B I D D I N G D O C U M E N T
For

Procurement of Design, Supply, Installation and commissioning of Transmission Substations and Lines - (AFD) Project

(e-Procurement System)

IPC No: *KP1/6A.1/PT/1/18/A69*

Project: KENYA POWER TRANSMISSION PROJECT

(AFD funded project)

Employer: KENYA POWER & LIGHTING CO. LTD

Country: KENYA

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PART 1 – BIDDING PROCEDURES

Section I. Instructions to Bidders

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Section I. Instructions to Bidders

General

1. Scope of Bid

1.1 In connection with the Invitation for Bids specified in the Bid Data Sheet (BDS), the Employer, as specified in the BDS, issues these Bidding Documents for the procurement of Works as specified in Section VII, Works Requirements. The name, identification, and number of lots (contracts) of this International Procurement Competition (IPC) process are specified in the BDS.

1.2 Throughout these Bidding Documents:

(a) The term "in writing" means communicated in written form and delivered against receipt;

(b) Except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and

(c) "Day" means calendar day.

2. Source of Funds

2.1 The Employer **specified in the BDS** has received or has applied for financing (hereinafter called "funds") from the Agence Française de Développement (hereinafter called "AFD") toward the project named **in the BDS**. The Employer intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.

3. Corrupt and Fraudulent Practices

3.1 The AFD requires compliance with its policy regarding corrupt and fraudulent practices as set forth in Section VI, AFD Policy - Corrupt and Fraudulent Practices - Environmental and Social Responsibility.

3.2 In further pursuance of this policy, Bidders shall permit and shall cause its sub-contractors and sub-consultants, to permit the AFD to inspect all accounts, records and other documents relating to any prequalification process, bid submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the AFD.

4. Eligible Bidders

4.1 A Bidder may be a firm that is a private entity, a State-owned entity - subject to ITB 4.3 - 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 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 bidding process and, in the event the JV is awarded the Contract, during contract execution. **Unless specified in the BDS**, there is no limit on the number of members in a JV.

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

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

(b) Receives or has received any direct or indirect subsidy from another Bidder; or

(c) Has the same legal representative as another Bidder; or

(d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or

(e) Participates in more than one bid in this bidding process. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one bid; or

(f) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid; or

(g) Any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract implementation; or

(h) Has a close business or family relationship with a professional staff of the Employer (or of the project implementing agency, or of a recipient of a part of the funds) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would 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 AFD throughout the procurement process and execution of the contract.

4.3 The AFD's eligibility criteria to bid are described in Section V, Eligibility Criteria.

4.4 A Bidder shall not be under suspension from bidding by the Employer as the result of the execution of a Bid–Securing Declaration.

4.5 This bidding is open only to prequalified Bidders unless **specified in the BDS**.

4.6 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as the Employer shall reasonably request.

5. Eligible Materials, Equipment, and Services

5.1 The materials, equipment and services to be supplied under the Contract and financed by the AFD may have their origin in any country subject to the restrictions specified in Section V, Eligibility Criteria, and all expenditures under the Contract will not contravene such restrictions. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

Contents of Bidding Documents

6. Sections of Bidding Documents

6.1 The Bidding Documents consist of Parts 1, 2, and 3, which include all the Sections specified below, and which should be read in conjunction with any Addenda issued in accordance with ITB 8.

PART 1 Bidding Procedures

(a) Section I. Instructions to Bidders (ITB);

(b) Section II. Bid Data Sheet (BDS);

(c) Section III. Evaluation and Qualification Criteria;

(d) Section IV. Bidding Forms;

(e) Section V. Eligibility criteria;

(f) Section VI. AFD Policy - Corrupt and Fraudulent Practices - Social and Environmental Responsibility;

PART 2 Works Requirements

(g) Section VII. Works Requirements;

PART 3 Conditions of Contract and Contract Forms

(h) Section VIII. General Conditions (GC);

(i) Section IX. Particular Conditions (PC);

(j) Section X. Contract Forms.

6.2 The Invitation for Bids issued by the Employer is not part of the Bidding Documents.

6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Bidding Documents, responses to requests for clarification, the minutes of the pre-Bid meeting (if any), or amendments to the Bidding Documents in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Documents and to furnish with its bid all information and documentation as is required by the Bidding Documents.

7. Clarification of Bidding Documents, Site Visit, Pre-Bid Meeting

7.1 A Bidder requiring any clarification of the Bidding Documents shall contact the Employer in writing at the Employer's address **specified in the BDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so specified in the BDS, the Employer shall also promptly publish its response at the web page identified in the BDS. Should the clarification result in changes to the essential elements of the Bidding Documents, the Employer shall amend the Bidding Documents following the procedure under ITB 8 and ITB 22.2.

7.2 The Bidder is advised to visit and examine the Site of Works and its surroundings and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.

7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.

7.4 If so specified in the BDS, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one week before the meeting.

7.6 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting. Nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

8. Amendment of Bidding Documents

8.1 At any time prior to the deadline for submission of bids, the Employer may amend the Bidding Documents by issuing amendments.

8.2 Any amendment issued shall be part of the Bidding Documents and shall be communicated in writing to all who have obtained the Bidding Documents from the Employer in accordance with ITB 6.3. The Employer shall also promptly publish the amendment on the Employer's web page in accordance with ITB 7.1.

8.3 To give Bidders reasonable time in which to take an amendment into account in preparing their bids, the Employer may, at its discretion, extend the deadline for the submission of bids, pursuant to ITB 22.2

Preparation of Bids

9. Cost of Bidding

9.1 The Bidder shall bear all costs associated with the preparation and submission of its Bid, and the Employer shall not be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

10. Language of Bid

10.1 The Bid, as well as all correspondence and documents relating to the bid exchanged by the Bidder and the Employer, shall be written in the language **specified in the BDS**. Supporting documents and printed literature that are part of the Bid may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language **specified in the BDS**, in which case, for purposes of interpretation of the Bid, such translation shall govern.

11. Documents Comprising the Bid

11.1 The Bid shall comprise the following:

(a) Letter of Bid and the Bidding Forms in accordance with ITB 12;

(b) Completed schedules as required, including Price Schedules, in accordance with ITB 12 and 14 and as indicated in the BDS;

(c) Bid Security or Bid-Securing Declaration, in accordance with ITB 19.1;

(d) Alternative bids, if permissible in accordance with ITB 13;

(e) Written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;

(f) Statement of Integrity, Eligibility and Social and Environmental Responsibility duly signed, in accordance with ITB 12;

(g) Documentary evidence in accordance with ITB 17 establishing the Bidder's continued qualified status or, if post-qualification applies, as specified in accordance with ITB 4.5, the Bidder's qualifications to perform the contract if its Bid is accepted;

(h) Technical Proposal in accordance with ITB 16;

(i) Any other document **required in the BDS**.

11.2 In addition to the requirements under ITB 11.1, bids 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 bid shall be signed by all members and submitted with the bid, together with a copy of the proposed Agreement.

11.3 The Bidder shall furnish information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.

12. Letter of Bid, Statement of Integrity, Bidding Forms and Schedules

12.1 The Letter of Bid, the Statement of Integrity, the Bidding Forms and Schedules, including the Bill of Quantities for unit price contracts or the Schedule of Prices in case of lump sum contracts, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The Letter of Bid and the Statement of Integrity must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 **Unless otherwise specified in the BDS**, alternative bids shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect **will be included in the BDS**, and the

method of evaluation shall be included in Section III, Evaluation and Qualification Criteria.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Bidding Documents must first price the Employer's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, 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 lowest evaluated Bidder conforming to the Employer's design of the Bidding Documents shall be considered by the Employer.

13.4 **When specified in the BDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in Section VII, Works Requirements. The methods for their evaluation shall be described in Section III, Evaluation and Qualification Criteria.

14. Bid Prices and Discounts

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below.

14.2 The Bidder shall submit a bid for the whole of the Works described in ITB 1.1, by filling in price(s) for all items of the Works, as identified in Section IV, Bidding Forms. In case of admeasurement contracts, the Bidder 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 Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the highest price of the item quoted by substantially responsive bidders will be added to the bid price and the equivalent total cost of the bid so determined will be used for price comparison.

14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.

14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid.

14.5 **Unless otherwise specified in the BDS** and the Contract, the rate(s) and price(s) quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and

weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.

14.6 If so specified in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the bids for all lots (contracts) are opened at the same time.

14.7 **Unless otherwise specified in the BDS**, all duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 28 days prior to the deadline for submission of bids, shall be included in the rates and prices and the total Bid Price submitted by the Bidder.

15. Currencies of Bid and Payment

15.1 The currency (ies) of the bid and the currency(ies) of payments shall be **as specified in the BDS**.

15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.

16. Documents Comprising the Technical Proposal

16.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, Schedules and any other information as stipulated in Section IV, Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the Work requirements and the completion time.

17. Documents Establishing the Qualifications of the Bidder

17.1 In accordance with Section III, Evaluation and Qualification Criteria, to establish that the Bidder continues to meet the criteria used at the time of prequalification, the Bidder shall provide in the corresponding information sheets included in Section IV, Bidding Forms, updated information on any assessed aspect that changed from that time, or if post-qualification applies as specified in ITB 4.5, the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Bidding Forms.

17.2 If a margin of preference applies as specified in accordance with ITB 33.1, domestic Bidders, individually or in joint ventures, applying for eligibility for domestic preference shall

supply all information required to satisfy the criteria for eligibility specified in accordance with ITB 33.1.

17.3 Any change in the structure or formation of a Bidder after being prequalified and invited to Bid (including, in the case of a JV, any change in the structure or formation of any member thereto) shall be subject to the written approval of the Employer prior to the deadline for submission of Bids. Such approval shall be denied if (i) as a consequence of the change, the Bidder no longer substantially meets the qualification criteria set forth in Section III, Evaluation and Qualification Criteria; or (ii) in the opinion of the Employer, the change may result in a substantial reduction in competition. Any such change should be submitted to the Employer not later than fourteen (14) days after the date of the Invitation for Bids.

18. Period of Validity of Bids

18.1 Bids shall remain valid for the period **specified in the BDS** after the bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A bid valid for a shorter period shall be rejected by the Employer as non-responsive.

18.2 In exceptional circumstances, prior to the expiration of the bid validity period, the Employer may request Bidders to extend the period of validity of their bids. The request and the responses shall be made in writing. If a bid security is requested in accordance with ITB 19, it shall also be extended for twenty-eight (28) days beyond the deadline of the extended validity period. A Bidder may refuse the request without forfeiting its bid security. A Bidder granting the request shall not be required or permitted to modify its bid, except as provided in ITB 18.3.

18.3 If the award is delayed by a period exceeding fifty-six (56) days beyond the expiry of the initial bid validity, the Contract price shall be determined as follows:

(a) In the case of fixed price contracts, the Contract price shall be the bid price adjusted by the factor **specified in the BDS**;

(b) In the case of adjustable price contracts, no adjustment shall be made;

(c) In any case, bid evaluation shall be based on the bid price without taking into consideration the applicable correction from those indicated above.

19. Bid Security

19.1 The Bidder shall furnish as part of its bid, either a Bid-Securing Declaration or a Bid Security **as specified in the BDS**, in original form and, in the case of a Bid Security, in the amount and currency **specified in the BDS**.

19.2 A Bid-Securing Declaration shall use the form included in Section IV, Bidding Forms.

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

(a) An unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company);

(b) An irrevocable letter of credit;

(c) A cashier's or certified check; or

(d) Another security **specified in the BDS**;

from a reputable source from an eligible country as specified in Section V, Eligibility Criteria. If the unconditional guarantee is issued by a financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Employer prior to bid submission. The Bid Security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

19.4 Any bid not accompanied by a substantially responsive Bid Security or Bid-Securing Declaration shall be rejected by the Employer as non-responsive.

19.5 The Bid Security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's signing the Contract and furnishing the Performance Security pursuant to ITB 42.

19.6 The Bid Security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required Performance Security.

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

(a) If a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or

(b) If the successful Bidder fails to:

(i) Sign the Contract in accordance with ITB 41; or

(ii) Furnish a Performance Security in accordance with ITB 42.

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

19.9 If a Bid Security is **not required in the BDS** pursuant to ITB 19.1, and

(a) If a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereto provided by the Bidder, or

(b) If the successful Bidder fails to sign the Contract in accordance with ITB 41; or furnish a Performance Security in accordance with ITB 42;

the Employer may, **if provided for in the BDS**, declare the Bidder ineligible to be awarded a contract by the Employer for a period of time **as stated in the BDS**.

20. Format and Signing of Bid

20.1 The Bidder shall prepare one original of the documents comprising the bid as described in ITB 11 and clearly mark it "ORIGINAL." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "ALTERNATIVE." In addition, the Bidder shall submit copies of the bid, in the number **specified in the BDS** and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the bid shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Bidder. This authorization shall consist of a written confirmation **as specified in the BDS** and shall be attached to the bid. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the bid where entries or amendments have been made shall be signed or initialed by the person signing the bid.

20.3 In case the Bidder is a JV, the Bid 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. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, then the Bid shall be signed by every member of the proposed JV.

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

Submission and Opening of Bids

21. Sealing and Marking of Bids

21.1 The Bidder shall enclose the original and all copies of the bid, including alternative bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "ORIGINAL", "ALTERNATIVE" and "COPY." These envelopes containing the original and the copies shall then be enclosed in one single envelope.

21.2 The inner and outer envelopes shall:

(a) Bear the name and address of the Bidder;

(b) Be addressed to the Employer in accordance with ITB 22.1;

(c) Bear the specific identification of this bidding process specified in the BDS 1.1; and

(d) Bear a warning not to open before the time and date for bid opening.

21.3 If all envelopes are not sealed and marked as required, the Employer will assume no responsibility for the misplacement or premature opening of the bid.

22. Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address and no later than the date and time **specified in the BDS**. **When so specified in the BDS**, bidders shall have the option of submitting their bids electronically. Bidders submitting bids electronically shall follow the electronic bid submission procedures **specified in the BDS**.

22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Documents in accordance with ITB 8, in which case all rights and obligations of the Employer and Bidders previously subject to the deadline shall thereafter be subject to the deadline as extended.

23. Late Bids

23.1 The Employer shall not consider any bid that arrives after the deadline for submission of bids, in accordance with ITB 22. Any bid received by the Employer after the deadline for submission of bids shall be declared late, rejected, and returned unopened to the Bidder.

24. Withdrawal, Substitution, and Modification of Bids

24.1 A Bidder may withdraw, substitute, or modify its bid 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 ITB 20.2. The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

(a) Prepared and submitted in accordance with ITB 20 and ITB 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 Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

24.3 No bid may be withdrawn, substituted, or modified in the interval between the deadline for submission of bids and the expiration of the period of bid validity specified by the Bidder on the Letter of Bid or any extension thereof.

25. Bid Opening

25.1 Except in the cases specified in ITB 23 and 24, the Employer shall publicly open and read out in accordance with ITB 25 all bids received by the deadline (regardless of the number of bids received), at the date, time and place **specified in the BDS**, in public and in the presence of Bidders` designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be **as specified in the BDS.**

25.2 First, envelopes marked "WITHDRAWAL" shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening. Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding bid being substituted, and the substituted bid shall not be opened, but returned to the Bidder. No bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at bid opening. Envelopes marked "MODIFICATION" shall be opened and read out with the corresponding bid. No bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at bid opening. Only bids that are opened and read out at bid opening shall be considered further.

25.3 All other envelopes shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; the presence or absence of a bid security or bid-securing declaration, if required; and any other details as the Employer may consider appropriate. Only

discounts and alternative bids read out at bid opening shall be considered for evaluation. The Letter of Bid and the Schedules are to be initialed by a minimum of three representatives of the Employer attending bid opening. At bid opening, the Employer shall neither discuss the merits of any bid nor reject any bid (except for late bids, in accordance with ITB 23.1).

25.4 The Employer shall prepare a record of the bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative bids; and the presence or absence of a bid security or bid-securing declaration, if one was required. The Bidders' representatives who are present shall be requested to sign the record. The omission of a Bidder's signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

Evaluation and Comparison of Bids

26. Confidentiality

26.1 Information relating to the examination, evaluation, and comparison of the bids, and qualification of the Bidders and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 40.

26.2 Any attempt by a Bidder to influence the Employer in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, or Contract award decisions may result in the rejection of its bid.

26.3 Notwithstanding ITB 26.2, from the time of bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.

27. Clarification of Bids

27.1 To assist in the examination, evaluation, and comparison of the bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer'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 bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the bids, in accordance with ITB 31.

27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Employer's request for clarification, its bid may be rejected.

28. Deviations, Reservations, and Omissions

28.1 During the evaluation of bids, the following definitions apply:

(a) "Deviation" is a departure from the requirements specified in the Bidding Documents;

(b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and

(c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.

29. Determination of Responsiveness

29.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB11.

29.2 A substantially responsive bid is one that meets the requirements of the Bidding Documents without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that,

(a) If accepted, would:

(i) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or

(ii) Limit in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Contract; or

(b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.

29.3 The Employer shall examine the technical aspects of the bid submitted in accordance with ITB 16, in particular, to confirm that all requirements of Section VII, Works Requirements have been met without any material deviation, reservation or omission.

29.4 If a bid is not substantially responsive to the requirements of the Bidding Documents, it shall be rejected by the Employer and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.

30. Nonmaterial Nonconformities

30.1 Provided that a bid is substantially responsive, the Employer may waive any nonmaterial nonconformities in the Bid.

30.2 Provided that a bid is substantially responsive, the Employer may request that the Bidder submit the necessary information

or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

30.3 Only for admeasurement contracts and provided that a bid is substantially responsive, the Employer shall rectify quantifiable nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component.

31. Correction of Arithmetical Errors

31.1 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors on the following basis:

(a) Only for admeasurement contracts, if there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail and the total price shall be corrected, unless in the opinion of the Employer there is an obvious misplacement of the decimal point in the unit price, in which case the total price as quoted shall govern and the unit price shall be corrected;

(b) Only for admeasurement contracts, if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and

(c) If there is a discrepancy between words and figures, the amount in words shall prevail, unless, only for admeasurement contracts, the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

31.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 31.1 shall result in the rejection of the Bid.

32. Conversion to Single Currency

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

33. Margin of Preference

33.1 **Unless otherwise specified in the BDS**, a margin of preference for domestic Bidders shall not apply.

34. Subcontractors

34.1 Unless otherwise stated in the BDS, the Employer does not intend to execute any specific elements of the Works by sub-contractors selected in advance by the Employer (nominated sub-contractors).

34.2 A "specialized sub-contractor" is a sub-contractor hired for specialized work as defined by the Employer in Section III 4.2 Experience. If no specialized work is specified by the Employer as such, sub-contractors experience shall not be considered for bids evaluation.

34.3 In case of Prequalification, the Bidder's Bid shall name the same specialized subcontractor as submitted in the prequalification application and approved by the Employer, or may name another specialized subcontractor meeting the requirements specified in the prequalification phase.

34.4 In case of Post qualification, the Employer may permit subcontracting for certain specialized works as indicated in Section III 4.2 Experience. When subcontracting is permitted by the Employer, the specialized sub-contractor's experience shall be considered for the evaluation. Section III, Evaluation and Qualification Criteria, describes the qualification criteria for sub-contractors.

35. Evaluation of Bids

35.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.

35.2 To evaluate a bid, the Employer shall consider the following:

(a) The bid price, excluding Provisional Sums unless priced competitively and the provision, if any, for contingencies in the Schedules, but including Day work items, where priced competitively;

(b) Price adjustment for correction of arithmetic errors in accordance with ITB 31.1;

(c) Price adjustment due to missing items, missing rates, or discounts offered in accordance with ITB 14.2 and 14.4;

(d) Price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 30.3;

(e) Converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 32;

(f) The additional evaluation factors as specified in 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 taken into account in bid evaluation.

35.4 If these Bidding Documents allows Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Evaluation and Qualification Criteria.

35.5 If the bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Employer's estimate, the Employer shall require the Bidder to produce detailed price analyses for any or all items of the Schedules, to demonstrate the internal consistency of those prices with the construction methods, resources and schedule proposed. Notwithstanding the provisions of ITB 14.2 which shall not be applicable, if one or several inconsistencies are evidenced, the bid shall be declared non-compliant and rejected. If the bid is seriously unbalanced or front loaded in the opinion of the Employer and after evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.

35.6 Only the qualifications of the Bidder shall be considered. In particular, the qualifications of a parent or other affiliated company that is not party to the Bidder under a JV in accordance with ITB 4.1 shall not be considered.

35.7 In case of multiple contracts, Bidders should indicate in their Bids the individual contracts in which they are interested. The Employer shall qualify each Bidder for the maximum combination of contracts for which the Bidder has thereby indicated its interest and for which the Bidder meets the appropriate aggregate requirements. The Qualification Criteria and Requirements are mentioned in Section III, Evaluation and Qualification Criteria.

36. Comparison of Bids

36.1 The Employer shall compare the evaluated prices of all substantially responsive bids established in accordance with ITB 35.2 to determine the lowest evaluated bid.

37. Qualification of the Bidder

37.1 Any change in the structure or formation of a Bidder after being prequalified and invited to bid (including, in the case of a JV, any change in the structure or formation of any member thereto) shall be subject to the written approval of the Employer. Such approval shall be denied if (i) as a consequence of the change, the Bidder no longer substantially meets the prequalification criteria; or (ii) in the opinion of the Employer, the change may result in a substantial reduction in competition. Any such

change should be submitted to the Employer not later than fourteen (14) days after the date of the Invitation for Bids.

37.2 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid either continues to meet (if prequalification applies) or meets (if postqualification applies) the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

37.3 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 17.1.

37.4 An affirmative determination shall be a prerequisite for award of the Contract to the Bidder. A negative determination shall result in disqualification of the bid, in which event the Employer shall proceed to the next lowest evaluated bid to make a similar determination of that Bidder's qualifications to perform satisfactorily.

38. Employer's Right to Reject All Bids

38.1 The Employer reserves the right to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

Award of Contract

39. Award Criteria

39.1 Subject to ITB 38.1, the Employer shall award the Contract to the Bidder whose bid has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

40. Notification of Award

40.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in consideration of the execution and completion of the Works and the requirement for the Contractor to remedy any defects therein (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). At the same time, the Employer shall also notify all other Bidders of the results of the bidding.

40.2 Until a formal contract is prepared and executed, the notification of award shall constitute a binding Contract.

40.3 The Employer shall promptly respond in writing to any unsuccessful Bidder who, after notification of award in accordance with ITB 40.1, requests in writing the grounds on which its bid was not selected.

40.4 In exceptional circumstances, a contract negotiation may be needed. In such case, the Employer shall send to the successful Bidder a letter of invitation to negotiate which should not be mistaken as a Letter of Acceptance which, under FIDIC Conditions of Contract, triggers contractual obligations from both Parties. The Letter of Acceptance shall be sent once the contract negotiation ends successfully. Minutes of negotiation meetings, and agreements reached therein, shall be attached to the Letter of Acceptance.

Signing of Contract

41.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.

41.2 Within twenty-eight (28) days of receipt of the Contract Agreement, the successful Bidder shall sign, date, and return it to the Employer.

Performance Security

42.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions of Contract, subject to ITB 35.5, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country.

42.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security or execution of the Bid-Securing Declaration. In that event the Employer may award the Contract to the next lowest evaluated Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.

Section II. Bid Data Sheet

A. Introduction	
ITB 1.1	The number of the Invitation for Bids is: **KP1/6A.1/PT/1/18/A69**
ITB 1.1	The Employer is: **KENYA POWER & LIGHTING COMPANY LTD**
ITB 1.1	The name of the IPC is: **Procurement of Design, Supply, Installation and Commissioning of transmission lines and substations-Kenya Power transmission Project (AFD funded)** The identification number of the IPC is: **KP1/6A.1/PT/1/18/A69** The number and identification of lots (contracts) comprising this IPC is: **KP1/6A.1/PT/1/18/A69 LOT 1** – Design, Supply, Installation and commissioning of 85 Km of 132Kv Double circuit (Narok-Bomet) line and two (2) Take off bays at both Narok and Bomet 132/33kv substations **KP1/6A.1/PT/1/18/A69 LOT 2 -** Design, Supply, Installation and commissioning of 6.5Km of 132Kv (Kipevu-Mbaraki) line and 2x45MVA 132/33KV Mbaraki substation. Bidders may bid for any one lot or both lots. However, the maximum number of lots a bidder may be awarded shall be one (1) lot. The criteria to be used in arriving at the one (1) lot, for any bidder evaluated as the lowest in the two (2) lots shall be the lot that gives the employer the lowest total cost across the two (2) lots.
ITB 2.1	The name of the Project is: **KENYA POWER TRANSMISSION PROJECT (AFD funded).**
ITB 4.1	Maximum number of members in the JV shall be: ***Three (3)***
ITB 4.5	This Bidding Process ***is not*** subject to prequalification.
B. Bidding Documents	
ITB 7.1	For **Clarification purposes** only, the Employer's address is: Attention : **CHIEF ENGINEER, PROJECTS DEVELOPMENT (SUBSTATIONS)** **The Kenya Power and Lighting Company Limited,** **Stima Investment Building I, 3rd Floor** **Kolobot Road, Parklands** **P.O Box 30099 - 00100** **Nairobi, Kenya** Telephone: +254-20-711031349 Electronic mail address: RNjoroge@kplc.co.ke and a copy to Stella Mucheke **PROCUREMENT SPECIALIST** SMucheke@kplc.co.ke Telephone: +254-20-711031349

ITB 7.1	Web page: www.kplc.co.ke
ITB 7.4	A Pre-bid meeting ***shall*** take place at the following date, time and place: Date: **30*th* *APRIL 2018*** Time: **1030hrs East Africa Time** Place: **The Auditorium, Stima Plaza, Kenya Power & Lighting Company Ltd, Kolobot Rd, Parklands, Nairobi - Kenya** A Pre-bid site visits **will be** conducted by the employer as follows: <table><tr><th>Date</th><th>Time</th><th>Site</th><th>Starting point</th></tr><tr><td>1th and 2nd May, 2018</td><td>9000Hrs East Africa Time</td><td>Narok–Bomet Line</td><td>KETRACO Narok 132/33kv Substation</td></tr><tr><td>4th and 5th May, 2018</td><td>9000Hrs East Africa Time</td><td>Kipevu-Mbaraki Line</td><td>KPLC Mbaraki Depot, Mombasa</td></tr></table>***Pre-bid Site Visits are mandatory to all bidders***

C. Preparation of Bids

ITB 10.1	The language of the bid is: English All correspondence exchange shall be in the English language. Language for translation of supporting documents and printed literature is English.
ITB 11.1 (b)	11.1 (b) The following schedules shall be submitted with the Bid: **- Schedule of Prices** **- Project time schedule**
ITB 11.1 (i)	The Bidder shall submit with its bid the following additional documents: The Bidder shall submit the following additional documents (for major items to be supplied) in its bid: • Manufacturer's authorizations in case the bidder is not a manufacturer • Manufacturer's ISO 9001:2008 or higher quality assurance certificate. A copy of such certificate shall be submitted with the bid. • Guaranteed Technical Particulars (GTPs)/ characteristics duly completed and signed by the bidder per Annex A of the Guaranteed Technical Specifications. • Type Tests certificates from accredited Laboratories as required in the Technical Specifications • The accreditation certificate for the testing laboratory • Bidders shall provide additional information such as brochures/catalogues/drawings describing in detail the proposed items. • The Manufacturer's Declaration of Conformity to reference standards. • Documentary Evidence indicating manufacturers Supplies record as follows;

(a) List of manufacturer's customer sales records submitted to support the offer

(b) Details of the supply contracts:

i) The Client's name, address and contact person as well as its location.

ii) Copies of signed contracts, award letters, and Purchase Orders indicating quantity supplied under the contract and the contract amount

- Manufacturer's warranty as stipulated in Section III–Evaluation Criteria.
- Audited Financial statements for the last five (5) years as stipulated in Section III of the Evaluation criteria

The major equipment in this project are:

No.	Equipment/Item
1.	Power transformer
2.	MV & HV outdoor Switchgear
3.	Instrument transformers
4.	Substation Automation
5.	Telecommunication and SCADA equipment
6.	Protection and Control Equipment
7.	Steel Structures and Gantry
8.	ACSR Conductors and HV XLPE Cables
9.	Surge Arresters
10.	Indoor GIS
11.	Lattice towers
12.	Self-supporting monopoles

ITB 13.1	Alternative bids ***Shall Not*** be permitted under ITB 13.2 / ITB 13.3 / ITB 13.4
ITB 13.2 Alternative times for completion (if not permitted under BDS 13.1 above, delete)	Alternative times for completion **Shall Not** be permitted.
ITB 13.3 Unsolicited alternative bids	***N/A***
ITB 13.4	***N/A***

Technical alternatives designed by the Employer (if not permitted under BDS 13.1 above, delete)	
ITB 14.5	The prices quoted by the Bidder shall be: ***Fixed***
ITB 14.7	The Bidder shall identify in the Bid Price as a separate amount the taxes, duties and fees payable under the Contract. The terms shall be strictly on Delivered and Duty Paid (DDP) for local supplier/contractor and Delivered at Place (DAP), for foreign supplier/contractor for schedule 1 (Mandatory plants and spares supplied from abroad). Import Duties and Taxes will be reimbursed on actual payments made by the Contractors on behalf of the Employer. For goods to be supplied from abroad, the bidder shall be responsible for clearance of the equipment. The bidders shall include in their bid all clearing and forwarding charges/agency fees for Plant and Mandatory Spare Parts Supplied from Abroad
ITB 15.1	The unit rates and prices shall be quoted by the Bidder in the Schedules separately in the following currencies: (i) For those inputs to the Works that the Bidder expects to supply from within the Employer's country, in **Kenya Shilling (KES)**, which is the "local currency"; and (ii) For those inputs to the Works that the Bidder expects to supply from outside the Employer's country (referred to as "the foreign currency requirements"), in Euros (€).
ITB 18.1	The bid validity period shall be ***120*** days.
ITB 18.3 (a)	The bid price shall be adjusted as follows: N/***A***.
ITB 19.1	A *Bid Security* ***shall*** be required. A Bid-Securing Declaration ***shall not*** be required. The Bidder shall furnish, as part of its Bid, a Bid security for the amount specified below (based on associated Lot(s)). The Original Bid Security, in a clearly labelled envelop, shall be deposited in the Tender Security Box on KPLC Supply Chain – (Procurement Department,) on or before the opening date and time and receipt acknowledged by KPLC evidenced by a stamped copy. The Bidder shall furnish a bid security in the form of a **Bank Guarantee Only;** the amount and currency of the bid security shall be:

	Lot No	**Minimum Bid Security in (EUR) or an equivalent amount in a KES.**	
		EUROS	**KES**
	KP1/6A.1/PT/1/18/A69 LOT 1	***Euro 330,000***	***41,702,100***
	KP1/6A.1/PT/1/18/A69 LOT 2	***Euro 310,000***	***39,174,700***
ITB 19.3 (d)	Other types of acceptable securities: ***None***		
ITB 19.9	**N/A**		
ITB 20.1	In addition to the original of the bid, the number of copies is: ***N/A***		
ITB 20.2	The written confirmation of authorization to sign on behalf of the Bidder shall consist of*:* - A Power of Attorney established in the name of the signatory of the bid and his sample signature appended on it.		
D. Submission and Opening of Bids			
ITB 22.1	Completed Bids are to be saved as PDF documents marked **"For Procurement of Design, Supply and Installation for Kenya Power Transmission Substation and Lines Project (AFD) KP1/6A.1/PT/1/A69"** and submitted in the appropriate KPLC E-procurement Web Portal found on the KPLC website (www.kplc.co.ke) so as to be received on or before**, 21st June, 2018 at 1000Hrs**. **(Note: This is a Central Office Tender; submissions should STRICTLY be done to Central Office KPLC E-procurement portal).** **The deadline for bid submission is:** **Date: 21St June, 2018** **Time: 1000Hrs East Africa Time** (Bidders may access/download guidelines on E-procurement registration and submission from KPLC website (www.kplc.co.ke)). *i.*e. Public Information/Tenders/ Supplier Manuals NB: Document Size Limit: Each PDF/Scanned document shall not exceed 100MB. There is no limit as to the number of PDF documents that may be uploaded.		
ITB 25.1	Bids will be opened electronically. The bid opening shall take place at: Address: Kenya Power & Lighting Co. ltd Street Address: **Stima Plaza, Kolobot Road, Parklands** Floor/Room number: ***Auditorium*** City: ***Nairobi*** Country: Kenya Date**:** **21St June, 2018** Time**:** **1030Hrs Eat Africa Time**		

E. Evaluation, and Comparison of Bids	
ITB 31	The transmission substation works component shall be on lump sum basis whereas the transmission line works shall be on admeasurement contract basis. Relevant evaluation criteria shall therefore apply to each component as detailed in ITB 31,35, 36 and 37.
ITB 32.1	The currency that shall be used for bid evaluation and comparison purposes to convert all bid price(s) expressed in various currencies into a single currency is: ***Kenya Shillings (KES)*** The source of exchange rate (Selling) shall be: **CENTRAL BANK OF KENYA** The date for the exchange rate shall be **Tender Closing Date** ***(21St June, 2018)*** The Employer will convert the amounts in various currencies in which the Bid Price, corrected pursuant to Clause 31, is payable (excluding Provisional Sums but including Day work where priced competitively) to the single currency identified above at the selling rates established for similar
ITB 33.1	A margin of preference ***shall not*** apply
ITB 34.1	The Employer ***does not intend*** to execute certain specific parts of the Works by sub-contractors selected in advance (nominated subcontractors).

Section III. Evaluation and Qualification Criteria

This Section contains all the criteria that the Employer shall use to evaluate bids and qualify Bidders. In accordance with ITB 35 and ITB 37, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Bidding Forms.

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the USD 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;
(b) Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 32.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer.

1. Evaluation

In addition to the criteria listed in ITB 35.2 (a) – (e) the following criteria shall apply:

1.1 Assessment of adequacy of Technical Proposal with Requirements

The assessment of the Technical Proposal submitted by a Bidder shall comprise (a) evaluation of the Bidder's technical capacity to mobilize key equipment and key personnel to carry out the works, (b) construction method, (c) construction schedule and (d) sufficiently detailed supply sources, in accordance with requirements specified in Section VII, Works Requirements.

If the environmental and social risks are evaluated as high and/or impacts as significant, and therefore, the Bidding Documents include ESHS Specifications, then the Technical Proposal shall comprise an ESHS Methodology. The ESHS Methodology submitted by the Bidder shall be evaluated to determine whether it is substantially responsive (i.e. without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements - ESHS Specifications. The Bidder shall use the ESHS Methodology Form provided for this purpose in Section IV, Bidding Forms - Technical Proposal. A Bid not comprising an ESHS Methodology or a Bid for which the ESHS Methodology is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

1.2 **Multiple Contracts**, if permitted under ITB 35.4, will be evaluated as follows:

Award Criteria for Multiple Contracts [ITB 35.4]:
Bidders may bid for any one lot or both lots. However, the maximum number of lots a bidder may be awarded shall be one (1) lot. The criteria to be used in arriving at the one (1) lot, for any bidder evaluated as the lowest in the two (2) lots shall be the lot that gives the employer the lowest total cost across the two (2) lots.

1.3 Alternative **Completion Times**, not permitted

1.4 Technical alternatives, not permitted.

1.5 Personnel

The Bidder must demonstrate that it has the personnel for the key positions that meet the following requirements for each lot:

No.	Position	Minimum Academic Qualification	Total Work Experience (years)	In Similar Works Experience (years)
b.	Resident project manager	BSc Civil/Electrical Engineering or equivalent	15	10
c.	Design Engineer-Electrical	BSc Electrical Engineering or equivalent	10	7
d.	Commissioning/Protection Engineer	BSc Electrical Engineering or equivalent	10	7
e.	Design Engineer-Civil	BSc Civil Engineering or equivalent	10	7
f.	Construction Engineer	BSc Civil/Electrical Engineering or equivalent	10	7
g.	Environmental and Social Expert	Degree in Environmental Science or Equivalent	10	5
h.	Health and Safety Expert	Degree in Health Science or Equivalent	10	5

The Bidder shall provide details of the proposed personnel and their experience records in the relevant Forms (PER-1 and PER-2) included in Section IV, Bidding Forms. The bidder needs to provide separate similar team for each lot.

1.6 Equipment

The Bidder must demonstrate that it can obtain (purchase, lease or rent) the key equipment listed hereafter for each lot.

No.	Equipment Type and Characteristics	Minimum Number required
1	Testing equipment for primary and secondary substation equipment (live line tester, clamp resistance measuring equipment, secondary voltage/current injection sets, current injection set 500mps, earth resistance measuring equipment, portable earthing conductors, Fibre Termination and tests Equipments)	each
2	Oil circulation machine	One
3	Excavation machines, Water Boozer, Compressors	One
4	Hiab (Lifting equipment-5 tons) fitted on a truck/Crane	One
5	Line construction tools – Hydraulic cable crimper, Hydraulic cable cuter, Cable drum rollers, Wire pullers and tensioner, Guy ropes, Grinders, Hack saw, Standby Generator, Adjustable wooden ladder, Earthing harness	One
…		

The Bidder shall provide further details of proposed items of equipment using Form EQU in Section IV, Bidding Forms. The bidder needs to provide separate similar Equipments for each lot.

2. Domestic Preference

N/A

3. Qualification

3.1 Subcontractors

The general experience and financial resources of the sub-contractors shall not be added to those of the Bidder for purposes of qualification of the Bidder. However, the Bidder shall submit letter of agreement/Authorization from the subcontractor

3.2 Update of information in case of prequalification

N/A

3.3 Qualification if no prequalification has taken place

Item No.	Description of Item	Minimum Criteria to be met	Documents to be submitted
1	Supplier for Major Equipment	For equipment supplied/manufactured outside the employers country, Equipment must have been in service for more than 5 years outside the country of origin. For the GIS more than 10 years	Manufactures sales record list, purchase orders/ customer references/recommendations letters.
2	Substation and Lines Installation subcontractor	Must have carried out similar substation and line works within the last 10 years.	Signed contracts, completion certificates, customer references/ recommendations letters.
3	Civil Subcontractor	Must have completed civil works of at least 5 substation and Lines projects of similar size and complexity within the last 10 years.	Signed contracts, completion certificates, customer references/ recommendations letters.
4	Testing and Commissioning	Must have completed testing and commissioning of at least 5 substation and Lines projects of similar size and complexity within the last 10 years.	Signed contracts, completion certificates, customer references/ recommendations letters.

Qualification Criteria

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	**Subject**	**Requirement**	**Single Entity**	**Joint Venture (existing or intended)**			**Submission Requirements**
				All Parties Combined	**Each Member**	**One Member**	
1. Eligibility							
1.1	**Nationality**	Nationality in accordance with ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments
1.2	**Conflict of Interest**	No conflicts of interest in accordance with ITB 4.2	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
1.3	**AFD Eligibility**	Not being ineligible to the AFD financing, as described in ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Statement of Integrity (appendix to Letter of Bid)
1.4	**State-Owned Entity**	Meet conditions of ITB 4.3	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI – 1.1 and 1.2, with attachments
2. Historical Contract Non-Performance							
2.1	History of Non-Performing Contracts	Termination of a contract[1] did not occur as a result of contractor's default in the past five (5) years.	Must meet requirement[2]	Must meet requirements	Must meet requirement[2]	N/A	Form CON-2
2.2	Suspension Based on Execution of Bid Securing Declaration by the Employer	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Letter of Bid
2.3	Pending Litigation	All pending litigation shall in total not represent more than one hundred percent (100%) of	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON – 2

[1] Non-performance shall include all terminations of contracts where (a) non performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non performance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism.

[2] This requirement also applies to contracts executed by the Bidder as JV member.

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	**Subject**	**Requirement**	**Single Entity**	**Joint Venture (existing or intended)**			**Submission Requirements**
				All Parties Combined	**Each Member**	**One Member**	
		the Bidder's net worth and shall be treated as resolved against the Bidder.					
3. Financial Situation and Performance							
3.1	Financial Capabilities	(i) The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as Euros (€). LOT: CASH FLOW(EUR) 1: 1.39 M 2: 1.31 M	Must meet requirement	Must meet requirement	N/A	N/A	Forms FIN-3.1 and FIN-3.3
		(ii) The Bidder shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow	Must meet requirement	Must meet requirement	N/A	N/A	Forms FIN-3.1 and FIN-3.4

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	**Subject**	**Requirement**	**Single Entity**	**Joint Venture (existing or intended)**			**Submission Requirements**
				All Parties Combined	**Each Member**	**One Member**	
		requirements on works currently in progress and for future contract commitments.					
		(iii) The audited balance sheets or, if not required by the laws of the Bidder's country, other financial statements acceptable to the Employer, for the last 5 years shall be submitted and must demonstrate the current soundness of the Bidder's financial position based on the following criteria: liquidity ratio ≥ 1.1 ((Current Assets) / (Current Liabilities) ≥ 1.1) indebtedness ratio ≤ 80% ((Total Liabilities) x 100 / (Total Assets) ≤ 80%)	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN–3.1, with attachments

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	**Subject**	**Requirement**	**Single Entity**	**Joint Venture (existing or intended)**			**Submission Requirements**
				All Parties Combined	**Each Member**	**One Member**	
3.2	Minimum Annual Construction Turnover	Minimum annual construction turnover of Euros (€) LOT: CASH FLOW(EUR) 1: 16 M 2: 15 M for the last 5 years, calculated as total certified annual payments received for contracts in progress and/or completed.	Must meet requirement	Must meet requirement	Must meet [twenty five] per cent [25]% of the requirement	Must meet [forty] per cent [40] % of the requirement	Form FIN – 3.2
4. Experience							
4.1	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last years, starting 1st January 2008	Must meet requirement	N/A	One must meet requirement	N/A	Form EXP - 4.1
4.2 (a)	Specific Construction & Contract Management Experience	(ii) A minimum number of similar[3] contracts specified below that	Must meet requirement	Must meet requirement[6]	N/A	N/A	Form EXP - 4.2(a)

[3] The similarity shall be based on the physical size, complexity, methods/technology and/or other characteristics described in Section VII, Work's Requirements. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

[6] In the case of JV, the value of contracts completed by its members shall not be aggregated to determine whether the requirement of the minimum value of a single contract has been met. Instead, each contract performed by each member shall satisfy the minimum value of a single contract as required for single entity. In determining whether the JV meets the requirement of total number of contracts, only the number of contracts completed by all members each of value equal or more than the minimum value required shall be aggregated.

<table>
<tr><th></th><th></th><th></th><th></th><th></th><th></th><th></th><th></th></tr>
<tr><th colspan="3">Eligibility and Qualification Criteria</th><th colspan="4">Compliance Requirements</th><th>Documentation</th></tr>
<tr><th rowspan="2">No.</th><th rowspan="2">Subject</th><th rowspan="2">Requirement</th><th rowspan="2">Single Entity</th><th colspan="3">Joint Venture (existing or intended)</th><th rowspan="2">Submission Requirements</th></tr>
<tr><th>All Parties Combined</th><th>Each Member</th><th>One Member</th></tr>
<tr><td></td><td></td><td>have been satisfactorily and substantially[4] completed as a prime contractor, joint venture member[5], management contractor or sub-contractor between 1st January 2008 and application submission deadline: N contracts, each of minimum value V
<table>
<tr><th>LOT</th><th>No. of contracts</th><th>Minimum value of each (euros)</th></tr>
<tr><td rowspan="3">1</td><td>1</td><td>16 M</td></tr>
<tr><td colspan="2">OR</td></tr>
<tr><td>2</td><td>8 M</td></tr>
<tr><td rowspan="3">2</td><td>1</td><td>15 M</td></tr>
<tr><td colspan="2">OR</td></tr>
<tr><td>2</td><td>7.5 M</td></tr>
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<tr><td>4.2 (b)</td><td></td><td>For the above and any other contracts completed and under implementation as prime contractor, joint venture</td><td>Must meet requirements</td><td>Must meet requirements</td><td>N/A</td><td>Must meet the following requirements for the key</td><td>Form EXP - 4.2 (b)</td></tr>
</table>

[4] Substantial completion shall be based on 80% or more works completed under the contract.
[5] For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder's share, by value, shall be considered to meet this requirement.

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	**Subject**	**Requirement**	**Single Entity**	**Joint Venture (existing or intended)**			**Submission Requirements**
				All Parties Combined	**Each Member**	**One Member**	
		member, management contractor or sub-contractor[7] on or after the first day of the calendar year during the period stipulated in 4.2 (a) above, a minimum construction experience in the following key activities successfully completed[8] in any **one (1) year** **<u>For Award of Lot 1</u>** The contractor must have successfully completed construction of 3 No.132 kv substation extension/new including protection & control and SCADA commissioning. The contractor must have successfully completed at least 50 km of 132 kv double circuit line including fibre optic in any one (1) year. **<u>For Award of Lot 2</u>**				activities listed below	

[7] For contracts under which the Bidder participated as a joint venture member or sub-contractor, only the Bidder's share shall be counted to meet this requirement.
[8] Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities).

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	**Subject**	**Requirement**	**Single Entity**	**Joint Venture (existing or intended)**			**Submission Requirements**
				All Parties Combined	**Each Member**	**One Member**	
		Should have successfully installed 33 kv indoor GIS substation in any One (1) year **and** Should have completed installation of 33 kv cable feed outs in a substation of more than 10 cable feed outs. in any One (1) year Must have successfully completed 10 Km of 132 kv line of self-supporting monopole in a town/city in any One (1) year. Must have successfully completed 132/33 kv substation of 45 MVA or above in any One (1) year.					

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
5. Environmental, Social, Health and Safety (ESHS)[9]							
5.1	ESHS Certifications	Availability of a valid ISO certification or internationally recognized equivalent (equivalency to be demonstrated by Bidder): - Quality management certificate ISO 9001 - Environmental management certificate ISO 14001 - Health and safety certificate OHSAS 18001	Must meet requirement	N/A	N/A	Lead Bidder must meet requirement	 Form CER Form CER Form CER
5.2	ESHS Documentation	Availability of in-house policies and procedures acceptable to the Employer	Must meet requirement	N/A	N/A	Leader must meet requirement	Form ESHS and supporting documentation

[9] Those ESHS qualification criteria may be reduced or deleted if the worksites management is of minor E&S impact

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
		for ESHS Project Areas management					
5.3	ESHS Experience	Experience of 3 construction contracts over the last 8 years, where major ESHS measures were carried out or are on progress satisfactorily and in compliance with international standards.	Must meet requirement	N/A	N/A	Leader must meet requirement	Form EXP-ESHS with supporting documents (in particular documents supporting the ESHS implementation shall be provided)
5.4	Specific ESHS Knowledge Transfer Specific Experience	Experience of one (1) construction contract in developing and emerging countries over the last five (5) years in which the ESHS knowledge transfer to a local partner or the ESHS capacity building of the Employer's country staff was carried out satisfactorily	Must meet requirement	N/A	N/A	Leader must meet requirement	Form EXP-ESHS with supporting documents The Bidder shall submit a piece of evidence supporting the ESHS knowledge transfer or capacity building.

Eligibility and Qualification Criteria			**Compliance Requirements**				**Documentation**
No.	Subject	Requirement	Single Entity	Joint Venture (existing or intended)			Submission Requirements
				All Parties Combined	Each Member	One Member	
5.5	Dedicated Personnel	Availability of in-house personnel dedicated to ESHS issues: Environmental and Social Manager; Health and Safety Manager.	Must meet requirement	N/A	N/A	Leader must meet requirement	Organizational chart evidencing ESHS filled positions

For Multiple Contracts, the criteria for qualification are aggregate minimum requirements for respective lots as specified under items 3.1, 3.2, 4.2 (a), 4.2 (b) and 5.

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Letter of Bid

[The Bidder shall prepare his Letter of Bid on a Letterhead paper specifying his name and address]

Date: _____
IPC No.: _____
Invitation for Bid No.: _____
Alternative No.: _____

To: _____

We, the undersigned, declare that:

(a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8)_____;

(b) We have no conflict of interest in accordance with ITB 4;

(c) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer's country in accordance with ITB 4.4;

(d) We offer to execute in conformity with the Bidding Documents the following Works: _____ _____;

(e) The total price of our Bid, excluding taxes and excluding any discounts offered in item (f) below is:
   i) In case of only one lot, total price (excluding taxes) of the Bid _____
   ii) In case of multiple lots, total price (excluding taxes) of each lot _____
   iii) In case of multiple lots, total price (excluding taxes) of all lots (sum of all lots) _____

(f) The discounts offered and the methodology for their application are:
   i) The discounts offered are: _____

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

(g) Our bid shall be valid for a period of _____ days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;

(h) If our bid is accepted, we commit to obtain a performance security in accordance with ITB 42 of the Bidding Documents;

(i) We are not participating, as a Bidder, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;

(j) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

(k) We acknowledge and agree that the Employer reserves the right to annul the bidding process and reject all bids at any time prior to contract award without thereby incurring any liability to us;

(l) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder*****_____
Name of the person duly authorized to sign the Bid on behalf of the Bidder******_____

Title of the person signing the Bid_____

Signature of the person named above_____

Date signed _____ day of _____, _____

*****: In the case of the Bid submitted by a JV specify the name of the JV as Bidder

**: Person signing the Bid shall have the power of attorney given by the Bidder to be attached with the Bid

Appendix to Bid

Schedule of Adjustment Data

N/A

Summary of Payment Currencies

Table: Option B

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

Name of currency	*Amounts payable*
Local currency KES	
Foreign currency: Euro	

Statement of Integrity, Eligibility and Social and Environmental Responsibility

Reference name of the bid or proposal: _____ (The "**Contract**")

To: _____(The "**Contracting Authority**")

1. We recognise and accept that *Agence Française de Développement* ("AFD") only finances projects of the Contracting Authority subject to its own conditions which are set out in the Financing Agreement which benefits directly or indirectly to the Contracting Authority. As a matter of consequence, no legal relationship exists between AFD and our company, our joint venture or our suppliers, contractors, subcontractors, consultants or subconsultants. The Contracting Authority retains exclusive responsibility for the preparation and implementation of the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

2. We hereby certify that neither we nor any other member of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants are in any of the following situations:

   2.1) Being bankrupt, wound up or ceasing our activities, having our activities administered by the courts, having entered into receivership, reorganisation or being in any analogous situation arising from any similar procedure;

   2.2) Having been:

   a. convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the Contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract (in the event of such conviction, you may attach to this Statement of Integrity supporting information showing that this conviction is not relevant in the context of this Contract);

   b. subject to an administrative sanction within the past five years by the European Union or by the competent authorities of the country where we are constituted, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract (in the event of such sanction, you may attach to this Statement of Integrity supporting information showing that this sanction is not relevant in the context of this Contract);

   c. convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an AFD-financed contract;

   2.3) Being listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;

   2.4) Having been subject within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;

   2.5) Not having fulfilled our fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where we are constituted or the Contracting Authority's country;

   2.6) Being subject to an exclusion decision of the World Bank and being listed on the website http://www.worldbank.org/debarr (in the event of such exclusion, you may attach to this Statement

of Integrity supporting information showing that this exclusion is not relevant in the context of this Contract);

2.7) having created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.

3. We hereby certify that neither we, nor any of the members of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants are in any of the following situations of conflict of interest:

3.1) Being an affiliate controlled by the Contracting Authority or a shareholder controlling the Contracting Authority, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;

3.2) Having a business or family relationship with a Contracting Authority's staff involved in the procurement process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of AFD and resolved to its satisfaction;

3.3) Being controlled by or controlling another bidder or consultant, or being under common control with another bidder or consultant, or receiving from or granting subsidies directly or indirectly to another bidder or consultant, having the same legal representative as another bidder or consultant, maintaining direct or indirect contacts with another bidder or consultant which allows us to have or give access to information contained in the respective applications, bids or proposals, influencing them or influencing decisions of the Contracting Authority;

3.4) Being engaged in a consulting services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the Contracting Authority;

3.5) In the case of procurement of goods, works or plants:

i. Having prepared or having been associated with a consultant who prepared specifications, drawings, calculations and other documentation to be used in the procurement process of this Contract;

ii. Having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;

4. If we are a state-owned entity, and to compete in a procurement process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.

5. We undertake to bring to the attention of the Contracting Authority, which will inform AFD, any change in situation with regard to points 2 to 4 here above.

6. In the context of the procurement process and performance of the corresponding contract:

6.1) We have not and we will not engage in any dishonest conduct (act or omission) deliberately indented to deceive others, to intentionally conceal items, to violate or vitiate someone's consent, to make them circumvent legal or regulatory requirements and/or to violate their internal rules in order to obtain illegitimate profit;

6.2) We have not and we will not engage in any dishonest conduct (act or omission) contrary to our legal or regulatory obligations or our internal rules in order to obtain illegitimate profit;

6.3) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to (i) any Person who holds a legislative, executive, administrative or judicial mandate within the State of the Contracting Authority regardless of whether that Person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the Person occupies, (ii) any other Person who performs a public function, including for a State institution or a State-owned company, or who provides a public service, or (iii) any other person defined as a Public Officer by the national laws of the Contracting

Authority's country, an undue advantage of any kind, for himself or for another Person or entity, for such Public Officer to act or refrain from acting in his official capacity;

6.4) We have not promised, offered or given and we will not promise, offer or give, directly or indirectly to any Person who occupies an executive position in a private sector entity or works for such an entity, regardless of the nature of his/her capacity, any undue advantage of any kind, for himself or another Person or entity for such Person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;

6.5) We have not and we will not engage in any practice likely to influence the contract award process to the detriment of the Contracting Authority and, in particular, in any anti-competitive practice having for object or for effect to prevent, restrict or distort competition, namely by limiting access to the market or the free exercise of competition by other undertakings;

6.6) Neither we nor any of the members of our joint venture or any of our suppliers, contractors, subcontractors, consultants or subconsultants shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or France;

6.7) We commit ourselves to comply with and ensure that all of our suppliers, contractors, subcontractors, consultants or subconsultants comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the environmental and social commitment plan (ESCP) provided by the Contracting Authority.

7. We, as well as members of our joint venture and our suppliers, contractors, subcontractors, consultants or subconsultants authorise AFD to inspect accounts, records and other documents relating to the procurement process and performance of the contract and to have them audited by auditors appointed by AFD.

Name: _____ In the capacity of: _____

Duly empowered to sign in the name and on behalf of[1]:

Signature: Dated:

[1] In case of joint venture, insert the name of the joint venture. The person who will sign the application, bid or proposal on behalf of the applicant, bidder or consultant shall attach a power of attorney from the applicant bidder or consultant.

Schedules

Schedules of Rates and Prices

1.1 Price Schedules

PREAMBLE

General

1. The Price Schedules are divided into separate Schedules as follows:

   Schedule No. 1: Plant (including Mandatory Spare Parts) Supplied from Abroad

   Schedule No. 2: Plant (including Mandatory Spare Parts) Supplied from within the Employer's Country

   Schedule No. 3: Design Services

   Schedule No. 4: Installation and Other Services

   Schedule No. 5: Grand Summary

   Schedule No. 6: Recommended Spare Parts

2. The Schedules do not generally give a full description of the plant to be supplied and the services to be performed under each item. Bidders shall be deemed to have read the Employer's Requirements and other sections of the Bidding Document and reviewed the Drawings to ascertain the full scope of the requirements included in each item prior to filling in the rates and prices. The entered rates and prices shall be deemed to cover the full scope as aforesaid, including overheads and profit.

3. If bidders are unclear or uncertain as to the scope of any item, they shall seek clarification in accordance with ITB 7 prior to submitting their bid.

Pricing

4. Prices shall be filled in indelible ink, and any alterations necessary due to errors, etc., shall be initialed by the Bidder.

   As specified in the Bid Data Sheet and Special Conditions of Contract, prices shall be fixed and firm for the duration of the Contract, or prices shall be subject to adjustment in accordance with the corresponding Appendix (Price Adjustment) to the Contract Agreement.

5. Bid prices shall be quoted in the manner indicated and in the currencies specified in the Instructions to Bidders in the Bidding Document.

   For each item, bidders shall complete each appropriate column in the respective Schedules, giving the price breakdown as indicated in the Schedules.

Prices given in the Schedules against each item shall be for the scope covered by that item as detailed in Section 6 (Employer's Requirements) or elsewhere in the Bidding Document.

6. Payments will be made to the Contractor in the currency or currencies indicated under each respective item.

7. When requested by the Employer for the purposes of making payments or partial payments, valuing variations or evaluating claims, or for such other purposes as the Employer may reasonably require, the Contractor shall provide the Employer with a breakdown of any composite or lump sum items included in the Schedules.

LOT1. 85KM OF 132KV DOUBLE CCT LINE AND TAKE OFF BAYS AT NAROK AND BOMET SUBSTATIONS

Schedule No. 1. Plant and Mandatory Spare Parts Supplied from Abroad

Item	Description	Unit	Qty (1)	Unit Price DDP site (Local bidders) (Specify Currency) (2)	Unit Price DAP (Foreign Bidders) (Specify Currency) (2)	Total Price DDP/DAP (Specify Currency) (3) = (1x2)	Duties (Foreign bidders) (4)	VAT (5)	Sum Total (6) = 3+4+5
NRK-001	132KV circuit breaker Single pole operated	NO.	4						
NRK -002	132Kv bus bar motorized isolator assembly	NO.	4						
NRK -003	132KV motorized line isolator with an integral earth switch	NO.	4						
NRK -004	132 kV current transformers	NO.	12						
NRK -005	132kV Voltage Transformers	NO.	12						
NRK -006	132kV Line Surge Arresters	NO.	12						
NRK -007	132kv bus bar extension materials, steel supports structures and gantries	LOT	1						
NRK -008	132KV Line bay materials and support steel structures	LOT	1						
NRK -009	Busbar protection panel with high impedance numeric relay	NO.	2						
NRK -010	Line differential and backup 1 protection panel through Fibre	NO.	4						
NRK -011	Line Distance and backup 2 protection panel	NO.	4						

NRK -012	Line control panels	NO.	4						
NRK -013	Line metering panel with a meter of Cl .0.2 accuracy	NO.	2						
NRK -014	Lightning protection for the Building and switchyard	LOT	1						
NRK -015	Substation and equipment earthing	LOT	1						
NRK -016	Multicore armoured flexible Control and Measuring Cables	LOT	1						
NRK -017	Substation Lighting System for the switch yard	LOT	1						
NRK -018	Scada and telecommunication integration equipment	LOT	1						
NRK -019	110Vdc supply and distribution board system	LOT	1						
NRK -020	48Vdc supply and distribution board system	LOT	1						
NRK -021	Substation Automation System	LOT	1						
132kv Double Circuit Line									
NRK- 022	132KV Double circuit three-phase transmission line on single 30/7 (Lynx) 175mm^2 ACSR conductor per phase, Including insulators, Fittings and all other necessary materials and equipment.	Lot/Km	85						
	Materials for transfer and or relocation of 33/11KV existing Overhead line fittings and conductor	lot/km	30						

NRK-023	Lattice towers	Lot/Km	85						
NRK-024	OPGW(48Core) Joint boxes ODFs and accessories	Lot/Km	85						
SUB TOTAL									
	Name of Bidder								
	Signature of Bidder								

Mandatory Spares (Narok –Bomet 85km line and take off Bay)

Item	Item	Code[1]	Unit	Qty (1)	Unit Price DDP site (Local bidders) (Specify Currency) (2)	Unit Price DAP (Foreign Bidders) (Specify Currency) (2)	Total Price DDP/DAP (Specify Currency) (3) = (1x2)	Duties (Foreign bidders) (4)	VAT (5)	Sum Total (6) = 3+4+5
	Mandatory Spares and tools									
	Spares for Transmission Line									
ST-001	Complete tower type -**S**		NO	3						
ST-002	Complete tower type- **L**		NO	1						
ST-003	Complete tower type -**M**		NO	1						
ST-004	Complete tower type- **H**		NO	1						
ST-005	Complete tower type- **HS**		NO	1						
ST-006	Complete tower type -**T**		NO	1						
	Spares for Substation									
ST-007	132kv circuit breaker		NO.	1						
ST-009	Set of 132kv current Transformers		NO.	1						
ST-010	Set(3) of 132kv Voltage Transformers		NO.	1						

ST-011	132kv Surge Arrestors		NO.	3						
ST-012	Auxiliary relays of matching type to ones used in offered equipment		NO	3 each						
ST-013	Trip coils for each type of Circuit Breaker		Sets	3						
ST-014	Close coils for each type of Circuit Breaker		Sets	3						
ST-015	132KV motorized isolator with earth switch		NO.	1						
ST-016	132KV motorized isolator without earth switch		NO.	1						
ST-017	Assorted MCB's for AC and DC distribution boards		Sets	10						
ST-018	Assorted control contactors of matching type to ones used in offered equipment		Sets	8						
ST-019	Bay control unit		No	1						
ST-020	Line main protection unit		No.	1						
ST-021	Backup protection unit		No.	1						
ST-025	line differential protection unit		No.	1						
ST-022	LAN switch of each type		No.	1						
ST-023	Input/output cards		No.	2						
	Tools									
ST-024	Lap tops loaded with backup files, licenses and configurations		No.	3						
Sub Total										
GRAND TOTAL TO SCHEDULE 5										
	Name of Bidder									
	Signature of Bidder									

LOT 1. (Narok-Bomet 85km line and take off Bay)
Schedule No. 2. Plant and Mandatory Spares Supplied from the Employer's Country

Narok and Bomet Substations					
Item	**Description**	**Unit**	**Qty**	**Unit Price DDP (specify currency)**	**Total Price DDP (specify currency)**
NRK-201					
NRK -202					
NRK -203					
NRK -204					
NRK -205					
Sub total					
GRAND TOTAL TO SCHEDULE 5					
	Name of Bidder				
	Signature of Bidder				

LOT 1. (Narok-Bomet 85km line and take off Bay)
Schedule No. 3. Design Services

Narok and Bomet Substations						
			Unit Price		**Total Price**	
Item	**Description**	**Qty (1)**	**Foreign Currency Portion (*specify currency*) (2)**	**Local Currency Portion (3)**	**Foreign Currency Portion (*specify currency*) (1x2)**	**Local Currency Portion (1x3)**
NRK-301	Substation Design (Electrical, Mechanical, Civil, Automation, Control/protection)	1 Lot				
NRK-302	132KV Line design	1 lot				
NRK-303	Statutory approval fees	1Lot				
Sub Total						
GRAND TOTAL TO SCHEDULE 5						
	Name of Bidder					
	Signature of Bidder					

LOT 1. (Narok-Bomet 85km Line and take off Bay)

Schedule No. 4. Installation and Other Services

Item	Description	Qty (1)	Unit Price[1]		Total Price[1]	
			Foreign Currency Portion (*specify currency*)	**Local Currency Portion (*specify currency*)**	**Foreign Currency Portion (*specify currency*)**	**Local Currency Portion (*specify currency*)**
		(1)	**(2)**	**(3)**	**(1x2)**	**(1x3)**
Narok and Bomet Substations						
NRK– 401	Equipment Platform works, Substation earth works and Drainage	1 Lot				
NRK– 402	Cable trenches	1 Lot				
NRK– 403	Equipment Erection and Assembly	1 Lot				
NRK –404	Equipment Testing and Commissioning	1 Lot				
NRK– 405	Telecoms / SCADA Installation, Testing and commissioning	1 Lot				
NRK –406	Substation Automation and integration	1 Lot				
NRK -407	Cost of statutory approvals					
132KV Line Works						
NRK –408	Civil Works	1 Lot				
NRK –409	Erection, assembly, stringing and commissioning works	1 Lot				
NRK –410	Ground reinstatement works	1 Lot				
SUB TOTAL						
		Name of Bidder				
		Signature of Bidder				

FACTORY ACCEPTANCE TEST AND TRAINING IN PROTECTION AND CONTROL

Factory Acceptance Tests			Unit Price[1]		Total Price[1]	
Item	**Description**	Qty (1)	**Foreign Currency Portion (*specify currency*)**	**Local Currency Portion (*specify currency*)**	**Foreign Currency Portion (*specify currency*)**	**Local Currency Portion (*specify currency*)**
AFD –001	Telecoms	1 Lot				
AFD –002	Switchgear (Circuit breakers, isolators etc)	1 Lot				
AFD –003	Protection, control and SAS	1 Lot				
AFD –004	Instrument Transformers	1 Lot				
AFD –005	Lattice Towers	1 Lot				
AFD –006	Conductor and insulators	1 Lot				
	Training in protection & control					
AFD –007	Protection training	1 Lot				
AFD –008	Substation Automation System training	1 Lot				
AFD–009	Telecommunications Training	1 Lot				
	Office facilities					
AFD–010	Office and communication facilities	1 Lot				
AFD –011	Transport for the Kenya power project manager for entire project period	1 Lot				
Sub-Total						
TOTAL (to Schedule No. 5. Grand Summary)						

Name of Bidder…….

Signature of Bidder……

Environmental, Social, Health and Safety (ESHS) - Cost Schedule

Item No	Description	ESHS Specifications Clause N°	Unit	Amount *[specify currency]*
ESHS 1	**Resources allocated to ESHS management**	Clause 4	Lump sum	
ESHS 2	**Drafting and updating the ESHS documentation, reporting, inspections**	Clauses 1, 2, 3, 5, 6, 7, 9	Lump sum	*[Cost ESHS 1 should exclude all or part of the costs of those tasks]*
ESHS 3	**Implementation of the Health and Safety Plan:** Meetings, health care center, medical check-ups, emergencies and evacuations, safety protective equipment, hygiene	Clauses 1, 9, 21 to 25, 27 to 35, 37, 38	Lump sum	*[Cost ESHS 1 should exclude all or part of the costs of those tasks]*
ESHS 4	**Accommodation, drinking water, meals and transportation of staff(*)** (*) :The Bidder shall detail the financial conditions of the supply of accommodation, meals and transport to its staff: – Accommodation – Meals – Transport	Clauses 36, 40, 41	Lump sum Lump sum Lump sum	*[The cost for "site mobilization" should exclude all or part of the costs of those tasks]*
ESHS 5	**Training and local recruitment management costs**	Clauses 8, 39	Lump sum	*[Cost ESHS 1 should exclude all or part of the costs associated to those tasks]*
ESHS 6	**Protection of adjacent areas, biodiversity, prevention of erosion and wastewater management**	Clauses 10, 11, 12, 17, 18	Lump sum	
ESHS 7	**Traffic, noise and atmospheric emissions management, land take**	Clauses 13, 14, 42, 43, 44	Lump sum	
ESHS 8	**Waste and hazardous products management**	Clauses 15, 26	Lump sum	
ESHS 9	**Vegetation clearing and site rehabilitation**	Clauses 16, 19, 20	Lump sum	*[The cost for "site mobilization" should exclude all or part of the costs associated to those tasks]*

Item No	Description	ESHS Specifications Clause N°	Unit	Amount *[specify currency]*
			Total for Bill ESHS	_____

ESHS costs are deemed to cover operations on all Sites (as defined in Clause 1.3 of ESHS Specifications)

Interim payment certificates shall include the portion of each ESHS cost amounting to the percentage of the actual progress achieved in executing the ESHS measures in compliance with the ESHS Specifications and approved by the Engineer.

LOT 1. (Narok-Bomet 85km Line and take off Bays)

Schedule No. 5. Grand Summary

Item	Description	Total Price	
		Foreign	**Local**
1	Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad		
2	Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the Employer's Country		
3	Total Schedule No. 3. Design Services		
4	Total Schedule No. 4. Installation and Other Services		
5	Total ESHS schedule		
TOTAL (to Bid Form)			

Name of Bidder _____

Signature of Bidder _____

Schedule N0. 6 Recommended Spare Parts

Item	Description	Qty	Unit Price		Total Price
			CIF or CIP (foreign parts)	**EXW (local parts)**	
		(1)	***(2)***	***(3)***	***(1) x (2) or(3)***
	Give itemized list				

Name of Bidder ______________________

Signature of Bidder ______________________

LOT 2. KIPEVU-MBARAKI TRANSMISSION LINE AND SUBSTATION

Mbaraki and Kipevu 132/33kv Substation									
Item	**Description**	**Unit**	**Qty (1)**	**Unit Price DDP site (Local bidders) (Specify Currency) (2)**	**Unit Price DAP (Foreign Bidders) (Specify Currency) (2)**	**Total Price DDP/DAP (Specify Currency) (3) = (1x2)**	**Duties (Foreign bidders) (4)**	**VAT (5)**	**Sum Total (6) = 3+4+5**
MBA-001	45MVA, 132/11KV Transformer with RTCC panel	NO.	2						
MBA-002	132KV circuit breaker	NO.	3						
MBA -003	132Kv motorized isolator without earth switch	NO.	3						
MBA -004	132KV motorised line isolator with an integral earth switch	NO.	3						
MBA -005	132 kV current transformers	NO.	9						
MBA -006	132kV Voltage Transformers	NO.	9						
MBA -007	132kV Surge Arresters	NO.	9						
MBA -008	132kv bay and busbar materials,	LOT	1						
MBA -009	132kv gantry and steel structures supports	LOT	1						
MBA -010	132kv transformer protection and control panel	NO.	4						
MBA -011	132kv line protection and control panel	NO.	3						
MBA-012	132kv busbar protection panel	NO.	1						
MBA-013	33kv Gas insulated switchgear for outgoing lines complete with current transformers, 3 phase voltage transformers, circuit	NO	10						

	breakers, disconnectors, earth switch, fast acting earthing switch, surge arrestors, busbar materials and steel structures for support								
MBA-014	33kv Gas Insulated switchgear for transformer incomers complete with current transformers, 3 phase voltage transformers, circuit breakers, disconnectors, earth switch, fast acting earthing switch, busbar materials and steel structures for support	NO	2						
MBA-015	33kv Gas Insulated switchgear for bus Sectionaliser complete with current transformers (located on each side of the busbar section), 3 phase voltage transformers (located on each side of the busbar sections), circuit breakers, disconnectors, earth switch, fast acting earthing switch, busbar materials and steel structures for support	NO	1						
MBA -016	33kv Gas Insulated switchgear for Auxiliary transformer with disconnectors, circuit breakers, current transformers, earthing switch, busbar materials and steel structures for support	NO	2						
MBA -017	33kv Incomer protection panel	NO.	2						
MBA -018	33kv bus section protection panel	NO.	1						
MBA-019	33kv line protection panel	NO.	10						
MBA -020	33kv Busbar protection panel	NO.	1						
MBA -021	33Kv line control panels (2 lines per panel)	NO.	5						

Item	Description	Units	Qty (1)	Unit Price DDP site (Local bidders) (Specify Currency) (2)	Unit Price DAP (Foreign Bidders) (Specify Currency) (2)	Total Price DDP/DAP (Specify Currency) (3) = (1x2)	Duties (Foreign bidders) (4)	VAT (5)	Sum Total (6) = 3+4+5
MBA-022	33KV Transformer control panel	NO.	2						
MBA -023	33KV Bus section control panel	NO.	1						
MBA -024	Transformers and feeders metering panel	NO.	2						
MBA -025	Neutral link	NO.	2						
MBA-026	Auxiliary transformer 200 kVA, 33/0.415 kV, with panel containing CTs suitable for aux tx HV protection tripping the aux tx GIS bay CB and support structures	NO.	2						
MBA -027	Substation Automation System (SAS) & SCADA equipment	LOT	1						
MBA - 028	Control and measuring cables	LOT	1						
MBA - 029	Auxiliary AC supply system with auto changeover	LOT	1						
MBA - 030	2 No. 110V DC supply system with auto changeover	LOT	1						
MBA - 031	2 No. 48V DC supply system with auto changeover	LOT	1						
MBA - 032	Lightning protection system	LOT	1						
MBA - 033	Substation Earthing System	LOT	1						
MBA -034	Substation Lighting System	LOT	1						
MBA -035	Telecommunication equipment-optical terminal equipment type	LOT	1						

	SDH STM-4 and associated materials								
MBA -036	33kv incomer cables in 630mmsq s/c CU including their termination kits, sealing ends and GIS connections	LOT/km	1						
MBA -037	33KV feeder cable s/c 630mmsq Aluminium inclusive of terminations/ jointing kits and sealing ends	Lot/KM	10						
MBA - 038	33KV Surge arrestors with support structures and earthing accessories	NO.	36						
MBA-039	48 core Underground fiber optic and 10no. ODFs	Lot/KM	10						
132kv Line bay at Remote Station Kipevu									
MBA- 039	132KV circuit breaker	NO.	1						
MBA - 040	132Kv motorized isolator without earth switch	NO.	2						
MBA - 041	132KV motorised line isolator with an integral earth switch	NO.	1						
MBA - 042	132 kV current transformers	NO.	3						
MBA - 043	132kV Voltage Transformers	NO.	3						
MBA -044	132kV Surge Arresters	NO.	3						
MBA- 045	132kv distance & back up and differential protection	No	2						
	132kv line control panel	NO	1						
MBA- 046	132kv line bay and busbar extension materials	LOT	1						
MBA -047	132kv steel structures supports	LOT	1						
MBA -048	Lightning protection system extension	LOT	1						

Item	Description	Units	Qty (1)	Unit Price DDP site (Local bidders) (Specify Currency) (2)	Unit Price DAP (Foreign Bidders) (Specify Currency) (2)	Total Price DDP/DAP (Specify Currency) (3) = (1x2)	Duties (Foreign bidders) (4)	VAT (5)	Sum Total (6) = 3+4+5
MBA - 049	Earthing System extension	Lot	1						
MBA - 050	Switchyard Lighting System extension	LOT	1						
MBA -051	Control and measuring cables	LOT	1						
MBA-052	SCADA and Telecoms extension with free standing 8 racks 42U cabinet	LOT	1						
MBA- 053	132KV cable in 800mmsq S/C between cable support structure and terminal tower complete with termination kits and sealing ends	LOT/KM	1.0						
MBA- 054	110V DC Supply system at Kipevu	LOT	1						
MBA- 055	48V DC Supply system at Kipevu	LOT	1						
Sub Total									
GRAND TOTAL TO SCHEDULE 5									
	Name of Bidder								
	Signature of Bidder								

132KV Single Circuit Line from Kipevu to Mbaraki									
Item	**Description**	**Unit**	**Qty (1)**	**Unit Price DDP site (Local bidders) (Specify Currency) (2)**	**Unit Price DAP (Foreign Bidders) (Specify Currency) (2)**	**Total Price DDP/DAP (Specify Currency) (3) = (1x2)**	**Duties (Foreign bidders) (4)**	**VAT (5)**	**Sum Total (6) = 3+4+5**
TL -001	132KV single circuit three-phase transmission line on monopoles with single 30/7 (Lynx) 175mm^2 ACSR conductor per phase with fittings, insulators and all other necessary materials	Lot/KM	6.5						
TL-002	Materials for transfer of existing 33kv lines on the monopoles as double circuit 33kv lines	Lot/km	6.5						
TL-003	Lattice towers (If required)	Pc	2						
TL-004	single OPGW earth wire with 2no ODF and splicing boxes	Lot/km	6.5						
33KV Lines									
TL -005	33KV Lines with single 150mmsq ACSR conductor per phase and single with hardware, Concrete poles, fittings, insulators and all other necessary materials	Lot/KM	10						
TL-006	33KV Submarine cable single core 630mmsq Cu conductor inclusive of jointing kits with undersea fiber optic and all other necessary materials	Lot/KM	0.8						
T-006a	Materials for transfer of 11/0.43KV Overhead line fittings and conductor to the new 33kV overhead line	Lot/km	4						

TL-007	Undersea fiber optic	Lot/km	0.8						
TL-008	OPGW earth wire complete with hardware materials and fittings and 10no. ODF	Lot/km	10						
Sub Total									
GRAND TOTAL TO SCHEDULE 5									
	Name of Bidder								
	Signature of Bidder								

Mandatory Spares

Item	Item	Code[1]	Unit	Qty (1)	Unit Price DDP site (Local bidders) (Specify Currency) (2)	Unit Price DAP (Foreign Bidders) (Specify Currency) (2)	Total Price DDP/DAP (Specify Currency) (3) = (1x2)	Duties (Foreign bidders) (4)	VAT (5)	Sum Total (6) = 3+4+5
	Mandatory Spares and tools									
	Spares for Transmission Line									
ST-001	Complete suspension monopole tower (1 section, 1 angle)		NO	2						
	Spares for Substation									
ST-002	132kv circuit breaker		NO.	1						
ST-003	Set of 132kv current Transformers		NO.	1						
ST-004	Set of 132kv Voltage Transformers		NO.	1						
ST-005	Set of 132kv Surge Arrestors		NO.	1						
ST-006	Auxiliary relays of matching type to ones used in offered equipment		LOT	1						
ST-007	Trip coils for each type of Circuit Breaker		NO	4						
ST-008	Close coils for each type of Circuit Breaker		NO	4						
ST-009	132KV motorized isolator with earth switch		NO.	1						
ST-010	132KV motorized isolator without earth switch		NO.	1						
ST-011	Assorted MCB's for AC and DC distribution boards		Sets	10						

ST-012	Assorted control contactors of matching type to ones used in offered equipment		Sets	8						
ST-013	Bay control unit		No	2						
ST-014	Transformer differential protection unit		No.	1						
ST-015	Feeder protection unit		No.	2						
ST-016	Telecommunication spare cards (SYN4E, TEPI,SAMO2,CESM,ETOP,EPO1		No.	6 SYN4E cards and 2 cards for the others						
ST-017	LAN switch of each type		No.	1						
ST-018	OPGW		KM	4						
ST-019	ADSS		KM	2						
ST-020	Programmable CEWE transducers		No.	30						
ST-021	Interposing relays 110V DC		No.	50						
ST-022	110V DC Contact multiplication relays		No.	50						
ST-023	33kv GIS Circuit breaker		NO.	2						
ST-024	33kv GIS Disconnector		NO.	2						
ST-025	33kv GIS Current transformer		NO.	2						
ST-026	33kv GIS voltage transformer		NO.	2						
ST-027	33KV GIS Surge arrestors		No.	2						
ST-028	33kv cable termination kits for 630mmsq CU cable		NO.	4						
ST - 029	33kv cable jointing kits for 630mmsq CU cable		NO.	4						
	Tools									
ST- 030	Lap tops loaded with backup files, licenses and configurations		NO.	3						
ST- 031	OTDR Test set		NO.	1						
ST- 032	MTS2000		NO.	1						

ST- 033	Crane		NO.	1						
ST- 034	Gas filling equipment		NO.	1						
ST- 035	Gas vacuuming equipment and filling system/equipment		NO.	1						
ST - 036	SF6 gas processing unit		NO.	1						
ST-037	SF6 spare gas		NO.	10 cylinders						
SUB TOTAL										
GRAND TOTAL TO SCHEDULE 5										
		Name of Bidder								
		Signature of Bidder								

Schedule No. 2. Plant and Mandatory Spares Supplied from the Employer's Country

Item	Description	Unit	Qty	Unit Price DDP (specify currency)	Total Price DDP (specify currency)
MBA-201	33kv concrete poles	km	10		
MBA -202	Transition structures on concrete poles	Lot	1		
MBA -203					
MBA -204					
MBA -205					
Sub Total					
GRAND TOTAL TO SCHEDULE 5					
	Name of Bidder				
	Signature of Bidder				

Schedule No. 3. Design Services

Item	Description	Qty.	Unit Price[1]		Total Price[1]	
			Foreign Currency Portion (*specify currency*)	**Local Currency Portion (*specify currency*)**	**Foreign Currency Portion (*specify currency*)**	**Local Currency Portion (*specify currency*)**
MBA- 301	Substation Design (Electrical, Mechanical, Civil, Automation, Control/protection engineering)	1 Lot				
MBA -302	Coordination of relay settings	1 Lot				
MBA- 303	132KV Line design	1 lot				
MBA- 304	Statutory approval fees	1Lot				
Sub Total						
GRAND TOTAL TO SCHEDULE 5						
	Name of Bidder					
	Signature of Bidder					

Schedule No. 4. Installation and Other Services

Item	Description	Qty (1)	Unit Price[1]		Total Price[1]	
			Foreign Currency Portion (*specify currency*) (2)	**Local Currency Portion (*specify currency*) (3)**	**Foreign Currency Portion (*specify currency*) (1x2)**	**Local Currency Portion (*specify currency*) (1x3)**
MBA -401	Transformer foundation with oil collection pit	2 No.				
MBA -402	Control room building	1Lot				
MBA– 403	Equipment Platform works	1 Lot				
MBA – 404	Cable trenches	1 Lot				
MBA- 405	Substation earth works, drainage, weed treatment and ballasting					
MBA – 406	Equipment Erection and Assembly, testing and commissioning	1 Lot				
MBA – 407	Telecoms / SCADA Installation, Testing, integration to existing and commissioning	1 Lot				
MBA –408	Substation Automation testing and commissioning	1 Lot				
MBA - 409	Guardhouse with toilet	1 Lot				
MBA-4010	Demolition and location of existing structures	1lot				
MBA - 411	Cost of all statutory approvals	1 Lot				
132KV Works at Kipevu						
MBA – 410	Bay earth works, drainage, weed treatment and ballasting	1 lot				
MBA – 411	Equipment Platform works at Kipevu	1 Lot				
MBA - 412	Cable trenches at Kipevu	1 Lot				
MBA- 413	Equipment Erection and Assembly, testing and commissioning at Kipevu	1 Lot				

MBA - 414	Telecoms/SCADA integration at KIPEVU	1 Lot				
MBA- 415	Refurbishment of old control room building and reinstatement of cable trenches at Kipevu	1 Lot				
MBA - 416	Relocation of the existing substation access road	1 lot				
132KV Line Works						
MBA –417	Civil Works	1 Lot				
MBA –418	Erection, assembly, stringing and commissioning works	1 Lot				
MBA –419	Ground reinstatement works	1 Lot				
MBA -420	80% transfer of the 33kv lines from Kipevu substation monopoles	Lot/ KM	5.2			
33 KV Line Works						
MBA –421	Civil Works	1 Lot				
MBA –422	Erection, assembly, stringing and commissioning works	1 Lot				
MBA-423	33kV Overhead circuit line in 150sqmm ACSR dual with existing 11/0.415kV line in ACSR conductor	Lot/km	10			
SUB TOTAL						
TOTAL (to Schedule No. 5. Grand Summary)						
	Name of Bidder					
	Signature of Bidder					

FACTORY ACCEPTANCE TEST AND TRAINING

Factory Acceptance Tests						
Item	**Description**	**Qty (1)**	**Unit Price[1]**		**Total Price[1]**	
			Foreign Currency Portion (*specify currency*) (2)	**Local Currency Portion (*specify currency*) (3)**	**Foreign Currency Portion (*specify currency*) (1x2)**	**Local Currency Portion (*specify currency*) (1x3)**
MBA –424	Telecoms	1 Lot				
MBA –425	GIS	1 Lot				
MBA –426	Protection, control and SAS	1 Lot				
MBA –427	Instrument Transformers	1 Lot				
MBA –428	Monopole towers	1 Lot				
MBA-429	Conductor, underground cable, submarine cable	1 Lot				
	Training in protection & control					
MBA –430	Protection training	1 Lot				
MBA –431	Substation Automation System training	1 Lot				
MBA –432	Telecommunications Training	1 Lot				
MBA –433	GIS Training	1 lot				
	Office facilities					
MBA –434	Office and communication facilities	1 Lot				
MBA –435	Transport for the Kenya power project manager for entire project period	1 Lot				
Sub-Total						
TOTAL (to Schedule No. 5. Grand Summary)						

Name of Bidder
Signature of Bidder

Environmental, Social, Health and Safety (ESHS) - Cost Schedule

Item No	Description	ESHS Specifications Clause N°	Unit	Amount *[specify currency]*
ESHS 1	**Resources allocated to ESHS management**	Clause 4	Lump sum	
ESHS 2	**Drafting and updating the ESHS documentation, reporting, inspections**	Clauses 1, 2, 3, 5, 6, 7, 9	Lump sum	*[Cost ESHS 1 should exclude all or part of the costs of those tasks]*
ESHS 3	**Implementation of the Health and Safety Plan:** Meetings, health care center, medical check-ups, emergencies and evacuations, safety protective equipment, hygiene	Clauses 1, 9, 21 to 25, 27 to 35, 37, 38	Lump sum	*[Cost ESHS 1 should exclude all or part of the costs of those tasks]*
ESHS 4	**Accommodation, drinking water, meals and transportation of staff(*)** (*) :The Bidder shall detail the financial conditions of the supply of accommodation, meals and transport to its staff: – Accommodation – Meals – Transport	Clauses 36, 40, 41	Lump sum Lump sum Lump sum	*[The cost for "site mobilization" should exclude all or part of the costs of those tasks]*
ESHS 5	**Training and local recruitment management costs**	Clauses 8, 39	Lump sum	*[Cost ESHS 1 should exclude all or part of the costs associated to those tasks]*
ESHS 6	**Protection of adjacent areas, biodiversity, prevention of erosion and wastewater management**	Clauses 10, 11, 12, 17, 18	Lump sum	
ESHS 7	**Traffic, noise and atmospheric emissions management, land take**	Clauses 13, 14, 42, 43, 44	Lump sum	
ESHS 8	**Waste and hazardous products management**	Clauses 15, 26	Lump sum	

Item No	Description	ESHS Specifications Clause N°	Unit	Amount *[specify currency]*
ESHS 9	**Vegetation clearing and site rehabilitation**	Clauses 16, 19, 20	Lump sum	*[The cost for "site mobilization" should exclude all or part of the costs associated to those tasks]*
			Total for Bill ESHS	_____

ESHS costs are deemed to cover operations on all Sites (as defined in Clause 1.3 of ESHS Specifications)

Interim payment certificates shall include the portion of each ESHS cost amounting to the percentage of the actual progress achieved in executing the ESHS measures in compliance with the ESHS Specifications and approved by the Engineer.

Schedule No. 5. Grand Summary

Item	Description	Total Price	
		Foreign	Local
	Total Schedule No. 1. Plant, and Mandatory Spare Parts Supplied from Abroad		
	Total Schedule No. 2. Plant, and Mandatory Spare Parts Supplied from Within the Employer's Country		
	Total Schedule No. 3. Design Services		
	Total Schedule No. 4. Installation and Other Services		
	Total ESHS Schedule		
TOTAL (to Bid Form)			

Name of Bidder _____

Signature of Bidder _____

Schedule No.6 Recommended Spare Parts

Item	Description	Qty.	Unit Price		Total Price
			CIF or CIP (foreign parts)	EXW (local parts)	
		(1)	*(2)*	*(3)*	*(1) x (2) or(3)*
	Give itemized list				

Name of Bidder	_____
Signature of Bidder	_____

Technical Proposal

Bidders shall submit following proposal for evaluation

- Environmental, Social, Health and Safety (ESHS) Methodology
- Site Organization and Method Statement
- Construction Schedule
- Personnel proposed (forms PER-1 and PER-2)
- Equipment proposed (form EQU)

Environmental, Social, Health and Safety (ESHS) Methodology

The Bidder shall provide an ESHS Methodology providing information on how the Bidder shall meet the requirements and objectives specified in Section VII, Works Requirements - ESHS Specifications. **If the ESHS Specifications are not included in the Bidding Documents, this requirement is not applicable.**

The ESHS Methodology submitted shall be in the form of a preliminary draft of the Worksite Environmental and Social Management Plan (Worksite - ESMP), the content of which is detailed in Appendix 1 to ESHS Specifications.

Information should be provided on all items of the above mentioned table of contents.

In order to address the highly sensitive ESHS issues highlighted during the project's environmental and social impact assessment, the ESHS Methodology shall provide detailed information on the management of the following items:

(a) ESHS resources and facilities and ESHS monitoring organization;
(b) Project Areas description (base camps, quarries, borrow pits, storage areas);
(c) Health & Safety on Project Areas;
(d) Local recruitment and ESHS trainings of local staff (capacity building), ESHS trainings of subcontractors and local partners (transfer of knowledge);
(e) Relations with stakeholders, information and consultation of local communities and authorities;
(f) Traffic management;
(g) Hazardous products;
(h) Wastewater (effluents);
(i) Protection of water resources;
(j) Atmospheric emissions, noise and vibrations;
(k) Waste management;
(l) Biodiversity : protection of fauna and flora;
(m) Site rehabilitation and revegetation;
(n) Erosion and sedimentation;
(o) Control of infectious and communicable diseases (HIV/AIDS, malaria…).

A Bid for which the ESHS Methodology is evaluated as non-substantially responsive (i.e. with material deviation, reservation or omission) to the ESHS Specifications shall be rejected.

Site Organization and Method Statement

Each Bidder shall set out details of the Site Organization and Method Statement for the Works to demonstrate how it will meet the Employer's objective and requirements. As a minimum, the Method Statement shall address the following:

(a) Details of the arrangements and methods which the Bidder proposes to implement for the construction of the Works, in sufficient detail to demonstrate their adequacy to achieve the requirements of the Contract including completion within the Time for Completion stated in the Particular Conditions of Contract;

(b) Outline of the arrangements of the Bidder to manage coordination of Site access;

(c) Comments on the geotechnical and subsurface aspects of the Works including materials, material sources and any constraints;

(d) Comments on any offshore or waterfront aspects of the Works (if relevant);

(e) Comments on logistics and traffic management

(f) Outline of the arrangements and organization of the Bidder to ensure compliance with the Works Requirements;

(g) Outline of the arrangements of the Bidder to carry out testing upon completion as specified in the Works Requirements;

Construction Schedule

Each Bidder shall set out a detailed Program and Schedule for mobilization and construction of the Works to be performed, including estimated starting and finishing dates for individual components and identification of major milestones and critical path. The proposed Program and Schedule shall be developed according to Works Requirements and shall address the following:

(a) Details of the proposed schedule for obtaining permits that may be necessary in order to commence the Works, including the preparation of required studies, supporting information, and applications;

(b) Details of the proposed timeline for carrying out the Works within the Time for Completion, in the form of a bar chart showing notably the critical path;

(c) Details of the proposed timeline for the testing, commissioning and handing over of the completed Works;

Personnel

Form PER-1: Proposed Personnel

Bidders should provide the names of suitably qualified personnel to meet the specified requirements stated in Section III, Evaluation and Qualification Criteria. The data on their experience should be supplied using the Form below for each candidate.

1.	**Title of position***
	Name
2.	**Title of position***
	Name
3.	**Title of position***
	Name
4.	**Title of position***
	Name

*As listed in Section III, Evaluation and Qualification Criteria.

Form PER-2: Resume of Proposed Personnel

Name of Bidder

Position		
Personnel information	**Name**	**Date of birth**
	Professional qualifications	
Present employment	**Name of employer**	
	Address of employer	
	Telephone	**Contact (manager / personnel officer)**
	Fax	**E-mail**
	Job title	**Years with present employer**

Summarize professional experience over the last 20 years, in reverse chronological order. Indicate particular technical and managerial experience relevant to the project.

From	**To**	**Company / Project / Position / Relevant technical and management experience**

Form EQU: Equipment

The Bidder 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 Bidder.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment ☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured	

Omit the following information for equipment owned by the Bidder.

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	

Bidders Qualification Forms

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

Form ELI -1.1: Bidder Information Form

Date: *[insert day, month, year]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert total number]* of *[insert total number]* pages

Bidder's name: *[insert full name]*
In case of Joint Venture (JV), name of each member: *[insert full name of each member in JV]*
In case of a JV, Bidder's actual or intended country of Constitution: *[indicate country of Constitution]*
Bidder's actual or intended year of Constitution: *[indicate year of Constitution]*
Bidder's legal address *[in country of Constitution]*: *[insert street/ number/ town or city/ country]*
Bidder's authorized representative information Name: *[insert full name]* Address: *[insert street/ number/ town or city/ country]* Telephone/Fax numbers: *[insert telephone/fax numbers, including country and city codes]* E-mail address: *[indicate e-mail address]*
1. Attached are copies of original documents of ❑ Articles of Constitution (or equivalent documents of association) of the legal entity named above; ❑ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITB 4.1; ❑ In case of State-owned enterprise or institution, in accordance with ITB 4.3 documents establishing: (a) Legal and financial autonomy; (b) Operation under commercial law; (c) Establishing that the Bidder is not a dependent agency of the Employer; 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form ELI -1.2: Bidder's JV Information Form

[The following table shall be filled by each member of a Joint Venture and, if applicable, by any specialized subcontractor, and in that case substitute ¨Bidder´s JV member¨ for Specialized Subcontractor.]

Date: *[insert day, month, year]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert total number]* of *[insert total number]*pages

Bidder's JV name: *[insert full name]*
Bidder's JV member's name: *[insert full name of Bidder's JV Member]*
Bidder's JV member's country of Constitution: *[indicate country of constitution]*
Bidder's JV member's year of Constitution: *[indicate year of constitution]*
Bidder's JV member's legal address in country of Constitution: *[insert street/ number/ town or city/ country]*
Bidder's JV member's authorized representative information Name: *[insert full name]* Address: *[insert street/ number/ town or city/ country]* Telephone/Fax numbers: *[insert telephone/fax numbers, including country and city codes]* E-mail address: *[indicate e-mail address]*
1. Attached are copies of original documents of ❑ Articles of Constitution (or equivalent documents of association) of the legal entity named above; ❑ In case of State-owned enterprise or institution, in accordance with ITB 4.3 documents establishing: (a) Legal and financial autonomy; (b) Operation under commercial law; (c) Establishing that the Bidder is not a dependent agency of the Employer; 2. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Form CON – 2: Historical Contract Non-Performance, Pending Litigation and Litigation History

[The following table shall be filled in for the Bidder and for each member of a Joint Venture]

Bidder's Name: *[insert full name]*
Date: *[insert day, month, year]*
JV Member's Name: *[insert full name]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert page number]* of *[insert total number]* pages

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria			
❑ Contract non-performance did not occur since 1st January *[insert current year number less 5]* specified in Section III, Evaluation and Qualification Criteria, Sub-criteria 2.1 ❑ Contract(s) not performed since 1st January *[insert current year number less 5]* specified in Section III, Evaluation and Qualification Criteria, Sub-criteria 2.1			
Year	**Non-performed portion of contract**	**Contract Identification**	**Total Contract Amount (current value, currency, exchange rate and US$ equivalent)**
[insert year]	*[insert amount and percentage]*	Contract Identification: *[indicate complete contract name/ number, and any other identification]* Name of Employer: *[insert full name]* Address of Employer: *[insert street/city/country]* Reason(s) for non-performance: *[indicate main reason(s)]*	*[insert amount]*

Pending Litigation, in accordance with Section III, Qualification Criteria and Requirements			
❑ No pending litigation in accordance with Section III, Qualification Criteria and Requirements, Sub-criteria 2.3 ❑ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-criteria 2.3 as indicated below			
Year of dispute	**Amount in dispute (currency)**	**Contract Identification**	**Total Contract Amount (currency), USD Equivalent (exchange rate)**
		Contract Identification: *[Indicate complete contract name, number, and any other identification]* Name of Employer: *[Insert full name]* Address of Employer: *[Insert street/city/country]* Matter in dispute: *[Indicate main issues in dispute]* Party who initiated the dispute: *[Indicate "Employer" or "Contractor"]* Status of dispute: *[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]*	*[insert amount]*

Form FIN – 3.1: Financial Situation and Performance

[The following table shall be filled in for the Bidder and for each member of a Joint Venture]

Bidder's Name: *[insert full name]*
Date: *[insert day, month, year]*
JV Member's Name: *[insert full name]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert page number]* of *[insert total number]*pages

1. Financial data

Type of Financial information in (currency)	**Historic information for previous** *[insert number] years, [insert in words]* **(amount in currency, currency, exchange rate*, US$ equivalent)**				
	Year 1	Year 2	Year 3	Year4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

*See ITB Clause 15 for the exchange rate

2. Financial documents

The Bidder and in case of a JV, each member shall provide copies of financial statements for *[number]* years pursuant Section III, Evaluation and Qualifications Criteria, Sub-criteria 3.1. The financial statements shall:

(a) Reflect the financial situation of the Bidder or in case of a JV, each member, and not an affiliated entity (such as parent company or group member);

(b) Be independently audited or certified in accordance with local legislation;

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

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

☐ Attached are copies of financial statements[1] for the *[number]* years required above and complying with the requirements

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

Form FIN – 3.2: Annual Construction Turnover

[The following table shall be filled in for the Bidder and for each member of a Joint Venture]

Bidder's Name: *[insert full name]*
Date: *[insert day, month, year]*
JV Member's Name: *[insert full name]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert page number]* of *[insert page number]* pages

Annual turnover data (construction only)*			
Year	**Amount** **Currency**	**Exchange rate**	**US$ equivalent**
[indicate calendar year]	*[insert amount and indicate currency]*	*[insert exchange rates used to calculate the US$ equivalent]*	*[insert US$ equivalent]*

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

Form FIN – 3.3: Financial Resources

[The following table shall be filled in for the Bidder and all parties combined in case of a Joint Venture]

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total construction cash flow demands of the subject contract or contracts as specified in Section III, Evaluation and Qualification Criteria.

No.	**Source of financing**	**Amount (US$ equivalent)**
1		
2		
3		

Form FIN – 3.4: Current Contract Commitments / Works in Progress

Bidders 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.

No.	Name of Contract	Employer's Contact Address, Tel, Fax	Value of Outstanding Work [Current US$ Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [US$/month)]
1					
2					
3					
4					
5					

Form EXP - 4.1: General Construction Experience

[The following table shall be filled in for the Bidder and in the case of a JV Bidder, each Member]

Bidder's Name: *[insert full name]*
Date: *[insert day, month, year]*
JV Member's Name: :*[insert full name]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert page number]* of *[insert total number]* pages

[Identify contracts that demonstrate continuous construction work over the past [number] years pursuant to Section III, Qualification Criteria and Requirements, Sub-criteria 4.1. List contracts chronologically, according to their commencement (starting) dates]

Starting Year*	Ending Year	Contract Identification	Role of Bidder
[indicate year]	*[indicate year]*	Contract name: *[insert full name]* Brief Description of the Works performed by the Bidder: *[describe works performed briefly]* Amount of contract: *[insert amount in currency, mention currency used, exchange rate and US$ equivalent]* Name of Employer: *[indicate full name]* Address:*[indicate street/number/town or city/country]*	*[insert "Prime Contractor" or "JV Member" or "Subcontractor" or "Management Contractor"]*
		Contract name: *[insert full name]* Brief Description of the Works performed by the Bidder: *[describe works performed briefly]* Amount of contract: *[insert amount in currency, mention currency used, exchange rate and US$ equivalent]* Name of Employer: *[indicate full name]* Address: *[indicate street/number/town or city/country]*	*[insert "Prime Contractor" or "JV Member" or "Subcontractor" or "Management Contractor"]*

* See Section III Evaluation and Qualification Criteria – Sub-criteria 4.1

Form EXP - 4.2(a): Specific Construction and Contract Management Experience

[The following table shall be filled in for contracts performed by the Bidder or each member of a Joint Venture]

Bidder's Name: *[insert full name]*
Date: *[insert day, month, year]*
JV Member's Name:*[insert full name]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert page number]* of *[insert total number]* pages

Similar Contract No. *[insert number]* of *[insert number of similar contracts required]*	**Information**			
Contract Identification	*[insert contract name and number, if applicable]*			
Award date	*[insert day, month, year, i.e., 15 June, 2015]*			
Completion date	*[insert day, month, year, i.e., 03 October, 2017*			
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount	*[insert total contract amount in local currency]*		US$ *[insert Exchange rate and total contract amount in US$ equivalent]*	
If member in a JV or sub-contractor, specify participation in total Contract amount	*[insert a percentage amount]*	*[insert total contract amount in local currency]*	*[insert exchange rate and total contract amount in US$ equivalent]*	
Employer's Name:	*[insert full name]*			
Address: Telephone/fax number E-mail:	*[indicate street / number / town or city / country]* *[insert telephone/fax numbers, including country and city area codes]* *[insert e-mail address, if available]*			

Form EXP - 4.2(a) (cont.)
Specific Construction and Contract Management Experience (cont.)

Similar Contract No.	Information
Description of the similarity in accordance with Sub-Factor 4.2(a) of Section III, Evaluation and Qualification Criteria:	
1. Amount	*[insert amount in local currency, exchange rate, US$ in words and in Figures]*
2. Physical size of required works items	*[insert physical size of items]*
3. Complexity	*[insert description of complexity]*
4. Methods/Technology	*[insert specific aspects of the methods/technology involved in the contract]*
5. Construction rate for key activities	*[insert rates and items]*
6. Other Characteristics	*[insert other characteristics as described in Section VII, Works Requirements - Scope of Works]*

Form EXP - 4.2(b): Construction Experience in Key Activities

Bidder's Name: *[insert full name]*
Date: *[insert day, month, year]*
Bidder's JV Member Name: *[insert full name]*
Sub-contractor's Name[1] (as per ITB 34.2 and 34.4): *[insert full name]*
IPC No. and title: *[insert IPC number and title]*
Page *[insert page number]* of *[insert total number]* pages

1. Key Activity No One: *[insert brief description of the Activity, emphasizing its specificity]*

	Information			
Contract Identification	*[insert contract name and number, if applicable]*			
Award date	*[insert day, month, year, i.e., 15 June, 2015]*			
Completion date	*[insert day, month, year, i.e., 03 October, 2017]*			
Role in Contract *[check the appropriate box]*	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount	*[insert total contract amount in contract currency(ies)]*		US$ *[insert exchange rate and total contract amount in US$ equivalent]*	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year *[Insert extent of participation indicating actual quantity of key activity successfully completed in the role performed]*	Total quantity in the contract (i)	Percentage participation (ii)		Actual Quantity Performed (i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				

[1] If permitted by the Employer under "specialized works" in Table 4.2 (b) of 4.Qualification of Section III, Evaluation and Qualification Criteria

	Information
Employer's Name:	
Address: Telephone/fax number E-mail:	*[indicate street / number / town or city / country]* *[insert telephone/fax numbers, including country and city area codes]* *[insert e-mail address, if available]*
Description of the key activities in accordance with Sub-criteria 4.2(b) of Section III, Evaluation and Qualification Criteria:	
	[insert response to inquiry indicated in left column]

2. Key Activity No. Two

3. Key Activity No. Three

Form CER: Quality Management / Environmental, Social, Health and Safety (ESHS) Certification

Bidder's Legal Name: _____ Date: _____

Bidder's JV Member name: _____ IPC No.: _____

DESCRIPTION	**INFORMATION**
Identification of the certificate	_____ *[insert full name of the certificate]*
Date of Issue	_____ *[insert day, month, year of first certificate award]*
Areas covered by the certificate	*[activities and locations]*
Expiry date	_____ *[insert day, month, year]*
Issuers Name	_____ *[insert full name]*
Address Telephone/fax number E-mail	_____ *[insert street / number / town or city / country]* _____ *[insert phone/fax no., incl. country & city area codes]* _____ *[insert e-mail address, if available]*
Compliance with international standards	The certificate is *[ISO 9001, ISO 14001, OHSAS 18001] [select as appropriate]* □ Yes / □ No
If no, proof of conformity with ISO standards by the Bidder	The Bidder shall provide a conformity assessment of its certificate by an internationally recognized Accredited Certification Body

The Bidder shall fill this Form for each Certification required under Sub-criteria 5.1 of Section III, Evaluation and Qualification Criteria

Form ESHS: Environmental, Social, Health and Safety (ESHS) Documentation

Bidder's Legal Name: _____ Date: _____

Bidder's JV Member name: _____-_____ IPC No.: _____

The Bidder shall demonstrate the existence of the following in-house policies and procedures.		
	DESCRIPTION	**SUPPORTING DOCUMENTATION REQUIRED IN ENGLISH (ORIGINAL OR TRANSLATION)**
1	Health & Safety Policy	Policy document or the index of the health & safety manual or other relevant documents acceptable to the Employer.
2	Environmental Management Policy	Policy document or the index of the Environmental Management manual or other relevant documents acceptable to the Employer
3	Declaration of compliance with ILO core labour standards[1] in operations	The Bidder certifies (by ticking explicitly) complying with the following core labour standards ☐ Freedom of Association; ☐ Forced Labour; ☐ Discrimination; ☐ Child Labour.
4	Reviews, inspections and audits related to ESHS issues within the company and especially on construction sites	Provide detailed samples of such reviews or audits which were carried out during the past 5 years
5	Internal and external integration and enforcement policy	Provide information on: (a) How the Bidder ensures that all members of a JV, subcontractors, suppliers or temporary workforce a) are aware of and b) comply with ESHS requirements; (b) Nature and content of the ESHS trainings provided to employees.
6	Procedures on main ESHS issues	Unless information is already provided in policy documents submitted under the requirements of Articles 1 and 2 above, provide in-house procedures

[1] See relevant ILO conventions C087, C098, C029, C105, C100, C111, C138, C182; more detailed information are available at www.ilo.org/ilolex/english/docs/declworld.htm.

The Bidder shall demonstrate the existence of the following in-house policies and procedures.		
	DESCRIPTION	**SUPPORTING DOCUMENTATION REQUIRED IN ENGLISH (ORIGINAL OR TRANSLATION)**
		for managing the following E&S issues, acceptable to the Employer: *[Delete items if not relevant and add sensitive issues with regards to the worksites management and resulting from the project's ESIA, ESMP or ESCP if any]* (a) ESHS resources and facilities and ESHS monitoring organization; (b) Project Areas management (base camps, quarries, borrow pits, storage areas); (c) Health & Safety on worksites; (d) Local recruitment and ESHS trainings of local staff (capacity building), ESHS trainings of subcontractors and local partners (transfer of knowledge); (e) Relations with stakeholders, information and consultation of local communities and authorities; (f) Traffic management; (g) Hazardous products; (h) Wastewater (effluents); (i) Protection of water resources; (j) Atmospheric emissions, noise and vibrations; (k) Waste management; (l) Biodiversity: protection of fauna and flora; (m) Site rehabilitation and revegetation; (n) Erosion and sedimentation; (o) Control of infectious and communicable diseases (HIV/AIDS, malaria…).

Form EXP – ESHS: Environmental, Social, Health and Safety (ESHS) Experience

Bidder's Legal Name: _____ Date: _____

Bidder's JV Member name: _____ IPC No.: _____

Page _____of _____pages

Similar Contract No. *[insert specific number]* **of** *[total number of contracts]* **required**	**Information**		
Contract Identification	_____ *[insert contract name and number, if applicable]*		
Short Project Description (main scope and key values of project)	_____ *[insert short project description]*		
Award date Completion date	_____ *[insert day, month, year]* _____ *[insert day, month, year]*		
Role in Contract *[check the appropriate box*]	☐ Contractor	☐ Management Contractor	☐ Subcontractor
Total Contract Amount		*[insert total contract amount in local currency]* _____	*[insert total contract amount in US$ equivalent]* _____
If party in a JV or subcontractor, specify participation of total contract amount	*[insert a percentage amount]* _____%	*[insert total contract amount in local currency]* _____	*[insert total contract amount in US$ equivalent]* _____
Employer's name: Address: Telephone/fax numbers : E-mail:	_____ *[insert full name]* _____ *[insert street / number / town or city / country]* _____ *[insert phone/fax no., incl. country and city area codes]* _____ *[insert e-mail address, if available]*		

Similar Contract No. *[insert specific number]* **of** *[total number of contracts]* **required**	**Information**
Description of the ESHS challenges and measures implemented under the contract:	
a) ESHS Challenge	Insert description
b) ESHS Risk Assessment Level	Insert classification of risk assessment as per development bank classification if applicable
c) ESHS implemented measures (as per sub-criteria 5.3 of Section III, Evaluation and Qualification Criteria)	Provide documents supporting the implementation of ESHS measures, acceptable to the Employer
d) ESHS Knowhow Transfer or ESHS Local Staff Capacity Building (as per sub-criteria 5.4 of Section III, Evaluation and Qualification Criteria)	Provide evidence of successful: (i) ESHS knowhow transfer to local partners or subcontractors; or (ii) ESHS capacity building to local staff under the contract.

Form of Bid Security

(Demand Guarantee)

Beneficiary: _____

Invitation for Bids No: _____

Date: _____

BID GUARANTEE No.: _____

Guarantor: _____

We have been informed that _____ (hereinafter called "the Bidder") has submitted or will submit to the Beneficiary its bid (hereinafter called "the Bid") for the execution of _____ under Invitation for Bids No. _____ ("the IFB").

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

At the request of the Bidder, 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 first 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 Bidder:

(a) Has withdrawn its Bid during the period of bid validity set forth in the Bidder's Letter of Bid ("the Bid Validity Period"), or any extension thereto provided by the Bidder; or
(b) Having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period or any extension thereto provided by the Bidder, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders ("ITB") of the Beneficiary's Bidding Documents.

This guarantee will expire: (a) if the Bidder is the successful Bidder, upon our receipt of copies of the contract agreement signed by the Bidder and the performance security issued to the Beneficiary in relation to such contract agreement; or (b) if the Bidder is not the successful Bidder, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Bidder of the results of the bidding process; or (ii) twenty-eight days after the end of the Bid Validity Period.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

_____*[signature(s)]*

Form of Bid-Securing Declaration

N/A

Section V. Eligibility Criteria

Eligibility in AFD-Financed Procurement

1. Financing allocated by the AFD to a Contracting Authority has been entirely untied since 1st January 2002. To the exception of any equipment or any sector which is subject to an embargo by the United Nations, the European Union or France, all goods, works, plants, consulting services and non-consulting services are eligible for the AFD financing regardless of the country of origin of the supplier, contractor, subcontractor, consultant or subconsultant inputs or resources used in the implementation processes. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

2. Natural or legal persons (including all members of a joint venture or any of their suppliers, contractors, subcontractors, consultants or subconsultants) shall not be awarded an AFD-financed contract if, on the date of submission of an application, a bid or a proposal, or on the date of award of a contract, they:

2.1) Are bankrupt or being wound up or ceasing their activities, are having their activities administered by the courts, have entered into receivership, or are in any analogous situation arising from a similar procedure;

2.2) Have been:

a. convicted, within the past five years by a court decision, which has the force of *res judicata* in the country where the contract is implemented, of fraud, corruption or of any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this conviction is not relevant in the context of this contract;

b. subject to an administrative sanction within the past five years by the European Union or by the competent authorities of the country where they are constituted, for fraud, corruption or for any other offense committed during a procurement process or performance of a contract, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this sanction is not relevant in the context of this contract;

c. convicted, within the past five years by a court decision, which has the force of *res judicata*, of fraud, corruption or of any other offense committed during the procurement process or performance of an AFD-financed contract;

2.3) Are listed for financial sanctions by the United Nations, the European Union and/or France for the purposes of fight-against-terrorist financing or threat to international peace and security;

2.4) Have been subject within the past five years to a contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during contract performance, unless this termination was challenged and

dispute resolution is still pending or has not confirmed a full settlement against them;

2.5) Have not fulfilled their fiscal obligations regarding payments of taxes in accordance with the legal provisions of either the country where they are constituted or the Contracting Authority's country;

2.6) Are subject to an exclusion decision of the World Bank and are listed on the website http://www.worldbank.org/debarr, unless they provide supporting information together with their Statement of Integrity (Form available as Appendix to the Application, Bid or Proposal Submission Form) which shows that this exclusion is not relevant in the context of this contract;

2.7) Have created false documents or committed misrepresentation in documentation requested by the Contracting Authority as part of the procurement process of this Contract.

3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to the AFD's satisfaction, through all relevant documents, including its Charter and other information the AFD may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

Section VI. AFD Policy - Corrupt and Fraudulent Practices – Social and Environmental Responsibility

1. Corrupt and Fraudulent Practices

The Contracting Authority and the suppliers, contractors, subcontractors, consultants or subconsultants must observe the highest standard of ethics during the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

By signing the Statement of Integrity the suppliers, contractors, subcontractors, consultants or sub consultants declare that (i) "it did not engage in any practice likely to influence the contract award process to the Contracting Authority's detriment, and that it did not and will not get involved in any anti-competitive practice", and that (ii) "the procurement process and the performance of the contract did not and shall not give rise to any act of corruption or fraud".

Moreover, the AFD requires including in the Procurement Documents and AFD-financed contracts a provision requiring that suppliers, contractors, subcontractors, consultants or subconsultants will permit the AFD to inspect their accounts and records relating to the procurement process and performance of the AFD-financed contract, and to have them audited by auditors appointed by the AFD.

The AFD reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

(a) Reject a proposal for a contract award if it is established that during the selection process the Bidder or consultant that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;

(b) Declare mis-procurement when it is established that, at any time, the Contracting Authority, the suppliers, contractors, subcontractors, consultants or subconsultants their representatives have engaged in acts of corruption, fraud or anti-competitive practices during the procurement process or performance of the contract without the Contracting Authority having taken appropriate action in due time satisfactory to the AFD to remedy the situation, including by failing to inform the AFD at the time they knew of such practices.

The AFD defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a Public Officer means:

(i) The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity; or

(ii) The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity.

(b) A Public Officer shall be construed as meaning:

(i) Any person who holds a legislative, executive, administrative or judicial mandate (within the country of the Contracting Authority) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;

(ii) Any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;

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(iii) Any other person defined as a Public Officer by the national laws of the country of the Contracting Authority.

(c) Corruption of a private person means:

(i) The act of promising, offering or giving to any person other than a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or

(ii) The act by which any person other than a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;

(d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.

(e) Anti-competitive practices mean:

(i) Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;

(ii) Any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it;

(iii) Any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

2. <u>Social and Environmental Responsibility</u>

In order to promote sustainable development, the AFD seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for AFD-financed contracts shall consequently undertake in the Statement of Integrity to:

(a) Comply with and ensure that all their subcontractors, or subconsultants comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;

(b) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.

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Section VIII. General Conditions (GC)

_____

[Name of Employer]

_____

[Name of Contract]

The General Conditions that follow are the Multilateral Development Banks Harmonized Edition of the Conditions of Contract for Construction prepared and copyrighted by the International Federation of Consulting Engineers (*Fédération Internationale des Ingénieurs-Conseils*, or FIDIC), FIDIC 2010-All rights reserved. This publication is exclusive for the use of AFD's Beneficiaries and their project implementing agencies as provided under the License Agreement between the Agence Française de Développement and FIDIC, and, consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by the Employer identified above and only for the exclusive purpose of preparing these Standard Bidding Documents for the Contract also identified above.

[This section should not be modified and any modification on the General Conditions should be specified in Section IX, Particular Conditions]

General Conditions

1. General Provisions

1.1 Definitions

In the Conditions of Contract ("these Conditions"), which include Particular Conditions, Parts A and B, and these General Conditions, the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

1.1.1 The Contract

1.1.1.1 "Contract" means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, these Conditions, the Specification, the Drawings, the Schedules, and the further documents (if any) which are listed in the Contract Agreement or in the Letter of Acceptance.

1.1.1.2 "Contract Agreement" means the contract agreement referred to in Sub-Clause 1.6 [Contract Agreement].

1.1.1.3 "Letter of Acceptance" means the letter of formal acceptance, signed by the Employer, of the Letter of Tender, including any annexed memoranda comprising agreements between and signed by both Parties. If there is no such letter of acceptance, the expression "Letter of Acceptance" means the Contract Agreement and the date of issuing or receiving the Letter of Acceptance means the date of signing the Contract Agreement.

1.1.1.4 "Letter of Tender" means the document entitled letter of tender or letter of bid, which was completed by the Contractor and includes the signed offer to the Employer for the Works.

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

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

1.1.1.7 "Schedules" means the document(s) entitled schedules, completed by the Contractor and submitted with the Letter of Tender, as included in the Contract. Such document may include the Bill of Quantities, data, lists, and schedules of rates and/or prices.

1.1.1.8 "Tender" means the Letter of Tender and all other documents which the Contractor submitted with the Letter of Tender, as included in the Contract.

1.1.1.9 "Bill of Quantities", "Daywork Schedule" and "Schedule of Payment Currencies" mean the documents so named (if any) which are comprised in the Schedules.

1.1.1.10 "Contract Data" means the pages completed by the Employer entitled contract data which constitute Part A of the Particular Conditions.

1.1.2 Parties and Persons

1.1.2.1 "Party" means the Employer or the Contractor, as the context requires.

1.1.2.2 "Employer" means the person named as employer in the Contract Data and the legal successors in title to this person.

1.1.2.3 "Contractor" means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).

1.1.2.4 "Engineer" means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer].

1.1.2.5 "Contractor's Representative" means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor's Representative], who acts on behalf of the Contractor.

1.1.2.6 "Employer's Personnel" means the Engineer, the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer's Personnel.

1.1.2.7 "Contractor's Personnel" means the Contractor's Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

1.1.2.8 "Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.

1.1.2.9 "DB" means the person or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Board] or Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Board]

1.1.2.10 "FIDIC" means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.

1.1.2.11 "Bank" means the financing institution (if any) named in the Contract Data.

1.1.2.12 "Borrower" means the person (if any) named as the borrower in the Contract Data.

1.1.3 Dates, Tests, Periods and Completion

1.1.3.1 "Base Date" means the date 28 days prior to the latest date for submission of the Tender.

1.1.3.2 "Commencement Date" means the date notified under Sub-Clause 8.1 [Commencement of Works].

1.1.3.3 "Time for Completion" means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Contract Data (with any extension under

Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

1.1.3.4 "Tests on Completion" means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Employer.

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

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

1.1.3.7 "Defects Notification Period" means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over 365 days except if otherwise stated in the Contract Data (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections]..

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

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

1.1.4 Money and Payments

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

1.1.4.2 "Contract Price" means the price defined in Sub-Clause 14.1 [The Contract Price], and includes adjustments in accordance with the Contract.

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

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

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

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

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

1.1.4.8 "Local Currency" means the currency of the Country.

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

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

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

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

1.1.5 Works and Goods

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

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

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

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

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

1.1.5.6 "Section" means a part of the Works specified in the Contract Data as a Section (if any).1.1.5.7 "Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.

1.1.5.8 "Works" mean the Permanent Works and the Temporary Works, or either of them as appropriate.

1.1.6 Other Definitions

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

1.1.6.2 "Country" means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.

1.1.6.3 "Employer's Equipment" means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.

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

1.1.6.5 "Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

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

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

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

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

1.1.6.10 "Notice of Dissatisfaction" means the notice given by either Party to the other under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] indicating its dissatisfaction and intention to commence arbitration.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

a. Words indicating one gender include all genders;

b. Words indicating the singular also include the plural and words indicating the plural also include the singular;

c. Provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;

d. "Written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and

e. The word "tender" is synonymous with "bid" and "tenderer" with "Bidder" and the words "tender documents" with "bidding documents.

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

In these Conditions, provisions including the expression "Cost plus profit" require this profit to be one-twentieth (5%) of this Cost unless otherwise indicated in the Contract Data.

1.3Communications

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

a) In writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Contract Data; and

b) Delivered, sent or transmitted to the address for the recipient's communications as stated in the Contract Data. However:

(i) If the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and

(ii) If the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

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

1.4 Law and Language

The Contract shall be governed by the law of the country or other jurisdiction stated in the Contract Data.

The ruling language of the Contract shall be that stated in the Contract Data.

The language for communications shall be that stated in the Contract Data. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.5 Priority of Documents

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

(a) The Contract Agreement (if any);

(b) The Letter of Acceptance;

(c) The Letter of Tender;

(d) The Particular Conditions – Part A;

(e) The Particular Conditions – Part B;

(f) These General Conditions;

(g) The Specification;

(h) The Drawings; and

(i) The Schedules and any other documents forming part of the Contract.

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

1.6 Contract Agreement

The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless the Particular Conditions establish otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.

1.7 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

(a) May assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party, and

(b) May, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

1.8 Care and Supply of Documents

The Specification and Drawings shall be in the custody and care of the Employer. Unless otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawing shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

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

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

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

1.9 Delayed Drawings or Instructions

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

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

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

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

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

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

1.10 Employer's Use of Contractor's Documents

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

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

a) Apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works;

b) Entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works; and

c) In the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

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

1.11 Contractor's Use of Employer's Documents

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

1.12 Confidential Details

The Contractor's and the Employer's Personnel shall disclose all such confidential and other information as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation.

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

1.13 Compliance with Laws

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

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

b) The Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution and completion of the Works and the remedying of any defects; and the Contractor shall indemnify and hold the Employer harmless against and from the consequences of any failure to do so, unless the Contractor is impeded to accomplish these actions and shows evidence of its diligence.

1.14 Joint and Several Liability

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

(a) These persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;

(b) These persons shall notify the Employer of their leader who shall have authority to bind the Contractor and each of these persons; and

(c) The Contractor shall not alter its composition or legal status without the prior consent of the Employer.

1.15 Inspections and Audit by the Bank

The Contractor shall permit the Bank and/or persons appointed by the Bank to inspect the Site and/or the Contractor's accounts and records relating to the performance of the Contract and to have such accounts and records audited by auditors appointed by the Bank if required by the Bank.

2. The Employer

2.1 Right of Access to the Site

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

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

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

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

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

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

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

2.2 Permits, Licences or Approvals

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

(a) Copies of the Laws of the Country which are relevant to the Contract but are not readily available, and

(b) Any permits, licences or approvals required by the Laws of the Country:

(i) Which the Contractor is required to obtain under Sub-Clause 1.13 [Compliance with Laws];

(ii) For the delivery of Goods, including clearance through customs, and

(iii) For the export of Contractor's Equipment when it is removed from the Site.

2.3 Employer's Personnel

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

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

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

2.4 Employer's Financial Arrangements

The Employer shall submit, before the Commencement Date and thereafter within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price punctually (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. Before the Employer makes any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.

In addition, if the Bank has notified to the Borrower that the Bank has suspended disbursements under its loan, which finances in whole or in part the execution of the Works, the Employer shall give notice of such suspension to the Contractor with detailed particulars, including the date of such notification, with a copy to the Engineer, within 7 days of the Borrower having received the suspension notification from the Bank. If alternative funds will be available in appropriate currencies to the Employer to continue making payments to the Contractor beyond a date 60 days after the date of Bank notification of the suspension, the Employer shall provide reasonable evidence in his notice of the extent to which such funds will be available.

2.5 Employer's Claims

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause

4.20 [Employer's Equipment and Free-Issue Materials], or for other services requested by the Contractor.

The notice shall be given as soon as practicable and no longer than 28 days after the Employer became aware, or should have become aware, of the event or circumstances giving rise to the claim. A notice relating to any extension of the Defects Notification Period shall be given before the expiry of such period.

The particulars shall specify the Clause or other basis of the claim, and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Engineer shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period in accordance with Sub-Clause 11.3 [Extension of Defects Notification Period].

This amount may be included as a deduction in the Contract Price and Payment Certificates. The Employer shall only be entitled to set off against or make any deduction from an amount certified in a Payment Certificate, or to otherwise claim against the Contractor, in accordance with this Sub-Clause.

3. The Engineer

3.1 Engineer's Duties and Authority

The Employer shall appoint the Engineer who shall carry out the duties assigned to him in the Contract. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties.

The Engineer shall have no authority to amend the Contract.

The Engineer may exercise the authority attributable to the Engineer as specified in or necessarily to be implied from the Contract. If the Engineer is required to obtain the approval of the Employer before exercising a specified authority, the requirements shall be as stated in the Particular Conditions. The Employer shall promptly inform the Contractor of any change to the authority attributed to the Engineer.

However, whenever the Engineer exercises a specified authority for which the Employer's approval is required, then (for the purposes of the Contract) the Employer shall be deemed to have given approval.

Except as otherwise stated in these Conditions:

(a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Engineer shall be deemed to act for the Employer;

(b) The Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;

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

(d) Any act by the Engineer in response to a Contractor's request except as otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.

The following provisions shall apply:

The Engineer shall obtain the specific approval of the Employer before taking action under the-following Sub-Clauses of these Conditions:

(a) Sub-Clause 4.12: agreeing or determining an extension of time and/or additional cost;

(b) Sub-Clause 13.1: instructing a Variation, except;

(i) In an emergency situation as determined by the Engineer, or

(ii) If such a Variation would increase the Accepted Contract Amount by less than the percentage specified in the Contract Data;

(c) Sub-Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with Sub Clause 13.1 or 13.2;

(d) Sub-Clause 13.4: Specifying the amount payable in each of the applicable currencies

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

3.2 Delegation by the Engineer

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

Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by an assistant, in accordance with the delegation, shall have the same effect as though the act had been an act of the Engineer. However:

(a) Any failure to disapprove any work, Plant or Materials shall not constitute approval, and shall therefore not prejudice the right of the Engineer to reject the work, Plant or Materials;

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

3.3 Instructions of the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

The Contractor shall comply with the instructions given by the Engineer or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Engineer or a delegated assistant:

(a) Gives an oral instruction;

(b) Receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction; and

(c) Does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation;

then the confirmation shall constitute the written instruction of the Engineer or delegated assistant (as the case may be).

3.4 Replacement of the Engineer

If the Employer intends to replace the Engineer, the Employer shall, not less than 21 days before the intended date of replacement, give notice to the Contractor of the name, address and relevant experience of the intended replacement Engineer. If the Contractor considers the intended replacement Engineer to be unsuitable, he has the right to raise objection against him by notice to the Employer, with supporting particulars, and the Employer shall give full and fair consideration to this objection.

3.5 Determinations

Whenever these Conditions provide that the Engineer shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Engineer shall consult with each Party in an endeavour to reach agreement. If agreement is not achieved, the Engineer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Engineer shall give notice to both Parties of each agreement or determination, with supporting particulars, within 28 days from the receipt of the corresponding claim or request except when otherwise specified. Each Party shall give effect to each agreement or determination unless and until revised under Clause 20 [Claims, Disputes and Arbitration].

4. The Contractor

4.1 Contractor's General Obligations

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

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

All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank.

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

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

If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Particular Conditions:

(a) The Contractor shall submit to the Engineer the Contractor's Documents for this part in accordance with the procedures specified in the Contract;

(b) These Contractor's Documents shall be in accordance with the Specification and Drawings, shall be written in the language for communications defined in Sub-Clause 1.4 [Law and Language], and shall include additional information required by the Engineer to add to the Drawings for co-ordination of each Party's designs;

(c) The Contractor shall be responsible for this part and it shall, when the Works are completed, be fit for such purposes for which the part is intended as are specified in the Contract; and

(d) Prior to the commencement of the Tests on Completion, the Contractor shall submit to the Engineer the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

4.2 Performance Security

The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the Contract Data and denominated in the currency(ies) of the Contract or in a freely convertible currency acceptable to the Employer. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor, and shall be in the form annexed to the Particular Conditions, as stipulated by the Employer in the Contract Data, or in another form approved by the Employer.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days

prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.

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

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

The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.

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

4.3 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.

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

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

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

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

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

The Contractor's Representative shall be fluent in the language for communications defined in Sub-Clause 1.4 [Law and Language]. If the Contractor's Representative's delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.4 Subcontractors

The Contractor shall not subcontract the whole of the Works.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his agents or employees, as if they were the acts or defaults of the Contractor. Unless otherwise stated in the Particular Conditions:

(a) The Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;
(b) The prior consent of the Engineer shall be obtained to other proposed Subcontractors;
(c) The Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site; and
(d) Each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer].

The Contractor shall ensure that the requirements imposed on the Contractor by Sub-Clause 1.12 [Confidential Details] apply equally to each Subcontractor.

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

4.5 Assignment of Benefit of Subcontract

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

4.6 Co-operation

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

(a) The Employer's Personnel;
(b) Any other contractors employed by the Employer; and
(c) The personnel of any legally constituted public authorities;

who may be employed in the execution on or near the Site of any work not included in the Contract.

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

If, under the Contract, the Employer is required to give to the Contractor possession of any foundation, structure, plant or means of access in accordance with Contractor's Documents, the Contractor shall submit such documents to the Engineer in the time and manner stated in the Specification.

4.7 Setting Out

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

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

4.8 Safety Procedures

The Contractor shall:

(a) Comply with all applicable safety regulations;

(b) Take care for the safety of all persons entitled to be on the Site;

(c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;

(d) Provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Employer's Taking Over]; and

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

4.9 Quality Assurance

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

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

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

4.10 Site Data

The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the

Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

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

(a) The form and nature of the Site, including sub-surface conditions;

(b) The hydrological and climatic conditions;

(c) The extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects;

(d) The Laws, procedures and labour practices of the Country; and

(e) The Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11 Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

a) Have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount; and
b) Have based the Accepted Contract Amount on the data, interpretations, necessary information, inspections, examinations and satisfaction as to all relevant matters referred to in Sub-Clause 4.10 [Site Data].

Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

4.12 Unforeseeable Physical Conditions

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

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

This notice shall describe the physical conditions, so that they can be inspected by the Engineer, and shall set out the reasons why the Contractor considers them to be Unforeseeable. The Contractor shall continue executing the Works, using such proper and reasonable measures as are appropriate for the physical conditions, and shall comply with any instructions which the Engineer may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

If and to the extent that the Contractor encounters physical conditions which are Unforeseeable, gives such a notice, and suffers delay and/or incurs Cost due to these conditions, the Contractor shall be entitled subject to notice under Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Engineer may also review whether other physical conditions in similar parts of the Works (if any) were more favourable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

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

4.13 Rights of Way and Facilities

Unless otherwise specified in the Contract the Employer shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

4.14 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

(a) The convenience of the public; or

(b) The access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.

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

4.15 Access Route

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

Except as otherwise stated in these Conditions:

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

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

(c) The Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;

(d) The Employer does not guarantee the suitability or availability of particular access routes; and

(e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

4.16 Transport of Goods

Unless otherwise stated in the Particular Conditions:

(a) The Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;

(b) The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and

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

4.17 Contractor's Equipment

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

4.18 Protection of the Environment

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

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

4.19 Electricity, Water and Gas

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

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

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5

[Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.

4.20 Employer's Equipment and Free-Issue Materials

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

(a) The Employer shall be responsible for the Employer's Equipment; except that

(b) The Contractor shall be responsible for each item of Employer's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.

The appropriate quantities and the amounts due (at such stated prices) for the use of Employer's Equipment shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.

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

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

4.21 Progress Reports

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

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

Each report shall include:

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

(b) Photographs showing the status of manufacture and of progress on the Site;

(c) For the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:

(i) Commencement of manufacture;

(ii) Contractor's inspections;

(iii) Tests; and

(iv) Shipment and arrival at the Site;

(d) The details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];

(e) Copies of quality assurance documents, test results and certificates of Materials;

(f) List of notices given under Sub-Clause 2.5 [Employer's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];

(g) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and

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

4.22 Security of the Site

Unless otherwise stated in the Particular Conditions:

(a) The Contractor shall be responsible for keeping unauthorised persons off the Site, and

(b) Authorised persons shall be limited to the Contractor's Personnel and the Employer's Personnel; and to any other personnel notified to the Contractor, by the Employer or the Engineer, as authorised personnel of the Employer's other contractors on the Site.

4.23 Contractor's Operations on Site

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

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

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

4.24 Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under

the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

5. Nominated Subcontractors

5.1 Definition of "nominated Subcontractor"

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

(a) Who is stated in the Contract as being a nominated Subcontractor; or

(b) Whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

5.2 Objection to Nomination

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

(a) There are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;

(b) The nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or

(c) The nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:

(i) Undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;

(ii) Indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities; and

(iii) Be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

5.3 Payments to nominated Subcontractors

The Contractor shall pay to the nominated Subcontractor the amounts shown on the nominated Subcontractor's invoices approved by the Contractor which the Engineer certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

5.4 Evidence of Payments

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

(a) Submits this reasonable evidence to the Engineer, or

(b)

(i) Satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts; and

(ii) Submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

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

6. Staff and Labour

6.1 Engagement of Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall make arrangements for the engagement of all staff and labour, local or otherwise, and for their payment, feeding, transport, and, when appropriate, housing.

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.

6.2 Rates of Wages and Conditions of Labour

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

The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for

the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

6.3 Persons in the Service of Employer

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

6.4 Labour Laws

The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.

The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.5 Working Hours

No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, unless:

(a) Otherwise stated in the Contract;

(b) The Engineer gives consent; or

(c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.

6.6 Facilities for Staff and Labour

Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.

The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

6.7 Health and Safety

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

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

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

HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other

measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Subcontractors and any other Contractor's or Employer's personnel employees, and all truck drivers and crew making deliveries to Site for construction activities) and to the immediate local communities, concerning the risks, dangers and impact, and appropriate avoidance behaviour with respect to, of Sexually Transmitted Diseases (STD) - or Sexually Transmitted Infections (STI) in general and HIV/AIDS in particular; (ii) provide male or female condoms for all Site staff and labour as appropriate; and (iii) provide for STI and HIV/AIDS screening, diagnosis, counselling and referral to a dedicated national STI and HIV/AIDS programme, (unless otherwise agreed) of all Site staff and labour.

The Contractor shall include in the programme to be submitted for the execution of the Works under Sub-Clause 8.3 an alleviation programme for Site staff and labour and their families in respect of Sexually Transmitted Infections (STI) and Sexually Transmitted Diseases (STD) including HIV/AIDS. The STI, STD and HIV/AIDS alleviation programme shall indicate when, how and at what cost the Contractor plans to satisfy the requirements of this Sub-Clause and the related specification. For each component, the programme shall detail the resources to be provided or utilised and any related sub-contracting proposed. The programme shall also include provision of a detailed cost estimate with supporting documentation. Payment to the Contractor for preparation and implementation this programme shall not exceed the Provisional Sum dedicated for this purpose.

6.8 Contractor's Superintendence

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

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

6.9 Contractor's Personnel

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

(a) Persists in any misconduct or lack of care;

(b) Carries out duties incompetently or negligently;

(c) Fails to conform with any provisions of the Contract; or

(d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

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

6.10 Records of Contractor's Personnel and Equipment

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

6.11 Disorderly Conduct

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

6.12 Foreign Personnel

The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.

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

6.13 Supply of Foodstuffs

The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.

6.14 Supply of Water

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

6.15 Measures against Insect and Pest Nuisance

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

6.16 Alcoholic Liquor or Drugs

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

6.17 Arms and Ammunition

The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.

6.18 Festivals and Religious Customs

The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.

6.19 Funeral Arrangements

The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.

6.20 Prohibition of Forced or Compulsory Labour

The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.

6.21 Prohibition of Harmful Child Labour

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

6.22 Employment Records of Workers

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

6.23 Workers' Organisations

In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce.

6.24 Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

7. Plant, Materials and Workmanship

7.1 Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

(a) In the manner (if any) specified in the Contract;

(b) In a proper workmanlike and careful manner, in accordance with recognised good practice; and

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

7.2 Samples

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

(a) Manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost; and

(b) Additional samples instructed by the Engineer as a Variation.

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

7.3 Inspection

The Employer's Personnel shall at all reasonable times:

(a) Have full access to all parts of the Site and to all places from which natural Materials are being obtained; and

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

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

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

7.4 Testing

This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

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

The Engineer may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

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

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the

Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

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

7.5 Rejection

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

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer.

7.6 Remedial Work

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

(a) Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract;

(b) Remove and re-execute any other work which is not in accordance with the Contract; and

(c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

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

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

7.7 Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the

Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

(a) When it is incorporated in the Works;

(b) When the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

7.8 Royalties

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

(a) Natural Materials obtained from outside the Site, and

(b) The disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

8. Commencement, Delays and Suspension

8.1 Commencement of Works

Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:

(a) Signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;

(b) Delivery to the Contractor of reasonable evidence of the Employer's financial arrangements (under Sub-Clause 2.4 [Employer's Financial Arrangements]);

(c) Except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works,

(d) Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

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

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

8.2 Time for Completion

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

(a) Achieving the passing of the Tests on Completion; and

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

8.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

(a) The order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing;

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

(c) The sequence and timing of inspections and tests specified in the Contract; and

(d) A supporting report which includes:

(i) A general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works; and

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

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

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

8.4 Extension of Time for Completion

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

(a) A Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract;

(b) A cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions;

(c) Exceptionally adverse climatic conditions;

(d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions; or

(e) Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.

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

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

(a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country;

(b) These authorities delay or disrupt the Contractor's work; and

(c) The delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

8.6 Rate of Progress

If, at any time:

(a) Actual progress is too slow to complete within the Time for Completion; and/or

(b) Progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme];

other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

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

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

8.7 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to notice under Sub-Clause 2.5 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Contract Data.

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

8.8 Suspension of Work

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

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

8.9 Consequences of Suspension

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

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

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

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

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

8.10 Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

(a) The work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days; and

(b) The Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

8.12 Resumption of Work

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

9. Tests on Completion

9.1 Contractor's Obligations

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

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

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

9.2 Delayed Tests

If the Tests on Completion are being unduly delayed by the Employer, Sub-Clause 7.4 [Testing] (fifth paragraph) and/or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.

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

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

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

(a) Order further repetition of Tests on Completion under Sub-Clause 9.3 [Retesting];

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

(c) Issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations].

10. Employer's Taking Over

10.1 Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

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

The Engineer shall, within 28 days after receiving the Contractor's application:

(a) Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or

(b) Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

10.2 Taking Over of Parts of the Works

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until

the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

(a) The part which is used shall be deemed to have been taken over as from the date on which it is used;

(b) The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and

(c) If requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

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

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

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

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

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

10.4 Surfaces Requiring Reinstatement

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

11. Defects Liability

11.1 Completion of Outstanding Work and Remedying Defects

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

(a) Complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer; and

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

If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

11.2 Cost of Remedying Defects

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

(a) Any design for which the Contractor is responsible;

(b) Plant, Materials or workmanship not being in accordance with the Contract; or

(c) Failure by the Contractor to comply with any other obligation.

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

11.3 Extension of Defects Notification Period

The Employer shall be entitled subject to Sub-Clause 2.5 [Employer's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.

If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects

or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.

11.4 Failure to Remedy Defects

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

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

(a) Carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;

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

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

11.5 Removal of Defective Work

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

11.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

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

11.7 Right of Access

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

11.8 Contractor to Search

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

11.9 Performance Certificate

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the

Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

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

11.10 Unfulfilled Obligations

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11 Clearance of Site

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

If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

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

12. Measurement and Evaluation

12.1 Works to be Measured

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

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:

(a) Promptly either attend or send another qualified representative to assist the Engineer in making the measurement; and

(b) Supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

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

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which

the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2 Method of Measurement

Except as otherwise stated in the Contract and notwithstanding local practice:

(a) Measurement shall be made of the net actual quantity of each item of the Permanent Works; and

(b) The method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

12.3 Evaluation

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

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

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

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

(a)

(i) The measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule;

(ii) This change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount;

(iii) This change in quantity directly changes the Cost per unit quantity of this item by more than 1%; and

(iv) This item is not specified in the Contract as a “fixed rate item”;

or

(b)

(i) The work is instructed under Clause 13 [Variations and Adjustments];

(ii) No rate or price is specified in the Contract for this item; and

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

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-

paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

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

12.4 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

(a) The Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;

(b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and

(c) This cost is not deemed to be included in the evaluation of any substituted work;

then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13. Variations and Adjustments

13.1 Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

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

Each Variation may include:

(a) Changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation);

(b) Changes to the quality and other characteristics of any item of work;

(c) Changes to the levels, positions and/or dimensions of any part of the Works;

(d) Omission of any work unless it is to be carried out by others;

(e) Any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work; or

(f) Changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

13.2 Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure].

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

(a) The Contractor shall design this part;

(b) Sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply; and

(c) If this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:

(i) Such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost]; and

(ii) The reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

However, if amount (i) is less than amount (ii), there shall not be a fee.

13.3 Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

(a) A description of the proposed work to be performed and a programme for its execution;

(b) The Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion; and

(c) The Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

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

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

13.4 Payment in Applicable Currencies

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

13.5 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

(a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or

(b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:

(i) The actual amounts paid (or due to be paid) by the Contractor; and

(ii) A sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

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

13.6 Daywork

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

(a) The names, occupations and time of Contractor's Personnel;

(b) The identification, type and time of Contractor's Equipment and Temporary Works; and

(c) The quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

13.7 Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

13.8 Adjustments for Changes in Cost

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

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

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

$Pn = a + b\ Ln/Lo + c\ En/Eo + d\ Mn/Mo + ...$ where:

"Pn" is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period "n", this period being a month unless otherwise stated in the Contract Data ;

"a" is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

"b", "c", "d", … are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

"Ln", "En", "Mn", … are the current cost indices or reference prices for period "n", expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

"Lo", "Eo", "Mo", … are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the "currency of index" is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable.

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

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

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

14. Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

(a) The Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;

(b) The Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];

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

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

(ii) For the purposes of Clause 12 [Measurement and Evaluation]; and

(d) The Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.

14.2 Advance Payment

The Employer shall make an advance payment, as an interest-free loan for mobilisation and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Contract Data.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Contract Data, this Sub-Clause shall not apply.

The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in the Contract Data, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:

(a) Deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%)of the Accepted Contract Amount less Provisional Sums; and

(b) Deductions shall be made at the amortisation rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be

completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Employer], except for Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

(a) The estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);

(b) Any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];

(c) Any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;

(d) Any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];

(e) Any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];

(f) Any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and

(g) The deduction of amounts certified in all previous Payment Certificates.

14.4 Schedule of Payments

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

(a) The instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];

(b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and

(c) If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

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

The Engineer shall determine and certify each addition if the following conditions are satisfied:

(a) The Contractor has:

(i) Kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection; and

(ii) Submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

(b) The relevant Plant and Materials:

(i) Are those listed in the Schedules for payment when shipped;

(ii) Have been shipped to the Country, en route to the Site, in accordance with the Contract; and

(iii) Are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall

be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) The relevant Plant and Materials:

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

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

The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6 Issue of Interim Payment Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Contract Data. In this event, the Engineer shall give notice to the Contractor accordingly.

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

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

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

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

14.7 Payment

The Employer shall pay to the Contractor:

(a) The first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;

(b) The amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and

(c) The amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

14.9 Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

14.10 Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:

(a) The value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works;

(b) Any further sums which the Contractor considers to be due; and

(c) An estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

14.11 Application for Final Payment Certificate

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

(a) The value of all work done in accordance with the Contract; and

(b) Any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.12 Discharge

When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.13 Issue of Final Payment Certificate

Within 28 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall deliver, to the Employer and to the Contractor, the Final Payment Certificate which shall state:

(a) The amount which he fairly determines is finally due; and

(b) After giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14 Cessation of Employer's Liability

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:

(a) In the Final Statement; and also

(b) (Except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

(a) If the Accepted Contract Amount was expressed in Local Currency only:

(i) The proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;

(ii) Payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and

(iii) Other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;

(b) Payment of the damages specified in the Contract Data, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;

(c) Other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;

(d) If any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and

(e) If no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

15. Termination by Employer

15.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2 Termination by Employer

The Employer shall be entitled to terminate the Contract if the Contractor:

(a) Fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct];

(b) Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;

(c) Without reasonable excuse fails:

(i) To proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension]; or

(ii) To comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it;

(d) Subcontracts the whole of the Works or assigns the Contract without the required agreement;

(e) Becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or

(f) Gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

(i) For doing or forbearing to do any action in relation to the Contract; or

(ii) For showing or forbearing to show favour or disfavour to any person in relation to the Contract,

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

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

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

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

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

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Employer may:

(a) Proceed in accordance with Sub-Clause 2.5 [Employer's Claims];

(b) Withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established; and/or

(c) Recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

15.5 Employer's Entitlement to Termination for Convenience

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor].

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [Termination by Employer].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor's Personnel].

For the purposes of this Sub-Clause:

(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 a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a 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;

(iv) "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;

(v) "Obstructive practice" is

(i) Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation 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

(ii) Acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 1.15 [Inspections and Audits by the Bank].

16. Suspension and Termination by Contractor

16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

(a) The Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work]

in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements];

(b) The Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;

(c) The Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer's Claims]);

(d) The Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract;

(e) The Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment];

(f) A prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension]; or

(g) The Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events;

(h) The Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.3 Cessation of Work and Removal of Contractor's Equipment

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

(a) Cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works;

(b) Hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment; and

(c) Remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination

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

(a) Return the Performance Security to the Contractor;
(b) Pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release]; and
(c) Pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17. Risk and Responsibility

17.1 Indemnities

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

(a) Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and
(b) Damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

17.2 Contractor's Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Employer's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over

Certificate has been issued and which arose from a previous event for which the Contractor was liable.

17.3 Employer's Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Employer's Risks] below, insofar as they directly affect the execution of the Works in the Country, are:

(a) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;

(b) Rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war, within the Country;

(c) Riot, commotion or disorder within the Country by persons other than the Contractor's Personnel;

(d) Munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity;

(e) Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

(f) Use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract;

(g) Design of any part of the Works by the Employer's Personnel or by others for whom the Employer is responsible; and

(h) Any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

17.4 Consequences of Employer's Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor's Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

(b) Payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [Employer's Risks], Cost plus profit shall be payable.

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

17.5 Intellectual and Industrial Property Rights

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

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

(a) An unavoidable result of the Contractor's compliance with the Contract; or

(b) A result of any Works being used by the Employer:

(i) For a purpose other than that indicated by, or reasonably to be inferred from, the Contract; or

(ii) In conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

17.6 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Employer's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer's Equipment and Free-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

17.7 Use of Employer's Accomoda-tion/Facilities

The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

18. Insurance

18.1 General Requirements for Insurances

In this Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Contract Data (calculated from the Commencement Date), submit to the other Party:

(a) Evidence that the insurances described in this Clause have been effected; and

(b) Copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

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

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

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

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant

coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Employer's Claims] or Sub-Clause 20.1 [Contractor's Claims], as applicable.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

18.2 Insurance for Works and Contractor's Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

(a) Shall be effected and maintained by the Contractor as insuring Party;

(b) Shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,

(c) Shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Employer's Risks];

(d) Shall also cover, to the extent specifically required in the bidding documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Employer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Contract Data (if an amount is not so stated, this sub-paragraph (d) shall not apply); and

(e) May however exclude loss of, damage to, and reinstatement of:

(i) A part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below);

(ii) A part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship;

(iii) A part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage; and

(iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [Employer's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

(a) Shall be effected and maintained by the Contractor as insuring Party;
(b) Shall be in the joint names of the Parties;
(c) Shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract; and
(d) May however exclude liability to the extent that it arises from:

(i) The Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works;

(ii) Damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects; and

(iii) A cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractor's Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The insurance shall cover the Employer and the Engineer against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. Force Majeure

19.1 Definition of Force Majeure

In this Clause, "Force Majeure" means an exceptional event or circumstance:

(a) Which is beyond a Party's control;

(b) Which such Party could not reasonably have provided against before entering into the Contract

(c) Which, having arisen, such Party could not reasonably have avoided or overcome; and

(d) Which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

(i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;

(ii) Rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war;

(iii) Riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;

(iv) Munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and

(v) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

19.3 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

19.4 Consequences of Force Majeure

If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

(b) If the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment].

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

19.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

19.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

(a) The amounts payable for any work carried out for which a price is stated in the Contract;

(b) The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;

(c) Other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;

(d) The Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and

(e) The Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

19.7 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

(a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and

(b) The sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

20. Claims, Disputes and Arbitration

20.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

(a) This fully detailed claim shall be considered as interim;

(b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and

(c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision].

The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Sub-Clause.

20.2 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision]. The Parties shall appoint a DB by the date stated in the Contract Data.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the Parties have not jointly appointed the DB 21 days before the date stated in the Contract Data and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [Discharge] shall have become effective.

20.3 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

(a) The Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Sub-Clause 20.2 [Appointment of the Dispute Board];

(b) Either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB of three persons by such date;

(c) The Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date; or

(d) The Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment;

then the appointing entity or official named in the Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

20.4 Obtaining Dispute Board's Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the

purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other Party.

In either event, this Notice of Dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

20.5 Amicable Settlement

Where a Notice of Dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

20.6 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

(a) If the contract is with foreign contractors,

International arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules;

(b) If the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

20.7 Failure to Comply with Dispute Board's Decision

In the event that a Party fails to comply with a final and binding DB decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration]. Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.

20.8 Expiry of Dispute Board's Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

(a) Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply; and

(b) The dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration].

APPENDIX

A General Conditions of Dispute Board Agreement

1. Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between:

(a) The "Employer";

(b) The "Contractor"; and

(c) The "Member" who is defined in the Dispute Board Agreement as being:

(i) The sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply, or

(ii) One of the three persons who are jointly called the "DB" (or "Dispute Board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

(a) The Commencement Date defined in the Contract;

(b) When the Employer, the Contractor and the Member have each signed the Dispute Board Agreement; or

(c) When the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

(a) Experienced in the work which the Contractor is to carry out under the Contract;

(b) Experienced in the interpretation of contract documentation; and

(c) Fluent in the language for communications defined in the Contract.

4. General Obligations of the Member

The Member shall:

(a) Have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;

(b) Not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;

(c) Have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;

(d) Not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);

(e) Comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;

(f) Not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;

(g) Not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;

(h) Ensure his/her availability for all site visits and hearings as are necessary;

(i) Become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;

(j) Treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and

(k) Be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

(a) Be appointed as an arbitrator in any arbitration under the Contract;

(b) Be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

(c) Be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

6. Payment

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

(a) A retainer fee per calendar month, which shall be considered as payment in full for:

(i) Being available on 28 days' notice for all site visits and hearings;

(ii) Becoming and remaining conversant with all project developments and maintaining relevant files;

(iii) All office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and

(iv) All services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third .This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

(b) A daily fee which shall be considered as payment in full for:

(i) Each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and

the Site, or another location of a meeting with the Other Members (if any);

(ii) Each working day on Site visits, hearings or preparing decisions; and

(iii) Each day spent reading submissions in preparation for a hearing;

(c) All reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;

(d) Any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a Site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

PROCEDURAL RULES

Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each Site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of Site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each Site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

(a) Act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case; and

(b) Adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Employer and the Contractor empower the DB, among other things, to:

(a) Establish the procedure to be applied in deciding a dispute;

(b) Decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it;

(c) Conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules;

(d) Take the initiative in ascertaining the facts and matters required for a decision;

(e) Make use of its own specialist knowledge, if any;

(f) Decide upon the payment of financing charges in accordance with the Contract;

(g) Decide upon any provisional relief such as interim or conservatory measures; and

(h) Open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

(a) It shall convene in private after a hearing, in order to have discussions and prepare its decision;

(b) It shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and

(c) If a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision; unless:

    (i) Either the Employer or the Contractor does not agree that they do so; or

    (ii) The absent Member is the chairman and he/she instructs the other Members not to make a decision.

Section IX. Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

Part A - Contract Data

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	**The Kenya Power and Lighting Company Limited,** **Stima Investment Building I, 3rd Floor,** **Kolobot Road, Parklands,** **P.O Box 30099 – 00100,** **Nairobi, Kenya.**
Engineer's name and address	1.1.2.4 & 1.3	**The Engineer will be the Consultant that shall be engaged to assist the employer in the Supervision and Management of the Project.**
Bank's name	1.1.2.11	The *Agence Française de Développement* ("The AFD"), it being specified that, according to French laws and regulations, the AFD is not a bank but a Specialized Financial Institution ("Institution Financière Spécialisée")
Borrower's name	1.1.2.12	The "Borrower" is "**The Kenya Power and Lighting Company Limited**"
Time for Completion of the Works	1.1.3.3	24 months
Defects Notification Period	1.1.3.7	365 days.
Sections	1.1.5.6	*N/A*
Specifications ESHS	1.1.6.11	Specifications ESHS are *applicable*. Employer's ESMF provided under Section VII for compliance
Exceptionally Adverse Climatic Conditions	1.1.6.15	*N/A*
Governing Law	1.4	KENYAN LAW
Ruling language	1.4	ENGLISH
Language for communications	1.4	ENGLISH

Conditions	Sub-Clause	Data
Time for Access to the Site	2.1	The Contractor will have access to the sites within one month after the effective date. The Employer shall give the Contractor right of access to the Site upon submission of evidence that the insurances specified in PCC 18 have been affected.
Engineer's Duties and Authority	3.1	*The Engineer shall obtain specific approval of the Employer before taking the following actions:* *Issuing any instruction resulting in substantial changes to the Works, or an increase of the Accepted Contract Amount and/or an extension of the Time for Completion;* *Proceeding to Determination under Sub-Clause 3.5;* *Issuing Interim Payment Certificate under Sub-Clause 14.6;* *(a) Issuance of a Taking over Certificate under Sub-Clauses 10.1 and 10.2;*
Contractor's General Obligations	4.1	The Contractor shall provide the following documents as part of the Contract and as specified in the Specification: (a) Shop drawings to be approved by the Engineer prior to starting the Works; (b) As-built drawings to be approved by the Engineer prior to taking over of the Works; and (c) Operation and maintenance manuals
Performance Security	4.2	The performance security will be in the form of a demand guarantee in the amount(s) of ***10*** per cent of the Accepted Contract Amount and in the same currency (ies) of the Accepted Contract Amount.
Progress reports	4.21	Frequency of progress reports: *Monthly*
Subcontractors	4.4	Direct payment of Sub-Contractors is **Not** allowed**.**
Normal working hours	6.5	**8:00AM to 5:00PM from Monday To Friday and 8:00AM to 1:00PM on Saturdays**
Commencement of Works	8.1	The Commencement Date shall be: The date of signature of the Contract Agreement (subject to the Contractor furnishing a Performance Security)
Delay damages for the Works	8.7 & 14.15(b)	**0.001** % of the Contract Price per day.
Maximum amount of delay damages	8.7	**10%** of the final Contract Price.

Conditions	Sub-Clause	Data
Works to be measured	12.1	The transmission line component shall be on admeasurement contract basis.
Percentage for adjustment of Provisional Sums	13.5.(b)(ii)	*N/A*
Adjustments for Changes in Cost	13.8	N/A
Contract Price	14.1	The Contract Price is a mix of Lump Sum Price Component and Admeasurement Component. The transmission substation works component shall be on lumpsum contract basis whereas the transmission line works shall be on admeasurement contract basis. (In a lump sum contract, the contractor is deemed to have included all inputs that are necessary to perform the scope of works. Neither arithmetic corrections nor price adjustments shall be made. However, errors arising from additions of subtotals shall be corrected while Admeasurement Component" means the parts of the Works in respect of which the Contract Price shall be subject to re-measurement in accordance with Clause 12 [Measurement and Evaluation].).
	14.1(b) 14.1(e)	Withholding tax shall be applicable. If requested by the Engineer, the breakdown of all unit prices shall also be submitted by the Contractor within 28 days from the Commencement Date.
Total advance payment	14.2	**10%** (Percentage) of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable
Repayment amortization rate of advance payment	14.2(b)	The repayment amortization rate (20%) shall be twice the percentage specified as Advance Payment in PC 14.2
Percentage of Retention	14.3	10%
Limit of Retention Money	14.3	10% of the Accepted Contract Amount
Plant and Materials	14.5(b)(i)	If Sub-Clause 14.5 applies: Plant and Materials for payment when shipped en route to the Site (Free on Board) ___N/A_____ *[As per price schedule]*.
	14.5(c)(i)	Plant and Materials for payment when delivered to the Site 80% [*As per price schedule]*.

Conditions	Sub-Clause	Data
Minimum Amount of Interim Payment Certificates	14.6	EUROs 10,000
Payment	14.7	The Employer shall pay to the Contractor the amount certified in each Interim Payment Certificate within ***60*** days. Payment to the Contractor of the amounts due in each currency shall be made into the following bank accounts: *[insert bank account details at the time of contract signing]*
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	The interest rate for payments in local currency is as per GC 14.8. The interest rate for payments in foreign currency is *[insert LIBOR + 200 bp]*.
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1	*[Insert period for submission of evidence of insurance and policy. Period may be from 14 days to 28 days.]* ___14__days ____28_days
Minimum amount of third party insurance per occurrence	18.3	*To be inserted during contract discussion*
Date by which the DB shall be appointed	20.2	28 days after the Commencement date
The DB shall be comprised of	20.2	A DB of Three Members
List of potential DB sole members	20.2	*None*
Appointment (if not agreed) to be made by	20.3	*President of FIDIC*
Arbitration rules **Place of arbitration**	20.6 20.6	*International Chamber of Commerce* *To be agreed between the Contractor and Employer*

Table: Summary of Sections

Section Name/Description (Sub-Clause 1.1.5.6)	Time for Completion (Sub-Clause 1.1.3.3)	Damages for Delay (Sub-Clause 8.7)

Part B - Specific Provisions

Conditions	Sub-Clause	Specific Provisions
Schedules	1.1.1.7	***A mix of Lump Sum Price Component and Admeasurement Component***
Bill of Quantities and "Daywork Schedule"	1.1.1.9	"Bill of Quantities "means the document so named relate to the Admeasurement Component of the works which is comprised in the schedules" "Daywork Schedule" means the document so named (if any) which is comprised in the Schedules.
Defects Notification Period	1.1.3.7	As per Sub-Clause 10.2 of the GCC [Taking Over of Parts of the Works]"
Lump Sum Price Component	1.1.4.13	*If the option* ***a mix of Lump Sum Price Component and Admeasurement Component*** *has been selected in Sub-Clause 14.1 of these Particular Conditions, then:* "Lump Sum Price Component" means the parts of the Works in respect of which the Contract Price shall not be subject to re-measurement in accordance with Clause 12 [Measurement and Evaluation].
Admeasurement Component	1.1.4.14	*If the option* ***a mix of Lump Sum Price Component and Admeasurement Component*** *has been selected in Sub-Clause 14.1 of these Particular Conditions, then:* "Admeasurement Component" means the parts of the Works in respect of which the Contract Price shall be subject to re-measurement in accordance with Clause 12 [Measurement and Evaluation].
Site	1.1.6.7	"Site" means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.

Conditions	Sub-Clause	Specific Provisions
Variation	1.1.6.9	"Variation" means any change to Specification or the Drawings or the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].
ESHS Specifications	1.1.6.11	*Additional Sub-Clause* "ESHS Specifications" means the document entitled environmental, social, health and safety specifications, as included in the Specification, and any additions and modifications to it in accordance with the Contract. Such document specifies the environmental, social, health and safety obligations of the Contractor.
Project Area	1.1.6.12	*Additional Sub-Clause* "Project Area" has the meaning defined in the ESHS Specifications.
Worksite - ESMP	1.1.6.13	Contractor to submit within 6 weeks of signing the contract
EPP	1.1.6.14	*Additional Sub-Clause* "EPP" stands for Environmental Protection Plan, and has the meaning defined in the ESHS Specifications
Communications	1.3	*Add the following at the end of item (a), after "Contract Data" and before ";":* ". In case of electronic transmission, these communications shall be in the form of an un-editable record attached to an electronic mail, such as a PDF document for instance, and any other communication transmitted in a different manner, such as the email body text, shall not be construed as communication under the Contract". *Before the last paragraph, add the following sentence:* "Delivery of communications, by any authorized method of transmission, shall be made against receipt"
Priority of Documents	1.5	*Add the following at the end of the Sub-Clause:* "The Contractor shall be obliged to comply with the clarification or instruction of the Engineer without any adjustment to the Contract Price and/or to the Time for Completion."
Contract Agreement	1.6	*This Sub-Clause is deleted in its entirety and replaced by:*"The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, or within 28 days after the Employer receives the Performance Security, whichever is later. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The Contract Agreement shall include any annexed memoranda comprising agreements between and signed by both Parties. The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Contractor.

Conditions	Sub-Clause	Specific Provisions
		This Contract constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and undertakings concerning the subject matter of this Contract. The Parties acknowledge and agree that by entering into this Contract they do not rely on any statement, representation, assurance or warranty of any person (whether a party to the Contract or not or whether made in writing or not) other than as expressly set out in the Contract."
Assignment	1.7	*This Sub-Clause is deleted in its entirety and replaced by:* "The Contractor shall not assign the whole or any part of the Contract or any benefit or interest in or under the Contract without the prior written consent of the Employer. The Employer shall be entitled to assign this Contract or any part of it to any person, for which purpose it shall not require the consent of the Contractor."
Care and Supply of Documents	1.8	*Delete the 2nd sentence of the 2nd paragraph in its entirety, and replace it by:* "The Contractor shall supply to the Engineer each of the Contractor's Documents in one (1) soft (digital) copy and two (2) hard (hard) copies".
Inspections and Audit by the AFD	1.15	*This Sub-Clause is deleted in its entirety and replaced by:* "The Contractor shall permit, and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit, the AFD and/or persons appointed by the AFD to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the AFD if requested by the AFD. The Contractor's attention is drawn to Sub-Clause 15.6 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of the AFD's inspection and audit rights provided for under Sub-Clause 1.15 constitute a prohibited practice subject to contract termination."
Non Waiver	1.16	*Additional Sub-Clause* Except as otherwise specifically provided for in the Contract, no failure or delay by either Party in exercising any right or remedy provided by the Laws or pursuant to the Contract will impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy will preclude any other or further exercise of it or the exercise of any other right or remedy.

Conditions	Sub-Clause	Specific Provisions
Survival of Obligations	1.17	*Additional Sub-Clause* Obligations under the Contract, which by their nature would continue beyond the termination or expiration hereof, including, by way of illustration only and not limitation, those in Clause 1 [General Provisions], Clause 11 [Defects Liability], Clause 17 [Indemnities], Clause 18 [Insurance], and Clause 20 [Claims and Disputes] shall survive the termination or expiration of the Contract.

Conditions	Sub-Clause	Specific Provisions
Severability	1.18	*Additional Sub-Clause* The Parties expressly declare that each section, clause or paragraph of this Contract will be considered separate in terms of its validity and enforceability. Therefore, if, for any reason, any provision of this Contract is declared null and void, or if a ruling states that any part of it runs contrary to governing law, said declaration will in no way affect the validity and enforceability of the other stipulations, which may be construed, understood and executed independently of the portion declared null and void. Thus, every part of this Contract not declared null and void in any way will be valid, enforceable and binding on the Parties. Likewise, if any provision of this Contract or its application to any individual or company or in a given circumstance is declared null and void, or if its enforceability is in any way limited, the other provisions herein, as well as also the application of the doubtful provision to other people or in other circumstances, will not be affected thereby, and they will be applied to the extent permitted by governing law. Notwithstanding the above, the Parties undertake to negotiate in good faith the terms of a mutually satisfactory provision to replace any clause that may be declared null and void or whose enforceability is in any way restricted.
No Partnership or Agency	1.19	*Additional Sub-Clause* Nothing contained in this Contract shall be construed to either constitute a partnership nor constitute either Party an agent or employee of the other Party.
Amendment	1.20	*Additional Sub-Clause* This Contract may not be altered, varied, changed, supplemented or amended except by a written instrument duly signed and executed by the Parties and expressly stated to be an amendment to this Contract. For the sake of clarity, any Variation under Clause 13 [Variations and Adjustments] which is leading to a substantial change to the Works, an increase of the Contract Price and/or to an extension of the Time for Completion shall be reflected in an amendment to this Contract.

Conditions	Sub-Clause	Specific Provisions
Right of Access to the Site	2.1	*Insert the following in the 1st paragraph, after the 1st sentence and before the 2nd sentence:* "This Employer is however under no obligation to give the Contractor right of access to, and possession of, any other area located outside the boundaries of the Site, even if such other area is located within the Project Area. Access to, and possession of, such any other area is fully at the Contractor's risk." *Add at the end of the 1st paragraph, after "received", the following:* "and until such time, whichever is the later, the Contractor has provided written evidence in the form of a broker's or an insurer's certificate that all insurances to be taken-out by the Contractor pursuant to the Contract have been duly put in place and are in full force and effect."
Employer's Claims	2.5	*Delete the 2nd sentence of the 2nd paragraph in its entirety.*
Delegation by the Engineer	3.2	Delegation by the Engineer is subject to the provisions of the contract between the Employer and the Engineer.
Instructions of the Engineer	3.3	*Remove the entire text from* "If the Engineer or a delegated assistant" *to* "(as the case may be)", *and replace it by the following:* "Verbal instructions given on Site shall only be binding on the Contractor if recorded by the Engineer, or his delegated assistant (as the case may be) in the on-site log book defined under Sub-Clause 4.25." *Add the following at the end of the Sub-Clause:* "If such an instruction would in the opinion of the Contractor, acting reasonably: (i) Result in possible adverse consequences for, including but not limited to, the quality of the Works and/or the Time for Completion; and/or (ii) Otherwise result in any increase in the Contract Price then: the Contractor shall immediately notify the Employer and the Engineer of the same in writing, and in any event before the Contractor implements the instruction. Following the issue of such notice, the Contractor shall implement the instruction given by the Engineer unless instructed otherwise by the Engineer. Under any circumstances, failure by the Contractor to notify the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims] shall mean that any performance of the Works relating thereto shall be deemed to be solely at the Contractor's risk and cost. The Contractor shall not have the right thereafter to rely on

Conditions	Sub-Clause	Specific Provisions
		such circumstances when a claim is made against him by the Employer for any failure by the Contractor to perform the Works in accordance with the requirements of the Contract or by him to the Employer for any relief (which includes, without limitation, any claim for any extension to the Time for Completion and/or for any additional payment) in accordance with the Contract."
Replacement of the Engineer	3.4	Not applicable
Contractor's General Obligations	4.1	*Insert the following at the end of the 2nd paragraph:* "Goods and services from countries under embargo from France, the European Union or the United Nations are not eligible and shall not be used by the Contractor." *Insert the following at the end of the Sub-Clause:* "If an unsolicited technical alternative, proposed by the Contractor, and approved by the Employer, becomes incorporated under the Contract and includes a change in the design of part or all of the Works, then unless otherwise agreed by both Parties: (i) the Bidder who becomes the Contractor shall design this part, (ii) sub-paragraphs (a) to (d) of the Conditions of Contract Sub-Clause 4.1 shall apply, and (iii) Contract price for this part of the Works shall be a lump sum price."a lump sum price."
Contractor's representative	4.3	*Delete the 3rd paragraph in its entirety and replace it by the following:* "The Contractor shall not, without the prior consent of the Employer, revoke the appointment of the Contractor's Representative or appoint a replacement."
Subcontractors	4.4	*Not Allowed*
Safety Procedures	4.8	*Add the following at the end of the Sub-Clause:* "These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure full compliance with."
Protection of the Environment	4.18	*Add the following after the last paragraph:* "These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure full compliance with."
Progress reports	4.21	*At the end of item (h), add the following:* "Details and dates relating to the personnel deployed through the design and execution to the completion of the Works shall be included in those comparisons." *Add the following new item at the end of the Sub-Clause:*

Conditions	Sub-Clause	Specific Provisions
		"(i) matters requested under the ESHS Specifications."
On-Site Log Book	4.25	*Additional Sub-Clause* The Contractor shall maintain on Site a log book, in a form approved by the Engineer and which shall integrate the fields required in the Specification. It will be used to record the Contractor's activities on a daily basis, and any instruction from the Engineer given on site. The Employer's Personnel shall have the right of access to this document at all times, and one copy of each daily record shall be promptly provided by the Contractor to the Engineer.
Facilities for Staff and Labour	6.6	*The last paragraph is deleted in its entirety and replaced by the following:* "The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the Site, except with the prior and express Employer's consent. The Employer and/or the Engineer may inspect the living quarters from time to time in order to verify their compliance with the Laws and the Contract. The Contractor shall accordingly grant the Employer and/or the Engineer full access to the living quarters as and when they require."
Health and Safety	6.7	*Add the following at the end of the Sub-Clause:* "These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure full compliance with."
Inspection	7.3	*In the first sentence of the last paragraph, add* ", in accordance with the Specification*," after "*notice to the Engineer*" and before "*whenever*"* *In the last sentence of the last paragraph*: (a) *Add* "within the prescribed period" after "notice"; (b) *Add* "risk and" before "cost".
Testing	7.4	*Add the following at the end of the 2nd paragraph:* "The Contractor shall carry out such further tests as may be required under the applicable Laws and as may be required by the relevant legally constituted public authorities in the Country in order for them to approve the completed Works. Any tests required by the applicable Laws or legally constituted authorities are deemed never to be varied or additional tests and are to be carried out by the Contractor at his risk and expense. " *In the 4th paragraph, replace* "not less than 24 hours' notice" *by* "24 hours' notice, unless a longer period is indicated in the Specification."
Commencement of Works	8.1	*Insert the following after* "Sub-Clause 16.2 [Termination by Contractor]" *and before* ".":

Conditions	Sub-Clause	Specific Provisions
		"unless the Contractor has caused, or contributed in any respect to, any non-fulfilment of one or all of these precedent conditions". *Add the following at the end of the Sub-Clause:* "As defined in the ESHS Specifications (if any), no physical work may commence on any Project Area until such time the Contractor has prepared and submitted to the Engineer the Worksite - ESMP, and the annexed EPP corresponding to a Project Area, and the Engineer has approved those."
Extension of Time for Completion	8.4	*Replace the first paragraph by the following:* "The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that any of the following causes affect his ability to meet the Time for Completion": *Add the following at the end of the Sub-Clause:* "However the Contractor's entitlement to an extension of time shall be reduced if and to the extent that the Contractor's failure to use all reasonable endeavors to mitigate any such delay has contributed to the delay.
		Any extension of Time for Completion granted to the Contractor shall, except where the Contractor is entitled to an increase in the Contract Price in accordance with other provisions of the Contract, be deemed to be full compensation and satisfaction for any loss or damage sustained or to be sustained by the Contractor in respect of the matter or thing in connection with which such extension shall have been granted."
Suspension of Work	8.8	*Add the following after the last sentence of the Sub-Clause:* "As an example, and without limitation to other possible causes, any suspension of work caused by any failure from the Contractor to comply with the obligations stated : (a) Under the ESHS Specifications (if any), in the event of a level 3 non-compliance; (b) Under Sub-Clause 4.8 as to safety procedures; (c) Under Sub-Clause 4.9 as to the quality assurance; (d) Under Sub-Clause 4.18 as to the protection of the environment; or (e) Under Sub-Clause 6.7 as to health and safety; shall be considered as cause of suspension which is the responsibility of the Contractor".

Conditions	Sub-Clause	Specific Provisions
Delayed Tests	9.2	*In the 2nd paragraph, add the following in between* "21 days" *and* "after" : ", or any other period instructed by the Engineer in accordance with and taking due regard of the Contract," *In the 3rd paragraph, add the following in between* "21 days" *and* "," : ", or any other period instructed by the Engineer under the former paragraph,"
Failure to Pass Tests on Completion	9.4	*Add the following item d) after item c):* "d) instruct the Contractor to carry out any remedial work, as provided for in Sub-Clause 7.6 [Remedial Work]"
Taking Over of Parts of the Works	10.2	*Add the following at the end of the 3rd paragraph:* "For the sake of clarity, the Defect Notification Period of a part of the Works which has been taken over under this Sub-Clause will expire when the Defect Notification Period of the Works as a whole, or of the Section to which the part is related, as the case may be, will expire. It will then typically be longer than the latter."
Works to be Measured	12.1	*If the option **full Lump Sum** has been selected in Sub-Clause 14.1 of these Particular Conditions, then* Clause 12 is not applicable *If the option **a mix of Lump Sum Price Component and Admeasurement Component** has been selected in Sub-Clause 14.1 of these Particular Conditions, replace all text before item (a) in the Sub-Clause by the following*: "The Admeasurement Component of the Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract. Whenever the Engineer requires any part of the Admeasurement Component of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:"

Conditions	Sub-Clause	Specific Provisions
Evaluation	12.3	*If the option **full Lump Sum** has been selected in Sub-Clause 14.1 of these Particular Conditions, then* Clause 12 is not applicable. *If the option **a mix of Lump Sum Price Component and Admeasurement Component** has been selected in Sub-Clause 14.1 of these Particular Conditions, delete the first paragraph in its entirety and replace it by the following:* Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the part of the Contract Price attributable to the Admeasurement Component of the Works by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.
Right to Vary	13.1	*Add the following sentence at the end of the first paragraph:* "Variations shall be strictly limited to what is directly related to and necessary for the Permanent Works, and to what falls under the skills, experience and trades of the Contractor."
Variation Procedure	13.3	*If the option **a mix of Lump Sum Price Component and Admeasurement Component** has been selected in Sub-Clause 14.1 of these Particular Conditions, replace the last paragraph in its entirety with the following:* "To the extent that the Variation relates to the Admeasurement Component of the Works, the Variation shall be evaluated in accordance with Clause 12, unless the Engineer instructs or approves otherwise in accordance with this Sub-Clause. To the extent that the Variation relates to the Lump Sum Price Component of the Works, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine adjustments to the Contract Price and the schedule of payments under Sub-Clause 14.4, unless the Engineer instructs or approves otherwise in accordance with this Sub-Clause. These adjustments shall include reasonable profit." *If the option **Full Lump Sum** has been selected in Sub-Clause 14.1 of these Particular Conditions, replace the last paragraph in its entirety with the following:* "Upon instruction of approving a Variation, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine adjustments to the Contract Price and to the schedule of payments under Sub-Clause 14.4. These adjustments shall include reasonable profit, and shall take account of the Contractor's submissions under Sub-Clause 13.2 [Value Engineering] if applicable."

Conditions	Sub-Clause	Specific Provisions
Adjustments for Changes in Legislation	13.7	*Add the following paragraph at the end of the Sub-Clause* "If the Contractor benefits or will benefit from reduced Cost as a result of such changes, the Engineer shall, subject to Sub-Clause 2.5 [Employer's Claims], proceed in accordance with Sub-Clause 3.5 [Determinations], to agree or determine the amount to be deducted from the Contract Price."
Contract Price	14.1(a)	*If the option **a mix of Lump Sum Price Component and Admeasurement Component** has been selected above, replace item (a) in its entirety by the following:* "(a) the Contract Price is the aggregate of : (i) the sum stated in the Letter of Acceptance as being the Lump Sum Price Component of the Works, forming part of the Accepted Contract Amount, and (ii) the sum agreed or determined under Sub-Clause 12.3 [Evaluation] as payable to the Contractor for the Admeasurement Component of the Works, for which a notional amount forming part of the Accepted Contract Amount is stated in the Letter of Acceptance

Conditions	Sub-Clause	Specific Provisions
		*If the option full **Lump Sum** has been selected above, replace items (a) and (b) of the Sub-Clause by the following:* "(a) The Contract Price shall be the lump sum Accepted Contract Amount and be subject to adjustments in accordance with the Contract; (c) Any quantities or price data which may be set out in a Schedule shall be used for the purposes stated in the Schedule and may be inapplicable for other purposes.
	14.1 (d)	If requested by the Engineer, the breakdown of all unit prices shall also be submitted by the Contractor within 28 days from the Commencement Date.
	14.1 (e)	*Add the following new item (e) at the end of the Sub-Clause:* (e) Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefore, imported by the Contractor for the sole purpose of executing the Contract shall be temporarily exempt from the payment of import duties and taxes upon initial importation, provided the Contractor shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the Time for Completion plus six months, in an amount equal to the full import duties and taxes which would be payable on the assessed imported value of such Contractor's Equipment and spare parts, and callable in the event the Contractor's Equipment is not exported from the Country on completion of the Contract. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon the importation of individual items of Contractor's Equipment and spare parts. Upon export of individual items of Contractor's Equipment or spare parts, or upon the completion of the Contract, the Contractor shall prepare, for approval by the customs authorities, an assessment of the residual value of the Contractor's Equipment and spare part to be exported, based on the depreciation scale and other criteria used by the customs authorities for such purposes under the provisions of the applicable Laws. Import duties and taxes shall be due and payable to the customs authorities by the Contractor on (a) the difference between the initial imported value and the residual value of the Contractor's Equipment and spare parts to exported; and (b) on the initial imported value that Contractor's Equipment and spare parts remaining in the Country after completion of the Contract. Upon payment of such dues within 28 days of being invoiced, the bond or bank guarantee shall be reduced or released accordingly; otherwise the security shall be called in the full amount remaining.

Conditions	Sub-Clause	Specific Provisions
Application for Interim Payment Certificates	14.3	*In the 1st sentence of the 1st paragraph, replace "six" by "*one soft (paper) copy and two hard (digital)*"*
Issue of Interim Payment Certificates	14.6	*Add the following sentence at the end of the 1st paragraph.* "The Engineer may withhold any amount up to one hundred percent (100%) of the certification at its discretion in the event that the monthly progress report to be submitted with the Contractor's Statement is missing any of the information listed in paragraphs (a)-(h) of Sub-Clause 4.21 [Progress reports]. Such withheld amounts shall be released in the Interim Payment Certificate in the month following the Contractor's submission of the missing information."
Payment	14.7	*Add the following sentence at the end of the Sub-Clause* "The payment period defined in item (b) above can be suspended for reasons defined in the Contract, in particular in the event of an unresolved level 3 non-compliance specified in the ESHS Specifications if any. Such suspension shall not entitle the Contractor to any additional payment under Sub-Clause 14.8 [Delayed Payment] or otherwise"
Statement at Completion	14.10	*In the 1st paragraph, replace "*six*" by "*one soft copy and two hard*"*
Application for Final Payment Certificate	14.11	*In the 1st paragraph, replace "*six*" by "*one soft copy and two hard*"* *In the 3rd paragraph, add* "by latest 56 days after the receipt of the draft final statement", *after* "the Engineer shall deliver". *In the 3rd paragraph, add the following sentence before the last sentence:* "Failure by the Engineer to deliver such Interim Payment Certificate within that period shall constitute a dispute."
Direct Payments to Sub-Contractors	14.16	*N/A*
Termination by Employer	15.2	*Add the following, after item (f) in the first paragraph:* "(g) Substantially fails to comply with the ESHS Specifications."
Valuation at Date of Termination	15.3	*Add the following at the end of the Sub-Clause after "Contract" and before ".":* ", except that the Engineer will be under no obligation to consult with the Contractor before making his determination, but may consult with the Contractor at his sole discretion."

Conditions	Sub-Clause	Specific Provisions
Corrupt or Fraudulent Practices	15.6	*Add the following at the end of the Sub-Clause:* "In addition to the provisions of this Sub-Clause, the Contractor is also bound by the provisions found under Appendix 1 to the Particular Conditions of Contract, named "Corrupt and Fraudulent Practices Policy – Social and Environmental Responsibility"."
Duty to Minimize Delay / renamed as "Duty to Minimize Delay and Cost"	19.3	*In the 1st paragraph add* "and/or Cost, including but not limited to those to the Works," *after* "delay"
Optional Termination, Payment and Release	19.6	*In the 2nd paragraph, replace* "the Engineer shall determine" *by the following:* "the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine"
Contractor's Claims	20.1	*Add the following sentence at the end of the 4th paragraph:* "As long as the event or circumstance giving rise to the claim continues having effect, the Contractor shall use all reasonable endeavours to minimise any incurred delay and/or Cost, including but not limited to those to the Works."
Failure to Comply with Dispute Adjudication Board's Decision	20.7	*Delete Sub-Clause 20.7 in its entirety and replace it by the following:* "In the event that a Party fails to comply with any decision of the DAB, whether binding, or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration] for summary or other expedited relief, as may be appropriate. Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference."

Appendix 1 to Particular Conditions of Contract Corrupt and Fraudulent Practices Policy – Social and Environmental Responsibility

1. Corrupt and Fraudulent Practices

The Contracting Authority and the suppliers, contractors, subcontractors, consultants or sub consultants must observe the highest standard of ethics during the procurement process and performance of the contract. The Contracting Authority means the Purchaser, the Employer, the Client, as the case may be, for the procurement of goods, works, plants, consulting services or non-consulting services.

By signing the Statement of Integrity the suppliers, contractors, subcontractors, consultants or sub consultants declare that (i) "it did not engage in any practice likely to influence the contract award process to the Contracting Authority's detriment, and that it did not and will not get involved in any anti-competitive practice", and that (ii) "the procurement process and the performance of the contract did not and shall not give rise to any act of corruption or fraud".

Suppliers, contractors, subcontractors, consultants or subconsultants will permit the AFD to inspect their accounts and records relating to the procurement process and performance of the AFD-financed contract, and to have them audited by auditors appointed by the AFD.

The AFD reserves the right to take any action it deems appropriate to check that these ethics rules are observed and reserves, in particular, the rights to:

(a) Reject a proposal for a contract award if it is established that during the selection process the Bidder or consultant that is recommended for the award has been convicted of corruption, directly or by means of an agent, or has engaged in fraud or anti-competitive practices in view of being awarded the Contract;

(b) Declare misprocurement when it is established that, at any time, the Contracting Authority, the suppliers, contractors, subcontractors, consultants or subconsultants their representatives have engaged in acts of corruption, fraud or anti-competitive practices during the procurement process or performance of the contract without the Contracting Authority having taken appropriate action in due time satisfactory to the AFD to remedy the situation, including by failing to inform the AFD at the time they knew of such practices.

The AFD defines, for the purposes of this provision, the terms set forth below as follows:

(a) Corruption of a Public Officer means:
- (i) The act of promising, offering or giving to a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity; or
- (ii) The act by which a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such Public Officer to act or refrain from acting in his official capacity.

(b) A Public Officer shall be construed as meaning:
- (i) Any person who holds a legislative, executive, administrative or judicial mandate (within the country of the Contracting Authority) regardless of whether that person was nominated or elected, regardless of the permanent or temporary, paid or unpaid nature of the position and regardless of the hierarchical level the person occupies;
- (ii) Any other person who performs a public function, including for a State institution or a State-owned company, or who provides a public service;
- (iii) Any other person defined as a Public Officer by the national laws of the country of the

Contracting Authority.

(c) Corruption of a private person means:

(i) The act of promising, offering or giving to any person other than a Public Officer, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations; or

(ii) The act by which any person other than a Public Officer solicits or accepts, directly or indirectly, an undue advantage of any kind for himself or for another person or entity, for such person to perform or refrain from performing any act in breach of its legal, contractual or professional obligations;

(d) Fraud means any dishonest conduct (act or omission), whether or not it constitutes a criminal offence, deliberately intended to deceive others, to intentionally conceal items, to violate or vitiate consent, to circumvent legal or regulatory requirements and/or to violate internal rules in order to obtain illegitimate profit.

(e) Anti-competitive practices mean:

(i) Any concerted or implied practices which have as their object or effect the prevention, restriction or distortion of competition within a marketplace, especially where they (i) limit access to the marketplace or free exercise of competition by other undertakings, (ii) prevent free, competition-driven price determination by artificially causing price increases or decreases, (iii) restrict or control production, markets, investments or technical progress; or (iv) divide up market shares or sources of supply;

(ii) Any abuse by one undertaking or a group of undertakings which hold a dominant position on an internal market or on a substantial part of it;

(iii) Any practice whereby prices are quoted or set unreasonably low, the object of which is to eliminate an undertaking or any of its products from a market or to prevent it from entering the market.

2. <u>Social and Environmental Responsibility</u>

In order to promote sustainable development, the AFD seeks to ensure that internationally recognised environmental and social standards are complied with. Candidates for AFD-financed contracts shall consequently undertake in the Statement of Integrity to:

(a) Comply with and ensure that all their subcontractors, or subconsultants comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the contract, including the fundamental conventions of the International Labour Organisation (ILO) and international environmental treaties;

(b) Implement environmental and social risks mitigation measures when specified in the environmental and social management plan (ESMP) provided by the Contracting Authority.

Section X. Contract Forms

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Notification of Award

Letter of Acceptance

[letterhead paper of the Employer]

[date]

To: *[name and address of the Contractor]*

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Contract Price *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our institution.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms, of the Bidding Documents.

Authorized Signature: _____
Name and Title of Signatory: _____
Name of institution: _____

Attachment: Contract Agreement

Contract Agreement

THIS AGREEMENT made the _____ day of _____, _____, between _____of _____ (hereinafter "the Employer"), of the one part, and _____ of _____ (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer desires that the Works known as _____ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, in the sum of [*insert Contract Price or Ceiling in words and figures, expressed in the Contract currency(ies)*] (hereafter called "the Contract Price").

The Employer 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.

(i) The Letter of Acceptance;

(ii) The Letter of Bid and Appendix to Bid (including the signed Statement of Integrity);

(iii) The addenda Nos _____(if any);

(iv) The Particular Conditions;

(v) The General Conditions;

(vi) The Specifications;

(vii) The Drawings;

(viii) The completed Schedules; and

(ix) The Contractor's Bid and any other documents forming part of the contract.

3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of _____ on the day, month and year specified above.

Signed by _____ (for the Employer)

Signed by _____ (for the Contractor)

Performance Security

(Demand Guarantee)

Beneficiary: _____
Date: _____
PERFORMANCE GUARANTEE No.: _____
Guarantor: _____

WHEREAS……(hereinafter called "the Supplier") has undertaken, in pursuance of your Tender Number……..(reference number of the Tender) and its Tender dated ……(insert Supplier's date of Tender taken from the Tender Form) to supply ……(description of the goods) (hereinafter called "the Tender)..

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

At the request of the Bidder, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____),[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 first demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Bidder is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the …. Day of ……, 2… [2], and any demand for payment under it must be received by us at this office indicated above on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

_____
[signature(s)]

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

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[1] *The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Letter of Acceptance, less provisional sums, if any, and denominated either in the currency(cies) of the Contract or a freely convertible currency acceptable to the Beneficiary.*

[2] *Insert the date twenty-eight days after the expected completion date as described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer 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. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "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."*

Advance Payment Security

Demand Guarantee

Beneficiary: _____
Date: _____
ADVANCE PAYMENT GUARANTEE No.: _____
Guarantor: _____

We have been informed that _____ (hereinafter called "the Bidder") has entered into Contract No. _____ dated _____ with the Beneficiary, for the execution of _____ (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum _____ (_____) is to be made against an advance payment guarantee.

At the request of the Bidder, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (_____) [1] upon receipt by us of the Beneficiary's first 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 Bidder:

(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 Bidder has failed to repay.

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 Bidder on its account number _____ at _____

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Bidder as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the ___ day of _____, 2___,[2] whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.

_____ *[signature(s)]*

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[1] *The Guarantor shall insert an amount representing the amount of the advance payment and denominated either in the currency(ies) of the advance payment as specified in the Contract, or in a freely convertible currency acceptable to the Employer.*

[2] *Insert the expected expiration date of the Time for Completion. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer 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. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "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."*

Retention Money Security

Demand Guarantee

_____ *[Guarantor letterhead or SWIFT identifier code]*
Beneficiary: _____ *[Insert name and Address of* Employer*]*
Date: _____ *[Insert date of issue]*
RETENTION MONEY GUARANTEE No.: *[Insert guarantee reference number]*
Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that _____ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Bidder") 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").

Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to 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, payment of *[*insert the second half of the Retention Money *or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money,* the difference between half of the Retention Money and the amount guaranteed under the Performance Security*]* is to be made against a Retention Money guarantee.

At the request of the Bidder, 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]* (_____) *[amount in words]*[1] upon receipt by us of the Beneficiary's first demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed *document* accompanying or identifying the demand, stating that the Bidder 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 therein.

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 Bidder on its account number _____ at _____ *[insert name and address of Bidder's bank]*.

This guarantee shall expire no later than the …. day of ……, 2… [2], and any demand for *payment* under it must be received by us at the office indicated above on or before that date.
This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.

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[1] *The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Beneficiary.*

[2] *Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in GC Clause 11.9. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer 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. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "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."*