

**KISUMU WATER AND SANITATION COMPANY
LIMITED**



**NAFAKA HOUSE, OGINGA ODINGA STREET
OPPOSITE SWAN CENTER
P.O BOX 3210 -40100
KISUMU**

**TENDER NAME: CONSTRUCTION OF PROPOSED OFFICE
BLOCK FOR KIWASCO**

TENDER NUMBER: KWSC/RBW/001/2021 - 2022

JULY 2021

TENDER DOCUMENTS FOR PROCUREMENT OF WORKS (BUILDING AND ASSOCIATED CIVIL ENGINEERING WORKS)

1) NAME AND CONTACT ADDRESSES OF PROCURING ENTITY

Name: Kisumu Water and Sanitation Company Limited

Address: P.O Box 3210 – 40100, Kisumu

Email address: info@kiwasco.co.ke

2) Invitation to Tender (ITT) No: KWSC/RBW/001/2021 – 2022

3) Tender Name: CONSTRUCTION OF OFFICE BLOCK FOR KIWASCO

INVITATION TO TENDER

PROCURING ENTITY: KISUMU WATER AND SANITATION COMPANY LIMITED

CONTRACT NAME AND DESCRIPTION: CONSTRUCTION OF PROPOSED OFFICE BLOCK FOR KIWASCO

1. Kisumu Water and Sanitation Company Limited (KIWASCO) invites sealed tenders for the **Construction of Office Block for KIWASCO**. The construction period is expected to be 1 calendar year.
2. Tendering will be conducted under open competitive method (National) using a standardized tender document. Tendering is open to all qualified and interested Tenderers.
3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours from 0800hrs to 1700 hours, Monday to Friday at the address given below.
4. The tender documents may be viewed and obtained electronically from our website, www.kiwasco.co.ke. Tender documents obtained electronically will be free of charge. Because of the prevailing COVID-19 pandemic, we shall not be giving out or selling hard copies of the tender documents.
5. Tender documents may be viewed and downloaded for free from the website www.kiwasco.co.ke. Tenderers who download the tender document **MUST** forward their particulars immediately to e-mail, aogwang@kiwasco.co.ke, Tel: 057 202 3977/ 057 202 4100, P.O Box 3210 – 40100, Kisumu to facilitate any further clarification or addendum. ***Further, all prospective bidders are advised to visit the website regularly to check any updates or addenda that may be issued***
6. Tenders shall be quoted in Kenya Shillings and shall include all taxes. Tenders shall remain valid for 120 days from the date of opening of tenders.
7. All Tenders must be accompanied by a tender Security of Kshs. 2,000,000.00 (Kshs. Two Million)
8. The Tenderer shall chronologically serialize, sign and stamp all pages of the tender documents submitted.
9. Completed tenders must be delivered to the address below on or before Thursday, 12th August 2021 at 12.00pm. Electronic Tenders will not be permitted.
10. Tenders will be opened immediately after the deadline date and time specified above. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend at the address below.
11. Late tenders will be rejected.
12. A site visit shall be conducted on Friday, the 23rd day of July 2021 from 11.00am. All prospective bidders are expected to assemble at KIWASCO offices as mentioned below before proceeding to the site. The bidders should organize for their own means of transport.

13. The addresses referred to above are:

A. Address for obtaining further information and for purchasing tender documents

1. Name of Procuring Entity.

Kisumu Water and Sanitation Company Limited

Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center

P.O Box 3210 – 40100

Kisumu

2. Physical address for hand Courier Delivery to an office or Tender Box

Kisumu Water and Sanitation Company Limited

Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center

P.O Box 3210 – 40100

Kisumu

3. Insert name, telephone number and e-mail address of the officer to be contacted.

Head of Supply Chain

Kisumu Water and Sanitation Company Limited

Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center

Tel: 057 202 3977/057 202 4100

E-Mail: aogwang@kiwasco.co.ke

P.O Box 3210 – 40100

Kisumu

B. Address for Submission of Tenders.

The Managing Director

Kisumu Water and Sanitation Company Limited

Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center

P.O Box 3210 – 40100

Kisumu

C. Address for Opening of Tenders.

KIWASCO Boardroom

Kisumu Water and Sanitation Company Limited

Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center

P.O Box 3210 – 40100

Kisumu

Thomas Odongo

Managing Director

Signature.....

Date: 15th July 2021

PART1: TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A. GENERAL PROVISIONS

10 Scope of tender

- 11** The Procuring Entity as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The name, identification, and number of lots (contracts) of this Tender Document are specified in the TDS.
- 12** Throughout this tendering document:
- a) The term “inwriting” means communicated in written form (e.g. by mail, e-mail, fax, including if specified in the TDS, distributed or received through the electronic-procurement system used by the Procuring Entity) with proof of receipt;
 - b) if the context so requires, “singular” means “plural” and vice versa;
 - c) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the Procuring Entity. It excludes official public holidays.

20 Fraud and corruption

- 21** The Procuring Entity requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”. The tender submitted by a person shall include a declaration that the person shall not engage in any corrupt or fraudulent practice and a declaration that the person or his or her sub-contractors are not debarred from participating in public procurement proceedings.
- 22** The Procuring Entity requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed. To this effect, Tenders shall be required to complete and sign the “Certificate of Independent Tender Determination” annexed to the Form of Tender.
- 23** Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the Procuring Entity to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the Procuring Entity.
- 24** Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the Procuring Entity shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

30 Eligible tenderers

- 31** A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.8, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agreement or with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms. The JV shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the members of the JV during the tendering process and, in the event the JV is awarded the Contract, during contract execution. Members of a joint venture may not also make an individual tender, be a subcontractor in a separate tender or be part of another joint venture for the purposes of the same Tender. The maximum number of JV members shall be specified in the **TDS**.
- 32** Public Officers of the Procuring Entity, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract. Public Officers are also not allowed to participate in any procurement proceedings.
- 33** A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be

disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with any other tenderer;
- b) Receives or has received any direct or indirect subsidy from another tenderer;
- c) Has the same legal representative as another tenderer;
- d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the Procuring Entity regarding this tendering process;
- e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;
- f) Any of its affiliates has been hired (or is proposed to be hired) by the Procuring Entity as a consultant for Contract implementation;
- g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;
- h) Has a close business or personal relationship with senior management or professional staff of the Procuring Entity who has the ability to influence the bidding process and:
 - i) Are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
 - ii) May be involved in the implementation or supervision of such Contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.

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

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

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

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

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

- i) A legal public entity of Government and/or public administration,
- ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and;
- iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprise to enable it compete with firms in the private sector on an equal basis.

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

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

- (b) 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 II - EVALUATION AND QUALIFICATION CRITERIA, Item 9*”.

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

- 3.12** The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate 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 website www.cak.go.ke.

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

40 Eligible goods, equipment, and services

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

- 42** 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.

50 Tenderer's responsibilities

- 51** 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.

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

- 53** 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. CONTENTS OF TENDER DOCUMENTS

60 Sections of Tender Document

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

PART 1: Tendering Procedures

Section I – Instructions to Tenderers

Section II – Tender Data Sheet (TDS)

Section III- Evaluation and Qualification Criteria

Section IV – Tendering Forms

PART 2: Works' Requirements

Section V - Bills of Quantities

Section VI - Specifications

Section VII – Drawings

PART 3: Conditions of Contract and Contract Forms

Section VIII - General Conditions (GCC)

Section IX - Special Conditions of Contract

Section X- Contract Forms

- 62** The Invitation to Tender Notice issued by the Procuring Entity is not part of the Contract documents.

Unless obtained directly from the Procuring Entity, the Procuring Entity is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document in accordance with ITT 10. In case of any contradiction, documents obtained directly from the Procuring Entity shall prevail.

- 63** 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.

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

- 71** A Tenderer requiring any clarification of the Tender Document shall contact the Procuring Entity in writing at the Procuring Entity's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting if provided for in accordance with ITT 7.2. The Procuring Entity will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The Procuring Entity shall forward copies of its response to all tenderers who have acquired the Tender documents in accordance with ITT 7.4, including a description of the inquiry but without identifying its source. If so specified in the **TDS**, the Procuring Entity shall also promptly publish its response at the web page identified in the **TDS**. Should the clarification result in changes to the essential

elements of the Tender Documents, the Procuring Entity shall amend the Tender Documents following the procedure under ITT 8 and ITT 22.2.

- 72** The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Site shall be at the Tenderer's own expense. The Procuring Entity shall specify in the **TDS** if a pre-arranged Site visit and or a pre-tender meeting will be held, when and where. The Tenderer's designated representative is invited to attend a pre-arranged site visit and a pre-tender meeting, as the case may be. The purpose of the site visit and the pre-tender meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.
- 73** 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.
- 74** Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Minutes shall not identify the source of the questions asked.
- 75** The Procuring Entity shall also promptly publish anonymized (*no names*) Minutes of the pre-arranged site visit and those of the pre-tender meeting at the web page identified in the **TDS**. Any modification to the Tender Documents that may become necessary as a result of the pre-arranged site visit and those of the pre-tender meeting shall be made by the Procuring Entity exclusively through the issue of an Addendum pursuant to ITT 8 and not through the minutes of the pre-Tender meeting. Non-attendance at the pre-arranged site visit and the pre-tender meeting will not be a cause for disqualification of a Tenderer.
- 80** **Amendment of Tender Documents**
- 81** At any time prior to the deadline for submission of Tenders, the Procuring Entity may amend the Tender Documents by issuing addenda.
- 82** Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the Procuring Entity. The Procuring Entity shall also promptly publish the addendum on the Procuring Entity's website in accordance with ITT 7.5.
- 83** To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the Procuring Entity should extend the dead line for the submission of Tenders, pursuant to ITT 22.2.

C. PREPARATION OF TENDERS

9.0 Cost of Tendering

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

10.0 Language of Tender

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

11.0 Documents Comprising the Tender

11.1 The Tender shall comprise the following:

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

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

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

13 Alternative Tenders

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

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

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

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

14.0 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.

- 142** The Tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Procuring Entity. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Tender, and provided that the Tender is determined substantially responsive notwithstanding this omission, the average price of the item quoted by substantially responsive Tenderers will be added to the Tender price and the equivalent total cost of the Tender so determined will be used for price comparison.
- 143** The price to be quoted in the Form of Tender, in accordance with ITT 12.1, shall be the total price of the Tender, including any discounts offered.
- 144** The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender, in accordance with ITT 12.1.
- 145** It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except incases where the contract is subject to fluctuations and adjustments, 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.
- 146** Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITT 14.4, provided the Tenders for all lots (contracts) are opened at the same time.
- 147** All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.
- 150 Currencies of Tender and Payment**
- 151** The currency(ies) of the Tender and the currency(ies) of payments shall be the same.
- 152** Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings.
- a) A Tenderer expecting to incur expenditures in other currencies for inputs to the Works supplied from outside Kenya (referred to as “the foreign currency requirements”) shall (if so allowed in 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.
- 153** Tenderers may be required by the Procuring Entity to justify, to the Procuring Entity's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Tender are reasonable, in which case a detailed break down of the foreign currency requirements shall be provided by Tenderers.

16.0 Documents Comprising the Technical Proposal

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

170 Documents Establishing the Eligibility and Qualifications of the Tenderer

- 171** Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility in accordance with ITT 4.
- 172** 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.

- 173** If a margin of preference applies as specified in accordance with ITT 33.1, national tenderers, individually or in joint ventures, applying for eligibility for national preference shall supply all information required to satisfy the criteria for eligibility specified in accordance with ITT 33.1.
- 174** Tenderers shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the Procuring Entity identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 175** 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.
- 176** The Tenderer shall provide further documentary proof, information or authorizations that the Procuring Entity may request in relation to ownership and control which in formation on any changes to the information which was provided by the tenderer under ITT 6.4. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 177** 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.
- 178** 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.
- 179** 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 in complete, in accurate or out-of-date, or attempts to obstruct the verification process, then the consequences ITT 17.8 will ensue unless the tenderer can show to the reasonable satisfaction of the Procuring Entity that any such act was not material, or was due to genuine error which was not attributable to the intentional act, negligence or recklessness of the tender.

18.0 Period of Validity of Tenders

- 18.1.** Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the Procuring Entity in accordance with ITT 22). A tender valid for a shorter period shall be rejected by the Procuring Entity as non-responsive.
- 18.2** In exceptional circumstances, prior to the expiration of the Tender validity period, the Procuring Entity may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested in accordance with ITT 19, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security. A Tenderer granting the request shall not be required or permitted to modify its Tender.

190 Tender Security

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

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

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

193 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.

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

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

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

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

- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension there to provided by the Tenderer; or
- b) if the successful Tenderer fails to: -
 - i) sign the Contract in accordance with ITT47; or
 - ii) furnish a Performance Security and if required in the TDS, and any other documents required in the TDS.

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

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

1910 A tenderer shall not issue a tender security to guarantee itself.

200 Format and Signing of Tender

201 The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, in the number specified

in the **TDS** and clearly mark them “COPY.” In the event of any discrepancy between the original and the copies, the original shall prevail.

- 202** 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.
- 203** The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation as specified in the **TDS** and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 204** Incase the Tenderer is a JV, the Tender shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives.
- 205** Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. SUBMISSION AND OPENING OF TENDERS

210 Sealing and Marking of Tenders

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

The inner envelopes or packages or containers shall:

- a) bear the name and address of the Procuring Entity,
 - b) bear the name and address of the Tenderer; and
 - c) bear the name and Reference number of the Tender.
- 212** 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.
- 220 Deadline for Submission of Tenders**
- 221** 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**.
- 222** The Procuring Entity may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the Procuring Entity and Tenderers previously subject to the deadline shall there after 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.

240 Withdrawal, Substitution, and Modification of Tenders

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

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

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

243 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

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

252 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.

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

254 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.

255 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.

256 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.

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

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

- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
- b) the Tender Price, per lot (contract) if applicable, including any discounts;
- c) any alternative Tenders;

- d) the presence or absence of a Tender Security, if new as required;
 - e) number of pages of each tender document submitted.
- 259 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers.

E. EVALUATION AND COMPARISON OF TENDERS

26 Confidentiality

- 261 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers in accordance with ITT 43.
- 262 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.
- 263 Notwithstanding ITT 26.2, from the time of tender opening to the time of contract award, if a tenderer wishes to contact the Procuring Entity on any matter related to the tendering process, it shall do so in writing.

270 Clarification of Tenders

- 271 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the Procuring Entity may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the Procuring Entity shall not be considered. The Procuring Entity's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Procuring Entity in the evaluation of the tenders, in accordance with ITT 31.
- 272 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.

280 Deviations, Reservations, and Omissions

- 281 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.

290 Determination of Responsiveness

- 291 The Procuring Entity's determination of a Tender's responsiveness is to be based on the contents of the tender itself, as defined in ITT 11.
- 292 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.

- 293** The Procuring Entity shall examine the technical aspects of the tender submitted in accordance with ITT 16, to confirm that all requirements of Section VII, Works' Requirements have been met without any material deviation, reservation or omission.
- 294** 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.
- 300 Non-material Non-conformities**
- 301** Provided that a tender is substantially responsive, the Procuring Entity may waive any non-conformities in the tender.
- 302** Provided that a Tender is substantially responsive, the Procuring Entity may request that the tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.
- 303** Provided that a tender is substantially responsive, the Procuring Entity shall rectify quantifiable non-material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component in the manner specified in the TDS.

31.0 Arithmetical Errors

- 311** 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.
- 312** 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
- 313** Tenderers shall be notified of any error detected in their bid during the notification of award.

32.0 Conversion to Single Currency

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

33.0 Margin of Preference and Reservations

- 331** 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.
- 332** A margin of preference shall not be allowed unless it is specified so in the TDS.
- 333** Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 33.4.
- 334** Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the TDS, a procuring entity shall ensure that the invitation to tender specifically indicates that only businesses or firms

belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.

34.0 Nominated Subcontractors

- 34.1** Unless otherwise stated in the **TDS**, the Procuring Entity does not intend to execute any specific elements of the Works by subcontractors selected/nominated by the Procuring Entity. In case the Procuring Entity nominates a subcontractor, the subcontract agreement shall be signed by the Subcontractor and the Procuring Entity. The main contract shall specify the working arrangements between the main contractor and the nominated subcontractor.
- 34.2** Tenderers may propose sub-contracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall be fully qualified for their parts of the Works.
- 34.3** Domestic subcontractor's qualifications shall not be used by the Tenderer to qualify for the Works unless their specialized parts of the Works were previously designated so by the Procuring Entity in the **TDS** as can be met by subcontractors referred to hereafter as 'Specialized Subcontractors', in which case, the qualifications of the Specialized Subcontractors proposed by the Tenderer may be added to the qualifications of the Tenderer.

35. Evaluation of Tenders

- 35.1** The Procuring Entity shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the Procuring Entity shall determine the Lowest Evaluated Tender in accordance with ITT 40.
- 35.2** To evaluate a Tender, the Procuring Entity shall consider the following:
- a) Price adjustment in accordance with ITT 31.1 (iii); excluding provisional sums and contingencies, if any, but including Daywork items, where priced competitively;
 - b) price adjustment due to discounts offered in accordance with ITT 14.4;
 - c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency in accordance with ITT 32;
 - d) price adjustment due to quantifiable non material non-conformities in accordance with ITT 30.3; and
 - e) any additional evaluation factors specified in the **TDS** and Section III, Evaluation and Qualification Criteria.
- 35.3** The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.
- 35.4** Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated in accordance with ITT 35.2. The methodology to determine the lowest evaluated tenderer or tenderers based on 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 required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36.0 Comparison of tenders

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

Abnormally low tenders and abnormally high tenders

Abnormally Low Tenders

- 37.0** 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.

- 371** 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.
- 372** 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

- 373** 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.
- 374** 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.
- 375** If the Procuring Entity determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the Procuring Entity shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

380 Unbalanced and/ or front-loaded tenders

- 381** If in the Procuring Entity's opinion, the Tender that is evaluated as the lowest evaluated price is seriously unbalanced and/or frontloaded, the Procuring Entity may require the Tenderer to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the tender prices with the scope of works, proposed methodology, schedule and any other requirements of the Tender document.
- 382** After the evaluation of the information and detailed price analyses presented by the Tenderer, the Procuring Entity may as appropriate:
- a) accept the Tender;
 - b) require that the total amount of the Performance Security be increased at the expense of the Tenderer to a level not exceeding a 30% of the Contract Price;
 - c) agree on a payment mode that eliminates the inherent risk of the Procuring Entity paying too much for undelivered works;
 - d) reject the Tender,

390 Qualifications of the tenderer

- 391** The Procuring Entity shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.
- 392** The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer, pursuant to ITT 17. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Sub-contractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

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

40.0 Lowest evaluated tender

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

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

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

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

F. AWARD OF CONTRACT

42.0 Award criteria

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

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

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

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

440 Stand still Period

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

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

450 Debriefing by The Procuring Entity

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

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

46.0 Letter of Award

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

47.0 Signing of Contract

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

47.2 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 Performance Security

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

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

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

49.0 Publication of Procurement Contract

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

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

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, Instructions to Tenderers (ITT). Whenever there is a conflict, over those in ITT.
or amend the provisions in the
the provisions herein shall prevail

A.General

The name of the contract is _____

CONSTRUCTION OF PROPOSED OFFICE BLOCK FOR KIWASCO

The reference number of the Contract is

KWSC/RBW/001/2021-2022

The number and identification of lots (contracts) comprising this Tender are
[insert number and identification of lots (contracts)]

LOTS ARE NOT APPLICABLE IN THIS TENDER

Lot1-Name _____

Lot2-Name _____

Lot... Name _____

The Information made available on competing firms is as follows:

The firms that provided consulting services for the contract being tendered for are:

1. AXONOMETRIC SYSTEMS – ARCHITECTS
2. MAGARE & PARTNERS – QUANTITY SURVEYORS
3. BENFILS LIMITED – MECHANICAL ENGINEERS
4. BENFILS LIMITED – ELECTRICAL ENGINEERS
5. APHEL'S CONSULTANTS – STRUCTURAL ENGINEERS

Maximum number of members in the Joint Venture (JV) shall be: *[insert a number]*.

JOINT VENTURES SHALL NOT BE APPLICABLE IN THIS TENDER

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B. Contents of Tender Document	
ITT 7.1	<p>(i) The Tenderer will submit any request for clarifications in writing at the Address:</p> <p>Kisumu Water and Sanitation Company Limited Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center P.O Box 3210 – 40100 Kisumu</p> <p>To reach the Procuring Entity not later than 12th August 2021 at 12.00pm</p> <p>(ii) The Procuring Entity shall publish its response at the website www.kiwasco.co.ke</p>
ITT 7.2	<p>(A) A pre-arranged pretender site visit shall take place at the following date, time and place:</p> <p>Date: 23rd July 2021 Time: 11.00am Place: All will converge at KIWASCO offices as specified above and thereafter proceed to the site.</p> <p>(B) Pre-Tender meeting shall take place at the following date, time and place:</p> <p>Date: 23rd July 2021 Time: 11.00am Place: Kisumu Water and Sanitation Company Limited Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center P.O Box 3210 – 40100 Kisumu</p>
ITT 7.3	The Tenderer will submit any questions in writing, to reach the Procuring Entity not later than 2 days before the meeting.
ITT 7.5	The Procuring Entity's website where Minutes of the pre-Tender meeting and the pre-arranged pretender visit will be published is www.kiwasco.co.ke
ITT 9.1	<p>For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the Procuring Entity's address is:</p> <p style="text-align: center;">Head of Supply Chain Kisumu Water and Sanitation Company Limited Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center Tel: 057 202 3977/057 202 4100 E-Mail: aogwang@kiwasco.co.ke P.O Box 3210 – 40100 <u>Kisumu</u></p>

C. Preparation of Tenders	
ITT 11.1 (h)	<p>The Tenderer shall submit the following additional documents in its Tender: <i>[list any additional document not already listed in ITT 11.1 that must be submitted with the Tender. The list of additional documents should include the following:]</i></p> <ul style="list-style-type: none"> i. Certificate of Incorporation/Registration ii. PIN/VAT certificate iii. Company's CR12 iv. Valid and Current Tax Compliance Certificate v. Valid and Current Business Permit vi. Valid NCA3 and above on Civil Works/ Valid and current NCA annual practicing certificate vii. Form of Tender duly filled, signed and stamped viii. Confidential business questionnaire duly filled, signed and stamped ix. Audited financial statements for the last 3 years x. Bid Bond of Kshs. 2,000,000.00 from a recognized bank or insurance company xi. Title deed or tenancy lease agreement as proof of existence of a functioning office
ITT 13.1	Alternative Tenders shall not be applicable in this tender
ITT 13.2	Alternative times for completion shall not be <u>permitted</u> .
ITT 13.4	Alternative technical solutions shall not be permitted
ITT 14.5	The prices quoted by the Tender shall be fixed.

ITT 15.2 (a)	Foreign currency requirements not allowed .
ITT 18.1	The Tender validity period shall be 120 days .
ITT 18.3	(a) The Number of days beyond the expiry of the initial tender validity period will be 30 days . (b) The Tender price shall be adjusted by the following percentages of the tender price: Not applicable in this tender
ITT 19.1	Tenderer shall provide a Tender Security . The type of Tender security shall be a bid bond in the amount of Kenya shillings Two Million
ITT 20.1	In addition to the original of the Tender, the number of copies is: One (1)
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall be in the form of: Power of Attorney administered by an advocate

D. Submission and Opening of Tenders

ITT 22.1	(A) For <u>Tender submission purposes</u> only, the Procuring Entity's address is: Kisumu Water and Sanitation Company Limited P.O Box 3210 -40100, Kisumu. Attention Managing Director Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center Date and Time of Submission: Thursday, the 12th day August 2021, at 12pm. Tenderers shall not submit tenders electronically.
ITT 25.1	The Tender opening shall take place at the time and the address for Opening of Tenders Provided below: Kisumu Water and Sanitation Company Limited P.O Box 3210 -40100, Kisumu. Attention Managing Director Nafaka House, Ground Floor, Oginga Odinga Street, Opposite Swan Center On 12th August 2021 at 12pm.
ITT 25.1	If Tenderers are allowed to submit Tenders electronically, they shall follow the electronic tender submission procedures specified below.. Not applicable for this tender.
ITT25.5	The number of representatives of the Procuring Entity to sign is _____

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 best estimate.
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	A margin of preference shall not apply.
	<p>The invitation to tender is extended to the following group that qualify for Reservations</p> <p>This Invitation to tender is open. Therefore, there are no reservations</p>
	At this time, the Procuring Entity does not intend to execute certain specific parts of the Works by subcontractors selected in advance.
	Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is: 30% 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.
	<p>The parts of the Works for which the Procuring Entity permits Tenderers to propose Specialized Subcontractors are designated as follows:</p> <p>Not applicable.</p> <p>For the above-designated parts of the Works that may require Specialized Subcontractors, the relevant qualifications of the proposed Specialized Subcontractors will be added to the qualifications of the Tenderer for the purpose of evaluation.</p>
	<p>Additional requirements apply. These are detailed in the evaluation criteria in Section III, Evaluation and Qualification Criteria.</p> <p><i>Post qualification or due diligence shall be conducted before final award is done.</i></p>
	<p>Other documents required in addition to the Performance Security:</p> <p>As specified above</p>
	<p>The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award of the Contract" herein and are also available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke.</p> <p>If a Tenderer wishes to make a Procurement-related Complaint, the Tenderer should submit its complaint following these procedures, in writing (by the quickest means available, that is either by hand delivery or email to:</p> <p style="text-align: center;"> For the attention: Mr. Thomas Odongo Title/position: Managing Director Procuring Entity: KIWASCO Email address: md@kiwasco.co.ke </p> <p>In summary, a Procurement-related Complaint may challenge any of the following (among others):</p> <ul style="list-style-type: none"> (i) the terms of the Tender Documents; and (ii) the Procuring Entity's decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

10 GENERAL PROVISIONS

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

13 EVALUATION AND CONTRACT AWARD CRITERIA

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

2.0 PRELIMINARY EXAMINATION FOR DETERMINATION OF RESPONSIVENESS

Preliminary examination for Determination of Responsiveness

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

S/NO	MANDATORY REQUIREMENTS	REMARKS
1	Certificate of Incorporation/Registration	
2	PIN/VAT registration certificate	
3	Company's CR12	
4	Valid and Current Tax Compliance Certificate	
5	Valid and Current Business Permit	
6	Audited Financial Statements for the last 3 years	

7	Bid bond of Kshs. 2,000,000.00	
8	Form of tender duly filled, signed and stamped	
9	Confidential Business Questionnaire dully filled, signed and stamped	
10	The whole bid document paginated, all pages stamped and initialed	
11	Title deed or lease tenancy agreement as proof of existance of a substantial office	
12	NCA 3 and above Registration – Building Works for both the main contractor and subcontractors in their specialities (not mandatory at this point but must be produced before contract signing, failure to which the bidder will not be eligible for contract signing)	
13	Current annual practicing license from the NCA. (Not mandatory but must be produced before contract signing)	

N/B Lack of any of the above requirements (except No. 12 & 13) shall render the tender non-responsive and hence will be dropped at this point.

30 TENDER EVALUATION (ITT 35)

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

- (i) Alternative Completion Times, if permitted under ITT13.2, will be evaluated as follows:

.....

(Alternative completion times shall not be applicable in this tender as stated in TDS above)

- (ii) Alternative Technical Solutions for specified parts of the Works, if permitted under ITT 13.4, will be evaluated as follows.....

(Alternative Technical Solutions is not permitted in this tender)

- (iii) Other Criteria; if permitted under ITT 35.2(j):

.....

40 MULTIPLE CONTRACTS (Not permitted in this tender)

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

OPTION 1

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

OPTION2

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

5.0 ALTERNATIVE TENDERS (ITT 13.1)

Alternative Tenders (ITT 13.1)

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

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

60 MARGIN OF PREFERENCE

- 61** If the TDS so specifies, the Procuring Entity will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of the foreign tenderers, where the percentage of share holding of Kenyan citizens is less than fifty-one percent (51%).
- 62** Contractors shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Procuring Entity, a particular contractor or group of contractors qualifies for a margin of preference.
- 63** After Tenders have been received and reviewed by the Procuring Entity, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens. Responsive tenders shall be classified into the following groups:
- i) *Group A:* tenders offered by Kenyan Contractors and other Tenderers where Kenyan citizens hold shares of over fifty-one percent (51%).
 - ii) *Group B:* tenders offered by foreign Contractors and other Tenderers where Kenyan citizens hold shares of less than fifty-one percent (51%).
- 64** All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award of contract. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 6.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected for award. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

7. Post qualification and Contract award (ITT 39), more specifically,

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- b) In case the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
 - i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow of Kenya Shillings 50M (Kshs. Fifty Million)
 - ii) Minimum average annual construction turnover of Kenya Shillings 500M (Kshs. Five Hundred Million), equivalent calculated as total certified payments received for contracts in progress and/or completed within the last 2 years.
 - iii) At least 5 Number of contract(s) of a similar nature executed within Kenya, or the East African Community or

a broad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings 100M (Kshs. One Hundred Million) equivalent.

- iv) Contractor's Representative and Key Personnel, which are specified as per FORM PER-1
- v) Contractors' key equipment listed on the table "Contractor's Equipment" below and more specifically listed as per FORM EQU - EQUIPMENT
- iv) Contractors shall provide a methodology and workplan. The workplan must be included with key deliverables clearly stated with critical path analysis well spelt.

c) History of non-performing contracts:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last 3 years. The required information shall be furnished in the appropriate form.

d) Pending Litigation

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

e) Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last 3 years. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or on going under its execution over the years specified. A consistent history of awards against the Tenderer or any member of a JV may result in rejection of the tender.

QUALIFICATION FORM*

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 (This is a national tender and therefore only tenderers registered and domiciled in Kenya are eligible)	Forms ELI - 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a valid and 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 (Prepared on company letterhead, signed and stamped)	
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.7	Form of Tender (Prepared on company letterhead, signed and stamped)	
5	State- owned Enterprise	Meets conditions of ITT 3.8	Forms ELI - 1.1 and 1.2, with attachments	
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI - 1.1 and 1.2, with attachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1 st January [.....].	Form CON-2 (Filled, signed and stamped)	
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 (Prepared on company letterhead, signed and stamped)	

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	Litigation History	No consistent history of court/arbitral award decisions	Form CON – 2 (Filled, signed and stamped)	
11	Financial Capabilities against the Tenderer since 1 st January insert year 2015.	<p>(i) The Tenderer shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated at Kenya Shillings 50M (Kshs. Fifty Million) equivalent for the subject contract(s) net of the Tenderer's other commitments.</p> <p>(ii) The Tenderers shall also demonstrate, to the satisfaction of the Procuring Entity, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. This shall be demonstrated by submitting a line of credit from the tenderer's bankers to the tune of kshs. 50M as mentioned above.</p> <p>(iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the Procuring Entity, for the last 3 years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.</p>	Form FIN - 3.1, with attachments as mentioned	
12	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings 500M (Kshs. Five Hundred Million) equivalent calculated as total certified payments received for contracts in progress and/or completed within the last 2 years, divided by 2 years	Form FIN - 3.2 (with supporting documents as mentioned)	

	2	3	4	5
	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For Procuring Entity's Use (Qualification met or Not Met)
	Specific Construction & Contract Management Experience	<p>A minimum number of 5 (five) similar contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January 2019 and tender submission deadline i.e., 5 (number) contracts, each of minimum value Kenya shillings 120M (One Hundred Twenty Million) or equivalent.</p> <p><i>[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]</i></p> <p>The similarity of the contracts shall be based on the following:</p> <p>1. Physical size: A storey building with minimum 4 floors and area same or bigger than the proposed building</p> <p>2. Complexity: Use Project Complexity Assessment Matrix based on stakeholder outlook, technology used, contractor's project cost vs time and risks involved.</p>	<p>Form EXP 4.2(a)</p> <p>(Provide supporting documents – Name of contract, nature, contract amount, letter of award, contract agreement and completion certificate)</p>	

		<p>3. Construction Method: State the construction method used in carrying out the similar assignment.</p> <p>4. Technology: Type of concrete works, any special materials used, unique situations on site requiring specialized attention, Type of equipments used in the construction in question.</p>		
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SECTION IV - TENDERING FORMS

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE

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

	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
	Local Labor			
	Local materials			
	Sub contracts from Local sources			
	Use of Local Plant and Equipment			
	Add any other items			
	TOTAL COST LOCAL CONTENT PERCENTAGE OF CONTRACT PRICE		XXXXX	

2. FORM EQU: EQUIPMENT

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

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

N/B: The above information shall be provided for each equipment. Provide details of proof of ownership of these equipments i.e logbooks for vehicles, receipts of purchase for equipments and evidence of lease inform of lease agreement if leased. The lease agreement must be accompanied by proof of ownership as mentioned above by the lessor.

The equipments shall be as listed below:

EQUIPMENT	MINIMUM REQUIREMENT
Earth Moving Equipment	Excavator/Backhoe/Shovel – 1 Loader – Type Optional - 1 Dump/Tipper truck – Type optional – 1 Compactor - Type optional - 1
Hauling/Lifting Equipment	Lifting Hoists and Overhead Crane – Type optional, but functional – 1 each Hauling truck – Min 25Ton – 1 Scaffold Hoists – 1 Set
Concreting Equipment	Batching plant – Option of using pre-mix cement allowed Concrete Mixer - capacity optional - 1 Concrete Vibrator - Poker – 2 - Pan/Table vibrators - added advantage
Welding equipment	Relevant types & sets required
Concrete on-site Non-Intrusive Testing Machines	Slump test apparatus - 1 Concrete test hammer (e.g. Schmidt hammer) - 1 Cube and cylindrical mold - @2 Penetrometer - 1 Extensometer - 1
Transport Equipment	Ten Tonner Truck – 1 Pickup Truck - 2

3. **FORM PER -1**

Contractor's Representative and Key Personnel Schedule

KEY STAFF EXPERIENCE & QUALIFICATIONS

FUNCTION	REQUIREMENT
Director	<ul style="list-style-type: none"> • At least one Technical Director with civil Engineering-related background • Certified by NCA
Site agent/Site Engineer	<ul style="list-style-type: none"> • BSc or B.Tech. in Civil/Construction Engineering • Proven Knowledge in Construction Management • At least Professional Engineer registered with EBK • At least 8 years' experience in building & Construction and similar projects in the same capacity • Certified by NCA
Civil Engineer	<ul style="list-style-type: none"> • BSc or B.Tech. in Civil/Construction Engineering • At least Graduate Engineer duly registered by EBK • Minimum 5 years' experience in similar field of construction • Certified by NCA
Structural Engineer	<ul style="list-style-type: none"> • BSc or B.Tech. in Civil/structural Engineering • At least Graduate Engineer duly registered by EBK • Minimum 5 years' experience as a structural engineer in a similar environment • Certified by NCA
Electro-Mechanical Engineer	<ul style="list-style-type: none"> • BSc or B.Tech. in Mechanical Engineering • At least Electrical or Mechanical Graduate Engineer duly registered by EBK • Minimum 5 years' experience as an electro-mechanical Engineer (Proven knowledge in both electrical and mechanical systems in similar construction) • Duly Certified by EPRA • Duly Certified by NCA
Site Foreman	<ul style="list-style-type: none"> • Minimum Diploma in Civil Engineering or construction management field • Excellent knowledge of construction operations and equipment • In-depth knowledge of construction procedures, equipment and OSH guidelines • Ability to read drawings, plans and blueprints • Minimum 5 Years' experience in a similar position • Certified by NCA
Surveyor (s)	<ul style="list-style-type: none"> • Minimum Higher Diploma in surveying and/or related studies • Recognized as Full member as Engineering Surveyor by ISK • Minimum 3 years' experience in building surveying of similar or bigger magnitude • Certified by NCA

Civil Technician (s)	<ul style="list-style-type: none"> • Minimum Diploma in civil engineering or construction technology • Minimum 3 years' experience in similar construction field • Member of KETRB as a civil technician or an equivalent in EBK • Certified by NCA
Quantity Surveyor (Optional)	<ul style="list-style-type: none"> • Higher National Diploma in Building, Civil or Quantity Surveying or equivalent • Member of IQSK with minimum 8 years' experience in similar field for Diploma and 5 years' experience for BSc • Certified by NCA
Plant Operator (Optional)	<ul style="list-style-type: none"> • Minimum trade certificate for heavy plant (Proficiency in plant and equipment requisite in this contract – including Earth moving equipment) • Duly licensed by NTSA • Minimum 5 years' experience in plant operation, and 3 years' experience in building construction environment • Certified by NCA
Health, Safety, Social and Environmental Officer	<ul style="list-style-type: none"> • Minimum BSc in Environmental Science • Proven training and 3years' practice in Occupational Safety & Health management • Minimum 5 years' experience in building construction environment of equivalent or bigger magnitude • Certified by NCA
Formwork technician	<ul style="list-style-type: none"> • Minimum Trade test certificate • Formwork technician training/certificate • Minimum 3 years' Experience in construction of which 1 must be in a major construction environment • Certified by NCA
steel fixer	<ul style="list-style-type: none"> • Minimum trade test certificate with bar-bending scheduling • Minimum 5 years' Experience in construction of which 2 must be in a major construction environment • Certified by NCA
Scaffolding technician	<ul style="list-style-type: none"> • Minimum Trade test certificate and Scaffolding training/certificate • Proven basic understanding of OSH in scaffolding work • Minimum 5 years' Experience in construction of which 2 must be in a major construction environment • Certified by NCA

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

4. **FORM PER - 2:**

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

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

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

Relevant experience			
Project	Role	Duration of involvement	[describe the experience relevant to position]
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[duration]</i>	

Declaration

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

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

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

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

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

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

Signature: _____

Date: (day month year): _____

Counter signature of authorized representative of the Tenderer:

Signature: _____

Date: (day month year): _____

N/B – Contractors to attach CVs of the above key personnel and copies of their certificates to support proof of their qualifications above. This should be for all the positions listed above

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.

FORM ELI -1.1 Tenderer Information Form

Date: _____ ITT No. _____

and title: _____

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

This form must be filled, all required information provided and required attachments provided

51 FORM ELI -1.2

Tenderer's JV Information Form

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

Date: _____ ITT No. And

title: _____

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

52 **FORM CON –2**

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: _____ Date: _____

JV Member's Name _____ ITT No. And title: _____

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

This must be filled, signed and stamped

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

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

5.4 FORM FIN – 3.1:

Financial Situation and Performance

Tenderer's Name: _____

Date: _____ JV

Member's

Name _____ ITT No. and title: _____

5.4.1. Financial Data

Type of Financial information in _____ (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate*, USD)				
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 Tax					
Cash Flow Information					
Cash Flow from Operating Activities					

*Refer to ITT 15 for the exchange rate

542 Sources of Finance

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

	Source of finance	Amount (Kenya Shilling equivalent)

543 Financial documents

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

- a) reflect the financial situation of the Tenderer or incase of JV member, and not an affiliated entity (such as parent company or group member).
- b) Be independently audited or certified in accordance with local legislation.
- c) Be complete, including all notes to the financial statements.
- d) Correspond to accounting periods already completed and audited.

☐ Attached are copies of financial statements¹ for the 3 years required above; and complying with the requirements.

5.4 FORM FIN – 3.1:

Average Annual Construction Turnover

Tenderer's Name: _____

Date: _____ JV

Member's

Name _____ ITT No. and title: _____

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

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

¹If 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.

N/B – Attach audited financial statements to support your figures above.

56 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		
	Source of financing	Amount (Kenya Shilling equivalent)

N/B – Tenderers shall attach supporting documents with this form including a letter of credit from their bankers. The letter of credit shall be for kshs. 50,000,000.00 (Fifty Million Only) and above.

5.5 FORM FIN – 3.2:

5.7 FORM FIN–3.4:

Current Contract Commitments / Works in Progress

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

<i>Current Contract Commitments</i>					
	Name of Contract	Procuring Entity's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]		Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month)]

N/B – Tenderers shall attach supporting documents with this form.

58 FORM EXP -4.1

General Construction Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. And title: _____

Page ____ of _____ pages

		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: _____	

N/B – Tenderers shall attach supporting documents with this form. The supporting documents will include letters of award, contract agreements and completion certificates.

59 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____

Date: _____ JV

Member's

Name _____ ITT No. and title: _____

Similar Contract No.	Information		
Contract Identification			
Award date			
Completion date			
Role in Contract	Contractor <input type="checkbox"/>	JV <input type="checkbox"/>	Management Contractor <input type="checkbox"/>
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:			
Amount ¹			
Physical size ² of required works items			
Complexity ³			
Methods/Technology ⁴			
Construction rate for key activities ⁵			
Other Characteristics ⁶			

N/B – Tenderers shall attach supporting documents with this form. The supporting documents will include letters of award, contract documents and completion certificates.

5.10 FORM EXP - 4.2 (b)

Construction Experience in Key Activities

Tenderer's Name: _____

Date: _____

Name: _____

No. and title: _____

Tenderer's

JV

Member

Sub-contractor's Name² (as per ITT 34): _____ ITT

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:

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

Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)	Actual Quantity Performed (i) x (ii)
Year 1			
Year 2			
Year 3			
Year 4			
Procuring Entity's Name:			
Address: Telephone/fax number E-mail:			
Description of the key activity in accordance with Sub-Factor 4 of Section III:			

N/B – Tenderers shall attach supporting documents with this form. The supporting documents will include letters of award, contract documents and completion certificates.

OTHER FORMS

6. FORM OF TENDER

INSTRUCTIONS TO TENDERERS

- i) *The Tenderer must prepare this Form of Tender on stationery with its letterhead clearly showing the Tenderer's complete name and business address.*
- ii) *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 shall include the following Forms duly completed and signed by the Tenderer.*
 - *Tenderer's Eligibility- Confidential Business Questionnaire*
 - *Certificate of Independent Tender Determination*
 - *Self-Declaration of the Tenderer*

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

Request for Tender No.: *[insert identification]* **Name and description of Tender**
[Insert as per ITT) Alternative No.: *[insert identification No if this is a Tender for an alternative]*

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

Dear Sirs,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above named Works, we, the undersigned offer to construct and complete the Works and remedy any defects there in for the sum³ of Kenya Shillings *[[Amount in figures]*_____ Kenya Shillings *[amount in words]*_____

The above amount includes foreign currency⁴ amount(s) of *[state figure or a percentage and currency]* [figures]

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

2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Architect notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Special Conditions of Contract.
3. We agree to adhere by this tender until _____ *[Insert date]*, and it shall remain binding upon us and may be accepted at any time before that date.
4. We understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the under signed, further declare that:

- i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
- ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
- iii) Tender - Securing Declaration: We have not been suspended nor declared ineligible by the Procuring Entity based on execution of a Tender-Securing or Proposal-Securing Declaration in the Procuring Entity's Country in accordance with ITT 19.8;
- iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: *[insert a brief description of the Works]*;
- v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: *[Insert one of the options below as appropriate]*
- vi) Option 1, in case of one lot: Total price is: *[insert the total price of the Tender in words and figures, indicating the various amounts and the respective currencies]*; or
Option 2, in case of multiple lots:
 - (a) Total price of each lot *[insert the total price of each lot in words and figures, indicating the various amounts and the respective currencies]*; and
 - (b) Total price of all lots (sum of all lots) *[insert the total price of all lots in words and figures, indicating the various amounts and the respective currencies]*;
- vii) Discounts: The discounts offered and the methodology for their application are:
- viii) The discounts offered are: *[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 in detail the method that shall be used to apply the discounts]*;
- x) Tender Validity Period: Our Tender shall be valid for the period specified in TDS 18.1 (as amended, if applicable) from the date fixed for the Tender submission deadline specified in TDS 22.1 (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- xi) Performance Security: If our Tender is accepted, we commit to 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 ITT 3.4, other than alternative Tenders submitted in accordance with ITT 13.3;
- xiii) Suspension and Debarment: We, along with any of our subcontractors, suppliers, Engineer, manufacturers, or service providers for any part of the contract, are not subject to, and not controlled by any entity or individual that is subject to, a temporary suspension or a debarment imposed by the Public Procurement Regulatory Authority or any other entity of the Government of Kenya, or any international organization.
- xiv) State-owned enterprise or institution: *[select the appropriate option and delete the other]* *[We are not a state-owned enterprise or institution]*/*[We are a state-owned enterprise or institution but meet the requirements of ITT 3.8]*;
- 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.”)

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

⁴The 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 there of included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- xvii) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;
- xviii) Fraud and Corruption: We here by certify that we have taken steps to ensure that no 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 process and the execution of any resulting contract.
- xxi) We, the Tenderer, have completed fully and signed the following Forms as part of our Tender:
 - a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are 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 the Tenderer - to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - (d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

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

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

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:

***[insert complete name of person duly authorized to sign the Tender]*

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

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

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

Date signed _____ day of _____, _____

Notes

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

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

(a) TENDERER'S ELIGIBILITY - CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

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

General and Specific Details

- (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

- (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

- (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 Procuring Entity	Interest or Relationship Tenderer

(ii) Conflict of interest disclosure

	Type of Conflict		If YES provide details of the relationship with Tenderer
	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
	Tenderer has the same legal representative as another tenderer		
	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.		

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.		
Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract Specified in this Tender Document.		
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 specification of the Contract, and/or the Tender evaluation process of such contract.		
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.		
Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the Procuring Entity throughout the tendering process and execution of the Contract.		

Certification

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

Full Name_____

Title or Designation_____

(Signature)

(Date)

b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

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

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

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

FORM SD1

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

I,, of Post Office Box being a
resident of

..... in the Republic of do hereby
make a statement as follows: -

1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal
Officer/Direct or of

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

..... for (*insert tender title/description*) for
..... (*insert name of the Procuring entity*) and duly authorized and competent
to make this statement.
2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from
participating in procurement proceeding under Part IV of the Act.
3. THAT what is deponed to here in above is true to the best of my knowledge, information and
belief.

.....

(Title)

.....
(Signature)

(Date)

Bidder Official Stamp

FORM SD2

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

I,of P.O. Box being a resident of

..... in the Republic of do hereby make a statement as follows: -

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

.....

..... (Title)
(Signature)

(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

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

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

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

Name of Authorized
signatory.....

Sign.....
.....

Position.....
.....

Office address.....

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

Name of the
Firm/Company.....
..

Date.....
.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name.....
.....

Sign.....
.....

Date.....
.....

(d) APPENDIX 1 - FRAUD AND CORRUPTION

(Appendix 1 shall not be modified)

1. Purpose

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

2. Requirements

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

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

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

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

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

- a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
- b) if a contract has already been entered into with the person, the contract shall be voidable;

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

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

- a) Shall not take part in the procurement proceedings;
- b) shall not, after a procurement contract has been entered in to, take part in any decision relating to the procurement or contract; and
- c) shall not be a subcontractor or for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.

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

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

(5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

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

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

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

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

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal 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 award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;
- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring(i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a "Self-Declaration Form" as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.

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

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

2. FORM OF TENDER SECURITY-DEMAND BANK GUARANTEE

Beneficiary: _____ **Request for Tenders**
No: _____ **Date:** _____

TENDER GUARANTEE
No.: _____
Guarantor: _____

1. We have been informed that _____ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called "the Tender") for the execution of _____ under Request for Tenders No. _____ ("the ITT").
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____) upon receipt by us of the Beneficiary's complying demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Applicant:
 - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[signature(s)]

4. FORM OF TENDER SECURITY (TENDER BOND)

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

BOND NO. _____

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 to be made, we, the said Principal and Surety, bind ourselves, our successors and as signs, jointly and severally, firmly by these presents.
2. WHERE AS 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]* (herein after called the “Tender”).
3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal:
 - a) _____ H
as with drawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension there to provided by the Principal; or
 - b) _____ H
aving been notified of the acceptance of its Tender by the Purchaser during the Tender Validity Period or any extension there to provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers (“ITT”) of the 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 here by agrees that its obligation will remain in full force and effect upto and including the date 30 days 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 day of _____ 20.

Principal: _____
Corporate Seal
(where appropriate)

Surety: _____

(Signature)

(Printed name and title)

(Signature)

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

Signed:..... Capacity/title

(director or partner or sole proprietor, etc.)

Name:..... Duly

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

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

5. Appendix to Tender

Schedule of Currency requirements

Summary of currencies of the Tender for _____ [insert name of Section of the Works]

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

PART II- WORKS REQUIREMENTS

SECTION V - BILLS OF QUANTITIES

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

1. These Notes for Preparing a Bill of Quantities are intended only as information for the Procuring 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 the specifications, descriptions and quantities of Works to be performed to enable tenders to be prepared efficiently and accurately and when a contract has been entered into, to provide a priced Bill of Quantities for use in the periodic valuation of Works executed. In order to attain these objectives, Works should be itemized in the Bill of Quantities in sufficient detail to distinguish between the different classes of Works, or between Works of the same nature carried out in 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 as simple 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) Daywork 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.

Unit	Abbreviation	Unit	Abbreviation
	m ³ or cu m	millimetre	mm
cubic meter	t		

43. The Bills of Quantities shall be read in conjunction with the Instructions to Tenders, General and Special Conditions of Contract, Technical Specifications, and Drawings.
44. 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 the Contract.
45. 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.
46. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or 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.
47. 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.
48. 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.
49. Provisional Sums and contingency sums included and so designated in the Bills of Quantities shall be expended in whole or in part at the direction and discretion of the Architect in accordance with Sub-Clause 13.5 and Clause 13.6 of the General Conditions of contract.
410. In preparing the Bills of Quantities, notes should be removed as they are intended to guide the person preparing the Tender Documents. The Contractor must allow in his rates for any costs associated with and complying with the requirements in the Preambles.
411. 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, notice boards, and other temporary works, otherwise items such as security for the Works which are primarily part of the Contractor's obligations should be 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 whole sections 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-measurement to be done before such work is cover-up.
- 55 All items that have not been measured and therefore not subject to tenderers 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 a general 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.
- 56 Provisional sums to cover specialized works normally carried out by Nominated Sub Contractors should be avoided and instead Bills of Quantities of the specialized Works should be included as a section of the main Bills of Quantities to be priced by the Main Contractor. The Main Contractor should be required to indicate the name(s) of the specialized firms he proposes to engage to carry out the specialized Works as his approved domestic sub-contractors. Only provisional sums to cover specialized Works by statutory authorities should be included in the Bills of Quantities.
- 57 A Daywork Schedule should be included if the probability of unforeseen work, outside the items included in the Bill of Quantities, is relatively high. To facilitate checking by the Procuring Entity of the realism of rates quoted by the tenderers, the Daywork Schedule should normally comprise:
- i) A list of the various classes of labor, and materials for which basic.
 - ii) Daywork rates and prices for various categories of labor are to be inserted by the tenderer, together with a statement of the conditions under which the Contractor will be paid for Work executed on a Daywork basis.
 - iii) A percent to be entered by the tenderer against each basic Day work item.
 - iv) Subtotal amount for labor, materials and plant representing the Contractor's profit, overheads, supervision and other charges.
- 58 The Summary should contain a tabulation of the separate parts of the Bills of Quantities carried forward, with provisional sums for Daywork, Provisional sums and Contingencies, and provision for Total Costing. The last line should allow for tenderer to indicate any discounts before arriving at a total cost carried forward to the Form of Tender.

BILLS OF QUANTITIES

(a) Preambles

1. The method of measurement of completed work for payment shall be in accordance with FIDIC Red Book
2. The Site is situated in Tom Mboya Estate, 350M to the North West of Avenue Hospital and adjacent to Sapphire Preparatory School – Mito Jura Road/Nyerere Road Junction. It is approximately 360 Kilometers from Nairobi. Access to the site shall be through Nyerere Road, which is an existing public road. Any damage caused to the surfaces of this road shall be made good at the Contractor's expense. The Contractor shall visit the site and acquaint itself with its nature and position, the nature of the ground, substrata and other local conditions, positions of existing power, water and other services, access roads or any other limitations that might affect his cost or progress. No claim for extras shall be considered on account of lack of knowledge in this respect.
3. The Contractor shall obtain the Architect's approval on the siting of all temporary buildings, spoil heaps, temporary access path, and storage of materials. The Contractor shall also obtain the Architect approval and direction regarding the use of any materials found on the Site.
4. The drawings used in the preparation of these Bills of Quantities can be inspected at the offices of the Procuring Entity or Procuring Entity's Representative during normal working hours. Two sets of the Working Drawings shall be provided to the contractor but additional copies shall be provided at a 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. The Contractor shall allow any costs associated with such occupation.
7. The main Contractor will be fully responsible for paying his Sub-Contractor but the Procuring Entity reserves the right in very exceptional circumstances to make such payments direct in the interests of the project where the completion thereof might be jeopardized by any dispute or vicariousness between the Contractor and the Sub- Contractor involve.
8. The Contractor shall complete and deliver the Works in the period inserted in the Form of Tender as his time for completion of the Works from the date for Possession, to be agreed with the Engineer. 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 the Works, draw up a Programme and Progress Chart setting out the order in which the Works are to be carried out, with the appropriate dates there of. This Chart shall be agreed with the Architect and no deviation from the order set out in it will be permitted without the written consent of the Engineer. The Contractor will be responsible for arranging the above programme with all his sub-Contractors and Specialties. The Contractor shall allow in his rates for carrying out this exercise, and for updating it as required.
10. The Contractor shall submit to the Architect on the first day of each week or such longer period as the Architect from time to time direct, a Progress Report and any information for the proceeding period, showing the progress during the period and the up-to-date cumulative progress on all important items of each section or portion of the Works.

11. The Contractor shall arrange for photographs of the Site to be taken by a professional photographer approved by the Engineer. The Photographs shall provide a record of the Site and adjacent areas as prior to the commencement of the Works and shall cover such portion of the works in progress and completion as the Architect shall direct. All prints shall be full plate size, unmounted, and marked on the reverse side with the date of exposure, identification reference and brief description. The copyright of all photographs shall be vested in the Procuring Entity. The negatives and four prints from each negative shall be delivered to the Architect within two weeks of exposure.
12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but whenever possible dimensions are to be taken on the Site or from the buildings. Before any work is commenced by Sub-Contractors or Specialist Firms, dimensions must be checked on the site comparable dimensions shown on the drawings. The Contractor shall be responsible for the accuracy of such dimensions.
13. Prior to commencement of any work the Contractor is to ascertain from the relevant Authorities the exact position, depth and level of all existing electric cables, waterpipes or other services in the area and he shall make whatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Architect and the relevant Authority and shall be made good to their satisfaction at the Contractor's expense. Where appropriate the Contractor shall open up the ground in advance of the main work by hand digging if necessary, to locate precisely the position and details of the services which are likely to affect his operations.
14. The Contractor shall include in his prices for the transport of materials, workmen, etc./, to and from the site of the proposed works, at such hours and by such route as are permitted by the Authorities.
15. The Contractor will be required to make good, at his own expense and damage he may cause to the present road surface and pavements within or beyond the boundary of the Site, during the period of the works. All existing paths, storm water channels, etc., that may be destroyed or damaged during the progress of the Works shall be reinstated by the Contractor to the satisfaction of the Engineer.
16. The Contractor is to allow for complying with all instructions and regulations of the Police Authorities.
17. All water shall be fresh, clean and pure, free from earthly, vegetable or organic matter, acid or alkaline substance in solution. The Contractor shall provide at his own risk and cost all water for use in connection with the Works, (including works of sub-contractors). If need be, he shall make arrangements with the Local Water Authority for the installation of a separate meter for all water used by him throughout the Contract and pay all cost and fees in connection therewith. He shall also provide temporary storage tanks and tubing, etc., as may be necessary, and clear away at completion.
18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub – Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion. The Contractor shall pay all fees and obtain all permits in connection therewith.
19. The Contractor shall constantly keep on the Works a Literate English-speaking Agent or Representative, competent and experienced in the kind of work involved, who shall give his whole time to the superintendence of the works. (Including works of sub – contractors). Such Agent or Representative shall receive on behalf of the Contractor directions and instruction from the Engineer, and such directions and instructions shall be deemed to be given to the contractor in accordance with the Conditions of Contract. The Agent shall not be replaced without the specific approval of the Engineer.
20. The Contractor shall ensure that the safety of his work people and all authorized visitors to the site are protected at all times. In particular, there shall be the proper provision of guard-rails to scaffolding, protection against falling materials, tools on site, dust, nail and other sharp objects.

The site shall be kept tidy and clear of dangerous rubbish. The Architect shall be empowered to suspend work on site should it be considered this condition is not being observed and no claim arising from such suspension will be allowed.

21. The areas available to the Contractor for workyards, offices and other facilities shall be directed by the Architect 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 contractor shall source them at own cost.
22. The Contractor shall give the Architect reasonable notice of the intention to set out or take levels for any part of the Works so that arrangements may be made for checking the work. The accuracy of setting out and leveling shall be within the tolerances specified in the Specifications or on the Drawings. The checking of setting out or leveling by the Architect shall not relieve the Contractor of his duties or responsibilities under the Contract.
23. The Contractor must take steps necessary to safeguard and shall be held fully responsible for any damage caused to existing and adjacent property, including buildings that are not a subject of demolition. He shall make good at his own cost damage to persons and property caused thereon, and he shall indemnify the Procuring Entity against any loss or claim that may arise.
24. The Contractor shall take such steps and exercise such care and diligence as to minimize nuisance arising 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 nuisance etc. as directed by Engineer.
25. The Contractor's attention is drawn to the standards levy order which was amended on 15th October 1998. Legal notice No. 154 of 1998. The Contractor is required to pay a monthly level of 0.2% of his factory price of construction works with effect from January 1999. Tenderer shall allow for this in the build-up of his rates.
26. The Contractor shall provide temporary sheds, offices, messrooms, sanitary, accommodation and other temporary buildings for the use of the contractor and sub-contractors, including lighting furniture equipment and attendance.
27. Contractor shall provide/build labor camp sites to be agreed with the Engineer. Labor camps shall be complete with sanitary accommodation and fencing gates.
28. The Contractor must provide the necessary toilet facilities to the requirement and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees during the period of the Works and remove when no longer required.
29. The Contractor shall provide at his own risk and cost all watching and lighting as necessary to safeguard the Works, Plant and materials against damage and theft.
30. The Contractor shall provide all necessary hoists, tackle, plant, equipment, vehicles, tools and appliances of every description for the due and satisfactory completion of the Works and shall remove the same on completion. All such plant, tools and equipment shall comply with all regulations in force throughout the period of the Contract and shall be altered or adopted during the Contract period as may be necessary to comply with any amendments in or additions to such regulations.
31. Provide, erect and maintain all necessary scaffolding, sufficiently strong and efficient for the due performance of the works, including Sub-Contract Works, provide special scaffolding as required by Sub-Contractors, alter and adopt all scaffolding as and when required during the Works, and remove on completion. No scaffolding is measured here in after and the Contractor must allow in his rates for this.
32. The Contractor shall take all necessary precautions such as temporary fencing, hoarding, fans, planked footways, guard-rails, gantries screen, etc., for the safe custody of the Works, materials and public protection and adjacent properties.
33. Cover up all and protect from damage, including damage from inclement weather, all finished work and unfixed materials, including that of Sub-Contractors, etc., to the satisfaction of the Architect until the completion of the 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 Works in a clean and tidy state to the satisfaction of the Engineer, sheds, camps, etc. Particular care shall be taken to leave clean all floors and windows and to move all paint and cement all rubbish and dirt as it accumulates. The Contractor is to find his own dump and shall pay all charges in connection therewith.
35. Concrete test cubes shall be prepared in a set of three, as described including testing fees, labor and materials, making molds, transport, handling, etc. Allow in your rates for making at least four cubes on each occasion, from different batches; the concrete being taken from the point of deposit.
36. The Contractor shall furnish at the earliest possible opportunity before work commences, and at his own cost, any samples of materials and workmanship that may be called for by the Architect for the approval or rejection, and any further samples in the case of rejection, until such samples are approved by the Engineer. Such samples, when approved, shall be the minimum standard for the work to which they apply. The procedure for submitting samples of materials for testing or approval and the method of marking for identification shall be as laid down by the Engineer. The Contractor shall allow in his Tender for such samples and tests, including those in connection with his Sub-Contractors work.
37. The Contractor's attention is drawn to the Finance Bill of the year 2000/2001 on withholding tax on contractual payment section 35(7)(i)(ii) which became effective on 1st July 2000. A 3% withholding tax will be applicable to all interim payments exceeding Kshs. 500,000.00 for work done in respect of building or civil works. The contractor shall allow for any costs arising resulting therefrom in the build-up of rates.
38. Blasting will only be allowed with the express permission of the Architect in writing. All blasting operations shall be carried out at the Contractor's sole risk and cost, in accordance with any Government regulations in force for the time being, and any special regulations laid down by the Architect governing the use and storage of explosives.
39. The National Construction Authority is a state corporation established under the national construction authority Act No.14 of 2011. The broad Mandate of the Authority is to oversee the construction industry and coordinate its development. The National Construction Authority Regulations 2014 with an effective date of 6th June 2014, regulation 25, - Allow 0.5% of the tender sum/contract sum for construction levy.
40. The Contractor's attention is drawn to Finance Bill of 1993 where VAT was introduced in all contracts for construction services. The tenderer is also drawn to VAT Act Cap 476 clause 19(9). The tenderer must allow for VAT 1.19 as instructed elsewhere.
41. The contractor shall allow and pay for all insurance to cover risks and indemnities required Items 17 and 18 of the Conditions of contract and also specified in the Special Conditions of Contract.

ITEM	DESCRIPTION	AMOUNT
	<p><u>SECTION NO. 1</u></p> <p><u>PRELIMINARIES</u></p> <p>A PRICING OF ITEMS OF PRELIMINARIES</p> <p>Whenever in the Contractor's priced Bills of Quantities no price appears against an item of Preliminaries, the value of such item shall be deemed to be included in the prices for the other items in the Bills of Quantities.</p> <p>B EMPLOYER</p> <p>The term "The Employer" wherever used hereinafter and in all Contract documents shall mean Kisumu Water And Sanitation Co.Ltd. of P.O Box 3210-40100, Kisumu.</p> <p>C CONTRACTOR</p> <p>The term "The Contractor" wherever used hereinafter and in all Contract, documents shall mean the person or Persons, Partnership, Firm or Company whose Tender for the works has been accepted and who has, or have signed this contract and shall include his or their heirs, executors, administrators, assigns, successors and duly appointed representatives.</p> <p>D ARCHITECT</p> <p>The term "Architect" wherever used hereinafter and in all Contract, documents shall mean M/S Axonometric Systems, P.O. Box 9589-00100, Nairobi, Kenya.</p> <p>E QUANTITY SURVEYORS</p>	

	<p>The term "The Quantity Surveyor" wherever used hereinafter and in all Contract, documents shall mean M/S Magare & Partners, P.O. Box 67617-00200, Nairobi.</p>	
	<p>Carried to Collection</p>	<p>Kshs</p>
A	<p>CIVIL/STRUCTURAL ENGINEERS</p> <p>The term "Engineer" wherever used hereinafter and in all Contract, documents shall mean M/S Aphel Consultants Consulting Engineers, P.O. Box 75624-00200, Nairobi, Kenya for Civil and Structural works.</p>	
B	<p>ELECTRICAL/MECHANICAL ENGINEERS</p> <p>The term "Electrical/Mechanical Engineers" wherever used hereinafter and in all contract, documents shall be M/S Benfils Engineering, P.O. Box 322-00100, Nairobi, Kenya for Electrical and Mechanical Engineerng Services, Nairobi, Kenya for services.</p>	
C	<p>EMPLOYER'S REPRESENTATIVES</p> <p>Wherever the term "Architect, Quantity Surveyor and Engineer" as defined above are used in all contract documents they shall be deemed to imply the Employer's Representatives or such persons as they may be duly authorised to represent them on behalf of the Employer or the Successors in the office of such persons and also such persons as may be deputed by such representatives to act on their behalf for the purpose of this contract.</p>	
D	<p>WORKS</p> <p>The term "The Works" wherever used hereinafter and in all Contract documents shall mean all or any portion of the Work, Materials and Articles wherever the same are being manufactured or prepared which are to be used in the execution of this Contract and whether the same be on site of the building or not. It shall also be deemed to include the work of all Sub-Contractors and of all variations</p>	

E	<p>CONTRACT</p> <p>The term "The Contract" wherever used hereinafter and in all Contract documents shall mean tender, Articles of Agreement and Condition of Contract, Form or Bond, Drawings and Priced and signed Bills of Quantities.</p>	
<p>Carried to Collection Kshs</p>		
A	<p>DEFINITION OF TERMS</p> <p>Throughout these Bills of Quantities, Units of measurements and terms are abbreviated and shall be interpreted as follows:-</p> <p>mm - shall mean millimetres</p> <p>L.M. - shall mean linear Metre</p> <p>S.M - shall mean Square Metre</p> <p>C.M - shall mean Cubic Metre</p> <p>Kgs - shall mean Kilogrammes</p> <p>No. - shall mean Number</p> <p>Prs - shall mean Pairs</p> <p>B.S. - shall mean current British Standard Specifications published by the British Standard Institution, 2,Park Street London,W.1,England</p> <p>" - shall mean Inch</p> <p>' - shall mean Foot</p>	

	<p>L.F - shall mean a Linear Foot</p> <p>S.F - shall mean Square Feet</p> <p>C.F - shall mean Cubic Feet</p> <p>L.B. - shall mean Pounds</p> <p>m.s. - shall mean Measured Separately</p> <p>b.s.m - shall mean Both Sides measure</p> <p>P. C - shall mean Prime Cost</p>	
<p>Carried to Collection</p>		Kshs
	<p>A small Pipe" - shall mean any pipe not exceeding 55 mm internal diameter</p> <p>A Large Pipe - shall mean any pipe exceeding 110 mm diameter.</p> <p>An extra-large pipe- shall mean any pipe exceeding 110 mm internal diameter</p> <p>Ditto - shall mean the whole of the preceding description except as qualified in the description in which it occurs where occurs in brackets it shall mean the whole of the preceding description which is contained within the whole of the appropriate brackets.</p> <p>Approved - shall mean approved by or to the Architect.</p> <p>As Directed - shall mean as directed by the Architect.</p>	

A	(m.s.) - shall mean mean measure separately.																			
	(b.s.m.) - shall mean both sides measured.																			
	(P.C.) - shall mean Prime Cost																			
	100-200 mm girth - shall mean exceeding 100 mm but not exceeding 200 girth and all item described in this manner shall similarly construed.																			
	DISCREPANCIES BETWEEN BILLS OF QUANTITIES AND DRAWINGS DRAWINGS In the event of a discrepancy between the Drawings and the Bills of Quantities, the Bills of Quantities shall override the Drawings as far as the quantities are concerned.																			
Carried to Collection		Kshs																		
A	THE SCOPE OF WORKS This is an Office block comprising: - <table><thead><tr><th><u>Level</u></th><th><u>Sq. Meters</u></th></tr></thead><tbody><tr><td>i. Ground Floor</td><td>719.61</td></tr><tr><td>ii. First Floor</td><td>726.84</td></tr><tr><td>iii. Second Floor</td><td>649.70</td></tr><tr><td>iv. Third Floor</td><td>649.70</td></tr><tr><td>v. Fourth Floor</td><td>649.70</td></tr><tr><td>vi. Rooftop</td><td>348.91</td></tr><tr><td><u>Total Built-up Area (As Measured by QS)</u></td><td><u>Sq. Meters</u></td></tr><tr><td></td><td>3,744.46</td></tr></tbody></table>	<u>Level</u>	<u>Sq. Meters</u>	i. Ground Floor	719.61	ii. First Floor	726.84	iii. Second Floor	649.70	iv. Third Floor	649.70	v. Fourth Floor	649.70	vi. Rooftop	348.91	<u>Total Built-up Area (As Measured by QS)</u>	<u>Sq. Meters</u>		3,744.46	
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B	<p><u>DESCRIPTION OF WORK</u></p> <p><u>The Main Building</u></p> <p>The building is a reinforced concrete frame with high class finishes to provide a modern work and living environment and facilities.</p> <p>The substructure consists of reinforced concrete Strip foundation, Column bases, Columns, Beams, Lift shafts, masonry wall.</p> <p>The surface bed is in reinforced concrete.</p> <p>The Superstructure is in reinforced concrete columns, beams and slabs.</p> <p>The main walling is in dressed stones or solid concrete blocks while internal partitions are in mdf with some glazing.</p> <p>The roof consists of pitched sections in Polycarbonate Sheet Covering on mild steel framed structure and flat sections in waterproofed screeds covered in concrete floor tiles.</p>	
	<p>Carried to Collection</p> <p>Kshs</p>	
	<p>The curtain walling are in Aluminium casements.</p> <p>The Doors are in Aluminium, timber panel and flush doors.</p> <p>External Finishes include ruff and tuff paint , Ceramic floor and chipboard ceilings.</p> <p>Internal Finishes include plaster and paint,Ceramic floor, and chip board ceilings.</p> <p><u>External Works</u></p> <p>External works comprise:-</p> <p>i.. Foul Water Drainage</p>	

A	<p>ORDER OF COMPLETION AND OCCUPATION BY SECTIONS</p> <p>The Contractor shall carry out the various sections of the works in such order as the Architect shall direct.</p> <p>The Employer reserves the right to occupy the works by sections as completed provided the Architect considers such occupation to be both practical and reasonable and will not hinder the Contractor's progress on the reminder of works.</p>	
B	<p>FORM OF CONTRACT</p> <p>Form of Agreement and Conditions of contract</p> <p>The Articles of Agreement and conditions of Contract shall be the Agreement and Schedule of conditions of Building Contract issued by the Joint Building Council with the sanction of Architectural Association of Kenya and the Kenya Association of Building and Civil Engineering Contractors, most current edition.</p>	
	<p>Carried to Collection</p>	<p>Kshs</p>
	<p>The contractor is advised to buy a copy and familialize himself with all the clauses as no claims shall be entertained on account of the tenderer not being conversant with any clause.</p> <p>The Contractor is referred to the full text of the undermentioned clauses of the conditions of Contract and he is to allow against each clause or in his prices for any cost arising there under or in connection with the further amplication of the undermentioned clause.</p> <p>Clause 1: Definitions</p> <p>Clause 2: Articles of Agreement</p> <p>Clause 3: General obligations of the employer</p>	

Clause 4: General obligations of the Contractor.

Clause 5: General obligations of the Architect.

Clause 6: General obligations of the Quantity Surveyor.

Clause 7: Contract Documents

A list of the Drawings from which the Contract Bills have been prepared is shown in Appendix a attached herewith.

The Contractor shall satisfy himself as to the correctness of all the Drawings and measurements. If the Contractor finds any discrepancy between the Architectural and Engineering Drawings or between any tender drawing and tender Bills of Quantities, he shall immediately refer the same to the Architect or Quantity Surveyor who will decide which shall be followed. Failure to do so will imply that there is no discrepancy and the tender sum will therefore be deemed to be representative of all works shown on the tender drawings and described in the Tender Bills of Quantities. Therefore, no claims for extra payments shall be considered on account of discrepancy between the drawings and Bills of Quantities.

The Contractor is to take the necessary particulars for ordering his materials and work from the Drawings and the work in progress on the building and not use the Bills of Quantities for that purpose.

Carried to Collection

Kshs

Clause 8: Contract Bills and Contract Price.

One blank and one priced copy of Contract Bills of quantities shall be furnished free of cost to the contractor for his own use. The blank copy shall be kept on the works until the completion thereof, and the Architect, Quantity surveyor and Engineers shall at all reasonable times have access to the same.

Clause 9: Contractor's site agent and other staff

The Contractor shall ensure that his Foreman-in-Charge is able to interpret the contract documents correctly.

Clause 10: Clerk of works

Clause 11: Liability against injury to person and property

Clause 12: Insurance against injury to persons and property

Workmen's Compensation Insurance

The contractor shall be responsible for taking out the insurance and produce documentary evidence, failure to do so will be construed as breach of contract and therefore ground for determination of employment.

Injury or damage to property

Injury or damage to property arising without negligence. Such Insurance, if any, shall be executed to cover risks upon the express instructions of the Architect.

Clause 13: Insurance of the works (Contractor's liability)

Clause 14: Insurance of the works (Employer's liability)

Clause 15: Insurance of the work (work of alteration etc.)

Clause 16: Performance bond

The Contractor shall allow for paying all charges in connection with the Bond.

Clause 17: Compliance with regulations, notices. Etc.

	Carried to Collection	Kshs
	<p>The Contractor shall pay all charges in connection and shall indemnify the Employer against all penalties incurred by reason of the non-observance of any such statutory obligations.</p> <p>The Contractor must also make himself fully acquainted with current ordinances and Government, Police and other regulations regarding the movement, housing, security and control of labour camps, Etc. He must abide by the same and or allow any expense in this connection.</p> <p>"Fees and charges" shall include all rates and fees applicable to temporary buildings or measured herein, hoarding if required, unless specifically.</p> <p>Clause 18: Programme of works</p> <p>Clause 19: Access to the works</p> <p>Clause 20: Possession of site and commencement of works</p> <p>Clause 21:1 Levelling and setting out</p> <p>Clause 22: Architect's instructions</p> <p>Clause 23: Specifications of goods, materials and workmanship</p> <p>The materials and standard of workmanship shall not be inferior to the current British Codes of Practice or Kenya Bureau of Standards which ever is relevant in every situation.</p> <p>The Contractor shall furnish, at his own cost, any samples of materials or workmanship or any tests that may be called for by the Architect or Engineer for approval or rejection and for any further samples or tests in case of rejection until they are approved by the Architect or Engineer unless otherwise provided for herein.</p>	

	<p>Clause 24: Samples and tests</p> <p>Clause 25: Royalties and patent rights</p>	
	<p>Carried to Collection</p> <p>Kshs</p>	
	<p>Should consent be given to assign any portion of the Works, the Contractor will in no way be relieved of his liabilities and responsibilities.</p> <p>Clause 30: Variations</p> <p>No claim in respect of payment for extra work at prices in excess of the unit prices entered in the Bills of Quantities, by reason of varying conditions or dissimilarity, will be recognised unless notice is given in writing to the Architect prior to the performance of the work in question that such a claim is to be submitted. No claim will be recognised for any part of the work being omitted unless notice is given in writing to the Architect within seven days of the date of the order to omit such work, that a claim is to be submitted in respect of such work.</p> <p>Clause 31: Nominated Sub-contractors</p> <p>Before issuing any certificate under Clause 34 of these Conditions the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amount stated as due in previous certificates in respect of the total value of the work, materials or goods executed or supplied by any nominated sub-contractor have been duly discharged, and if the Contractor fails to comply with such request the Architect shall issue a certificate to that effect and hereupon the Employer may himself pay such amount to any nominated sub-contractor concerned and deduct the same from any sums due or to become due to the Contractor.</p> <p>Clause 32: Nominated Suppliers</p>	

	<p>Before issuing any certificate under Clause 34 of these Conditions, the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the request calculation of the amount stated as due in previous certificates in respect of the total value of the work, materials or goods executed, supplied by any nominated supplier have been duly discharged, and if the Contractor fails to comply with such request the Architect shall issue a certificate to that effect and hereupon the Employer may himself pay such concerned and deduct the same from any sums due or to become due to the Contractor.</p> <p>Clause 33: Work by other persons engaged by the Employer</p>	
	<p>Carried to Collection</p> <p>Kshs</p>	
	<p>Clause 34: Payments</p> <p>The Contractor shall provide at monthly intervals a list of materials and goods on the site indicating the quantity and value thereof including the value of materials, goods or work of nominated Sub-Contractor and suppliers.</p> <p>All documents necessary for the purpose of the composition of the Final Account including all documents relating to the accounts of Nominated Sub-Contractors and Suppliers shall be passed to the Quantity Surveyors as and when available during progress of the Works and not later than one month after the date of Practical Completion.</p> <p>Clause 35: Fluctuations</p> <p>This clause should be deleted in its entirety. This shall be a fixed price contract and no price fluctuations of whatever kind shall be reimbursed. The Contractor should allow for price fluctuations in his tender.</p> <p>Clause 36: Extension of time</p> <p>The Contractor shall order all materials to be obtained from overseas immediately upon signing the Contract and shall also order materials be obtained from local sources as early as necessary to ensure that such materials are on Site when required for use in the Works. However, before placing any order the Contractor must obtain confirmation in writing, from the Architect, that the materials</p>	

	<p>specified are required for the Works and have not been varied in any way in the light of altered requirement or planning.</p> <p>A claim for extension of time on his account will not be considered unless substantial proof is submitted that every endeavor has been made to avoid delay and the Architect must be notified in writing within seven days of the apparent circumstances.</p> <p>Clause 37: Loss and expense caused by disturbance of regular progress of the works.</p> <p>Clause 38: Termination of the contract by the employer</p> <p>Clause 39: Termination of the contract by the Contractor</p>	
	<p>Carried to Collection</p> <p>Kshs</p>	
A	<p>Clause 41: Practical completion and defects liability</p> <p>Clause 42: Sectional completion</p> <p>Clause 43: Damages for delay in completion</p> <p>Clause 44: Antiquities and other objects of value</p> <p>Clause 45: Settlement of disputes</p> <p>BOND</p> <p>The Contractor is required to find and submit on the form of tender the name of one surety who shall be an established Bank, Insurance Company or Fidelity Guarantee to be bound to the Employer in an amount of equal to Ten per centum</p>	

	<p>(10%) of the contract amount for the due performance of the contract up to the date of completion as certified by the Architect and who will, when an if called upon, sign a Bond to that effect (without the addition of any limitations) on the same day as the contract Agreement is signed.</p> <p>In the event of the surety named in the form of tender not being approved by the client the contractor shall furnish within seven days (7) another surety to the approval of the Employer.</p> <p>B INSURANCE</p> <p>The Contractor shall insure as required in conditions Nos. 11,12 and 13 of the Conditions of Contract.</p> <p>No payment on account of the work executed will be made to the Contractor until he satisfied the Architect either by production of an Insurance Policy or an Insurance Certificate that the provisions of the foregoing Insurance Clause have been complied with in all respects. Thereafter the Architect shall from time to time ascertain that premiums are duly paid up by the Contractor who shall, if called upon to do so, produce receipted premium renewals for the Architect's inspection.</p>	
<p>Carried to Collection</p>		<p>Kshs</p>
A	<p>APPENDIX</p> <p>Particulars of Insertions to be made in Appendix to Contract Agreement</p> <p>Defects Liability Period (Clause 41.6)</p> <p>6 Months from Practical Completion</p> <p>Percentage to cover Professional Fees for Insurance Purposes Only (Clause 13.0)</p>	

	<p>Date for Possession (Clause 20.1)</p> <p>Date for Practical Completion (Clause 20.2)</p> <p>Liquidated and Ascertained Damages (Clause 43.1)</p> <p>Percentage of Certified Value Retained (Clause 34.12)</p> <p>Limit of retention Fund (Clause 34.12)</p> <p>Period of Final Measurement and Valuation (Clause 34.17)</p> <p>Name of Contractor's Surety (Clause 16.1)</p> <p>Bonding (Clause 16)</p> <p>Amount of Surety (Clause 16.1)</p> <p>Name of Bank for interest Calculations (Clause 31.14,32.4.5, 34.6)</p>	<p>To be agreed with the Employer</p> <p>5per cent</p> <p>5 per cent</p> <p>6 Months from Practical Completion</p> <p>Central Bank of Kenya treasury bills plus 5%</p>	
	Carried to Collection	Kshs	
A	SITE		

The site of the proposed works is in Kisumu Town, Kisumu County on Plot No. KSM BLOCK 4/149

The Contractor is recommended to visit the site and if unable to locate it to apply to the Architect for directions to enable him to do so. He shall be taken to have acquainted himself therewith as to its nature, position and means of access, etc. and no claim arising out of lack of knowledge will be allowed.

B ACCESS TO SITE AND TEMPORARY ROADS

If after visiting the Site, the Contractor deems it necessary to construct other temporary roads for the transport of materials, plant and workmen, he may do so. Location of such roads shall be agreed with the Architect prior to commencement of the works and the Contractor must make allowance for all expenses incurred in connection with temporary roads.

Upon completion of the works the Contractor shall remove such temporary roads, etc., as described and make good and reinstate all works and services disturbed to the satisfaction of the Architect.

C EXISTING PROPERTY

The Contractor shall take every precaution to avoid damage to all existing property including buildings, roads, cables, rains and other services and he will be held responsible for all damage arising from the execution of the Contract to the aforementioned and he shall make good all such damage when directed at his own expense to the satisfaction of the Architect.

D NOTICE BOARDS

Provide and erect where directed and maintain during the whole period of building operations and remove at completion an approved notice board overall size 2296x1828mm high with brief description of the Works, the names of the Employer, The Architect, The Quantity Surveyor, The Engineer, Contractor, All necessary Statutory approval reference numbers and with Sufficient space to append the names of the Nominated Sub-Contractor and Suppliers when known.

	The size and the format of the lettering shall be decided by the Architect.	
	Carried to Collection	Kshs
A	<p>LABOUR CAMPS</p> <p>The contractor is to contact the client and the Architect so as to be allocated an appropriate area within the site for his labour camps.</p>	
B	<p>STORAGE OF MATERIALS</p> <p>The Contractor shall provide at his own risk and cost where directed on the site weather proof lock-up sheds for the safe storage and custody of materials for the Works and for the use of workmen engaged thereon and shall remove such sheds and make good damaged or disturbed surfaces upon completion to the satisfaction of the Architect. Nominated Sub-Contractors are to be made liable for the cost of any storage accommodation provided specially for their use. No materials shall be stored or stacked on suspended slabs without the prior approval of the Architect.</p>	
C	<p>OFFICE FOR THE ARCHITECT (TYPE 'B')</p> <p>The Contractor shall provide, erect and maintain where directed on site (afterwards dismantle) a site office Type 'B' as attached in Appendix "B" herewith with the following description.</p> <p>(I) The office shall have a minimum area (plinth) of 50 square metres and divided into four rooms namely Meeting Rooms, Clerks of Works, Samples Room and Toilet.</p> <p>(ii) The floor shall be of timber or concrete finished with cement and sand screed, 150 mm (min) above ground level.</p>	

	<p>(iii) Walls shall be of studding lined inside with softboard and covered outside with weather-board or of concrete blocks plastered and painted internally.</p> <p>(iv) The roof shall be of felt on tongued and grooved boarding or galvanised corrugated sheeting on purlins and rafters.</p> <p>(v) The ceiling shall be of painted softboard (2.40 metres minimum height).</p>	
	<p>Carried to Collection</p> <p>Kshs</p>	
A	<p>(vii) Doors shall have night latches or mortice locks.</p> <p>(viii) One room shall be provided with a plan chest 1.30 metres long, writing table with locking drawers, three chairs and 5.0 metres of 200 x 25 mm shelving where directed.</p> <p>(ix) The other room shall be provided with a chest and shelving as last and large table (to seat 10 persons) and ten chairs.</p> <p>(x) The Contractor shall provide, erect and maintain lock-up approved water closets for the use of the architect, including making temporary connections to drain where applicable to the satisfaction of Government and Medical Officers of Health and shall provide the services of a sweeper and pay all necessary charges and keep both the offices and closet in a clean and sanitary condition from the commencement to completion of the works and make good disturbed satisfaction of the Architect on completion of the works.</p> <p>(xi) The Contractor shall make available on the Site as and when required by the architect a modern and accurate level together with leveling staff, ranging rods and one 100 metres metallic and linen tapes.</p> <p>WATER AND ELECTRICITY SUPPLY FOR THE SITE</p>	

	<p>The Contractor must contact the client on the possible location of his water stand pipe within the site and ascertain the real costs accordingly.</p> <p>He must also provide temporary storage tanks and metres as required at his own cost and clear away when no longer required and make good on completion to the entire satisfaction of the Architect. The Contractor shall pay all charges in connection therewith. No Guarantee is given that sufficient water will be available from the mains and the contractor must make his own arrangements for augmenting this supply at his own cost if necessary.</p> <p>Nominated Sub-Contractors are to be made liable for the cost of any water or electric current used for any installation provide especially for their own use.</p>	
	<p>Carried to Collection</p> <p>Kshs</p>	
A	<p>TELEPHONE</p> <p>The Contractor shall provide a telephone line throughout the course of the Contract and shall pay all charges in connection therewith. The telephone shall be available for the Architect during the working hours.</p>	
B	<p>SANITATION OF THE WORKS</p> <p>The sanitation of the Works shall be arranged and maintained by the Contractor to the satisfaction of the Government and / or Local Authorities, Labour Department and the Architect.</p>	
C	<p>SECURITY OF THE WORKS</p> <p>The Contractor shall be entirely responsible for the security of all the Works, Stone, Materials, Plant, Personnel, etc., both his own and Sub-Contractor's and shall provide all necessary fencing, hoarding watching, lighting and other</p>	

	<p>precautions as necessary to ensure security against theft, loss or damage and the protection of the public. The painting of the hoarding to be included.</p>	
D	<p>BLASTING OPERATIONS</p> <p>No blasting will be allowed without the Architect's Approval.</p>	
E	<p>MATERIALS, TOOLS, PLANES, ETC</p> <p>All materials and workmanship used in the Works shall be of the best quality and description unless otherwise described. Any materials for the works condemned by the Architect shall immediately be removed from the site at the Contractor's expense.</p> <p>The Contractor shall be responsible for the provision of all materials, scaffolding, tools, plant, transport and workmen required for the works except in so far as may be stated otherwise herein and he shall allow for the provision of the foregoing except for such items specially and only required for the use of Nominated Sub-Contractors as described herein.</p> <p>No timber for scaffolding, formwork or similar purposes shall be used afterwards in the permanent work.</p> <p>The Contractor shall order all materials to be obtained from overseas immediately after the Contract is signed and shall order materials to be obtained from local sources as early as necessary to ensure that such materials are on site when required for use in the Works.</p>	
<p>Carried to Collection</p>		<p>Kshs</p>
A	<p>SETTING OUT</p>	

The Architect shall furnish to the Contractor either by way of carefully dimensioned drawings or by personal supervision at the time of setting out the Works such information as shall enable the Contractor to set out the enclosing walls of the building at ground level after which the Contractor shall be responsible and shall at his own cost amend any errors arising from his own inaccurate setting out unless the Architect shall state otherwise in writing.

B SAMPLES

The Contractor shall furnish at his own cost any samples of materials or workmanship including concrete test cubes required for the Works that may be called for, by the Architect for his approval or rejection until such sample are approved by the Architect, and the Architect may reject any materials or workmanship not in his opinion up to the approved samples.

The Architect shall arrange for the testing of such materials as he may at his discretion deem desirable and the Contractor shall pay all expenses in connection with preparation, transportation and testing.

The procedure for submitting samples of materials for testing and the method of making for identification shall be laid down by the Architect.

The Contractor shall allow in his Tender for such samples and tests except those in connection with Nominated Sub-Contractor's work.

C SUPERVISION AND WORKING HOURS

The Works shall be executed under the direction and to the entire satisfaction in all respects of the Architect, who shall at all times during normal working hours have access to the Works, the yards and workshops of the Contractor and Sub-Contractors' or other places where work is being prepared for the Contractor.

The Contractor shall constantly keep on site a competent and literate English-speaking Agent. No work shall be covered up or shall any concreting be carried out without the prior approval of the Architect in writing.

Carried to Collection		Kshs
A	<p>GOVERNMENT ORDINANCES AND EMERGENCY REGULATIONS</p> <p>The Contractor's attention is called to the provisions of the Factory's Act Chapter 514 and allowance must be made in his Tender for compliance therewith in so far as they are applicable.</p> <p>The Contractor must also make himself acquainted with current ordinances and Government Emergency and other regulations regarding the movement, housing, security and control of labour, labour camps, passes for transport etc.</p> <p>It is most important that the Contractor before tendering shall obtain from the relevant Authority the fullest information regarding all such regulations which may affect the organisations of the work supply and control of labour etc, and allow accordingly in his Tender. No Claim for want or knowledge in this connection will be entertained.</p>	
	<p>B FAIR WAGES</p> <p>Contractor shall, in respect of all persons employed anywhere by him in the execution of the Contract and further in respect of all persons employed by him otherwise than in the execution of the Contract in every factory, workshop or place occupied or used by him for the execution of the Contract, observe and fulfil the following conditions: -</p> <p>(I) The Contractor shall pay rates of wages and observe hours and conditions of labour not less favourable than those established for the trade or industry in the district where the work is carried out by machinery of negotiations of arbitration to which the parties or organisations of employers and trade unions representative respectively of substantial proportions of the employers.</p> <p>(ii) In the absence of any rates of wages, hours or conditions of labour so established the Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and circumstances in the trade or industry in which the Contractor is engaged are similar.</p>	

	<p>(iii) Where the absence of established rates of wages, hours and conditions of labour or the dissimilarity of the general circumstances in the trade or industry in which the Contractor is engaged prevent the Contractor observing rates or wages, hours and conditions of labour ascertained under sub-paragraphs (a) and (b) above, the Contractor in fixing the rates of wages, hours and conditions of labour of his employees shall be guided by the advice of the Labour Department.</p>	
	<p>Carried to Collection</p>	<p>Kshs</p>
	<p>(iv) The Contractor shall recognise the freedom of his employees to be members of trade unions.</p> <p>(v) The Contractor shall maintain records in English or the time worked by, and wages paid to his employees, adequate to show that he is complying with the requirements of this clause.</p> <p>(vi) The Contractor shall at all times during the continuance of the Contract display, for the information of his employees in every factory, workshop or place occupied or used by him for the execution of the Contract a copy of this clause, together with a notice setting out the general rates of wages, hours and conditions of labour of his employees.</p> <p>(vii) The Contractor shall be responsible for the observance of this clause by Sub-Contractors employed in the execution of the Contract and shall, if required, notify the Government names and addresses of all such Sub-Contractors.</p> <p>(viii) Any Contractor or Sub-Contractor who is found to be in breach of the Fair Wages Clause shall cease to be invited to tender for such period as the Architect may decide.</p>	

	<p>(ix) Should a claim be made to the Government alleging the Contractor's default in payment of Fair Wages to any Workman employed on the payment on the Contract and if proof thereof satisfactory to the Architect is furnished by the Labour Department the Architect may, failing payment by the Contract, pay the claim out of any monies due or which become due to the Contractor under the Contract.</p> <p>(x) The Contractor shall furnish to the Architect, if called upon to do so such particulars of the rates of wages, hours and conditions of labours referred to above as the Architect may direct.</p>	
<p>Carried to Collection</p>		<p>Kshs</p>
<p>A</p>	<p>METHODS OF MEASUREMENT</p> <p>Notwithstanding any contrary provisions contained in the Conditions of Contract, all quantities shall be deemed to have been prepared in accordance with the current edition of the Standard Method of Measurement of Building Works, 2nd Edition published in June 2008 by the AAK-Quantity Surveyors' Chapter.</p> <p>The rates set down by the Contractor against each item in these Bills of Quantities shall, unless otherwise expressly provided to the contrary, or unless there is a separate item for extra labour, cutting or waste, be held to include return of empties hoisting, setting, fitting and fixing in position, making good and all other labour and everything else necessary for the proper completion of each item and for establishment charges and profit. All items of cutting shall include for consequent waste.</p>	
<p>B</p>	<p>ALTERATIONS TO BILLS, PRICING ETC.</p>	

	<p>Any unauthorised alterations or qualification made to the text of the Bills of Quantities may cause the Tender to be disqualified and will in any case be ignored.</p> <p>The Contractor shall be deemed to have made allowance in his prices generally to cover items of Preliminaries, expenses in connection with P.C. Sums or other items if these have not been priced against respective items.</p> <p>All items of measured work shall be priced in detail and Tender containing Lump Sums to cover trades or group of work must be broken down to show the price of each item before they will be accepted. Lump Sum to cover any items of preliminaries shall be likewise broken down if so required.</p> <p>C PROVISIONAL SUMS</p> <p>The term "Provisional Sum" wherever used in these Bills of Quantities shall have the meaning stated on Section 'A', item '7' of the Standard method of measurement. Such sums are net and no addition shall be made to them for profit.</p>	
<p>Carried to Collection</p>		<p>Kshs</p>
A	<p>PRIME COST (P.C.) SUMS</p> <p>The term "Prime Cost Sum" or "P.C. Sum" wherever used in these Bills of Quantities shall have the meaning stated in Section 'A', item '7' (ii) of the Standard Method of Measurement.</p> <p>Persons or firms nominated by the Architect to execute work or to provide and fix materials or goods as stated in Condition No.27 of the Contract are described herein as Nominated Sub-Contractors.</p> <p>Persons or firms so nominated to supply goods or materials are described herein as Nominated Suppliers.</p>	

B ADJUSTMENT OF Prime Cost SUMS

In the Final Account, all Prime Cost Sums shall be deducted and the amount properly expended upon the Architect's order in respect of each of them added to the Contract Sum. The Contractor shall produce To the Architect such quotations, invoices or Bills, properly receipted, as may be necessary to show the actual details of the sums paid by the Contractor. Items of "Attendance" and "Special Attendance " following Prime Cost Sums shall be adjusted pro-rata to the physical extent of the work executed (not pro-rata to the amount paid) and this shall apply even though the Bills shows a percentage in the rate column in respect of them.

Should the Contractor be permitted to tender and his tender be accepted for work for which Prime Cost Sum is included in these Bills of Quantities profit and Attendance will be allowed at the same rate as it would be if the work were executed by a Nominated Sub-Contractor.

C ADJUSTMENT OR PROVISIONAL SUMS

In the Final Account, all Provisional Sums shall be deducted and the value of the work properly executed in respect of them upon the Architect's order added to the Contract Sum. Such work shall be valued as described for variations in Condition No.11 of the Conditions of Contract but should any part of the work be executed by a Nominated Sub-Contractor, or any articles for the work or articles shall be treated as a Prime Cost Sum and Profit and Attendance comparable to that contained in the priced Bills of Quantities for similar items added.

	Carried to Collection	Kshs
A	<p>NOMINATED SUB-CONTRACTORS</p> <p>When any work ordered by the Architect to be executed by Nominated Sub-Contractors, the Contractor shall enter into Sub-Contract as described in Conditions No.27 of the Conditions of Contract and shall thereafter be responsible for such Sub-Contractors in every respect.</p> <p>The Contractor shall price for this with the Nominated Sub-Contractor's work concerned in the Prime Cost Sums under the description "Add for Attendance".</p>	
B	<p>ATTENDANCE UPON NOMINATED SUB-CONTRACTORS</p> <p>The term "Attendance" following Prime Cost Sums for Nominated Sub-Contractors' work in these Bills of Quantities shall be deemed to include both Attendance and items of special attendance as defined in the Standard Method of Measurements.</p>	
C	<p>ATTENDANCE UPON OTHER TRADES MEN, ETC</p> <p>The Contractor shall allow for the attendance upon tradesmen and shall afford any tradesmen or other persons employed for the execution of any work included in this Contract every facility for carrying out their work and also for use of his ordinary scaffolding. The Contractor, however, shall not be required to erect any special scaffolding for them.</p> <p>The Contractor shall perform such cutting away for and making good after the work of such tradesmen or persons as may be ordered by the Architect and the work will be measured and paid for to the extent executed at rates provided in these Bills.</p>	
D	<p>DIRECT CONTRACTS</p>	

	<p>Notwithstanding the foregoing conditions, the Employer reserves the right to place a "Direct Contract" for any goods or services required in the Works which are covered by a Prime Cost Sum in the Bills of Quantities and to pay for the same direct. In my such instance, profit relative to the Prime Cost Sum in the priced Bills of Quantities will be adjusted as described for Prime Cost Sums and allowed.</p>	
	<p>Carried to Collection</p> <p>Kshs</p>	
A	<p>MATERIALS ARISING FROM EXCAVATIONS</p> <p>Materials of any kind obtained from the excavations shall be the property of the Employer. Unless the Architect directs otherwise such materials shall be dealt with as provided in the Contract. Such materials shall only be used in the Works, in substitution of materials had to supply with the written permission of the Architect. Should such permission be given, the Contractor shall make due allowance for the value of the a price to be agreed.</p>	
B	<p>PROTECTION OF THE WORKS</p> <p>Provide protection of the whole of the Works contained in the Bill of Quantities, including casing up, covering or such other means as may be necessary to avoid damage to the satisfaction of the Architect and remove such protection when no longer required and make good any damage which may nevertheless have been done at completion free of cost to the employer.</p>	
C	<p>REMOVAL OF RUBBISH, ETC.</p> <p>Remove all rubbish and debris from the building and site as it accumulates and at completion of the Works and remove all plant scaffolding and unused materials at completion.</p>	
D	<p>WORKS TO BE DELIVERED UP CLEAN</p>	

E	<p>Clean and flush all gutters, rainwater and waste ipes, manholes and drains, wash (except) where such treatment might cause damage) and clean all floors, sanitary fittings, glass inside and outside and any other parts of the Works which may require it, remove all marks, blemishes, stains and defects from joinery, fittings and decorated surfaces generally, polish door furniture and bright parts of Metalwork and leave the whole of the building water-tight, clean perfect and fit for occupation to the approval of the Architect.</p> <p>TRAINING LEVY</p> <p>The Contractor's attention is drawn to Legal Notice No.237 of October, 1977, which requires payment by the Contractor of a Training Levy on all contracts over Kshs. 50,000.00 (Fifty Thousand) in value and his tender must include for all costs arising or resulting therefrom.</p>	
<p>Carried to Collection Kshs</p>		
A	<p>VALUE ADDED TAX (VAT)</p> <p>The Contractor's attention is drawn to Value Added Tax 1990 and any amendments thereafter and his tender is deemed to include for all costs arising or resulting therefrom.</p>	
B	<p>OPERATION OF FLUCTUATION CLAUSES</p> <p>This is a fixed contract and the fluctuation clause shall not be applicable. Contractors should price this tender with the understanding that the client shall only be requested to make an ex-gratia payment in cases where excessive increment in prices of materials, labour or equipment shall understandably beyond the contractors control.</p>	
C	<p>Any additional Item(s) which the tenderer may wish to price separately which has not been included in the foregoing conditions, specifications and /or Bills of Quantities</p> <p>Description.....</p>	

**PROPOSED OFFICE BLOCK FOR KISUMU WATER AND SANITATION COMPANY
LIMITED (KIWASCO)**

SECTION NO. 2

TRADE PREAMBLES

1.00: GENERAL

- 01: Unless otherwise stated the whole of the Main Contract works shall be carried out in accordance with the Ministry of Works General Specification for Building Works, 1976 Edition together with any amendments thereto and all references in this section are to this document unless qualified here in on individual items.
- 02: The whole of the works shall be carried out in accordance with the contract drawings and any further drawings issued in amplification thereof.
- 03: This section shall be known as the Trade Preambles and shall be held to included the Special Notes on Page A1 and the General Preliminaries on Pages B1 to 22.
- 04: These Trade Preambles are intended to supplement, amplify and amend the clauses in the Ministry of Public Works General Specification.

SITE COPY

- 05: The Contractor is instructed to purchase two (2) copies of the above General Specification from the Ministry of Public Works Building Department and to retain one copy in the site office at all times.

2.00: APPLICATION

- 01: These Trade Preambles shall apply to all Bill items for Building Works contained in the following Bills of Quantities and to any additional works covered by Prime Cost and Provisional Sums and the rates for all items shall include for complying in all respects with these Preambles and their provision.

3.00: MANUFACTURES' NAMES

- Manufactures' names and catalogue references are given solely as a guide to qualify and
- 01: alternative manufactures of materials or goods of equivalent quality will be accepted at direction of the Architects.

4.00: DEMOLITIONS

- 01: The Trade Preambles given on Pages C1 to C5 shall apply.
- 02: All demolitions will be done only with prior approval by the Architect.
- 03: Responsibility for the safety of the persons and property will rest solely with the Contractor.
- 04: Materials arising from demolitions will be handed over to the client.
- 05: Materials arising from the debris of walls, concrete rubble etc. may be used as hardcore but with express permission of the Architect.
- 06: The Contractor shall take care and shall be responsible for all services within the area of operation.
- 07: The Contractor will price for "take delivery and fix only" for materials supplied by the client from the demolitions and approved by the Architect for use in the works.

5.00: EXCAVATIONS AND EARTHWORKS

- 01: The Trade Preambles given on Pages D1 to D11 shall apply.
- 02: Rates are to include for excavating in all materials except class 1 Rock as classified in clause 0634 on page D2. Any other materials encountered must be notified to the Architect immediately as specified in clause 0634 and his decision as to its class will be final and binding.

- 03: Insecticide treatment shall be carried out in accordance with clause 0827 and 0859. The bottoms and sides of all excavations and the top surfaces of hardcore shall be treated with insecticide. The Contractor shall provide a ten year guarantee for all such treatment from an approved firm.
- 04: Disposal of surplus excavated material shall be in accordance with clause 0612 and 0783. The rate for this allow for loading carting away and depositing material in designated areas within 10km of the site and must include for spreading and levelling such material to the satisfaction of the Architect. No compaction will be carried out.
- 05: Explosives must not be used without the prior approval of the Architect and if authorised must be carried out in accordance with clause 0628 as specified.
- 06: Items for excavation shall be deemed to include excavating for and destroying all white ant's nests in the vicinity of the Building as directed by the Architect and treat as specified in clause 0685.
- 07: Disposal of water shall be specified in clauses 0770 to 0775.

6.00: CONCRETE WORK

- 01: The Trade Preambles given in pages F1 to F34 shall apply.
- 02: The whole of the concrete work shall be carried out in accordance with the Structural Engineer's drawings and to his satisfaction.
- 03: The Contractor shall use "Guaranteed Strength" concrete in accordance with the Engineers requirements.
- 04: The Contractor may use "Ready mixed" concrete if the Engineer gives prior approval.
- 05: Concrete test cubes will be required and should be prepared in accordance with the procedure laid down in clause 282 on page F15.
- 06: Volume batching of sand and aggregate will be permitted in accordance with clause 1165. The gauge boxes must be manufactured of steel as directed by the Architect and must be kept thoroughly clean at all times and in good repair. Failure to do so may result in the Architect directing that all measuring will be by weight batching in accordance with clause 1167.

- 07: Extreme care must be taken in the storage of all concreting materials on site in accordance with clause 1132 and 1134. No materials that have become contaminated or intermixed in any way be allowed to be used in the works. Special care is necessary to ensure that no soil becomes mixed with aggregates or sand.
- 08: All construction joints shall be formed and treated strictly in accordance with clauses 1360 to 1369 as directed by the Architect.
- 09: "Fair-Faced" concrete finish will be as defined in clause 1415. Finishes to receive screed shall be "floated" with a wood float as specified in clause 1442.
- 10: Concrete curing to vertical or inclined surfaces shall be carried out by methods 1 and 3 as described in clause 1385 and as directed by the Architect.
- 11: New walls foundations shall be tied into the existing foundations by exposing the steel reinforcing bars and connecting to new reinforcement.
- 12: Formwork shall be sawn timber of approved quality closely laid to prevent leakage of the cement and water content of the concrete.
- 13: Rapid Hardening Cement shall be "Bamburi" Rapid Hardening Cement as manufactured by Messrs Bamburi Portland Cement Co. Ltd. or other equal and approved.

7.00: WALLING

- 01: The Trade preambles given in Pages G1 to G15 shall apply.
- 02: All walls where shown are laid of solid concrete blocks or stone as indicated.
- 03: All walls less than 150mm thick shall be reinforced with 25mm-hoop iron on every alternate course.
- 04: Where applicable, all new walling is to be cut, toothed and bonded into existing walls and any damaged or craked portions of adjoining walling shall be made good or replaced with new work.

- 05: Where walls are built up under existing lintels, beams or roof slabs, care shall be taken to ensure that the top course shall be completely filled with cement mortar and pinning and keying to the underside of existing surfaces shall be done with approved edging material well driven in.
- 06: Concrete grille walls where shown shall be in 500mm x 25mm thick specially manufactured precast concrete grille blocks in accordance with Architect's drawing, bedding, jointed and pointed in plain cement and sand (1:3) mortar.
- 07: Rubble walling shall be of selected random stone rock faced as described in clauses 2486 and 2539 and shall be built as specified in clauses 2520 to 2572.

8.00: GROUND WATER PROOFING

8.10: ASPHALT WATER PROOFING WORK

- 01: The Trade Preambles given on pages J1 to J4 shall apply.
- 02: All Mastic asphalt work shall be carried out by an approved Sub-contractor in accordance with clause 2881.
- 03: A Ten-year guarantee for all asphalt work shall be provided in accordance with clause 2888.
- 04: Tanking asphalt shall comply with clauses 2824 and 2941.
- 05: Isolating membrane shall comply with clauses 2852, 2908 and 2943.
- 06: If excavation is in rock, the face of the rock is to be prepared formwork. Plaster should be thoroughly dry before laying asphalt in accordance with clause 2902.

8.20: CHEMICAL CRYSTALLINE REACTIVE WATER PROOFING SYSTEM

- 01: All works related to chemical waterproofing will be carried by an approved sub-contractor. The guidelines of clause 2881 regarding submission of details will be adhered to.

02: The basic for this treatment should be application for a cementitious chemical treatment leading to formation of continuous barrier of non-soluble crystals within the capillaries and micropores which should prevent the passage of water through the concrete.

03: Such a system must have the following characteristics:-

It must permit transmission of air and water vapour through the concrete (I.e it must permit the concrete to 'breathe').

It must be completely chemically and physically compatible with concrete, and provide protection for the reinforcement against corrosion from aggressive subsoil water, acids and seawater.

It must be non-toxic. The chemical process should be capable of functioning along with or in opposition to strong hydrostatic or osmotic process.

The process should subsequently form an integral part of the concrete.

04: The Contractor must submit complete details of the proposed product together with supporting test results for the approval of the Engineer prior to any application.

05: Any faulty work carried out shall be repaired at the Contractor's own cost and to the approval of the Engineer and such repair works shall be carried with a system compatible with the product (pressure injections, epoxy or other approved).

06: The works must be supported by a guarantee of **Ten Years** from the end of the Defects Liability Period. The Certificate of Guarantee will be submitted to the Architect on achieving practical completion of works.

9.00: ROOFING

- 01: All roof materials shall be as specified in the Bills of Quantities and laid in accordance with the manufacturer's printed instructions.
- 02: The Trade Preambles given on pages K1 to K19 shall apply.
- 03: Bitumen felt shall comply with BS 747 part 2 but additionally to be suitable for use in tropical conditions.

10.00: CARPENTRY

- 01: The Trade Preambles given on pages L1 to L13 shall apply.
- 02: The timber for carpentry work generally is to be grade II sawn or wrot cypress or podocarpus of approved moisture with preservative as specified in clause 3730
- 03: A Certificate of treatment shall be provided in accordance with clause 3730.
- 04: The softwood timber generally is to be selected (second grade) wrot cypress of podocarpus or second grade wrot cedar, all of approved moisture content in accordance with clause 4034. The grading rules for cypress shall be the same as those for podocarpus.
- 05: The hardwood timber generally is to be prime grade of approved moisture content and treated with preservative as above.
- 06: Prices of joinery shall include for pencil rounded arises for protection against damage and for bedding frames and cills in cement mortar.
- 07: "Plugged" shall mean drilling walling or concrete with masonry drill and fitting with proprietary plugs of the correct size - cutting holes with hammer and chisel will not be permitted.

- 08: The joinery fittings are to be made up in the best approved manner in accordance with classes 4670 to 4691.
- 09: Samples of each type of joinery fixtures have to be approved by the Architect before manufacturing of further items and the Architect shall be given notice of the workshops where these are to be manufactured so that if required these can be inspected during manufacture and before delivery to the site.
- 10: All Ironmongery, veer and laminated plastic sheeting shall be selected by or be subjected to the approval of the Architect.
- 11: Veneered plywood boarding shall be 3mm thick 3-ply boarding faced with Mahogany' or other equal and approved veneer facing and shall comply with clauses 4062 and 4067 and section 4400.
- 12: Block boards shall comply with clauses 4067 and 4056 and shall be fixed in accordance with section 4400.
- 13: Laminated plastic sheeting shall be 'Formica' or other equal and approved plastic sheeting of an approved colour and texture and shall comply with clauses 4076 and shall be fixed in compliance with clause 4168 and section 4400.
- 14: Adhesives generally shall comply with clauses 4092 to 4096, 4162 and 4414
- 15: Flush doors shall be solid-cored faced on both sides with 3mm thick three-ply boarding as described and shall comply with clause 4564 and hung in accordance with section 4640.
- 16: Internal timber door frames and linings shall be in the selected timber to comply with clause 4568 and shall be fixed in accordance with sections 4610 and 4630 using mild steel cramps as clause 4585.

- 17: Architraves and beads to the door frames and linings shall be in the selected timber and shall comply with clauses 4512 and 4624.
- 18: Cupboard doors shall be in 25mm thick blockboard lipped all round with hardwood lipping all in accordance with clause 4673 and shall be faced on both sides with plywood boarding as described before.
- 19: Shelves shall be 25mm thick blockboard lipped on exposed edges with hardwood lipping in accordance with clause 4679 and shall be fixed to timber bearers in compliance with clause 4682.
- 20: Ironmongery for the works shall be fitted and fixed in the best approved manner in accordance with clause 4850 to 4898.
- 21: Rates for supply and fixing of ironmongery will be deemed to include for fixing with matching screw including cutting sinking boring mortising and fitting the ironmongery, removing before and refixing after painting and labelling and safeguarding the keys to each lock.
- 22: All ironmongery shall be tested and fully operative before the handing over of the works.
- 23: Brass hinges shall comply with clause 4869.

12.00: METAL WORK

- 01: The Trade Preambles given on Pages P1 to P11 shall apply.
- 02: All steelwork shall be mild steel to BS 4360 Grade 43B and BS 449.

- 03: All steel work shall be finished with one coat of zinc chromate and two coats red oxide paint as specified in clause 5911 prior to erection.
- 04: Steel and aluminium sections shall conform to section 5530.
- 05: Aluminium doors and window frames shall conform to clause 591d7.
- 06: All aluminium sections shall be anodised in accordance with clause 5727.
- 07: All aluminium sections shall comply with clauses 5551 and 5553.
- 08: Aluminium sheets and plates shall comply with clause 5591.
- 09: Fastenings for aluminium shall conform to clauses 5618, 5671 and 5921.
- 10: Aluminium window frames shall have permanent vent slots as described with wire mesh mosquito proofing as clause 5576.
- 11: Welding to aluminium will conform to clause 5701.
- 12: All welds shall be neatly executed in accordance with section 5680.
- 13: Bolts, screws, nuts and washers shall match the material of the section being secure in mastic, building in fixing lugs and plugging, fitting and adjusting handles and fasteners on completion.
- 14: Rates for metal windows are to include for assembling parts, bedding and pointing in mastic, building in fixing lugs and plugging, fitting and adjusting handles and fasteners on completion.
- 15: Metal windows frames shall be bedded in an approved bedding compound on conformity with clause 5935 and shall be neatly pointed all round on

completion with approved pointing sealant in compliance with clause 5937 and left clean to the approval of the Architect.

16: Plugs shall conform to clause 5922.

13.00: PLUMBING AND ENGINEERING INSTALLATIONS

01: The plumbing and drainage will be carried out by an approved sub-contractor in accordance with specification and Bills of Quantities to the satisfaction of the Electrical and Mechanical Engineers.

02: Unless otherwise stipulated in the Specification, the Trade Preambles given in pages Q1 to Q4 shall apply.

03: The Main Contractor shall arrange and monitor a programme for the work of the sub-contractor and for all other sub-constructors affected by them. The main contractor shall ensure that all work and builder's work in connection is carried out in a sequence which will allow under floor drains, piping, in ducts, chases and the like leading to or from all sanitary fittings, hot or cold water tanks, gully traps, vent pipes and the nearest manholes, to be installed in their correct positions in order to minimise the amount of cutting of holes, chases, floor ducts, etc as much as possible.

04: The main contractor shall carry out the builder's work in connection with sub-contract including cutting or forming holes and chases and later making good.

05: Catalogue references for the supply of sanitary fittings and accessories have been quoted in the Specification. Other equal and approved types of fittings may be used only after approval from the Architect.

06: The Trade Preambles on pages Q4 to Q8 will apply to rainwater pipes and gutters, which will be carried out by the Main Contractor.

- 07: Rainwater downpipes, gutters and fittings shall comply with clause 6121 and shall be fixed in accordance with sections 6160 and 6190.
- 08: Roof outlets, gutters brackets, fixing and jointing materials shall be in accordance with section 6140.
- 09: Testing of downpipes and gutters shall be carried out in accordance with section 6230.

14.00: ELECRICAL INSTALLATION

- 01: The Trade Preambles given on pages R1 to R4 shall apply.
- 02: The electrical installation work shall be executed by a nominated sub-contractor in accordance sub-contract Specification and Bills of Quantities prepared by Electrical and Mechanical Engineers.
- 03: The builders' work in connection with elecrical installation shall be carried out by the Main Contractor and the Trade Preambles given on pages R1 to R4 relating to this work shall apply.
- 04: The Main contractor should particularly note clause on page R1 relating to the programme and sequence of works.
- 05: All necessary pipe ducts and the like shall be built in as directed by the Architect in readiness for the Electrical Sub-Contractor.
- 06: All conduits junction boxes and other requirements shall be built into the concrete floor and roofing slabs where required and adequate notice shall be given to the electrical sub-contractor and the architect to enable these to be positioned before concreting.

15.00: FLOOR, WALL AND CEILING FINISHES

- 01: The Trade Preambles given on pages S1 to S25 shall apply.
- 02: Finishes generally shall be as specified on the drawings and Bills of Quantities.
- 03: If required by the Architect, a sample panel of any particular finish shall be prepared for his approval and the approved shall form the standard for all similar finishes.
- 04: The joints between different finishes shall be neatly and cleanly executed to the approval of the Architect.
- 05: All adjoining surfaces shall be fully protected against any splashing or other damage and such protection shall be afterwards removed and all surfaces made good to the approval of the Architect.
- 06: Attention is drawn to clause 7697 wherein it is specified that the Main Contractor is responsible for preparing all sub-floors, screed and any other backgrounds to the satisfaction of the sub-contractor and Architect. The Main Contractor must ensure that all such surfaces are smooth, level or to required even falls and levels and any cracks or hollows shall be filled with approved levelling compound to the satisfaction of the sub-contractor and Architect.
- 07: PVC or vinyl floor tiles shall be provided as specified in clauses 7520 to 7749.
- 08: PVC or vinyl floor tiles shall be executed by an approved specialist sub-contractor and with an approved adhesive applied with metal combs in accordance with the manufacture's printed instructions.

- 09: Extreme care shall be taken to ensure that no surplus adhesive rise up between the joints and any which does shall be immediately wiped off and cleaned to the Architect's approval. No spirit shall be used which may leak into the joints and soften the adhesive. Should any floor tiling show signs of leaking' of the adhesive due to this or other cause the portions affected will require to be taken up and repaid with new tiles.
- 10: PVC or vinyl floor tiles shall be treated on completion with two coats of water/wash emulsion polish as specified in clause 7743.
- 11: Wood blocks for flooring shall comply with clause 7491 and to approved sample submitted to the Architect. The adhesive to be used shall be in accordance with clause 7511.
- 12: Parquet flooring shall be in paper backed with blocks of narrow strips of approved hardwood size 150mm x 150mm and shall otherwise be as specified in clause 7491 and to an approved sample submitted to the Architect. The adhesive used shall be in accordance with clause 5712.
- 13: Wood block and parquet flooring shall be laid in accordance with clauses 7650 to 7653 and finished in accordance with clause 7680 to 7688.
- 14: Finishes to the wood block and parquet flooring shall be three coats of two-pack polyurethane of approved manufacture carefully applied to thoroughly prepared and perfectly clean surfaces and protected from all traffic and dust until dry.
- 15: All materials for (I) wall plaster and render finishes and (ii) terrazzo, granolithic and cement screed floor finishes shall comply with clauses 7040 to 7177.
- 16: Dividing strips to terrazzo and granolithic flooring shall be provided in accordance with clauses 7088 and 7375.

- 17: Terrazzo and granolithic paving and cement screed shall be laid and finished in accordance with clauses 7310 to 7419.
- 18: Cement screed paving shall be treated with sodium silicate in accordance with clauses 7177 and 7417.
- 19: Non slip inserts shall be provided to all treads of staircase and shall be sand textured carborundum strips 50mm wide or other equivalent material fixed in position in accordance with clause 7403.
- 20: Ceramic floor and wall tiles shall be of approved size, manufacture, texture and colour and shall be in accordance with clause 7483. The adhesive to be used shall comply with clause 7504.
- 21: Ceramic tiles shall be laid or fixed by an approved specialist sub-contractor in accordance with clauses 7590 to 7649 and 7750 to 7798.
- 22: Plastering and rendering shall be carried out in accordance with clauses 7180 to 7307.
- 23: Glazed ceramic wall tiles shall comply with clause 7486 and shall be fixed in accordance with clauses 7750 to 7798.
- 24: Timber wall panelling shall be carried out in accordance with Architect's details using the best materials and workmanship and shall comply in all respect with the Trade Preambles for joinery work, all to the entire satisfaction of the Architect.
- 25: Flat asbestos cement ceiling shall conform to clauses 3754 and 4053 and shall be 4mm thick approved thereto fixed in strict compliance with manufacturer's written instructions and in accordance with clauses 4470 to 4496

- 26: Tongued and grooved timber boarding suspended ceilings and the slated timber strip ceilings shall be carried out in accordance with the Architect's details using the best materials and workmanship and shall comply in all respect with the Trade Preambles for joinery works, all to the entire satisfaction of the Architect.
- 27: Softboard ceilings shall be 12mm thick plain 'Celotex' or other equal and approved ceiling board complying with clause 4025 and shall be cut, jointed and fixed to symmetrical patterns in accordance with clauses 4430 to 4469.
- 28: All fixing nails to softboard ceilings shall be large-headed galvanised clout nails pinned in and puttied over to form a smooth surface.
- 29: Trap doors shall be provided in the ceilings where shown on the drawings.
- 30: Where specified "making good" shall include repairing and filling in cracks, interstices, holes, etc. using and approved wire brushing and generally restoring the work to match any similar approved work and preparing for painting or receiving a new finish.

16.00: GLAZING

- 01: The Trade Preambles given on pages T1 to T6 shall apply.
- 02: All glazing shall be carefully executed by an approved specialist sub-contractor.
- 03: Unless otherwise described glazing to windows is generally clear sheet glass or obscure glass in accordance with clauses 8526 and 8355 respectively.
- 04: Clear float and wired ground polished glass shall comply with clauses 8326 and 8355 respectively.

- 05: One-way reflecting glass shall be 6mm thick "Stopsol" or other equal and approved polished one-way reflecting plate glass.
- 06: Glazing shall be carried out in accordance with clauses 8400 to 8417.
- 07: Glazing to metal windows and doors shall be carried out in accordance with clauses 8420 to 8433 using first quality metal casement putty in accordance with clause 8371.
- 08: Glazing to timber doors and frames shall be carried out using hardwood timber beads in accordance with clauses 8440 to 8461.
- 09: All exposed edges shall be rounded and polished in accordance with clause 8382
- 10: Glazing strips, channels and sealant compounds shall conform to clause 8351
- 11: Edge clearance and edge cover shall be in accordance with clause 8402.
- 12: External glazing shall be weather tight in accordance with clause 8402.
- 13: Mirrors shall be supplied and fixed in accordance with clauses 8440 to 8461 using wash leather strips in accordance with clause 8357.
- 14: Aluminium glazing beads shall be fixed in accordance with clause 8357.

17.00: PAINTING AND DECORATING

- 01: The Trade Preambles given on pages U1 to U8 shall apply.
- 02: The whole of the work shall be carried out by an approved painter whose

name must be submitted for approval by the Architect and shall be carried out to the full satisfaction of the Architect.

- 03: The paint treatment and colour will be selected by the Architect and shall be carried out to the full satisfaction of the Architect.
- 04: Samples of all primers, paints, vanishes and all treatment to be used in the works shall be submitted to the Architect for approval before commencement.
- 05: All backs of timber frames to doors or other joinery surfaces adjoining masonry, concrete block or clay block walling shall be primed as described in clauses 8512.
- 06: The metal casement putty to all windows shall be primed with one coat approved aluminium primer as soon as the putty is dry, in preparation for finishes.

18.00: EXTERNAL WORKS

- 01: The external works generally shall be carried out in accordance with the foregoing Trade Preambles where applicable and the Trade Preambles given on pages V1 to V14 and access road 1 to access road 13.

19.00: DRAINAGE

- 01: The Trade Preambles given on page V1 to V13 shall apply.
- 02: Attention is drawn to item 01 to 03 of the foregoing Trade Preambles for plumbing and Engineering Installations.
- 03: Unless otherwise stipulated in the specification, the Trade Preambles on pages V1 to V11 shall apply together with the following Preambles.
- 04: All excavation and back filling of trenches shall be carried out in accordance with clauses 9011, 9140 to 9155 and 9280 to 9298.

- 05: Excavations and backfilling in black cotton soil shall be carried out in accordance with clauses 9011, 9140 to 9155.
- 06: The top soil shall be excavated, kept separate in spoil heaps re-excavated and spread and leveled as described in clauses 0691 and 0784.
- 07: Surplus material after backfilling shall be spread and levelled or otherwise disposed off as described in clauses 0622 and 0784. Surplus rock shall be used as filling materials where directed or shall be removed from the site if so directed. Sub-soil arising from trenches where not used in backfilling shall be used as filling material or spread and levelled on site as directed.
- 08: Pipes are to bedded and laid in trenches in accordance with clauses 9162 and 9164.
- 09: Pipes and fitting shall generally be Golden Brown unplasticised polyvinyl chloride (UPVC) pipes class 41 to comply with ISO Standard 4435 or BS 4660 (1973/78) and BS (1977). The joints shall be chamfered spigot and ring seal socket with elastomeric sealing ring in accordance with BS 2494 and clauses 9032 and 9221.
- 10: Pipes under building, roads and parking areas where specified shall be cast iron spigot and socket pipes to comply with BS 4472 or ISO 2531 and in accordance with clause 9051.
- 11: Beds and surround to pipes shall be in accordance with clauses 9160 to 9199
- 12: Drain pipes shall be generally bedded and surrounded in granular material in accordance with clauses 9101, 9173 and PVC pipes must not be surrounded with concrete.

- 13: Where directed pipes shall be bedded and surrounded in type 'C' concrete bed and surround in accordance with clauses 9132,9178 and 9183. The concrete bed and surround shall comply with clauses 9105 and 9167. Where the ground is of low bearing capacity the concrete bed is to be reinforced in accordance with clause 9285 and 9197. The backfilling around pipes having a concrete bed and surrounded shall be in accordance with clauses 9285 and 9281.
- 14: Gulley traps shall be bedded and surrounded in accordance with clause 9199.
- 15: Manholes shall be constructed in accordance with clauses 9240 to 9261. Cast iron manholes covers and frames shall comply with clause 9081 and step irons shall comply with clause 9087.
- 16: All blockworks for manholes and culvert headwalls shall comply with clause 2223. Alternatively natural stone blocks may be used as specified in clause 2480 to 2575.
- 17: All block work for manholes and culvert headwalls shall be built in Group 1 cement/lime putty/sand mortar (1:1:3) mix as in clause 2114. Cement for mortar and internal; render to manholes shall be Sulphate Resisting Portland Cement as clause 1082. All exposed blockworks shall be rendered with cement and sand (1:5) mortar as clause 7047.
- 18: Invert block drains and side slabs shall conform to clause 9072 and shall be laid as specified on the drawing and directed by the Architect.
- 19: The banks to both and side slabs shall conform to clause 9072 and shall be cleared, trimmed and grassed in accordance with clause 9155.
- 20: Culvert pipes shall be spun concrete pipes of the specified diameter having :Ogee" joints and shall comply with clauses 9034 and 9072.

21: The testing of the drainage shall be carried out in accordance with clauses 9270 to 9297.

20.00: FENCING AND GATES

01: The Trade Preambles given on pages W1 to W6 shall apply.

21.00: ACCESS ROADS AND PARKING

01: The Trade Preambles given in pages access roads 1 to access road 13 shall apply.

02: The Contractor shall conform to the relevant clauses applicable to this contract.

22.00: LANDSCAPING

01: The landscaping will be carried out as per Architect's drawings. Any other trades will be in accordance with relevant sections of these Trade Preambles.

NOTE

**THE DETAILED SECTION OF THE BILLS OF
QUANTITIES IS PROVIDED SEPARATELY
(please download from our website
www.kiwasco.co.ke)**

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).*

	<i>Description</i>				
Total for Bill No. 2 (carried forward to Summary, p.____)					

Bill No. 3: Schedule of Daywork Rates - Labor

	Description				A
	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

	<i>Description</i>				
	Allow ____ percent a. of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 4 (b) above.				
	Total for Daywork: Materials (carried forward to Daywork Summary, p.)				

a. To be entered by the Tenderer.

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

	<i>Description</i>		<i>Basic hourly rental rate</i>	
	Allow ____ percent ^a of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 5 above.			
Total for Contractor's Equipment (carried forward to Daywork Summary, p. ____)				

a. To be entered by the Tenderer.

Bill No. 6: Daywork Summary

	<i>Amount^a</i>		
1.Total for Daywork:Labor			
2.Total for Daywork:Materials			
3.Total for Daywork: Contractor's Equipment			
Total for Daywork (Provisional Sum) (carried forward Summary of Bills of Quantities, p. _____)			

Bill No. 7: Provisional Sums

		<i>Description</i>	<i>A</i>
Total for Specified Provisional Sums (carried forward to Grand Summary)			

SECTION VI - SPECIFICATIONS

Notes for preparing Specifications

1. Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the Procuring Entity and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.
2. Specifications from previous similar projects are useful and may not be necessary to re-write specifications for every Works Contract.
3. There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as high ways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.
4. Care must be taken in drafting Specifications to ensure they are not restrictive. In the Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also be used.
5. The Procuring Entity should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.
6. The Procuring Entity should provide a description of the selected parts of the Works with appropriate reference to 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 by the Procuring Entity, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the Procuring Entity each on its own merits and independently of whether the tenderer has priced the item as described in the Procuring Entity's design included with the tender documents.

SECTION VII – DRAWINGS (ALL PROVIDED SEPARATELY – download from our website : www.kiwasco.co.ke)

LIST OF DRAWINGS

ARCHITECTURAL

1. SITE PLAN
2. GROUND FLOOR
3. 1ST FLOOR
4. 2ND FLOOR
5. 3RD FLOOR
6. SCHEDULES
7. SECTION X-X
8. SECTION Y-Y

STRUCTURAL DRAWINGS

- | | |
|--|-------|
| 1. FOUNDATION AND LIFT SHAFT - RC DETAILS | STR01 |
| 2. COLUMN - RC DETAILS | STR02 |
| 3. STAIRCASES - RC DETAILS | STR03 |
| 4. BEAMS - RC DETAILS | STR04 |
| 5. 1 ST FLOOR SLAB - RC DETAILS | STR05 |
| 6. 2 ND , 3 RD , 4 TH AND ROOF SLABS - RC DETAILS | STR06 |
| 7. BOUNDARY WALL - RC DETAILS | STR07 |
| 8. ROOF - TRUSSES LAYOUT AND DETAILS | STR08 |

ELECTRICAL DRAWINGS

1. GROUND FLOOR - LIGHTING LAYOUT -	SHEET NO. 1
2. GROUND FLOOR - POWER & ICT LAYOUT -	SHEET NO. 2
3. GROUND FLOOR - FIRE ALARM LAYOU -	SHEET NO. 11
4. FIRST FLOOR - LIGHTING LAYOUT -	SHEET NO. 3
5. FIRST FLOOR - POWER & ICT LAYOUT -	SHEET NO. 4
6. FIRST FLOOR - FIRE ALARM LAYOUT -	SHEET NO. 12
7. SECOND FLOOR - LIGHTING LAYOUT -	SHEET NO. 5
8. SECOND FLOOR - POWER & ICT LAYOUT -	SHEET NO. 6
9. SECOND FLOOR - FIRE ALARM LAYOUT -	SHEET NO. 13
10. THIRD FLOOR - LIGHTING LAYOUT -	SHEET NO. 7
11. THIRD FLOOR - POWER & ICT LAYOUT -	SHEET NO. 8
12. THIRD FLOOR - FIRE ALARM LAYOUT -	SHEET NO. 14
13. FOURTH FLOOR - LIGHTING LAYOUT -	SHEET NO. 9
14. FOURTH FLOOR - POWER & ICT LAYOUT -	SHEET NO. 10
15. FOURTH FLOOR - FIRE ALARM LAYOUT -	SHEET NO. 15

MECHANICAL WORKS DRAWINGS

1. GROUND FLOOR - PLUMBING LAYOUT	- SHEET NO. 1
2. GROUND FLOOR - DRAINAGE LAYOUT	- SHEET NO. 2
3. FIRST FLOOR - PLUMBING LAYOUT	- SHEET NO. 3
4. FIRST FLOOR - DRAINAGE LAYOUT	- SHEET NO. 4
5. SECOND FLOOR - PLUMBING LAYOUT	- SHEET NO. 5
6. SECOND FLOOR - DRAINAGE LAYOUT	- SHEET NO. 6
7. THIRD FLOOR - PLUMBING LAYOUT	- SHEET NO. 7

- 8. THIRD FLOOR - DRAINAGE LAYOUT - SHEET NO. 8
- 9. FOURTH FLOOR - PLUMBING LAYOUT - SHEET NO. 9
- 10. FOURTH FLOOR - DRAINAGE LAYOUT - SHEET NO. 10
- 11. ROOF TOP FLOOR - PLUMBING LAYOUT - SHEET NO. 11
- 12. ROOF TOP FLOOR - DRAINAGE LAYOUT - SHEET NO. 12
- 13. SITE PLAN - WATER RETICULATION - SHEET NO. 13
- 14. SITE PLAN - EXTERNAL FOUL DRAINAGE - SHEET NO. 14

PART III - THE CONDITIONS OF CONTRACT AND CONTRACT

SECTION VIII - GENERAL CONDITIONS OF CONTRACT (GCC)

NAME OF PROCURING ENTITY : KISUMU WATER AND SANITATION COMPANY LIMITED

NAME OF CONTRACT : CONSTRUCTION OF PROPOSED OFFICE BLOCK FOR
KIWASCO

ARCHITECT NAME AND ADDRESS: AXONOMETRIC SYSTEMS P.O BOX 2308 - 40100, KISUMU

DEFINITIONS

- 1.1** Architects instructions - Means instructions issued by the Architect to the Contractor in accordance with these conditions and includes instructions issued by other agents of the Employer appointed under article 2.13 of the agreement.
- 1.2** Bills of quantities or contract bills - Means the document drawn up by the Quantity Surveyor and priced by the Contractor to arrive at the contract price.
- 1.3** Certificate of practical completion - Means a certificate issued by the Architect to the Contractor to signify a state of completion where, in the opinion of the Architect, the Works are substantially complete and can effectively and conveniently be used for the intended purposes.
- 1.4** Final certificate - Means a certificate issued by the Architect to the Contractor signifying that the Works have been carried out and completed in accordance with the terms of this contract and that all adjustments to the contract price have been made in accordance therewith.
- 1.5** Contract period - Means the period agreed for the construction of the Works and stated in the appendix to these conditions or extended in accordance therewith.
- 1.6** Contract price - Means the price for the Works as stated in article 2.5 of the agreement or as adjusted in accordance with the contract.
- 1.7** Contractor - Means the person or firm named in the articles of agreement with whom the Employer has entered into contract and includes the legal successors in title and permitted assigns.
- 1.8** Contractor's equipment - Means all machinery, vehicles, tools, apparatus and other things required for the carrying out and completion of the Works and the remedying of any defects.
- 1.9** Employer - Means the person or firm named in the articles of agreement with whom the Contractor has entered into contract and includes the legal successors in title and permitted assigns.
- 1.10** Defect - Means any aspect of the Works which is not in accordance with the contract or to the

reasonable satisfaction of the Architect.

1.11 Force Majeure - means an event, occurrence or circumstance which;

1.11.1 is beyond a party's control,

1.11.2 such party could not reasonably have foreseen before entering into contract,

1.11.3 having arisen, such party could not reasonably have avoided or overcome,

1.11.4 and is not substantially attributable to either party.

1.12 Patent defect - Means a defect which a reasonable inspection by the Architect would disclose.

1.13 Latent defect - Means a defect which a reasonable inspection by the Architect would not disclose.

1.14 Final account - Means the document prepared by the Quantity Surveyor containing all the adjustments to the contract price in accordance with the conditions of contract and which in his opinion is the total value of the Works at final completion.

1.15 Materials and goods - Means things of all kinds and all supplies delivered by the Contractor, sub-contractors, suppliers or by others for incorporation in the Works whether stored on site or elsewhere but not yet incorporated in the Works.

1.16 Prime cost sum - Means a sum included in the contract bills for works or services to be executed by a nominated sub-contractor, statutory or other authority or for materials or goods to be obtained from a nominated supplier.

1.17 Provisional sum - Means a sum included in the contract bills for the execution of work which cannot be entirely foreseen, defined or detailed at the time the tender documents are issued.

1.18 Site - Means the place or places where the permanent Works are to be carried out and to which materials and goods are to be delivered and includes workshops or other places where materials, goods or work are being prepared for incorporation in the Works either by the Contractor, sub-contractors or by others.

1.19 Works - Means the permanent works designed for the Employer by the Architect or other agents for execution by the Contractor and as described in the contract documents. It shall include work of all sub- contractors and suppliers as well as materials and goods supplied for incorporation in the Works.

1.20 All reference to days shall mean calendar days of 24 hours duration and shall include non working days unless otherwise stated.

1.21 Unless inconsistent with the context, the masculine includes the feminine, the singular includes the plural and vice versa, and persons shall include bodies corporate.

1.22 Titles and headings are for reference purposes only and do not form part of these conditions. They shall not be taken into consideration in the interpretation of these conditions or the contract.

2.0 ARTICLES OF AGREEMENT

2.1 This agreement is made on the.....day

of.....

BETWEEN.....

.....

of (or whose registered office is situated **at**)

.....

.....

.....

(hereinafter called "the Employer") of the one part

AND.....

.....

of (or whose registered office is situated

at).....

.....

.....

(hereinafter called "the Contractor") of the other part.

2.2 WHEREAS I Employer is desirous

of.....

.....

.....

.....

.....

hereinafter called "the Works"
at.....

on Land Reference No.....
and has

caused drawings, bills of quantities and specifications showing and describing the work
to be done to be prepared by or under the directions of an Architect.

2.3 AND WHEREAS the Contractor has supplied the Employer with a priced copy of the
said bills of quantities (which copy is hereinafter referred to as "the contract bills")
AND WHEREAS the said drawings numbered:

.....
.....
.....
.....(hereinaf
ter

referred to as "the contract drawings") the contract bills and the specifications have
been signed by or on behalf of the parties hereto.

NOW IT IS HEREBY AGREED AS FOLLOWS:

2.4 For the consideration hereinafter stated, the Contractor shall upon and subject to the conditions
annexed hereto carry out and complete the Works shown upon the contract drawings and described
by or referred to in the contract bills, the specifications and in the conditions of contract.

2.5 The Employer shall pay to the Contractor the sum of Kshs. (in words).....
.....
.....
(Kshs.....)
(hereinafter referred to as "the contract price") or such sum as shall become payable hereinafter at the
times and in the manner specified in the said conditions.

2.6 The Employer shall appoint a representative whose name shall be communicated in writing to the
Contractor, the Architect and the Quantity Surveyor. The powers and duties of the representative
shall be deemed to be the same as those of the Employer unless otherwise stated in writing.

2.7 The term "the Architect" in these conditions shall mean

.....
.....
Of
.....
.....

and in the event of his ceasing to be the Architect for the purposes of this contract, the Employer shall appoint another person for that purpose. Such a person shall not be a person against whom the Contractor shall object for reasons considered to be sufficient by an Arbitrator appointed in accordance with clause 45.0 of these conditions.

2.8 No person subsequently appointed to be the Architect under this contract shall be entitled to disregard or overrule any certificate, opinion, decision, approval or instruction given or expressed by the previous Architect.

2.9 The Architect shall appoint a representative whose name shall be communicated in writing to the Contractor, the Employer and the Quantity Surveyor. The powers and duties of the representative shall be deemed to be the same as those of the Architect unless otherwise stated in writing.

2.10 The term "the Quantity Surveyor" in these conditions shall mean

.....
of
.....
.....

and in the event of his ceasing to be the Quantity Surveyor for the purposes of this contract, such other person as the Employer shall appoint for that purpose. Such a person shall not be a person against whom the Contractor shall object for reasons considered to be sufficient by an Arbitrator appointed in accordance with clause 45.0 of these conditions.

2.11 No person subsequently appointed to be the Quantity Surveyor under this contract shall be entitled to disregard or overrule any valuation, opinion, or assessment given or expressed by the previous Quantity Surveyor.

2.12 The Quantity Surveyor shall appoint a representative whose name shall be communicated in writing to the Contractor, the Employer and the Architect. The powers and duties of the representative shall be deemed to be the same as those of the Quantity Surveyor unless otherwise stated in writing.

2.13 The Employer may appoint Engineers, specialists and other consultants to render professional services under the contract. Where so appointed, such Engineers, specialists and other consultants shall be deemed, for the purposes of this contract, to be rendering such services under the delegated authority of the Architect.

2.14 In the event of the need to appoint a replacement Architect, Quantity Surveyor, Engineer or other specialist (whether named in this agreement or not) the Employer shall make such appointment as soon as practicable after the need for such appointment arises.

2.15 Where the contract does not incorporate bills of quantities, the terms "contract bills" and "bills of quantities" wherever appearing shall be deemed deleted and replaced with the term "schedule of rates" as applicable.

2.16 AS WITNESS the hands of the said parties; Signed by the said:

.....(Employer)

.....

In the presence of:

Name:

Address:

Signed by the said:

.....(Contractor)

.....

In the presence of:

Name:

Address:

.....
.....

2.17 CAUTION

The words 'Architect,' 'Quantity Surveyor' and 'Engineer' are prescribed and protected by statute for the use of persons registered as such under the relevant laws. If this document is used by other than such a registered person, the references appropriate thereto must be deleted or amended.

2.18 NOTE

The contract shall be under seal;

2.18.1 When the articles of association of a limited company which is a party to the contract so require, or

2.18.2 When either party is a non-trading corporation such as a hospital or school board.

2.18.3 If the contract is to be executed under seal delete "as witness the hands of and insert "signed and sealed by".

CONDITIONS OF CONTRACT

3.0 GENERAL OBLIGATIONS OF THE EMPLOYER

The Employer shall upon the execution of the agreement;

- 3.1** Clearly identify the site upon which the Works will be carried out and the access thereto.
- 3.2** Confirm that the said site is in his legal possession and that it is free from all material encumbrances.
- 3.3** Ascertain and confirm to the Contractor that the proposed Works comply with all statutory requirements, local authority planning and design bylaws or regulations as the case may be.
- 3.4** Make adequate financial arrangements to ensure that all payments to the Contractor under these conditions are made within the periods and in the manner stipulated in the contract and shall provide such evidence to the Contractor on request.

4.0 GENERAL OBLIGATIONS OF THE CONTRACTOR

The Contractor shall upon the execution of the agreement;

- 4.1** Carry out, superintend upon and complete the Works and rectify any defects appearing therein in accordance with the contract and to the reasonable satisfaction of the Architect, unless it is legally or physically impossible to do so.
- 4.2** Give a written notice to the Architect specifying any discrepancy, ambiguity or divergence in these conditions, the contract drawings, the contract bills or specifications immediately such discrepancy or divergence is detected. The Architect shall thereupon issue instructions in regard thereto as soon as is practicable.
- 4.3** Notwithstanding any obligation of the Architect to the Employer and whether or not the Employer appoints a Clerk of Works, the Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with the contract and whether or not the Architect or the Clerk of Works, if appointed, at any time goes on to the Works or to any workshop or other places where work is being prepared to inspect or approve the same or otherwise.

5.0 GENERAL OBLIGATIONS OF THE ARCHITECT

The Architect shall upon the execution of the agreement;

- 5.1** Issue comprehensive drawings and all necessary details and other information required by the Contractor for the proper carrying out of the Works.
- 5.2** Expeditiously supply information, instructions and interpretations required or requested by the Contractor to ensure the timely carrying out of the Works.
- 5.3** Issue all necessary approvals and certificates and take other required action as soon as practicable.
- 5.4** Where the Architect is required under the contract to exercise his discretion by giving his decision, opinion, consent or approval or by taking any other action which may affect the rights and obligations of the Employer or the Contractor, he shall exercise such discretion impartially within the terms of the contract.

6.0 GENERAL OBLIGATIONS OF THE QUANTITY SURVEYOR

The Quantity Surveyor shall, upon the execution of the agreement;

- 6.1** Expeditiously provide the necessary advice, opinion, assessment, measurements, computations, or valuations as the case may be of any matter required of him under these conditions. While giving advice, opinion, assessment, measurements, computations or valuations, he shall carry out the task impartially within the terms of the contract.

7.0 CONTRACT DOCUMENTS

- 7.1** The contract documents for use in the carrying out of the Works shall be:-

- 7.1.1** The agreement and these conditions.

- 7.1.2** Contract drawings as listed in the articles of agreement;

- 7.1.3** Contract bills of quantities or schedule of rates as applicable.

- 7.1.4** Specifications as separately supplied or as contained in the contract bills.

- 7.2** All the original contract documents shall remain in the custody of the Architect or the Quantity Surveyor during the construction period. They shall be available at all reasonable times for the inspection of the Employer or the Contractor. Upon the issue of the final certificate, the original contract documents shall be handed over to the Employer.

- 7.3** Upon the execution of the contract, the Employer shall register the agreement with the relevant statutory authority and pay all fees, charges, taxes, duties and all costs arising therefrom.
- 7.4** Immediately after the execution of the contract, the Architect or the Quantity Surveyor shall furnish the Employer with one certified set of all contract documents.
- 7.5** The Architect and the Quantity Surveyor shall, without charge to the Contractor, furnish him with:-
- 7.5.1** A registered counterpart of the agreement and these conditions.
 - 7.5.2** One certified copy of the contract bills, where applicable.
 - 7.5.3** Three certified copies of all contract drawings.
 - 7.5.4** Two certified copies of the unpriced bills of quantities where applicable.
 - 7.5.5** Two certified copies of the contract specifications, if not included in 7.5.4 above.
- 7.6** So soon as is practicable after the execution of this contract, the Architect shall, without charge to the Contractor, furnish him (unless he shall have been previously furnished) with three copies of the descriptive schedules or other like documents necessary for use in carrying out the Works. Provided that nothing contained in the said descriptive schedules or other documents shall impose any obligation beyond those imposed by the contract documents.
- 7.7** As and when necessary the Architect, without charge to the Contractor, shall furnish him with three copies of such further drawings or details as are reasonably necessary either to explain or amplify the contract drawings, or to enable the Contractor to carry out and complete the Works in accordance with these conditions.
- 7.8** The Contractor shall keep one copy of the contract drawings, a copy of the unpriced bills of quantities, one copy of the specifications descriptive schedules or other like documents referred to in sub-clause 7.5 of this condition, and one copy of the drawings, details and descriptive schedules referred to in sub-clauses 7.6 and 7.7 of this condition upon the Works so as to be available to the Architect or his representatives at all reasonable times.
- 7.9** Upon final payment under clause 34.0 of these conditions, the Contractor shall, if so requested by the Architect, forthwith return to the Architect all drawings, details, specifications, descriptive schedules and other documents of a like nature which bear the Architect's name.
- 7.10** The contract documents 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;
- 7.10.1** The letter of award of contract
 - 7.10.2** The agreement and these conditions

7.10.3 The bills of quantities

7.10.4 The specifications

7.10.5 The drawings

7.10.6 The schedules and other documents forming part of the contract.

7.11 None of the documents herein before mentioned shall be used by the Contractor or the Employer for any purpose other than this contract and neither the Employer, the Architect nor the Quantity Surveyor shall divulge or use any of the prices in the contract bills except for the purposes of this contract.

8.0 CONTRACT BILLS AND CONTRACT PRICE

8.1 The Employer shall be deemed to have provided to the Contractor before the submission of tender all available data concerning the site and its surroundings. The Contractor shall be responsible for interpreting such data.

8.2 Notwithstanding the above, the Contractor shall be deemed to have obtained all necessary information which may affect the tender or the Works and to have satisfied himself as to the correctness and sufficiency of his tender for the carrying out of the Works.

8.3 The quality and quantity of the work included in the contract price shall be deemed to be that which is set out in the contract bills. The bills, unless otherwise expressly stated therein, shall be deemed to have been prepared in accordance with the principles of the latest edition of the Standard Method of Measurement of Building Works for East Africa.

8.4 Any error in description or in quantity or any omission of items from the contract bills or specifications shall not vitiate this contract but shall be corrected and deemed to be a variation required by the Architect.

8.5 The contract price shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these conditions.

8.6 Subject to sub-clause 8.4 of this condition, any error whether arithmetical or not in the computation of the contract price shall be deemed to have been accepted by the parties hereto.

9.0 CONTRACTORS SITE AGENT AND OTHER STAFF

9.1 The Contractor shall constantly keep upon the Works a competent site agent who is able to understand and interpret the contract documents and to superintend upon the Works.

The site agent shall be literate in the English language. Any instructions given to him by the Architect shall be deemed to have been issued to the Contractor.

9.2 The Contractor shall make his own arrangements for the engagement of all labour and other workmen, both local or otherwise, required for the Works and shall comply with

statutory, industrial or other rules and regulations governing the employment and working terms and conditions of labour.

- 9.3 The Contractor shall be responsible for the observance, by all sub-contractors (whether nominated or not) of all the foregoing provisions.
- 9.4 The Architect may (but not unreasonably or vexatiously issue instructions requiring the dismissal from the Works of any person employed thereon.

10.0 CLERK OF WORKS

- 10.1 The Employer shall be entitled to appoint a Clerk of Works whose primary duty shall be to act as inspector of the Works on behalf of the Employer under the direction of the Architect. The Contractor shall afford every reasonable facility for the performance of that duty.
- 10.2 Where a Clerk of Works is appointed, the Employer may also appoint other persons to assist the Clerk of Works in the exercise of his functions. Directions given by the assistants shall be deemed to be those of the Clerk of Works unless otherwise stated in writing.
- 10.3 The employment of a Clerk of Works shall not relieve the Contractor from any of his duties and obligations under the contract.
- 10.4 Directions given by the Clerk of Works in writing to the Contractor or to his site agent shall be deemed to be Architect's instructions in respect of;
 - 10.4.1 The interpretation of Architect's instructions, drawings, specifications or bills of quantities.
 - 10.4.2 The removal from the site of any work, materials or goods which are not in accordance with the contract.
 - 10.4.3 Matters of urgency involving the safety or protection of persons or property, and
 - 10.4.4 Any other matters in respect of which the Architect is expressly empowered by these conditions to issue instructions and on which the Architect has authorized in writing the Clerk of Works so to act.
- 10.5 Any other directions given by the Clerk of Works to the Contractor or the site agent shall be of no effect.

11.0 LIABILITY AGAINST INJURY TO PERSONS AND PROPERTY

- 11.1 The Contractor shall be liable for and shall indemnify the Employer against any expenses, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, unless the injury or death is due to any act or neglect of the Employer or of any person for whom the Employer is responsible.
- 11.2 Except for such loss or damage as is at the risk of Employer under clause 14.0 or clause

15.0 of these conditions (if applicable), the Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal insofar as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works. Provided always that the injury or damage is due to any negligence, omission or default of the Contractor his servants or agents or of any sub-contractor his servants or agents.

12.0 INSURANCE AGAINST INJURY TO PERSONS AND PROPERTY

12.1 Without prejudice to his liability to indemnify the Employer under clause 11.0 of these conditions, the Contractor shall maintain and shall cause any sub-contractor to maintain;

12.1.1 Such insurances as are necessary to cover the liability of the Contractor or as the case may be, of such sub-contractor, in respect of personal injuries or deaths arising out of or in the course of or caused by the carrying out of the Works, and

12.1.2 Such insurances as are necessary to cover the liability of the Contractor or as the case may be, of such sub-contractor, in respect of injury or damage to property real or personal arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission or default of the Contractor, his servants or agents or, as the case may be, of such subcontractor, his servants or agents.

12.2 As and when he is reasonably required to do so by the Architect, the Contractor shall produce and shall cause any sub-contractor to produce for inspection by the Employer, documentary evidence that the insurances required by sub-clause 12.1.1 and 12.1.2 are properly maintained but, on occasion, the Employer may require to have produced for his inspection, the policy or policies and the receipts in question.

12.3 The Contractor shall maintain in the joint names of the Employer and the Contractor, insurances for such amounts of indemnity as may be specified by way of provisional sum items in the contract bills in respect of any expenses, liability, loss, claim, or proceedings which the Employer may incur or sustain by reason of damage to any property other than the Works caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by the carrying out of the Works, excepting damage;

12.3.1 Caused by the negligence, omission or default of the Contractor, his servants or agents or any sub-contractor, his servants or agents.

12.3.2 Attributable to errors or omissions in the designing of the Works.

12.3.3 Which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution.

12.3.4 Which is at the risk of the Employer under clause 14.0 or clause 15.0 of these conditions (if applicable).

12.3.5 Arising from a nuclear risk or war risk.

- 12.4** The insurances shall be placed with insurers to be approved by the Employer. The Contractor shall deposit with the Quantity Surveyor the policy or policies and the receipts in respect of premiums paid.
- 12.5** Should the Contractor or any sub-contractor make default in insuring or in continuing to insure as provided in sub-clauses 12.1.1, 12.1.2 and 12.3 of these conditions, the Employer may himself insure against any risk with respect to which the default shall have occurred and may deduct a sum equivalent to the amount paid by him in respect of premiums from any money due or to become due to the Contractor.

13.0 INSURANCE OF THE WORKS (CONTRACTOR'S LIABILITY)

- 13.1** In the erection of new buildings, if the Contractor is required by the contract to insure the Works, he shall before the commencement of the works, procure insurances in the Joint names of the Employer and the Contractor against loss and damage by fire, earthquake, fire following earthquake, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion for the full value thereof (plus the percentage, if any named in the appendix to these conditions to cover professional fees). The insurances shall cover all work executed and all unfixed materials and goods delivered to, placed on or adjacent to the Works and intended therefore but excluding temporary buildings and equipment owned or hired by the Contractor or any sub-contractor. He shall keep such work, materials and goods so insured until practical completion of the Works.
- 13.2** Such insurances shall be with insurers approved by the Employer. The Contractor shall deposit the policy or policies and the receipts in respect of premiums paid with the Quantity Surveyor. Should the Contractor make default in insuring or continuing to insure as aforesaid, the Employer may himself insure against any risk in respect of which the default shall have occurred and deduct a sum equivalent to the amount paid by him in respect of premiums from any money due or to become due to the Contractor.
- 13.3** Provided always that if the Contractor shall independently of his obligations under this contract maintain a policy of insurance which covers (inter alia) the said work, materials and goods against the aforesaid contingencies to the full value thereof (plus the aforesaid percentage, if any), then the maintenance by the Contractor of such policy shall, if the Employer's interest is endorsed thereon, be a discharge of the Contractor's obligation to insure in the joint names of the Employer and the Contractor.
- 13.4** As long as the Contractor is able to produce for inspection documentary evidence that the said policy is properly endorsed and maintained as and when he is reasonably required to do so by the Architect, then the Contractor shall be discharged from his obligation to deposit a policy or policies and receipts with the Quantity Surveyor but on any occasion, the Employer may require to have produced for his inspection the policy and receipts in question.
- 13.5** Upon settlement of any claim under the insurance aforesaid, the Contractor with due

diligence shall restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove and dispose of any debris and proceed with the carrying out and completion of the Works. All money received from such insurances (less only the aforesaid percentage, if any), shall be paid to the Contractor by installments under certificates of the Architect issued at the periods of interim certificates stated in clause 34.0 of these conditions. The Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods, and the removal and disposal of debris other than the money received under the said insurances.

14.0 INSURANCE OF THE WORKS (EMPLOYERS LIABILITY)

- 14.1** In the erection of new buildings, if the Employer is required by the contract to insure the Works, all work executed and all unfixed materials and goods, delivered to, placed on or adjacent to the Works and intended therefore but excluding temporary buildings and equipment owned or hired by the Contractor or any sub-contractor shall be at the sole risk of the Employer as regards loss or damage by fire, earthquake, fire following earthquake, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion. The Employer shall maintain a proper policy of insurance against such risks until practical completion of the Works.
The policy or policies and the receipts for the last premium paid for renewal shall, upon request, be produced for inspection by the Contractor.
- 14.2** If the Employer shall at any time nil upon request to produce any receipt showing such a policy as aforesaid to be effective, the Contractor may in the name and on behalf of the Employer, insure all work executed and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies and shall, upon production of the receipt for any premium paid by him, be entitled to have its amount added to the contract price.
- 14.3** If any loss or damage affecting the Works or any part thereof, or any such unfixed materials or goods is occasioned by any one or more of the said contingencies, then;
- 14.3.1** The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of the contract, and
- 14.3.2** The Contractor with due diligence shall restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove and dispose of any debris and proceed with the carrying out and completion of the Works.
- 14.3.3** The restoration of work damaged, the replacement and repair of unfixed materials and goods and the removal and disposal of debris shall be deemed to be a variation required by the Architect.

15.0 INSURANCE OF WORKS (WORKS OF ALTERATIONS etc)

15.1 In works of alterations, repairs or extensions, the Employer shall solely take the risk for the existing structures together with all the contents thereof owned by him or for which he is responsible and the Works and all unfixed materials and goods intended for, delivered to and placed on or adjacent to the Works and intended therefore but excluding temporary buildings and equipment owned or hired by the Contractor or any sub-contractor.

The Employer shall maintain a proper policy of insurance against the risks of loss or damage by fire, earthquake, fire following earthquake, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion until practical completion of the Works. The policy and the receipts for the last premium paid for the renewal of the insurance cover shall, upon request, be produced for inspection by the Contractor.

15.2 If the Employer shall at any time fail, upon request, to produce any receipt showing such a policy as aforesaid to be effective, the Contractor may in the name and on behalf of the Employer insure the existing structures together with all the contents thereof, the Works and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies. He shall have such right of entry and inspection as may be required to make a survey and inventory of the existing structures and contents therein. Upon production of receipts for any premium paid by him, the Contractor shall be entitled to have its amount added to the contract price.

15.3 If any loss or damage affecting the Works or any part thereof or any such unfixed materials or goods is occasioned by any one or more of the said contingencies, then;

15.3.1 The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this contract.

15.3.2 If the contract is not terminated in accordance with sub- clause 40.3, the Contractor with due diligence shall reinstate or make good all loss or damage and proceed with the carrying out and completion of the Works.

15.3.3 The Architect may issue instructions requiring the Contractor to remove and dispose of any debris, and

15.3.4 The reinstatement and making good of such loss or damage and (when required) the removal and disposal of debris shall be deemed to be a variation required by the Architect.

16.0 PERFORMANCE BOND

16.1 Before commencing the Works, the Contractor shall provide one surety who must be an established bank or insurance company to the approval of the Employer and who will be bound to the Employer in the sum equivalent to ten per cent (10%) of the contract price for the due performance of the contract until the certified date of practical completion. No payments shall be made to the Contractor before the said bond is provided.

16.2 Where stated in the contract, the Employer shall provide one surety who must be an established bank or insurance company to the approval of the Contractor who will be bound

to the Contractor in the sum equal to one half of the limit of retention fund for the due performance of the Employer's payment obligations until the final certificate is issued and honoured.

17.0 COMPLIANCE WITH REGULATIONS, NOTICES, etc.

- 17.1** The Contractor shall comply with and give all notices required by any enactment or regulation of any statutory or other authority or of any public service company which has any jurisdiction with regard to the Works or with whose system the same are or will be connected. The Contractor, before making any variation from the contract drawings, specifications or the contract bills necessitated by such compliance, shall give to the Architect a written notice specifying and giving the reason for such variation and the Architect may issue instructions in regard thereto. If within fourteen days of having given the said notice the Contractor does not receive any instructions in regard to the matters therein specified, he shall proceed with the work complying with the enactment or regulation in question and any variation thereby necessitated shall be deemed to be a variation required by the Architect.
- 17.2** The Employer shall be responsible for obtaining all planning and similar permits and approvals and shall serve all statutory and other notices and shall pay and indemnify the Contractor against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any enactment or regulation of any statutory or other authority or any public service company in respect of the Works and the site upon which the Works are to be constructed.
- 17.3** The Employer's responsibility and liability under sub-clause 17.2 herein shall subsist irrespective of whether or not such fees, charges, rates, taxes etc. are covered by way of prime cost or provisional sums or arise as a result of an Architect's instruction issued under clause 22.0 of these conditions.
- 17.4** In the event of the Employer failing to comply with the provisions of sub-clause 17.2 herein, the Contractor may pay such fees, charges, rates, taxes, etc. Any costs or expenses incurred by the Contractor in making such payments shall be assessed by the Quantity Surveyor and added to the contract price and if an interim certificate is issued after the date of assessment, the said amount shall be added to the amount which would otherwise be stated as due in such a certificate.

18.0 PROGRAMME OF WORKS

- 18.1** The Contractor shall, within the period stated in the appendix to these conditions, submit for the approval of the Architect a programme of Works in such form and detail as the Architect shall reasonably prescribe.
- 18.2** Should actual progress not match the programme, the Contractor shall amend the programme accordingly and submit the revisions to the Architect. In the event that a Contractor fails to submit or amend a programme within a reasonable time after being so instructed by the Architect, the Employer may withhold half of the amount due to the Contractor in subsequent payment certificates until the default is rectified.
- 18.3** Neither the submission of the programme by the Contractor nor its approval by the Architect shall in any way relieve the Contractor from any of his duties and obligations

under the contract.

19.0 ACCESS TO THE WORKS

- 19.1** The Employer, the Architect, Quantity Surveyor, Engineers and other agents of the Employer shall, at all reasonable times, have access to the Works and to the workshops or other places where work is being prepared for the contract.
- 19.2** Where work is to be prepared in workshops or other places of a subcontractor (whether nominated or not) the Contractor shall as far as possible secure a similar right of access to those places for the persons mentioned above.

20.0 POSSESSION OF SITE AND COMMENCEMENT OF WORKS

- 20.1** Within the period stated in the appendix to these conditions, the Employer, or the Architect on his behalf, shall give possession of site to the Contractor and such access as may be necessary to enable the Contractor to commence and proceed with the Works in accordance with the contract.
- 20.2** On or before the date for commencement stated in the appendix to these conditions, the Contractor shall commence the execution of the Works and shall regularly and diligently proceed with the same and complete on or before the date stated in the appendix to these conditions as the date for practical completion.

21.0 LEVELLING AND SETTING OUT

- 21.1** The Employer shall be responsible for the proper identification of the site and the establishment of boundary pegs and beacons and the correctness of the datum levels *on* which the Architect's drawings are based. Such pegs, beacons and datum levels shall be identified to the Contractor by the Employer or by the Architect on his behalf.
- 21.2** The Contractor shall take all necessary precautions to preserve such pegs, beacons and datum levels and should they become disturbed he shall replace or reinstate them at his cost.
- 21.3** The Architect shall determine any levels which may be required for the execution of the Works
and shall furnish to the Contractor, by way of accurately dimensioned drawings, such information as shall enable the Contractor to set out the Works.
- 21.4** The Contractor shall provide all necessary equipment and assistance to enable the accuracy of the setting out to be checked by the Architect. Checking of the setting out shall not relieve the Contractor of his responsibility for the correctness thereof. Unless the Architect shall otherwise instruct, the Contractor shall be responsible for and entirely at his own cost correct any errors arising from his own inaccurate setting out. If the Architect otherwise instructs, an appropriate deduction shall be made from the contract price to reflect the cost of such errors.

22.0 ARCHITECT'S INSTRUCTIONS

- 22.1** The Contractor shall (subject to sub-clauses 22.3 and 22.4 of this condition) forthwith comply with all instructions issued to him by the Architect in regard to any matter in respect of which the Architect is expressly empowered by these conditions to issue instructions.
- 22.2** If within fourteen days after receipt of a written notice from the Architect requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instructions. All costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any money due or to become due to the Contractor under this contract.
- 22.3** Upon receipt of what purports to be an instruction issued to him by the Architect, the Contractor may request the Architect to specify in writing the provisions of these conditions which empower the issue of the said instruction. The Architect shall comply with any such request, and if the Contractor shall thereafter comply with the said instructions, then the issue of the same shall be deemed for all the purposes of this contract to have been empowered by these conditions.
- 22.4** All instructions issued by the Architect shall be in writing. Any instruction issued orally shall be of no immediate effect, but shall be confirmed in writing by the Contractor to the Architect within seven days. If not dissented from in writing by the Architect within seven days from receipt of the Contractor's confirmation, the oral instruction shall take effect as from the expiration of the latter said seven days. Provided always that;
- 22.4.1** If the Architect shall within seven days of giving such an oral instruction himself confirm the same in writing, then the Contractor shall not be obliged to confirm as aforesaid and the said instruction shall take effect as from the date of the Architect's confirmation.
- 22.4.2** If neither the Contractor nor the Architect shall confirm such an oral instruction in the manner and at the time aforesaid, but the contractor shall nevertheless comply with the same, then the Architect may confirm the same **in** writing at any time prior to the issue of the final certificate and the said instruction shall thereupon be deemed to have taken effect on the date on **which it** was issued.-
- 22.5** Any instructions given directly by the Employer to the Contractor shall be of no immediate effect but shall be confirmed by the Architect within seven days, failing which the Contractor shall confirm the same in writing in the same manner as is provided for in sub-clause 22.4. If confirmed by the Contractor, such instructions shall be deemed to be Architect's instructions.

23.0 SPECIFICATION OF GOODS, MATERIALS AND WORKMANSHIP

- 23.1** All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards described in the contract bills, the drawings and the specifications.

- 23.2** The Contractor shall, upon request by the Architect, furnish him with trade catalogues or manufacturer's brochures to prove that the materials and goods comply with sub-clause 23.1 of this condition.
- 23.3** If the Contractor shall fail to obtain materials or goods of the respective kinds and standards shown in the contract drawings and described or referred to in the contract bills and specifications, he shall forthwith give to the Architect a written notice specifying the non-availability. The Architect shall within fourteen days of receipt of such notice issue instructions in regard thereto.
- 23.4** Where not so described, the materials, goods and workmanship shall be to a standard appropriate to the Works and to the reasonable satisfaction of the Architect.
- 23.5** Notwithstanding the generality of his powers, if any work, materials or goods are not in accordance with the contract, the Architect may in his discretion allow any or all such work, materials or goods to remain in the Works. If so allowed, an appropriate deduction shall be assessed by the Quantity Surveyor and the contract price adjusted accordingly.
- 23.6** The Architect may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out tests of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of such opening up or testing, together with the cost of making good in consequence thereof, shall be added to the contract price unless provided for in the contract bills or unless the inspection or test shows that the work, materials or goods are not in accordance with the contract.
- 23.7** Where materials or goods are specified by a trade or brand name, the Contractor shall not be liable for any latent defects therein, if any. The Contractor shall be deemed to have assigned to the Employer any right of action that may exist against the supplier or the manufacturer in case of failure arising from such defects.
- 23.8** The Architect may issue instructions in regard to the removal from the site of any work, materials or goods which are not in accordance with the contract.

24.0 SAMPLES AND TESTS

- 24.1** The Contractor shall arrange for and furnish to the Architect, samples of any materials, goods or workmanship and perform any tests that may be called for by the Architect for his approval. Any samples and tests approved by the Architect shall be deemed to represent the minimum standard for the part of the Works to which they apply.
- 24.2** Where the Contractor fails to comply with the provisions of sub-clause 24.1, the Architect may arrange with other parties to provide the requisite samples or carry out the necessary tests. The Contractor shall be obliged to conform to the standards set by such samples or tests. All costs and expenses incurred in the procurement of such samples and tests shall be borne by the Contractor.

25.0 ROYALTIES AND PATENT RIGHTS

- 25.1** All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions in carrying out the Works as described by or referred to in the contract bills and the specifications, shall be deemed to have been included in the contract price.
- 25.2** The Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Employer or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.
- 25.3** Where the Contractor shall supply and use in carrying out the Works any patented articles, processes or inventions in compliance with Architect's instructions, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes and inventions. All royalties, damages or other money which the Contractor may be liable to pay to the persons entitled to such patent rights shall be added to the contract price.

26.0 ASSIGNMENT

- 26.1** Neither the Employer nor the Contractor shall, without the written consent of the other, assign this contract. Provided that the approval of assignment shall not relieve either party of his obligations for the part of the contract already performed or the part not assigned.
- 26.2** It shall be a condition of any assignment that the employment of any assigns shall terminate immediately upon the termination (for whatever reason) of the Contractor's employment under the contract.

27.0 SUBLETTING

- 27.1** The Contractor shall not sublet the whole of the Works without the written consent of the Employer and the Architect. He may sub-let part of the Works upon giving notice to the Architect.
- 27.2** The Contractor shall remain liable under the contract for all work sublet under this clause as if he had himself carried out such work.
- 27.3** It shall be a condition in any sub-letting that the employment of the sub-contractor shall terminate forthwith upon the termination (for whatever reason) of the Contractor's employment under the contract.

28.0 SUSPENSION OF THE WORKS BY THE ARCHITECT

- 28.1** The Architect may issue instructions to postpone the carrying out of any work included in this contract.
- 28.2** The Architect may issue instructions to suspend the carrying out of any work included in this contract, if;

- 28.2.1** The Contractor fails to comply with an Architect's instruction requiring the dismissal from the Works of any person employed thereon, or
 - 28.2.2** There arises any matters of urgency involving the safety or protection of persons or property, or
 - 28.2.3** The Contractor fails to comply with the contract provisions to insure the Works, or
 - 28.2.4** The Contractor fails to comply with an Architect's instruction in regard to the removal from the site of any work, materials or goods which are not in accordance with the contract, or
 - 28.2.5** The Contractor assigns the contract or sub-lets the whole of the Works without the written consent of the Employer.
- 28.3** Except for suspension under sub-clause 28.2.2, all other instructions to suspend shall be accompanied by a seven days notice.
- 28.4** Instructions for postponement or suspension shall be copied to the Employer
- 28.5** The suspension shall not take effect if the matter occasioning the notice is rectified within the period of the notice. Such suspension shall cease immediately the matter occasioning the notice is rectified.
- 28.6** Should the Works be suspended under this clause, the Contractor shall be liable for all expenses arising therefrom.

29.0 SUSPENSION OF THE WORKS BY THE CONTRACTOR

- 29.1** The Contractor may suspend the carrying out of the Works, if;
- 29.1.1** He has not received a payment certificate which he applied for in accordance with Clause 34.0 of these conditions and the default continues for thirty days after expiry of the stated period, or
 - 29.1.2** He has not received payment within the period for honouring certificates provided in clause 34.0 of these conditions and the default continues for thirty days after expiry of the stated period, or
 - 29.1.3** The Contractor notifies the Architect that it has become impossible to impracticable to procure goods and materials for the Works for reason beyond the Contractor's control and the Architect has not given appropriate instructions in accordance with sub-clause 23.3, or

29.1.4 Delay occurs in the nomination or renomination of a sub-contractor or supplier which delay materially affects the progress of the Works, **or**

29.1.5 Delay occurs in the appointment of a replacement Architect, Quantity Surveyor or Engineer which delay materially affects the progress of the Works.

29.2 Where the Contractor intends to suspend the carrying out of the Works, he shall give the Employer a seven days notice in writing to that effect, with a copy to the Architect.

29.3 The Contractor shall not suspend the carrying out of the Works if the matter occasioning the notice is rectified within the period of the notice. Such suspensions shall cease immediately the matter occasioning the notice is rectified.

29.4 During the period of suspension either under clause 28.0 or herein the Contractor shall properly protect and secure the Works to the reasonable satisfaction of the Architect.

30.0 VARIATIONS

30.1 The term 'variation' as used in these conditions shall mean the alteration or modification of the design, quality or quantity of the Works as shown upon the contract drawings and described by or referred to in the contract bills and specifications and includes:

30.1.1 The addition, omission or substitution of any item of work.

30.1.2 The alteration of the kind or standard of any of the materials or goods to be used in the Works.

30.1.3 The removal from the site of any work, materials, or goods brought upon the Works by the Contractor for the purposes of the Works other than work, materials, or goods which are not in accordance with the contract.

30.1.4 The issue of instructions by the Architect in regard to the expenditure of prime cost and provisional sums included in the contract bills and of prime cost sums which arise as a result of instructions issued in regard to the expenditure of provisional sums.

30.2 The Architect may issue instructions requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction of the Architect. No variation required by the Architect or subsequently sanctioned by him shall vitiate this contract, provided that no such instructions shall substantially change the scope or object of the contract without the consent of the Employer and the Contractor.

30.3 If the net value of all variations should equal 15% of the builders work, the Architect shall not issue any further instructions requiring a variation for additional work without the consent of the Employer and the Contractor.

30.4 All instructions for variations shall be copied to the Employer.

30.5 All variations required by the Architect or subsequently sanctioned by him in writing and all work executed by the Contractor for which provisional sums are included in the contract

bills (other than work for which a tender made under sub-clause 31.11 of these conditions has been accepted) shall be assessed by the Quantity Surveyor who shall give to the Contractor an opportunity of being present at the time of such assessment and of taking such notes and measurements as the Contractor may require.

30.6 The valuation of variations and of work executed by the Contractor for which a provisional sum is included in the contract bills (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed, shall be made in accordance with the following rules:

30.6.1 The prices in the contract bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein.

30.6.2 The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far *as may be* reasonable, failing which a fair valuation thereof shall be made.

30.6.3 Where work cannot properly be measured and valued, the Contractor shall be allowed day-work rates on the prices prevailing when such work is carried out (unless otherwise provided in the contract bills). The day-work rates will be;

30.6.3.1 Rates, if any, inserted by the Contractor in the contract bills or in a schedule of rates, or

30.6.3.2 When no such rates have been inserted, at rates to be agreed between the Quantity Surveyor and the Contractor.

30.6.3.3 Vouchers specifying the time daily spent upon the work (and if required by the Architect, the workmen's names) the equipment and the materials used shall be delivered for verification to the Quantity Surveyor not later than the end of the week following that in which the work was executed.

30.6.4 The prices in the contract bills shall determine the valuation of items omitted. Provided that if omissions substantially vary the conditions under which any remaining items of work are carried out, the prices for such remaining items shall be valued as set out in sub-clause 30.6.2.

30.7 Effect shall be given to the measurement and valuation of variations under sub-clause 30.6 of this condition in interim certificates and by adjustment of the contract price. Effect shall also be given to the measurement and valuation of work for which a provisional sum is included in the contract bills under the said sub-clause in interim certificates and by adjustment of the contract price in accordance with sub-clause 34.19.

30.8 If upon written application being made by the Contractor, the Quantity Surveyor is of the opinion that a variation or the execution by the Contractor of work for which a provisional sum is included in the contract bills (other than work for which a tender made under clause

31.0 of these conditions has been accepted) has involved the Contractor in direct loss and or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause 30.6 of this condition and if the said application is made with supporting details within thirty days of the loss or

expense having been incurred, the Quantity Surveyor shall assess the amount of such loss or expense. Any amount so assessed from time to time shall be added to the contract price, and if an interim certificate is issued after the date of assessment the said amount shall be added to the amount which would otherwise be stated as due in such certificate.

30.9 Should any part of the Works be omitted from the contract and that part is carried out by others, the Contractor shall be entitled to reimbursement of the profit he would have made had he carried out the omitted part. Such loss of profit shall be assessed by the Quantity Surveyor and if an interim certificate is issued after the date of assessment the said amount shall be added to the amount which would otherwise be stated as due in such a certificate.

30.10 No instructions for variations shall be issued after the practical completion certificate is issued without the consent of the Contractor.

30.11 Where a variation is necessitated by the default or breach of the contract by the Contractor, any additional cost attributable to such a variation shall be borne by the Contractor.

30.12 Except as expressly stated in the contract, the Architect shall have no authority to alter or amend the terms and conditions of the contract or to relieve the Contractor of any of his obligations under the contract.

30.13 Where the Architect, with the consent of the Employer and the Contractor, issues instructions requiring a variation beyond the limit provided in sub-clause 30.3, the Employer may require an additional performance bond over and above that provided under sub-clause 16.1. The Contractor shall be reimbursed for the provision of the additional bond pro-rata to the amount priced for the bond in the contract.

30.14 The Architect shall not issue an instruction requiring a variation for additional work exceeding 0.01% of the contract price without the prior approval of the Employer unless otherwise communicated by the Employer to the Architect and to the Contractor.

31.0 NOMINATED SUB-CONTRACTORS

31.1 The following provisions shall apply where prime cost sums are included in the contract bills or arise as a result of Architect's instructions given in regard to the expenditure of provisional sums in respect of persons to be nominated by the Architect to supply and fix or install materials or goods or to carry out work.

31.2 Such sums shall be expended in favour of such persons as the Architect shall instruct, with the consent of the Employer, and all specialists or others who are nominated by the Architect are hereby declared to be sub-contractors employed by the Contractor, and are referred to in these conditions as 'nominated sub-contractors'.

31.3 The Architect shall not nominate any person as a sub-contractor against whom the Contractor shall make reasonable objection.

31.4 The nominated sub-contractor shall carry out and complete the sub-contract works in every respect to the reasonable satisfaction of the Contractor and of the Architect and in conformity with all the reasonable directions and requirements of the Contractor.

31.5 The Contractor and the nominated sub-contractor shall enter into a sub-contract agreement which provides (inter alia):

- 31.5.1** That the nominated sub-contractor shall observe, perform and comply with all the provisions of this contract on the part of the Contractor to be observed, performed and complied with (other than clause 13.0 of these conditions, if applicable) so far as they relate and apply to the sub-contract works or to any , portion of the same.
- 31.5.2** That the nominated sub-contractor shall indemnify the Contractor against the same liabilities in respect of the sub-contract works as those for which the Contractor is liable to indemnify the Employer under this contract.
- 31.5.3** That the nominated sub-contractor shall indemnify the Contractor against claims in respect of any negligence, omission or default of such subcontractor, his servants or agents or any misuse by him or them of any scaffolding or other equipment, and shall insure himself against any such claims and produce the policy or policies and receipts in respect of premiums paid as and when required by either the Architect or the Contractor.
- 31.5.4** That the sub-contract works shall be completed within the period or (where they are to be completed in sections) periods therein specified.
- 31.5.5** That the Contractor shall not without the written consent of the Architect, grant any extension of time for the completion of the sub-contract works or any section thereof, and that the Contractor shall inform the Architect of any representation made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the sub-contract works or any section thereof.
- 31.5.6** That if the nominated sub-contractor shall fail to complete the sub-contract works or (where the sub-contract works are to be completed in sections) any section thereof, within the period therein specified or within any extended time granted by the Contractor with the written consent of the Architect and the Architect certifies in writing to the Contractor that the same ought \reasonably so to have been completed, the nominated sub-contractor shall or allow to the Contractor either a sum calculated at the rate therein agreed as liquidated damages for the period during which the said works or any section thereof, as the case may be, shall so remain or have remained incomplete or where no such rate is therein agreed), a sum equivalent to any loss or damage suffered or incurred by the Contractor and caused by the failure of the nominated sub-contractor as aforesaid.
- 31.5.7** That payment in respect of any work, materials or goods comprised in the sub-contract shall be made within fourteen days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the Architect's certificates issued under clause 34.0 of these conditions which states as due an amount calculated by including the total value of such work, materials or goods, and shall when due be subject to retention by the Contractor of the sums stated in sub-clause 31.5.8 of this condition.
- 31.5.8** That the Contractor shall retain from the sum directed by the Architect as having been included in the calculation of the amount stated as due in any certificate issued under clause 34.0 of these conditions in respect of the total value

of work, materials or goods executed or supplied by the nominated subcontractor the percentage of such value named in the appendix to these conditions as percentage of certified value retained up to a total amount not exceeding a sum which bears the same ratio to the sub-contract price as the unreduced sum named in the appendix to these conditions as the limit of retention fund bears to the contract price.

31.5.9 That the Contractor's interest in any sums so retained (by whomsoever held)-shall be fiduciary as trustee for the nominated sub-contractor (but without obligation to invest), and that the nominated sub-contractor's beneficial interest in such sums shall be subject only to the right of the Contractor to have recourse thereto from time to time for payment of any amount which he is entitled under the sub-contract to deduct from any sum due or to become due to the nominated sub-contractor; and that if and when such sums or any part thereof are released to the nominated sub-contractor, they shall be paid in full.

31.5.10 That the Employer, the Architect, Quantity Surveyor, Engineers and other agents of the Employer, shall have a right of access to the workshops and other places of the nominated sub-contractor where work is being prepared as provided for in clause 19.0 of these conditions.

31.6 The Architect shall direct the Contractor as to the total value of the work, materials or goods executed or supplied by a nominated sub-contractor included in the calculation of the amount stated as due in any certificate issued under clause 34.0 of these conditions and shall forthwith inform the nominated sub-contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor within fourteen days after receipt by the Contractor of the sum to which the Contractor shall be entitled by virtue of the certificate less only;

31.6.1 Any retention money which the Contractor may be entitled to deduct under the terms of the sub-contract, and

31.6.2 Any sum to which the Contractor may be entitled in respect of delay in the completion of the sub-contract works or any section thereof, and

31.6.3 Amounts already paid under previous certificates.

31.7 Before issuing any certificate under clause 34.0 of these conditions, the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amounts stated as due in previous certificates in respect of the total value of the work, materials or goods executed or supplied by any nominated subcontractor have been duly paid and if the Contractor fails to comply with any such request the Architect shall issue a certificate to that effect and thereupon the Employer may himself pay such amounts to any nominated sub-contractor concerned and deduct the same from any money due or to become due to the Contractor.

31.8 The Contractor shall not grant to any nominated sub-contractor any extension of the period within which the sub-contract works, or (where the sub-contract works are to be completed in sections) any section thereof is to be completed without the written consent of the Architect. Provided always that the Contractor shall inform the Architect of any

representations made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the sub- contract works or of any section thereof. The consent of the Architect shall not be unreasonably withheld. Any extension of time granted under this clause shall be copied to the Employer.

- 31.9** If any nominated sub-contractor fails to complete the sub-contract works or (where the sub-contract works are to be completed in sections) any section thereof within the period specified in the sub- contract or within any extended time granted by the Contractor with the written consent of the Architect, then if the same ought reasonably so to have been completed, the Architect shall certify in writing accordingly. Immediately upon issue, the Architect shall send a copy of any such certificate to the nominated sub-contractor and to the Employer.
- 31.10** If the Architect desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor, and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, then the Architect may in an interim certificate include an amount to cover the said final payment, and the Contractor shall pay to such nominated sub- contractor the amount so certified within fourteen days of receipt of the payment. Upon such final payment, the amount named in the appendix to these conditions as limit of retention fund shall be reduced by the sum which bears the same ratio to the said amount as does such sub-contractor's subcontract price to the contract price, and save for latent defects, the Contractor shall be discharged from all liability for the work, materials or goods executed or supplied by such sub- contractor under the sub-contract to which the payment relates.
- 31.11** Where the Contractor in the ordinary course of his business directly carries out works for which prime cost sums are included in the contract bills and where he has so informed the Architect, the Contractor shall be permitted to tender for the same or any of them but without prejudice to the Employer's right to reject the lowest or any tender.
- 31.12** Where a prime cost sum arises under Architect's instructions issued under sub- clause 30.1.4, of these conditions, it shall be deemed for the purposes of this sub-clause to have been included in the contract bills.
- 31.13** It shall be a condition of any tender accepted under sub-clause 31.11 that clause 30.0 of these conditions shall apply in respect of the items of work included in the tender as if the reference therein to the contract drawings, specifications and the contract bills were references to the equivalent documents included in or referred to in the tender.
- 31.14** Where the terms of a contract between the Contractor and a nominated sub-contractor so require or the Architect shall so authorize in writing, the Contractor shall make advance payment to the sub- contractor before delivery of the materials or goods, and the Contractor shall be allowed simple interest for the period of such advance payment calculated at the commercial bank lending rate in force at the time of the advance until the value of the said materials or goods is included in a certificate in accordance with clause 34.0.
- 31.15** If a nominated sub-contractor terminates the sub-contract or the Contractor terminate the sub- contract on the advice of the Architect, the Architect shall make a further nomination of a sub- contractor as may be necessary to carry out and complete the work

left incomplete by the sub- contractor whose employment has been terminated Any additional costs arising therefrom shall be borne by the Employer.

Notwithstanding the above, the Architect may instruct, with the consent of the Contractor, that the incomplete work shall be executed by the Contractor and such instruction shall be deemed to be a variation to the contract.

- 31.16** Provided that where a nominated sub-contractor terminates the sub-contract as a result of a default by the Contractor, or the Contractor terminates the sub-contract without the written advice of the Architect, the Contractor shall be liable to the Employer to any additional costs arising therefrom.
- 31.17** Where a nominated sub-contract provides a defects liability period which extend beyond the Contractor's defects liability period, the Contractor's obligations and liabilities in connection with the defects of the nominated sub-contract shall nevertheless terminate at the end of the Contractor's defects liability period. The remaining portion of the nominated sub-contractor's defects liability period shall be subject to a direct agreement between the Employer and the nominated sub-contractor and shall not form part of this agreement
- 31.18** Where a sub-contractor is required to give a guarantee or warranty relating to the subcontract works such guarantee or warranty shall be assigned by the sub-contractor to the Employer prior to the issue of the final certificate.
- 31.19** The employment of a nominated sub-contractor under these conditions shall terminate forthwith upon the termination (for any reason) of the Contractor's employment under the contract.
- 31.20** Neither the existence nor the exercise of the foregoing powers nor anything else contained in these conditions shall render the Employer in any way liable to any nominated sub-contractor.

32.0 NOMINATED SUPPLIERS

- 32.1** The following provisions shall apply where prime cost sums are included in the contract bills, or arise as a result of Architect's instructions given in regard to the expenditure of provisional sums in respect of any materials or goods to be supplied by others and fixed or installed by the Contractor.
- 32.2** Such sums and the term prime cost, when included or arising as aforesaid, shall be understood to mean the net cost to be defrayed as a prime cost after deducting any trade or other discount and shall include customs duty or other taxes, and the cost of packing, carriage and delivery. Provided that, where in the opinion of the Architect the Contractor has incurred expense for special packing or special carriage, such special expenses shall be allowed as part of the sums actually paid by the Contractor.
- 32.3** Such sums shall be expended in favour of such persons as the Architect shall instruct. All specialists, merchants; tradesmen or others who are so nominated by the Architect to supply materials or goods are hereby declared to be suppliers to the Contractor and are referred to in these conditions as 'nominated suppliers'.

32.4 The Architect shall not nominate as a supplier, a person who will not enter into a contract of sale which provides (inter alia):

32.4.1 That the materials or goods to be supplied shall be to the reasonable satisfaction of the Architect.

32.4.2 That the nominated supplier shall make good by replacement or otherwise any defects in the materials or goods supplied which appear within such period as is therein stated and shall bear any expenses reasonably incurred by the Contractor as a direct consequence of such defects provided that:-

32.4.2.1 Where the materials or goods have been used or fixed such defects are not such that examination by the Contractor ought to have revealed them before using or fixing, and

32.4.2.2 Such defects are due solely to defective workmanship or defects in the materials or goods supplied and shall not have been caused by improper storage by the Contractor or by misuse or by any act or neglect of either the Contractor, the Architect or the Employer or by any person or persons for whom they may be responsible.

32.4.3 That delivery of the materials or goods supplied shall be commenced and completed at such times as the Contractor may reasonably direct.

32.4.4 All payments by the Contractor for materials or goods supplied by a nominated supplier shall be in full and shall be paid within thirty days of the end of the month during which delivery is made. Failure by the Contractor to pay the nominated supplier as stipulated shall entitle the Employer to pay the relevant sums direct and deduct the same from any money due or to become due to the Contractor.

32.4.5 Where the terms of a contract between the Contractor and a nominated supplier so require, or the Architect shall so authorize in writing, the Contractor shall make advance payments to the supplier before delivery of the materials or goods. The Contractor shall be allowed simple interest for the period of such advance payment calculated at the commercial bank lending rate in force at the time of the advance until the value of the said materials or goods is included in a certificate in accordance with clause 34.0.

33.0 WORKS BY OTHER PERSONS ENGAGED BY THE EMPLOYER

33.1 The Contractor shall permit the carrying-out of work not forming part of this contract, but described in the contract bills, by the Employer or by other persons employed or otherwise engaged by him.

33.2 Where the work is not described in the contract bills, the Employer may arrange the carrying out of such work only with the consent of the Contractor, which consent shall not be unreasonably withheld.

33.3 Every person employed or otherwise engaged by the Employer under this clause shall be deemed to be a person for whom the Employer is responsible and not a subcontractor.

34.0 PAYMENTS

34.1 At intervals stated in the appendix to these conditions, the Contractor shall submit to the Quantity Surveyor an application for payment giving sufficient details of the works done and the materials on site and the amounts which the Contractor considers himself to be entitled to. The application for payment shall be copied to the Architect and the Employer.

- 34.2** Upon receipt of the application and after verifying the amounts, the Quantity Surveyor shall prepare within seven days an interim valuation of work done and materials on site during the relevant period and forward the same to the Architect. The valuation shall be copied to the Employer.
- 34.3** The Architect shall issue an interim payment certificate within seven days from the date of receipt of the Quantity Surveyor's valuation. The payment certificate shall be copied to the Employer.
- 34.4** Neither the Quantity Surveyor nor the Architect shall be bound to issue a valuation for a payment certificate, as the case may be, whose value is less than the amount stated in the appendix to these conditions as the minimum amount of a payment certificate before the issue of the certificate of practical completion of the whole of the Works or any section thereof.
- 34.5** The Contractor shall, on presenting any interim payment certificate to the Employer be entitled to payment thereof within fourteen days from presentation.
- 34.6** If a certificate remains unpaid beyond the period for honoring certificates stated herein, the Employer shall pay or allow to the Contractor simple interest on the unpaid amount for the period it remains unpaid at the commercial bank lending rate in force during the period of default. The Quantity Surveyor shall assess the amounts to be included in an interim certificate as the interest due for the delay and if an interim certificate is issued after the date of any such assessment, the amount shall be added to the amount which would otherwise be stated as due in such a certificate.
- 34.7** The payment of interest for late payment of certified sums shall not relieve the Employer from his obligation to honour payment certificates when due.
- 34.8** The Architect may, by a subsequent or supplementary certificate, make any correction, amendment or modification to any previously issued certificate and shall have the authority, if work is not carried out to his satisfaction, to omit or reduce the value of such work in any certificate.
- 34.9** The amount stated as due in an interim certificate shall, subject to any agreement between the parties as to stage payments, be the total value of work properly executed and the value of materials and goods required for use in the Works which have been delivered to the Works.
- 34.10** The Architect may, with the consent of the Employer, include in an interim certificate the value of materials and goods which have been stored elsewhere in safe custody by the Contractor.
- 34.11** Provided that such interim certificate shall only include the value of such materials and goods as and from such time as they are reasonably, properly and not prematurely brought to the Works or stored as aforesaid and are adequately stored and protected against weather and other casualties and are covered by proper insurance and have passed to the legal ownership of the Contractor. There shall be deducted from the amount of the certificate such sums as may be retained by the Employer as hereinafter provided and less any amounts previously certified under this clause.

- 34.12** The Employer may retain the percentage of the total value of the work, materials and goods referred to in sub-clause 34.9 of this condition, which is named in the appendix to these conditions as percentage of certified value retained. Provided always that when the sum of the amounts so retained equals the amount named in the said appendix as limit of retention fund, or that amount as reduced pursuant to sub-clause, 31.10, 42.7, and 42.8 of these conditions, as the case may be, no further amount shall be retained by virtue of this clause.
- 34.13** Where any certificate of which the Contractor has received payment in accordance with sub-clause 34.5 of these conditions, includes the value of any unfixed materials and goods required for use in the Works, such materials and goods shall become the property of the Employer and shall not be removed without the authority of the Architect except for use upon the Works. The Contractor shall remain responsible for any loss of or damage to such materials and goods whether the same are stored on site or elsewhere.
- 34.14** The following amounts, when included in interim certificates, shall not be subject to retention:-
- 34.14.1** Payment for taxes, levies and charges in respect of which the Contractor pays or indemnifies the Employer under the provisions of sub-clause 17.4 of these conditions.
 - 34.14.2** Payment made for inspections and tests carried out by the Contractor or by third parties under clauses 23.0 and 24.0.
 - 34.14.3** Payment to the Contractor for the provision of a performance bond under clause 16.1 of these conditions.
 - 34.14.4** Payment to the Contractor for the provision of insurances under clauses 12.0, 13.0, 14.0 and 15.0 of these conditions, as applicable.
 - 34.14.5** Payment for goods and materials supplied by nominated suppliers under clause 32.0.
 - 34.14.6** Any amounts to which the Contractor is entitled in accordance with sub-clause 34.28.
- 34.15** The Employer and the Contractor may agree to open a joint interest earning bank account where all retention money shall be deposited. Such account, if opened, shall be operated jointly by the Employer and the Contractor. All interest accruing to the deposited retention fund shall be periodically released to the Contractor at the times agreed between the parties and inserted in the appendix to these conditions.
- 34.16** The amounts retained by virtue of sub-clause 34.12 of this condition shall be subject to the following rules;
- 34.16.1** The Employer's interest in any amount so retained shall be fiduciary a trustee for the Contractor (but without obligation to invest) and the Contractor's beneficial interest therein shall be subject only to the right of the Employer to have recourse thereto from time to time for payment of an amount which he is entitled under the provisions of this contract to deduct from any sum due or to become due to the Contractor.
 - 34.16.2** On the issue of the certificate of practical completion, the Architect shall issue a

certificate for one half of the total amount then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment of the said amount within fourteen days from presentation.

34.16.3 On the expiration of the defects liability period named in the appendix to these conditions, or on the issue of the certificate of completion of rectification of defects, whichever is the later, the Architect shall issue a certificate for the balance of the amount then so retained and the Contractor shall be entitled to payment of the said balance within fourteen days from presentation.

34.17 The measurement and valuation of the Works shall be completed within the period of final measurement and valuation stated in the appendix to these conditions calculated from the date of practical completion, and the Contractor shall be supplied with a copy of the final account not later than the end of the said period and before the issue of the final certificate under sub-clause 34.21 of this condition.

34.18 Either before or within a reasonable time after practical completion of the Works, the Contractor shall send to the Quantity Surveyor all documents and calculation necessary for the purposes of the computations required by these conditions including all documents relating to the accounts of nominated sub-contractors and nominated suppliers. The Quantity Surveyor may request the Contractor to submit further documents as he may deem necessary for the computation of the final account.

34.19 In the settlement of accounts, the amounts paid or payable under the appropriate contracts by the Contractor to nominated sub-contractors or nominated suppliers, the amount paid or payable by virtue of clause 17.0 of these conditions in respect of fee or charges for which a provisional sum is included in the contract bills, the amount paid or payable in respect of any insurances maintained in compliance with sub-clause 12.3 of these conditions, the tender price (or such other sum as may be appropriate or accordance with the terms of the tender) for any work for which a tender made under sub-clause 31.11 of these conditions is accepted and the value of any work executed by the Contractor for which a provisional sum is included in the contract bills, shall be set against the relevant prime cost sum or provisional sum included in the contract bills or arising under Architect's instructions issued under clause 30.1.4 of these conditions as the case may be. The balance, after allowing in all cases pro rata for the Contractor's profit at the rates shown in the contract bills, shall be added to 01 deducted from the contract price. Provided that no deduction shall be made in respect of any damages paid or allowed to the Contractor by any sub-contractor or supplier.

34.20 The final account shall be agreed between the Quantity Surveyor, the Contractor and the Architect. If the Contractor does not sign the final account within thirty days after being so requested to do, the Architect may issue the final certificate based on the final account prepared by the Quantity Surveyor. The final account shall be copied to the Employer.

34.21 So soon as the Quantity Surveyor has prepared the final account but before the expiration of sixty days from the end of the defects liability period stated in the appendix to these conditions, or from completion of rectification of defects under clause 41.6 of these conditions, or from receipt by the Quantity Surveyor of the documents referred to in paragraph 34.18 of this condition, whichever is the latest, the Architect shall issue the final certificate.

The final certificate shall state;

- 34.21.1** The sum of the amounts certified to the Contractor under interim certificates and the amount named in the said appendix as limit of retention fund, and
 - 34.21.2** The contract price adjusted as necessary in accordance with the terms of these conditions, and as reflected in the final account.
 - 34.21.3** The difference (if any) between the two sums shall be expressed in the said certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor, as the case may be. Subject to any deductions authorized by these conditions, the said balance as from the fourteenth day after presentation of the final certificate by the Contractor to the Employer shall be a debt payable by the Employer to the Contractor or by the Contractor to the Employer, as the case may be.
- 34.22** Unless a written request to concur in the appointment of an Arbitrator shall have been given under clause 45.0 of these conditions by either party before the final certificate has been issued, or within thirty days after such issue, the said certificate shall be conclusive evidence in any proceedings arising out of this contract (whether by arbitration under clause 45.0 of these conditions or otherwise) that the Works have been properly carried out and completed in accordance with the terms of this contract and that any necessary effect has been given to all the terms of this contract which require an adjustment to be made to the contract price, except and insofar as any sum mentioned in the said certificate is erroneous by reason of;
- 34.22.1** Fraud, dishonesty or fraudulent concealment relating to the Works, or any part thereof, or to any matter dealt with in the said certificate, or
 - 34.22.2** Any defect including any omission in the Works or any part thereof which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before the issue of the said certificate would not have disclosed, or
 - 34.22.3** Any accidental inclusion or exclusion of any work, materials, goods or figure in any computation or any arithmetical error in any computation.
- 34.23** Save as aforesaid, no certificate of the Architect shall of itself be conclusive evidence that any Works, materials or goods to which it relates are in accordance with this contract.
- 34.24** If the Architect shall delete or reduce any sum in the final certificate which was previously certified in respect of work done or goods and materials supplied or services rendered by a nominated sub- contractor or supplier, which sum has already been paid by the Contractor to the nominated sub- contractor or supplier, the Employer shall reimburse the Contractor the amount of any sum so overpaid to the extent that the Contractor is unable to recover the said overpayment.
- 34.25** The Employer shall be entitled to deduct from or set off against any money due from him to the Contractor in interim certificates any sum or sums which the Contractor is liable to pay to the Employer arising under or in connection with the contract.
- 34.26** Where in these conditions it is provided that an amount is to be added to or deducted from the contract price, then as soon as such an amount is assessed in whole or in part, it shall be reflected in the next payment certificate following such assessment.

- 34.27** All certificates to be issued by the Architect under these conditions shall be issued to the Contractor except that the Architect may issue a special payment certificate to others for payment by the Employer where the Employer;

34.27.1 Engages others to execute work in accordance with sub-clause 22.2.

34.27.2 Elects to pay nominated sub-contractors or nominated suppliers direct in accordance with clauses 31.7 and 32.4.4.

34.27.3 Elects to pay direct statutory and similar services providers in accordance with clause 17.2.

- 34.28** Any penalties or fines imposed on the Contractor by the relevant authority for delay in the payment of Value Added Tax and other taxes levied in the building industry arising from a delay in the honouring of a payment certificate shall be reimbursed by the Employer to the Contractor.

35.0 FLUCTUATIONS

- 35.1** The contract price shall be deemed to have been calculated to include all duties on materials and goods to be incorporated into the finished Works unless otherwise stated in the contract. If at any time during the period of the contract the duties shall be varied and this shall affect the cost to the Contractor of such materials, then the Quantity Surveyor shall assess the net difference in cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the contract price, as the case may be. For purposes of this clause, 'duties' shall include all customs and excise charges, tariffs, V.A.T and other taxes and duties imposed by statutory or other authority in the country where the Works are being carried out.

- 35.2** The contract price shall be deemed to be based on exchange rates current at the date of tender in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the contract bills or specifications) for permanent incorporation in the Works. Unless otherwise stated in the contract, if at any time during the period of the contract the exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Quantity Surveyor shall assess the net difference in the cost of such materials. Any amount from time to time so assessed shall be added to or deducted from the contract price, as the case may be.

- 35.3** Unless otherwise stated in the contract, the contract price shall be deemed to have been calculated in the manner set out below and in sub-clauses 35.4 and 35.5 and shall be subject to adjustment in the events specified there under.

35.3.1 The prices contained in the contract bills shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council of Kenya (J.B.C) and set out in the schedule of basic rates annexed to the contract bills.

35.3.2 Upon J.B.C determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the contract price shall be increased or decreased by the amount assessed by the Quantity Surveyor based upon the difference, expressed as a percentage, between the rate set out in the annexed schedule of basic rates and the rate published by

the J.B.C and applied to the quantum of labour incorporated within the amount of work remaining to be executed at the date of publication of such increase or decrease.

35.3.3 No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of practical completion except during such other period as may be granted as an extension of time under clause 36.0 of these conditions.

35.4 The prices contained in the contract bills shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the Works as determined by the J.B.C and set out in the schedule of basic rates annexed to the contract bills.

35.5 Upon the J.B.C determining that any of the said basic prices are increased or decreased then the contract price shall be increased or decreased by the amount to be assessed by the Quantity Surveyor based upon the difference between the price set out in the schedule of basic rates and the rate published by the J.B.C and applied to the quantum of the relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 34.0 of these conditions issued before the date of publication of such increase or decrease.

35.6 No adjustment shall be made in respect of changes in basic prices which occur after the date for practical completion except during such other period as may be granted as an extension of time under clause 36.0 of these conditions.

35.7 The provisions of sub-clauses 35.1 and 35.2 herein shall not apply in respect of any materials included in the annexed schedule of basic rates.

35.8 The provision of sub-clause 35.3 to 35.5 shall not apply to nominated sub-contractors and nominated suppliers except in so far as shall be specifically provided in any subcontract agreement.

36.0 EXTENSION OF TIME

36.1 Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice of the cause of the delay to the Architect with supporting details showing the extent of delay caused or likely to be caused. Thereafter the Architect shall evaluate the information supplied by the Contractor and if in his opinion the completion of the Works is likely to be or has been delayed

Beyond the date for practical completion stated in the appendix to these conditions or beyond any extended time previously fixed under this clauses;

36.1.1 By force majeure, or

36.1.2 By reason of any exceptionally adverse weather conditions, or

36.1.3 By reason of loss or damage occasioned by any one or more of the contingencies referred to in clause 13.0, 14.0, or 15.0 of these conditions or

36.1.4 By reason of civil commotion, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or

transportation of any of the goods or materials required for the Works

- 36.1.5** By reason of Architect's instructions issued under clauses 22.0, 28.1 and 30.0 of these conditions , or
- 36.1.6** By reason of the contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the date for practical completion stated in the appendix to these conditions or to any extension of time then fixed under this clause was either unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- 36.1.7** By delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this contract, or
- 36.1.8** By reason of delay by statutory or other services providers or similar bodies engaged directly by Employer, or
- 36.1.9** By reason of the opening up for inspection of any work covered up or of the testing of any of the work, materials or goods in accordance with sub-clause 23.6 of these conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with this contract, or
- 36.1.10** By the contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the date of this contract, to obtain delivery upon Works of such goods or materials as are essential to the proper carrying out of the Works, or
- 36.1.11** By reason of carrying out Works having been suspended by the Contractors in accordance with the clause 29.0, or
- 36.1.12** By reason of delay in appointing a replacement Architect, Quantity Surveyor or Engineers, or
- 36.1.13** By reason of delay caused by the late supply of goods or materials or in executing work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or
- 36.1.14** By reason of delay caused by nominated subcontractors or nominated suppliers which delay the Contractor has taken all reasonable measures to avoid or reduce the effects of, or
- 36.1.15** By reason of the Contractor's inability, for reasons beyond his control, to secure such skilled labour and other workmen essential to the proper carrying out of the Works, or
- 36.1.16** By delay arising from the nomination or renomination of a subcontractor or supplier, or
- 36.1.17** By delay in receiving possession of or access to the site.

36.2 Then the Architect shall so soon as he is able to estimate the length of the delay beyond the

date or time aforesaid, but in any case not later than thirty days after receiving an application for extension of time in the manner prescribed, make in writing a fair and reasonable extension of time for the completion of the Works.

- 36.3** Provided always that should a cause of delay be of continuing effect, the Architect shall make an interim decision within the said thirty days and a final decision made within thirty days of the end of the cause of delay.
- 36.4** The Contractor shall use constantly his best endeavors to prevent delay and shall do all that may reasonably be required of him to the satisfaction of the Architect to proceed with the Works.
- 36.5** If the Architect's decision on extension of time is not communicated to the Contractor within the said thirty days, and no justifiable grounds are given for the failure to act, the time applied for by the Contractor shall be deemed to have been accepted by the Architect as being a fair extension of time for the completion of the Works. Such a decision shall take effect not earlier than fourteen days after the expiry of the thirty day period.
- 36.6** If by the Architect's instructions the scope of the Works is reduced and in the opinion of the Architect the time for completion of the Works has been or is likely to be reduced, the Architect shall as soon as he is able to estimate the reduction in time, make in writing a fair and reasonable reduction to the time for completion of the Works. Provided always that such a reduction in the time for completion of the Works shall be notified to the Contractor within thirty days from the date of issue of such Architect's instructions.
- 36.7** The Architect shall not be bound to evaluate a request for extension of time which is submitted more than thirty days after the events listed in sub-clause 36.1 have occurred.
- 36.8** All applications for extension of time and all decision on the same shall be copied to the Employer at the time of application or decision, as the case may be.

37.0 LOSS AND EXPENSE CAUSED BY DISTURBANCE OF REGULAR PROGRESS OF THE WORKS

- 37.1** If upon written application being made to him by the Contractor the Architect is of the

opinion that the Contractor has been involved in direct loss and or expense for which he would not be reimbursed by a payment made under any other provision in this contract by reason of the regular progress of the Works or of any part thereof having been materially affected by;

37.1.1 The Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing, on a date which having regard to the date for practical completion stated in the appendix to these conditions or to any extension of time then fixed under clause 36.0 of these conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

37.1.2 The opening up for inspection of any work covered up or the testing of any work, materials or goods in accordance with clause 23.0 of these conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials, or goods were not in accordance with this contract, or

37.1.3 Delay in appointing a replacement Architect, Quantity Surveyor or Engineer, **or**

37.1.4 Any discrepancy in or divergence in these conditions, **the contract drawings**, specifications and or the contract bills, or

37.1.5 Delay on the part of artists, tradesmen or others engaged by the Employer **in** executing work not forming part of this contract; or

37.1.6 Delay by statutory or other services providers or similar bodies engaged directly by the Employer, or

37.1.7 Architect's instruction issued in regard to the postponement of any work **to** **be** carried out under the provisions of this contract, or

37.1.8 Delay arising from the nomination or renomination of a sub-contractor or supplier, or

37.1.9 The Contractor suspending the carrying out of the Works in accordance with clause 29.0 of these conditions, except under sub-clause 29.1.3., or

37.1.10 Delay caused by the late supply of goods or materials or in executing work for which the Employer or his agents are contractually obliged to supply or to execute as the case may be, or

37.1.11 Delay in receiving possession of or access to the site.

37.2 And if the written application is accompanied by detailed particulars of the claim and it is made within the period stated in sub-clause 37.4 herein upon it becoming apparent that the progress of the Works or of any part thereof has been affected as aforesaid, then the Quantity Surveyor shall as soon as practicable assess the amount of such loss and or expense. Any amount from time to time so assessed shall be added to the contract price, and if an interim certificate is issued after the date of assessment, any such amount shall be added to the amount which would otherwise be stated as due in such a certificate.

37.3 Upon the happening of any of the events listed at sub-clause 37.1.1 to 37.1.11, the Contractor shall

37.4 maintain such records as may be necessary to support any claim he may wish to make. The Quantity Surveyor may request any further information as he may deem necessary for a fair and just assessment of the claim.

37.5 The Contractor shall give written notice to the Architect of his intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

37.6 Provided always that should the event giving rise to the claim be of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

37.7 If the Contractor fails to comply with any of the provisions of this clause in respect of any claim he seeks to make, his entitlement to payment in respect thereof shall not exceed such amount as the Quantity Surveyor or any Arbitrator appointed under clause 45.0 shall consider to be verified by contemporary records submitted at the time the event occurred.

- 37.8** All applications for the reimbursement of loss and or expense made by the Contractor, and all assessments of loss and expense made by the Quantity Surveyor, shall be copied to the Employer.

38.0 TERMINATION OF THE CONTRACT BY THE EMPLOYER

- 38.1** Without prejudice to any other rights and remedies which the Employer may possess, if the Contractor shall make default in any one or more of the following respects, that is to say,
- 38.1.1** If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, for a period exceeding fourteen days,
or
 - 38.1.2** If he fails to proceed regularly and diligently with the Works, or
 - 38.1.3** If he fails to commence the Works within thirty days of the date for commencement, or
 - 38.1.4** If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods, and by such refusal or neglect the Works are materially affected, or
 - 38.1.5** If he fails to comply with the provisions of clause 26.0 and 27.0 of these conditions,
or
 - 38.1.6** If despite previous notices from the Architect in writing he persistently or flagrantly neglects to comply with any of his obligations under the contract,
- 38.2** Then the Architect may give to the Contractor a notice by registered post or recorded delivery specifying the default, and if the Contractor either shall continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default then the Employer may within fourteen days after such continuance or repetition by notice by registered post or recorded delivery, forthwith terminate the contract, provided that such notice shall not be given unreasonably or vexatiously.
- 38.3** In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed or possession taken by or on behalf of the holders of any debentures secured by a floating charge of any property comprised in or subject to the floating charge, then the contract shall automatically terminate but it may be reinstated and continued if the Employer and the Contractor, his trustee in bankruptcy, receiver or manager, as the case may be, shall so agree.
- 38.4** In the event of the contract being terminated as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Employer and the Contractor;
- 38.4.1** The carrying out of the Works by the Contractor shall cease forthwith and the Contractor shall vacate the site thereby relinquishing possession thereof and the responsibility and care of the site and the Works shall henceforth pass to the Employer.

- 38.4.2** So soon as it is practicable, the Architect shall arrange a joint inspection with the Contractor and the Quantity Surveyor for the purpose of taking a record of the work done, materials and goods delivered on site, the contractor's equipment, and temporary buildings.
- 38.4.3** The Quantity Surveyor shall, within a reasonable time after the inspection, prepare a final account for that part of the Works carried out by the Contractor by the date of termination of the contract.
- 38.5** The Employer may employ and pay other persons to carry out and complete the Works and to rectify any defects and he or they may enter upon the Works and use all temporary buildings, equipment, goods and materials intended for, delivered to and placed on or adjacent to the Works, and may purchase all materials and goods necessary for the carrying out and completion of the Works.
- 38.6** The Contractor shall, if so required by the Employer, within fourteen days of the date of termination, assign to the Employer without payment the benefit of any agreement for the supply of materials or goods and or for the execution of any work for the purposes of this contract, but on the terms that a supplier or sub-contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer. In any case, the Employer may pay any supplier or sub-contractor for any materials or goods delivered or works executed for the purpose of this contract (whether before or after the date of termination) insofar as the cost thereof has not already been paid by the Contractor. The Employer's rights under this sub-clause are in addition to his rights to pay nominated sub- contractors as provided in sub-clause 31.7 of these conditions and payments made under this sub-clause may be deducted from any money due or to become due to the Contractor.
- 38.7** The Contractor shall as and when required in writing by the Architect so to do (but not before) remove from the Works any temporary buildings, equipment, goods and materials belonging to or hired by him. If within thirty days after any such requirement has been made the Contractor has not complied therewith, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor holding the proceeds less all costs incurred to the credit of the Contractor.
- 38.8** The Contractor shall allow or pay to the Employer in the manner hereinafter appearing, the amount of any direct loss and or damage caused to the Employer by the termination. Until after completion of the Works under sub-clause 38.5, the Employer shall not be bound by any provision of this contract to make any further payments to the Contractor, but upon such completion and the verification within a reasonable time of the accounts therefore, the Quantity Surveyor shall assess the amount of expenses properly incurred by the Employer and the amount of any direct loss and or damage caused to the Employer by the termination and, if such amounts when added to the money paid to the Contractor before the date of termination exceed the total amount which would have been payable on due completion in accordance with this contract, the difference shall be a debt payable to the Employer by the Contractor. If the said amounts when added to the money paid to the Contractor be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.
- 38.9** The Contractor shall not be relieved of any of his obligations and liabilities in regard to that part of the Works carried out by him.

39.0 TERMINATION OF THE CONTRACT BY THE CONTRACTOR

39.1 Without prejudice to any other rights and remedies which the Contractor may possess, if:

39.1.1 The Contractor does not receive a payment certificate which he applied for in accordance with clause 34.1 of these conditions within fourteen-days of the application and the default continues for sixty days after expiry of the stated period, or

39.1.2 The Employer does not pay to the Contractor the amount due on any certificate within the period for honouring certificates named in clause 34.5 of these conditions and continues such default for sixty days after expiry of that period, or

39.1.3 The Employer interferes with or obstructs the issue of any certificate due under this contract, and continues such act for sixty days after a notice of default has been issued by the Contractor, or

39.1.4 The carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under sub-clause 41.6 of these conditions) is suspended for a continuous period of sixty days by reason of;

39.1.4.1 Delay in receiving possession of or access to the site, or

39.1.4.2 Architect's instructions issued under clauses 22.0, 28.1, or 30.0 of these conditions, or

39.1.4.3 The Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the date for practical completion stated in the appendix to these conditions, or to any extension of time granted under clause 36.0 of these conditions, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or

39.1.4.4 Delay in appointing a replacement architect, Quantity Surveyor, Engineer, or

39.1.4.5 Delay on the part of artists, tradesmen or others engaged by the employer in executing works not forming part of this contract, or

39.1.4.6 Delay by statutory or other services providers or similar bodies engaged directly by the Employer, or

39.1.4.7 Delay due to the opening up for inspection of any work covered up or the testing of any of the work, materials or goods in accordance with sub-clause 23.6 of these conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance

with the contract, or

39.1.4.8 The Contractor having suspended the carrying out of the Works in accordance with clause 29.0 of these conditions, except under sub-clause 29.1.3, or

39.1.4.9 Delay arising from the nomination or renomination of a sub- contractor or supplier.

39.2 The Employer becomes bankrupt or makes a composition or arrangement with his creditors or has a winding up order made or (except for the purpose of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking is duly appointed or possession is taken by or on behalf of the holders of any debenture secured by a floating charge of any property comprised in or subject to the floating charge.

39.3 Then the Contractor may give the Employer a notice by registered post or recorded delivery with a copy to the Architect specifying the default and should the default continue for fourteen days after receipt of such notice, the Contractor may forthwith terminate the contract

39.4 Upon such termination, then without prejudice to the accrued rights or remedies of either party or to any liability mentioned in clause 11.0 of these conditions which may accrue either before the Contractor or any sub contractors shall have removed their temporary buildings, equipment, goods or materials or by reason of their so removing the same, the respective rights and liabilities of the Contractor and the Employer shall be as follows, that is to say;

39.4.1 The carrying out of the Works by the Contractor shall cease forthwith and the Contractor shall vacate the site thereby relinquishing possession thereof and responsibility and care of the site and the Works shall henceforth pass to the Employer

39.4.2 So soon as it is practicable, the Architect shall arrange a joint inspection with the Contractor and the Quantity Surveyor for the purpose of taking a record of the work done, materials and goods delivered on site.

39.4.3 Thereafter, the Contractor shall with all reasonable dispatch and in such manner and with such precautions as will prevent injury, death or damage in respect of which before the date of termination he was liable to indemnify the Employer under clause 11.0 of these conditions, remove from the site all his temporary buildings, equipment, goods and materials and shall give facilities to his sub- contractors to do the same, but subject always to the provisions of sub-clause 39.5.4 of this condition.

39.5 After taking into account amounts previously paid under this contract, the Contractor shall be paid by the Employer;

39.5.1 The total value of work completed at the date of termination.

39.5.2 The total value of work begun and executed but not completed at the date of termination, the value being assessed in accordance with clause 30.6 of these conditions as if such work were a variation required by the Architect.

39.5.3 Any sum assessed in respect of direct loss and or expense under clause 37.0 of these conditions (whether assessed before or after the date of termination).

39.5.4 The cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor shall be legally bound to pay, and which have been recorded in accordance with sub-clause 39.4.2, and on such payment by the Employer, any materials or goods so paid for shall become the property of the Employer and shall not be removed from the site without the authority of the Employer.

39.5.5 The reasonable cost of removal under sub-clause 39.4.3

39.5.6 Any direct loss and or damage caused to the Contractor by the termination.

40.0 TERMINATION OF THE CONTRACT BY EITHER PARTY

40.1 If during the progress of the Works the Government and people of the country in which the site is located shall become engaged in war, warlike operations or hostilities or kindred activities which either directly or indirectly involve or would involve either party in loss or expense beyond that provided for in or reasonably contemplated by this contract, then the contract may be terminated by either party giving to the other fourteen days notice by registered post or recorded delivery. Upon termination the Contractor shall be paid by the Employer in respect of the work carried out before such termination in accordance with the provisions of sub-clauses 39.5.1 to 39.5.5 of these conditions.

40.2 In the event of the Works or any part thereof or any goods or materials brought on the site for use in the Works being destroyed or damaged by war, warlike operations or hostilities or kindred activities as the case may be, the Contractor shall be under no liability whatsoever to repair, reinstate or make good the destruction or damage so caused and shall be entitled;

40.2.1 To be paid the full value of all work carried out before such event and for all materials on the site for use in the works (including the work or materials so damaged or destroyed), and

40.2.2 To be paid for any work done and materials or goods supplied in the reinstatement or making good of any destruction or damage so caused upon such terms as may be agreed between the parties, and in default of agreement, upon the basis of prime cost plus a reasonable profit to be assessed by the Quantity Surveyor.

40.3 In the case of works of alterations, repairs or extensions, if the Works are damaged by any of the contingencies referred to in clause 15.0 and if it is just and equitable to do so, the contract may within sixty days of the occurrence of such loss or damage be terminated at the option of either party upon giving a fourteen days notice by registered post or recorded delivery. Within fourteen days of receiving such a notice either party may give to the other a written request to concur in the appointment of an Arbitrator under clause 45.0 of these conditions in order that it may be determined whether such termination will be just and equitable. Upon the giving or receiving by the Employer of such a notice of termination or, where a reference to arbitration is made as aforesaid, upon the Arbitrator upholding the notice of termination, the provisions of sub-clause 39.5.1 to 39.5.5 of these conditions shall apply.

40.4 If the carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under sub-clause 41.6 of these conditions) is suspended for a continuous period of sixty days by reason of;

40.4.1 Force majeure, or

40.4.2 Loss or damage occasioned by any one or more of the contingencies referred to in clauses 13.0 and 14.0 of these conditions (if applicable), or

40.4.3 Loss or damage arising from nuclear activity,

40.5 Then either party may, upon giving a fourteen days notice by registered post or recorded delivery, terminate the contract, provided that such notice shall not be given unreasonably or vexatiously. Upon such termination, the Contractor shall be paid by the Employer in respect of the work executed before such termination in accordance with the provisions of clause 39.5.1 to 39.5.5.

41.0 PRACTICAL COMPLETION AND DEFECTS LIABILITY

41.1 When in the opinion of the Contractor the whole of the Works are practically complete, he shall give a notice in writing to the Architect to that effect. The notice shall be accompanied by an undertaking to complete any outstanding work within a reasonable time or within such time as the Architect may direct.

41.2 Within fourteen days of the issue of such notice, the Architect shall inspect the Works and if in his opinion the Works are practically complete, he shall issue the certificate of practical completion, and the defects liability period shall be deemed to commence on the date of issue of the said certificate. If the Works are not practically complete, he shall specify in writing to the Contractor the work which in his opinion requires to be completed before the certificate can be issued.

41.3 The Contractor shall retain possession of the site of the Works up to and including the date of issue of the certificate of practical completion and subject to clause 42.0 hereof, the Employer shall not be entitled to take possession of any part or parts of the Works until that date.

41.4 Upon the Employer taking possession of the whole or any part of the Works, (hereinafter referred to as the relevant part), the relevant part of the Works taken over shall be at the sole risk of the Employer in every respect as from the date of such taking over.

41.5 Should the employer take over the whole or any part of the Works before the issue of a certificate of practical completion, practical completion shall be deemed to have taken place on the date of taking over of the whole or any part of the Works.

41.6 Any defects, shrinkages or other faults which shall appear within the defects liability period stated in the appendix to these conditions and which are due to materials or workmanship not being in accordance with the contract shall be specified by the architect in a schedule of defects which he shall deliver to the Contractor not later than thirty days after the expiry of the said defects liability period. Within a reasonable time after receipt of such schedule, the defects, shrinkages and other faults therein specified shall be rectified by the contractor and (unless the Architect shall otherwise instruct,) entirely at his own cost.

- 41.7** Notwithstanding the provisions of sub- clause 41.6 of this condition, the Architect may whenever he considers it necessary to do so, issue instructions requiring any defect, shrinkage or other fault which shall appear within the defects liability period named in the appendix to these conditions and which is due to materials or workmanship being not in accordance with this contract to be rectified and the Contractor shall within a reasonable time after receipt of such instructions comply with the same and (unless the Architect shall otherwise instruct, in which case the contract price shall be adjusted accordingly), entirely at his own cost. Provided that no such instructions shall be issued after delivery of a schedule of defects or after thirty days from the expiration of the said defect liability period.
- 41.8** Notwithstanding the provisions of sub-clause 30.10 and sub-clause 41.6 herein, where defects shrinkages or other faults shall occur during the period of rectification of defects which are not due to materials or workmanship not being in accordance with the contract, the Architect may instruct their rectification. Such instruction shall be treated as variation and shall be valued in accordance with sub-clause 30.6 of these conditions.
- 41.9** When in the opinion of the Architect any defects, shrinkages or other defaults which he may have required to be rectified under sub- clause 41.6 of this condition shall have been rectified he shall issue a certificate to that effect, and completion of rectification of defects shall be deemed for all the purpose of this contract to have taken place on the day named in such certificate.

42.0 SECTIONAL COMPLETION

- 42.1** If at any time or times before practical completion of the Works the Employer with the consent of the Contractor, shall take possession of any parts or parts of the same (any such part being hereinafter in this clause referred to as ‘the relevant part’) then notwithstanding anything expressed or implied elsewhere in this contract,
- 42.2** Within fourteen days from the date on which the Employer shall have taken possession of the relevant part, the Quantity Surveyor shall prepare a valuation stating his estimate of the approximate total value of the said part. The Architect shall thereafter issue a certificate for the relevant part and for all purposes of this condition (but for no other) the value stated in the certificate shall be deemed to be the total value of the said part.
- 42.3** For the purposes of sub clauses 41.2, 41.6 and 41.7 of these conditions, practical completion of the relevant part shall be deemed to have occurred and the defects liability period in respect of the relevant part shall be deemed to have commenced on the date on which the Employer shall have taken possession thereof.
- 42.4** When in the opinion of the Architect any defects, shrinkages or other faults in the relevant part which he may have required to be rectified under sub-clause 41.6 and 41.7 of these conditions shall have been rectified he shall issue a certificate to that effect.
- 42.5** The Contractor shall reduce the value insured under sub-clause 13.1 of these conditions (if applicable) by the full value of the relevant part, and the said relevant part shall as from the date on which the Employer shall have taken possession thereof, be at the sole risk of the Employer as regards any of the contingencies referred to in the said sub-clause.
- 42.6** In lieu of any sum to be paid or allowed by the Contractor under clause 43.0 of these conditions in respect of any period during which the Works may remain incomplete occurring after the date on which the Employer shall have taken possession of the relevant

part, there shall be paid or allowed such sum as bears the same ratio to the sum which would be paid or allowed apart from the provisions of this condition, as does the contract price less the total value of the said relevant part to the contract price.

42.7 Within thirty days of the date on which the Employer shall have taken possession of the relevant part, there shall be paid to the Contractor from the sums then retained under clause 34.0 of these conditions (if any), one half of such amount as bears the same ratio of the unreduced amount named in the appendix to these conditions as limit of retention fund as does the total value of the said relevant part to the contract price, and the amount named in the appendix to these conditions as limit of retention fund shall be reduced by the amount so paid to the Contractor.

42.8 On the expiration of the defects liability period named in the appendix to these conditions in respect of the relevant part, or on the issue of the certificate of completion of rectification of defects in respect of the relevant part, whichever is the later, there shall be paid to the Contractor from the sums then retained under sub-clause 34.12 of these conditions (if any), the balance of the amount referred to in sub-clause 42.7 and the amount named in the appendix to these conditions as limit of retention fund shall be reduced by the amount of such payment.

43.0 DAMAGES FOR DELAY IN COMPLETION

43.1 If the Contractor fails to complete the Works by the date for practical completion stated in the appendix to these conditions, or within any extended time fixed under clause 36.0 of these conditions, and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the said appendix as liquidated damages for the period during which the Works shall so remain or have remained incomplete, and the Employer may deduct such sum from any money due or to become due to the Contractor under the contract or recover the same from the Contractor as a debt.

43.2 The payment or deduction of such damages shall not relieve the Contractor from his obligations to complete the Works or any part thereof or from any other obligations and liabilities under the contract.

44.0 ANTIQUITIES AND OTHER OBJECTS OF VALUE

44.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating the same during the progress of the work, shall become the property of the Employer. The Contractor shall carefully take out and preserve all such objects and shall immediately or as soon as convenient after the discovery of such articles, deliver the same into the possession of the Architect or of the Clerk of Works uncleaned and as excavated.

44.2 If in the opinion of the Architect, compliance with the provisions of the preceding sub-clause has involved the Contractor in direct loss and or expense for which he would not be reimbursed by a payment made under any other provision in this contract, then the Quantity Surveyor shall assess the amount of such loss and or expense. Any amount from

time to time so assessed shall be added to the contract price, and if an interim certificate is issued after the date of assessment, any such amount shall be added to the amount which would otherwise be stated as due in such a certificate.

45.0 SETTLEMENT OF DISPUTES

- 45.1** In case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works, such 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 by the Chairman or Vice Chairman of The Architectural Association of Kenya or by the Chairman or Vice Chairman of The Chartered Institute of Arbitrators, Kenya Branch, on the request of the applying party.
- 45.2** The arbitration may be on the construction of this contract or on any matter or thing of whatsoever nature arising thereunder or in connection therewith, including any matter or thing left by this contract to the discretion of the Architect, or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the measurement and valuation referred to in clause 34.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of contract.
- 45.3** Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference 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.
- 45.4** Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties.
- 45.5** In any event, no arbitration shall commence earlier than ninety days after the service of the notice of a dispute or difference.
- 45.6** Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the contract by either party:
- 45.6.1** The appointment of a replacement Architect, Quantity Surveyor or Engineer upon the said persons ceasing to act.
- 45.6.2** Whether or not the issue of an instruction by the Architect is empowered by these conditions.
- 45.6.3** Whether or not a certificate has been improperly withheld or is not in accordance with these conditions.

45.6.4 Any dispute or difference arising in respect of war risks or war damage.

45.7 All other matters in dispute shall only be referred to arbitration after the practical completion or alleged practical completion of the Works, or abandonment of the Works, or termination or alleged termination of the contract, unless the Employer and the Contractor agree otherwise in writing.

45.8 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.

45.9 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

45.10 The award of such Arbitrator shall be final and binding upon the parties.

APPENDIX	Clause
Percentage to cover professional fees for insurance purposes only	13.0
Name of Contractor's surety	16.1
Amount of surety	16.1
Name of Employer's surety	16.2
Amount of surety	16.2
Period for submission of programme	18.1
Period for possession of site	20.1
Contract period	20.2
Date for commencement of Works	20.2
Date for practical completion	20.2

Name of the bank for purposes of interest calculation.	31.1 32.4.2 34.6
Interval for application of payment certificates	34.1
Minimum amount of payment Certificate	34.4
Percentage of certified value retained	34.12
Limit of retention fund	34.12
Periods for release of interest on retention money to Contractor	34.15
Period of final measurement and valuation	34.17
Defects liability period	41.6
Damages for delay in completion	43.1 at the rate of Kshs.
Signed by the said:
.....
EMPLOYER	CONTRACTOR

CONTRACTOR'S PERFORMANCE BOND

BY THIS AGREEMENT, we.....(SURETY)

of.....

.....

are bound to(EMPLOYER)

in the sum of Kenya Shillings

.....(Ksh.....)

to be paid by us to the said.....(EMPLOYER)

WHEREAS by an agreement in writing dated

.....(CONTRACTOR)

entered into contract with.....(EMPLOYER)

to carry out and complete the works therein stated in the manner and by the time therein specified
all in accordance with the provisions of the said contract, namely; (description of Works)

NOW the condition of the above written bond is such that if the said Contractor his executors, administrators, successors or assigns shall duly perform his obligations under the contract, or if on default by the Contractor the Surety shall satisfy and discharge the damages sustained by the Employer thereby up to the amount of the above written bond, then this bond shall be void, otherwise it shall remain in full force and effect. Upon default, and without prejudice to his other rights under the contract, the Employer shall be entitled to demand forfeiture of the bond and we undertake to honour the demand in the amount stated above.

PROVIDED always and it is hereby agreed and declared that no alteration in the terms of the said contract or in the extent or nature of the works to be carried out and no extension of time by the Architect under the contract shall in any way release the Surety from any liability under the above written bond.

IN WITNESS whereof we have set our hands thisday of.....

.....

Surety

.....

Witness

Authorised-by Power of Attorney No...

EMPLOYER'S PAYMENT BOND

BY THIS AGREEMENT, we..... (SURETY)

of.....

..

are bound to..... (CONTRACTOR)

in the sum of Kenya Shillings.....

..... (Ksh.....)

to be paid by us to be said..... (CONTRACTOR)

WHEREAS by an agreement in writing dated.....

..... (CONTRACTOR)

entered into contract with..... (EMPLOYER)

to carry out and complete the works therein stated in the manner and by the time therein specified all in accordance with the provisions of the said contract, namely; (description of Works).

NOW the condition of the above written bond is such that if the said Employer his executors, administrators, successors or assigns shall duly perform his payment obligations under the contract then this bond shall be void, otherwise it shall remain in full force and effect. That is to say, should the Contractor terminate the contract under clause 39.1.1., 39.1.2 or 39.1.3 of the contract or should the final certificate remain unpaid beyond the period stated in clause 34.21.3, then without prejudice to his other rights under the contract, the Contractor shall be entitled to demand forfeiture of the bond and we undertake to honour the demand in the amount stated above.

PROVIDED always and it is hereby agreed and declared that no alteration in the terms of the said contract or in the extent or nature of the works to be carried out and no extension of time by the Architect under the contract shall in any way release the Surety from any liability under the above written bond.

IN WITNESS whereof we have set our hands thisday of

.....

.....

Surety

Witness

Authorized by Power of Attorney No...

Section IX - Special Conditions of Contract

The following Special Conditions shall supplement the GCC. Whenever there is a conflict, the provisions here in shall prevail over those in the GCC.

Part A - Contract Data

Conditions		Data
Procuring Entity's Name and address	Heading	KISUMU WATER AND SANITATION COMPANY LIMITED P.O BOX 3210 – 40100 KISUMU
Name and Reference No. of the Contract	Heading and 3.1.1	CONSTRUCTION OF PROPOSED OFFICE BLOCK FOR KIWASCO TENDER NO: KWSC/RBW/001/2020-2021
Engineer's name and address	Heading and 3.1.1	ENG. MOSES JURA CHIEF ENGINEER, TECHNICAL SERVICES P.O BOX 3210 – 40100 KISUMU
Contractor's representative's name	4.3.1	<i>(insert the name of the Contractor's Representative agreed by the Procuring Entity prior to contract signature)</i>
Key Personnel Names	16.9.1	<i>(Insert the name of each key Personnel agreed by the Procuring Entity prior to contract signature)</i>
Time for Completion	1.1	365 Days
Defects Notification period	1.1	7 Days
Sections	1.1	Not applicable in this Tender
Electronic Transmission Systems	1.3	E-Mail or fax
Time for the Parties Entering into a Contract Agreement	1.6	Within 30 days from date of contract award
Commencement Date	8.1.1	To be agreed after signing of contract during inception meeting
Time for access to the site	2.1	No earlier than the commencement date and not later than 5 days after Commencement Date
Architect Duties and Authority	3.1.6 (b) (ii)	Variations resulting in an increase of the Accepted Contract Amount shall require approval of the

		Procuring Entity
Performance Security	4.2.1	The performance security will be in the form of a performance bond from a recognized bank or insurance company in the amount of 10% of the Accepted Contract Amount and in the same curenc(ies) of the Accepted Contract Amount
Normal Working Hours	6.5	7.00am to 6.00pm
Delay damages for the works	8.7 & 14.15(b)	0.05% of the Contract Price per day
Maximum amount of delay damages	8.7	1% of the final Contract Price
Provisional Sums	13.5 (b)(ii)	There shall be no adjustments on Provisional sums
Adjustments for changes in cost	13.8	Shall not be applicable in this tender
Total Advance payment	14.2.1	20% of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable. The contractor shall be expected to submit a bank guarantee for the amount to be advanced before the disbursement is done.
Repayment ammortization rate of advance payment	14.2.5(b)	This shall be a percentage of an equal percentage of the certificate payable until payment is done in full.
Percentage of Retention	14.3.2 (c)	10% of the Accepted Contract Amount

Conditions		Data
Limit of the Retention Money	14.3.2 (c)	5% of the Accepted Contract Amount
Plant and Materials	14.5 (b) (i)	Sub clause 14.5 shall not apply
Minimum amount of interim payment certificates	14.6	8% of the Accepted Contract Amount. However, this shall not be applicable in the first and last certificates.
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	As per Central Bank of Kenya Website

Maximum total liability of the contractor to the Procuring Entity	17.6	The product of 0.05 times the Accepted Contract Amount
Periods for Submission of Insurance a. Evidence of insurance b. Relevant policies	18.1	13 days 13 days
Maximum amount of deductibles for insurance of the Procuring Entity's risks	18.2.4 (d)	N/A
Minimum amount of third-party insurance	18.3	Kshs. 500,000.00
The place of arbitration	20.7.2	Kisumu City, Kenya

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 TO AWARD OF CONTRACT

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

FORMAT

1. For the attention of Tenderer's Authorized Representative

- i) Name: *[insert Authorized Representative's name]*
- ii) Address: *[insert Authorized Representative's Address]*
- iii) Telephone: *[insert Authorized Representative's telephone/fax numbers]*
- iv) Email Address: *[insert Authorized Representative's email address]*

[IMPORTANT: insert the date that this Notification is transmitted to Tenderers. The Notification must be sent to all Tenderers simultaneously. This means on the same date and as close to the same time as possible.]

2. Date of transmission: *[email]* on *[date]* (local time)

This Notification is sent by (Name and designation) _____

3. Notification of Award

- i) Procuring Entity: *[insert the name of the Procuring Entity]*
- ii) Project: *[insert name of project]*
- iii) Contract title: *[insert the name of the contract]*
- iv) ITT No: *[insert ITT reference number from Procurement Plan]*

This Notification of Intention to Award (Notification) notifies you of our decision to award the above contract. The transmission of this Notification begins the Standstill Period. During the Standstill Period, you may:

4. Request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related Complaint in relation to the decision to award the contracts.

a) The successful tenderers

i) Name of successful Tender _____

ii) Address of the successful Tender _____

iii) Contract price of the successful Tender Kenya Shillings _____ (in words _____)

b) The reasons for your tender being unsuccessful are as follows:

c) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.

	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated

(Note a) State NE if not evaluated

5. How to request a debriefing

- a) DEADLINE: The dead line to request a debriefing expires at midnight on *[insert date]* (local time).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
 - i) Attention: *[insert full name of person, if applicable]*
 - ii) Title/position: *[insert title/position]*
 - iii) Agency: *[insert name of Procuring Entity]*
 - iv) Email address: *[insert email address]*
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint?

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:

- i) Attention: *[insert full name of person, if applicable]*
- ii) Title/position: *[insert title/ position]*
- iii) Agency: *[insert name of Procuring Entity]*
- iv) Email address: *[insert email address]*
- c) At this point in the procurement process, you may submit a Procurement-related Complaint challenging the decision to award the contract. You do not need to have requested, or received, a debriefing before making this complaint. Your complaint must be submitted within the Standstill Period and received by us before the Standstill Period ends.
- d) Further information: For more information refer to the Public Procurement and Disposals Act 2015 and its Regulations available from the Website www.ppra.go.ke.

You should read these documents before preparing and submitting your complaint.

- e) There are four essential requirements:
- i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process and is the recipient of a Notification of Intention to Award.
- ii) The complaint can only challenge the decision to award the contract.
- iii) You must submit the complaint within the period stated above.
- iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

- i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the Procuring Entity:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

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 here by accepted by..... *(name of Procuring Entity)*.

You are requested to furnish the Performance Security within in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized

Signature:

.....

Name and Title of

Signatory:

.....

Name of Procuring

Entity:

.....

Attachment: *Contract*

Agreement:

.....

FORM NO 3: CONTRACT AGREEMENT

THIS AGREEMENT made the day of..... 20.....,
between.....

.....of.....
(hereinafter “the Procuring

Entity”), of the one part, and.....of
.....(hereinafter “the Contractor”), of
the other part:

WHEREAS the Procuring Entity desires that the Works known as
.....sho
uld be executed by the Contractor, and has accepted a Tender by the Contractor for the execution
and completion of these Works and the remedying of any defects there in,

The Procuring Entity and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - a) The Notification of Award
 - b) the Form of Tender
 - c) the addenda Nos.....(if any)
 - d) the Special Conditions of Contract
 - e) the General Conditions of Contract;
 - f) the Specifications
 - g) the Drawings; and
 - h) the completed Schedules and any other documents forming part of the contract.
3. In consideration of the payments to be made by the Procuring Entity to the Contractor as specified in this Agreement, the Contractor here by covenants with the Procuring Entity to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Procuring Entity here by covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects there in, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

INWITNESS where of the parties here to have caused this Agreement to be executed in
accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by.....(for the Procuring
Entity)

Signed and sealed by.....(for the Contractor).

FORM NO. 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 letterhead]*

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ Dated with (name of Procuring Entity) _____ (the Procuring Entity as the Beneficiary), for the execution of _____ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of.....*(in words)*,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 it self 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]*, inresponse tot he Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”
.....

[Name of Authorized Official, signature(s) and seals/stamps]

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

¹The 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.

²Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

FORM No. 5- PERFORMANCE SECURITY

[Option 2– Performance Bond]

[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee in stead of Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[insert name and Address of Procuring Entity]*

Date: _____ *[Insert date of issue]* **PERFORMANCE BOND No.:** _____

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond _____ as Principal (hereinafter called “the Contractor”) and _____] as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____] as Oblige (hereinafter called “the Procuring Entity”) in the amount of _____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the Procuring Entity dated the _____ day of _____, 20_____, for _____ in accordance with the documents, plans, specifications, and amendments there to, which to the extent here in provided for, are by reference made part here of and are here in after referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Procuring Entity to be, in default under the Contract, the Procuring Entity having performed the Procuring Entity's obligations there under, the Surety may promptly remedy the default, or shall promptly:
 - a) Complete the Contract in accordance with its terms and conditions; or
 - b) Obtain a tender or tenders from qualified tenderers for submission to the Procuring Entity for completing the Contract in accordance with its terms and conditions, and upon determination by the Procuring Entity and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and Procuring Entity and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Procuring Entity to Contractor under the Contract, less the amount properly paid by Procuring Entity to Contractor; or
 - c) Pay the Procuring Entity the amount required by Procuring Entity to complete the Contract in accordance with its terms and conditions upto a total not exceeding the amount of this Bond.
4. The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

5. Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate. No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Procuring Entity named here in or the heirs, executors, administrators, successors, and assigns of the Procuring Entity.
6. In testimony whereof, the Contractor has here unto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly at tested by the signature _____ of _____ his _____ legal _____ representative, _____ this _____ day _____ of _____ 20____.

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

FORM NO. 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 _____ (in words _____) is to be made against an advance payment guarantee.
3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (in _____ words _____) upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:
 - a) Has used the advance payment for purposes other than the costs of mobilization in respect of the Works; or
 - b) Has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Contractor on its account number _____ at _____.
5. The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the _____ day of _____, 20____, _____, 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.*

¹*The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency of the advance payment as specified in the Contract.*

²*Insert the expected expiration date of the Time for Completion. The Procuring Entity should note that in the event of an extension of the time for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.*

FORM NO. 7 – RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____ *[Insert name and Address of Procuring Entity]*

Date: _____ *[Insert date of issue]*

Advance payment guarantee no. *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that _____ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. _____ *[insert reference number of the contract]* dated _____ with the Beneficiary, for the execution of _____ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys upto the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, and payment of *[insert the second half of the Retention Money]* is to be made against a Retention Money guarantee.
3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* _____ *([insert amount in words])*¹ upon receipt by us of the Beneficiary's complying demands supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified there in.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number _____ at _____ *[insert name and address of Applicant's bank]*.
5. This guarantee shall expire no later than the Day of², and any demand for payment under it must be received by us at the office indicated above on or before that date.
6. The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed *[six months]* *[one year]*, in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.

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[Name of Authorized Official, signature(s) and seals/stamps]

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

¹The Guarantor shall insert an amount representing the amount of the second half of the Retention Money.

²Insert a date that is twenty-eight days after the expiry of retention period after the actual completion date of the contract. The Procuring Entity should note that in the event of an extension of this date for completion of the Contract, the Procuring Entity would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee.

