheContractor'suseofsuchmunitions,explosives,radiationorradio-activity,and
e) naturalcatastrophessuchasearthquake,hurricane,typhoonorvolcanicactivity.

19.2 Notice o fForce 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 ForceMajeure.

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 MinimizeD elay

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 ForceMajeure.

19.4 Consequences of Force Majeure

19.4.1 If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause19.2[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, paymen to any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause18.2[Insurance for Works and Contractor's Equipment].

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

19.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under thisClause.

19.6 Optional Termination, Paymentand Release

19.6.1 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-Clause19.2 [Notice of ForceMajeure],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 thi sevent, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

19.6.2 Upon such termination, the Architect shall determine the value of the work done and issue a Payment Certificate which shall include:

a) The amounts payable for any work carried out for which a price is stated in the Contract;

b) The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and beat the risk of) the Procuring Entity when paid for by the Procuring Entity,and the Contractor shall place the same at the Procuring Entity's disposal;

c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing theWorks;

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 otherdestinationatnogreatercost);and

e) the Cost of repatriation of the Contractor's staff and labor 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 or 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 underSub-Clause19.6 [Optional Termination, Paymentand Release] if the Contract had been terminated under Sub-Clause19.6.

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-Clauseshallapply.

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 becomea ware) 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 eventor circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

20.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Architect and approved by the Contractor, the Architect shall respond with approval, or with disapproval and detailed comments. He may also request anynecessary further particulars but shall nevertheless give his response on the principles of the claim within the above definedtimeperiod.

20.1.7 Within the above defined period of 42 days, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations]toagreeordetermine(i)theextension(ifany) of the TimeforCompletion(beforeorafterits expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment(ifany)towhichtheContractorisentitledundertheContract.

20.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiatedasdueundertherelevantprovisionoftheContract.Unlessanduntiltheparticularssuppliedare sufficienttosubstantiatethewholeoftheclaim,theContractorshallonlybeentitledtopaymentforsuchpartof theclaimashehasbeenabletosubstantiate.

20.1.9 IftheArchitectdoesnotrespondwithinthetimeframedefinedinthisClause,eitherPartymayconsiderthatthe claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordancewithClause20.3.

20.1.10 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim.IftheContractorfailstocomplywiththisoranotherSub-Clauseinrelationtoanyclaim,anyextension oftimeand/oradditionalpaymentshalltakeaccountoftheextent(ifany)towhichthefailurehaspreventedor prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph ofthis Sub-Clause20.3.

20.2 Procuring Entity'sClaims

20.2.1 If the Procuring Entity considers itself to be entitled to any payment under any Clause of these Conditions r 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.

20.2.2 The notice shall be given as soon as practicable and nolonger than 30days 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.

20.2.3 The particulars shall specify the Clause or other basis of the claim and shall include substantiation of the amount and/or extension to which the Procuring Entity considers itself to be entitled in connection with the Contract. The Architect shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine(i) the amoun t(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].

20.2.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. The Procuring Entity shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, inaccordance 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 inaccordance with Sub-Clause 20.1 above should move to commence arbitration after 60days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

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 a bandonment 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 Clause17.3and Clause 19.
e) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the Procuring Entity and the Contractor agree otherwise in writing.

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-Clause20.3 shall befinally 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 ofs uch 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 orvaluations as may in his opinion be desirable inorder to determine the rights of the parties and assess and award any sums which ought to have been the subject to for 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 equirement or 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.

20.5.7 Arbitration may commenced prior to or after completion of the Works. The obligations of the Parties, and the Architect shall not bealtered by reason of any arbitration being conducted during the progress of the Works.

20.5.8 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 Contractis with national contractors, arbitration proceedings will beconducted inaccordance 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 Chairmanor 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

20.7.1 Arbitration with foreign contractors shall be conducted in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules.

20.7.2 The place of arbitration shall be allocation specified in the **SCC;** and the arbitration shall be conducted in the language for communications defined in Sub-Clause1.4[Law and Language].

20.8 Alternative Arbitration Proceedings

Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

20.9 FailuretoComplywithArbitrator'sDecision

20.9.1 The award of such Arbitrator shall be final and binding upon the parties.

20.9.2 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,

1.1.1 the parties shall continue to perform their respective obligations under the Contract unless they otherwiseagree;and

1.1.2 the Procuring Entity shall pay the Contractor any monies due the Contractor.

Section IX –Appendix to Conditions of Contract

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

Part A - Contract Data

Conditions	Sub-clause	Data
Procuring Entity's Name and address	Heading	The Kitale National Polytechnic P. O. Box 2162 – 30200 Kitale
Name and Reference Number of the Contract	Headng and 3.1.1	KNP/OT/04/2020-2021
Engineer's Name and Address	Headng and 3.1.1	State Department of Public Works, Trans Nzoia County
Contractor's Represnetative Name	4.3.1	As indicated from ELI 1.1
Key Personnel Names	16.9.1	As indicated in form PER-2
Time of Completion	1.1	As directed by the Project Manager
Defects Notification period	1.1	As soon as they occur
Time for parties entering into a contract agreement	1.6	Within 30 dyas
Commencement date	8.1.1	Not later than 14 days after contract signing
Time for access to the site	2.1	No later than the commencement date and not later than 7 days after commencement date.
Architech duties and authority	3.1.6 (b) (ii)	Variations resulting in an increasing of the accepted contract amount which cannot be catered for by the contingencies in the contract shall require approved of the procuring entity.
Performance security	4.2.1	The performance security shall be a bank guarantee to be specied by the procurement entity
Normal working hours	6.5	As per the laws of Kenya
Delay damages for the works	14.15 (b)	Kshs. 1,500 per day
Maximum amount of delay	87	30% of the final conract price
Provisional sums	13.5 (b) (ii)	Percentage of adjustment of provision sums maximum 25%
Adjustment in chage in costs	13.8	Price adjustment clause shall apply
Total advance payment	14.2.1	N/A
% of retention	14.3.2(c)	10% of any interim payment
Limit of retention money	14.3.2 (c)	10% of the accepted contract amount
Periods of submission of insurance a) evidence of insurance b) relevant polcies	18.1	 30 days 30 days

SECTION X - CONTRACT FORMS

FORM No. 1 - NOTIFICATION OF INTENTION TO AWARD

FORM No. 2 - NOTIFICATION OF AWARD - LETTER OF ACCEPTANCE

FORM No. 3 - CONTRACT AGREEMENT

FORM No. 4 - PERFORMANCE SECURITY [Option 1 - Unconditional Demand Bank Guarantee]

FORM No. 5- PERFORMANCE SECURITY [Option 2– Performance Bond]

FORM No. 6 - ADVANCE PAYMENT SECURITY

FORM No. 7 - 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'sAuthorizedRepresentative

   i) Name: *[insert Authorized Representative'sname]*

   ii) Address: *[insert Authorized Representative'sAddress]*

   iii) Telephone: *[insert Authorized Representative's telephone/faxnumbers]*

   iv) Email Address: *[insert Authorized Representative's emailaddress]*

   [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*] (localtime)

   This Notification is sent by (*Name anddesignation*) _____

3. NotificationofAward

   i) Procuring Entity: *[insert the name of the ProcuringEntity]*

   ii) Project: *[insert name ofproject]*

   iii) Contract title: *[insert the name of thecontract]*

   iv) ITT No: *[insert ITT reference number from ProcurementPlan]*

   This Notification of Intention to Award (Notification) notifies you of our decision to award the 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 successfulTender_____

   _____

   iii) Contract price of the successful Tender Kenya Shillings _____

   (inwords_____)

   b) The reasons for your tender being unsuccessful are as follows:

   c) Other Tenderers

   Names of all Tenderers that submitted aTender. If theTender's price was evaluated include the evaluated price as well as the Tender price as read out.

SNo	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

(Note a) State NE if not evaluated

5. How to request a debriefing

a) DEADLINE: The deadline to request a debriefing expires at midnight on[*insertdate*](*localtime*).

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 (3) 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) Emailaddress:[*insert email address*]

d) If your request for a debriefing is received within the 3 Days deadline,wewillprovidethedebriefingwithin five(3)BusinessDaysofreceiptofyourrequest.Ifweareunabletoprovidethedebriefingwithinthisperiod, 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 Stand still 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 acomplaint?

a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, [*insertdate*](localtime).

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) Emailaddress:[*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 Stand still Period and received by us before the Stand still Period ends.

d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from theWebsitewww.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. Stand still Period

i) DEADLINE: The Stand still Period is due to end at midnight on[*insertdate*](localtime).
ii) The Stand still Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
iii) The Stand still Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please donot hesitateto contactus. On behalf of the Procuring Entity:

Signature:_____

Name:_____

Title/position:_____

_____

Telephone:_____

FORM NO 2: LETTER OF AWARD

[letterhead paper of the Procuring Entity]

[date]

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

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words][name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is hereby accepted by……*(name o fProcuring 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 3: CONTRACTAGREEMENT

THIS AGREEMENT made the day of……. 20……., between……. ……...of……. (hereinafter "the Procuring Entity"), of the onepart,and_____of_____(hereinafter "theContractor"),oftheotherpart:

WHEREAS the Procuring Entity desires that the Worksknownas_____should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying ofa ny defects therein,

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_____(ifany)
   d) The Special Conditions of Contract
   e) The General Conditions of Contract;
   f) The Specifications
   g) The Drawings; and
   h) The completed Schedules and any other documents forming part of the contract.

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

4. The Procuring Entity hereby covenants to pay the Contractor in consideration of the execution and completion of theWorks and the remedying of defectst herein, 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 whereof the parties here to have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and years pecified above.

   Signed and sealed by_____(for the Procuring Entity)

   Signed and sealed by_____(for the Contractor).

FORM NO. 4 - 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 letter head]*

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 _____(hereinaftercalled"theContract").

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, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of_____(*in words*),[1] such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, 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...…[2],and any demand for payment under it must be received by us at the office indicated above on or before that date.

5. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months][one year],* 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.*

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[1]*The Guarantor shall insert an amount representing the percentage of the Accepted Contract Amount specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2]*Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extensionofthisdateforcompletionoftheContract,theProcuringEntitywouldneedtorequestanextensionofthisguaranteefromtheGuarantor. Suchrequestmustbeinwritingandmustbemadepriortotheexpirationdateestablishedintheguarantee.*

FORMNo.5-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 Bondholder to action]*

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[insert name and Address of*Procuring

Entity*]* **Date:** _____

_____*[Insert date of issue]* **PERFORMANCE**

BONDNo.:____

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

1. By this Bond_____ as Principal (hereinafter called "the Contractor") and_____] as Surety (hereinafter called "the Surety"), are held and firmly bound unto_] as Obligee (hereinafter called "the ProcuringEntity") 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 thereto,which to the extent herein provided for, are by reference made part hereof and are hereinafter 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, indefault under the Contract, the Procuring Entity having performed the Procuring Entity's obligations thereunder,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-OverCertificate. No righ to faction shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named herein or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.

6. In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents tobe sealed with his corporate seal duly attested by the signature of his legal representative, this day_____of_____20_____.

SIGNEDON_____on behalf of_____

By_____in the capacity of_____

In the presence of_____

SIGNEDON_____on behalf of_____

By_____in the capacity of_____

In the presence of_____

FORM NO. 6 - 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 _____(*inwords*_____)is to be made against an advance payment 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_____(*in words*_____)[1] upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
   a) Has used the advance payment for purposes other than the costs of mobilization in respect of 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, oronthe_____dayof_____,2_____,[2] 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.

_____

[Name of Authorized Official, signature(s) and seals/stamps]

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

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[1] *TheGuarantorshallinsertanamountrepresentingtheamountoftheadvancepaymentanddenominatedeitherinthecurrencyoftheadvancepaymentasspecifiedin the Contract.*

[2] *InserttheexpectedexpirationdateoftheTimeforCompletion.TheProcuringEntityshouldnotethatintheeventofanextensionofthetimeforcompletionofthe Contract,theProcuringEntitywouldneedtorequestanextensionofthisguaranteefromtheGuarantor.Suchrequestmustbeinwritingandmustbemadepriorto theexpirationdateestablishedintheguarantee.*

FORM NO.7 – RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary:_____*[Insert name and Address of* Procuring Entity*]*

Date:_____*[Insertdateofissue]*

Advance payment guarantee no. *[Insertguaranteereferencenumber]*

Guarantor:*[Insert name and address of place of issue, unless indicated in th eletter head]*

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. _____*[insertreferencenumberofthecontract]*dated_____with the Beneficiary, for the executionof_____*[insert name of contract and brief description of* Works*]* (hereinafter called"theContract").

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 sumor sums not exceeding in total an amount of *[insert amount in figures]*__ (*[insert amount in words*_____*])*[1]upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) underthe Contract, without your needing to prove or show grounds for your demand or the sum specifiedt herein.

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 a bove has been credited to the Contractor on itsaccountnumber_at _____*[insert name and address ofApplicant's bank]*.

5. This guarantee shall expire no later than the.....Day of.....2.....[2],and any demand for payment under it must be received by us at the office indicated above on or before that date.

6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months][one year],*in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor beforetheexpiryoftheguarantee.

_____

[Name of Authorized Official, signature(s) and seals/stamps]

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

[1] *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.*

[2] *Insertadatethatistwenty-eightdaysaftertheexpiryofretentionperiodaftertheactualcompletiondateofthecontract.TheProcuringEntityshouldnotethatin theeventofanextensionofthisdateforcompletionoftheContract,theProcuringEntitywouldneedtorequestanextensionofthisguaranteefromtheGuarantor . Suchrequestmustbeinwritingandmustbemadepriortotheexpirationdate*

THE BILL OF QUANTITIES

FOR

THE PROPOSED COMPLETION OF THE THE FOUR STOREY TUITION BLOCK

AT

THE KITALE NATIONAL POLYTECHNIC

BILL OF QUANTITIES

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO. 1 **SUBSTRUCTURES**				
	Expansion joint				
A.	25 X 25mm expansion joint sealant	9	LM		
	Plinth Works				
B.	12mm thick cement and sand (1:3) render to plinths	62	SM		
C.	Prepare and apply three coats bituminous paint to rendered plinths	62	SM		
	Paving slabs around building				
D.	600 X 600 X 50mm thick precast concrete paving slabs bedded and joined in cement and sand (1:3) including 100mm bed of hardcore and 50mm marrum blinding and all necessary excavations, leveling and disposal of excavated materials	140	SM		
	Carried to collection				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO.2				
	REINFORCED CONCRETE SUPERSTRUCTURE				
	Vibrated reinforced concrete grade 20/20 (1:2:4)				
A.	Beams	24	CM		
B.	Columns	12	CM		
	Sawn formwork to:				
C.	Sides of soffites of beams	293	SM		
D.	Sides of columns	200	SM		
E.	Steel for reinforcement	1200	kgs		

	Expansion joint				
F.	12mm Thick flexcel expansion joint	20	SM		
G.	25 X 25mm thick sealant	10	LM		
	TOTAL FOR R.C SUPERSTRUCTURES CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO 3				
	WALLING				
	Machine dressed natural stone walling in cement and sand (1:3) motar reinforced with and including 25 X 3mm thick hoop iron in every alternate course				
A.	200mm thick walling externally	400	SM		
B.	150mm thick ditto	30	SM		
	Medium chisel dressed natural stone walling in cement and sand mortar (1:3):				
C.	200mm thick walling internally	140	SM		
D.	Eave filling to 200mm thick wall extreme height	146	LM		
	TOTAL FOR WALLING CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO.4				
	ROOFING				
A.	Galvanized corrugated roofing sheet: gauge 28	602	SM		
B.	Ditto 150mm Diameter half round ridge cap with and including 150mm end laps	91	LM		
C.	Ditto hp cap ditto	20	LM		
D.	Ditto valley ditto	10	LM		
	Trusses (All timber work is provisional)				
	The following in No. half trusses spanning 2500mm in censured first grade cypress timber				
E.	150 X 50mm rafters	28	LM		
F.	Ditto tie beams	18	LM		
G.	100 X 50mm struts and ties	59	LM		
	The following in 29 no. double pitch trusses as described				
H.	150 X 50mm rafters	189	LM		
I.	Ditto tie beams	293	LM		
J.	100 X 50mm struts and ties	575	LM		
	The following is sawn second grade censured and well seasoned cypress timber				
K.	100 X 50mm wall plate bedded in cement sand (1:3), and bolted to wall with and including 12mm diameter bolts 60mm long at 1000mm centers	129	LM		
L.	50 X 75mm purlins	405	LM		
	Carried to collection				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ROOFING-(CONTINUED)				
A	Bore in 50mm thick timber for 12mm diameter bolts	130	NO		
B	Make mortise in reinforced concrete for 12mm diameter bolts 60mm deep	130	NO		
	Eaves				
C	50 x 50mm second grade censured and well seasoned cypress timber branding	118	LM		
D	Ditto but plugged	118	LM		
E	25 x 25mm thick wrot cypress timber slats nailed to timber members at 75mm centers.	55	SM		
F	Mosquito gauze and coffee tray tacked to timber at eaves	55	SM		
	Fascia Board				
G	225 x 25mm thick wrot cypress fascia/barge boards fixed to end of timber rafters or purlins (m/s).	118	LM		
	Rain Water Goods				
H	150 x 100mm galvanized iron gutter gauge 24 fixed to fascia boards (m/s) with and including approved steel brackets at 1000m centers.	87	LM		
J	Extra over gutter for stopped ends	4	NO		
K	Ditto but for 100mm diameter outlet	4	NO		
L	100mm diameter galvanized iron downpipe gauge 24 fixed to stone walling with and including steel brackets at 1000mm centers	102	LM		
M	Extra over downpipe for swan neck 450mm long	4	NO		
N	Ditto horse shoe 300mm long	4	NO		
	Carried to collection				

ITEM	DESCRIPTION	QNTY	UNIT	RATE	AMOUNT
	ROOFING-(CONTINUED)				
	Decoration and painting				
	Knot, stain, prepare and apply three coats oil gloss paint to:				
A	General surfaces of timber	55	SM		
B	Surfaces of timber 200-300mm girth	118	LM		
	Prepare and apply three coats gloss oil paint				
C	General surfaces of metal gutters	40	SM		
D	Surfaces of large pipes	181	LM		
	Carried to collection				
	COLLECTION				
1	FROM PAGE KNP/6				
2	FROM PAGE KNP/7				
3	FROM ABOVE				
	TOTAL FOR ROOFING CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO. 5				
	DOORS				
	Wrot cypress framed frames and framings				
A	150 x 50mm thick rebated door frame	323	LM		
B	Ditto transom twice rebated	65	LM		
C	40 X 35 mm moulded architrave	323	LM		
D	25 x 25 mm diameter moulded quadrant	323	LM		
E	12 x 12mm Ditto glazing bead	323	LM		
F	Steel doors 1200x 2200mm high consisting of 2No unequal leaves one of 900x2200mm and the other 300x2200mm high 45mm Thick solid core flush, both leaves lipped with wrot hardwood all round and faced with 6mm thick veneer both sides.	16	NO		
G	Ditto but single leaf door size 900 x 2200mm high ditto`	20	NO		
H	Ditto but semi-solid core door ditto	24	NO		
	Iron mongery **Supply and fix the following to UNION catelogue or other equal and approved**				
J	Three lever mortise lock complete with set of aluminum lever handle furniture	16	NO		
K	Two lever mortise lock ditto	44	NO		
L	100mm long pressed steel butt hangers	76	Prs		
M	150mm long mild steel bolt complete with all necessary accessories	62	NO		
N	20mm diameter rubber door stop complete with 38mm raw bolt fixed to concrete floor or natural stone walling	76	NO		
	Carried to collection				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	DOORS - (CONTINUED)				
	Glazing				
A	4mm Thick clear sheet glazing in panes not exceeding 0.10SM	5	SM		
B	Ditto exceeding 0.10SM but not exceeding 0.50SM	12	SM		
	Priming				
C	Prime back of wooden frames before fixing surfaces not Exceeding 100mm girth	323	LM		
	Knot, prime, prepare and apply three coats gloss oil paint to:				
D	General surface of timber	259	SM		
E	Ditto Surfaces exceeding 200mm but not exceeding 300mm	386	SM		
F	Surfaces exceeding 100mm but not exceeding 200mm girth	722	LM		
G	Surfaces not exceeding 100mm girth	249	LM		
	Carried to Collection				
	COLLECTION FROM PAGE KNP/9 FROM ABOVE				
	TOTAL FOR DOORS CARRIED TO				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO.6				
	WINDOWS				
	Supply and fix the following purpose made steel casement window fabricated from standard section complete with frames mullions and transoms including all necessary locking and window stays, screws and nuts once shop-primed before delivery to site and including burglar proofing comprising of 25 x6mm flats welded onto the window casement at 150mm centers both ways				
A	Steel casement window size 1200 x1500mm high	76	NO		
B	Steel casement window size 600 x 1500mm ditto	8	NO		
C	600 x 600mm Ditto	24	NO		
	Pelmet Boxes in Wrot cypress (All provisional)				
D	225 x 25mm pelmet top	186	LM		
E	50 x 50mm bearer plugged	186	LM		
F	225 x100 x 25mm pelmet box ends	232	NO		
G	Heavy duty I-Section Brass curtain rail complete with matching hooks and rollers	183	LM		
	4mm thick clear glass and glazing fixed with and including putty to steel windows				
H	In panes not exceeding 0.10SM	112	SM		
J	Ditto panes 0.10-0.50SM	104	SM		
	4mm Thick obscure glass ditto				
K	In panes 0.10 - 0.50SM	10	SM		
	Sills				
L	100 X 150 X 15mm Thick clay tile window sill (in148 No.)	206	LM		
	Window Board				
M	200 x 20mm Thick wrot cypress window board (in 148 No)	206	LM		
	Priming				
N	Prepare and apply wood preservative primer to backs of timber before fixing not exceeding 100mm girth	183	LM		
P	Ditto 100-2--girth	206	LM		

	TOTAL FOR WINDOWS CARRIED TO SUMMARY				
ITEM	**DESCRIPTION**	**QTY**	**UNIT**	**RATE**	**AMOUNT**
	ELEMENT NO. 7 - FINISHES				
	Wall Finishes				
A	12mm Thick cement sand (1:4) plaster to stone walling, concrete beams and columns finished smooth	1350	SM		
B	10mm Ditto prepared to receive wall tiling	467	SM		
C	8mm Thick white glazed tiling fixed on prepared surfaces of walls with approved adhesive	467	SM		
	Floor Finishes				
D	Ceramic tiles (SAJ) on screed backing	1540	SM		
E	30mm Thick cement sand (1:3) ditto finished to receive ceramic tiles tiles	154	SM		
F	15mm X 100mm High ceramic tile skirting finished with a rounded top	661	LM		
	Ceiling Finishes				
J	12mm thick cement sand (1:4) plaster finished smooth	1371	SM		
K	12MM thick chipboard ceiling set in symmetrical panels size 600 x 600mm with neat v-joints and nailed to timber brandings (m/s)	439	SM		
L	Extra over celotex ceiling for trap door size 600 x 450mm with 50 x 50mm cypress framing all round	2	NO		
M	50 X 50mm celcured cypress timber brandering	1324	LM		
N	50 X 75mm ditto plugged	1325	LM		
P	100 x 25mm Thick wrot cypress moulded cornice	249	LM		
	Carried to Collection				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	FINISHES CONTD				
	Staircase and ramp finishes				
A	12mm polished terrazzo floor on prepared pvc stripped screed (ms)	390	SM		
B	Ditto on 240mm wide treads	113	LM		
C	Ditto on 150mm high risers	136	LM		
E	Ceramic tiles on prepared screed 100mm (average) High ditto skirting made to the profile of steps, risers and walls finished with a coved junction to wall and a rounded top	500	LM		
F	Mild steel balustrade 1000mm high constructed of 30 x 30 x3mm thick square hollow sections balusters, hand, middle and bottom rails all welded together at 300mm centers at stairs and landings.	20	LM		
G	Ditto including 75 x75x3mm stanchions at every 4m at the verandah and the ramp sides including shop priming and fixing balusters to concrete flooring and grouting as necessary.	330	LM		
	Carried To Collection				
	COLLECTION				
1	FROM PAGE KNP/13				
2	FROM ABOVE				
	TOTAL FOR FINISHES CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	ELEMENT NO.8 - PAINTING				
	Prepare and apply three coats first quality gloss oil paint on:				
A	Steel balustrade internally	700	SM		
B	Glazed surfaces of metal windows both internally	225	SM		
C	Ditto externally	225	SM		
	Knot, prime, stop, prepare and apply thee coats first quality gloss oil paint on:				
D	General timber surfaces (window board and pelmet boxes)	95	SM		
E	General timber door surfaces	259	SM		
E	Ditto Surfaces exceeding 200mm but not exceeding 300mm	386	SM		
F	Surfaces exceeding 100mm but not exceeding 200mm girth	722	LM		
G	Surfaces not exceeding 100mm girth	249	LM		
	Prepare and apply three coats first quality plastic emulsion silk paint on:-				
E	Plastered walls	1350	SM		
F	Ditto ceiling	1371	SM		
	TOTAL FOR PAINTING CARRIED TO SUMMARY				

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
	SECTION SUMMARY				
	Total for SUBSTRUCTURES from page KNP/3				
	Total for R.C superstructure from page KNP/4				
	Total for WALLING from page KNP/5				
	Total for roofing from page KNP/8				
	Total for DOORS from page KNP/10				
	Total WINDOWS FROM page KNP/11				
	Total for FINISHES from page KNP/13				
	TOTAL for PAINTING from page KNP/14				
	TOTAL FOR OFFICE BLOCK CARRIED TO GRAND SUMMARY				

PRIME COST AND PROVISIONAL SUMS

ITEM	DESCRIPTION	RATE	AMOUNT
	PRIME COST SUMS		
A	Allow a Prime cost Sum of Kenya shillings, One Million (Kshs.1, 000,000.00) for Electrical Installation Works and Trunking	ITEM	1,000,000
B	Allow for profit (%)	20%	200,000
C	Allow for Attendance	ITEM	
D	Allowance a Prime Cost Sum of Kenya Shillings seven Hundred and sixty Thousand (Ksh.760,000.00) for Mechanical Installation works.	ITEM	760,000
E	Allow for profit (%)	20%	152,000
F	Allow for Attendance	ITEM	
	PROVISIONAL SUMS		
	The following provisional items to be measured on completion of the works and priced in accordance with rates contained in these Bills of Quantities or pro-rata thereto or deducted in whole if not required.		
	Provision sum for:		
G	Allow a Provision Sum of Kenya Shillings, six hundred thousand (Kshs. 600,000.00) for contingencies.		600,000
H	Allow a Provisional Sum of Kenya shillings five hundred thousand (Kshs.500,000.00) for land scaping and Additional External works		500,000
I	Allow a Provisional Sum of Kenya shillings, two hundred and eighty thousand (Kshs.280,000.00) for Project Management costs and expenses		280,000
	Total PC and Provisional Sums carried to Grand Summary		

GRAND SUMMARY

BILL NO	DESCRIPTION	TENDERERS AMOUNT (Kshs)
1	PRELIMINARIES (HOARDING, SECURITY, SITE STORE, OFFICE AND TOILET)	
2	TIUTION BLOCK from page KNP/15	
3	PC AND PROVISIOAL SUMS from Page PC S/1	
	TOTAL CARRIED TO FORM OF TENDER	

Amount in words Kshs…….

…….

Carried to form of tender

Contractor……..

Address ……..

Date……Signature.....……

NB: The works will be awarded as ONE contract package and therefore tenderers must submit bids for all the works