



# REPUBLIC OF KENYA



**AFRICAN DEVELOPMENT BANK  
AFRICAN DEVELOPMENT FUND**



**TANA WATER WORKS DEVELOPMENT  
AGENCY**

## **KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAM**

**TENDER No. TWWDA/ADB/004/2024-2025**

## **ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE**

### **BID DOCUMENT VOLUME I**

#### **CONTENTS**

INSTRUCTIONS TO BIDDERS  
BID DATA SHEET  
EVALUATION AND QUALIFICATION CRITERIA,  
BIDDING FORMS  
ELIGIBLE COUNTRIES  
EMPLOYMENT REQUIREMENTS  
GENERAL CONDITIONS  
PARTICULAR CONDITIONS  
CONTRACT FORMS

**Employer:**

TANA WATER WORKS DEVELOPMENT AGENCY  
P.O. BOX 1292 – 10100  
NYERI-KENYA

**Engineer:**

CHIEF EXECUTIVE OFFICER  
TANA WATER WORKS DEVELOPMENT AGENCY  
P.O. BOX 1292 – 10100  
NYERI-KENYA

**Supervising Consultant:**

**MIBP**  
CONSULTING ENGINEERS

MANGAT, I.B. PATEL (MIBP)  
LIMITED  
CONSULTING ENGINEERS  
P.O. BOX 48674, 00100 - GPO  
NAIROBI, KENYA  
E-mail: [mibp.nairobi@mibpp.com](mailto:mibp.nairobi@mibpp.com)  
Tel: +254 - 20 – 2710500

**JUNE 2025**

## **TENDER No. TWWDA/ADB/004/2024-2025**

# **ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE**

## **BID DOCUMENT**

The Bid Document comprises of the following:

### **PART 1 – BIDDING PROCEDURES**

#### **Section I: Instructions to Bidders (ITB)**

This Section provides relevant information to help Bidders prepare their bids. Information is also provided on the submission, opening, and evaluation of bids and on the award of Contracts. **Section I contains provisions that are to be used without modification.**

#### **Section II. Bid Data Sheet (BDS)**

This Section consists of provisions that are specific to each procurement and that supplement the information or requirements included in Section I, Instructions to Bidders.

#### **Section III. Evaluation and Qualification Criteria**

This Section contains the criteria to determine the lowest evaluated bid and the qualifications of the Bidder to perform the contract. Two alternative Sections III, Evaluation and Qualification Criteria are provided to address the possibility of having or not having prequalification of Bidders.

#### **Section IV: Bidding Forms**

This Section contains the forms which are to be completed by the Bidder and submitted as part of his Bid.

#### **Section V. Eligible Countries**

This Section contains information regarding eligible countries.

### **PART 2 – EMPLOYER’S REQUIREMENTS**

#### **Section VI. Requirements**

This Section contains the Specification, the Drawings, and supplementary information that describe the Works to be procured.

## **PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS**

### **Section VII. General Conditions (GC)**

This Section contains the general clauses to be applied in all contracts. **The text of the clauses in this Section shall not be modified.**

### **Section VIII. Particular Conditions (PC)**

This Section consists of Part A, Contract Data which contains data, and Part B, Specific Provisions which contains clauses specific to each contract. The contents of this Section modify or supplement the General Conditions and shall be prepared by the Employer.

### **Section IX: Contract Forms**

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

**PROCUREMENT DOCUMENTS**

**Bidding Document for  
Procurement of Works**

**Procurement of:**

**ADDITIONAL WORKS FOR CHUKA AND  
CHOGORIA WATER SUPPLY INFRASTRUCTURE**

**Issued on: 24<sup>TH</sup> JUNE, 2025**

**OCB No: TWWDA/ADB/004/2024-2025**

**Employer:**

**TANA WATER WORKS DEVELOPMENT AGENCY,  
MAJI HOUSE, BARDEN POWELL ROAD,  
P.O. Box 1292 – 10100,  
NYERI.**

**Country: KENYA**

## Preface

This Bidding Document for Procurement of Works has been prepared by Tana Water Works Development Agency and is based on the Standard Bidding Document for Procurement of Works issued by the African Development Bank,<sup>1</sup> dated June 2010.

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.

---

<sup>1</sup> "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.

## **TENDER No. TWWDA/ADB/004/2024-2025**

# **ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE**

## **BID DOCUMENT**

### **Table of Contents**

<b>PART 1 – Bidding Procedures</b>	<b>1-1</b>
Section I. Instructions to Bidders	1-2
Section II. Bid Data Sheet	1-24
Section III. Evaluation and Qualification Criteria	1-28
Section IV. Bidding Forms	1-42
Section V. Eligible Countries	1-86
<b>PART 2 – Employer’s Requirements</b>	<b>2-1</b>
Section VI. Requirements	2-2
<b>PART 3 – Conditions of Contract and Contract Forms</b>	<b>3-1</b>
Section VII. General Conditions (GC)	3-8
Section VIII. Particular Conditions (PC)	3-99
Section IX. Contract Forms	3-105

# **PART 1 – Bidding Procedures**

## **TENDER No. TWWDA/ADB/004/2024-2025**

# **ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE**

## **BID DOCUMENT**

### **Section I. Instructions to Bidders**

#### **Table of Contents**

<b>A.</b>	<b>General</b>	<b>1-4</b>
1.	Scope of Bid	1-4
2.	Source of Funds	1-4
3.	Fraud and Corruption	1-4
4.	Eligible Bidders	1-6
5.	Eligible Goods and Related Services	1-8
<b>B.</b>	<b>Contents of Bidding Document</b>	<b>1-9</b>
6.	Sections of Bidding Document	1-9
7.	Clarification of Bidding Document, Site Visit, Pre-Bid Meeting	1-9
8.	Amendment of Bidding Document	1-10
<b>C.</b>	<b>Preparation of Bids</b>	<b>1-11</b>
9.	Cost of Bidding	1-11
10.	Language of Bid	1-11
11.	Documents Comprising the Bid	1-11
12.	Letter of Bid and Price Schedules	1-12
13.	Alternative Bids	1-12
14.	Bid Prices and Discounts	1-12
15.	Currencies of Bid and Payment	1-13
16.	Documents Establishing the Qualifications of the Bidder	1-13
17.	Documents Establishing the Eligibility of the Goods and Related Services	1-13
18.	Period of Validity of Bids	1-13
19.	Bid Security	1-14
20.	Format and Signing of Bid	1-15
<b>D.</b>	<b>Submission and Opening of Bids</b>	<b>1-16</b>
21.	Submission, Sealing and Marking of Bids	1-16



22.	Deadline for Submission of Bids	1-16
23.	Late Bids	1-17
24.	Withdrawal, Substitution, and Modification of Bids	1-17
25.	Bid Opening	1-17
<b>E.</b>	<b>Examination of Bids</b>	<b>1-18</b>
26.	Confidentiality	1-18
27.	Clarification of Bids	1-18
28.	Determination of Responsiveness	1-19
<b>F.</b>	<b>Bid Evaluation and Comparison</b>	<b>1-20</b>
29.	Correction of Arithmetical Errors	1-20
30.	Conversion to Single Currency	1-20
31.	Bid Adjustments	1-20
32.	Qualification of the Bidder	1-21
33.	Comparison of Bids	1-21
34.	Employer's Right to Accept Any Bid, and to Reject Any or All Bids	1-21
<b>G.</b>	<b>Award of Contract</b>	<b>1-22</b>
35.	Award Criteria	1-22
36.	Notification of Award	1-22
37.	Signing of Contract	1-22
38.	Performance Security	1-23

# 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 Bank<sup>2</sup> (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 Subcontractors, under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts<sup>3</sup>. In pursuance of this policy, the Bank:
    - (i) defines, for the purposes of this provision, the terms set forth below as follows:
    - (ii) “Corrupt Practice” is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party<sup>4</sup>;

---

<sup>2</sup> The specific financing institution shall be as stipulated in the **BDS**.

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

<sup>4</sup> 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.

- (iii) “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;
- (iv) “Collusive Practice” is an arrangement between two or more parties<sup>5</sup>, designed to achieve an improper purpose, including to influence improperly the actions of another party; and
- (v) “Coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party<sup>6</sup>;
- (vi) “Obstructive practice” is:
  - (aa) 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
  - (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 has, directly or through an agent, engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract in question;
  - (c) will declare misprocurement and will cancel the portion of the Financing allocated to a Contract if it determines at any time that representatives of the Borrower or of a beneficiary of such Financing engaged in corrupt, fraudulent, collusive, or coercive practices during the procurement or the execution 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

---

<sup>5</sup> 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.

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

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 procedures<sup>7</sup> including by 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 nominated<sup>8</sup> 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

<sup>7</sup> 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.

<sup>8</sup> 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."

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 Bank's **Rules and Procedures for Procurement of Goods and Works**, and as listed in Section V, Eligible Countries.<sup>9</sup> 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
  - (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.

---

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

- 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 procedures<sup>10</sup>, 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,

<sup>10</sup> 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."

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 of 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.

#### 6.2 **PART 1 Bidding Procedures**

Section I. Instructions to Bidders (ITB)

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

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

- 6.4 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.

- 6.5 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 Cheque;

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 1f 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.

31.4 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. Qualification of the Bidder**

32.1 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.

32.2 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.

32.3 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](http://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

<b>A. General</b>	
<b>ITB 1.1</b>	The number of the Invitation for Bids is: <b>TWWDA/ADB/004/2024-2025</b>
<b>ITB 1.1</b>	The Employer is: <b>Tana Water Works Development Agency, Maji House, Barden Powell Road, P.O. Box 1292 – 10100, NYERI. Telephone: +254 61 2032282 e-mail: ceo@tanawwda.go.ke</b>
<b>ITB 1.1</b>	The name of the bidding process is: <b>Open Competitive Bidding (OCB)</b>  The identification number of the bidding process is: <b>TWWDA/ADB/004/2024-2025</b>  The number and identification of lots comprising this bidding process is: <b>ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE</b>
<b>ITB 2.1</b>	The Borrower is: <b>The Government of Kenya (GoK) Through The Chief Executive Officer, Tana Water Works Development Agency, Maji House – Barden Powel Road, P.O. Box 1292 – 10100 NYERI</b>
<b>ITB 2.1</b>	The specific Bank financing institution is: <b>African Development Bank (ADB)</b>
<b>ITB 2.1</b>	The name of the Project is: <b>Kenya Towns Sustainable Water Supply and Sanitation Program ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE</b>
<b>ITB 4.1 (a)</b>	The individuals or firms in a joint venture, consortium or association “ <b>shall be</b> ” jointly and severally liable.
<b>ITB 4.4</b>	A list of debarred firms is available at <a href="http://www.afdb.org/debarred">http://www.afdb.org/debarred</a>
<b>B. Contents of Bidding Document</b>	

<b>ITB 7.1</b>	<p>For <b><u>clarification purposes</u></b> only, the Employer's address is:</p> <p style="text-align: center;">The Chief Executive Officer, Tana Water Works Development Agency Maji House, Baden Powell Road P.O. Box 1292 - 10100 NYERI Phone: +254 61 2032282 Fax: +254 61 2034118 / +254 61 2032282 Email: info@tanawwda.go.ke</p> <p>Requests for clarifications should be received by the Employer no later than <b>seventeen (17) days</b>, prior to the deadline for submission of Bids.</p>
<b>ITB 7.4</b>	<p>A Pre-Bid meeting “<b>shall</b>” take place.</p> <p>If a Pre-Bid Meeting will take place, it will be at the following Date, Time and Place:</p> <p>Date: <b>9<sup>th</sup> July, 2025</b> Time: <b>10.00 Hours East African Time</b> Place: <b>Chuka Sub-County Water Offices-Kimbumbu</b></p> <p>A site visit conducted by the Employer <b>shall</b> be organized.</p> <p>Date: <b>9<sup>th</sup> July, 2025</b> Time: <b>10.00 Hours East African Time</b> Place: Chuka Sub-County Water Offices in Chuka Town</p>
<b>C. Preparation of Bids</b>	
<b>ITB 10.1</b>	The language of the Bid is: <b>English</b>
<b>ITB 11.1 (h)</b>	<p>The Bidder must provide the following Documentary Evidence to establish the conformity of the Technical Proposal with the Bidding Document:</p> <p><b>As per Section IV.</b></p>
<b>ITB 11.1 (j)</b>	<p>The Bidder shall submit with its bid the following additional documents:</p> <p><b>As per Section IV</b></p>
<b>ITB 13.1</b>	Alternative Bids are <b>NOT</b> permitted.
<b>ITB 13.2</b>	Alternatives to the Times for Completion “ <b>SHALL NOT BE</b> ” permitted.
<b>ITB 13.4</b>	Alternative technical solutions shall be permitted for the following parts of the Works, as further detailed in the Specification: <b>NONE</b> .
<b>ITB 14.2</b>	Prices <b>SHALL BE</b> fixed.

<b>ITB 14.6</b>	The prices quoted by the Bidder <b>“SHALL NOT BE”</b> subject to adjustment during the performance of the Contract.
<b>ITB 15.1</b>	<p>The currency(ies) of the Bid and the payment currency(ies) shall be as described below:</p> <p><b>Bidders to quote entirely in local currency:</b></p> <p>(a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in <b>KENYA SHILLINGS (KES.)</b>, further referred to as “the local currency”. A Bidder expecting to incur expenditures in other currencies for inputs to the Requirements supplied from outside the Employer’s Country (referred to as “the foreign currency (ies) requirements”) shall indicate, in the Summary of Payment Currencies, furnished in Section IV. Bidding Forms, the percentage(s) of the Bid Price (excluding Provisional Sums), needed by him for the payment of such foreign currency requirements, limited to no more than three foreign currencies of any eligible Country.</p> <p><i>The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage(s) mentioned in (a) above shall be specified by the Bidder in the Summary of Payment Currencies, furnished in Section IV. Bidding Forms, shall apply for all payments under the Contract so that no exchange risk will be borne by the successful Bidder.</i></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>
<b>ITB 18.1</b>	<p>The bid validity period shall be:</p> <p><b>120 days.</b></p>
<b>ITB 19.1</b>	<p>The Bidder shall furnish a Bid Security (<b>Unconditional Bank Guarantee</b>), in the amount of</p> <p><b>KES. 1,000,000 (Kenya Shillings One Million Only) or equivalent in freely convertible currency.</b></p>
<b>ITB 20.1</b>	In addition to the original of the Bid, the number of copies is: <b>One (1Nr) Original and Four (4Nr) Copies</b>
<b>ITB 20.2</b>	<p>The written confirmation of authorisation to sign on behalf of the Bidder shall indicate:</p> <p>(a) The name and description of the documentation required to demonstrate the authority of the signatory to sign the Bid such as Power of Attorney; and</p> <p>(b) In the case of Bids submitted by an existing or intended JVCA an undertaking signed by all parties (stating that all parties shall be jointly and severally liable, if so required in accordance with ITB 4.1 (a), and (ii)</p>



	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.
<b>D. Submission and Opening of Bids</b>	
<b>ITB 21.1</b>	Bidders <b>SHALL NOT</b> have the option of submitting their bids electronically.
<b>ITB 21.1 (b)</b>	The electronic bidding submission procedures shall be: <b>N/A</b>
<b>ITB 22.1</b>	<p>For <b><u>bid submission purposes</u></b> only, the Employer's address is:</p> <p><b>At the Tender Box at the TWWDA Reception</b>  <b>Addressed to:</b>  <b>The Chief Executive Officer</b>  <b>Tana Water Works Development Agency,</b>  <b>Maji House, Baden Powell Road</b>  <b>P.O. Box 1292 - 10100</b>  <b>NYERI</b></p> <p><b>The deadline for bid submission is 5<sup>th</sup> August,2025</b></p> <p><b>The Envelope should be clearly marked 'Tender No TWWDA/ADB/004/2024-2025. ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE</b></p>
<b>ITB 25.1</b>	<p>The bid opening shall take place at:</p> <p><b>Tana Water Works Development Agency, Boardroom</b>  <b>Maji House, Baden Powell Road</b>  <b>NYERI.</b></p> <p><b>On Monday, 5<sup>th</sup> August,2025 at 10.00 a.m East African Time</b></p>
<b>ITB 25.1</b>	The electronic bid opening procedures shall be: <b>N/A</b>
<b>F. Bid Evaluation and Comparison</b>	
<b>ITB 31.2</b>	A margin of Domestic or Regional preference <b>SHALL NOT</b> 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 (If permitted in accordance with ITB 13.1)

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) 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) 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 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 (KES)**

The source of exchange rate shall be: **The Central Bank of Kenya Mean Exchange Rate**

The date for the exchange rate shall be: **The Date of Bid Opening**

#### 1.4 Discounts (In accordance with ITB 14.5)

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 Quantifiable Nonmaterial Nonconformities (In accordance with ITB 28.8)**

The adjustment shall be made using the following methodology:

- (a) Bids determined to be substantially responsive will be checked by the Employer for any arithmetics errors. Errors will be corrected by the Employer as follows:
  - (i) Where there is a discrepancy between the amounts in figures and in words, the amount **in words** will govern;  
  
And
  - (ii) Where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the **unit rate as quoted will govern**, unless in the opinion of the Employer there is an obviously gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted will govern, and the unit rate will be corrected.
- (b) The amount stated in the Bid will be adjusted by the Employer in accordance with the above procedure for the correction of errors and, with the concurrence of the Bidder, shall be considered as binding upon the Bidder. If the Bidder does not accept the corrected amount, the Bid will be rejected, and the Bid Security may be forfeited in accordance Sub-Clause 29.3.

**1.6 Margin of Domestic or Regional Preference: Not Applicable**

**1.7 Any other Criteria or Methodology: Not Applicable**

<b>2</b>	<b>Qualification (Without Prequalification)</b>
<b>2.1</b>	Eligibility (TABLE)
<b>2.2</b>	Historical Contract Non-Performance (TABLE)
<b>2.3</b>	Financial Situation (TABLE)
<b>2.4</b>	Experience (TABLE)
<b>2.5</b>	Personnel (TABLE)
<b>2.6</b>	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	
2.1.1 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
2.1.2 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
2.1.3 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
2.1.4 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

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
2.1.5	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 by an act of compliance with UN Security Council resolution, in accordance with ITB 4.8	Must meet requirement	Existing JVCA must meet requirement	Must meet requirement	N / A	Letter of Bid

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 History of non-performing contracts	Non-performance of a Contract did not occur within the last <b>Five (5)</b> 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 appeal instances available to the bidder have been exhausted.	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
2.2.2 Failure to Sign Contract	Not being under execution of a Bid-Securing Declaration pursuant to <b>ITB 4.6</b> for <b>Five (5)</b> years	Must meet requirement	N / A	Must meet the requirement by itself or as partner to a JVCA	N / A	Letter of Bid

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	
2.2.3 Pending Litigation	All pending litigation shall in total not represent more than <b>Fifty percent (50%)</b> 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



Factor	2.3 Financial Situation					
Sub-Factor	Requirement	Criteria				Documentation Required
		Single Entity	Bidder			
			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 <b>Five (5)</b> years to demonstrate the current soundness of the Bidders financial position and its prospective long term profitability.  a) The Current Financial Soundness of the Bidder and its prospective Long Term Profitability should be considered as follows:  i) <i>Current Ratio (CR) of over 1 (One).</i> <div><math display="block">\left[ \frac{\text{Current Assets}}{\text{Current Liabilities}} &gt; 1 \right]</math></div> ii) <i>Debt Ratio (DR) 1 (One) or less.</i> <div><math display="block">\left[ \frac{\text{Total Debt}}{\text{Total Assets}} \leq 1 \right]</math></div>	Must meet requirement	N / A	Must meet requirement	N / A	Form FIN – 3.1 with attachments

Factor	2.3 Financial Situation					
Sub-Factor	Requirement	Criteria				Documentation Required
		Single Entity	Bidder			
			Joint Venture, Consortium or Association			
			All Partners Combined	Each Partner	At Least One Partner	
2.3.2 Average Annual Turnover	Minimum average annual turnover of <b>KES 600,000,000 (Kenya Shillings Six Hundred Million)</b> calculated as total certified payments received for Contracts in progress or completed, within the last <b>Five (5)</b> years.	Must meet requirement	Must meet requirement	Must meet <b>Twenty Five percent (25 %)</b> of the requirement	Must meet <b>Forty percent (40 %)</b> of the requirement	Form FIN –3.2
2.3.3 Financial Resources	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:  i) the following cash-flow requirement:  <i>Minimum amount of Liquid Assets and /or Credit Facilities Net of other Contractual Commitment shall be KES 150,000,000 (Kenya Shillings Fifty Million)</i>	Must meet requirement	Must meet requirement	Must meet <b>Twenty Five percent (25%)</b> of the requirement	Must meet <b>Forty percent (40%)</b> of the requirement	Form FIN –3.3 + Form CCC

Factor	2.3 Financial Situation					
Sub-Factor	Requirement	Criteria				Documentation Required
		Single Entity	Bidder			
			Joint Venture, Consortium or Association			
			All Partners Combined	Each Partner	At Least One Partner	
	ii) the overall cash flow requirements for this Contract and its current commitments.					

Factor	2.4 Experience					
Sub-Factor	Requirement	Criteria				Documentation Required
		Single Entity	Bidder			
			Joint Venture, Consortium or Association			
			All Partners Combined	Each Partner	At Least One Partner	
2.4.1 General Experience	Experience under Contracts in the role of Contractor, Subcontractor, or Management Contractor for at least the last <b>Five (5) years</b> 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 Sub-Contractor, in at least <b>Two (2)</b> Contracts within the last <b>Five (5) years</b> , each with a value of at least <b>KES 250,000,000 (Kenya Shillings Two Hundred and Fifty Million)</b> , 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	Must meet requirement	Must meet requirements for all characteristics	N / A	Must meet requirement for one characteristic	Form EXP 2.4.2(a)

Factor	2.4 Experience					
Sub-Factor	Requirement	Criteria				Documentation Required
		Single Entity	Bidder			
			Joint Venture, Consortium or Association			
			All Partners Combined	Each Partner	At Least One Partner	
	characteristics as described i Section IV, Bidding Forms.					
	(b) For the above or other Contracts executed during the period stipulated in 2.4.2(a) above, a minimum experience in the following key activities: <i>i) Excavation for structures including rock excavation – 100m³/month.</i> <i>ii) Excavation, laying, jointing, testing and commissioning of water pipes. Pipe dia. n.e. 160mm – 5000m/month.</i> <i>iii) Fixing of Reinforcement – 3 tons/month.</i> <i>iv) Reinforced Concrete Works – 50m³/month.</i> v)	Must meet requirements	Must meet requirements	N / A	Must meet requirements	Form EXP-2.4.2(b)

## 2.5 Personnel

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

No.	Position	Requirements / Qualifications	Total Work Similar Experience (years)	In Similar Works Experience (years)
1.	Project Manager	BSc. Civil Engineering or equivalent Be Registered with ERB or equivalent	15	10
2.	Site Agent	BSc. Civil Engineering	15	10
3.	Surveyor	Higher National Diploma or equivalent	10	5
4.	Technician (Pipelines)	Higher National Diploma or equivalent	10	5
5.	Technician (Concrete)	Higher National Diploma or equivalent	10	5
6.	Environmentalist	Registered NEMA Lead Expert	5	2
7.	Sociologist	Degree in Sociology / Community Development	5	2
8.	Occupational Safety and Health Officer	First Degree and a Course 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:

No.	Equipment Type and Characteristics	Minimum Number required
1.	Tipper Truck of 7 tonne capacity	3
2.	Pick-up of at least 1 tonne capacity	2
3.	Compressor of normal delivery rating of 6.0 – 7.5 m <sup>3</sup> /min, complete with attachments	2
4.	Hydraulic dual purpose backhoe excavator/loader of minimum bucket capacity of 1.0 m <sup>3</sup>	3
5.	Concrete Mixers – 0.5-1.0 m <sup>3</sup> capacity	2
6.	Concrete Poker Vibrator 25mm dia.	4
7.	Generator 15kVA capacity	1
8.	Total Survey Station	2
9.	Dewatering Pump	2

---

10.	Plate Compactor of 1 tonne capacity	2
11.	Water Bowser	1
12.	Rock Breakers	1

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

## Section IV. Bidding Forms

### Table of Forms

<b>Letter of Bid</b>	<b>1-43</b>
<b>Bill of Quantities/Schedules of Prices</b>	<b>1-45</b>
<b>Schedule of Adjustment Data</b>	<b>1-57</b>
<b>Summary of Payment Currencies</b>	<b>1-58</b>
<b>Form of Bid Security (Bank Guarantee)</b>	<b>1-60</b>
<b>Form of Bid Security (Bid Bond)</b>	<b>1-61</b>
<b>Form of Bid-Securing Declaration</b>	<b>1-62</b>
<b>Technical Proposal</b>	<b>1-63</b>
Site Organisation	1-64
Method Statement	1-65
Mobilisation Schedule	1-66
Construction Schedule	1-67
Contractor's Equipment	1-68
Proposed Personnel	1-69
Resume of Proposed Personnel	1-70
Others	1-71
<b>Bidder's Qualification</b>	<b>1-72</b>
Bidder Information Sheet	1-73
Partner to JVCA Information Sheet	1-Error!
<b>Bookmark not defined.</b>	
Historical Contract Non-Performance	1-75
Current Contract Commitments / Works in Progress	1-76
Financial Situation	1-77
Average Annual Turnover	1-79
Financial Resources	1-80
General Experience	1-81
Specific Experience	1-82
Specific Experience in Key Activities	1-84



## 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: The Chief Executive Officer,  
Tana Water Works Development Agency,  
Maji House, Barden Powell Road,  
P.O. Box 1292 – 10100,  
NYERI.

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:  
  
**Including Duties and Taxes:** \_\_\_\_\_ *[amount in numbers]*,  
 \_\_\_\_\_ *[amount in words] [name of currency]*.
- (d) The discounts offered and the methodology for their application are: \_\_\_\_\_;
- (e) Our bid shall be valid for a period of **119 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;<sup>11</sup>
- (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;

---

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

- (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;<sup>12</sup>
- (m) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: <sup>13</sup>

Name of Recipient	Address	Reason	Amount
_____	_____	_____	_____
_____	_____	_____	_____

- (n) 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.<sup>14</sup>
- (o) 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;
- (p) We understand that you are not bound to accept the lowest evaluated bid or any other bid that you may receive; and
- (q) If awarded the contract, the person named below shall act as Contractor's Representative:

\_\_\_\_\_

Name:

In the capacity of:

Signed:

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

Date:

<sup>12</sup> Use one of the two options as appropriate.

<sup>13</sup> If none has been paid or is to be paid, indicate "none".

<sup>14</sup> 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.

## **Bill of Quantities / Schedules of Prices**

## **PREAMBLE AND NOTES TO BILLS OF QUANTITIES**

1. These Bills of Quantities form part of the Contract Documents and are to be read in conjunction with the Conditions of Contract, Standard and Special Specifications and Drawings.
2. The quantities set forth in the Bills of Quantities represent the character of the work to be carried out. There is no guarantee to the Contractor that he will be required to carry out the quantities of work indicated under any one particular item or group of items in the Bills of Quantities, though on the Contract as a whole the quantities are intended to represent the overall value of the work to be carried out.
3. The prices and rates inserted in the Bills of Quantities will be used for valuing the work executed and the Engineer will measure the whole of the works executed in accordance with the Contract.
4. The prices and rates inserted in the Bills of Quantities are to be the full inclusive costs of the works described under the items, complete in place and in accordance with the Specifications and Drawings, **including setting out of the works**, including costs and expenses which may be required in and for the construction of the works described, **together with any temporary works and installations** which may be necessary and all general risks, liabilities and obligations set forth or implied in the Documents on which the Contract is based.
5. The brief description of the items given in the Bills of Quantities are purely for the purpose of identification and in no way modify or supersede the detailed descriptions given in the Conditions of Contract, Specifications or Drawings. When pricing items, reference is to be made to the Conditions of Contract, Standard Specifications, Drawings and Special Specification for the full directions and description of work and materials.
6. A price or rate is to be inserted, in ink, against each item in the Bills of Quantities, whether quantities are stated or not, and if the Bidder includes the cost of a particular item elsewhere in his rates or prices, he shall insert the word "nil" against both the rate and extension of that particular item. Should the Bidder omit to price an item, then it will be assumed that he has included the cost of the item elsewhere in his rates or prices.
7. No alteration shall be made to the Bills of Quantities and no extra item shall be inserted. The Bidder shall satisfy himself that the Contract Sum arrived at by pricing the quantities and items given is sufficient compensation for constructing and maintaining the whole of the works in accordance with the Contract Documents.
8. For the purpose of payment by Interim Certificate of "Lump Sum" items the Engineer may assess the portion of the work completed on the "Lump Sum" item and allow for payment of the portion of the "Lump Sum" he deems fair and reasonable. The total of all portions allowed shall not exceed the "Lump Sum". All interim payments shall be subject to the retention stipulated in the Contract Documents.
9. During construction the unit rate established for an item in one Bill of Quantities may be used as a basis for establishing a unit rate for similar work in another Bill of Quantities which contains no such item. No additional cost will be considered for such an eventuality.
10. The Contractor will be provided by the Employer with all that land occupied by the Permanent Works including the specified working width for pipe laying and other permanent construction works. The costs of compensation and entry upon land (if any) for the specified working width will be paid by the Employer. All other costs for temporary access to the works or additional working space shall be paid by the Contractor.

11. It shall be the responsibility of the Contractor to arrange for the identification and removal of, or alteration to existing utility services where necessitated by the Works. Costs incurred will be paid under relevant items in the Bills of Quantities. The Contractor shall verify alignment of existing services e.g. KPLC Services, Telkom Services, existing water pipes, etc. The cost for these should be included in the Contractor's rates.
12. Quantities for site clearance, stripping and spreading shall be based on plain area cleared or stripped.
13. The rates for excavation items shall be deemed to include inter alia for setting aside spoil for reuse in the Works or disposing to approved tips identified by the Contractor in liaison with the Local Authority, except where otherwise provided for in the Bills of Quantities.
14. Generally, excavation items are based on volumes for structures and on linear measurements for certain pipelines. The work may be covered by one or more items. The rates shall include as appropriate for:-
  - a) Breaking through surfaces, handling different classes of material separately; excavation beyond the net plan area of the foundations, for working space and for battering or timbering etc.
  - b) Timbering
  - c) Dealing with water from any source whatsoever, unless specifically itemised in the Bills of Quantities
  - d) Backfilling as specified
  - e) Disposal of surplus spoil to approved tips identified by the Contractor in liaison with the local council, not exceeding 5 km distance

Measurement of volume of excavation for structures shall be calculated from the plan dimensions of the structure without allowance for working space.

The depth of excavation in pipe trenches will be measured from ground level to the invert of the pipe. Measurement for other excavations will be to the size which is required to accommodate the permanent works. A Bidder shall accordingly allow in his prices for any amount of extra excavation, which may be necessary for working space to complete the work to the satisfaction of the Engineer.

The Contractor shall allow in his prices for clearly marking the excavation width of the pipe trench prior to commencement of excavation, fixing of sight rails at intervals of 30m and marking of temporary Bench Marks related to Survey of Kenya Datum at such intervals as directed by the Engineer.

Items are included for "Extra Over for Rock" on a volume basis. The rates shall include for breaking out and for any other additional costs and the items shall apply to work encountered within measured excavation. Different classifications have been billed separately. Rock shall be measured as a volume calculated from the thickness encountered within the plan area of a mass excavation, within the plan dimensions of a structure, or within the nominal width of a trench. The decision of the Engineer on the classification of rock encountered in excavation shall be final and binding. **Note: Any excavation of murram in whatever form will be taken as common excavation.**

Timbering left in excavations shall only be measured for payment where it is specified or ordered by the Engineer.

15. Excavation by means of mechanical equipment may not be possible in some areas due to restricted wayleaves, existing structures, drains, roads, trees, fences, walls, etc. The Contractor's rates for pipe trench excavation shall be deemed to cover mechanical and/or manual excavation. **No claim for restricted space or double haulage will be entertained.**

The Contractor shall indemnify the Employer against all claims for damage which in opinion of the Engineer may be caused by Excavation. This includes reinstatement of road surfaces, drains, fences, wall, culverts, etc. all in accordance to relevant Authority.

16. When the site of any particular item of the Works has been sufficiently cleared of trees, undergrowth etc. and before any excavation or filling has been carried out, the Contractor shall carry out a survey under the supervision of the Engineer's Representative to take, record and agree upon an adequate number of original ground levels. The data so obtained shall be used as a basis for the computation of excavation and filling. If for whatever reason the Contractor commences excavation without taking levels, the Engineer's decision on the original ground levels to be used for computation will be final.
17. The volume of fill will be measured net to the finished levels as shown on the drawings or as amended by the Engineer.
18. The rates for concrete shall include for making and testing concrete cubes and forwarding the results to the Engineer. Testing to be carried out by a Test Laboratory approved by the Engineer. The Contractor shall maintain a written log of cubes prepared indicating date of testing and results achieved. The Contractor shall designate a qualified person for preparation and follow up on cube tests in co-ordination with the Engineer's Representative.
19. The rates for precast concrete paving shall include for all cutting, bedding, jointing and laying to falls.
20. The rates for precast concrete edging and kerbs shall include for formwork, concrete bed and backing, all cutting, jointing and laying.
21. All formwork must be cleaned and oiled prior to use. All exposed concrete edges shall have a 20mm chamfer unless otherwise directed. The formwork rates shall also be inclusive of all necessary box outs and cut outs for individual holes up to 1 square metre.

The rates for forming rebates in concrete walls etc. shall include for forming pockets for the fish tail fixing cleats where required.

Deductions from formwork quantities will be made for openings more than 1 square metre in area.

22. Formwork for upper surfaces inclined at 30 degrees or less to the horizontal is not measured and the cost of any such formwork used will be deemed to be included in the relevant concrete item rate.
23. Wrought formwork where specified will be measured to 150mm below final ground levels.
24. Items required for Structural Joints and Construction Joints shown on drawings shall be paid for as per the rates in the Bills of Quantities; the rate for providing and fixing PVC water bar is deemed to be inclusive of all joints, overlaps, junctions, welding, etc. formwork not shown on drawings shall be deemed to be included in the unit rates for concrete work.
25. All rates and sums in the Bills of Quantities shall be in Kenya Shillings and Cents.
26. A construction wayleave of up to 9 metres for the Raw Water Gravity Main in open fields will be allowed. Construction wayleave of up to 3 m for Water Mains within the Town will generally be

allowed, if possible. In built up areas especially the Central Business District, the Contractor's rates shall include staged excavation, including double haulage of excavated interval, provision of temporary access to premises safety barriers, warning signs, etc. in order to facilitate normal business activities to be maintained without disruption. The Contractor in his planning shall allow for working after normal business working hours and at night to enable timely completion of the Works.

In restricted spaces including heavy pedestrian and vehicular traffic areas backfilling of pipelines prior to testing will be permitted. However, no claim for additional costs will be entertained for exposing of pipelines and joints in case of failure of pressure tests. The Contractor to allow in his rates for such exigencies.

Payment for site clearance will be based upon this width except that the Engineer reserves the right to restrict this width due to the presence of obstructions, roads, houses and the like. Payment shall then be according to the actual area cleared. In case additional working space is required this may be made available by the Contractor at his own cost.

No claim for additional space will be entertained by the Engineer. No claims for inconvenience and the like caused by obstruction will be entertained. The rates shall be deemed to include for reinstatement of fences, gates, roads, drains, culverts, etc. or any other existing structures damaged or uprooted by the Contractor during the Construction Works to the satisfaction of the Engineer.

27. All pipe diameters indicated in the Bills of Quantities and on Drawings are nominal. Fittings dimensions to suit size/type of pipes supplied by the Bidder and Bidder's rates are deemed to allow for this. No additional cost adjustment will be allowed.
28. Unless otherwise specified the method of measurement shall be in accordance with the Standard Method of Measurement of Civil Engineering Quantities (CESMM3) published by the Institution of Civil Engineers, London, Third Edition - 1991. In some cases variations to this method have been made to suit local practice. A Contractor shall be deemed to have priced the items accordingly and no claims relating to variation from the method of measurement stated in these documents shall be considered.
29. Items for buildings, electrical and mechanical works are not described using CESMM3 for clarity purposes.
30. All quantities have been measured in Metric Units.
31. Explanation of abbreviations used in the Bills of Quantities are as follows:-

L.S.	-	Lump Sum
P.C.	-	Prime Cost
E.O.	-	Extra Over
Avg.	-	Average
Max.	-	Maximum
Min.	-	Minimum
n.e.	-	Not Exceeding
Nr.	-	Number
mm	-	Millimetre
m	-	Linear Metre
m <sup>2</sup>	-	Square Metre
m <sup>3</sup>	-	Cubic Metre
Ha.	-	Hectare

Drg.	-	Drawing
Kg.	-	Kilogramme
H.T.	-	High Tensile
M.S.	-	Mild Steel
B.L.	-	Bitumen Lined
Dia.	-	Diameter
E.C.	-	Epoxy Coated
E.L.	-	Epoxy Lined
S & S	-	Socket & Spigot
C.L.	-	Cement-mortar Lined
C.I.	-	Cast Iron
D.I.	-	Ductile Iron
uPVC	-	Unplasticised Polyvinyl Chloride
G.I.	-	Galvanised Iron
G.M.S.	-	Galvanised Mild Steel
P.E.H.	-	Palothene
PE	-	Polyethylene
Hr.	-	Hour
FE/Fe	-	Ferrous

32. The rates for metalwork shall include for bolts, nuts, washers and rag-bolts, fixing as specified or in accordance with the manufacturer's instructions and rectifying as specified any parts of the painted, coated or galvanised surface that may be damaged either before or after erection.

33. The rates for fixing penstocks and flap valves etc. shall include for bedding and grouting, testing for water tightness, greasing all working parts and leaving in good working order; where the item includes supply, the rates shall also include for supplying drawings for approval before manufacture is commenced.

#### 34. Concrete Works

- a) Item : Concrete  
Unit : m<sup>3</sup> of each class

Concrete shall be measured by the cubic metre of each class calculated from the dimensions given on the drawings or as instructed by the Engineer. No deduction shall be made in the measurement for:

- i) bolt holes, pockets, box outs and cast-in components provided that the volume of each is less than 0.15 cubic metres;
- ii) mortar beds, fillets, drip moulds, rebates, recesses, grooves, chamfers and the like of 100mm total width or less;
- iii) reinforcement.

The rates for concrete shall include for the cost of:

- i) provision and transport of cement, aggregate and water;
- ii) admixtures and workability agents including submission of details unless otherwise specified;
- iii) batching, mixing, transporting, placing, compacting and curing;



- iv) Class UF1 finish;
  - v) laying to sloping surfaces not exceeding 15 degrees from the horizontal and laying to falls;
  - vi) formwork to blinding concrete;
  - vii) placing and compacting against excavated surfaces where required including any additional concrete to fill overbreak or working space;
  - viii) complying with the requirements of Clauses 724, 401-415 inclusive and Clause 418 of the Specification.
- b) Item : Blinding Concrete  
Unit : m<sup>3</sup>

Blinding concrete shall be measured by the cubic metre calculated as the product of the plan area of the foundation as shown on the drawings and the instructed thickness. No deduction shall be made for openings provided that the area of each is less than 0.5 square metres. Blinding concrete over hard material shall be measured as the volume used provided that the maximum thickness of 150mm allowed for overbreak is not exceeded.

The rate for blinding concrete shall include for all costs itemised in Note 33(a) of this Preamble.

- c) Item : No Fines Concrete  
Unit : m<sup>3</sup>

No fines concrete shall be measured by the cubic metre calculated from the dimensions given on the drawings or as instructed by the Engineer.

The rate for no fines concrete shall include for all costs stated in Note 33(a) of this Preamble.

- d) Item : Unformed Surface Finishes  
Unit : m<sup>2</sup> of each class of finish

Unformed surface finishes shall be measured by the square metre from the dimensions given on the drawings or as instructed by the Engineer.

The rate for concrete in Notes 33(a), (b) and (c) shall include for class UF1 finish.

The rate for unformed surface finishes shall include for the cost of complying with Clause 410 of the Specification.

- e) Item : Formwork for Formed Surface Finishes  
Unit : m<sup>2</sup> of formwork for each class of finish for each range of inclinations

Except as stated below, formwork shall be measured by the square metre of formwork actually in contact with the finished face of the concrete. No deduction shall be made in the measurement for openings, pipes, ducts and the like, provided that the area of each is less than 0.50 square metres. Unless otherwise stated, if the volume or area of concrete has not been deducted when measuring the concrete in accordance with Notes 33(a), (b) and (c), formwork to form or box out the void shall not be measured.

Formwork less than 300mm high to edges of slabs shall be measured by the linear metre in accordance with Note 33(f) of this Preamble.

Inclined formwork shall be measured in accordance with the following classifications:

- i) Horizontal: 85 to 90 degrees inclination from vertical
- ii) Sloping: 10 to 85 degrees inclination from vertical
- iii) Battered: 0 to 10 degrees inclination from vertical
- iv) Vertical: 0 degrees
- v) Sloping upper surfaces inclined at more than 15 degrees from the horizontal

Formwork required for blinding concrete, to form construction joints and shear keys for future concrete and other construction surfaces shall not be measured and the costs shall be included in the rates for other work.

Formwork to contraction and expansion joints shall be measured by the square metre on one face only. The rates shall include for the costs stated below and for forming recesses for sealant and channels for grout.

The rates for formwork shall include for the cost of submission of details, providing and transporting all materials for formwork and falsework, erection including provision of supports, fillets and chamfers 75mm and less in width, bolts, ties, fixings, cutting to waste, drilling or notching the formwork for reinforcement where required, working around pipes, ducts, conduits and waterstops, temporary openings, cleaning, dressing, stripping, filling bolt holes and any remedial work and for complying with Clauses 405, 407, 414, 415, 416, 418 and 501 to 506 inclusive of the Specification.

- f) Item : Formwork to Edges of Slabs  
Unit : m of each class of finish

Formwork less than 300mm high to edges of slabs shall be measured by the linear metre.

The rate shall include for the costs stated in Note 33(a) of this Preamble.

- g) Item : Waterstops  
Unit : m of each type

Waterstops shall be measured by the metre run of each type.

The rate for waterstops shall include for the provision, installation, jointing, any sealants required at the face of the concrete and for placing and compacting concrete around the waterstop.

- h) Item : Mortar  
Unit : m<sup>2</sup>

Mortar used for bedding base plates and the like shall be measured by square metre as the area of the base plate at the specified nominal thickness of bedding.

Mortar used in filling bolts pockets and the like shall not be measured separately and the costs shall be included in the rates for the bolts.

The rates for mortar shall include for the cost of providing and placing the mortar and of complying with the requirements of Clauses 411 and 417 of the Specification.

- i) Item : Admixture Workability and Hardening Agents  
Unit : As specified in the Special Specification

Where required by the Special Specification admixtures, workability and hardening agents shall be measured and paid for in accordance with the Special Specification.

- j) Item : Reinforcement  
Unit : Tonne of each type for each range of diameters

Reinforcement shall be measured separately for each of the following ranges:

- i) of diameter equal to or less than 16mm  
ii) of diameter greater than 16mm

Steel fabric reinforcement shall be measured in accordance with Note 35(k) of this Preamble.

Steel (plain and deformed bars) reinforcement shall be measured by the tonne and shall be the calculated weight of the steel required including splice lengths shown on the drawings. No allowance shall be made in the measurement for rolling margins or cutting waste. The density of steel shall be taken as 7850 kilogrammes per cubic metre.

The rates for reinforcement shall include for cost of providing, cutting to length, splice lengths additional to those shown on the drawings, laps, bending, hooking, waste incurred by cutting, cleaning, spacer blocks, provision and fixing of chairs or other types of supports, welding, fixing the reinforcement in position including the provision of wire or other material for supporting and tying the reinforcement in place, being reinforcement aside temporarily and straightening, placing and compacting concrete around reinforcement and for complying with the requirements of Clauses 419 to 420 inclusive of the Specification.

- k) Item : Fabric Reinforcement  
Unit : m<sup>2</sup> of each type

Steel fabric reinforcement shall be measured by the square metre and shall be the calculated area excluding any allowance for laps.

The rate for steel fabric reinforcement shall include for the costs stated in Note 33(j) of this Preamble.

#### Sewers, Drains and Pipelines

35. The rates for pipes, pipework and specials shall include for supply of all materials, setting of concrete blocks and hardwood wedges where specified, providing any temporary support that may be necessary, preparing ends of pipes for jointing and all labour in jointing, protection to detachable joints, cleaning pipelines and rectifying as specified any damage to surface coating. The rates shall also include for all cutting of pipes consequent upon structures, specials and fittings being constructed in the designated positions.
36. The rates for concrete surround, bed and haunching to pipes, concrete in anchor blocks to pipes, and to gully pots shall include for all formwork required and for any additional concrete the Contractor may place for his own convenience or by reason of the method of carrying out the work.

**37. Pipes, Fittings and Valves**

- a) uPVC pipes and fittings to SRN 300 Class 'D' (12 bar), or as specified
- b) Steel pipes and fittings to SRN 210, SRN 212 and SRN 216
- c) Ductile Iron (DI) pipes and fittings to SRN 202
- d) Galvanised Iron (GI) pipes and fittings to SRN 203
- e) Flexible joint spigot and socket precast concrete (PVC) pipes to SRN 409  
Rigid joint spigot and socket pcc pipes to SRN 409  
Ogee joint pcc pipes to SRN 407
- f) All flanges to SRN 207, NP 16 or as specified
- g) Gate valves to SRN 501, NP 16 or as specified
- h) Double orifice air valves as specified  
Single large orifice air valves as specified  
Single small orifice air valves as specified
- i) Fire hydrants to SRN 509
- j) Butterfly valves to SRN 506, NP 16 as specified
- k) Ball float valves as specified
- l) All pipe, fittings and valve diameters indicated are nominal diameters.
- m) Supply of pipes and fittings to include for cost of supply of all jointing materials like bolts, nuts, washers, gaskets, packings, jointing glue, etc.
- n) uPVC pipes to be supplied complete with compression joints
- o) Supply of C/L steel pipes to be with flange or push-in joints. If plain ended pipes are offered, one number coupling per length is to be included. Coupling is subject to approval by Engineer.
- p) Ductile Iron pipes to be with push-in type joints
- q) Galvanised Iron pipes to be with threaded coupling joints, or as specified
- r) Precast concrete ogee pipes to be complete with all jointing materials
- s) **All Ferrous Pipes and Fittings to be PN16 unless otherwise stated in the Specifications or Bills of Quantities.**

**Shop Drawings**

38. Detailed shop drawings, in triplicate, to be provided for all items where ferrous pipework, fittings and any metalwork i.e. penstocks, ladders etc., are indicated to be installed as outlined in the bills of quantities and drawings. These drawings to be submitted well in advance of ordering of the above materials and the billed rates are deemed to include for provision of these drawings, samples where requested, and inspection where fabricated by the Engineer or his Representative.

The Contractor's rates for electrical Works shall include for preparation and submission in triplicate of working drawings for electrical wiring, switchgear panels, etc. including submission of literature and samples for light fittings, wiring, cables, switchgear controls as specified.

Prime Cost Items

39. Attendance on nominated Sub-Contractors shall include for all or any of the following as appropriate - labour, materials and plant required for taking delivery, carting, storing, hoisting and builder's work entailed in fixing, erecting and installing as specified or in accordance with the manufacturer's instructions and all overheads and profits.
40. When, in the opinion of the Engineer, it is reasonable to expect the Contractor to price the attendance item it will be so included in the Bills of Quantities. In all other cases it will form the subject of a Provisional Sum to be expended on a Dayworks basis.
41. Profit shall include for establishment charges, profit and any other costs not included in the attendance item.
42. The rates for the supply of any mechanical and electrical equipment shall include for the submission of factory test results.
43. Definitions of Terms used in Bill of Quantities
  - a) **'Provide'** - shall mean all costs to cover purchase of materials in good condition, services for transaction with the supplier, supervision, transport to site of works all charges for rental, consumptions, overheads and profits throughout the Contract. It shall also include for all maintenance, insurance and handling and storage whenever applicable.
  - b) **'Excavate for'** - shall mean handling of any material from its incumbent position intended for specified work shown in the drawings or directed by the Engineer and backfilling and compacting part of material after laying of pipes or erection of structures, and cart away remaining to tips to be provided by the Contractor. The cost for this work shall include all survey, supervision, labour, tools, machinery, protection of work, pumping, insurances and overheads and profits.
  - c) **'Laying'** - shall cover all work necessary for placing an object or material to true line and level specified in a drawing or as directed by the Engineer.
  - d) **'Jointing'** - shall mean process of fixing specified material, pipes, fittings and specials together using appropriate tools, material, labour and machinery. It should cover for all work necessary to provide matching of opposite parts in size, shape and position indicated and clamps, seatings and holders to hold firmly.
  - e) **'Testing'** - shall mean provision of all materials, apparatus, labour, machinery, charges for the media or chemical to be used and their transport, repair of object to be tested if required, re-testing, excavation of any part for visual inspection, erection of any type all until the object has been certified as having passed the required test satisfactorily.
  - f) **'Install'** - shall include for all work requirements stipulated for "laying" and "jointing". It will cover all expenses for the provision of labour, materials, removal from stores, complete erection, installation, supervision, site testing and commissioning as per the Specifications.

44. The unit rates for the various items listed in the BOQ shall include, except insofar as it is otherwise provided under the Contract, all labour, construction equipment, materials, erection, maintenance, supervision, insurances etc. set forth or implied in the Contract. These are all deemed to include all allowances for waste or surplus of any kind, which are not subject to measurement.
- 45. The rates to be indicated in the Bills of Quantities shall be inclusive of all applicable Kenya Government duties and taxes except Value added Tax (VAT). The VAT amount shall be added to the overall Bills Total in the Grand Summary. The Grand Total from the Grand Summary (inclusive of VAT) shall be carried to the Letter of Bid.**

## Schedule of Adjustment Data

**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: _____
<b>Total</b>					<b>1.00</b>

**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: _____
<b>Total</b>						<b>1.00</b>

## Summary of Payment Currencies

**Table: Alternative A**

**For .....**insert 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 _____				
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
<b>Local Currency:</b> _____	
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 Employer, 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 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 **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)

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]<sup>15</sup> [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
- (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)

<sup>15</sup> 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.

## 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: The Chief Executive Officer,  
Tana Water Works Development Agency,  
Maji House, Barden Powell Road,  
P.O. Box 1292 – 10100,  
NYERI.

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**



## **Construction Schedule**

## 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.

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

The following information shall be provided only for equipment not owned by the Bidder.

<b>Owner</b>	<b>Name of owner</b>	
	<b>Address of owner</b>	
	<b>Telephone</b>	<b>Contact name and title</b>
	<b>Fax</b>	<b>Telex</b>
<b>Agreements</b>	<b>Details of rental / lease / manufacture agreements specific to the project</b>	

## 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.	Title of position
	Name
2.	Title of position
	Name
3.	Title of position
	Name
4.	Title of position
	Name
5.	Title of position
	Name
6.	Title of position
	Name
etc.	Title of position
	Name

**Form PER – 2**

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

[illegible]

## **Others**

## **Bidder's Qualification**

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

**Form ELI - 1.1****Bidder Information Sheet**

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: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with <b>ITB</b> Clauses 4.1 and 4.2. <input type="checkbox"/> In case of JVCA, letter of intent to form JVCA including a draft agreement, or JVCA agreement, in accordance with <b>ITB</b> Clauses 4.1 <input type="checkbox"/> 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 <b>ITB</b> 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: <input type="checkbox"/> Articles of Incorporation or Registration of firm named in 1, above, in accordance with <b>ITB</b> Clauses 4.1 and 4.2. <input type="checkbox"/> 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 <b>ITB</b> Clause 4.5.



**Form CON – 2****Historical Contract Non-Performance**

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

Bidder's Legal Name: \_\_\_\_\_

JVCA Partner Legal Name: \_\_\_\_\_

Bidding No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

**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:	_____

**Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria**

☐ No pending litigation in accordance with Sub-Factor 2.2.3 of Section III, Evaluation and Qualification Criteria.

☐ 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:	_____

**Form CCC****Current Contract Commitments / Works in Progress**

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.				

**Form FIN – 3.1****Financial Situation**

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).

**Form FIN – 3.2****Average Annual Turnover**

Bidder's Legal Name: \_\_\_\_\_

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

JVCA Partner Legal Name: \_\_\_\_\_

Bidding No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Annual Turnover Data (Construction only)</b>		
<b>Year</b>	<b>Amount and Currency</b>	<b>US\$ equivalent</b>
	_____	_____
	_____	_____
	_____	_____
	_____	_____
	_____	_____
<b>*Average Annual Construction Turnover</b>	_____	_____

\*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.

**Form FIN – 3.3****Financial Resources**

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total Construction Cash Flow Demands of the subject Contract or Contracts as indicated in Section III, Evaluation and Qualification Criteria.

<b>Source of Financing</b>	<b>Amount (US\$ equivalent)</b>
1.	
2.	
3.	
4.	

**Form EXP – 2.4.1****General Experience**

Bidder's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 JVCA Partner Legal Name: \_\_\_\_\_ Bidding No.: \_\_\_\_\_  
 Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Starting Month / Year</b>	<b>Ending Month / Year</b>	<b>Years *</b>	<b>Contract Identification</b>	<b>Role of Bidder</b>
_____	_____		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:	_____
_____	_____		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

**Form EXP – 2.4.2(a)****Specific Experience**

Bidder's Legal Name: \_\_\_\_\_ Date: \_\_\_\_\_

JVCA Partner Legal Name: \_\_\_\_\_ Bidding No.: \_\_\_\_\_

Page \_\_\_\_\_ of \_\_\_\_\_ pages

<b>Similar Contract Number: ____ [insert specific number] of ____ [insert total number of Contracts required.]</b>	<b>Information</b>		
Contract Identification	_____		
Award date	_____		
Completion date	_____		
Role in Contract	<input type="checkbox"/> Contractor	<input type="checkbox"/> Management Contractor	<input type="checkbox"/> Subcontractor
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:	_____		



**Form EXP – 2.4.2(a) (cont.)****Specific Experience (cont.)**

Bidder's Legal Name: \_\_\_\_\_ Page \_\_\_\_\_ of \_\_\_\_\_ pages

JVCA Partner Legal Name: \_\_\_\_\_

<b>Similar Contract No. __[insert specific number] of __[insert total number of Contracts] required</b>	<b>Information</b>
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	_____

**Form EXP – 2.4.2(b)****Specific Experience in Key Activities**

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"/> Subcontractor
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:	_____ _____		

**Form EXP – 2.4.2(b) (cont.)****Specific Experience in Key Activities (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 Eligible<sup>16</sup> Countries.<sup>17</sup> 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**

##### **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

<sup>16</sup> Refer to Appendix 4 for additional information on Eligibility.

<sup>17</sup> "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.

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**

All countries are eligible to participate in this bidding process.

## **PART 2 – Employer’s Requirements**

# Section VI. Requirements

## Contents

1.	Scope of Works.....	2-3
2.	Specification.....	2-4
3.	Drawings .....	2-5
4.	Supplementary Information .....	2-15

## Section VI. Requirements

### 1. Scope of Works

The Works comprise of the following:

Item	Scope of Works
<b>Transmission Mains</b>	<ul style="list-style-type: none"> <li>• <b>4 Nr. Transmission Pipelines, Approx. Total Length 45.3Km</b> <ul style="list-style-type: none"> <li>- Kabui Tank Line Extension (TWKB) – OD 50mm HDPE Pipe, Length – 2.6 Km.</li> <li>- Kaanwa Line Extension – Ntuntuni Line (TWKN) – OD 110mm HDPE Pipe, Length – 6.4 Km.</li> <li>- Kaanwa Line Extension – Mwanjati Line (TWKW) – OD 200mm HDPE Pipe, Length – 7.1 Km.</li> <li>- Kathwana Line (TWKT) – OD 200 /160MM HDPE Pipe, Length – 29.2 Km.</li> </ul> </li> </ul>
<b>Break Pressure Tanks (BPT)</b>	<ul style="list-style-type: none"> <li>• <b>4 Nr. Break Pressure Tanks, Capacity – 5m<sup>3</sup> Each</b> <ul style="list-style-type: none"> <li>- Near Gakuuni Coffee Factory</li> <li>- Near Miraa Miraja Shopping Centre</li> <li>- Near Nkorongo Shopping Centre</li> <li>- Near Kamutiria Chief's Camp</li> </ul> </li> </ul>



## **2. General and Technical Specification**

1. The specification to be used for the Works is the General and Technical Specifications given in Volume II of the Bid Documents.
2. “Standards, brand names, catalogue numbers or similar classifications provided in the Specifications are indicative of performance requirements and offers which have similar characteristics and which provide performance and quality equal or higher to the performance requirements specified would be accepted.”

**FOR DETAILS SEE VOLUME II OF THE BID DOCUMENT**

### 3. Drawings

#### Schedule of Engineering Drawings

KENYA TOWNS SUSTAINABLE WATER SUPPLY AND SANITATION PROGRAM			
DESIGN REVIEW AND CONSTRUCTION SUPERVISION OF CHUKA AND CHOGORIA WATER SUPPLY AND SEWERAGE PROJECT			
TENDER NO. TWWDA/ADB/004/2024-2025			
SCHEDULE OF ENGINEERING DRAWINGS - ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE			
DRG NO.	DESCRIPTION	DRG NO.	DESCRIPTION
	<b>GENERAL (G)</b>		
M407/CK/G/01	PROJECT LOCATION PLAN - EXISTING AND PROPOSED CHUKA WATER SUPPLY SYSTEM	M407/CK/TWKT/24	PLAN AND LONGITUDINAL SECTION SHEET 24 OF 26
M407/CG/G/01	PROJECT LOCATION PLAN - EXISTING AND PROPOSED CHOGORIA WATER SUPPLY SYSTEM	M407/CK/TWKT/25	PLAN AND LONGITUDINAL SECTION SHEET 25 OF 26
		M407/CK/TWKT/26	PIPE FITTINGS SHEET 26 OF 26
	<b>TREATED WATER GRAVITY MAINS (TW)</b>		<b>BREAK PRESSURE TANKS (BPT)</b>
	<b>KABUJI TANK LINE EXTENSION (TWKB)</b>		<b>BPT - 01</b>
M407/CG/TWKB/01	PLAN AND LONGITUDINAL SECTION SHEET 1 OF 3	M407/CK/BPT-1/01	BPT - 01, 5m <sup>3</sup> - SITE LAYOUT PLAN
M407/CG/TWKB/02	PLAN AND LONGITUDINAL SECTION SHEET 2 OF 3	M407/CK/BPT-1/02	BPT - 01, 5m <sup>3</sup> - PLAN, SECTION & R.C. DETAILS
M407/CG/TWKB/03	PLAN AND LONGITUDINAL SECTION SHEET 3 OF 3	M407/CK/BPT-1/03	BPT - 01, 5m <sup>3</sup> - PIPEWORK DETAILS
	<b>KAANWA LINE EXTENSION - NTUNTUNI LINE (TWKN)</b>		<b>BPT - 02</b>
M407/CK/TWKN/01	PLAN AND LONGITUDINAL SECTION SHEET 1 OF 7	M407/CK/BPT-2/01	BPT - 02, 5m <sup>3</sup> - SITE LAYOUT PLAN
M407/CK/TWKN/02	PLAN AND LONGITUDINAL SECTION SHEET 2 OF 7	M407/CK/BPT-2/02	BPT - 02, 5m <sup>3</sup> - PLAN, SECTION & R.C. DETAILS
M407/CK/TWKN/03	PLAN AND LONGITUDINAL SECTION SHEET 3 OF 7	M407/CK/BPT-2/03	BPT - 02, 5m <sup>3</sup> - PIPEWORK DETAILS
M407/CK/TWKN/04	PLAN AND LONGITUDINAL SECTION SHEET 4 OF 7		
M407/CK/TWKN/05	PLAN AND LONGITUDINAL SECTION SHEET 5 OF 7		
M407/CK/TWKN/06	PLAN AND LONGITUDINAL SECTION SHEET 6 OF 7		<b>BPT - 03</b>
M407/CK/TWKN/07	PIPE FITTINGS SHEET 7 OF 7	M407/CK/BPT-3/01	BPT - 03, 5m <sup>3</sup> - SITE LAYOUT PLAN
		M407/CK/BPT-3/02	BPT - 03, 5m <sup>3</sup> - PLAN, SECTION & R.C. DETAILS
		M407/CK/BPT-3/03	BPT - 03, 5m <sup>3</sup> - PIPEWORK DETAILS
	<b>KAANWA LINE EXTENSION - MWANJATI LINE (TWKM)</b>		
M407/CK/TWKM/01	PLAN AND LONGITUDINAL SECTION SHEET 1 OF 7		
M407/CK/TWKM/02	PLAN AND LONGITUDINAL SECTION SHEET 2 OF 7		<b>BPT - 04</b>
M407/CK/TWKM/03	PLAN AND LONGITUDINAL SECTION SHEET 3 OF 7	M407/CK/BPT-4/01	BPT - 04, 5m <sup>3</sup> - SITE LAYOUT PLAN
M407/CK/TWKM/04	PLAN AND LONGITUDINAL SECTION SHEET 4 OF 7	M407/CK/BPT-4/02	BPT - 04, 5m <sup>3</sup> - PLAN, SECTION & R.C. DETAILS
M407/CK/TWKM/05	PLAN AND LONGITUDINAL SECTION SHEET 5 OF 7	M407/CK/BPT-4/03	BPT - 04, 5m <sup>3</sup> - PIPEWORK DETAILS
M407/CK/TWKM/06	PLAN AND LONGITUDINAL SECTION SHEET 6 OF 7		
M407/CK/TWKM/07	PIPE FITTINGS SHEET 7 OF 7		
			<b>STANDARD DRAWINGS (SD)</b>
	<b>KATHWANA LINE (TWKT)</b>	M407/SD/01	DETAILS FOR VALVE CHAMBER
M407/CK/TWKT/01	PLAN AND LONGITUDINAL SECTION SHEET 1 OF 26	M407/SD/02	DETAILS OF PRECAST CONCRETE COVERS FOR VALVE CHAMBERS
M407/CK/TWKT/02	PLAN AND LONGITUDINAL SECTION SHEET 2 OF 26	M407/SD/03	THRUST BLOCKS, ANCHOR BLOCKS AND INDICATOR POST DETAILS
M407/CK/TWKT/03	PLAN AND LONGITUDINAL SECTION SHEET 3 OF 26	M407/SD/04	TYPICAL DETAILS OF CONSUMER WATER METER INSTALLATION ON A SERVICE LINE
M407/CK/TWKT/04	PLAN AND LONGITUDINAL SECTION SHEET 4 OF 26		
M407/CK/TWKT/05	PLAN AND LONGITUDINAL SECTION SHEET 5 OF 26		
M407/CK/TWKT/06	PLAN AND LONGITUDINAL SECTION SHEET 6 OF 26		
M407/CK/TWKT/07	PLAN AND LONGITUDINAL SECTION SHEET 7 OF 26		
M407/CK/TWKT/08	PLAN AND LONGITUDINAL SECTION SHEET 8 OF 26		
M407/CK/TWKT/09	PLAN AND LONGITUDINAL SECTION SHEET 9 OF 26		
M407/CK/TWKT/10	PLAN AND LONGITUDINAL SECTION SHEET 10 OF 26		
M407/CK/TWKT/11	PLAN AND LONGITUDINAL SECTION SHEET 11 OF 26		
M407/CK/TWKT/12	PLAN AND LONGITUDINAL SECTION SHEET 12 OF 26		
M407/CK/TWKT/13	PLAN AND LONGITUDINAL SECTION SHEET 13 OF 26		
M407/CK/TWKT/14	PLAN AND LONGITUDINAL SECTION SHEET 14 OF 26		
M407/CK/TWKT/15	PLAN AND LONGITUDINAL SECTION SHEET 15 OF 26		
M407/CK/TWKT/16	PLAN AND LONGITUDINAL SECTION SHEET 16 OF 26		
M407/CK/TWKT/17	PLAN AND LONGITUDINAL SECTION SHEET 17 OF 26		
M407/CK/TWKT/18	PLAN AND LONGITUDINAL SECTION SHEET 18 OF 26		
M407/CK/TWKT/19	PLAN AND LONGITUDINAL SECTION SHEET 19 OF 26		
M407/CK/TWKT/20	PLAN AND LONGITUDINAL SECTION SHEET 20 OF 26		
M407/CK/TWKT/21	PLAN AND LONGITUDINAL SECTION SHEET 21 OF 26		
M407/CK/TWKT/22	PLAN AND LONGITUDINAL SECTION SHEET 22 OF 26		
M407/CK/TWKT/23	PLAN AND LONGITUDINAL SECTION SHEET 23 OF 26		

## **4. Supplementary Information**

### **1. Priority Works**

The Works to be undertaken as Priority Works is the Supply and Delivery of Pipes and Associated fittings. These Pipes and fittings should be supplied within within the first **three (3) months** of the Construction Period.

### **2. Contractor's Camps**

The Employer has no available land to offer for Contractor's Camps, storage of materials and preparation of concrete etc. Identification and procurement of suitable area of land for Contractor's Camp whether rented or purchased is the responsibility of the Contractor.

### **3. Construction Wayleaves**

The Treated Water Pipeline will be laid mostly within Road Reserves In some instances the space available will be restricted due to traffic and encroachments. The Contractor will make necessary adjustment to his Work Method, Programme and Bid Rates to carry out the Works diligently using the available space. No claims in this respect will be entertained by the Employer.

### **4. Maintaining Continuity of Existing Water Supply**

Some Works are to be executed within existing operational Water Supply System, Community Water Supply Schemes etc. The existing operations must continue uninterrupted during execution of the Works. Notwithstanding any official Pre-Bid Site Visit that may be organized by the Employer, Bidders are encouraged to carry out their own Pre-Bid Site Visits and Due Diligence to understand the existing facilities and their operation in order to plan their Methodology and Work Plan for executing the Works whilst maintaining continuity of existing operations and to allow for this appropriately in their Tender rates. No claims in this respect shall be entertained by the Employer later during Contract execution.



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

## **Section VII. General Conditions (GC)**

### **Section VII. General Conditions (GC)**

#### **TANA WATER WORKS DEVELOPMENT AGENCY**

#### **ADDITIONAL WORKS FOR CHUKA AND CHOGORIA WATER SUPPLY INFRASTRUCTURE**

These General Conditions are the Bank Harmonised Edition of the Conditions of Contract for Construction prepared and copyrighted by the International Federation of Consulting Engineers (Fédération Internationale des Ingénieurs-Conseils, or FIDIC), FIDIC 2005-All rights reserved. This publication is exclusive for the use of Multilateral Development Banks' Borrowers and their project implementing agencies as provided under the License Agreement dated [redacted] [Date of Agreement], between [redacted] [Name of Bank] and FIDIC, and, consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by the Employer identified above and only for the exclusive purpose of preparing these Standard Bidding Documents for the Contract also identified above.

## Section VII. General Conditions (GC)

### Table of Contents

<b>1.</b>	<b>General Provisions .....</b>	<b>3-8</b>
1.1	Definitions	3-8
1.2	Interpretation	3-13
1.3	Communications	3-13
1.4	Law and Language	3-14
1.5	Priority of Documents	3-14
1.6	Contract Agreement	3-14
1.7	Assignment	3-14
1.8	Care and Supply of Documents	3-15
1.9	Delayed Drawings or Instructions	3-15
1.10	Employer's Use of Contractor's Documents	3-16
1.11	Contractor's Use of Employer's Documents	3-16
1.12	Confidential Details	3-16
1.13	Compliance with Laws	3-17
1.14	Joint and Several Liability	3-17
1.15	Inspections and Audit by the Bank	3-17
<b>2.</b>	<b>The Employer .....</b>	<b>3-17</b>
2.1	Right of Access to the Site	3-17
2.2	Permits, Licences or Approvals	3-18
2.3	Employer's Personnel	3-18
2.4	Employer's Financial Arrangements	3-19
2.5	Employer's Claims	3-19
<b>3.</b>	<b>The Engineer .....</b>	<b>3-20</b>
3.1	Engineer's Duties and Authority	3-20
3.2	Delegation by the Engineer	3-21
3.3	Instructions of the Engineer	3-21
3.4	Replacement of the Engineer	3-22
3.5	Determinations	3-22
<b>4.</b>	<b>The Contractor .....</b>	<b>3-22</b>
4.1	Contractor's General Obligations	3-22
4.2	Performance Security	3-23
4.3	Contractor's Representative	3-24
4.4	Subcontractors	3-25
4.5	Assignment of Benefit of Subcontract	3-25
4.6	Co-operation	3-26
4.7	Setting Out	3-26

4.8	Safety Procedures	3-27
4.9	Quality Assurance	3-27
4.10	Site Data	3-27
4.11	Sufficiency of the Accepted Contract Amount	3-28
4.12	Unforeseeable Physical Conditions	3-28
4.13	Rights of Way and Facilities	3-29
4.14	Avoidance of Interference	3-29
4.15	Access Route	3-29
4.16	Transport of Goods	3-30
4.17	Contractor's Equipment	3-30
4.18	Protection of the Environment	3-30
4.19	Electricity, Water and Gas	3-31
4.20	Employer's Equipment and Free-Issue Materials	3-31
4.21	Progress Reports	3-31
4.22	Security of the Site	3-32
4.23	Contractor's Operations on Site	3-33
4.24	Fossils	3-33
<b>5.</b>	<b>Nominated Subcontractors .....</b>	<b>3-33</b>
5.1	Definition of "nominated Subcontractor"	3-33
5.2	Objection to Nomination	3-34
5.3	Payments to Nominated Subcontractors	3-34
5.4	Evidence of Payments	3-34
<b>6.</b>	<b>Staff and Labour .....</b>	<b>3-35</b>
6.1	Engagement of Staff and Labour	3-35
6.2	Rates of Wages and Conditions of Labour	3-35
6.3	Persons in the Service of Employer	3-35
6.4	Labour Laws	3-35
6.5	Working Hours	3-36
6.6	Facilities for Staff and Labour	3-36
6.7	Health and Safety	3-36
6.8	Contractor's Superintendence	3-37
6.9	Contractor's Personnel	3-37
6.10	Records of Contractor's Personnel and Equipment	3-38
6.11	Disorderly Conduct	3-38
6.12	Foreign Personnel	3-38
6.13	Supply of Foodstuffs	3-38
6.14	Supply of Water	3-38
6.15	Measures against Insect and Pest Nuisance	3-38
6.16	Alcoholic Liquor or Drugs	3-39
6.17	Arms and Ammunition	3-39
6.18	Festivals and Religious Customs	3-39
6.19	Funeral Arrangements	3-39
6.20	Forced Labour	3-39
6.21	Child Labour	3-39
6.22	Employment Records of Workers	3-39
6.23	Workers' Organisation	3-39
6.24	Non- Discrimination and Equal Opportunity	3-40



<b>7.</b>	<b>Plant, Materials and Workmanship .....</b>	<b>3-40</b>
7.1	Manner of Execution	3-40
7.2	Samples	3-40
7.3	Inspection	3-41
7.4	Testing	3-41
7.5	Rejection	3-42
7.6	Remedial Work	3-42
7.7	Ownership of Plant and Materials	3-43
7.8	Royalties	3-43
<b>8.</b>	<b>Commencement, Delays and Suspension .....</b>	<b>3-43</b>
8.1	Commencement of Works	3-43
8.2	Time for Completion	3-44
8.3	Programme	3-44
8.4	Extension of Time for Completion	3-45
8.5	Delays Caused by Authorities	3-45
8.6	Rate of Progress	3-45
8.7	Delay Damages	3-46
8.8	Suspension of Work	3-46
8.9	Consequences of Suspension	3-46
8.10	Payment for Plant and Materials in Event of Suspension	3-47
8.11	Prolonged Suspension	3-47
8.12	Resumption of Work	3-47
<b>9.</b>	<b>Tests on Completion .....</b>	<b>3-47</b>
9.1	Contractor's Obligations	3-47
9.2	Delayed Tests	3-48
9.3	Retesting	3-48
9.4	Failure to Pass Tests on Completion	3-48
<b>10.</b>	<b>Employer's Taking Over .....</b>	<b>3-49</b>
10.1	Taking Over of the Works and Sections	3-49
10.2	Taking Over of Parts of the Works	3-49
10.3	Interference with Tests on Completion	3-50
<b>11.</b>	<b>Defects Liability .....</b>	<b>3-51</b>
11.1	Completion of Outstanding Work and Remedying Defects	3-51
11.2	Cost of Remedying Defects	3-51
11.3	Extension of Defects Notification Period	3-51
11.4	Failure to Remedy Defects	3-52
11.5	Removal of Defective Work	3-52
11.6	Further Tests	3-52
11.7	Right of Access	3-53
11.8	Contractor to Search	3-53
11.9	Performance Certificate	3-53
11.10	Unfulfilled Obligations	3-53
11.11	Clearance of Site	3-53

<b>12.</b>	<b>Measurement and Evaluation .....</b>	<b>3-54</b>
12.1	Works to be Measured	3-54
12.2	Method of Measurement	3-54
12.3	Evaluation	3-54
12.4	Omissions	3-55
<b>13.</b>	<b>Variations and Adjustments .....</b>	<b>3-56</b>
13.1	Right to Vary	3-56
13.2	Value Engineering	3-56
13.3	Variation Procedure	3-57
13.4	Payment in Applicable Currencies	3-58
13.5	Provisional Sums	3-58
13.6	Daywork	3-58
13.7	Adjustments for Changes in Legislation	3-59
13.8	Adjustments for Changes in Cost	3-59
<b>14.</b>	<b>Contract Price and Payment.....</b>	<b>3-61</b>
14.1	The Contract Price	3-61
14.2	Advance Payment	3-61
14.3	Application for Interim Payment Certificates	3-62
14.4	Schedule of Payments	3-63
14.5	Plant and Materials Intended for the Works	3-63
14.6	Issue of Interim Payment Certificates	3-64
14.7	Payment	3-65
14.8	Delayed Payment	3-66
14.9	Payment of Retention Money	3-66
14.10	Statement at Completion	3-67
14.11	Application for Final Payment Certificate	3-67
14.12	Discharge	3-68
14.13	Issue of Final Payment Certificate	3-68
14.14	Cessation of Employer's Liability	3-68
14.15	Currencies of Payment	3-69
<b>15.</b>	<b>Termination by Employer .....</b>	<b>3-69</b>
15.1	Notice to Correct	3-69
15.2	Termination by Employer	3-69
15.3	Valuation at Date of Termination	3-71
15.4	Payment after Termination	3-71
15.5	Employer's Entitlement to Termination for Convenience	3-71
15.6	Fraud and Corruption	3-71
<b>16.</b>	<b>Suspension and Termination by Contractor .....</b>	<b>3-73</b>
16.1	Contractor's Entitlement to Suspend Work	3-73
16.2	Termination by Contractor	3-74
16.3	Cessation of Work and Removal of Contractor's Equipment	3-75
16.4	Payment on Termination	3-76
<b>17.</b>	<b>Risk and Responsibility .....</b>	<b>3-76</b>

17.1	Indemnities	3-76
17.2	Contractor's Care of the Works	3-76
17.3	Employer's Risks	3-77
17.4	Consequences of Employer's Risks	3-77
17.5	Intellectual and Industrial Property Rights	3-78
17.6	Limitation of Liability	3-79
17.7	Use of Employer's Accommodation /Facilities	3-79
<b>18.</b>	<b>Insurance .....</b>	<b>3-79</b>
18.1	General Requirements for Insurances	3-79
18.2	Insurance for Works and Contractor's Equipment	3-81
18.3	Insurance Against Injury to Persons and Damage to Property	3-82
18.4	Insurance for Contractor's Personnel	3-83
<b>19.</b>	<b>Force Majeure .....</b>	<b>3-83</b>
19.1	Definition of Force Majeure	3-83
19.3	Duty to Minimise Delay	3-84
19.4	Consequences of Force Majeure	3-84
19.5	Force Majeure Affecting Subcontractor	3-84
19.6	Optional Termination, Payment and Release	3-85
19.7	Release from Performance	3-85
<b>20.</b>	<b>Claims, Disputes and Arbitration.....</b>	<b>3-86</b>
20.1	Contractor's Claims	3-86
20.2	Appointment of the Dispute Board	3-87
20.3	Failure to Agree on the Composition of the Dispute Board	3-88
20.4	Obtaining Dispute Board's Decision	3-88
20.5	Amicable Settlement	3-89
20.6	Arbitration	3-89
20.7	Failure to Comply with Dispute Board's Decision	3-90
20.8	Expiry of Dispute Board's Appointment	3-90

## **Section VII. 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”, “Daywork Schedule” and “Schedule of Payment Currencies” mean the Documents so named (if any) which are comprised in the Schedules.
- 1.1.1.10 “Contract Data” means the pages completed by the Employer entitled Contract Data which constitute Part A of the Particular Conditions.

## **1.1.2 Parties and Persons**

- 1.1.2.1 “Party” means the Employer or the Contractor, as the context requires.
- 1.1.2.2 “Employer” means **the person named as Employer in the 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**

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

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**

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**

2.1.1 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.

- 2.1.2 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].
- 2.1.3 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.
- 2.1.4 After receiving this notice, the Engineer shall proceed in accordance with **GC** Clause 3.5 [Determinations] to agree or determine these matters.
- 2.1.5 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**

- 2.2.1 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**

4.14.1 The Contractor shall not interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to and use and occupation of all roads and 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' Organisation**

- 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.

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.

**11.10 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.

**11.11 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 Daywork**

- 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:

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

where:

“P<sub>n</sub>” 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;

“L<sub>n</sub>”, “E<sub>n</sub>”, “M<sub>n</sub>”, ... 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

“L<sub>o</sub>”, “E<sub>o</sub>”, “M<sub>o</sub>”, ... 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

**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 Sub-Clause 2.5 [Employer's Claims],
- (b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or
- (c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under **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].

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 or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the 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 or coercive 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 subcontractors, under Bank-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy<sup>18</sup>, 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 party<sup>19</sup>;
- (ii) "Fraudulent Practice" is any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party<sup>20</sup> to obtain financial or other benefit or to avoid an obligation;
- (iii) "Collusive Practice" is an arrangement between two or more parties<sup>21</sup>, 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 party<sup>22</sup>;
- (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

<sup>18</sup> See the Bank's "Rules and Procedures for Whistleblowing and Complaints Handling in the Bank"; and the "Guidelines for Preventing & Combating Corruption & Fraud in Bank Group Operations"

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> 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.

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

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]

- (b) will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in Corrupt, Fraudulent, Collusive, or Coercive 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 procedures<sup>23</sup>, 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 nominated<sup>24</sup> 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 to permit the Bank to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by auditors appointed by the Bank.

## **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)

---

<sup>23</sup> 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.

<sup>24</sup> 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."

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 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.



## **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

<b>Employer's Name and Address</b>	1.1.2.2 & 1.3	<b>Tana Water Works Development Agency, Maji House, Barden Powell Road, P.O. Box 1292 – 10100 NYERI.</b>
<b>Engineer's Name and Address</b>	1.1.2.4 & 1.3	<b>The Chief Executive Officer, Tana Water Works Development Agency, Maji House, Barden Powell Road, P.O. Box 1292 – 10100 NYERI.</b>
<b>Bank's Name</b>	1.1.2.11	<b>African Development Bank (AfDB)</b>
<b>Borrower's Name</b>	1.1.2.12	<b>The Government of the Republic of Kenya (GoK)</b>
<b>Time for Completion</b>	1.1.3.3	<b>6 Months</b>
<b>Defects Notification Period</b>	1.1.3.7	<b>12 Months</b>
<b>Sections</b>	1.1.5.6	If Sections are to be used, refer to Table: Summary of Sections below
<b>Level of "Profit"</b>	1.2.3	<b>"To be inserted by the Bidder"</b>
<b>Addresses for Communication</b>	1.3.1(b)	The Chief Executive Officer, Tana Water Works Development Agency, Maji House, Barden Powell Road, P.O. Box 1292 – 10100 NYERI . Phone: +254 724 259 891 e-mail: <a href="mailto:ceo@tanawwda.go.ke">ceo@tanawwda.go.ke</a>
<b>Governing Law</b>	1.4	<b>Law of the Republic of Kenya</b>
<b>Ruling language</b>	1.4	<b>English</b>
<b>Language for Communications</b>	1.4	<b>English</b>
<b>Deadline for entering into a Contract, after Contractor receives Letter of Acceptance</b>	1.6.1	<b>28 Days</b>
<b>Permits and Permissions to be obtained by the Employer</b>	1.13.2(a)	<b>As per the applicable laws of Kenya</b>
<b>Notices, Taxes, Duties, Permits, Licences, Approvals to be</b>	1.13.2(b)	<b>As per the applicable laws of Kenya</b>



<b>given and/or obtained by Contractor</b>		
<b>Time for Access to the Site</b>	2.1.1	<b>As agreed during Contract Signing</b>
<b>Situations in which the Engineer shall obtain approval from the Employer before exercising a specific authority</b>	3.1.3	<b>Specific Powers for execution of Construction Works will be delegated to the Engineer and notified to the Engineer's Representative and Contractor at Commencement of Works.</b>
<b>Engineer's Duties and Authority</b>	3.1.6(b)(ii)	<b>Variations resulting in an increase of the Accepted Contract Amount shall require approval of the Employer.</b>
<b>Parts of the Permanent Works to be designed by the Contractor</b>	4.1.6	<b>"Not Applicable"</b>
<b>Performance Security</b>	4.2.1	The Performance Security will be in the form of an <b>Unconditional Bank Guarantee or equivalent in Freely Convertible Currency</b> in the amount of 10% of the Accepted Contract Amount, and in the same currency(ies) as the Accepted Contract Amount.
<b>Delivery, Handling, and Risks associated with Transport of Goods</b>	4.16	<b>N/A</b>
<b>Monthly Progress Reports</b>	4.21.1	<b>As per GCC</b>
<b>Security of the Site</b>	4.22.1	<b>Contractor</b>
<b>Engagement of Staff &amp; Labour</b>	6.1.2	Mandatory Requirement: <b>Management / Technical Staff: 60% Local</b> <b>Unskilled Labour: 95% Local</b>
<b>Normal Working Hours</b>	6.5.1	Normal working hours are: <b>8.00 hours per day from Monday to Friday and 5 Hours on Saturday except Sundays and Public Holidays</b>
<b>Conditions Precedent to Commencement of Works</b>	8.1.1	<b>N/A</b>
<b>Delay Damages for the Works</b>	8.7.1 & 14.15.1(b)	<b>0.1% of the Contract Price per day.</b>
<b>Maximum Amount of Delay Damages</b>	8.7.1	<b>10% of the Final Contract Price.</b>
<b>Provisional Sums</b>	13.5.1(b)(ii)	<b>Not Applicable</b>

<b>Adjustments for Changes in Cost</b>	13.8.3	<b>Not Applicable</b>
<b>Contract Price Specificities</b>	14.1.1	<b>Not Applicable</b>
<b>Total Advance Payment</b>	14.2.1	<b>20%</b> of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable
<b>Repayment Amortisation Rate of Advance Payment</b>	14.2.5(b)	<b>Repayment to begin when the amount of certified works attains 10% of the Contract Sum and to be completed when certified works reach 80% of the Contract Sum.</b>
<b>Percentage of Retention</b>	14.3.2	<b>10%</b>
<b>Limit of Retention Money</b>	14.3.2	<b>5%</b> of the Accepted Contract Amount
<b>Plant and Materials</b>	14.5.3(b)(i)	<b>Not Applicable</b>
	14.5.3(c)(i)	<b>Not Applicable</b>
<b>Minimum Amount of Interim Payment Certificates</b>	14.6.2	<b>15%</b> of the Accepted Contract Amount.
<b>Calculation of Financing Charges</b>	14.8.1	<b>Not Applicable</b>
<b>Substitution Guarantee for Second Half of Retention Money</b>	14.9.5	<b>An Unconditional Bank Guarantee or equivalent in Freely Convertible Currency of equivalent amount in the same currency(ies) as the Accepted Contract Amount</b>
<b>Maximum total Liability of the Contractor to the Employer</b>	17.6.2	<b>Accepted Contract Amount</b>
<b>Periods for Submission of Insurance:</b> <b>a. evidence of insurance.</b> <b>b. relevant policies</b>	18.1.6	<b>14 days calculated from the date of commencement of works</b>
<b>Maximum Amount of Deductibles for Insurance of the Employer's Risks</b>	18.2.4(d)	<ul style="list-style-type: none"> <li>- Loss or damage to works = Contract Price</li> <li>- Equipment = KES. 8,000,000</li> <li>- Property = KES 3,000,000</li> <li>- Workers Injury or Death = KES. 5,000,000</li> <li>- Third Party = KES 3,000,000</li> </ul>
<b>Minimum Amount of Third Party Insurance</b>	18.3.2	Third Party = KES 3,000,000
<b>Insurance Details</b>	18.3.3	<b>Not Applicable</b>
<b>Date by which the DB shall be appointed</b>	20.2.1	When the Employer deems it necessary
<b>The DB shall be comprised of</b>	20.2.2	Three Members
<b>List of Potential DB Sole Members</b>	20.2.4	<b>Chartered Institute of Arbitrators (Kenya)</b>

<b>Appointment (if not agreed) to be made by</b>	20.3.1	<b>Chartered Institute of Arbitrators (Kenya)</b> Nicholson Drive, Off Ngong Road 50163-00200 Nairobi Phone: 0722 200 496 / 0734 652 205 Email: info@ciarbkkenya.org
<b>International Arbitration Institution</b>	20.6.1(a)	<b>Chartered Institute of Arbitrators (Kenya)</b> Nicholson Drive, Off Ngong Road 50163-00200 Nairobi Phone: 0722 200 496 / 0734 652 205 Email: info@ciarbkkenya.org
<b>Place of International Arbitration</b>	20.6.1(a)	<b>Kigali, Rwanda</b>

**Table: Summary of Sections**

<b>Section Name/Description (GC Clause 1.1.5.6)</b>	<b>Time for Completion (GC Clause 1.1.3.3)</b>	<b>Damages for Delay (GC Clause 8.7.1)</b>
All the Work in the Contract.	6 Months	0.1% of Contract Price per Day

---

## Particular Conditions

### Part B – Specific Provisions

#### GC Clause 14.1 The Contract Price

(Supplementary to GC Clause 14.1.1(e))

1. "This Contract is exempted from Taxes and Customs and Duty, Exercise Duty and VAT payable in accordance with **Legal Notices Nos. 138 and 145 of 4<sup>th</sup> June 1992 (as amended in 1996 and 2003)**. It is the responsibility of the Contractor to obtain Duty and Tax Exemptions through the Employer who will provide necessary certification and recommendation to the Treasury."
2. The remission of tax under the above Legal Notices shall not apply to
  - a) fuels and also for use in vehicles and equipment for the Projects
  - b) all taxable services except those specified in any remission order published under Section 23 of the Act.
3. The Contractor and his Employees are subject to all current National and Local Taxes (i.e. Income Tax, P.A.Y.E and NHIF, NSSF Contributions etc.)
4. The prices tendered by the Bidder shall include all taxes, duties and other charges imported outside the Employer's Country or the production, manufacture, rate and transport of the Bidders' Equipment, Plant, Materials and Temporary works to be used on or furnished under the Contract, or on services performed under the Contract
5. Notwithstanding the provisions of the above Sub-clause, Contractor's Construction Equipment, including essential spare part thereof, imported by the Bidder for the sole purpose of executing the Contract shall be exempt from the payment if import duties and taxes upon initial importation, provided the Bidder shall post with the customs authorities at the port of entry an approved export bond or bank guarantee, valid until the end of the Defects Liability Period plus 91 days, in an amount equivalent to the full import duties and taxes which would be payable on the assessed imported value of such Contractors' Equipment and spare parts and callable in the event of non-export from the Employer's country. A copy of the bond or bank guarantee endorsed by the customs authorities shall be provided by the Contractor to the Employer upon export of any individual item of Contractor's Equipment or spare parts.

Import duties and taxes shall be due and payable to the customs authorities by the Contractor on the initial imported value of that Contractor's Equipment and spare parts remaining in the Employer's country after the end of the Defects Liability Period plus 91 days. Upon payment of such dues by the Contractor within 28 days of being invoiced, the bond or bank guarantee will be reduced or released accordingly; otherwise the security shall be called in the full amount of the balance remaining. Bidders are required to check and adhere to laws and regulations in force in Kenya relating to tax and duty exemptions on plant and equipment. Bidders are entirely responsible for arranging for these exemptions and costs arising thereof. **No claims due to delay in application and approval of duty and tax exemptions, customs clearance etc. will be entertained, and any delay in execution of Works will be due to the Contractor's account. The facility for temporary clearance of plant, equipment and materials is available for a period of 90 days against a Security Bond. If such facility is used for whatsoever reason, the Bidder is deemed to have allowed this in his rates.**

## 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.

### Table of Forms

Letter of Acceptance .....	3-106
Contract Agreement .....	3-107
Option I: Performance Security .....	3-109
Option II: Performance Bond.....	3-110
Advance Payment Security .....	3-112
Retention Money Security .....	3-114

## 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 days<sup>25</sup> 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.**

Authorised Signature: .....

Name and Title of Signatory: .....

Name of Agency: .....

Attachment: Contract Agreement

<sup>25</sup> Or, the alternative deadline stipulated in the Particular Conditions.

## Contract Agreement

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

BETWEEN

- (1) **Chief Executive Officer, Tana Water Works Development Agency, Maji House, Barden Powell road, P.O Box 1292 – 10100, Nyeri, a [insert description of type of legal entity, for example, an agency of the Ministry of Water and Irrigation of the Government of Kenya, or corporation incorporated under the laws of Kenya and having its principal place of business at Tana Water Works Development Agency, Maji House, Barden Powell road, P.O Box 1292 – 10100, Nyeri (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 **Kenya** on the day, month and year indicated above.

Signed by: \_\_\_\_\_  
(for and on behalf of the Employer)

In the presence of:

Witness:      Name: \_\_\_\_\_  
                    Address: \_\_\_\_\_  
                    Signature: \_\_\_\_\_  
                    Date: \_\_\_\_\_

Signed by: \_\_\_\_\_  
(for and on behalf of the Contractor)

In the presence of:

Witness:      Name: \_\_\_\_\_  
                    Address: \_\_\_\_\_  
                    Signature: \_\_\_\_\_  
                    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 Employer, we hereby irrevocably undertake to pay you any sum(s) not exceeding **[insert amount(s)<sup>26</sup> 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 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]**,<sup>27</sup> 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]**

---

<sup>26</sup> 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.

<sup>27</sup> 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."

## Option II: Performance Bond

By this Bond \_\_\_\_\_ as Principal (hereinafter called “the Contractor”) and \_\_\_\_\_] as Surety (hereinafter called “the Surety”), are held and firmly bound unto \_\_\_\_\_] as Oblige (hereinafter called “the Employer”) in the amount of \_\_\_\_\_, for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a written Agreement with the Employer dated the \_\_\_\_ day of \_\_\_\_, 20 \_\_\_\_\_, for \_\_\_\_\_ in accordance with the documents, plans, specifications, and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer’s obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a Bid or bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsive Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or
- (3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

Any suit under this Bond must be instituted before the expiration of one year from the date of the issuing of the Taking-Over Certificate.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors, and assigns of the Employer.

---

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

## 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]<sup>28</sup>. . . . . ([insert currency and amount in words]. . . . .) is to be made against an advance payment guarantee.

At the request of the Employer, 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 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 . . . . . , . . . . .<sup>29</sup>, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

<sup>28</sup> 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

<sup>29</sup> 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

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)]. . . . .

**Note –**

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

---

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.”

# 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 Employer, 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]<sup>1</sup> upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds 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].

<sup>1</sup> 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 Employer.

This guarantee shall expire, at the latest, 21 days after the date when the Employer 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.**