

PROCUREMENT DOCUMENTS

**Bidding Document for Procurement of Plant
Design, Supply, and Installation**

Procurement of:
**132 kV underground cable Nanyuki – Rumuruti Transmission
line**

VOLUME 1 OF 2

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ICB No: KETRACO/PT/009/2021

Employer: Kenya Electricity Transmission Company

Country: Kenya

Preface

This Bidding Document for Procurement of Works has been prepared by Kenya Electricity Transmission Company Limited (KETRACO) and is based on the Standard Bidding Document for Procurement of Works issued by the African Development Bank,¹ dated September 2010, revised February 2018.

The Standard Bidding Document for Procurement of Works reflects the structure and the provisions of the Master Document for Procurement of Works issued by the Multilateral Development Banks, except where specific considerations within the African Development Bank have required a change.

¹ "Bank" shall mean the African Development Bank, the African Development Fund, the Nigeria Trust Fund, as well as any other funds administered by the African Development Bank, and any or all of these entities, as the context may require.

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PART 1 – Bidding Procedures

Section I. Instructions to Bidders

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Section I. Instructions to Bidders

A. General

- 1. Scope of Bid** 1.1 The Employer indicated in Section II, Bid Data Sheet (BDS) issues this Bidding Document for the procurement of Works, as specified in Section VI, Requirements. The name, identification, and number of lots are provided in the BDS.
- 1.2 Unless otherwise stated, throughout this Bidding Document definitions and interpretations shall be as prescribed in Section VII, General Conditions.
- 2. Source of Funds** 2.1 The Borrower or Recipient (hereinafter called "Borrower") indicated in the BDS has applied for or received financing (hereinafter called "funds") from the African Development Bank² (hereinafter called "the Bank") toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which this Bidding Document is issued.
- 2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of the financing agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
- 3. Fraud and Corruption** 3.1 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank Financing), as well as Bidders, Suppliers, and contractors, and their agents (whether declared or not), subcontractors, sub-consultants, service providers or suppliers, and any personnel thereof, under Bank-financed contracts, observe the highest standard of ethics during the procurement

² The specific financing institution shall be as stipulated in the **BDS**.

and execution of such contracts³. In pursuance of this policy, the Bank:

(a) defines, for the purposes of this provision, the terms set forth below as follows:

(i) *“Corrupt Practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party⁴;*

(ii) *“Fraudulent practice” is any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;*

(iii) *“Collusive Practice” is an arrangement between two or more parties⁵, designed to achieve an improper purpose, including to influence improperly the actions of another party; and*

(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 party⁶;*

(v) “Obstructive practice” is

(aa) deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false

³ In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

⁴ For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Bank staff and employees of other organizations taking or reviewing procurement decisions.

⁵ For the purpose of this sub-paragraph, “parties” refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other’s bid prices or other conditions.

⁶ For the purpose of this sub-paragraph, “party” refers to a participant in the procurement process or contract execution.

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

(bb) acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under paragraph 3.1(e) below.

(b) will reject a proposal for award if it determines that the Bidder recommended for award, or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees has, directly or indirectly engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the Contract in question;

(c) will declare misprocurement and cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of such Financing engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the procurement or the implementation of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;

(d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures⁷ including by

⁷ A firm or an individual may be declared ineligible to be awarded a Bank financed contract: (i) upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including, *inter alia*, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, or otherwise decided by the Bank; and through the application of the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group; and (ii) as a result of temporary suspension or early temporary suspension in connection with an on-going sanction proceeding. See footnote 18 and paragraph 9 of Appendix 1 of the Rules and Procedures for Procurement of Goods and Works.

publicly declaring such firm or individual ineligible to bid for, or to be awarded Bank-financed contracts either indefinitely or for a stated period of time, (i) to be awarded a Bank-financed contract; (ii) to be a nominated⁸ sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract ; and

(e) will require that a clause be included in Bidding Documents and in contracts financed by the Bank, requiring bidders, suppliers and contractors and their sub-contractors, agents, personnel, consultants, service providers, or suppliers, to permit the Bank to inspect all accounts and records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by the Bank.

3.2 Furthermore, Bidders shall be aware of the provisions stated in Section VII, General Conditions.

4. Eligible Bidders

4.1 A Bidder may be a natural person, private entity, government-owned entity – subject to ITB 4.5 – or any combination of such entities supported by a letter of intent to enter into an agreement or under an existing agreement in the form of a joint venture, consortium, or association (JVCA). In the case of a joint venture, consortium, or association:

- a) unless otherwise specified in the BDS, all partners shall be jointly and severally liable, and*
- b) the JVCA shall nominate a Representative who shall have the authority to conduct all businesses for and on behalf of any and all the partners of the JVCA during the bidding process and, in the event the JVCA is awarded the Contract, during contract execution.*

4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of an eligible country, in accordance with the

⁸ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding documents) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirement for the particular bid; or (ii) appointed by the Borrower.”

Bank's **Rules and Procedures for Procurement of Goods and Works**, and as listed in Section V, Eligible Countries.⁹ A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including Related Services.

4.3 A Bidder shall not have a conflict of interest. All Bidders found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest with one or more parties in this bidding process, if:

- (a) they have controlling partners in common; or
- (b) they receive or have received any direct or indirect subsidy from any of them; or
- (c) they have the same legal representative for purposes of this bid; or
- (d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
- (e) A Bidder 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 it is involved. However, this does not limit the inclusion of the same subcontractor, not otherwise participating as a Bidder, in more than one bid; or

⁹ Including eligibility criteria for participation in the supply of goods, works and related services.

(f) a Bidder participated as a consultant in the preparation of Section VI, Requirements that are the subject of the bid; or

(g) A Bidder or any of its affiliates has been hired, or is proposed to be hired, by the Employer or the Borrower for the supervision of the contract.

4.4 A Bidder that is under a declaration of ineligibility by the Bank in accordance with ITB Clause 3, at the date of the deadline for bid submission or thereafter, shall be disqualified.

4.5 Government-owned entities in the Borrower's country shall be eligible only if they can establish that they (i) are legally and financially autonomous, (ii) operate under the principles of commercial law, and (iii) are not dependent agencies of the Employer or the Borrower.

4.6 Bidders shall not be under execution of a Bid-Securing Declaration in the Employer's Country.

4.7 Bidders shall provide such evidence of their continued eligibility satisfactory to the Employer, as the Employer shall reasonably request.

4.8 Firms from an eligible country shall be excluded if:

(a) as a matter of law or official regulation, the Borrower's country prohibits commercial relations with that country; or

(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the Borrower's country prohibits any import of Goods from that country or any payments to persons or entities in that country.

4.9 In case a prequalification process has been conducted prior to the bidding process, this bidding is open only to prequalified Bidders.

4.10 A firm sanctioned by the Bank in accordance with the above ITB Clause 3.1 (d), or in accordance with the Bank's policies on

anti-corruption and fraud and Bank's sanctions procedures¹⁰, shall be ineligible to be awarded a Bank-financed contract, or to benefit from a Bank-financed contract, financially or in any other manner, during the period of time determined by the Bank.

**5. Eligible
Goods and
Related Services**

5.1 All goods and Related services to be supplied under the Contract and financed by the Bank, shall have as their country of origin an eligible country of the Bank in accordance with the Bank's **Rules and Procedures for Procurement of Goods and Works**, and as listed in Section V, Eligible Countries.

5.2 For purposes of this Clause, the term "Goods" includes commodities, raw material, machinery, equipment, and industrial plants; and "Related Services" includes services such as insurance, transportation, installation, commissioning, training, and initial maintenance.

5.3 The term "country of origin" means the country where the Goods have been mined, grown, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognised article results that differs substantially in its basic characteristics from its imported components.

5.4 The nationality of the firm that produces, assembles, distributes, or sells the Goods shall not determine their origin.

B. Contents of Bidding Document

**6. Sections
Bidding
Document**

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

PART 1 Bidding Procedures

Section I. Instructions to Bidders (ITB)

¹⁰ See the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group and the Bank's Whistleblowing and Complaints Handling Policy. The Bank's sanctions procedures are publicly disclosed on the Bank's external website."

Section II. Bid Data Sheet (BDS)

Section III. Evaluation and Qualification Criteria

Section IV. Bidding Forms

Section V. Eligible Countries

PART 2 Employer's Requirements

Section VI. Requirements

PART 3 Conditions of Contract and Contract Forms

Section VII. General Conditions (GC)

Section VIII. Particular Conditions (PC)

Section IX. Contract Forms

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

6.3 The Bidder shall obtain the Bidding Document from the source stated by the Employer in the Invitation for Bids; otherwise the Employer is not responsible for the completeness of the Bidding Document.

6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Bidding Document. Failure to furnish all information or documentation required by the Bidding Document may result in the rejection of the bid.

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

7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer's address indicated in the BDS or raise his enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond to any request for clarification, provided that such request is received prior to the deadline for submission of bids, within the number of days specified in the BDS. The Employer's response shall be in writing with copies to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding

Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.

7.2 Where applicable, the Bidder is advised to visit and examine the project site and obtain for itself on its own responsibility all information that may be necessary for preparing the bid and entering into a contract for the provision of the Requirements. The costs of visiting the site shall be at the Bidder's own expense.

7.3 Pursuant to ITB 7.2, where the Bidder and any of its personnel or agents have been granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, 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 visit.

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

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, including the text of the questions raised 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 Document in accordance with ITB 6.3. Any modification to the Bidding Document 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.

7.7 Non-attendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

**8. Amendment
of Bidding
Document**

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

8.2 Any addendum issued shall be part of the Bidding Document and shall be communicated in writing to all who have obtained the Bidding Document from the Employer in accordance with ITB 6.3.

8.3 To give prospective Bidders reasonable time in which to take an addendum 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

C. 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 that language, 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
- b) Completed Schedules as provided in Section IV, Bidding Forms;

- c) Bid Security or Bid -Securing Declaration, in accordance with ITB 19;
- d) at the Bidder's option, alternative proposals, if permissible, in accordance with ITB 13;
- e) written confirmation authorising the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
- f) documentary evidence establishing the eligibility of the Goods and Related Services offered by the Bidder, in accordance with ITB 17.1;
- g) documentary evidence establishing the Bidder's qualifications in accordance with the requirements of Section III, Evaluation and Qualification Criteria, using the relevant forms furnished in Section IV, Bidding Forms;
- h) documentary evidence as specified in the BDS, establishing the conformity of the Technical Proposal offered by the Bidder with the Bidding Document, using the relevant forms furnished in Section IV, Bidding Forms;
- i) in the case of a bid submitted by a JVCA, JVCA agreement, or letter of intent to enter into a JVCA including a draft agreement, indicating at least the parts of the Requirements to be executed by the respective partners;
- j) any other document required in the BDS.

12. Letter of Bid and Price Schedules

12.1 The Bidder shall submit the Letter of Bid using the form furnished in Section IV, Bidding Forms. This form must be completed without any alterations to its format, and no substitutes shall be accepted. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

13.1 Unless otherwise indicated in the BDS, alternative proposals shall not be considered. If alternative proposals are permitted, their method of evaluation shall be as stipulated in Section III, Evaluation and Qualification Criteria.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the BDS, as will the method of evaluating different times for completion.

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the bidding document must first price the Employer's requirements as described in the bidding document 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 basic technical requirements 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 requirements, and such parts shall be identified in the BDS, as will the method for their evaluation, and described in Section VI, Requirements.

14. Bid Prices and Discounts

14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Price Schedules shall conform to the requirements specified in ITB 14.2.

14.2 Unless otherwise provided in the BDS and the General Conditions (GC), the prices quoted by the Bidder shall be fixed.

14.3 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 will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

14.4 The price to be quoted in the Letter of Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.

14.5 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.

14.6 If, pursuant to ITB 14.2, prices are adjustable, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data provided in Section IV, Bidding Forms and the Employer may require the Bidder to justify its proposed indices and weightings.

14.7 If so indicated in ITB 1.1, bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer any price reduction 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. Price reductions or discounts shall be submitted in accordance with ITB 14.5, provided the bids for all lots (contracts) are submitted and opened at the same time.

14.8 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 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) for payment shall be as specified in the BDS.

16. Documents Establishing the Qualifications of the Bidder

16.1 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 Section IV, Bidding Forms.

17. Documents Establishing the Eligibility of the Goods and Related Services

17.1 To establish the eligibility of the Goods and Related Services in accordance with ITB Clause 5, Bidders shall complete the forms, included in Section IV, Bidding Forms.

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, pursuant to ITB 22. 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, the Bidder granting the request shall also extend the bid security 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 In the case of fixed price contracts, 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 adjusted as specified in the request for extension. Bid evaluation shall be based on the Bid Price without taking into consideration the above correction.

19. Bid Security 19.1 The Bidder shall furnish as part of its bid, at the option of the Employer, and as stipulated in the BDS, the original of either a Bid-Securing Declaration or a bid security using the relevant form included in Section IV, Bidding Forms. In the case of a bid security, the bid security amount and currency shall be as 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 surety;
- (b) an irrevocable letter of credit; or

- (c) a cashier's or certified check;

from a reputable source from an eligible country. If the unconditional guarantee is issued by an insurance company or a bonding company located outside the Employer's Country, the issuer 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. In either case, the form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight days (28) beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

19.4 Pursuant to the option stipulated at ITB 19.1, 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 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder's furnishing of the performance security pursuant to ITB 38.

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 in the Letter of Bid or
- (b) if the successful Bidder fails to:
 - (i) sign the Contract in accordance with ITB 37; or
 - (ii) furnish a performance security in accordance with ITB 38.

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

19.9 If a Bid-Securing Declaration is executed in accordance with ITB 19.7, the Employer will declare the Bidder ineligible to be awarded a contract by the Employer for the period of time stated in the Form of Bid-Securing Declaration.

**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." 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 authorised to sign on behalf of the Bidder. This authorisation 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 authorisation must be typed or printed below the signature. All pages of the bid where entries have been made shall be signed or initialled by the person signing the bid.

20.3 A bid submitted by a JVCA shall comply with the following requirements:

(a) Unless not required in accordance with ITB 4.1 (a), be signed so as to be legally binding on all partners; and

(b) Include the Representative's authorisation referred to in ITB 4.1 (b), consisting of a power of attorney signed by those legally authorised to sign on behalf of the JVCA.

20.4 Any amendments, interlineations, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the bid.

D. Submission and Opening of Bids

21. Submission, Sealing and Marking of Bids

21.1 Bidders may always submit their bids by mail or by hand. If so specified in the BDS, bidders shall have the option of submitting their bids electronically. Procedures for submission, sealing and marking are as follows:

(a) Bidders submitting bids by mail or by hand shall enclose the original and copies of the Bid in separate sealed envelopes. If so permitted in accordance with ITB 13 alternative proposals, and copies thereof, shall also be placed in separate envelopes. The envelopes shall be duly marked as "ORIGINAL," "ALTERNATIVE," "ORIGINAL COPY," and "ALTERNATIVE COPY". These envelopes shall then be enclosed in one single package. The rest of the procedure shall be in accordance with ITB 21.2 and 21.3.

(b) Bidders submitting bids electronically shall follow the electronic bid submission procedures specified in the BDS.

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 pursuant to ITB 1.1; and
- (d) bear a warning not to open before the time and date for bid opening

21.3 If envelopes and packages 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 indicated in the BDS.
- 22.2 The Employer may, at its discretion, extend the deadline for the submission of bids by amending the Bidding Document 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 authorised representative, and shall include a copy of the authorisation in accordance with ITB 20.2, (except that withdrawal notices do not require copies). 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 The Employer shall conduct the bid opening in public, in the presence of Bidders` designated representatives and anyone

who choose to attend, and at the address, date and time specified in the BDS. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 21.1, 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 authorisation 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 authorisation 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 authorisation 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 The Employer shall open all other envelopes one at a time and read out: the name of the Bidder, the Bid Price(s), any discounts and their application methodology, alternative bids, the presence or absence of a bid security or Bid-Securing Declaration; 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. No bid shall be rejected at bid opening 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 if applicable, including any discounts and alternative proposals; and the presence or absence of a bid security or a Bid-Securing Declaration. 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 who submitted bids in time, and posted online when electronic bidding is permitted.

E. Examination of Bids

26. Confidentiality

26.1 Information relating to the evaluation of bids shall not be disclosed to Bidders or any other persons not officially concerned with such process until information on Contract award is communicated to all Bidders.

26.2 Any attempt by a Bidder to influence improperly the Employer in the evaluation of the bids or Contract award decisions may result in the rejection of its bid.

26.3 Notwithstanding ITB 26.1, from the time of bid opening to the time of Contract award, if any Bidder wishes to contact the Employer on any matter related to the bidding process, it should 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, allowing a reasonable time for 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 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 29.

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. Determination of Responsiveness

28.1 The Employer's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB 11.

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

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

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

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

28.3 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 Requirements as specified in Section VI; or

(ii) limit in any substantial way, inconsistent with the Bidding Document, 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.

28.4 The Employer shall examine the technical aspects of the bid in particular, to confirm that all requirements of Section VI have been met without any material deviation, reservation, or omission.

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

28.6 Provided that a bid is substantially responsive, the Employer may waive any quantifiable nonconformity in the bid that does not constitute a material deviation, reservation or omission.

28.7 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.

28.8 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 the non-conforming item or component. The adjustment shall be made using the methodology indicated in Section III, Evaluation and Qualification Criteria.

F. Bid Evaluation and Comparison

29. Correction of Arithmetical Errors

29.1 The Employer shall use the criteria and methodologies indicated in Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted.

29.2 Provided that the bid is substantially responsive, the Employer shall correct arithmetical errors as indicated in Section III, Evaluation and Qualification Criteria.

29.3 If a Bidder does not accept the correction of errors, its bid shall be declared non-responsive and its Bid Security shall be forfeited or the Bid -Securing Declaration executed.

30. Conversion to Single Currency

30.1 For evaluation and comparison purposes, the currency (ies) of the bid shall be converted into a single currency as specified in Section III, Evaluation and Qualification Criteria.

31. Bid Adjustments

31.1 For the evaluation and comparison purposes the Employer shall adjust the bid prices using the criteria and methodology specified in Section III. Evaluation and Qualification Criteria.

31.2 Unless otherwise specified in the BDS, no margin of domestic or regional preference shall apply. If a margin of preference applies, the application methodology shall be as specified in Section III, Evaluation and Qualification Criteria, and in accordance with the provisions stipulated in the Bank's Rules and Procedures for Procurement of Goods and Works.

31.3 If in the opinion of the Employer the bid which results in the lowest Evaluated Bid, is seriously unbalanced or front loaded or substantially below the Employer's estimates, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the methods and schedule proposed. 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.

32. Qualification of the Bidder

32.1 The Employer shall determine to its satisfaction whether the Bidder that is selected as having submitted the lowest evaluated and substantially responsive bid meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

32.2 The determination shall be based upon an examination of the documentary evidence of the Bidder's qualifications submitted by the Bidder, pursuant to ITB 16.

32.3 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.

32.4 The capabilities of the manufacturers and subcontractors proposed in its Bid to be used by the lowest evaluated Bidder for identified major items of the Requirements will also be evaluated for acceptability in accordance with the criteria and methodologies defined in Section III, Evaluation and Qualification Criteria. Their participation should be confirmed with a letter of intent between the parties, as needed. Should a manufacturer or subcontractor be determined to be unacceptable, the Bid will not be rejected, but the Bidder will be required to substitute an acceptable manufacturer or subcontractor without any change to the bid price.

33. Comparison of Bids

33.1 Subject to ITB 29, 30 and 31, the Employer shall compare all substantially responsive bids to determine the lowest evaluated bid.

34. Employer's Right to Accept Any Bid, and to Reject Any or All Bids

34.1 The Employer reserves the right to accept or reject any bid, and 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.

G. Award of Contract

35. Award Criteria

35.1 Subject to ITB 34.1, the Employer shall award the Contract to the Bidder whose offer has been determined to be the lowest evaluated bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.

36. Notification of Award

36.1 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 (hereinafter and in the Contract Forms called “the Contract Price”).

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

36.3 At the same time, the Employer shall also notify all other Bidders of the results of the bidding, and shall publish in UNDB online and at the Bank’s website (www.afdb.org), the results identifying the bid and lot numbers and the following information: (i) name of each Bidder who submitted a Bid; (ii) bid prices as read out at bid opening; (iii) name and evaluated prices of each Bid that was evaluated; (iv) name of bidders whose bids were rejected and the reasons for their rejection; and (v) name of the winning Bidder, and the price it offered, as well as the duration and summary scope of the contract awarded. After publication of the award, unsuccessful bidders may request in writing to the Employer for a debriefing seeking explanations on the grounds on which their bids were not selected. The Employer shall promptly respond in writing to any unsuccessful Bidder who, after Publication of contract award, requests a debriefing.

37. Signing of Contract

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

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

37.3 Upon the successful Bidder’s furnishing of the signed Contract Agreement and Performance Security pursuant to ITB 38, the Employer will discharge its Bid Security, pursuant to ITB 19.

37.4 Notwithstanding ITB 37.2 above, in case signing of the Contract Agreement is prevented by any export restrictions attributable to the Employer, to the country of the Employer, or to the use of the products/goods, systems or services to be supplied, where such export restrictions arise from trade regulations from a country supplying those products/goods,

systems or services, the Bidder shall not be bound by its bid, always provided, however, that the Bidder can demonstrate to the satisfaction of the Employer and of the Bank that signing of the Contract Agreement has not been prevented by any lack of diligence on the part of the Bidder in completing any formalities, including applying for permits, authorisations and licenses necessary for the export of the products/goods, systems or services under the terms of the Contract Agreement.

38. Performance Security

38.1 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 conditions of contract, subject to ITB 31.3, using for that purpose the Performance Security Form included in Section IX, 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.

38.2 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. General	
ITB 1.1	The number of the Invitation for Bids is : <u>KETRACO/PT/009/2021</u>
ITB 1.1	The Employer is: Kenya Electricity Transmission Company Limited
ITB 1.1	<p>The name of the bidding process is: PROCUREMENT OF DESIGN, SUPPLY AND ERECTION OF 132KV UNDEGROUND CABLE NANYUKI-RUMURUTI TRANSMISSION LINE</p> <p>The identification number of the bidding process is: <u>KETRACO/PT/009/2021</u></p> <p>The number and identification of lots comprising this bidding process is: N/A</p>
ITB 2.1	The Borrower is: Government of Kenya
ITB 2.1	The specific Bank financing institution is: African Development Bank
ITB 2.1	The name of the Project is: Supplementary Financing For The Ethiopia - Kenya Electricity Highway Project
ITB 4.1 (a)	The individuals or firms in a joint venture, consortium or association shall be jointly and severally liable.
ITB 4.4	<p>A list of debarred firms is available at <u>https://www.afdb.org/en/projects-operations/debarment-and-sanctions-procedures</u></p>
B. Contents of Bidding Document	
ITB 7.1	<p>For <u>clarification purposes</u> only, the Employer's address is:</p> <p>Attention: Project Manager: NANYUKI UNDERGROUND CABLE AND ASSOCIATED TRANSMISSION LINES</p>

	<p>Street Address:</p> <p>The Kenya Electricity Transmission Company Ltd 5th Floor, KAWI COMPLEX, BLOCK B, SOUTH C Popo Lane Off Red Cross Road, South C, PO Box 34942</p> <p>Floor/Room number: 5th Floor</p> <p>City: Nairobi</p> <p>ZIP Code: 00100</p> <p>Country: Kenya</p> <p>Telephone: +254-20-4956000</p> <p>Electronic mail address: ketracotendersug@ketraco.co.ke</p> <p>Requests for clarifications should be received by the Employer no later than fourteen days prior to the deadline for submission of Bids.</p>
ITB 7.4	<p>A Pre-Bid meeting shall take place.</p> <p>If a Pre-Bid meeting will take place, it will be at the following date, time and place: Date: 2nd March 2021 Time: <u>10.00am</u> Place: <u>Kenya Electricity Transmission Company Offices Nairobi</u></p> <p>A site visit conducted by the Employer shall be organized.</p> <p>If a Site Visit will take place, it will be at the following date, time and place: Date: 3rd March 2021. Time: 8.00 am</p>

	Place: Nanyuki 132/33 kv substation
C. Preparation of Bids	
ITB 10.1	The language of the bid is: English
ITB 11.1 (h)	<p>The Bidder must provide the following Documentary Evidence to establish the conformity of the Technical Proposal with the Bidding Document:</p> <p>a) All Technical Schedules with detailed information of offered materials and equipment, in which all required information, should be filled completely as specified in the Tender documents and all documents as requested within clauses of Section VI</p> <p>b) Copies of Type Test Reports and technical documents (catalogue, brochures, drawings.) of each major item offered shall form part of the Bid. Copies of Type test reports shall meet the following:</p> <ul style="list-style-type: none"> i. Type test reports shall be carried out by a laboratory independent from manufacturer or with the witness of independent laboratory. Accreditation certificate for testing laboratory shall be presented. ii. Results of type test shall have been conducted at least three (3) years prior to the date of tender submission. The Bidder shall submit contact details (Title, email and fax) of certifying laboratory iii. Testing materials and equipment in Type Test Reports shall have the same code/ country/ manufacturer and technical parameters as offered materials and equipment. Type tests of non-conforming materials/ equipment shall not be accepted. iv. Type test reports shall include all items tested and results confirming that they meet the requirements of applied standards as stipulated in Tender Documents <p>The major equipment are:</p> <p>Underground Cable, Outdoor terminal equipment, Underground optic fiber cable, Cable surveillance Equipment</p>

	<p>c) The manufacturer of the major equipment is required to have been awarded a valid ISO 9001 Certificate or equivalent Quality Assurance Certification.</p> <p>d) The manufacturers must have successfully manufactured and supplied similar items (for projects of 132 kV and above) for the last fifteen (15) years in conditions to those prevailing on site</p> <p>e) Equipment similar in all specifications to those offered as the major equipment to be supplied must have been installed and been in service for at least ten (10) years outside the country of manufacture in similar conditions to those prevailing on site. The bidder shall submit documentary evidence, including the most recent type tests.</p>
ITB 11.1 (j)	<p>The Bidder shall submit with its bid the following additional documents:</p> <p>Qualification requirements for bidders, including members of joint ventures, consortia, subcontractors or vendors:</p> <p>In case of joint venture/consortium, at least one member of the Bidder, must have certification for ISO 9001 or/and 9002: Quality Management/Manufacturing System or equivalent, applicable to:</p> <ul style="list-style-type: none"> • Design, Engineering, Installation, Construction and Commissioning of overhead and underground cable transmission lines of voltages 132kV and above <p>The Bidder shall submit, with his Bid, certification verifying the Quality Assurance level.</p> <p>The Bidder shall submit a contract methodology describing a full and comprehensive work plan for the implementation of the project.</p> <p>In general, for items of supply, the vendors must have successfully manufactured and supplied in any one year during the last five years, the quantity being proposed for subcontracting, which are in satisfactory operation/use for the past two years as on the date of bid closing. Customer references and testimonials must be provided</p> <p>The Bidder shall submit with its bid, the Manufacturer's Authorization for the following part or component:</p>

	<ol style="list-style-type: none"> 1. Terminal points (Cable sealing end) 2. Underground optical fiber 3. 132kV HV Underground cable 4. Cable riser structure 5. Insulators, fittings and accessories 6. Surge Arrestors 7. Cable Accessories 8. Underground optical fiber accessories 9. CCTV Equipment 10. Underground Cable Vandalism Detection and Surveillance Equipment 11. Unmanned Aerial Vehicle 12. Handheld data collection devices
ITB 13.1	Alternative bids are not permitted.
ITB 13.2	<p>Alternatives to the Times for Completion shall not be permitted.</p> <p>Time to complete the Plant, Installation Services and pre-commissioning activities shall be 12 months.</p>
ITB 14.2	Prices shall be fixed.
ITB 14.3	Bidders shall quote for the entire Plant and Installation Services on a "single responsibility" basis.
ITB 14.5(a)	The Named place of destination shall be: CIP The project site of Nanyuki - Rumuruti U/G Cable and associated transmission lines.
ITB 14.6	The prices quoted by the Bidder shall not be subject to adjustment during the performance of the Contract.
ITB 15.1	<p>The currency(ies) of the bid and the payment currency(ies) shall be as described below:</p> <p>(a) The unit rates and prices shall be quoted by the Bidder in the Bill of Quantities separately in the following currencies:</p>

	<p>(i) for those inputs to the Requirements that the Bidder expects to supply from within the Employer's country, in Kenya shillings, further referred to as "the local currency"; and</p> <p>(ii) for those inputs to the Requirements that the Bidder expects to supply from outside the Employer's country (referred to as "the foreign currency requirements"), in up to any three currencies of any country.</p> <p>(b) 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 unit rates and prices and shown in the Schedule of Adjustment Data, furnished in Section IV. Bidding Forms, are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.</p>
ITB 16.1	The Bidder shall not submit with its bid, evidence that it will be represented by an Agent in the country.
ITB 18.1	The bid validity period shall be: 180 calendar days.
ITB 19.1	<p>The Bidder shall furnish a bid security, in the amount of not less than Four hundred and fifty four thousand (454,000) US Dollars, or its equivalent in a freely convertible currency issued from a tier 1 bank licensed by the Central Bank of Kenya as per Form of Bid Security included in Section VII – Forms and Procedures</p> <p>The bid security shall be valid for 28days beyond the original validity period of the bid of 180 days or 28days beyond any period of extension if required under ITB 19.2;</p>
ITB 20.1	<p>In addition to the original of the Bid, the number of copies is: three (3) printed copies must be clearly labelled, Copy 1, 2, 3 and three (3) soft copies in CDs/DVDs. The ORIGINAL printed hard copy shall still remain the main reference document. Soft copies must be submitted and shall be at the bidder's risk as to their completeness and accuracy.</p> <p>The soft copies provided in CDs (or DVDs) shall be structured strictly as per ITB 11.1. Each Volume shall be presented in a separate folder. Each</p>

	Section shall be provided as single PDF files as per ITB 11.1. Additionally, data sheets and price schedules shall be provided as <i>editable Excel 2007 or 2010 files</i>
ITB 20.2	<p>The written confirmation of authorisation to sign on behalf of the Bidder shall indicate:</p> <p>The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid such as a Power of Attorney; and</p> <p>In the case of Bids submitted by an existing or intended JVCA an undertaking signed by all parties (i) stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1(a), and (ii) nominating a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JVCA during the bidding process and, in the event the JVCA is awarded the Contract, during contract execution.</p>
D. Submission and Opening of Bids	
ITB 21.1	Bidders shall not have the option of submitting their bids electronically.
ITB 21.1 (b)	Not applicable
ITB 22.1	<p>For <u>bid submission purposes</u> only, the Employer's address is :</p> <p>Attention: The Company Secretary</p> <p>The Kenya Electricity Transmission Company Ltd</p> <p>5th Floor,</p> <p>KAWI COMPLEX, BLOCK B, SOUTH C</p> <p>Popo Lane Off Red Cross Road,</p> <p>South C,</p> <p>PO Box 34942 – 00100</p> <p>Nairobi,</p> <p>Kenya</p> <p>The deadline for bid submission is:</p> <p>Date: 5th April 2021.....</p> <p>Time: 10.00 a.m.</p>

ITB 25.1	The bid opening shall take place at: KAWI COMPLEX, BLOCK B, SOUTH C Popo Lane Off Red Cross Road, South C, PO Box 34942 – 00100 Nairobi, Kenya Date: 5 th April 2021 Time: 10.00 a.m.
F. Bid Evaluation and Comparison	
ITB 31.2	A margin of domestic or regional preference shall not apply.

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 28 and ITB 32, 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.

1 Evaluation Criteria and Methodology

1.1 Alternative Proposal -Not Applicable

Technical Alternative -Not Applicable

Alternative Time for Completion-Not Applicable

1.2 Correction of Arithmetical Errors (In accordance with ITB 29.1)

- (a) Where there are errors between the total of the amounts given under the column for the price breakdown and the amount given under the Total Price, the former shall prevail and the latter will be corrected accordingly
- (b) 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;
- (c) **1.1.1.1 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**

- (d) **1.1.1.1.2 If there is a discrepancy between words and figures, the amount in words shall prevail, unless 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.**

- 1.3 1.1.1.1.3 Conversion to a Single Currency (In accordance with ITB 30)**
The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is:

Kenya Shillings

The source of exchange rate shall be: **Selling Rate of the Central Bank of Kenya: <https://www.centralbank.go.ke/>.**

The date for the exchange rate shall be: **28 days prior to opening of bids**

- 1.4 1.1.1.1.4**

1.1.1.1.5 Discounts (In accordance with ITB 14.1)

1.1.1.1.6 The Employer will adjust the Bid Price, using the methodology prescribed by the Bidder in its Letter of Bid, to take account of the Discounts offered by the Bidder in its Letter of Bid, as read out at the Bid Opening.

- 1.5 1.1.1.1.7 Quantifiable Nonmaterial Nonconformities (In accordance with ITB 28.8)**

1.1.1.1.8 The adjustment shall be made using the following methodology:

1.1.1.1.9 The Employer will make its own assessment of the cost of any non- material non-conformities and omissions for the purpose of ensuring fair comparison of bids since partial bids are strictly not allowed.

Any deviation of technical requirement shall be analyzed. These criteria shall be evaluated on a pass-fail system. However, a minor deficiency in technical compliance shall not be a cause for rejection of the Bid.

The cost of all quantifiable deviations or deficiencies from the technical requirements as specified in Section VI, Schedule of requirement and specification shall be evaluated. The Employer will assess the cost of these deviations or deficiencies for the purpose of ensuring fair comparison of Bids by applying to that item the price equal to the highest price quoted for

the same item by the responsive Bidder offering the highest price for such item. The Bidder with deviation will be subject to price adjustment equal to the highest price of the responsive bid for that item multiplied a factor equal to 1.15.

Missing Prices for Items.

Price schedules are required to be fully filled. But in the event when an item that is not considered as a major item is not quoted, the missing price shall be deemed to be covered by other rates and prices.

Missing Items.

If in the Price schedules some major items are omitted it has to be considered as this item is not quoted and the Bid Price will be adjusted for evaluation purposes only by applying to that item the price equal to the highest price quoted for the same item by the responsive Bidder offering the highest price for such item. The Bidder with deviation offering the highest price for that item will be subject to that price to be multiplied a factor equal to 1.15.

1.6 Margin of Domestic or Regional Preference: Not Applicable

1.7 Any other Criteria and Methodology for Bid Evaluation and Adjustments:

The following factors and methods will apply:

(a) Time Schedule:

Time to complete the Plant and Installation Services from the effective date specified in Article 3 of the Contract Agreement for determining time for completion of pre-commissioning activities is: 12Months. No credit will be given for earlier completion. [The completion time specified shall be for the entire Plant and Installation Services or for parts or sections of the Plant and Installation Services.]

(b) Operating and Maintenance Costs

Since the operating and maintenance costs of the facilities being procured form a major part of the life cycle Costs of the facilities, these costs will be evaluated according to the principles given hereafter, including the cost of spare parts for the initial period of operation stated below and based on prices furnished by each Bidder in Price Schedule Nos. 1 and 2, as well as on past experience of the Employer or other Employers similarly placed. Such costs shall be added to the bid price, for evaluation.

Reference to the methodology specified in the Specification or elsewhere in the Bidding Document

(c) Functional Guarantees of the facilities

The minimum (or maximum) requirements stated in the Specification for functional guarantees required in the Specification are:

(d) Work, services, facilities, etc., to be provided by the Employer

Where bids include the undertaking of work or the provision of services or facilities by the Employer in excess of the provisions allowed for in the bidding document, the Employer shall assess the costs of such additional work, services and/or facilities for the duration of the contract. Such costs shall be added to the bid price for evaluation.

(e) Specific additional criteria

The relevant evaluation method, if any, shall be as follows:

Any adjustments in price that result from the above procedures shall be added, for purposes of comparative evaluation only, to arrive at an "Evaluated Bid Price." Bid prices quoted by bidders shall remain unaltered.

2	Qualification (Without Prequalification)
2.1	Eligibility (TABLE)

2.2	Historical Contract Non-Performance (TABLE)
2.3	Financial Situation (TABLE)
2.4	Experience (TABLE)
2.5	Personnel (TABLE)
2.6	Equipment (TABLE)

2. Qualification Tables (Without Prequalification)

TABLES

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
Nationality	Nationality in accordance with ITB 4.2.	Must meet requirement	Existing or intended JVCA must meet requirement	Must meet requirement	N / A	Form ELI –1.1 and 1.2, with attachments
Conflict of Interest	No- conflicts of interests as described in ITB 4.3.	Must meet requirement	Existing or intended JVCA must meet requirement	Must meet requirement	N / A	Letter of Bid

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
Bank Ineligibility	Not having been declared ineligible by the Bank as described in ITB 4.4.	Must meet requirement	Existing JVCA must meet requirement	Must meet requirement	N / A	Letter of Bid
Government Owned Entity	Compliance with conditions of ITB 4.5	Must meet requirement	Must meet requirement	Must meet requirement	N / A	Form ELI -1.1 and 1.2, with attachments
Ineligibility based on a United Nations resolution or Borrower’s country law	Not having been excluded as a result of the Borrower’s country laws or official regulations, or	Must meet requirement	Existing JVCA must meet requirement	Must meet requirement	N / A	Letter of Bid

Factor	2.1 Eligibility					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8					

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
history of non-performing contracts	Non-performance of a contract did not occur within the last five (5) years prior to the deadline for application submission, based on all information on fully settled disputes or litigation. A fully settled dispute or litigation is one that has been resolved in accordance with the Dispute Resolution Mechanism under the respective contract, and where all	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Form CON - 2

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
	appeal instances available to the bidder have been exhausted.					

Factor	2.2 Historical Contract Non-Performance					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.2.1 Failure to Sign Contract	Not being under execution of a Bid-Securing Declaration pursuant to ITB 4.6 for five (5) years	Must meet requirement	N / A	Must meet the requirement by itself or as partner to a JVCA	N / A	Letter of Bid
2.2.2 Pending Litigation	All pending litigation shall in total not represent more than fifty percent (50%) of the Bidder’s net worth and shall be treated as resolved against the Bidder.	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Must meet requirement by itself or as partner to past or existing JVCA	N / A	Form CON – 2

	2.3 Financial Situation					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.3.1 Historical Financial Performance	Submission of audited balance sheets or if not required by the law of the bidder’s country, other financial statements acceptable to the Employer, for the last five [5] years to demonstrate the current soundness of the bidder’s financial position and its prospective long-term profitability. (a) (criterion 1)	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments

	<p>(b) (criterion 2)</p> <p>(c) _____</p>					
2.3.2. Average Annual Turnover	Minimum average annual turnover of Thirty Million USD (30 MUSD) calculated as total certified payments received for contracts in progress or completed, within the last five (5) years	Must meet requireme nt	Must meet requireme nt	Must meet Twenty Five percent (25%) of the require ment	Must meet Forty percent (40%) of the requireme nt	Form FIN -3.2

2.3.3. Financial Resources	<p>The Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:</p> <p>(i) the following cash-flow requirement: Not less than six (6) months of the project maximum cash requirements (8.0MUSD) and</p> <p>(ii) the overall cash flow requirements for this contract and its current commitments.</p>	Must meet requirement	Must meet requirement	Must meet Twenty five percent (25%) of the requirement	Must meet Forty percent (40%) of the requirement	Form FIN -3.3 + Form CCC
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Factor	2.4 Experience					
Sub-Factor	Criteria					Documentation Required
	Requirement	Bidder				
		Single Entity	Joint Venture, Consortium or Association			
			All partners combined	Each partner	At least one partner	
2.4.1General Experience	Experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last fifteen years [15] years prior to the applications submission deadline, and with activity in at least nine (9) months in each year.	Must meet requirement	N / A	Must meet requirement	N / A	Form EXP-2.4.1

2.4.2 Specific Experience	(a) Participation as contractor, management contractor, or subcontractor, in at least three (3) contracts within the last ten (10) years, each with a value of at least US\$ 12 million , that have been successfully and substantially completed and that are similar to the proposed Works. The similarity shall be based on the physical size, complexity, methods/technology or other characteristics as described in Section IV, Bidding Forms.	Must meet requirements	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic	Form EXP 2.4.2(a)
2.4.2 Specific Experience	b) For the above or other contracts executed during the period stipulated in 2.4.2(a) above, a minimum	Must meet requirements	Must meet requirements	N / A	Must meet requirements	Form EXP-2.4.2(b)

	experience in the following key activities: Design, supply, installation and commissioning of at least 30 km underground cable Transmission lines of voltages 132kV or above based on the physical size, complexity, methods, technology or other characteristics as described in Section VI, Employer's Requirements.					
--	--	--	--	--	--	--

2.5 Personnel

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

No .	Position	Minimum Academic Qualification	Total Work Experi ence (years)	Experience In Similar Work (years)
1	Resident Project manager (Contractor's Representative)	Bachelor of Science in Civil Engineering/Electrical Engineering and Certification in Project Management	10	7
2	Cable Design Engineer	Bachelor of Science in Electrical Engineering	10	7
3	Construction (Site) Manager	Bachelor of Science in Civil Engineering/Electrical Engineering and Certification in Project Management	10	7
5	Construction Engineer - Civil	Bachelor of Science in Civil Engineering and Certification in Project Management	7	5
6	Construction Engineer - Electrical	Bachelor of Science in Civil Engineering and Certification in Project Management	7	5

7	Protection engineer - electrical	Bachelor of Science in Electrical Engineering	10	7
8	Communication Engineer	Bachelor of Science in Electrical Engineering	7	5
9	Geo-technical Engineer	Bachelor of Science in Survey, Geospatial Engineering	7	5
10	Senior Surveyor	Bachelor of Science in Survey, Geospatial Engineering	7	5
11	Safety, Health and Environment manager	Bachelor Degree in Civil/Electrical/Survey/Geospatial/Mechanical Engineering and and Certification in Occupational Health and safety	5	2

The Bidder shall provide details of the proposed personnel and their experience records using Forms PER-1 and PER-2 included in Section IV, Bidding Forms.

2.6 Equipment

The Bidder must demonstrate that it has the key equipment listed hereafter:

Equipment Type and Characteristics	Minimum Number required
100 ton hydraulic crimping tool	2
4-wheel drive utility vehicle	8
Back actor (backhoe) and trenchers	1
Boom Trucks	1
Cable pulling machines	3
Concrete Mixers (5 cubic meters)	3
Conductor puller	3
Conductor Tensioner	3
Digital Earth Tester	2
Excavators 130kW minimum	6
Field Cranes	1
Hand GPS	4
Heavy Duty air compressor	2
Heavy duty trucks (13 ton)	3
Heavy duty trucks (5 ton)	3
High Voltage cable testing equipment	2
High voltage line testing equipment	2
Hydraulic Cranes	2
Light duty trucks (2 ton)	4
Lorry over 10 tonnes	4
Mobile concrete batching plant	5
Motor Graders	1
Power Joint Machine	1
Puller	2
Stringing tools	2
Tensioner	2

Equipment Type and Characteristics	Minimum Number required
Tipper truck up to 10 tonnes	10
Torque Wrench	4
Total station and accessories	2
Vibrator	5
Water pump	2
Water Trucks (for construction)	2
Microtunnelling boring machine/Horizontal directional drilling	1

The Bidder shall provide further details of proposed items of equipment using the Form EQU in Section IV.

2.7 Subcontractors/manufacturers

Subcontractors/Manufacturers for the following major items of supply or installation services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1	Supplier for conductor, OPGW, fittings and accessories	The vendors must have successfully manufactured and supplied similar items (132 kV and above) for the last fifteen (15) years in conditions to those prevailing on site, and the items shall have at least ten (10) years of successful field operations outside the country of origin in conditions similar to those at site.
2	Supplier for underground cable, fibre optic cable, earthing and accessories	The vendors must have successfully manufactured and supplied similar items (132 kV and above) for the last fifteen (15) years in conditions to those prevailing on site, and the items shall have at least ten (10) years of successful field operations outside the country of origin in conditions similar to those at site.
3	Sub-contractor for the cable installations	<p>Shall have six (6) years of experience in line underground cable installations of 132 kV and above.</p> <p>Shall have completed at least two (2) line projects of similar size and complexity and similar conditions.</p>
4	Supplier for accessories	The vendors must have successfully manufactured and supplied similar items (for projects of 132 kV and above) for the last fifteen (15) years in conditions to those prevailing on site, and the items shall have at least ten (10) years of successful field operations outside the country of origin in conditions similar to those at site.

Conditions on sub-contractors**(i) For Major Equipment suppliers:**

(a)The sub- contractor shall submit copies of original documents defining the constitution or legal status, place of registration and principal place of business of the Company or partnership or, if a joint venture, of each party thereto constituting the Bid.

(b)The sub contractor shall be able to achieve the required standard and quality of works.

(ii) For Local Works sub-contractors:

(a)The main Contractor shall propose list of possible subcontractors for each of the works and submit their License, experience (reference lists), key personnel qualifications, financial standing and work in hand for Employer's evaluation.

(b)If the main Contractor proposes more than one subcontractor, the quoted price will be deemed to apply to whichever subcontractor appointed and no adjustment of the rates and prices will be permitted.

(c)Supply of Local Material and Equipment required for construction shall be directly sourced by the main contractor. Subcontracting of material supply and equipment shall not be allowed.

Subcontractors for the following additional major services must meet the following minimum criteria, herein listed for that item:

Item No.	Description of Item	Minimum Criteria to be met
1.	Local civil works subcontractor	The civil works subcontractor from the Employer's country, if proposed by the Bidder, should be registered with the National Construction Authority (NCA) with proven experience in civil works contracts. The Sub-contractor should have carried out projects in major foundation works with reference of completed projects within the last five (5) years. All approved subcontractors shall be subjected to post qualification.
2.	Local electromechanical works	The electro-mechanical subcontractor from the Employer's country, if proposed by the Bidder, should have Contractor License in Electro-Mechanical Works issued by the National Construction Authority (NCA. Electro-mechanical subcontractors shall provide proven records on previous similar assignments involving high voltage substations. All approved subcontractors shall be subjected to post qualification.

Failure to comply with these requirements will result in rejection of the subcontractor.

In the case of a Bidder who offers to supply and install major items of supply under the contract that the Bidder did not manufacture or otherwise produce, the Bidder shall provide the manufacturer's authorization, using the form provided in Section IV, Bidding Forms, showing that the Bidder has been duly authorized by the manufacturer or producer of the related plant and equipment or component to supply and install that item in the Employer's country. The Bidder is responsible for ensuring that the manufacturer or producer complies with the requirements of ITB 4 and 5, and meets the minimum criteria listed above for that item.

Section IV. Bidding Forms

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Letter of Bid

The Bidder must prepare the Letter of Bid on stationery with its letterhead clearly showing the Bidder's complete name and address.

Date: _____

Bidding No.: _____

Invitation for Bid 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) Clause 8 _____;

(b) We offer to execute in conformity with the Bidding Documents the following Works:

_____;

(c) The total price of our Bid, excluding any discounts offered in item (d) below is: [amount of foreign currency in words], [amount in figures], and [amount of local currency in words], [amount in figures];

(d) The discounts offered and the methodology for their application are: _____;

- (e) Our bid shall be valid for a period of _____ [insert validity period as specified in ITB 18.1.] 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;
- (f) If price adjustment provisions apply, the Table(s) of Adjustment Data shall be considered part of this Bid;¹¹
- (g) If our bid is accepted, we commit to obtain a performance security in accordance with ITB 38 and GC 4.2, for the due performance of the Contract;
- (h) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries, in accordance with ITB 4.2;
- (i) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3;
- (j) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative offers submitted in accordance with ITB 13;
- (k) Our firm, its affiliates or subsidiaries (including any Subcontractors or Suppliers for any part of the contract), has not been declared ineligible by the Bank, or under execution of a Bid-Securing Declaration in the Employer's country, or under the Employer's country laws or official regulations, or by an act of compliance with a decision of the United Nations Security Council, in accordance with ITB 4.4, 4.6 and 4.8, respectively;
- (l) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB 4.5;¹²
- (m) We are / are not under sanction by the World Bank, the IADB, EBRD or the ADB for any action of corruption and fraud in accordance with ITB 3. [If under sanction, please provide details including date of start of sanction and duration].

¹¹ Include if price adjustment provisions apply in the Contract in accordance with PC Clause 13.8: Adjustments for Changes in Cost.

¹² Use one of the two options as appropriate.

(n) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: ¹³

Name of Recipient	Address	Reason	Amount
.....
.....

(o) We undertake that, in competing for (and, if the award is made to us, in executing) the above contract, we will strictly observe the laws against fraud and corruption in force in the country of the Employer, as such laws have been listed by the Employer in the bidding documents for this contract.¹⁴

(p) 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;

(q) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and

(r) If awarded the contract, the person named below shall act as Contractor's Representative: _____

Name: _____

In the capacity of: _____

Signed: _____

¹³ If none has been paid or is to be paid, indicate "none".

¹⁴ The Bank will accept the introduction of such undertaking at the request of the Borrowing country, provided the arrangements governing such undertaking are satisfactory to the Bank.

Duly authorised to
sign the Bid for and
on behalf of:

Date:

Bill of Quantities/Schedules of Prices

Schedule of Adjustment Data

NOT APPLICABLE IN THIS CONTRACT

Where the Contract Period (excluding the Defects Liability Period) exceeds eighteen (18) months, it is normal procedure that prices payable to the Contractor shall be subject to adjustment during the performance of the Contract to reflect changes occurring in the cost of labour and material components. In such cases the bidding documents shall include in this form a formula of the following general type, pursuant to PC Clause 3.1.2.

Where Contracts are of a shorter duration than eighteen (18) months or in cases where there is to be no Price Adjustment, the following provision shall not be included. Instead, it shall be indicated under this form that the prices are to remain firm and fixed for the duration of the Contract.

Table A - Local Currency

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Local Currency Amount	Bidder's Proposed Weighting
	Nonadjustable	—	—	—	A: ____ B: ____ C: ____ D: ____ E: ____
Total					1.00

Table B - Foreign Currency

Name of Currency: _____

If the Bidder wishes to quote in more than one foreign currency, this table should be repeated for each foreign currency.

Index Code	Index Description	Source of Index	Base Value and Date	Bidder's Currency in Type/Amount	Equivalent in FC1	Bidder's Proposed Weighting
	Nonadjustable	—	—	—		A: _____ B: _____ C: _____ D: _____ E: _____
Total						1.00

Summary of Payment Currencies

Table: Alternative A

Forinsert name of Section of the Works .

Separate tables may be required if the various sections of the Works (or of the Bill of Quantities) will have substantially different foreign and local currency requirements. The Employer should insert the names of each Section of the Works.

	A	B	C	D
Name of Payment Currency	Amount of Currency	Rate of Exchange to Local Currency	Local Currency Equivalent $C = A \times B$	Percentage of Net Bid Price (NBP) $\frac{100 \times C}{NBP}$
Local currency _____		1.00		
Foreign Currency #1 _____				
Foreign Currency #2 _____				

Foreign Currency #3 <hr/>				
Net Bid Price				100.00
Provisional Sums Expressed in Local Currency		1.00		
BID PRICE				

Table: Alternative B

To be used only with Alternative B Prices directly quoted in the currencies of payment. (Clause ITB 15.1)

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

Name of currency	Amounts payable
Local Currency: _____	
Foreign currency #1: _____	
Foreign currency #2: _____	
Foreign currency #3: _____	

Form of Bid Security (Bank Guarantee)

_____ [Bank's Name, and Address of Issuing Branch or Office]

Beneficiary: _____ [Name and Address of Employer]

Date: _____

BID GUARANTEE No.: _____

We have been informed that _____ [*name of the Bidder*] (hereinafter called "the Applicant") has submitted to you its bid dated _____ (hereinafter called "the Bid") for the execution of _____ [*name of contract*] under Invitation for Bids No. _____ ("the IFB").

Furthermore, we understand that, according to your conditions, bids must be supported by a bid guarantee.

At the request of the Applicant, we _____ [*name of Bank*] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of _____ [*amount in figures*] (_____) [*amount in words*] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Applicant is in breach of its obligation(s) under the bid conditions, because the Applicant:

(a) has withdrawn its Bid during the period of bid validity specified by the Applicant in the Form of Bid; or

(b) having been notified of the acceptance of its Bid by the Beneficiary during the period of bid validity or any extension thereto provided by the Applicant, (i) fails or refuses to execute the Contract Form, if required, or (ii) fails or refuses to furnish the performance security, in accordance with **ITB 38**.

This guarantee will expire: (a) if the Applicant is the successful Bidder, upon our receipt of copies of the contract signed by the Applicant and the performance security issued to you upon the instruction of the Bidder; and (b) if the Applicant is not the successful Bidder, upon the earlier of: (i) our receipt of a copy your notification to the Applicant of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of the Bid Validity Period.

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 758.

[Signature]

Form of Bid Security (Bid Bond)
--

NOT APPLICABLE IN THIS CONTRACT

BOND NO. _____

BY THIS BOND [name of Bidder] as Principal (hereinafter called "the Principal"), and [name, legal title, and address of surety], **authorised to transact business in** [name of country of Employer], as Surety (hereinafter called "the Surety"), are held and firmly bound unto [name of Employer] as Oblige (hereinafter called "the Employer") in the sum of [amount of Bond]¹⁵ [amount in words], for the payment of which sum, well and truly to be made, we, the said Principal and Surety, bind ourselves, our successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Principal has submitted a written Bid to the Employer dated the ____ day of _____, 20__, for the construction of [name of Contract] (hereinafter called the "Bid").

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

(a) withdraws its Bid during the period of bid validity specified in the Form of Bid; or

¹⁵ The amount of the Bond shall be denominated in the currency of the Employer's country or the equivalent amount in a freely convertible currency.

(b) having been notified of the acceptance of its Bid by the Employer during the period of Bid validity; (i) fails or refuses to execute the Contract Form, if required; or (ii) fails or refuses to furnish the Performance Security in accordance with the Instructions to Bidders;

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

The Surety hereby agrees that its obligation will remain in full force and effect up to and including the date 28 days after the date of expiration of the Bid validity as stated in the Invitation to Bid or extended by the Employer at any time prior to this date, notice of which extension(s) to the Surety being hereby waived.

IN TESTIMONY WHEREOF, the Principal and the Surety have caused these presents to be executed in their respective names this ____ day of _____ 20__.

Principal: _____

Surety: _____

Corporate Seal (where appropriate)

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

Form of Bid-Securing Declaration

Date: [insert date (as day, month and year)]

Bid No.: [insert number of bidding process]

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

To: [insert complete name of Employer]

We, the undersigned, declare that:

We understand that, according to your conditions, bids must be supported by a Bid-Securing Declaration.

We accept that we will automatically be suspended from being eligible for bidding in any contract with the Borrower for the period of time of **[Employer to insert number of months or years]** starting on **[insert date]**, if we are in breach of our obligation(s) under the bid conditions, because we:

- (a) have withdrawn our Bid during the period of bid validity specified in the Letter of Bid; or
- (b) having been notified of the acceptance of our Bid by the Employer during the period of bid validity, (i) fail or refuse to execute the Contract, if required, or (ii) fail or refuse to furnish the Performance Security, in accordance with **ITB 38**.

We understand this Bid-Securing Declaration shall expire if we are not the successful Bidder, upon the earlier of (i) our receipt of your notification to us of the name of the successful Bidder; or (ii) twenty-eight days after the expiration of our Bid.

Signed: [insert signature of person whose name and capacity are shown] In the capacity of [insert legal capacity of person signing the Bid-Securing Declaration]

Name: [insert complete name of person signing the Bid-Securing Declaration]

Duly authorised to sign the bid for and on behalf of: [insert complete name of Bidder]

Dated on _____ day of _____, _____ [insert date of signing]

Corporate Seal (where appropriate)

[Note: In case of a Joint Venture, Consortium or Association, the Bid-Securing Declaration must be in the name of all partners to the JVCA that submits the bid.]

Technical Proposal

Technical Proposal Forms

Site Organisation

Method Statement

Mobilisation Schedule

Construction Schedule

Contractor's Equipment

Personnel

Others

Site Organisation

Method Statement

Mobilisation Schedule

<h2>Construction Schedule</h2>

Contractor's Equipment

FORM EQU

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. The Bidder shall provide all the information requested below, to the extent possible. Fields with asterisk (*) shall be used for evaluation.

Type 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 <div style="display: flex; justify-content: space-around; align-items: center;"> <input type="checkbox"/> Owned <input type="checkbox"/> Rented <input type="checkbox"/> Leased <input type="checkbox"/> Specially manufactured </div>	

The following information shall be provided only for equipment not 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	

Proposed Personnel

Form PER – 1

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

1.	<div style="border: 1px solid black; padding: 2px;">Title of position</div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Name</div>
2.	<div style="border: 1px solid black; padding: 2px;">Title of position</div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Name</div>
3.	<div style="border: 1px solid black; padding: 2px;">Title of position</div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Name</div>
4.	<div style="border: 1px solid black; padding: 2px;">Title of position</div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Name</div>
5.	<div style="border: 1px solid black; padding: 2px;">Title of position</div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Name</div>
6.	<div style="border: 1px solid black; padding: 2px;">Title of position</div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Name</div>
etc.	<div style="border: 1px solid black; padding: 2px;">Title of position</div> <div style="border: 1px solid black; padding: 2px; margin-top: 2px;">Name</div>

Resume of Proposed Personnel

Form PER – 2

The Bidder shall provide all the information requested below. Fields with asterix (*) shall be used for evaluation.

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

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

From*	To*	Company, Project, Position, and Relevant Technical and Management Experience*

Others

<h2>Bidder's Qualification</h2>
--

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

Bidder Information Sheet**Form ELI - 1.1**

Date: _____

Bidding No.: _____

Invitation for Bid No.: _____

Page _____ of _____ pages

1. Bidder's Legal Name

2. In case of Joint Venture, Consortium or Association (JVCA), legal name of each party:

3. Bidder's actual or intended Country of Registration:

4. Bidder's Year of Registration:

5. Bidder's Legal Address in Country of Registration:

6. Bidder's Authorised Representative Information

Name:

Address:

Telephone/Fax numbers:

Email Address:

7. Attached are copies of original documents of:

- ☐ Articles of Incorporation or Registration of firm named in 1, above, in accordance with **ITB** Clauses 4.1 and 4.2.
- ☐ In case of JVCA, letter of intent to form JVCA including a draft agreement, or JVCA agreement, in accordance with **ITB** Clauses 4.1
- ☐ In case of government owned entity from the Employer's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with **ITB** Clause 4.5.

Partner to JVCA Information Sheet**Form ELI - 1.2**

Date: _____

Bidding No.: _____

Invitation for Bid No.: _____

Page _____ of _____ pages

1. Bidder's Legal Name:

2. JVCA's Party legal name:

3. JVCA's Party Country of Registration:

4. JVCA's Party Year of Registration:

5. JVCA's Party Legal Address in Country of Registration:

6. JVCA's Party Authorised Representative Information

Name:

Address:

Telephone/Fax numbers:

Email Address:

7. Attached are copies of original documents of:

- ☐ Articles of Incorporation or Registration of firm named in 1, above, in accordance with **ITB** Clauses 4.1 and 4.2.
- ☐ In case of government owned entity from the Purchaser's country, documents establishing legal and financial autonomy and compliance with the principles of commercial law, in accordance with **ITB** Clause 4.5.

Historical Contract Non-Performance

Form CON - 2

Bidder's Legal Name: _____ Date: _____

JVCA Partner Legal Name: _____

Bidding No.: _____

Page _____ of _____ pages

1.1.1.1.10 Non-Performing Contracts in accordance with Section III, Evaluation and Qualification Criteria)=

Contract non-performance did not occur during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III, Evaluation and Qualification Criteria. Contract non-performance during the stipulated period, in accordance with Sub-Factor 2.2.1 of Section III, Evaluation and Qualification Criteria.

Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____

1.1.1.1.11 Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
<input type="checkbox"/> No pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation and Qualification Criteria.			
<input type="checkbox"/> Pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation and Qualification Criteria, as indicated below			
Year	Outcome as Percent of Total Assets	Contract Identification	Total Contract Amount (current value, US\$ equivalent)
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____
_____	_____	Contract Identification: Name of Employer: Address of Employer: Matter in dispute:	_____

Current Contract Commitments / Works in Progress

Form CCC

Bidders and each partner to a JVCA 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.

Name of contract	Employer, 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.				
etc.				

Financial Situation

Form FIN – 3.1

Bidder's Legal Name: _____

Date: _____

JVCA Partner Legal Name: _____

Bidding No.: _____

Page _____ of _____ pages

To be completed by the Bidder and, if JVCA, by each partner

Financial information in US\$ equivalent	Historic information for previous _____ (___) years (US\$ equivalent in 000s)						
	Year 1	Year 2	Year 3	Year ...	Year n	Avg.	Avg. Ratio
Information from Balance Sheet							
Total Assets (TA)							
Total Liabilities (TL)							
Net Worth (NW)							
Current Assets (CA)							
Current Liabilities (CL)							

Information from Income Statement							
Total Revenue (TR)							
Profits Before Taxes (PBT)							

☐ Attached are copies of financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following conditions:

- Must reflect the financial situation of the Bidder or partner to a JVCA, and not sister or parent companies
- Historic financial statements must be audited by a certified accountant
- Historic financial statements must be complete, including all notes to the financial statements
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)

Average Annual Turnover

Form FIN – 3.2

Bidder's Legal Name: _____ Date: _____

JVCA Partner Legal Name: _____ Bidding No.: _____

Page _____ of _____ pages

Annual turnover data (construction only)		
Year	Amount and Currency	US\$ equivalent
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
*Average Annual Construction Turnover	_____	_____

*Average annual turnover calculated as total certified payments received for work in progress or completed over the number of years specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.2, divided by that same number of years.

Financial Resources**Form FIN – 3.3**

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 indicated in Section III, Evaluation and Qualification Criteria.

Source of financing	Amount (US\$ equivalent)
1.	
2.	
3.	
4.	

General Experience

Form EXP - 2.4.1

Bidder's Legal Name: _____ Date: _____

JVCA Partner Legal Name: _____ Bidding No.:

Page _____ of _____ pages

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Bidder
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____

Starting Month / Year	Ending Month / Year	Years*	Contract Identification	Role of Bidder
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____
_____	_____		Contract name: Brief Description of the Works performed by the Bidder: Name of Employer: Address:	_____

*List calendar year for years with contracts with at least nine (9) months activity per year starting with the earliest year

Specific Experience

Form EXP - 2.4.2(a)

Bidder's Legal Name: _____ Date: _____

JVCA Partner Legal Name: _____ Bidding No.: _____

Page _____ of _____ pages

Similar Contract Number: ____ [insert specific number] of ____ [insert total number of contracts required].	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontract or
Total contract amount	_____ —		US\$ _____ _____
If partner in a JVCA or subcontractor, specify participation of total contract amount	_____% _____	_____ _____	US\$ _____ _____
Employer's Name:	_____		

Similar Contract Number: ____ [insert specific number] of ____ [insert total number of contracts required.]	Information
Address:	_____

Telephone/fax number:	_____
E-mail:	_____

Specific Experience (cont.)

Form EXP – 2.4.2(a) (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages

JVCA Partner Legal Name: _____

Similar Contract No. __[insert specific number] of __[insert total number of contracts] required	Information
Description of the similarity in accordance with Sub-Factor 2.4.2(a) of Section III, Evaluation and Qualification Criteria:	
Amount	_____
Physical size	_____
Complexity	_____
Methods/Technology	_____
Other features	_____

Specific Experience in Key Activities

Form EXP - 2.4.2(b)

Bidder's Legal Name: _____ Date: _____

JVCA Partner Legal Name: _____ Bidding No.: _____

Subcontractor's Legal Name: _____ Page _____ of _____ pages

	Information		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontracto r
Total contract amount	_____		US\$ _____
If partner in a JVCA or subcontractor, specify participation of total contract amount	_____ %	_____	US\$ _____
Employer's Name:	_____		
Address:	_____ _____ _____		
Telephone/fax number:	_____		
E-mail:	_____		

Specific Experience in Key Activities (cont.)
--

Form EXP – 2.4.2(b) (cont.)

Bidder's Legal Name: _____ Page _____ of _____ pages

JVCA Partner Legal Name: _____

Subcontractor's Legal Name: _____

	Information
Description of the key activities in accordance with Sub-Factor 2.4.2(b) of Section III, Evaluation and Qualification Criteria:	
Amount	
Physical size	
Complexity	
Methods/Technology	
Physical Production Rate	

Section V. Eligible Countries

Eligibility for the Provision of Goods, Works and Related Services in Bank-financed Procurement

A. Provision at Paragraph 1.6 of the Bank's Rules and Procedures for Procurement of Goods and Works

1.6 The African Development Fund permits firms and individuals from all countries to offer goods, works and services for ADF funded projects. However, the proceeds of any Financing undertaken in the operations of the African Development Bank and the Nigeria Trust Fund shall be used for procurement of goods and works, including the related services, provided by bidders from Eligible¹⁶ Countries.¹⁷ Any conditions for participation shall be limited to those that are essential to ensure the firm's capability to fulfil the contract in question. In the case of ADB and NTF, bidders from non-Member Countries offering goods, works and related services (including transportation and insurance) are not eligible even if they offer these from Eligible Member Countries. Any waiver to this rule will be in accordance with the Articles 17(1) (d) of the Agreement Establishing the African Development Bank and 4.1 of the Agreement Establishing the Nigeria Trust Fund.

B. Provision at Appendix 4 of the Bank's Rules and Procedures for Procurement of Goods and Works

¹⁶ Refer to Appendix 4 for additional information on Eligibility.

¹⁷ "Eligible Countries" shall mean: (a) in the case of the African Development Bank and the Nigeria trust Fund, the Member Countries of the African Development Bank.

Overview

1. The eligibility criteria for participation in the supply of goods, works and related services, to be procured through the ADB and NTF Financing, derive from the requirements of the Agreement Establishing the African Development Bank, Article 17.1.d, and the Agreement Establishing the Nigeria Trust Fund, Article 4.1. The foregoing requirements basically prescribe two types of eligibility criteria:

The eligibility of the bidder;

The eligibility of the goods, works and related services.

Eligibility of the Bidder

2. The eligibility of the bidder shall be based on nationality, in accordance with the following rules:

(a) Natural Persons: A natural person is eligible if he or she is a national of a Member Country of the Bank, or a State Participant of the Fund. Where a person has more than one nationality, such a person shall be eligible if the nationality indicated in his or her bid is that of a Member Country of the Bank, or a State Participant of the Fund.

(b) Corporations: A corporation is eligible if it satisfies the following criteria:

it is incorporated in a country that is a Member of the Bank, or State Participant of the Fund;

it is a national of a country that is a Member of the Bank, or State Participant of the Fund, as determined by the law of its place of incorporation;

it has its principal place of business in a country that is a Member of the Bank, or State Participant of the Fund.

(c) Joint Ventures and Associations: An unincorporated joint venture, partnership, or association, shall be eligible if at least 60% of its individual, or corporate members, satisfy the eligibility requirement for individuals or corporations.

Eligibility of the Goods, Works and Related Services

3. In order to be eligible, the goods to be procured must have been mined, grown, or produced, in the form in which they are purchased, in an Eligible Member Country.

4. For works contracts, which may include civil works, plant construction, or turnkey contracts, the contractor must satisfy the nationality criteria of eligibility, either as a natural person, or corporation, or joint venture and association. Labour,

equipment, and materials needed for carrying out the works contract, shall be supplied from Eligible Member Countries.

5. For contracts, which have been awarded on the basis of Cost, Insurance and Freight (CIF), or Carriage and Insurance Paid (CIP), bidders shall be free to arrange for ocean and other transportation, and the related insurance, from any Eligible Member Country. On the other hand, where goods are shipped on FOB basis, and the Bank has agreed to finance transportation and insurance separately, which are arranged by the purchaser, under a separate contract, the Bank shall be satisfied that the services are supplied from Eligible Member Countries.

C. Eligible Countries

PART 2 – Employer’s Requirements

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Scope of Works

REFER TO VOLUME 2 OF 2

Specification

REFER TO VOLUME 2 OF 2

Drawings

REFER TO VOLUME 2 OF 2

Supplementary Information

REFER TO VOLUME 2 OF 2

PART 3 – Conditions of Contract and Contract Forms

Section VII. General Conditions (GC)

[Name of Employer]

[Name of Contract]

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General Conditions (GC)

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 Bid, 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 GC 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 Bid, 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 Bid” means the document entitled 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 Bid, 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 “Bid” means the Letter of Bid and all other documents which the Contractor submitted with the Letter of Bid, as included in the Contract.
- 1.1.1.9 “Bill of Quantities”, “Day work 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 Particular Conditions 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 Bid 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 Particular Conditions, or other person appointed from time to time by the Employer and notified to the Contractor under GC 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 GC 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 GC 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 GC Clause 20.2 [Appointment of the Dispute Board] or GC 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 Particular Conditions.

- 1.1.2.12 “Borrower” means the person (if any) named as the borrower in the Particular Conditions.

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 Bid.
- 1.1.3.2 “Commencement Date” means the date notified under GC 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 GC Clause 8.2 [Time for Completion], as stated in the Particular Conditions (with any extension under GC 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 GC 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 GC 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 GC Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over twelve months except if otherwise stated in the Particular Conditions (with any extension under GC Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under GC Clause 10.1 [Taking Over of the Works and Sections].
- 1.1.3.8 “Performance Certificate” means the certificate issued under GC 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 GC 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 GC Clause 14.13 [Issue of Final Payment Certificate].

- 1.1.4.5 “Final Statement” means the statement defined in GC 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 GC 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 GC 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 GC Clause 13.5 [Provisional Sums].
- 1.1.4.11 “Retention Money” means the accumulated retention moneys which the Employer retains under GC Clause 14.3 [Application for Interim Payment Certificates] and pays under GC 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 GC 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 Particular Conditions 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.
- 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 GC 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 GC 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 GC Clause 13 [Variations and Adjustments].
- 1.1.6.10 “Notice of Dissatisfaction” means the notice given by either Party to the other under GC Clause 20.4 [Obtaining Dispute Board’s Decision] indicating its dissatisfaction and intention to commence arbitration.

1.2 Interpretation

- 1.2.1 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;
 - (e) the word “tender” is synonymous with “bid” and “tenderer” with “bidder” and the words “tender documents” with “bidding documents”.
- 1.2.2 The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

- 1.2.3 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 Particular Conditions.

1.3 Communications

- 1.3.1 Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices, requests and discharges, these communications shall be:
- (a) in writing and delivered by hand (against receipt), sent by mail or courier, or transmitted using any of the agreed systems of electronic transmission as stated in the Particular Conditions; and
 - (b) delivered, sent or transmitted to the address for the recipient's communications as stated in the Particular Conditions. 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.
- 1.3.2 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

- 1.4.1 The Contract shall be governed by the law of the country or other jurisdiction stated in the Particular Conditions.
- The ruling language of the Contract shall be that stated in the Particular Conditions.
- The language for communications shall be that stated in the Particular Conditions. If no language is stated there, the language for communications shall be the ruling language of the Contract.

1.5 Priority of Documents

- 1.5.1 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 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

- 1.6.1 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 provided in Section IX, Contract Forms. 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

- 1.7.1 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

- 1.8.1 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

- 1.9.1 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 GC Clause 20.1 [Contractor's Claims] to:

- (a) an extension of time for any such delay, if completion is or will be delayed, under GC 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.

- 1.9.2 After receiving this further notice, the Engineer shall proceed in accordance with GC 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

- 1.10.1 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.

- 1.10.2 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.

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

1.11 Contractor's Use of Employer's Documents

- 1.11.1 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

- 1.12.1 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 the Contractor's 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

- 1.13.1 The Contractor shall, in performing the Contract, comply with applicable Laws.

- 1.13.2 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

- 1.14.1 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

- 1.15.1 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

- 2.11 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 Particular Conditions. 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.
 - 2.12 If no such time is stated in the Particular Conditions, 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 GC Clause 8.3 [Programme].
 - 2.13 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 GC Clause 20.1 [Contractor's Claims] to:
 - (a) an extension of time for any such delay, if completion is or will be delayed, under GC Clause 8.4 [Extension of Time for Completion], and
 - (b) payment of any such Cost plus profit, which shall be included in the Contract Price.
 - 2.14 After receiving this notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.
 - 2.15 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
- 2.21 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 **GC** 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

- 2.3.1 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 **GC** Clause 4.6 [Co-operation], and
 - (b) take actions similar to those which the Contractor is required to take under **GC** Clauses 4.8.1(a), 4.8.1(b), and 4.8.1(c) [Safety Procedures] and under **GC** Clause 4.18 [Protection of the Environment].

2.4 Employer's Financial Arrangements

- 2.4.1 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 **GC** 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.
- 2.4.2 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 such notice of the extent to which such funds will be available.

2.5 Employer's Claims

- 2.5.1 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 **GC** Clause 4.19 [Electricity, Water and Gas], under **GC** Clause 4.20 [Employer's Equipment and Free-Issue Material], or for other services requested by the Contractor.
- 2.5.2 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.

- 2.5.3 The particulars shall specify the GC 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 GC 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 GC Clause 11.3 [Extension of Defects Notification Period].
- 2.5.4 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 GC Clause.
- 3 The Engineer
- 3.1 Engineer's Duties and Authority
- 3.1.1 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.
- 3.1.2 The Engineer shall have no authority to amend the Contract.
- 3.1.3 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.
- 3.1.4 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.
- 3.1.5 Except as otherwise stated in these Conditions:
- (a) whenever carrying out duties or exercising authority, specified in or implied by the Contract, the 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 otherwise expressly specified shall be notified in writing to the Contractor within 28 days of receipt.
- 3.1.6 The following provisions shall apply:
- The Engineer shall obtain the specific approval of the Employer before taking action under the following Clauses of these Conditions:

- (a) GC Clause 4.12: Agreeing or determining an extension of time and/or additional cost.
- (b) GC 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 Particular Conditions.
- (c) GC Clause 13.3: Approving a proposal for Variation submitted by the Contractor in accordance with GC Clause 13.1 or 13.2.
- (d) GC Clause 13.4: Specifying the amount payable in each of the applicable currencies

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

3.2 Delegation by the Engineer

- 3.2.1 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 GC Clause 3.5 [Determinations].
- 3.2.2 Assistants shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in GC Clause 1.4 [Law and Language].
- 3.2.3 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

- 3.3.1 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 GC Clause. If an instruction constitutes a Variation, GC Clause 13 [Variations and Adjustments] shall apply.
- 3.3.2 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

- 3.4.1 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

- 3.5.1 Whenever these Conditions provide that the Engineer shall proceed in accordance with this GC 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.
- 3.5.2 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 GC Clause 20 [Claims, Disputes and Arbitration].

4 The Contractor

4.1 Contractor's General Obligations

- 4.1.1 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Engineer's instructions, and shall remedy any defects in the Works.
- 4.1.2 The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.
- 4.1.3 All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country as defined by the Bank, in the Rules and Procedures for Procurement of Goods and Works.
- 4.1.4 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all Contractors' Documents, Temporary Works, and such design of each item of Plant and Materials as is required for the item to be in accordance with the Contract, and (ii) shall not otherwise be responsible for the design or specification of the Permanent Works.
- 4.1.5 The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.
- 4.1.6 If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the 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 GC 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 GC Clause 10.1 [Taking Over of the Works and Sections] until these documents and manuals have been submitted to the Engineer.

4.2 Performance Security

- 4.2.1 The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the Particular Conditions 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 Particular Conditions, this GC Clause shall not apply.
- 4.2.2 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 stipulated in Section IX, Contract Forms or in another form approved by the Employer.
- 4.2.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 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.
- 4.2.4 The Employer shall not make a claim under the Performance Security, except for amounts to which the Employer is entitled under the Contract.
- 4.2.5 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.
- 4.2.6 The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.
- 4.2.7 Without limitation to the provisions of the rest of this GC 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

- 4.3.1 The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract.
- 4.3.2 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 GC Clause 6.9 [Contractor's Personnel], or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.
- 4.3.3 The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.

- 4.3.4 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.
- 4.3.5 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under GC Clause 3.3 [Instructions of the Engineer].
- 4.3.6 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.
- 4.3.7 The Contractor's Representative shall be fluent in the language for communications defined in GC 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
- 4.4.1 The Contractor shall not subcontract the whole of the Works.
- 4.4.2 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 GC Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under GC Clause 15.2 [Termination by Employer].
- 4.4.3 The Contractor shall ensure that the requirements imposed on the Contractor by GC Clause 1.12 [Confidential Details] apply equally to each Subcontractor.
- 4.4.4 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

- 4.5.1 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

- 4.6.1 The Contractor shall, as specified in the Contract or as instructed by the Engineer, allow appropriate opportunities for carrying out work to:
- (a) the 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.
- 4.6.2 Any such instruction shall constitute a Variation if and to the extent that it causes the Contractor to suffer delays and/or to incur Unforeseeable Cost. Services for these personnel and other contractors may include the use of Contractor's Equipment, Temporary Works or access arrangements which are the responsibility of the Contractor.
- 4.6.3 If, under the Contract, the 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

- 4.7.1 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.
- 4.7.2 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.
- 4.7.3 If the Contractor suffers delay and/or incurs Cost from executing work which was necessitated by an error in these items of reference, and an experienced contractor could not reasonably have discovered such error and avoided this delay and/or Cost, the Contractor shall give notice to the Engineer and shall be entitled subject to GC Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GC 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.

- 4.7.4 After receiving this notice, the Engineer shall proceed in accordance with GC 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 GC Clause 4.7.3(a) and (b) above related to this extent.

4.8 Safety Procedures

- 4.8.1 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 GC 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

- 4.9.1 The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.
- 4.9.2 Details of all procedures and compliance documents shall be submitted to the 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.
- 4.9.3 Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.10 Site Data

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

- (a) the form and nature of the Site, including sub-surface conditions,
- (b) the hydrological and climatic conditions,
- (c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects,
- (d) the Laws, procedures and labour practices of 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

4.11.1 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 GC Clause 4.10 [Site Data].

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

4.12 Unforeseeable Physical Conditions

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

4.12.2 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.

4.12.3 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, GC Clause 13 [Variations and Adjustments] shall apply.

4.12.4 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 GC Clause 20.1 [Contractor's Claims] to:

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

- 4.12.5 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Engineer shall proceed in accordance with GC 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 GC 4.12.4(a) and (b) above related to this extent.
- 4.12.6 However, before additional Cost is finally agreed or determined for item (ii) under GC Clause 4.12.5, 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 Bid. If and to the extent that these more favourable conditions were encountered, the Engineer may proceed in accordance with GC 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 GC 4.12.4(b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.
- 4.12.7 The 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
- 4.13.1 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
- 4.14.2 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.
- 4.14.2 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
- 4.15.1 The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.
- 4.15.2 Except as otherwise stated in these Conditions:
- (a) the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;

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

4.16.1 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

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

4.18 Protection of the Environment

- 4.18.1 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 4.18.2 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

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

- 4.19.2 The Contractor shall be entitled to use for the purposes of the Works such supplies of electricity, water, gas and other services as may be available on the Site and of which details and prices are given in the 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.
- 4.19.3 The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with GC Clause 2.5 [Employer's Claims] and GC Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.

4.20 Employer's Equipment and Free-Issue Materials

- 4.20.1 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.
- 4.20.2 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 GC Clause 2.5 [Employer's Claims] and GC Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.
- 4.20.3 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.
- 4.20.4 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

- 4.21.1 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.
- 4.21.2 Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.
- 4.21.3 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 GC 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 GC 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 GC Clause 2.5 [Employer's Claims] and notices given under GC 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

4.22.1 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

- ##### 4.23.1
- The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the 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.

- 4.23.2 During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.
- 4.23.3 Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

4.24 Fossils

- 4.24.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.
- 4.24.2 The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Engineer and shall be entitled subject to GC Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GC Clause 8.4 [Extension of Time for Completion], and
 - (b) payment of any such Cost, which shall be included in the Contract Price.
- 4.24.3 After receiving this further notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.

5 Nominated Subcontractors

5.1 Definition of "nominated Subcontractor"

- 5.1.1 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 GC Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to GC Clause 5.2 [Objection to Notification].

5.2 Objection to Nomination

- 5.2.1 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 GC Clause 5.3 [Payment to nominated Subcontractors].

5.3 Payments to nominated Subcontractors

- 5.3.1 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 GC Clause 13.5.1(b) [Provisional Sums], except as stated in GC Clause 5.4 [Evidence of Payments].

5.4 Evidence of Payments

- 5.4.1 Before issuing a Payment Certificate which includes an amount payable to a nominated Subcontractor, the 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 this GC Clause 5.4.1(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

- 6.1.1 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.
- 6.1.2 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

- 6.2.1 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.
- 6.2.2 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

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

6.4 Labour Laws

- 6.4.1 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.
- 6.4.2 The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.

6.5 Working Hours

- 6.5.1 No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Particular Conditions, 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

- 6.6.1 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.
- 6.6.2 The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

6.7 Health and Safety

- 6.7.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- 6.7.2 The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.
- 6.7.3 The Contractor shall send, to the Engineer, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as the Engineer may reasonably require.
- 6.7.4 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.

- 6.7.5 The Contractor shall throughout the contract (including the Defects Notification Period): (i) conduct Information, Education and Consultation Communication (IEC) campaigns, at least every other month, addressed to all the Site staff and labour (including all the Contractor's employees, all Sub-Contractors and Consultants' 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.
- 6.7.6 The Contractor shall include in the program to be submitted for the execution of the Works under GC Clause 8.3 an alleviation program 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 GC 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
- 6.8.1 Throughout the execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the work.
- 6.8.2 Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in GC Clause 1.4 [Law and Language]) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.
- 6.9 Contractor's Personnel
- 6.9.1 The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The 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.

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

6.10 Records of Contractor's Personnel and Equipment

- 6.10.1 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

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

6.12 Foreign Personnel

- 6.12.1 The Contractor 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.
- 6.12.2 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

- 6.13.1 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

- 6.14.1 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

- 6.15.1 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 their danger to 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

- 6.16.1 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

- 6.17.1 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

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

6.19 Funeral Arrangements

- 6.19.1 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 Forced labour

- 6.20.1 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 Child labour

- 6.21.1 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 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

- 6.22.1 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 summarised on a monthly basis and submitted to the Engineer, and these records shall be available for inspection by Auditors during normal working hours. These records shall be included in the details to be submitted by the Contractor under GC Clause 6.10 [Records of Contractor's Personnel and Equipment].

6.23 Workers' Organizations

- 6.23.1 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 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 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. Worker organisations are expected to fairly represent the workers in the workforce.

6.24 Non-Discrimination and Equal Opportunity

- 6.24.1 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 Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on inherent requirements of the job shall not be deemed discrimination.

7 Plant, Materials and Workmanship

7.1 Manner of Execution

- 7.1.1 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

- 7.2.1 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.

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

7.3 Inspection

7.3.1 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.

7.3.2 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.

7.3.3 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

7.4.1 This GC Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

7.4.2 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.

7.4.3 The Engineer may, under GC Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant, Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

7.4.4 The 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.

- 7.4.5 If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to GC Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GC Clause 8.4 [Extension of Time for Completion], and
 - (b) payment of any such Cost plus profit, which shall be included in the Contract Price.
- 7.4.6 After receiving this notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.
- 7.4.7 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
- 7.5.1 If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the 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.
- 7.5.2 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 GC Clause 2.5 [Employer's Claims] pay these costs to the Employer.
- 7.6 Remedial Work
- 7.6.1 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.
- 7.6.2 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 GC Clause 7.6.1(c).
- 7.6.3 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 GC Clause 2.5 [Employer's Claims] pay to the Employer all costs arising from this failure.

7.7 Ownership of Plant and Materials

7.7.1 Except otherwise specified 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 GC Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

7.8 Royalties

7.8.1 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

8.1.1 Except as otherwise specified in the Particular Conditions, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's instruction recording the agreement of both Parties on such fulfilment and instructing to commence the Works is received by the Contractor:

- (a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities in the Country;
- (b) delivery to the Contractor of reasonable evidence of the Employer's Financial arrangements (under GC Clause 2.4 [Employer's Financial Arrangements]);
- (c) except if otherwise specified in the Particular Conditions, effective access to and possession of the Site given to the Contractor together with such permission(s) under GC Clause 1.13.2(a) [Compliance with Laws] as required for the commencement of the Works; and
- (d) receipt by the Contractor of the Advance Payment under GC Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

8.1.2 If the above 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 GC Clause 16.2 [Termination by Contractor].

- 8.1.3 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

- 8.2.1 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 GC Clause 10.1 [Taking Over of the Works and Sections].

8.3 Programme

- 8.3.1 The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under GC 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 GC Clause 5 [Nominated Subcontractors]),
- (c) the sequence and timing of inspections and tests specified in the Contract, and
- (d) a supporting report which includes:
 - (i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and
 - (ii) details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

- 8.3.2 Unless the Engineer, within 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.

- 8.3.3 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 GC Clause 13.3 [Variation Procedure].

- 8.3.4 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 GC Clause.

8.4 Extension of Time for Completion

- 8.4.1 The Contractor shall be entitled subject to GC 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 GC 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 GC 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 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.

- 8.4.2 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 GC Clause 20.1 [Contractor's Claims]. When determining each extension of time under GC 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

- 8.5.1 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 GC Clause 8.4.1(b) [Extension of Time for Completion].

8.6 Rate of Progress

- 8.6.1 If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion, and/or
- (b) progress has fallen (or will fall) behind the current programme under GC Clause 8.3 [Programme],

other than as a result of a cause listed in GC Clause 8.4 [Extension of Time for Completion], then the Engineer may instruct the Contractor to submit, under GC Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

8.6.2 Unless the 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 GC Clause 2.5 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under GC Clause 8.7 below.

8.6.3 Additional costs of revised methods, including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under GC 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

8.7.1 If the Contractor fails to comply with GC Clause 8.2 [Time for Completion], the Contractor shall subject to notice under GC 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 Particular Conditions, 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 GC Clause shall not exceed the maximum amount of delay damages (if any) stated in the Particular Conditions.

8.7.2 These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under GC 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

8.8.1 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.

8.8.2 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 GC Clauses 8.9, 8.10 and 8.11 shall not apply.

8.9 Consequences of Suspension

8.9.1 If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under GC 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 GC Clause 20.1 [Contractor's Claims] to:

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

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

8.9.3 The Contractor shall not be entitled to an extension of time for, or to payment of the Cost incurred in, making good the consequences of the Contractor's faulty design, workmanship or materials, or of the Contractor's failure to protect, store or secure in accordance with GC Clause 8.8 [Suspension of Work].

8.10 Payment for Plant and Materials in Event of Suspension

8.10.1 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

8.11.1 If the suspension under GC 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 GC 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 GC Clause 16.2 [Termination by Contractor].

8.12 Resumption of Work

8.12.1 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 GC Clause 13 [Variations and Adjustments].

9 Tests on Completion

9.1 Contractor's Obligations

9.1.1 The Contractor shall carry out the Tests on Completion in accordance with this GC Clause and GC Clause 7.4 [Testing], after providing the documents in accordance with GC Clause 4.1.6(d) [Contractor's General Obligations].

9.1.2 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.

- 9.1.3 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

- 9.2.1 If the Tests on Completion are being unduly delayed by the Employer, GC Clause 7.4 [Testing] (fifth paragraph) and/or GC Clause 10.3 [Interference with Tests on Completion] shall be applicable.
- 9.2.2 If the Tests on Completion are being unduly delayed by the Contractor, the 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.
- 9.2.3 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

- 9.3.1 If the Works, or a Section, fail to pass the Tests on Completion, GC 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

- 9.4.1 If the Works, or a Section, fail to pass the Tests on Completion repeated under GC Clause 9.3 [Retesting], the Engineer shall be entitled to:
- (a) order further repetition of Tests on Completion under GC Clause 9.3;
 - (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 GC Clause 11.4.2(c) [Failure to Remedy Defects]; or
 - (c) issue a Taking-Over Certificate, if the Employer so requests.
- 9.4.2 In the event of GC Clause 9.4.1(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 GC Clause 2.5 [Employer's Claims] and GC Clause 3.5 [Determinations].

10 Employer's Taking Over

10.1 Taking Over of the Works and Sections

- 10.1.1 Except as stated in GC 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 GC Clause 8.2 [Time for Completion] and except as allowed in GC Clause 10.1.3(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 GC Clause.
- 10.1.2 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.
- 10.1.3 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 GC Clause.
- 10.1.4 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
- 10.2.1 The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.
- 10.2.2 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.

- 10.2.3 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.
- 10.2.4 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 GC 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 GC Clause 3.5 [Determinations] to agree or determine this Cost and profit.
- 10.2.5 If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the 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 GC 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 GC Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

- 10.3.1 If the Contractor is prevented, for more 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.
- 10.3.2 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.
- 10.3.3 If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to GC Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GC 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.
- 10.3.4 After receiving this notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.

10.4 Surfaces Requiring Reinstatement

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

11 Defects Liability

11.1 Completion of Outstanding Work and Remedying Defects

11.1.1 In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:

- (a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and
- (b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

11.1.2 If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.

11.2 Cost of Remedying Defects

11.2.1 All work referred to in GC Clause 11.1.1(b) [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

- (a) any design for which the Contractor is responsible,
- (b) Plant, Materials or workmanship not being in accordance with the Contract, or
- (c) failure by the Contractor to comply with any other obligation.

11.2.2 If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and GC Clause 13.3 [Variation Procedure] shall apply.

11.3 Extension of Defects Notification Period

11.3.1 The Employer shall be entitled subject to GC 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 a damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.

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

11.4 Failure to Remedy Defects

11.4.1 If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (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.

- 11.4.2 If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under GC 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 GC 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 GC 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

- 11.5.1 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

- 11.6.1 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.
- 11.6.2 These tests shall be carried out in accordance with the terms applicable to the previous tests, except that they shall be carried out at the risk and cost of the Party liable, under GC Clause 11.2 [Cost of Remedying Defects], for the cost of the remedial work.

11.7 Right of Access

- 11.7.1 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 GC Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

11.8 Contractor to Search

- 11.8.1 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 GC 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 GC Clause 3.5 [Determinations] and shall be included in the Contract Price.

11.9 Performance Certificate

- 11.9.1 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.
- 11.9.2 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.
- 11.9.3 Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

11.1 Unfulfilled Obligations

- 11.10.1 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.

11.1 Clearance of Site

- 11.11.1 Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.
- 11.11.2 If all these items have not been removed within 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.
- 11.11.3 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

- 12.1.1 The Works shall be measured, and valued for payment, in accordance with this GC Clause. The Contractor shall show in each application under GC Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement at Completion], and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.
- 12.1.2 Whenever the 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.
- 12.1.3 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.
- 12.1.4 Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.
- 12.1.5 If the Contractor examines and disagrees with 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

- 12.2.1 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

- 12.3.1 Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with GC 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 GC Clauses 12.1 and 12.2 and the appropriate rate or price for the item.
- 12.3.2 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

- 12.3.3 Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.
- 12.3.4 However, 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 GC 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.
- 12.3.5 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 GC Clause 12.3.4(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.
- 12.3.6 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 Works commences.

12.4 Omissions

- 12.4.1 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 GC Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13 Variations and Adjustments

13.1 Right to Vary

13.1.1 Variations may be initiated by the 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.

13.1.2 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.

13.1.3 Each Variation may include:

- (a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) changes to the quality and other characteristics of any item of work,
- (c) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,
- (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

13.1.4 The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves a Variation.

13.2 Value Engineering

13.2.1 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.

13.2.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in GC Clause 13.3 [Variation Procedure].

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

- (a) the Contractor shall design this part,

- (b) GC Clauses 4.1.6(a), 4.1.6(b), 4.1.6(c), and 4.1.6(d) [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 GC 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 GC Clause 13.7 [Adjustments for Changes in Legislation] and GC 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.

13.2.4 However, if amount (i) is less than amount (ii), there shall not be a fee.

13.3 Variation Procedure

- 13.3.1 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 GC Clause 8.3 [Programme] and to the Time for Completion, and
 - (c) the Contractor's proposal for evaluation of the Variation.
- 13.3.2 The Engineer shall, as soon as practicable after receiving such proposal (under GC Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.
- 13.3.3 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.
- 13.3.4 Each Variation shall be evaluated in accordance with GC Clause 12 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this GC Clause.

13.4 Payment in Applicable Currencies

- 13.4.1 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

- 13.5.1 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 GC 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 GC 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 Particular Conditions shall be applied.
- 13.5.2 The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6 Day work

- 13.6.1 For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a day work basis. The work shall then be valued in accordance with the Day work Schedule included in the Contract, and the following procedure shall apply. If a Day work Schedule is not included in the Contract, this GC Clause shall not apply.
- 13.6.2 Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.
- 13.6.3 Except for any items for which the Day work 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.
- 13.6.4 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 GC Clause 14.3 [Application for Interim Payment Certificates].

13.7 Adjustments for Changes in Legislation

- 13.7.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of 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.
- 13.7.2 If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to GC Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GC Clause 8.4 [Extension of Time for Completion], and
 - (b) payment of any such Cost, which shall be included in the Contract Price.
- 13.7.3 After receiving this notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.
- 13.7.4 Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of GC Clause 13.8 [Adjustments for Changes in Cost].

13.8 Adjustments for Changes in Cost

- 13.8.1 In this GC 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 GC Clause shall not apply.
- 13.8.2 If this GC 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 GC Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other GC Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.
- 13.8.3 The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

$$P_n = a + b L_n / L_o + c E_n / E_o + d M_n / M_o + \dots$$

where:

"P_n" 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 Particular Conditions;

“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.

- 13.8.4 The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.
- 13.8.5 In cases where the “currency of index” (stated in the table) 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
- 13.8.6 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.
- 13.8.7 If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favourable to the Employer.
- 13.8.8 The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14 Contract Price and Payment

14.1 The Contract Price

14.1.1 Unless otherwise stated in the Particular Conditions:

- (a) the Contract Price shall be agreed or determined under GC 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 GC 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 GC 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; and
- (e) notwithstanding the provisions of GC Clause 14.1.1(b), Contractor's Equipment, including essential spare parts therefore, 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

- 14.2.1 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 GC 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 Particular Conditions.
- 14.2.2 Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Particular Conditions, this GC Clause shall not apply.
- 14.2.3 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 GC Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with GC 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 furnished in Section IX, Contract Forms or in another form approved by the Employer.
- 14.2.4 The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.
- 14.2.5 Unless stated otherwise in the Particular Conditions, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer in accordance with GC 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 per cent (30%) of the Accepted Contract Amount less Provisional Sums; and

- (b) deductions shall be made at the amortisation rate stated in the Particular Conditions 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 per cent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

14.2.6 If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works, or prior to termination under GC Clause 15 [Termination by Employer], GC Clause 16 [Suspension and Termination by Contractor] or GC Clause 19.6 [Optional Termination, Payment and Release] (as the case may be), the whole of the balance then outstanding shall immediately become due, and in case of termination under GC Clause 15 [Termination by Employer], except for GC Clause 15.5 [Employer's Entitlement to Termination for Convenience], payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

14.3.1 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 GC Clause 4.21 [Progress Reports].

14.3.2 The Statement shall include the following items, as applicable, which shall be expressed in the various currencies in which the Contract Price is payable, in the sequence listed:

- (a) the estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in this GC Clause 14.3.2 (b) to (g) below);
- (b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with GC Clause 13.7 [Adjustments for Changes in Legislation] and GC 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 Particular Conditions 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 Particular Conditions;
- (d) any amounts to be added for the advance payment (if more than one instalment) and to be deducted for its repayments in accordance with GC Clause 14.2 [Advance Payment];
- (e) any amounts to be added and deducted for Plant and Materials in accordance with GC 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 GC Clause 20 [Claims, Disputes and Arbitration]; and
- (g) the deduction of amounts certified in all previous Payment Certificates.

14.4 Schedule of Payments

- 14.4.1 If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:
- (a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of GC Clause 14.3.2(a) [Application for Interim Payment Certificates];
 - (b) GC 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 GC Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.
- 14.4.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

- 14.5.1 If this GC Clause applies, Interim Payment Certificates shall include, under GC Clause 14.3.2(e) [Application for Interim Payment Certificates], (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 GC Clause 14.3.2(a) [Application for Interim Payment Certificates].
- 14.5.2 If the lists referred to in GC Clause 14.5.3(b)(i), or GC Clause 14.5.3(c)(i) below are not included in the Schedules, this GC Clause shall not apply.
- 14.5.3 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 GC Clause: this guarantee may be in a similar form to the form referred to in GC Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

- (i) are those listed in the Schedules for payment when delivered to the Site, and
- (ii) have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

14.5.4 The additional amount to be certified shall be the equivalent of eighty percent 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 GC Clause and of the contract value of the Plant and Materials.

14.5.5 The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under GC Clause 14.3.2(a) [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials

14.6 Issue of Interim Payment Certificates

14.6.1 No amount will be certified or paid until the 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.

14.6.2 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 Particular Conditions. In this event, the Engineer shall give notice to the Contractor accordingly.

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

- (a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or
 - (b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.
- 14.6.4 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

- 14.7.1 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 GC Clause 4.2 [Performance Security] and GC 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 GC Clause 16.2.
- 14.7.2 Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8 Delayed Payment

- 14.8.1 If the Contractor does not receive payment in accordance with GC 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 GC Clause 14.7 [Payment], irrespective (in the case of Clause 14.7.1(b)) of the date on which any Interim Payment Certificate is issued.
- 14.8.2 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.

- 14.8.3 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

- 14.9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the 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.
- 14.9.2 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.
- 14.9.3 However, if any work remains to be executed under GC Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.
- 14.9.4 When calculating these proportions, no account shall be taken of any adjustments under GC Clause 13.7 [Adjustments for Changes in Legislation] and GC Clause 13.8 [Adjustments for Changes in Cost].
- 14.9.5 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 stipulated in Section IX, Contract Forms 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 GC 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 GC Clause 14.9.2. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.
- 14.9.6 If the Performance Security required under GC 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

- 14.10.1 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 GC Clause 14.3 [Application for Interim Payment Certificates], showing:
- (a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,
 - (b) any further sums which the Contractor considers to be due, and
 - (c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.
- 14.10.2 The Engineer shall then certify in accordance with GC Clause 14.6 [Issue of Interim Payment Certificates].

14.11 Application for Final Payment Certificate

- 14.11.1 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.
- 14.11.2 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 the 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".
- 14.11.3 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 GC Clause 20.4 [Obtaining Dispute Board's Decision] or GC 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

- 14.12.1 When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

14.13 Issue of Final Payment Certificate

14.13.1 Within 28 days after receiving the Final Statement and discharge in accordance with GC Clause 14.11 [Application for Final Payment Certificate] and GC 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.

14.13.2 If the Contractor has not applied for a Final Payment Certificate in accordance with GC Clause 14.11 [Application for Final Payment Certificate] and GC 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

14.14.1 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 GC Clause 14.10 [Statement at Completion].

14.14.2 However, this GC 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

14.15.1 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 GC Clause 13.5 [Provisional Sums] and GC Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and

- (iii) other payments and deductions under GC Clauses 14.3.2(a), 14.3.2(b), 14.3.2(c), and 14.3.2(d) [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in GC Clause 14.15.1(a)(i) above;
- (b) payment of the damages specified in the Particular Conditions 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

- 15.1.1 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

- 15.2.1 The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) fails to comply with GC Clause 4.2 [Performance Security] or with a notice under GC 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 GC Clause 8 [Commencement, Delays and Suspension], or
 - (ii) to comply with a notice issued under GC Clause 7.5 [Rejection] or GC 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 GC Clause 15.2.1(f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

- 15.2.2 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 GC Clause 15.2.1(e) or (f), the Employer may by notice terminate the Contract immediately.
- 15.2.3 The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.
- 15.2.4 The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.
- 15.2.5 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.
- 15.2.6 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

- 15.3.1 As soon as practicable after a notice of termination under GC Clause 15.2 [Termination by Employer] has taken effect, the Engineer shall proceed in accordance with GC 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

- 15.4.1 After a notice of termination under GC Clause 15.2 [Termination by Employer] has taken effect, the Employer may:
 - (a) proceed in accordance with GC 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 GC 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

- 15.5.1 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 GC 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 GC Clause 16.2 [Termination by Contractor].
- 15.5.2 After this termination, the Contractor shall proceed in accordance with GC Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment] and shall be paid in accordance with GC Clause 16.4 [Payment on Termination].

15.6 Fraud and Corruption

- 15.6.1 If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive, coercive or obstructive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contractor's employment under the Contract and expel him from the Site, and the provisions of GC Clause 15 shall apply as if such expulsion had been made under GC Clause 15.2 [Termination by Employer].
- 15.6.2 Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent, coercive or obstructive practice during the execution of the work then that employee shall be removed in accordance with GC Clause 6.9 [Contractor's Personnel].
- 15.6.3 It is the Bank's policy to require that Borrowers (including beneficiaries of Bank Financing), as well as bidders, suppliers, and contractors, and their agents (whether declared or not), subcontractors, sub-consultants, service providers or suppliers, and any personnel thereof, observe the highest standard of ethics during the procurement and execution of Bank-financed contracts¹⁸. In pursuance of this policy, the Bank:

¹⁸ In this context, any action to influence the procurement process or contract execution for undue advantage is improper.

- (a) defines, for the purposes of this provision, the terms set forth below as follows:
- (i) “Corrupt Practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party¹⁹;
 - (ii) “Fraudulent Practice” is any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party²⁰ to obtain financial or other benefit or to avoid an obligation;
 - (iii) “Collusive Practice” is an arrangement between two or more parties²¹, designed to achieve an improper purpose, including to influence improperly the actions of another party; and
 - (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 party²²;
 - (v) “obstructive practice” is
 - (v.1) 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
 - (v.2) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under clause 1.15 [Inspections and Audits by the Bank]

¹⁹ For the purpose of this sub-paragraph, “another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes Bank staff and employees of other organizations taking or reviewing procurement decisions.

²⁰ For the purpose of this sub-paragraph, “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

- (b) will reject a proposal for award if it determines that the bidder recommended for award or any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in Corrupt, Fraudulent, Collusive, Coercive or obstructive Practices in competing for the contract in question;
- (c) will declare misprocurement and cancel the portion of the Financing allocated to a contract if it determines at any time that representatives of the Borrower or of a recipient of any part of the proceeds of such Financing engaged in Corrupt, Fraudulent, Collusive, Coercive or Obstructive Practices during the procurement or the implementation of that contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;
- (d) will sanction a firm or individual, at any time, in accordance with the prevailing Bank's sanctions procedures²³, including by publicly declaring such firm or individual ineligible either indefinitely or for a stated period of time, (i) to be awarded Bank-financed contracts and (ii) to be a nominated²⁴ sub-contractor, consultant, supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and
- (e) will require that a clause be included in bidding documents and in contracts financed by the Bank, requiring bidders, suppliers and contractors and their sub-contractors, agents, personnel, consultants, service providers, or suppliers to permit the Bank to inspect all accounts and records and other documents relating to the submission of bids and contract performance and to have them audited by auditors appointed by the Bank.

²¹ For the purpose of this sub-paragraph, "parties" refers to participants in the procurement process (including public officials) attempting either themselves, or through another person or entity not participating in the procurement or selection process, to simulate competition or to establish bid prices at artificial, non-competitive levels, or are privy to each other's bid prices or other conditions.

²² For the purpose of this sub-paragraph, "party" refers to a participant in the procurement process or contract execution.

²³ A firm or an individual may be declared ineligible to be awarded a Bank financed contract: (i) upon completion of the Bank's sanctions proceedings as per its sanctions procedures, including, inter alia, cross-debarment as agreed with other International Financial Institutions, including Multilateral Development Banks, or otherwise decided by the Bank; and through the application of the Proposal for the Implementation of a Sanctions Process within the African Development Bank Group; and (ii) as a result of temporary suspension or early temporary suspension in connection with an on-going sanction proceeding. See footnote 18 and paragraph 9 of Appendix 1 of the Rules and Procedures for Procurement of Goods and Works.

²⁴ A nominated sub-contractor, consultant, manufacturer or supplier, or service provider (different names are used depending on the particular bidding documents) is one which has either been: (i) included by the bidder in its pre-qualification application or bid because it brings specific and critical experience and know-how that allow the bidder to meet the qualification requirement for the particular bid; or (ii) appointed by the Borrower."

16 Suspension and Termination by Contractor

16.1 Contractor's Entitlement to Suspend Work

- 16.1.1 If the Engineer fails to certify in accordance with GC Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with GC Clause 2.4 [Employer's Financial Arrangements] or GC 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.
- 16.1.2 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 GC 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.
- 16.1.3 The Contractor's action shall not prejudice his entitlements to financing charges under GC Clause 14.8 [Delayed Payment] and to termination under GC Clause 16.2 [Termination by Contractor].
- 16.1.4 If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant GC Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.
- 16.1.5 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 GC Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to GC Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GC 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.
- 16.1.6 After receiving this notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.

16.2 Termination by Contractor

- 16.2.1 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 GC Clause 16.1 [Contractor's Entitlement to Suspend Work] in respect of a failure to comply with GC 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 GC Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with GC 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 GC Clause 1.6 [Contract Agreement] or GC Clause 1.7 [Assignment],
- (f) a prolonged suspension affects the whole of the Works as described in GC 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 GC Clause 8.1 [Commencement of Works].

16.2.2 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 GC Clause 16.2.1(f) or (g), the Contractor may by notice terminate the Contract immediately.

16.2.3 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 GC Clause 14.7 [Payment] for payments under Interim Payment certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under GC Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under GC Clause 16.1.3 above, or (ii) terminate his employment under 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.

16.2.4 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

16.3.1 After a notice of termination under GC Clause 15.5 [Employer's Entitlement to Termination for Convenience], GC Clause 16.2 [Termination by Contractor] or GC 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

16.4.1 After a notice of termination under GC 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 GC Clause 19.6 [Optional Termination, Payment and Release], and
- (c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17 Risk and Responsibility

17.1 Indemnities

17.1.1 The Contractor shall indemnify and hold harmless the 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.

17.1.2 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 GC Clause 18.3.3(d)(i), (ii) and (iii) [Insurance Against Injury to Persons and Damage to Property].

17.2 Contractor's Care of the Works

- 17.2.1 The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under GC 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.
- 17.2.2 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.
- 17.2.3 If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause not listed in GC 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.
- 17.2.4 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

- 17.3.1 The risks referred to in GC 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 preventative precautions.

17.4 Consequences of Employer's Risks

- 17.4.1 If and to the extent that any of the risks listed in GC 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.
- 17.4.2 If the Contractor suffers delay and/or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to GC Clause 20.1 [Contractor's Claims] to:
 - (a) an extension of time for any such delay, if completion is or will be delayed, under GC 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 GC Clause 17.3.1(f) and (g) [Employer's Risks], Cost plus profit shall be payable.
- 17.4.3 After receiving this further notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.

17.5 Intellectual and Industrial Property Rights

- 17.5.1 In this GC 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.
- 17.5.2 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 GC Clause.
- 17.5.3 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 anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.
- 17.5.4 The Contractor shall indemnify and hold the 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.

- 17.5.5 If a Party is entitled to be indemnified under this GC 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

- 17.6.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any 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 GC Clause 8.7 [Delay Damages]; GC Clause 11.2 [Cost of Remedying Defects]; GC Clause 15.4 [Payment after Termination]; GC Clause 16.4 [Payment on Termination]; GC Clause 17.1 [Indemnities]; GC Clause 17.4 (b) [Consequences of Employer's Risks] and GC Clause 17.5 [Intellectual and Industrial Property Rights].
- 17.6.2 The total liability of the Contractor to the Employer, under or in connection with the Contract other than under GC Clause 4.19 [Electricity, Water and Gas], GC Clause 4.20 [Employer's Equipment and Free-Issue Material], GC Clause 17.1 [Indemnities] and GC 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 Particular Conditions, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.
- 17.6.3 This GC 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 Accommodation/Facilities

- 17.7.1 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).
- 17.7.2 If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the 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

- 18.1.1 In this GC Clause, "insuring Party" means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant GC Clause.

- 18.1.2 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 GC Clause
- 18.1.3 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 GC Clause.
- 18.1.4 If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this GC 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.
- 18.1.5 Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- 18.1.6 The relevant insuring Party shall, within the respective periods stated in the Particular Conditions (calculated from the Commencement Date), submit to the other Party:
- (a) evidence that the insurances described in this GC Clause have been effected, and
 - (b) copies of the policies for the insurances described in GC Clause 18.2 [Insurance for Works and Contractor's Equipment] and GC Clause 18.3 [Insurance against Injury to Persons and Damage to Property].
- 18.1.7 When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.
- 18.1.8 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this GC Clause.
- 18.1.9 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.

- 18.1.10 If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this GC Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.
- 18.1.11 Nothing in this GC 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.
- 18.1.12 Payments by one Party to the other Party shall be subject to GC Clause 2.5 [Employer's Claims] or GC Clause 20.1 [Contractor's Claims], as applicable.
- 18.1.13 The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to GC Clause 18) with insurers from any eligible source country, in accordance with the Bank's Rules and Procedures for Procurement of Goods and Works.

18.2 Insurance for Works and Contractor's Equipment

- 18.2.1 The insuring Party shall insure the Works, Plant, Materials and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under GC Clause 18.1.6(a) [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.
- 18.2.2 The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under GC Clause 11 [Defects Liability]).
- 18.2.3 The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.
- 18.2.4 Unless otherwise stated in the Particular Conditions, insurances under this GC 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 **GC 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 **GC Clause 17.3.1(c), (g) and (h)** [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 Particular Conditions (if an amount is not so stated, this **GC Clause 18.2.4(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 **GC Clause 18.2.4(e)(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 **GC Clause 14.5** [Plant and Materials intended for the Works].
- 18.2.5 If, more than one year after the Base Date, the cover described in **GC Clause 18.2.4(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 **GC 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 **GC Clause 18.1** [General Requirements for Insurances].
- 18.3 Insurance against Injury to Persons and Damage to Property
- 18.3.1 The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under **GC Clause 18.2** [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under **GC Clause 18.4** [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.
- 18.3.2 This insurance shall be for a limit per occurrence of not less than the amount stated in the Particular Conditions, with no limit on the number of occurrences. If an amount is not stated in the Particular Conditions, this **GC Clause** shall not apply.
- 18.3.3 Unless otherwise stated in the Particular Conditions, the insurances specified in this **GC 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 GC 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 GC 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

- 18.4.1 The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.
- 18.4.2 The insurance shall cover the 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.
- 18.4.3 The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this GC Clause.

19 Force Majeure

19.1 Definition of Force Majeure

- 19.1.1 In this GC Clause, "Force Majeure" means an exceptional event or circumstance:
 - (a) which is beyond a Party's control,
 - (b) which such Party could not reasonably have provided against before entering into the Contract,
 - (c) which, having arisen, such Party could not reasonably have avoided or overcome, and
 - (d) which is not substantially attributable to the other Party.
- 19.1.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (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

- 19.2.1 If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- 19.2.2 The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- 19.2.3 Notwithstanding any other provision of this GC 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 Minimise Delay

- 19.3.1 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.
- 19.3.2 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

- 19.4.1 If the Contractor is prevented from performing its substantial obligations under the Contract by Force Majeure of which notice has been given under GC 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 GC Clause 20.1 [Contractor's Claims] to:
- (a) an extension of time for any such delay, if completion is or will be delayed, under GC Clause 8.4 [Extension of Time for Completion], and

- (b) if the event or circumstance is of the kind described in GC Clause 19.1.2(i) to (iv) [Definition of Force Majeure] and, in the case of GC Clause 19.1.2(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 GC Clause 18.2 [Insurance for Works and Contractor's Equipment].
- 19.4.2 After receiving this notice, the Engineer shall proceed in accordance with GC Clause 3.5 [Determinations] to agree or determine these matters.
- 19.5 Force Majeure Affecting Subcontractor
 - 19.5.1 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 GC 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 GC Clause.
- 19.6 Optional Termination, Payment and Release
 - 19.6.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under GC 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 GC Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].
 - 19.6.2 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 Costs 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

- 19.7.1 Notwithstanding any other provision of this GC 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 GC Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under GC Clause 19.6.

20 Claims, Disputes and Arbitration

20.1 Contractor's Claims

- 20.1.1 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.
- 20.1.2 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 GC Clause shall apply.
- 20.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 20.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this GC 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.
- 20.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the 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.
- 20.1.6 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.
- 20.1.7 Within the above defined period of 42 days, the Engineer shall proceed in accordance with GC 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 GC Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 20.1.8 Each Payment Certificate shall include such additional payment for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.
- 20.1.9 If the Engineer does not respond within the timeframe defined in this GC Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer it to the Dispute Board in accordance with GC Clause 20.4 [Obtaining Dispute Board's Decision].
- 20.1.10 The requirements of this GC Clause are in addition to those of any other GC Clause which may apply to a claim. If the Contractor fails to comply with this or another GC 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 GC Clause.
- 20.2 Appointment of the Dispute Board
 - 20.2.1 Disputes shall be referred to a DB for decision in accordance with GC Clause 20.4 [Obtaining Dispute Board's Decision]. The Parties shall appoint a DB by the date stated in the Particular Conditions.
 - 20.2.2 The DB shall comprise, as stated in the Particular Conditions, 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.

- 20.2.3 If the Parties have not jointly appointed the DB 21 days before the date stated in the Particular Conditions 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.
- 20.2.4 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.
- 20.2.5 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.
- 20.2.6 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.
- 20.2.7 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.
- 20.2.8 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 GC Clause.
- 20.2.9 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 GC Clause 14.12 [Discharge] shall have become effective.

20.3 Failure to Agree on the Composition of the Dispute Board

- 20.3.1 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 GC 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 Particular Conditions 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

- 20.4.1 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 GC Clause.
- 20.4.2 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.
- 20.4.3 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).
- 20.4.4 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 GC 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.
- 20.4.5 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.
- 20.4.6 In either event, this notice of dissatisfaction shall state that it is given under this GC Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in GC Clause 20.7 [Failure to Comply with Dispute Board's Decision] and GC 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 GC Clause.
- 20.4.7 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

- 20.5.1 Where a notice of dissatisfaction has been given under GC 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 GC Clause 20.4 above, should move to commence arbitration after the fifty-sixth (56) day from the day on which a notice of dissatisfaction was given, even if no attempt at amicable settlement has been made.

20.6 Arbitration

- 20.6.1 Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with GC 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) for contracts with foreign contractors, international arbitration (i) with proceedings administered by the arbitration institution designated in the Particular Conditions, and conducted under the rules of arbitration of such institution; or, if so specified in the Particular Conditions, (ii) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (iii) if neither an arbitration institution or UNCITRAL arbitration rules is specified in the Particular Conditions, 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 the said arbitration rules.

The place of arbitration shall be the neutral location specified in the Particular Conditions, and the arbitration shall be conducted in the language for communications defined in GC Clause 1.4 [Law and Language].

- (b) for contracts with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

- 20.6.2 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.
- 20.6.3 Neither Party shall be limited in the proceedings before the arbitrators to the evidence nor 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.
- 20.6.4 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

- 20.7.1 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 GC Clause 20.6 [Arbitration]. GC Clause 20.4 [Obtaining Dispute Board's Decision] and GC Clause 20.5 [Amicable Settlement] shall not apply to this reference.

20.8 Expiry of Dispute Board's Appointment

- 20.8.1 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) GC Clause 20.4 [Obtaining Dispute Board's Decision] and GC Clause 20.5 [Amicable Settlement] shall not apply, and
 - (b) the dispute may be referred directly to arbitration under GC 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 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 GC 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 GC 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 Particular Conditions 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 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 GC Clause 20.4 of the Conditions of Contract, the DB shall proceed in accordance with GC 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 GC 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 to not make a decision.

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Section VIII. 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.

Particular Conditions

Part A - Contract Data

Employer's name and address	1.1.2.2 & 1.3	Name: KENYA ELECTRICITY TRANSMISSION COMPANY KAWI COMPLEX, BLOCK B, SOUTH C Popo Lane Off Red Cross Road, South C, PO Box 34942 - 00100 Nairobi, Kenya
Engineer's name and address	1.1.2.4 & 1.3	Tractebel Engineering GmbH
Bank's name	1.1.2.11	African Development Bank
Borrower's name	1.1.2.12	The Government of the Republic of Kenya
Time for Completion	1.1.3.3	The Time for Completion of the whole of the Facilities including commissioning shall be twelve (12) months from the Effective Date as described in the Contract Agreement
Defects Notification Period	1.1.3.7	Shall be extended by 12 months (1 year)
Sections	1.1.5.6	Contract management shall not be handled through sections.
Level of "Profit"	1.2.3	One-twentieth (5%)
Addresses for Communication	1.3.1(b)	The Employer's address for the purpose of communications is: Attention:

		<p>Project Manager; EEHP (Nanyuki Underground Cable and associated transmission line): KAWI COMPLEX, BLOCK B, SOUTH C Popo Lane Off Red Cross Road, South C, PO Box 34942 – 00100 Nairobi, Kenya</p> <p>The Contractor's address for the purpose of communications is: [State full address, telephone, fax and e-mail]</p>
Governing Law	1.4	Republic of Kenya
Ruling language	1.4	English
Language for communications	1.4	English
Permits and Permissions to be obtained by the Employer	1.13.2(a)	<p>The permits, approvals and/or licenses, to be acquired and paid for by the Employers are:</p> <ul style="list-style-type: none"> a. National Environmental Management Authority (NEMA) License b. Kenya Civil Aviation Authority (KCAA) approval c. Easement acquisition (Right-of-Way)
Notices, Taxes, Duties, Permits, Licences, Approvals to be given and/or obtained by Contractor	1.13.2(b)	<p>The other permits, approvals and/or licenses, to be acquired by the Contractor, that are not the responsibility of the Employer under GC Clause 1.13.2(a) are:</p> <p>All permits, approvals and/or licenses from all local, state or national government</p>

		<p>authorities or public service undertakings in the country where the Site is located which such authorities or undertakings require the Contractor to obtain in its name and which are necessary for the performance of the Contract, including, without limitation, visas for the Contractor's and Subcontractor's personnel; working permits; registration with professional bodies; building and constructions permits; insurance work covers; licences for operating equipment & machinery and vehicles; entry permits for all imported Contractor's equipment; written consent by private land owners for right of passage; road permits for movement of construction plant, plant and equipment; where road crossings are involved, consent/permission by relevant department to disrupt traffic due to construction activities; any other statutory approvals as may be required by the law.</p>
Time for access to the Site	2.1.1	<p>Within 30 days after Commencement Date:</p> <p>PC 10.2 KETRACO will provide the following facilities for access to Site:</p> <ol style="list-style-type: none"> a. Over the whole length of the route, sufficient right of access as the Employer's representative agrees is essential for the Contractor's staff to carry out survey work and investigation of the general foundation conditions. b. Unless otherwise agreed, over not less than one-eighth of the

		<p>route as specified above, in not more than seven continuous lengths there shall be:-</p> <ul style="list-style-type: none"> i. such right of access for the Contractor's staff along the route as is necessary for the Contract Works; ii. the right to transport material on to the route at intervals approved by the Employer's representative ; iii. the right to make a reasonable width of track for a direct visual survey and for the transport of stores and material and the carrying out of erection operations along the route except where the route crosses buildings, orchards, gardens or any other ground over which the Employer's representative decides that such a track is not reasonably practicable. <p>The facilities in sub clause b. above shall be extended to the complete line as soon as available.</p>
Access to the project wayleave corridor	2.1.2	The contractor will be responsible for access outside the cable and line wayleave corridor. He will also be responsible for repair of any damage in public roads and private property outside the corridor
Situations in which the Engineer shall obtain approval from the Employer	3.1.3	The Engineer shall obtain the specific approval of the Employer before:-

before exercising a specific authority		<p>a) Agreeing or determining an extension of time and/or additional cost.</p> <p>b) Giving an Instructing that leads to a Variation,</p> <p>c) Approving a proposal for Variation submitted by the Contractor in accordance with GC Clause 13.1 or 13.2.</p>
Engineer's Duties and Authority	3.1.6(b)(ii)	All Variations shall require approval of the Employer.
Parts of the Permanent Works to be designed by the Contractor	4.1.6	All Permanent Works.
Notification of changes in financial position, performance and litigation status	4.1.7	The contractor shall provide the employer a report of the financial position, performance and litigation status every four months or within 21 days upon receipt of the employer's request for the same. In addition, the contractor should notify the employer of significant occurrences in the company financial position, performance and litigation status that may affect his ability to execute the contract within 21 days of becoming aware of the same.
Performance Security	4.2.1	The performance security shall be issued by the Contractor from a tier 1 Bank licensed by the Central Bank of Kenya and acceptable to the Employer and will be in the form of a Form of "Performance Security" furnished in Section IX, Contract Forms in the amount(s) and percentage Ten percent (10%) of the Accepted Contract Amount, and in the same currency(ies) as the Accepted Contract Amount.
Monthly Progress Reports	4.21.1	The reports shall be submitted on the 20 th of every month.
Normal working hours	6.5.1	Normal working hours are:

		0800hours to 1700hours from Monday to Friday except public holidays observed in Kenya
Delay damages for the Works	8.7.1 & 14.15.1 (b)	<u>0.2</u> % of the Contract Price per day.
Maximum amount of delay damages	8.7.1	10 % of the final Contract Price.
Contract Price Specificities	14.1.1	Not Applicable
Total advance payment	14.2.1	Twenty Percentage (20%) of the Accepted Contract Amount payable against receipt of an Advance Payment Guarantee issued by the Contractor from a tier 1 bank licensed by the Central Bank of Kenya and will be in the form of a Form of "Advance Payment Security" furnished in Section IX, Contract Forms in the amount(s) and in the currencies and proportions in which the Accepted Contract Amount is payable
Repayment amortisation rate of advance payment	14.2.5(b)	Thirty Percent (30%)
Percentage of Retention	14.3.2	10% of the contract price
Limit of Retention Money	14.3.2	10 % of the Accepted Contract Amount
Issue of Interim Payment Certificates	14.6.1	<p>No amount will be certified or paid until the Employer has received and approved the Performance Security. The performance security shall remain valid at all times during the execution of the contract; failure to which no amount shall be certified or paid.</p> <p>The Engineer shall, within 7 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate or return to the Contractor the Statement and supporting documents for correction.</p>

Issue of Interim Payment Certificates	14.6.2	No incorrect statement or supporting documents shall be certified. No corrections shall be done by the Engineer. All required corrections shall be done by the Contractor including correction of amounts.
	14.6.3	An interim payment certificate shall be withheld if:- a) The Statement is incorrect; this includes amounts b) The works have not been certified The supporting documents for goods supplied do not verify the nature and quantity of goods supplied.
Minimum Amount of Interim Payment Certificates	14.6.4	8% of the Accepted Contract Amount.
Payment	14.7.1 (a)	The Employer shall pay the Contractor the advance payment within 60 days after receipt of Statement, Performance Security and Advance Payment Guarantee.
	14.7.1 (b)	The Employer shall pay the Contractor the amount certified in each Interim Payment Certificate within sixty (60) days after receipt of the Statement and supporting documents as specified under PC Clause 14.6.
	14.7.1 (c)	The Employer shall pay the Contractor the amount certified in the Final Payment Certificate within sixty (60) days after receipt of the Statement and supporting documents as specified under PC Clause 14.6.
Delayed Payment	14.8.1	The financing charges shall be : One (1) Year Libor rate

	14.8.3	The Contractor shall be required to issue a statement with supporting documents and the payment procedure shall follow the same procedure as stated in PCC Clause 14.6 and 14.7
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Termination by Contractor	16.2.1	<p>The Contractor shall be entitled to terminate the Contract if:</p> <ul style="list-style-type: none"> a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under GC Clause 16.1 [Contractor's Entitlement to Suspend Work] in respect of a failure to comply with GC Clause 2.4 [Employer's Financial Arrangements], b) 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, c) the Employer fails to comply with GC Clause 1.6 [Contract Agreement] or GC Clause 1.7 [Assignment], d) a prolonged suspension affects the whole of the Works as described in GC Clause 8.11 [Prolonged Suspension], or e) 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. <p>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 GC Clause 8.1 [Commencement of Works].</p>
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	16.2.2	In any of these events or circumstances, the Contractor shall, upon giving 28 days' notice to the Employer, terminate the Contract. However, in the case of GC Clause 16.2.1(d) or (e), the Contractor may by notice terminate the Contract immediately.
Payment on Termination	16.4.1 (c)	The Contractor shall be entitled to payment of loss or damaged sustained as a result of the termination. The loss or damage sustained by the Contractor to be paid upon termination shall however NOT include loss of profit, indirect or consequential loss and overheads that would be incurred as part of the normal operation of the Contractor.
Maximum total liability of the Contractor to the Employer	17.6.2	The product of 1 times the Accepted Contract Amount
Periods for submission of insurance: a. evidence of insurance. b. relevant policies	18.1.6	28 days 28 days
Maximum amount of deductibles for insurance of the Employer's risks	18.2.4(d)	USD 5,000
Minimum amount of third party insurance	18.3.2	Third party liability Insurance to be taken out in accordance with the laws of Kenya.
Date by which the DB shall be appointed	20.2.1	28 days after a dispute has been declared.
Appointment (if not agreed) to be made by	20.3.1	This shall be discussed and agreed before contract negotiations

International Arbitration Institution	20.6.1(a)	Nairobi Centre of International Arbitration
Place of International Arbitration	20.6.1(a)	Arusha

Particular Conditions

Part B – Specific Provisions

GC Clause 14.1 The Contract Price

(Alternative text for GC Clause 14.1.1(e))

(e): Notwithstanding the provisions of GC Clause 14.1.1(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(s) 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 be 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.

Section IX. Contract Forms

This Section contains Contract Forms which, once completed, will constitute part of the Contract. The forms for Contract Agreement, Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder, after contract award

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Letter of Acceptance

[on letterhead paper of the Employer]

..... [date]

To: [name and address of the Contractor]

Subject: [Notification of Award Contract No].

This is to notify you that your Bid dated [Insert date] for execution of the . .
.....[insert name of the contract and identification number] for the
amount of [insert amount (s) in figures and words and name(s) of
currency(ies)], as corrected and modified in accordance with the Instructions to
Bidders is hereby accepted by us.

**You are requested to furnish the Performance Security in the amount of [insert
amount (s) in figures and words and name(s) of currency(ies)]within 28 days²⁵ in
accordance with the Conditions of Contract, using for that purpose the Performance
Security Form included in Section IX (Contract Forms) of the Bidding Document.**

²⁵ Or, the alternative deadline stipulated in the Particular Conditions.

Authorised Signature:

Name and Title of Signatory:

Name of Agency:

Attachment: Contract Agreement

Contract Agreement

THIS CONTRACT AGREEMENT is made on the [**insert number**] day of [**insert month**], [**insert year**].

BETWEEN

(1) [**insert complete name of the Employer**], a [**insert description of type of legal entity, for example, an agency of the Ministry of**] of the Government of { **insert name of Country of the Employer** }, or corporation incorporated under the laws of { **insert name of Country of the Employer** } and having its principal place of business at [**insert address of the Employer**] (hereinafter called “the Employer”),

and

(2) [**insert name of the Contractor**], a corporation incorporated under the laws of [**insert country of Contractor**] and having its principal place of business at [**insert address of Contractor**] (hereinafter called “the Contractor”).

WHEREAS the Employer invited bids for the Works, described as [**insert brief description of the Works**] and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, and the Employer agrees to pay the Contractor 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.

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.

- (a) **the Letter of Acceptance**
- (b) **the Bid**
- (c) **the Addenda No [insert addenda numbers if any].**
- (d) **the Particular Conditions**
- (e) **the General Conditions**
- (f) **the Specification**
- (g) **the Drawings; and**
- (h) **the completed Schedules,**

3. In consideration of the payments to be made by the Employer to the Contractor as indicated 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.

Agreement to be executed in accordance with the laws of **[insert name of the borrowing country]** on the day, month and year indicated above.

Signed by: Signed by:

For and on behalf of the Employer for and on behalf the Contractor

In the presence of: in the presence of:

Witness, Name, Signature, Address, Date

Witness, Name, Signature, Address, Date

Option I: Performance Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

Date: **[insert date (e.g., day, month, and year)]**

Bidding Process Reference: **[insert no. and title of bidding process]**

Bank's Branch or Office: **[insert complete name of Guarantor]**

Beneficiary: **[insert complete name of Employer]**

PERFORMANCE GUARANTEE No.: **[insert Performance Guarantee number]**

We have been informed that **[insert complete name of the Contractor]** (hereinafter called "the Applicant") has entered into Contract No. **[insert number]** dated **[insert day and month]**, **[insert year]** with you, for the execution and completion of **[insert description of the Works]** and the remedying of any defects therein (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a Performance Guarantee is required.

At the request of the Applicant, we hereby irrevocably undertake to pay you any sum(s) not exceeding **[insert amount(s)²⁶ in figures and words]** such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing declaring the Applicant

²⁶ The bank shall insert the amount(s) specified in the PC and denominated, as specified in the PC, either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

to be in default under the Contract, without cavil or argument, or your needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This Guarantee shall expire no later than the [insert number] day of [insert month], [insert year],²⁷ and any demand for payment under it 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, except that the supporting statement under Article 15(a) is hereby excluded.

[signatures of authorised representatives of the bank]

²⁷ Insert the date twenty-eight days after the expected completion date. 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 Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Advance Payment Security

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated.]

Date: [insert date (e.g., day, month, and year) of Bid Submission]

Bidding Process Reference: [insert number and title of bidding process]

[bank's letterhead]

Beneficiary: [insert legal name and address of Employer]

ADVANCE PAYMENT GUARANTEE No.: [insert Advance Payment Guarantee no.]

We have been informed that [insert name of the Contractor]. . . . (hereinafter called "the Applicant") has entered into Contract No. [insert reference number of the Contract]. . . . dated [insert day and month], [insert year].with you, 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, an advance payment in the sum... . [insert currency and amount in figures]²⁸. . . . (. . . . [insert currency and amount in words]. . . .) is to be made against an advance payment guarantee.

At the request of the Applicant, we [insert name of the bank]. hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of [insert currency and amount in figures]*. (. [insert currency and

²⁸ The Guarantor shall insert an amount representing the amount of the advance payment 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

amount in words]. . . .) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Applicant is in breach of its obligation under the Contract because the Applicant used the advance payment for purposes other than performing his obligations under the Contract or the costs of mobilisation in respect of the Works or has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

It is a condition for any claim and payment under this guarantee to be made that the advance payment referred to above must have been received by the Applicant on its account number **[insert Contractor's account number]**. . . . at **[insert name and address of the bank]**. . . .

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as indicated 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 eighty (80) percent of the Contract Price has been certified for payment, or on the . . . day of,²⁹, 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, except that the supporting statement under Article 15(a) is hereby excluded.

. **[Seal of bank and Signature(s)]**.

²⁹ 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 [insert number of months], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

Note -

All italicised text (**including footnotes**) is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

Retention Money Security

Demand Guarantee

_____ **[insert Bank's Name, and Address of Issuing Branch or Office]**

Beneficiary: _____ **[insert Name and Address of Employer]**

Date: _____ **[insert date (e.g., day, month, and year)]**

RETENTION MONEY GUARANTEE No.: **[insert Retention Money Guarantee no.]**

We have been informed that _____ **[insert name of Contractor]** (hereinafter called "the Applicant") has entered into Contract No. _____ **[insert reference number of contract]** dated _____ **[insert date]** with you, 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 Applicant, 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]³⁰ upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without 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 Applicant on its account number _____ at _____ [insert name and address of Applicant's bank].

This guarantee shall expire, at the latest, 21 days after the date when the Beneficiary has received a copy of the Performance Certificate issued by the Engineer. 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, except that the supporting statement under Article 15(a) is hereby excluded.

[signature(s)]

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

³⁰ The Guarantor shall insert an amount representing the amount of 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 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.

Appendices

Appendix 1. Terms and Procedures of Payment

In accordance with the provisions of GC Clause 3.2 (Terms of Payment), the Employer shall pay the Contractor in the following manner and at the following times, on the basis of the Price Breakdown given in the section on Price Schedules. Payments will be made in the currencies quoted by the Bidder unless otherwise agreed between the Parties. Applications for payment in respect of part deliveries may be made by the Contractor as work proceeds.

TERMS OF PAYMENT

Schedule No. 1. Plant and Equipment Supplied from Abroad

In respect of plant and equipment supplied from abroad, the following payments shall be made:

Twenty percent (20%) of the total CIP amount as an advance payment against receipt of invoice and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (70%) of the total or pro rata CIP amount upon Incoterm "CIP", upon delivery to the carrier within forty-five (45) days after receipt of documents [Employer to state the required documents, such as a negotiable bill

of lading, a non-negotiable sea way bill, an airway bill, a railway consignment note, a road consignment note, insurance certificate, etc.].

Five percent (5%) of the total or pro rata CIP amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata CIP amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 2. Plant and Equipment Supplied from within the Employer's Country

In respect of plant and equipment supplied from within the Employer's country, the following payments shall be made:

Twenty percent (20%) of the total EXW amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of the plant and equipment delivered to the site, as evidenced by shipping and delivery documents.

Eighty percent (70%) of the total or pro rata EXW amount upon Incoterm "Ex-Works," upon delivery to the carrier within forty-five (45) days after receipt of invoice and documents [Employer to state the required documents, such as a railway consignment note, a road consignment note, insurance certificate, etc.].

Five percent (5%) of the total or pro rata EXW amount upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata EXW amount upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

Schedule No. 3. Design Services

In respect of design services for both the foreign currency and the local currency portions, the following payments shall be made:

Ten percent (20%) of the total design services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer.

Ninety percent (80%) of the total or pro rata design services amount upon acceptance of design in accordance with GC Clause 4.4 by the Project Manager within forty-five (45) days after receipt of invoice.

Schedule No. 4. Installation Services

In respect of installation services for both the foreign and local currency portions, the following payments shall be made:

Ten percent (20%) of the total installation services amount as an advance payment against receipt of invoice, and an irrevocable advance payment security for the equivalent amount made out in favour of the Employer. The advance payment security may be reduced in proportion to the value of work performed by the Contractor as evidenced by the invoices for installation services.

Eighty percent (70%) of the measured value of work performed by the Contractor, as identified in the said Program of Performance, during the preceding month, as evidenced by the Employer's authorization of the Contractor's application, will be made monthly within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Completion Certificate, within forty-five (45) days after receipt of invoice.

Five percent (5%) of the total or pro rata value of installation services performed by the Contractor as evidenced by the Employer's authorization of the Contractor's monthly applications, upon issue of the Operational Acceptance Certificate, within forty-five (45) days after receipt of invoice.

In the event that the Employer fails to make any payment on its respective due date, the Employer shall pay to the Contractor interest on the amount of such delayed payment at the discount rate of the issuing institute of the contractor's of origin increased by 1% per amount for the foreign currency part, and the national Bank of Kenya discount rate for the local currency part.

PAYMENT PROCEDURES

The procedures to be followed in applying for certification and making payments shall be as follows:

All payments shall be upon submission of payment request to the Engineer.

All payments from African Development Bank will be made through Direct Transfer to the contractor account upon application by the client.

The Engineer shall issue payment certificate to the employers with a copy to the contractor. The Engineer shall issue the payment certificate within seven days receipt of the invoice with relevant attachments as per contract.

The contractor shall prepare and submit the invoice after receipt of payment certificate from Engineer.

In the event the Engineer require the contractor invoice to be corrected, he shall correct the invoice and the payments shall be made for the corrected amount by the Engineer.

Appendix 2. Price Adjustment Clause

NOT APPLICABLE

Sample Price Adjustment Formula

Prices payable to the Contractor, in accordance with the Contract, shall be subject to adjustment during performance of the Contract to reflect changes in the cost of labour and material components, in accordance with the following formula:

$$P_1 = P_0 \times \left(a + b \frac{L_1}{L_0} + c \frac{M_1}{M_0} \right) - P_0$$

in which:

P_1 = adjustment amount payable to the Contractor

P_0 = Contract price (base price)

a = percentage of fixed element in Contract price ($a = \%$)

b = percentage of labour component in Contract price ($b = \%$)

c = percentage of material and equipment component in Contract price ($c = \%$)

L_0, L_1 = labour indices applicable to the appropriate industry in the country of origin on the base date and the date for adjustment, respectively

M_0, M_1 = material and equipment indices in the country of origin on the base date and the date for adjustment, respectively

N.B. $a+b+c=100\%$.

Conditions Applicable To Price Adjustment

The Bidder shall indicate the source of labour and materials indices and the base date indices in its bid.

<u>Item</u>	<u>Source of Indices Used</u>	<u>Base Date Indices</u>
-------------	-------------------------------	--------------------------

The base date shall be the date twenty-eight (28) days prior to the Bid closing date.

The date of adjustment shall be the mid-point of the period of manufacture or installation of component or Plant.

The following conditions shall apply:

- (a) No price increase will be allowed beyond the original delivery date unless covered by an extension of time awarded by the Employer under the terms of the Contract. No price increase will be allowed for periods of delay for which the Contractor is responsible. The Employer will, however, be entitled to any price decrease occurring during such periods of delay.
- (b) If the currency in which the Contract price, P_0 , is expressed is different from the currency of the country of origin of the labour and/or materials indices, a correction factor will be applied to avoid incorrect adjustments of the Contract price. The correction factor shall correspond to the ratio of exchange rates between the two currencies on the base date and the date for adjustment as defined above.
- (c) No price adjustment shall be payable on the portion of the Contract price paid to the Contractor as an advance payment.

[Note: For complex Plant supply and installation involving several sources of supply and/or a substantial amount of installation works, a family of formulas may be necessary, with provision for the usage of Contractor's equipment in the works formula].

Appendix 3. Insurance Requirements

Insurances To Be Taken Out By The Contractor

In accordance with the provisions of GC Clause 6.4, the Contractor shall at its expense take out and maintain in effect, or cause to be taken out and maintained in effect, during the performance of the Contract, the insurances set forth below in the sums and with the deductibles and other conditions specified. The identity of the insurers and the form of the policies shall be subject to the approval of the Employer, such approval not to be unreasonably withheld.

(a) Cargo Insurance

Covering loss or damage occurring, while in transit from the supplier's or manufacturer's works or stores until arrival at the Site, to the Facilities (including spare parts therefor) and to the construction equipment to be provided by the Contractor or its Subcontractors.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
110% of CIP	USD 5,000/-	Employer / Contractor	Works	Site

(b) Installation All Risks Insurance

Covering physical loss or damage to the Facilities at the Site, occurring prior to completion of the Facilities, with an extended maintenance coverage for the Contractor's liability in respect of any loss or damage occurring during the defect liability period while the Contractor is on the Site for the purpose of performing its obligations during the defect liability period.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
100% of contract price Site	USD 5000	Employer / Contractor		Works

(c) Third Party Liability Insurance

Covering bodily injury or death suffered by third parties (including the Employer's personnel) and loss of or damage to property (including the Employer's property and any parts of the Facilities that have been accepted by the Employer) occurring in connection with the supply and installation of the Facilities.

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
[in currency(ies)]		[names]	[place]	[place]

Third party liability Insurance to be taken out in accordance with the laws of Kenya.

(d) Automobile Liability Insurance

Covering use of all vehicles used by the Contractor or its Subcontractors (whether or not owned by them) in connection with the supply and installation of the Facilities. Comprehensive insurance in accordance with statutory requirements.

Third party liability Insurance to be taken out in accordance with the laws of Kenya.

(e) Workers' Compensation

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(f) Employer's Liability

In accordance with the statutory requirements applicable in any country where the Facilities or any part thereof is executed.

(g) Other Insurances

The Contractor is also required to take out and maintain at its own cost the following insurances:

Not applicable

Details:

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
[in currency(ies)]		[names]	[place]	[place]

The Employer shall be named as co-insured under all insurance policies taken out by the Contractor pursuant to GC Clause 6.4.1, except for the Third Party Liability, Workers' Compensation and Employer's Liability Insurances, and the Contractor's Subcontractors shall be named as co-insureds under all insurance policies taken out by the Contractor pursuant to GC Clause 6.4.1, except for the Cargo, Workers' Compensation and Employer's Liability Insurances. All insurer's rights of subrogation against such co-insureds for losses or claims arising out of the performance of the Contract shall be waived under such policies.

Insurances To Be Taken Out By The Employer

NOT APPLICABLE

If the Employer is proposing to take out any or all of the above insurances itself, or any other insurances in respect of the Facilities, either in its own name or in the joint names of itself and the Contractor, it shall give details below prior to issuing the bidding documents. Under the terms of the Contract, the Contractor and the Contractor's Subcontractors shall be named as co-insureds under all such policies.

The Employer shall at its expense take out and maintain in effect during the performance of the Contract the following insurances.

Details:

<u>Amount</u>	<u>Deductible limits</u>	<u>Parties insured</u>	<u>From</u>	<u>To</u>
[in currency(ies)]		[names]	[place]	[place]

Appendix 4. Time Schedule

The Employer should normally provide a Time Schedule to be followed by the Contractor during the performance of the Contract. This schedule should be provided with the bidding documents under this Appendix. All completion times indicated must be in accordance with the information regarding Time(s) for Completion given in the Bid Data Sheet.

Except under exceptional circumstances, the Time Schedule should indicate periods of time (e.g., weeks or months) and not specify calendar dates. All periods should be shown from the Effective Date of the Contract.

Should it become necessary to amend the Time Schedule to reflect any agreements made with the selected Bidder prior to award of Contract, the amended Time Schedule shall replace the original Time Schedule prior to signature of the Contract Agreement.

If the bidding documents contain no Time Schedule, the Bidder shall be required to submit with its bid a detailed program, normally in the form of a bar chart, showing how and the order in which it intends to perform the Contract and showing the key events requiring action or decision by the Employer. In preparing this Program, the Bidder shall adhere to the Time(s) for Completion given in the Bid Data Sheet or give its reasons for not adhering thereto. The Time Schedule submitted by the selected Bidder and amended as necessary prior to award of Contract shall be included as Appendix to the Contract Agreement before the Contract is signed.

The Bidder shall attach to his bid an overall master schedule showing all principal activities, design, fabrication, testing, shipping, transportation, erection and commissioning.

The said Schedule shall be such that the whole of the Works are completed in twenty four months from the commencement date of the Contract.

Method of Working

The Contractor shall provide details of:

- (i) The structure and location of his management team
- (ii) The structure and location of his design team with details of any design work he proposes to subcontract.
- (iii) The structure and location of his site team with details of any works he proposes to subcontract.
- (iv) Description of work method (attach drawings, charts, etc as necessary to show compliance to tenders requirements).

Appendix 5. List of Major Items of Plant and Installation Services and List of Approved Subcontractors

Prior to issuing the Bidding Document, the Employer shall have established a list of major item of Plant and Installation Services for which approval of the Employer is required. Prior to award of Contract, the details of approved subcontractor, including manufacturers shall be completed, indicating those subcontractors proposed by the Bidder in the corresponding Attachment to its bid that are approved by the Employer for engagement by the Contractor during the performance of the Contract.

A list of major items of Plant and Installation Services is provided below.

The following Subcontractors and/or manufacturers are approved for carrying out the items of the Facilities indicated below. Where more than one Subcontractor is listed, the Contractor is free to choose between them, but it must notify the Employer of its choice in good time prior to appointing any selected Subcontractor. In accordance with GC Clause 4.3.1, the Contractor is free to submit proposals for Subcontractors for additional items from time to time. No Subcontracts shall be placed with any such Subcontractors for additional items until the Subcontractors have been approved in writing by the Employer and their names have been added to this list of Approved Subcontractors.

Major Items of Plant and Installation Services	Approved Subcontractors/Manufacturers	Nationality

Appendix 6. Scope of Works and Supply by the Employer

THIS SCHEDULE IS NOT BE USED

Prior to issuing the bidding documents, the Employer shall indicate in this Appendix details of all personnel and Facilities it will provide for use by the Contractor and indicate, where applicable, the charges that it will make in respect of their use.

The Employer shall also identify any part(s) of the facilities it intends to carry out itself (or by other contractors), and any plant, equipment, or materials that it proposes to purchase itself and supply to the Contractor for incorporation in the facilities, indicating, where applicable, the charges that it will make in respect thereof.

The following personnel, facilities, works and supplies will be provided/supplied by the Employer, and the provisions of GC Clauses 3.1, 4.5 and 4.8 shall apply as appropriate.

All personnel, facilities, works and supplies will be provided by the Employer in good time so as not to delay the performance of the Contractor, in accordance with the approved Time Schedule and Program of Performance pursuant to GC Clause 4.2.2.

Unless otherwise indicated, all personnel, facilities, works and supplies will be provided free of charge to the Contractor.

Personnel

Charge to Contractor (if any)

FacilitiesCharge to Contractor (if any)WorksCharge to Contractor (if any)SuppliesCharge to Contractor (if any)

Appendix 7. List of Documents for Approval or Review

Pursuant to GC Clause 4.4.4, the Contractor shall prepare, or cause its Subcontractor to prepare, and present to the Project Manager in accordance with the requirements of GC Clause 4.2.2 (Program of Performance), the following documents for

A. Approval

- 1. Works Schedule and Programme of works**
- 2. All Drawings of major equipment such as towers and foundations**

3. All line profiles and tower schedules

4. All foundation nomination schedules

B. Review

1. Quality assurance and Quality management Plans

2. Health and Safety management Plan

In details

Descriptions	Prints		Electronic Copy by e-mail (see notes)		Electronic Copy Cd	
	Employer	Engineer	Employer	Engineer	Employer	Engineer
For Approval						
Calculations and drawings	2		2	1		
Other design documents	2		2	1		
Method statements	2		2	1		
Commissioning procedures	2		2	1		
For Construction						
Calculations and drawings	2		2	1		

Other design documents	2		2	1		
Method statements	2		2	1		
Commissioning procedures	2		2	1		
Final Records						
Calculations and drawings(in Acad (soft copy) &Pdf)	3		2	1	4	1
Other design documents	3		2	1	4	1
Method statements	3		2	1	4	1
Commissioning procedures	3		2	1	4	1
Installation and Maintenance Instructions	3*		2	1	4	1

Notes

1. The 3 copies as indicated above *, shall be books of approximately A4 size and bound into strong black durable imitation leather covers
2. Maximum size of files on e-mail to be 20MB
3. Laptop computers to be supplied to Employer, minimum specification to be as per Employers Requirements:

The Contractor shall submit photographs for reference of critical installation procedures and assessment of progress.

Appendix 8. Functional Guarantees

The material and equipment supplied shall confirm in all respects to the technical specification and the schedules of technical information and be fit for purpose.

General

This Appendix sets out

- (a) the functional guarantees referred to in GC Clause 5.3 (Functional Guarantees)
- (b) the preconditions to the validity of the functional guarantees, either in production and/or consumption, set forth below
- (c) the minimum level of the functional guarantees
- (d) the formula for calculation of liquidated damages for failure to attain the functional guarantees.

2. Preconditions

The Contractor gives the functional guarantees (specified herein) for the facilities, subject to the following preconditions being fully satisfied:

The information from submitted type-tests reports; or from factory acceptance tests should certify that the guaranteed figures have been met.

3. Functional Guarantees

Subject to compliance with the foregoing preconditions, the Contractor guarantees as follows:

3.1 Production Capacity

[List here the production capacity that the Contractor is to guarantee, **making sure to use, as functional guarantees, the figures offered by the Contractor in its bid.**]

and/or

3.2 Raw Materials and Utilities Consumption

N/A

4. Failure in Guarantees and Liquidated Damages

4.1 Failure to Attain Guaranteed Production Capacity

If the production capacity of the facilities attained in the guarantee test, pursuant to GC Clause 4.9.4, is less than the guaranteed figure specified in para. 3.1 above, but the actual production capacity attained in the guarantee test is not less than the minimum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities, pursuant to GC Clause 5.3.3, then the Contractor shall pay liquidated damages at the rate of [insert amount in the contract currency] for every complete one percent (1%) of the deficiency in the production capacity of the Facilities, or at a proportionately reduced rate for any deficiency, or part thereof, of less than a complete one percent (1%).

4.2 Raw Materials and Utilities Consumption in Excess of Guaranteed Level

[To be specified in the appropriate wording for the type of Facilities if there are consumption guarantees.]

If the actual measured figure of specified raw materials and utilities consumed per unit (or their average total cost of consumption) exceeds the guaranteed figure specified in para. 3.2 above (or their specified average total cost of consumption), but the actual consumption attained in the guarantee test, pursuant to GC Clause 4.9.4, is not more than the maximum level specified in para. 4.3 below, and the Contractor elects to pay liquidated damages to the Employer in lieu of making changes, modifications and/or additions to the Facilities pursuant to GC Clause 5.3.3, then the Contractor shall pay liquidated damages at the rate of [insert amount in the contract currency] for every complete one percent (1%) of the excess consumption of the Facilities, or part thereof, of less than a complete one percent (1%).

[The rate of liquidated damages specified in paras. 4.1 and 4.2 above shall be at least equivalent to the rate specified in Section III, Evaluation and

Qualification Criteria, for the comparison of functional guarantees provided by the bidders.]

4.3 Minimum Levels

Notwithstanding the provisions of this paragraph, if as a result of the guarantee test(s), the following minimum levels of performance guarantees (and consumption guarantees) are not attained by the Contractor, the Contractor shall at its own cost make good any deficiencies until the Facilities reach any of such minimum performance levels, pursuant to GC Clause 5.3.2:

- (a) production capacity of the Facilities attained in the guarantee test: ninety-five percent (95%) of the guaranteed production capacity (the value offered by the Contractor in its bid for functional guarantees represents 100%).

and/or

- (b) average total cost of consumption of all the raw materials and utilities of the Facilities: one hundred and five percent (105%) of the guaranteed figures (the figures offered by the Contractor in its bid for functional guarantees represents 100%).

4.4 Limitation of Liability

Subject to para. 4.3 above, the Contractor's aggregate liability to pay liquidated damages for failure to attain the functional guarantees shall not exceed _____ percent (___ %) of the Contract price [the percentage specified shall not exceed ten percent (10%)].