



# **STANDARD BIDDING DOCUMENT**

**FOR**

**WORKS**

**Description of Bid: CONSTRUCTION OF PROPOSED ADDITIONAL OFFICE SPACE AT ROOF LEVEL FOR MESPT HEAD OFFICE.**

**Bid Number: MESPT-FA-PRQ03601-2024**

**Bid Closing/Opening Date: 30<sup>th</sup> October 2024**

**Bid Opening Time: 12:00 PM East Africa Time**

**Issue Date: 9<sup>th</sup> October 2024**

## **PART I: INVITATION TO BID**

1. Micro Enterprises Support Programme Trust (MESPT) invites sealed bids from eligible candidates for the **CONSTRUCTION OF PROPOSED ADDITIONAL OFFICE SPACE AT ROOF LEVEL FOR MESPT HEAD OFFICE.**

2. Interested and eligible candidates may obtain further information from MESPT using the email address or physical address below during business hours **0800hrs to 1600hrs** by 21<sup>st</sup> October 2024.

Clarifications can be accessed from [here](#).

### **Micro Enterprises Support Programme Trust (MESPT)**

**Tausi Lane 01, Westlands**

**P.O. Box 187-00606,**

**Nairobi, Kenya**

**Tel: 0722 207 905 / 0735 333 154**

**Email address: [procurement@mespt.org](mailto:procurement@mespt.org)**

3. Bid documents herein are **free of charge**.
4. All bids **shall not** be accompanied by bid security.
5. Complete bidding documents shall be submitted through electronic means in the manner indicated below:

**[submission via email: [tender@mespt.org](mailto:tender@mespt.org)]**

Bids must be received on or before the date and time indicated below;

**Date: 30<sup>th</sup> October 2024**

**Time: 12:00 PM (East Africa Time)**

6. Prices quoted should be net inclusive of all taxes and quoted in **Kenyan Shillings**. All prices shall remain valid for **90 days** from the closing date of the bid.

**Chief Executive Officer**

**Micro Enterprises Support Programme Trust**

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## **PART II: INSTRUCTIONS TO BIDDERS**

### **I. Purview of the Bid**

- 1.1. Micro Enterprises Support Programme Trust, herein referred to as **MESPT** invites bids for **CONSTRUCTION OF PROPOSED ADDITIONAL OFFICE SPACE AT ROOF LEVEL FOR MESPT HEAD OFFICE** as indicated in the **BDS**. The description and identification number of the bid has been provided in the **BDS**.
- 1.2. Within this bidding document:
  - a) The term “in writing” means communication in any written form either electronic or manual accompanied with proof receipt
  - b) Where so indicated “singular” means “plural” and vice versa
  - c) “Day” means calendar day unless specifically indicated as “Business Day or Working Day.”
  - d) “Business day” or “Working Day” excludes weekends and public holidays.

### **2. Fraud and Corruption**

- 2.1. MESPT is committed to upholding corporate governance principles in the processing of this bid including adherence to the MESPT supplier code of ethics. As such, Bidders shall allow MESPT to inspect their accounts, records and any other documents that is related to their submission for this bid.
- 2.2. A bidder shall not be involved in corrupt, coercive, obstructive, collusive or fraudulent practices. Any bidder proven to have been involved in any of these practices shall be automatically disqualified from the bidding process and shall not be eligible to participate in future bids advertised by MESPT.
- 2.3. Bidders shall also be required to adhere to the MESPT Code of Conduct.

### **3. Eligible Bidders**

- 3.1. Firms operating as private entities or individuals or combination of such entities in the form of a joint venture (JV) are eligible to bid. Whether JVs shall be allowed, the maximum number of JVs shall be indicated in the **BDS**. Proof of a joint venture shall be in the form indicated in the **BDS**. Employees of MESPT, their close relatives and business associates or agents are not eligible to bid. For purposes of a relative, this includes the spouse, children, brothers, sisters, uncles and aunts of the Employee.
- 3.2. A bidder shall be declared as having conflict of interest if any of the following circumstances exist:
  - a) Has a direct or indirect control over another bidder participating in the bidding process. This includes shared representatives, directorship or ownership.
  - b) Has a relationship with another bidder, directly or through common third parties that puts the bidder in a position to influence the bid of another bidder or influence the decision of MESPT regarding the bidding process.
  - c) Bidder or its affiliates participated as a consultant in the preparation of the design/schedule of requirements/technical specifications for this bid.

- d) Bidder or any of its affiliates has been hired by MESPT for purposes of contract implementation.
  - e) Bidder would be providing goods, works or non-consulting services that are a result of or directly related to consulting services for the preparation or implementation of the project.
- 3.3. A bidder shall not submit more than one bid for purposes of this bid and this includes participation of the bidder as a subcontractor for another bidder. Bidders who contravene this sub-clause shall be automatically disqualified from the bidding process and all future bids advertised by MESPT.
- 3.4. Bidders may have the nationality of any country including proposed sub-contractors as long as the specific country is not from a country that is prohibited from trading with Kenya as a matter of law or official regulations. In such instances, MESPT shall require to bidders provide details of Nationality.
- 3.5. Where bidders are required to meet specific legal requirements in Kenya, the same shall be indicated in the **BDS**.

#### **4. Eligible Goods, Equipment and Services**

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

#### **5. Clarification of Bidding Documents**

- 5.1. Bidders may, within the timelines indicated in the **BDS** and in the manner specified in the **BDS** request for a clarification regarding any aspect of the bid document. MESPT shall respond to any clarification received within the timelines indicated in the **BDS**.

#### **6. Pre-bid Meeting or Site Visit**

- 6.1. MESPT shall indicate in the **BDS** whether a pre-bid meeting or site visit shall be conducted including the date(s) and time(s) and whether the pre-bid meeting or site visit shall be mandatory.
- 6.2. The Bidder, at the Bidder's own responsibility and risk, is encouraged to visit and examine and inspect the site of the required services and its surroundings and obtain all information that may be necessary for preparing the bid and entering into a contract for the works. The cost of visiting the site shall be at the Bidder's own expense.

#### **7. Amendment of Bidding Document**

- 7.1. MESPT may at any time prior to the deadline for submission of bid documents, amend the bidding documents by issuing addenda.
- 7.2. MESPT shall share the addenda with prospective Bidders and may extend the initial time for bid submission at its own discretion.



## **8. Bid preparation**

- 8.1. The bidder shall bear all costs associated with preparation and submission of the bid. These costs include costs for production and submission of samples and at no point shall MESPT be held liable for such costs.

## **9. Language of Bid Document**

- 9.1. The bid document, any resulting documents and correspondences that shall be exchanged between MESPT and prospective bidders shall be in English Language. Where supporting literature is in another language, an English translation of the document shall be availed together with the bid document.

## **10. Bid Prices, Discounts and Currency of Bid**

- 10.1. Prices quoted by the bidders in the Form of Bid and shall include any discounts offered. Conditional discounts will be automatically rejected.
- 10.2. Prices quoted by the Bidder shall be fixed during performance of the contract and shall not vary unless specified in the **BDS**.
- 10.3. If specified in the **BDS** that the requirements shall be placed in lots, the **BDS** shall also specify the number of lots that a bid can participate in.
- 10.4. Unless otherwise specified in the **BDS**, the currency of the bid shall be in Kenya Shillings.
- 10.5. The currency of the bid, the currency of award and the currency of the contract payments shall be similar.

## **11. Evidence to confirm eligibility and Conformity of the Goods and Related Services**

- 11.1. Bidders shall be required to furnish documentary evidence to confirm that the technical specifications and standards meet the requirements in Part V – Works Requirements
- 11.2. The documentary evidence may be in the form of literature, drawings or data and shall consist of a detailed item by item description of the essential technical and performance characteristics of the goods and related services which should be a demonstration of the substantial responsiveness of the goods and related services.
- 11.3. Standards for workmanship, process, material, and equipment, as well as references to brand names or catalogue numbers specified by MESPT in the Schedule of Requirements, are intended to be descriptive only and not restrictive. Bidders may offer other standards of quality, brand names, and/or catalogue numbers, provided that it demonstrates, to MESPT's satisfaction, that the substitutions ensure substantial equivalence or are superior to those specified in Part V – Works Requirements.

## **12. Evidence confirming Bidders Eligibility and Qualifications**

- 12.1. Bidder shall provide the documents required in Part III – Evaluation and Qualification Criteria to confirm their eligibility and qualifications.
- 12.2. Bidder shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information, in sufficient detail to demonstrate adequacy of the Bidder's proposal to meet the works requirements and the completion time.

### **13. Period of Bid Validity**

- 13.1. Bids shall remain valid for the bid validity period specified in the **BDS**. Commencement of the bid validity period shall be from the deadline of bid submission and any bid that is valid for a shorter period shall be rejected by MESPT.
- 13.2. MESPT may extend the bid validity period for a further duration as may be specified in the **BDS** where it's necessary to enable completion of the procurement process.
- 13.3. Bidders shall utilize the form of bid security provided in Part VI – Standard Bidding Forms.
- 13.4. Bid security shall take the following forms as may be specified in the **BDS**.
  - a) Cash
  - b) Bank guarantee
  - c) Guarantee issued by an insurance company
  - d) Letter of credit

### **14. Format and Signing of Bids**

- 14.1. The format for signing of bids, labelling of bids and number of copies to be submitted shall be specified in the **BDS**.
- 14.2. Bids shall be signed by an authorized representative of the bidder and such authorization shall be in the form provided in the **BDS**.

### **15. Submission and Opening of Bids**

- 15.1. Bids shall be submitted electronically in the manner specified in the **BDS** and also opened electronically in the manner specified in the **BDS**.
- 15.2. Withdrawal, modification or substitution of bids shall be done electronically in the manner specified in the **BDS**.
- 15.3. Bids shall be submitted and opened in the manner specified in the **BDS** and on the date and time specified in the **BDS**.
- 15.4. Later bids shall be rejected.

### **16. Evaluation and Comparison of Bids**

- 16.1. The evaluation criteria and procedure for evaluation shall be set out in Part III – Evaluation and Qualification Criteria.
- 16.2. During the evaluation, MESPT may request for clarification on the submitted bid, prices given and errors discovered.
- 16.3. Evaluation of the bids shall be based on the bid itself without relying on any extrinsic information.
- 16.4. Where bidders are allowed to quote in multiple foreign currencies, the rate of exchange rate to be used for purposes of evaluation shall be the exchange rate specified in the **BDS**.
- 16.5. MESPT shall determine the bids that are substantially responsive as indicated in Part III – Evaluation and Qualification Criteria and proceed to establish the bidder with the lowest evaluated price. Comparison of prices shall include all cost aspects.

## **17. Abnormally Low and Abnormally High Bids**

- 17.1. An abnormally low bid is one that appears unreasonably low in comparison with other bidders and the market. For such a bid the bidder shall seek written clarification from the bidder including a cost breakdown to establish whether the prices are reasonable.
- 17.2. Where MESPT establishes that the Bidder has failed to demonstrate its capability to perform the contract, MESPT shall reject the bid.
- 17.3. An abnormally high bid is one which appears unreasonably too high to the extent that MESPT might not be getting value for money. For such a bid, MESPT shall undertake a market survey and make the following decisions as may applicable:
  - a) If the bid price is high due to wrong initial estimates of the contract, MESPT may accept or reject the bid as may be determined by MESPT's budget ceilings.
  - b) If the bid price is high due to wrong specifications, scope of work and/or conditions of contract, MESPT shall reject all bids and initiate a new bidding process with correct specifications, scope of work and conditions of contract.

## **18. Due diligence**

- 18.1. MESPT shall undertake due diligence on the bidder identified as having the lowest evaluated price using the criteria identified in Part III – Evaluation and Qualification Criteria.

## **19. Award of Contract**

- 19.1. Award of contract shall be based on the Bidder with the Lowest Evaluated Bid as identified in Part III – Evaluation and Qualification Criteria.
- 19.2. MESPT shall issue a notification of award. Within the period stipulated in the notification of award, the successful Bidder shall accept the award.

## **20. Signing of Contract**

- 20.1. Within Fourteen (14) days of receipt of the contract agreement or any other period specified in the **BDS**, the successful Bidder shall sign, date and return the contract agreement to MESPT.

## **21. Performance Security**

- 21.1. If specified in the **BDS**, the bidder shall avail performance security in the amount and form identified in the **BDS**.
- 21.2. Failure by the successful bidder to submit the performance security where required or to sign the contract shall be grounds for withdrawal of the award and forfeiture of the bid security if it had been submitted.

## **22. Nominated Subcontractors**

- 22.1. Unless stated in the **BDS**, MESPT does not intend to execute any specific elements of the works by subcontractors selected in advance by MESPT.
- 22.2. Bidders may propose subcontracting up to the percentage of total value of contracts or the volume of works as specified in the **BDS**. Subcontractors proposed by the Bidder shall be fully qualified for their parts of the Works.

22.3. The Subcontractor's qualifications shall not be used by the Bidder to qualify for the works unless their specialized parts of the works were previously designated by MESPT in the **BDS** as can be met by subcontractors referred to hereafter as "specialized subcontractor," in which case, the qualifications of the specialized subcontractors proposed by the bidder may be added to the qualifications of the Bidder.

### **23. Unbalanced and/or Front-Loaded Bids**

23.1. If in the opinion of MESPT, the Bidder that is evaluated as the lowest evaluated price is seriously unbalanced and/or front loaded, MESPT may require the Bidder to provide written clarifications. Clarifications may include detailed price analyses to demonstrate the consistency of the bid prices with the scope of works, proposed methodology, schedule and any other requirements of the bid document.

23.2. After the evaluation of the information and detailed price analyses presented by the Bidder, MESPT may as appropriate:

- a) Accept the Bid; or
- b) Require that the total amount of the performance security be increased at the expense of the Bidder to a level not exceeding 30% of the contract price; or
- c) Agree on a payment mode that eliminates the inherent risk of MESPT paying too much for undelivered works; or
- d) Reject the bid.

## APPENDIX TO PART II: BID DATA SHEET (BDS)

Reference Section in the Instructions To Bidders (ITB)	Particulars to the Instructions To Bidders (ITB)
1.1.	<p><b>Purview of Bid</b> Description of Works: <b>CONSTRUCTION OF PROPOSED ADDITIONAL OFFICE SPACE AT ROOF LEVEL FOR MESPT HEAD OFFICE.</b></p> <p>Identification no. of the bid: <b>MESPT-FA-PRQ03601-2024</b></p>
3.1.	<p><b>Eligible Bidders</b> The maximum number of JVs shall be: <u>    N/A    </u> Proof of existence of a JV shall be select one (<i>a JV agreement or letter of intent to enter into a JV</i>)</p>
3.5.	<p><b>Eligible Bidders</b> Bidders shall be required to provide the following:</p> <ul style="list-style-type: none"> <li>a) Evidence of a registered business in Kenya or country of domicile</li> <li>b) Evidence of registration with the relevant authority, i.e. National Construction Authority among others</li> <li>c) Any other requirements in Part III: Evaluation &amp; Qualification Criteria</li> </ul>
5.1.	<p><b>Clarification of Bid Documents</b> Bidders shall request for clarification within <u>    7    </u> business/working days prior to the date of bid opening. MESPT shall respond to requests for clarification within <u>    2    </u> business/working days from the date of receipt of the request.</p>
6.1.	<p><b>Site Visit (Mandatory)</b> The Site visit <b>SHALL</b> be held. The site visit shall be held on the date, time, and location below: <b>Date: 17<sup>th</sup> October 2024</b> <b>Time: 10:00am – 1.00pm</b> <b>Location: MESPT HQ office, Tausi Lane, Westlands Rd</b> <b>Contact: - 0722-207 905 / 0735-333 154</b> <b>Contact person: Kennedy Mwandido</b></p>
10.2.	<p><b>Bid Prices, Discounts and Currency of Bid</b> Prices <b>shall not</b> vary during the duration of the contract</p>
10.3.	<p><b>Bid Prices, Discounts and Currency of Bid</b> The bid <b>shall not</b> be divided into lots</p>

10.4.	<b>Bid Prices, Discounts and Currency of Bid</b> Applicable incoterm shall be: <u>  N/A  </u>
10.5.	<b>Bid Prices, Discounts and Currency of Bid</b> Currency of the bid shall be: <u>  Kenyan Shillings  </u>
13.1.	<b>Period of Bid Validity</b> Bids shall be valid for <b>90</b> days from the date of bid opening
13.2.	<b>Period of Bid Validity</b> Bid validity period shall be extended by <b>30</b> days
13.4.	<b>Period of Bid Validity</b> Bid security shall be in the form of a <b>Bank Guarantee</b>
14.1.	<b>Format and Signing of Bids</b> Bids shall bear the following details: Name of Bid: <b>CONSTRUCTION OF PROPOSED ADDITIONAL OFFICE SPACE AT ROOF LEVEL FOR MESPT HEAD OFFICE.</b> Reference Number: <b>MESPT-FA-PRQ03601-2024</b>
14.2.	<b>Format and Signing of Bids</b> Bids shall be accompanied by a <b>Power of Attorney</b>
15.1.	<b>Submission and Opening of Bids</b> Bids shall be submitted through electronic means in the following manner. <b>(Bids shall be submitted via email address; <a href="mailto:tender@mespt.org">tender@mespt.org</a>)</b>
15.2.	<b>Submission and Opening of Bids</b> Bids may be withdrawn, modified, or substituted through electronic means in the following manner. <b>(An email shall be shared with the bidders with the opening outcome/bid summary)</b>
15.2.	<b>Submission and Opening of Bids</b> Opening of bids shall be through electronic means on the date and time below: <b>Date: 30<sup>th</sup> October 2024</b> <b>Time: 12:00 PM (East Africa Time)</b>
16.4.	<b>Evaluation and Comparison of Bids</b> Exchange prevailing <b>October 2024</b> as provided by the Central Bank of Kenya
20.1.	<b>Signing of Contract</b> Contract shall be signed within <b>21 days</b> from the date of notification of award
21.1.	<b>Performance Security</b> Performance security <b>SHALL</b> be applicable. Amount of performance security shall be <b>10% of the total contract amount.</b> Form of Performance Security shall be <b>bank guarantee</b>
22.1.	<b>Nominated Subcontractors</b> MESPT <b>shall not</b> nominate subcontractors
22.2.	<b>Nominated Subcontractors</b> <u>  N/A  </u> % of the total value of works
22.3.	<b>Nominated Subcontractors</b> Provide details of works that can be subcontracted as specialized works

## **PART III: EVALUATION AND QUALIFICATION CRITERIA**

### **General Provisions**

Wherever a Bidder is required to state a monetary amount, Bidders should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:

- a) For construction turnover or financial data required for each year – exchange rate prevailing on the last day of the respective calendar year (in which the amount for that year is yet to be converted) was originally established.
- b) Value of single contract – Exchange rate prevailing on the date of the contract signature.
- c) Exchange rates shall be obtained from the Central Bank of Kenya exchange rates.

### **Stage 1: Preliminary/Mandatory Evaluation**

The following criteria shall apply for the preliminary/mandatory evaluation. Failure to meet the requirements of the preliminary/mandatory evaluation shall lead to disqualification from the rest of the bidding process.

- *CR12 (Not more than 12 months old)*
- *Certificate of Incorporation*
- *KRA Pin*
- *Valid Tax Compliance Certificate*
- *Valid Business Permit*
- *Valid NCA number 7 and above*

### **Stage 2: Technical Evaluation**

The following criteria shall apply for the technical evaluation. Failure to meet the requirements of the technical evaluation shall lead to disqualification from the rest of the bidding process.

- *Three past completed projects in the last 5 years of an equivalent nature with references*
- *List of equipment and machinery for this project and proof of ownership/lease*
- *Annual turnover Ksh. 10 million and above*
- *6-month bank statements from year 2024*

### **Stage 3: Financial Evaluation**

Financial evaluation shall involve comparison of the bid prices of the bidders who pass stage 1 and/or stage 2 and confirmation that the Bidder has quoted for the required items as per the instructions set by MESPT.

#### **Stage 4: Commercial Evaluation**

This stage shall involve comparison of the transaction requirements of MESPT vis-à-vis the bid placed by the successful bid and it shall include the following:

- a) Confirmation whether the completion period meets the requirements set by MESPT.
- b) Whether the prices are inclusive/exclusive taxes and currency of the prices.
- c) Whether the payment terms conform to the requirements of MESPT.

#### **Stage 5: Due Diligence Exercise**

This stage shall involve confirmation and verification of the requirements and evidence submitted in Stage 1 and Stage 2, e.g. confirmation of previous client references/assignments, confirming validity of mandatory documents, e.t.c. All the processes that shall be involved in the due diligence exercise shall be stated here.

- *Bidders shall indicate the contact persons of their references on past completed projects*
- *All documents provided must be authentic.*

#### **Award Criteria without Lots**

Award will be made to the successful Bidder who has passed the five (5) stages above as may be required for the specific bidding process.



## **PART IV: PRICE BILL OF QUANTITIES**

**Available on the Appendix**

### Notes

- a) Prices quoted shall be inclusive of all taxes.
- b) The prices above should capture each and every chargeable cost.
- c) Prices above shall prevail for \_\_\_|\_\_\_ year from the date of contract.

## **PART V: WORKS REQUIREMENTS**

### **DRAWINGS**

***Available on the Appendix***

## **BILLS OF QUANTITIES**

**Available on the Appendix**

**PART VI: STANDARD BIDDING FORMS**

**1. Form of Bid**

Date \_\_\_\_\_

Bid No. \_\_\_\_\_

To: **Micro Enterprise Support Programme Trust (MESPT)**

Chief Executive Officer

1. Having examined the Bid documents including Addenda Nos. .... *[insert numbers]* the receipt of which is hereby duly acknowledged, we, the undersigned, offer to construct ( ..... *(insert bid description)* in conformity with the said Bid documents for the sum of ..... *(total bid amount in words and figures)* or such other sums as may be ascertained in accordance with the Schedule of Prices attached herewith and made part of this bid.
2. We undertake, if our Bid is accepted, to deliver install and commission the equipment in accordance with the delivery schedule specified in the Schedule of Requirements.
3. If our Bid is accepted, we will obtain the guarantee of a bank in a sum of equivalent to \_\_\_\_\_ percent of the Contract Price for the due performance of the Contract , in the form prescribed by ..... *( The Buyer)*.
4. We agree to abide by this Bid for a period of ..... *[number]* days from the date fixed for bid opening of the Instructions to Bidders, and it shall remain binding upon us and may be accepted at any time before the expiration of that period.
5. This Bid, together with your written acceptance thereof and your notification of award, shall constitute a Contract, between us. Subject to signing of the Contract by the parties.
6. We understand that you are not bound to accept the lowest or any bid you may receive.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
[signature]

\_\_\_\_\_  
[in the capacity of]

Duly authorized to sign bid for and on behalf of \_\_\_\_\_

## 2. Supplier Questionnaire Form

You are requested to give the particulars indicated in Part I and either Part 2(a), 2(b) or 2 (c) whichever applied to your type of business.

You are advised that you will be sanctioned from future bids by MESPT if you give false information on this form.

### Part I – General:

Business Name .....

Location of business premises. ....

Plot No..... Street/Road .....

Postal Address ..... Tel No. .... Fax ..... E mail .....

Nature of Business .....

Registration Certificate No. ....

Maximum value of business which you can handle at any one time – Kshs. ....

Name of your bankers ..... Branch .....

	<p>Part 2 (a) – Sole Proprietor</p> <p>Your name in full ..... Age .....</p> <p>Nationality ..... Country of origin .....</p> <ul style="list-style-type: none"> <li>• Citizenship details .....</li> <li>• .....</li> </ul>																					
	<p>Part 2 (b) Partnership</p> <p>Given details of partners as follows:</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> </tr> </thead> <tbody> <tr> <td>Shares</td> <td></td> <td></td> </tr> <tr> <td>1. ....</td> <td></td> <td></td> </tr> <tr> <td>2. ....</td> <td></td> <td></td> </tr> <tr> <td>3. ....</td> <td></td> <td></td> </tr> <tr> <td>4. ....</td> <td></td> <td></td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares			1. ....			2. ....			3. ....			4. ....					
Name	Nationality	Citizenship Details																				
Shares																						
1. ....																						
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	<p>Part 2 (c) – Registered Company</p> <p>Private or Public .....</p> <p>State the nominal and issued capital of company-</p> <p>Nominal Kshs. ....</p> <p>Issued Kshs. ....</p> <p>Given details of all directors as follows</p> <table border="1"> <thead> <tr> <th>Name</th> <th>Nationality</th> <th>Citizenship Details</th> </tr> </thead> <tbody> <tr> <td>Shares</td> <td></td> <td></td> </tr> <tr> <td>1.....</td> <td></td> <td></td> </tr> <tr> <td>2.....</td> <td></td> <td></td> </tr> <tr> <td>3.....</td> <td></td> <td></td> </tr> <tr> <td>4.....</td> <td></td> <td></td> </tr> <tr> <td>5.....</td> <td></td> <td></td> </tr> </tbody> </table>	Name	Nationality	Citizenship Details	Shares			1.....			2.....			3.....			4.....			5.....		
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5.....																						
<p>Date .....</p> <p>Signature of Candidate .....</p>																						

If a Kenya Citizen, indicate under “Citizenship Details” whether by Birth, Naturalization or registration.

### 3. Bid Security Form

Whereas ..... [name of the Bidder]

(hereinafter called "the bidder") has submitted its bid dated ..... [date of submission of bid] for the construction of ..... [name and/or description of the works] (hereinafter called "the Bid") ..... KNOW ALL PEOPLE by these presents that WE ..... of ..... having our registered office at ..... (hereinafter called "the Bank"), are bound unto ..... [name of The Buyer] (hereinafter called "the Buyer") in the sum of ..... for which payment well and truly to be made to the said The Buyer, the Bank binds itself, its successors, and assigns by these presents. Sealed with the Common Seal of the said Bank this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

THE CONDITIONS of this obligation are:-

1. If the Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Bid Form; or
2. If the Bidder, having been notified of the acceptance of its Bid by the Buyer during the period of Bid validity:
  - (a) fails or refuses to execute the Contract Form, if required; or
  - (b) fails or refuses to furnish the performance security in accordance with the Instructions to Bidders;

We undertake to pay to the Buyer up to the above amount upon receipt of its first written demand, without the Buyer having to substantiate its demand, provided that in its demand the Buyer will note that the amount claimed by it is due to it, owing to the occurrence of one or both of the two conditions, specifying the occurred condition or conditions.

This bid guarantee will remain in force up to and including thirty (30) days after the period of bid validity, and any demand in respect thereof should reach the Bank not later than the above date.

[signature of the bank] \_\_\_\_\_

(Amend accordingly if provided by Insurance Company)

#### 4. Performance Security Form

To .....

*[name of The Buyer]*

WHEREAS ..... *[name of bidder]* (hereinafter called “the bidder”) has undertaken , in pursuance of Contract No. \_\_\_\_\_ *[reference number of the contract]* dated \_\_\_\_\_ 20 \_\_\_\_\_ to \_\_\_\_\_ construct ..... *[description of works]* (hereinafter called “the Contract”).

AND WHEREAS it has been stipulated by you in the said Contract that the bidder shall furnish you with a bank guarantee by a reputable bank for the sum specified therein as security for compliance with the Bidder’s performance obligations in accordance with the Contract.

AND WHEREAS we have agreed to give the bidder a guarantee:

THEREFORE WE hereby affirm that we are Guarantors and responsible to you, on behalf of the bidder, up to a total of ..... *[amount of the guarantee in words and figure]* and we undertake to pay you, upon your first written demand declaring the bidder to be in default under the Contract and without cavil or argument, any sum or sums within the limits of ..... *[amount of guarantee]* as aforesaid, without you needing to prove or to show grounds or reasons for your demand or the sum specified therein.

This guarantee is valid until the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

Signed and seal of the Guarantors

\_\_\_\_\_  
*[name of bank or financial institution]*

\_\_\_\_\_  
*[address]*

\_\_\_\_\_  
*[date]*

## PART VII: GENERAL CONDITIONS OF CONTRACT

These General Conditions of Contract (GCC), read in conjunction with the Particular Conditions of Contract (PCC) and other documents listed therein, should be a complete document expressing fairly the rights and obligations of both parties.

### A. General

#### I. Definitions

I.1. The following terms are defined as follows;

- I.1.1. **The 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.
- I.1.2. **The Activity Schedule** is a schedule of the activities comprising the construction, installation, testing, and commissioning of the Works in a lump sum contract. It includes a lump sum price for each activity, which is used for valuations and for assessing the effects of Variations and Compensation Events.
- I.1.3. **The Adjudicator** is the person appointed jointly by The Buyer and the Contractor to resolve disputes in the first instance, as provided for in the GCC.
- I.1.4. **Bill of Quantities** means the priced and completed Bill of Quantities forming part of the Bid.
- I.1.5. **Compensation Events** are those defined in the GCC.
- I.1.6. **The Completion Date** is the date of completion of the Works as certified by the Project Manager, in accordance with the GCC.
- I.1.7. **The Contract** is the Contract between The Buyer and the Contractor to execute, complete, and maintain the Works. It consists of the documents listed in the GCC.
- I.1.8. **The Contractor** is the party whose Bid to carry out the Works has been accepted by The Buyer.
- I.1.9. **The Contractor's Bid** is the completed bidding document submitted by the Contractor to The Buyer.
- I.1.10. **The Contract Price** is the Accepted Contract Amount stated in the Letter of Acceptance and thereafter as adjusted in accordance with the Contract.
- I.1.11. **Days** are calendar days; months are calendar months.
- I.1.12. **Day works** are varied work inputs subject to payment on a time basis for the Contractor's employees and Equipment, in addition to payments for associated Materials and Plant.
- I.1.13. **A Defect** is any part of the Works not completed in accordance with the Contract.
- I.1.14. **The Defects Liability Certificate** is the certificate issued by Project Manager upon correction of defects by the Contractor.
- I.1.15. **The Defects Liability Period** is the period named in the PCC and



calculated from the Completion Date.

- I.1.16. **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 Buyer in accordance with the Contract, include calculations and other information provided or approved by the Project Manager for the execution of the Contract.
- I.1.17. **The Buyer** is the party who employs the Contractor to carry out the Works, **as specified in the PCC**, who is also The Buyer.
- I.1.18. **Equipment** is the Contractor's machinery and vehicles brought temporarily to the Site to construct the Works.
- I.1.19. **“In writing” or “written”** means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- I.1.20. The Initial Contract Price is the Contract Price listed in The Buyer's Letter of Acceptance.
- I.1.21. **The Intended Completion Date** is the date on which it is intended that the Contractor shall complete the Works. The Intended Completion Date is **specified in the PCC**. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.
- I.1.22. **Materials** are all supplies, including consumables, used by the Contractor for incorporation in the Works.
- I.1.23. **Plant** is any integral part of the Works that shall have a mechanical, electrical, chemical, or biological function.
- I.1.24. **The Project Manager** is the person **named in the PCC** (or any other competent person appointed by The Buyer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the Works and administering the Contract.
- I.1.25. **PCC** means Particular Conditions of Contract.
- I.1.26. **The Site** is the area of the works as **defined as such in the PCC**.
- aa) **Site Investigation Reports** are those that were included in the bidding document and are factual and interpretative reports about the surface and subsurface conditions at the Site.
- bb) **Specification** means the Specification of the Works included in the Contract and any modification or addition made or approved by the Project Manager.
- cc) **The Start Date is given in the PCC**. It is the latest date when the Contractor shall commence execution of the Works. It does not necessarily coincide with any of the Site Possession Dates.
- dd) **A Subcontractor** is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the Site.
- ee) **Temporary Works** are works designed, constructed, installed, and removed by the Contractor that are needed for construction or installation of the Works.

ff) **A Variation** is an instruction given by the Project Manager which varies the Works.

gg) **The Works** are what the Contract requires the Contractor to construct, install, and turn over to The Buyer, **as defined in the PCC**.

## 2. Interpretation

2.1 In interpreting these GCC, words indicating one gender include all genders. Words indicating the singular also include the plural and words indicating the plural also include the singular. Headings have no significance. Words have their normal meaning under the language of the Contract unless specifically defined. The Project Manager shall provide instructions clarifying queries about these GCC.

2.2 If sectional completion is specified in the PCC, references in the GCC to the Works, the Completion Date, and the Intended Completion Date apply to any Section of the Works (other than references to the Completion Date and Intended Completion Date for the whole of the Works).

2.3 The documents forming the Contract shall be interpreted in the following order of priority:

- a) Agreement,
- b) Letter of Acceptance,
- c) Contractor's Bid,
- d) Particular Conditions of Contract,
- e) General Conditions of Contract, including Appendices,
- f) Specifications,
- g) Drawings,
- h) Bill of Quantities, and
- i) any other document **listed in the PCC** as forming part of the Contract.

## 3 Language and Law

3.1 The language of the Contract is English Language and the law governing the Contract are the Laws of Kenya.

3.2 Throughout the execution of the Contract, the Contractor shall comply with the import of goods and services prohibitions in The Buyer's Country when

- a) as a matter of law or official regulations, Kenya 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, Kenya prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

## 4 Project Manager's Decisions

4.1 Except where otherwise specifically stated, the Project Manager shall decide contractual matters between The Buyer and the Contractor in the role representing The Buyer.

## 5 Delegation

5.1 Otherwise **specified in the PCC**, the Project Manager may delegate any of his duties and responsibilities to other people, except to the Adjudicator, after notifying the Contractor, and may revoke any delegation after notifying the Contractor.

## **6 Communications**

6.1 Communications between parties that are referred to in the Conditions shall be effective only when in writing. A notice shall be effective only when it is delivered.

## **7 Subcontracting**

7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of The Buyer in writing. Subcontracting shall not alter the Contractor's obligations.

## **8 Other Contractors**

8.1 The Contractor shall cooperate and share the Site with other contractors, public authorities, utilities, and The Buyer between the dates given in the Schedule of Other Contractors, as **referred to in the PCC**. The Contractor shall also provide facilities and services for them as described in the Schedule. The Buyer may modify the Schedule of Other Contractors, and shall notify the Contractor of any such modification.

## **9 Personnel and Equipment**

9.1 The Contractor shall employ the key personnel and use the equipment identified in its Bid, to carry out the Works or other personnel and equipment approved by the Project Manager. The Project Manager shall approve any proposed replacement of key personnel and equipment only if their relevant qualifications or characteristics are substantially equal to or better than those proposed in the Bid.

9.2 If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the Site within seven days and has no further connection with the work in the Contract.

9.3 If The Buyer, Project Manager or Contractor determines, that any employee of the Contractor be determined to have engaged in Fraud and Corruption during the execution of the Works, then that employee shall be removed in accordance with Clause 9.2 above.

## **10 Buyer's and Contractor's Risks**

10.1 The Buyer carries the risks which this Contract states are Buyer's risks, and the Contractor carries the risks which this Contract states are Contractor's risks.

## **11 Buyer's Risks**

11.1 From the Start Date until the Defects Liability Certificate has been issued, the following are Buyer's risks:

- a) The risk of personal injury, death, or loss of or damage to property

- (excluding the Works, Plant, Materials, and Equipment), which are due to
- 11.1.1 Use or occupation of the Site by the Works or for the purpose of the Works, which is the unavoidable result of the Works or
  - 11.1.2 Negligence, breach of statutory duty, or interference with any legal right by The Buyer or by any person employed by or contracted to him except the Contractor.
    - b) The risk of damage to the Works, Plant, Materials, and Equipment to the extent that it is due to a fault of The Buyer or in The Buyer's design, or due to war or radioactive contamination directly affecting the country where the Works are to be executed.
- 11.2 From the Completion Date until the Defects Liability Certificate has been issued, the risk of loss of or damage to the Works, Plant, and Materials is a Buyer's risk except loss or damage due to;
- 11.2.1 A Defect which existed on the Completion Date,
  - 11.2.2 An event occurring before the Completion Date, which was not itself a Buyer's risk, or
  - 11.2.3 The activities of the Contractor on the Site after the Completion Date.

## **12 Contractor's Risks**

- 12.1 From the Starting Date until the Defects Liability Certificate has been issued, the risks of personal injury, death, and loss of or damage to property (including, without limitation, the Works, Plant, Materials, and Equipment) which are not Buyer's risks are Contractor's risks.

## **13 Insurance**

- 13.1 The Contractor shall provide, in the joint names of The Buyer and the Contractor, insurance cover from the Start Date to the end of the Defects Liability Period, in the amounts and deductibles **stated in the PCC** for the following events which are due to the Contractor's risks:
- a) Loss of or damage to the Works, Plant, and Materials;
  - b) Loss of or damage to Equipment;
  - c) Loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - d) Personal injury or death.
- 13.2 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the Start Date. All such insurance shall provide for compensation to be payable in the types and proportions of currencies required to rectify the loss or damage incurred.
- 13.3 If the Contractor does not provide any of the policies and certificates required, The Buyer may effect the insurance which the Contractor should have provided and recover the premiums The Buyer has paid from payments otherwise due to the Contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 13.4 Alterations to the terms of an insurance shall not be made without the approval of the Project Manager.

13.5 Both parties shall comply with any conditions of the insurance policies.

#### **14 Site Data**

14.1 The Contractor shall be deemed to have examined any Site Data **referred to in the PCC**, supplemented by any information available to the Contractor.

#### **15 Contractor to Construct the Works**

15.1 The Contractor shall construct and install the Works in accordance with the Specifications and Drawings.

#### **16 The Works to Be Completed by the Intended Completion Date**

16.1 The Contractor may commence execution of the Works on the Start Date and shall carry out the Works in accordance with the Program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

#### **17 Approval by the Project Manager**

17.1 The Contractor shall submit Specifications and Drawings showing the proposed Temporary Works to the Project Manager, for his approval.

17.2 The Contractor shall be responsible for design of Temporary Works.

17.3 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary Works.

17.4 The Contractor shall obtain approval of third parties to the design of the Temporary Works, where required.

17.5 All Drawings prepared by the Contractor for the execution of the temporary or permanent Works, are subject to prior approval by the Project Manager before this use.

#### **18 Safety**

18.1 The Contractor shall be responsible for the safety of all activities on the Site.

#### **19 Discoveries**

19.1 Anything of historical or other interest or of significant value unexpectedly discovered on the Site shall be the property of The Buyer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

#### **20 Possession of the Site**

20.1 The Buyer shall give possession of all parts of the Site to the Contractor. If possession of a part is not given by the date **stated in the PCC**, The Buyer shall be deemed to have delayed the start of the relevant activities, and this shall be a Compensation Event.

#### **21 Access to the Site**

21.1 The Contractor shall allow the Project Manager and any person authorized by the Project Manager access to the Site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

## **22 Instructions, Inspections and Audits**

22.1 The Contractor shall carry out all instructions of the Project Manager which comply with the applicable laws where the Site is located.

22.2 The Contractor shall keep, and shall make all reasonable efforts to cause its Subcontractors and sub-consultants to keep, accurate and systematic accounts and records in respect of the Works in such form and details as will clearly identify relevant time changes and costs.

22.3 The Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, The Buyer and/or persons appointed by MESPT to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by MESPT.

## **23. Appointment of the Adjudicator**

- a. The Adjudicator shall be appointed jointly by The Buyer and the Contractor, at the time of The Buyer's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, The Buyer does not agree on the appointment of the Adjudicator, The Buyer will request the Appointing Authority designated in the PCC, to appoint the Adjudicator within 14 days of receipt of such request.
- b. Should the Adjudicator resign or die, or should The Buyer and the Contractor agree that the Adjudicator is not functioning in accordance with the provisions of the Contract, a new Adjudicator shall be jointly appointed by The Buyer and the Contractor. In case of disagreement between The Buyer and the Contractor, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in the PCC at the request of either party, within 14 days of receipt of such request.

## **24. Settlement of Claims and Disputes**

### **a. Contractor's Claims**

24.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Project Manager, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.

24.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and The Buyer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub- Clause shall apply.

- 24.1.3 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.
- 24.1.4 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 Project Manager. Without admitting The Buyer's liability, the Project Manager may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Project Manager to inspect all these records, and shall (if instructed) submit copies to the Project Manager.
- 24.1.5 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 Project Manager, the Contractor shall send to the Project Manager 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 Project Manager may reasonably require; and
  - c) the Contractor shall send a final claim within 30 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 Project Manager.
- 24.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Project Manager and approved by the Contractor, the Project Manager 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.
- 24.1.7 Within the above defined period of 42 days, the Project Manager shall proceed in accordance with Sub-Clause 24.1.6.
- 24.1.8 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.
- 24.1.9 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only

be entitled to payment for such part of the claim as he has been able to substantiate.

24.1.10 If the Project Manager does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Project Manager and any of the Parties may refer to Arbitration.

24.1.11 The requirements of this Sub-Clause are in addition to those of any other Sub-Clause which may apply to a claim. If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded in the GCC.

#### **b. Amicable Settlement**

24.1.1 Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with the GCC should move to commence arbitration after the fifty-sixth day from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

#### **c. Matters that may be referred to arbitration**

24.3.1 Notwithstanding anything stated herein the following matters may be referred to arbitration before the practical completion of the Works or abandonment of the Works or termination of the Contract by either party:

- a) The appointment of a replacement Project Manager upon the said person ceasing to act.
- b) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- c) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- e) Any dispute arising in respect of war risks or war damage.
- f) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless The Buyer and the Contractor agree otherwise in writing.

#### **d. Arbitration**

24.4.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably shall be finally settled by arbitration.

24.4.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

24.4.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be



required.

- 24.4.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 24.4.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision requirement or notice had been given.
- 24.4.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Project Manager, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Project Manager from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 24.4.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 24.4.8 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Project Manager shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 24.4.9 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

#### **e. Arbitration with National Contractors**

- 24.5.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- i) Architectural Association of Kenya
  - ii) Institute of Quantity Surveyors of Kenya
  - iii) Association of Consulting Engineers of Kenya
  - iv) Chartered Institute of Arbitrators (Kenya Branch)
  - v) Institution of Engineers of Kenya
- 24.5.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

#### **f. Alternative Arbitration Proceedings**

24.6.1 Alternatively, the Parties may refer the matter to the Nairobi Centre for International Arbitration (NCIA) which offers a neutral venue for the conduct of national and international arbitration with commitment to providing institutional support to the arbitral process.

**g. Failure to Comply with Arbitrator's Decision**

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

24.7.2 In the event that a Party fails to comply with a final and binding Arbitrator's decision, then the other Party may, without prejudice to any other rights it may have, refer the matter to a competent court of law.

**h. Contract operations to continue**

24.8.1 Notwithstanding any reference to arbitration herein,

- a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- b) The Buyer shall pay the Contractor any monies due the Contractor.

**25. Fraud and Corruption**

- a. The Government requires compliance with the country's Anti-Corruption laws and its prevailing sanctions policies and procedures as set forth in the Constitution of Kenya and its Statutes.
- b. The Buyer requires the Contractor to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount and currency, and the purpose of the commission, gratuity or fee.

**B. Time Control**

**26. Program**

- a. Within the time stated in the **PCC**, after the date of the Letter of Acceptance, the Contractor shall submit to the Project Manager for approval a Program showing the general methods, arrangements, order, and timing for all the activities in the Works. In the case of a lump sum contract, the activities in the Program shall be consistent with those in the Activity Schedule.
- b. An update of the Program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.
- c. The Contractor shall submit to the Project Manager for approval an updated Program at intervals no longer than the period stated in the **PCC**. If the Contractor does not submit an updated Program within this period, the Project Manager may withhold the amount stated in the **PCC** from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue Program has been submitted.

In the case of a lump sum contract, the Contractor shall provide an updated Activity Schedule within 14 days of being instructed to by the Project Manager.

- d. The Project Manager's approval of the Program shall not alter the Contractor's obligations. The Contractor may revise the Program and submit it to the Project Manager again at any time. A revised Program shall show the effect of Variations and Compensation Events.

### **27. Extension of the Intended Completion Date**

- a. The Project Manager shall extend the Intended Completion Date if a Compensation Event occurs or a Variation is issued which makes it impossible for Completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost.
- b. The Project Manager shall decide whether and by how much to extend the Intended Completion Date within 21 days of the Contractor asking the Project Manager for a decision upon the effect of a Compensation Event or Variation and submitting full supporting information. If the Contractor has failed to give early warning of a delay or has failed to cooperate in dealing with a delay, the delay by this failure shall not be considered in assessing the new Intended Completion Date.

### **28. Acceleration**

- a. When The Buyer wants the Contractor to finish before the Intended Completion Date, the Project Manager shall obtain priced proposals for achieving the necessary acceleration from the Contractor. If The Buyer accepts these proposals, the Intended Completion Date shall be adjusted accordingly and confirmed by both The Buyer and the Contractor.
- b. If the Contractor's priced proposals for an acceleration are accepted by The Buyer, they are incorporated in the Contract Price and treated as a Variation.

### **29. Delays Ordered by the Project Manager**

- a. The Project Manager may instruct the Contractor to delay the start or progress of any activity within the Works.

### **30. Management Meetings**

- a. Either the Project Manager or the Contractor may require the other to attend a management meeting. The business of a management meeting shall be to review the plans for remaining work and to deal with matters raised in accordance with the early warning procedure.
- b. The Project Manager shall record the business of management meetings and provide copies of the record to those attending the meeting and to The Buyer. The responsibility of the parties for actions to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

### **31. Early Warning**

- a. The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price, or delay the execution of the Works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The estimate shall be provided by the Contractor as soon as reasonably possible.
- b. The Contractor shall cooperate with the Project Manager in making and considering proposals for how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instruction of the Project Manager.

## **C. Quality Control**

### **32. Identifying Defects**

- a. The Project Manager shall check the Contractor's work and notify the Contractor of any Defects that are found. Such checking shall not affect the Contractor's responsibilities. The Project Manager may instruct the Contractor to search for a Defect and to uncover and test any work that the Project Manager considers may have a Defect.

### **33. Tests**

- a. If the Project Manager instructs the Contractor to carry out a test not specified in the Specification to check whether any work has a Defect and the test shows that it does, the Contractor shall pay for the test and any samples. If there is no Defect, the test shall be a Compensation Event.

### **34. Correction of Defects**

- a. The Project Manager shall give notice to the Contractor of any Defects before the end of the Defects Liability Period, which begins at Completion, and is defined in the **PCC**. The Defects Liability Period shall be extended for as long as Defects remain to be corrected.
- b. Every time notice of a Defect is given, the Contractor shall correct the notified Defect within the length of time specified by the Project Manager's notice.

### **35. Uncorrected Defects**

- a. If the Contractor has not corrected a Defect within the time specified in the Project Manager's notice, the Project Manager shall assess the cost of having the Defect corrected, and the Contractor shall pay this amount.

## **D. Cost Control**

### **36. Contract Price**

- a. The Bill of Quantities shall contain priced items for the Works to be performed by the Contractor. The Bill of Quantities is used to calculate the Contract Price. The Contractor will be paid for the quantity of the work accomplished at the rate in the Bill of Quantities for each item.

### **37. Changes in the Contract Price**

- a. If the final quantity of the work done differs from the quantity in the Bill of Quantities for the particular item by more than 25 percent, provided the change exceeds one (1) percent of the Initial Contract Price, the Project Manager shall adjust the rate to allow for the change. The Project Manager shall not adjust rates from changes in quantities if thereby the Initial Contract Price is exceeded by more than 15 percent, except with the prior approval of The Buyer.
- b. If requested by the Project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bill of Quantities.

### **38. Variations**

- a. All Variations shall be included in updated Programs produced by the Contractor.
- b. The Contractor shall provide the Project Manager with a quotation for carrying out the Variation when requested to do so by the Project Manager. The Project Manager shall assess the quotation, which shall be given within seven (7) days of the request or within any longer period stated by the Project Manager and before the Variation is ordered.
- c. If the Contractor's quotation is unreasonable, the Project Manager may order the Variation and make a change to the Contract Price, which shall be based on the Project Manager's own forecast of the effects of the Variation on the Contractor's costs.
- d. If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the Variation shall be treated as a Compensation Event.
- e. The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning
- f. If the work in the Variation corresponds to an item description in the Bill of Quantities and if, in the opinion of the Project Manager, the quantity of work above the limit stated in Sub-Clause 37 (a) or the timing of its execution do not cause the cost per unit of quantity to change, the rate in the Bill of Quantities shall be used to calculate the value of the Variation. If the cost per unit of quantity changes, or if the nature or timing of the work in the Variation does not correspond with items in the Bill of Quantities, the quotation by the Contractor shall be in the form of new rates for the relevant items of work
- g. Value Engineering: The Contractor may prepare, at its own cost, a value engineering proposal at any time during the performance of the contract. The value engineering proposal shall, at a minimum, include the following:
  - a) the proposed change(s), and a description of the difference to the existing contract requirements;
  - b) a full cost/benefit analysis of the proposed change(s) including a description

- and estimate of costs (including life cycle costs) The Buyer may incur in implementing the value engineering proposal; and
- c) a description of any effect(s) of the change on performance/functionality.
- h. The Buyer may accept the value engineering proposal if the proposal demonstrates benefits that:
- a) accelerate the contract completion period; or
  - b) reduce the Contract Price or the life cycle costs to The Buyer; or
  - c) improve the quality, efficiency, safety or sustainability of the Facilities; or
  - d) yield any other benefits to The Buyer, without compromising the functionality of the Works.
- i. If the value engineering proposal is approved by The Buyer and results in:
- (a) A reduction of the Contract Price; the amount to be paid to the Contractor shall be the **percentage specified in the PCC** of the reduction in the Contract Price; or
  - (b) An increase in the Contract Price; but results in a reduction in life cycle costs due to any benefit described in (a) to (d) above, the amount to be paid to the Contractor shall be the full increase in the Contract Price.

### **39. Cash Flow Forecasts**

- a. When the Program is updated, the Contractor shall provide the Project Manager with an updated cash flow forecast. The cash flow forecast shall include different currencies, as defined in the Contract, converted as necessary using the Contract exchange rates.

### **40. Payment Certificates**

- a. The Contractor shall submit to the Project Manager monthly statements of the estimated value of the work executed less the cumulative amount certified previously.
- b. The Project Manager shall check the Contractor's monthly statement and certify the amount to be paid to the Contractor.
- c. The value of work executed shall be determined by the Project Manager.
- d. The value of work executed shall comprise the value of the quantities of work in the Bill of Quantities that have been completed.
- e. The value of work executed shall include the valuation of Variations and Compensation Events.
- f. The Project Manager may exclude any item certified in a previous certificate or reduce the proportion of any item previously certified in any certificate in the light of later information.
- g. Where the contract price is different from the corrected bid price, in order to ensure the contractor is not paid less or more relative to the contract price (which would be the bid price), payment valuation certificates and variation orders on omissions and additions valued based on rates in the Bill of Quantities or schedule of rates in the Bid, will be adjusted by a plus or minus percentage. The percentage already worked out during bid evaluation

is worked out as follows:  $(\text{corrected bid price} - \text{bid price}) / \text{bid price} \times 100$ .

#### **41. Payments**

- a. Payments shall be adjusted for deductions for advance payments and retention. The Buyer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of each certificate. If The Buyer makes a late payment, the Contractor shall be paid interest on the late payment in the next payment. Interest shall be calculated from the date by which the payment should have been made up to the date when the late payment is made at the prevailing rate of interest for commercial borrowing for each of the currencies in which payments are made.
- b. If an amount certified is increased in a later certificate or as a result of an award by the Adjudicator or an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in this clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- c. Unless otherwise stated, all payments and deductions shall be paid or charged in the proportions of currencies comprising the Contract Price.
- d. Items of the Works for which no rate or price has been entered in shall not be paid for by The Buyer and shall be deemed covered by other rates and prices in the Contract.

#### **42. Compensation Events**

- a. The following shall be Compensation Events:
  - d) The Buyer does not give access to a part of the Site by the Site Possession Date pursuant to the GCC.
  - e) The Buyer modifies the Schedule of Other Contractors in a way that affects the work of the Contractor under the Contract.
  - f) The Project Manager orders a delay or does not issue Drawings, Specifications, or instructions required for execution of the Works on time.
  - g) The Project Manager instructs the Contractor to uncover or to carry out additional tests upon work, which is then found to have no Defects.
  - h) The Project Manager unreasonably does not approve a subcontract to be let.
  - i) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to bidders (including the Site Investigation Reports), from information available publicly and from a visual inspection of the Site.
  - j) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by The Buyer, or additional work required for safety or other reasons.
  - k) Other contractors, public authorities, utilities, or The Buyer does not work within the dates and other constraints stated in the Contract, and they cause delay or extra cost to the Contractor.

- l) The advance payment is delayed.
  - m) The effects on the Contractor of any of The Buyer's Risks.
  - n) The Project Manager unreasonably delays issuing a Certificate of Completion.
- b. If a Compensation Event would cause additional cost or would prevent the work being completed before the Intended Completion Date, the Contract Price shall be increased and/or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended.
  - c. As soon as information demonstrating the effect of each Compensation Event upon the Contractor's forecast cost has been provided by the Contractor, it shall be assessed by the Project Manager, and the Contract Price shall be adjusted accordingly. If the Contractor's forecast is deemed unreasonable, the Project Manager shall adjust the Contract Price based on the Project Manager's own forecast. The Project Manager shall assume that the Contractor shall react competently and promptly to the event.
  - d. The Contractor shall not be entitled to compensation to the extent that The Buyer's interests are adversely affected by the Contractor's not having given early warning or not having cooperated with the Project Manager.

#### 43. Tax

- a. The Project Manager shall adjust the Contract Price if taxes, duties, and other levies are changed between the date 30 days before the submission of bids for the Contract and the date of the last Completion certificate. The adjustment shall be the change in the amount of tax payable by the Contractor, provided such changes are not already reflected in the Contract Price or are a result of the GCC.

#### 44. Currency of Payment

- a. All payments under the contract shall be made in Kenya Shillings

#### 45. Price Adjustment

- a. Prices shall be adjusted for fluctuations in the cost of inputs only if **provided for in the PCC**. If so provided, the amounts certified in each payment certificate, before deducting for Advance Payment, shall be adjusted by applying the respective price adjustment factor to the payment amounts due in each currency. A separate formula of the type specified below applies:

$$P = A + B I_m / I_o$$

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

A and B are coefficients **specified in the PCC**, representing the non-adjustable and adjustable portions, respectively, of the Contract Price payable and  $I_m$  is the index prevailing at the end of the month being invoiced and  $I_o$  is the index prevailing 30 days before Bid opening for inputs payable.

- b. If the value of the index is changed after it has been used in a calculation, the



calculation shall be corrected and an adjustment made in the next payment certificate. The index value shall be deemed to take account of all changes in cost due to fluctuations in costs.

#### **46. Retention**

- a. The Buyer shall retain from each payment due to the Contractor the proportion stated in the **PCC** until Completion of the whole of the Works.
- b. Upon the issue of a Certificate of Completion of the Works by the Project Manager, half the total amount retained shall be repaid to the Contractor and half when the Defects Liability Period has passed and the Project Manager has certified that all Defects notified by the Project Manager to the Contractor before the end of this period have been corrected. The Contractor may substitute retention money with an “on demand” Bank guarantee.

#### **47. Liquidated Damages**

- a. The Contractor shall pay liquidated damages to The Buyer at the rate per day stated in the **PCC** for each day that the Completion Date is later than the Intended Completion Date. The total amount of liquidated damages shall not exceed the amount defined in the PCC. The Buyer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities.
- b. If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rates specified in the GCC.

#### **48. Bonus**

- a. The Contractor shall be paid a Bonus calculated at the rate per calendar day **stated in the PCC** for each day (less any days for which the Contractor is paid for acceleration) that the Completion is earlier than the Intended Completion Date. The Project Manager shall certify that the Works are complete, although they may not be due to be complete.

#### **49. Advance Payment**

- a. The Buyer shall make advance payment to the Contractor of the amounts stated in the **PCC** by the date stated in the **PCC**, against provision by the Contractor of an Unconditional Bank Guarantee in a form and by a bank acceptable to The Buyer in amounts and currencies equal to the advance payment. The Guarantee shall remain effective until the advance payment has been repaid, but the amount of the Guarantee shall be progressively reduced by the amounts repaid by the Contractor. Interest shall not be charged on the advance payment.
- b. The Contractor is to use the advance payment only to pay for Equipment, Plant, Materials, and mobilization expenses required specifically for execution of the Contract. The Contractor shall demonstrate that advance payment has been used in this way by supplying copies of invoices or other documents to the Project Manager.

- c. The advance payment shall be repaid by deducting proportionate amounts from payments otherwise due to the Contractor, following the schedule of completed percentages of the Works on a payment basis. No account shall be taken of the advance payment or its repayment in assessing valuations of work done, Variations, price adjustments, Compensation Events, Bonuses, or Liquidated Damages.

#### **50. Performance Security**

- a. The Performance Security shall be provided to The Buyer no later than the date specified in the Letter of Acceptance and shall be issued in an amount **specified in the PCC**, by a bank or surety acceptable to The Buyer, and denominated in the types and proportions of the currencies in which the Contract Price is payable. The Performance Security shall be valid until a date 28 day from the date of issue of the Certificate of Completion in the case of a Bank Guarantee, and until one year from the date of issue of the Completion Certificate in the case of a Performance Bond.

#### **51. Dayworks**

- a. If applicable, the Dayworks rates in the Contractor's Bid shall be used only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- b. All work to be paid for as Dayworks shall be recorded by the Contractor on forms approved by the Project Manager. Each completed form shall be verified and signed by the Project Manager within two days of the work being done.
- c. The Contractor shall be paid for Dayworks subject to obtaining signed Dayworks forms.

#### **52. Cost of Repairs**

- a. Loss or damage to the Works or Materials to be incorporated in the Works between the Start Date and the end of the Defects Correction periods shall be remedied by the Contractor at the Contractor's cost if the loss or damage arises from the Contractor's acts or omissions.

#### **E. Finishing the Contract**

#### **53. Completion**

- a. The Contractor shall request the Project Manager to issue a Certificate of Completion of the Works, and the Project Manager shall do so upon deciding that the whole of the Works is completed.

#### **54. Taking Over**

- a. The Buyer shall take over the Site and the Works within seven days of the Project Manager's issuing a certificate of Completion.

#### **55. Final Account**

- a. The Contractor shall supply the Project Manager with a detailed account of the total amount that the Contractor considers payable under the Contract before the end of the Defects Liability Period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 56 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 56 days a schedule that states the scope of the corrections or additions that are

necessary. If the Final Account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a payment certificate.

## **56. Operating and Maintenance Manuals**

- a. If “as built” Drawings and/or operating and maintenance manuals are required, the Contractor shall supply them by the dates stated in the PCC.
- b. If the Contractor does not supply the Drawings and/or manuals by the dates stated in the **PCC** or they do not receive the Project Manager's approval, the Project Manager shall withhold the amount **stated in the PCC** from payments due to the Contractor.

## **57. Termination**

- a. The Buyer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.
- b. Fundamental breaches of Contract shall include, but shall not be limited to, the following:
  - a) the Contractor stops work for 30 days when no stoppage of work is shown on the current Program and the stoppage has not been authorized by the Project Manager;
  - b) the Project Manager instructs the Contractor to delay the progress of the Works, and the instruction is not withdrawn within 30 days;
  - c) The Buyer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - d) a payment certified by the Project Manager is not paid by The Buyer to the Contractor within 84 days of the date of the Project Manager's certificate;
  - e) the Project Manager gives Notice that failure to correct a particular Defect is a fundamental breach of Contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
  - f) the Contractor does not maintain a Security, which is required;
  - g) the Contractor has delayed the completion of the Works by the number of days for which the maximum amount of liquidated damages can be paid, as **defined in the PCC**; or
  - h) if the Contractor, in the judgment of The Buyer has engaged in Fraud and Corruption in competing for or in executing the Contract, then The Buyer may, after giving fourteen (14) days written notice to the Contractor, terminate the Contract and expel him from the Site.
- c. Notwithstanding the above, The Buyer may terminate the Contract for convenience.
- d. If the Contract is terminated, the Contractor shall stop work immediately, make the Site safe and secure, and leave the Site as soon as reasonably possible.
- e. When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under GCC Sub-Clause 57 above, the Project Manager shall decide whether the breach is fundamental or not.

## **58. Payment upon Termination**

- a. If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and Materials ordered less advance payments received up to the date of the issue of the certificate and less the percentage to apply to the value of the work not completed, as specified in the **PCC**. Additional Liquidated Damages shall not apply. If the total amount due to The Buyer exceeds any payment due to the Contractor, the difference shall be a debt payable to The Buyer.
- b. If the Contract is terminated for The Buyer's convenience or because of a fundamental breach of Contract by The Buyer, the Project Manager shall issue a certificate for the value of the work done, Materials ordered, the reasonable cost of removal of Equipment, repatriation of the Contractor's personnel employed solely on the Works, and the Contractor's costs of protecting and securing the Works, and less advance payments received up to the date of the certificate.

## **59. Property**

- a. All Materials on the Site, Plant, Equipment, Temporary Works, and Works shall be deemed to be the property of The Buyer if the Contract is terminated because of the Contractor's default.

## **60. Release from Performance**

- a. If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either The Buyer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor shall make the Site safe and stop work as quickly as possible after receiving this certificate and shall be paid for all work carried out before receiving it and for any work carried out afterwards to which a commitment was made.

## PART VIII: PARTICULAR CONDITIONS OF CONTRACT

The following Particular Conditions of Contract (PCC) shall supplement and/or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the General Conditions of Contract (GCC).

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>A. General</b>	
<b>GCC 1.1.15</b>	<p><b>Defects Liability Period</b></p> <p>Defects liability period shall be (____) days from the completion date.</p>
<b>GCC 1.1.17</b>	<p><b>The Buyer</b></p> <p>The Buyer is <i>[insert name, address, and name of authorized representative]</i>.</p>
<b>GCC 1.1.21</b>	<p><b>Intended Completion Date</b></p> <p>The Intended Completion Date for the whole of the Works shall be <i>[insert date]</i></p> <p><i>[If different dates are specified for completion of the Works by section (“sectional completion” or milestones), these dates should be listed here]</i></p>
<b>GCC 1.1.24</b>	<p><b>Project Manager</b></p> <p>The Project Manager is <i>[insert name, address, and name of authorized representative]</i>.</p>
<b>GCC 1.1.26</b>	<p><b>The Site</b></p> <p>The Site is located at <i>[insert address of Site ]</i> and is defined in drawings No. <i>[insert numbers]</i></p>
<b>GCC 1.1.26 (cc)</b>	<p><b>Start Date</b></p> <p>The Start Date shall be <i>[insert date]</i>.</p>
<b>GCC 1.1.26 (gg)</b>	<p><b>The Works</b></p> <p>The Works consist of <i>[insert brief summary, including relationship to other contracts under the Project]</i>.</p>
<b>GCC 2.2</b>	<p><b>Sectional Completion</b></p> <p>Sectional Completions are: <i>[insert nature and dates, if appropriate]</i></p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>GCC 2.3</b>	<b>Additional documents</b> The additional documents are as follow: _____
<b>GCC 5.1</b>	<b>Delegation</b> The Project manager <i>[may or may not]</i> delegate any of his duties and responsibilities.
<b>GCC 8.1</b>	<b>Other Contractors</b> Schedule of other contractors: <i>[insert Schedule of Other Contractors, if appropriate]</i>
<b>GCC 13.1</b>	The minimum insurance amounts and deductibles shall be: <ul style="list-style-type: none"> <li>(a) for loss or damage to the Works, Plant and Materials: <i>[insert amounts]</i>.</li> <li>(b) For loss or damage to Equipment: <i>[insert amounts]</i>.</li> <li>(c) for loss or damage to property (except the Works, Plant, Materials, and Equipment) in connection with Contract <i>[insert amounts]</i>.</li> <li>(d) for personal injury or death:               <ul style="list-style-type: none"> <li>(i) of the Contractor's employees: <i>[amount]</i>.</li> <li>(ii) of other people: <i>[amount]</i>.</li> </ul> </li> </ul>
<b>GCC 14.1</b>	<b>Site Data</b> Site Data are: <i>[list Site Data]</i>
<b>GCC 20.1</b>	<b>Site Possession Date</b> The Site Possession Date(s) shall be: <i>[insert location(s) and date(s)]</i>
<b>GCC 23 a. &amp; b</b>	<b>Appointment of the Adjudicator</b> Appointing Authority for the Adjudicator: <i>[insert name of Authority]</i> .
	Hourly rate and types of reimbursable expenses to be paid to the Adjudicator: <i>[insert hourly fees and reimbursable expenses]</i> .
<b>B. Time Control</b>	

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>GCC 26 a.</b>	<p><b>Program</b></p> <p>The Contractor shall submit for approval a Program for the Works within [number] days from the date of the Letter of Acceptance.</p>
<b>GCC 26 c.</b>	<p>The period between Program updates is [insert number] days.</p> <p>The amount to be withheld for late submission of an updated Program is [insert amount].</p>
<b>C. Quality Control</b>	
<b>GCC 34 a.</b>	<p><b>Correction of Defects</b></p> <p>The Defects Liability Period is: [insert number] days.</p> <p><i>[The Defects Liability Period is usually limited to 12 months, but could be less in very simple cases]</i></p>
<b>D. Cost Control</b>	
<b>GCC 38. i.</b>	<p><b>Value Engineering</b></p> <p>If the value engineering proposal is approved by The Buyer the amount to be paid to the Contractor shall be ___% (<i>insert appropriate percentage. The percentage is normally up to 50%</i>) of the reduction in the Contract Price.</p>
<b>GCC 44 a.</b>	<p><b>Currency of Payment</b></p> <p>The currency of The Buyer's Country is: [insert name of currency of The Buyer's Country].</p>
<b>GCC 45 a.</b>	<p><b>Price Adjustment</b></p> <p>The Contract [insert "is" or "is not"] subject to price adjustment in accordance with GCC Clause 45, and the following information regarding coefficients [specify "does" or "does not"] apply.</p> <p><i>[Price adjustment is mandatory for contracts which provide for time of completion exceeding 18 months]</i></p> <p>The coefficients for adjustment of prices are:</p> <p>(a) [insert percentage] percent nonadjustable element (coefficient A).</p>

Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
	<p>(ib) <i>[insert percentage]</i> percent adjustable element (coefficient B).</p> <p>(c) The Index I for shall be <i>[insert index]</i>.</p>
<b>GCC 46 a.</b>	<p><b>Retention</b></p> <p>The proportion of payments retained is: <i>[insert percentage]</i></p> <p><i>[The retention amount is usually close to 5 percent and in no case exceeds 10 percent.]</i></p>
<b>GCC 47 a.</b>	<p><b>Liquidated Damages</b></p> <p>The liquidated damages for the whole of the Works are <i>[insert percentage of the final Contract Price]</i> per day. The maximum amount of liquidated damages for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price.</p> <p><i>[Usually liquidated damages are set between 0.05 percent and 0.10 percent per day, and the total amount is not to exceed between 5 percent and 10 percent of the Contract Price. If Sectional Completion and Damages per Section have been agreed, the latter should be specified here]</i></p>
<b>GCC 48. a.</b>	<p><b>Bonus</b></p> <p>The Bonus for the whole of the Works is <i>[insert percentage of final Contract Price]</i> per day. The maximum amount of Bonus for the whole of the Works is <i>[insert percentage]</i> of the final Contract Price.</p> <p><i>[If early completion would provide benefits to The Buyer, this clause should remain; otherwise delete. The Bonus is usually numerically equal to the liquidated damages.]</i></p>
<b>GCC 49. a.</b>	<p><b>Advance Payment</b></p> <p>The Advance Payments shall be: <i>[insert amount(s)]</i> and shall be paid to the Contractor no later than <i>[insert date(s)]</i>.</p>



Number of GC Clause	Amendments of, and Supplements to, Clauses in the General Conditions of Contract
<b>GCC 50. a.</b>	<p data-bbox="435 306 768 338"><b>Performance Security</b></p> <p data-bbox="435 369 1433 485">The Performance Security amount is <i>[insert amount(s) denominated in the types and proportions of the currencies in which the Contract Price is payable, or in a freely convertible currency acceptable to The Buyer]</i></p> <p data-bbox="435 516 1433 632">(a) Performance Security – Bank Guarantee: in the amount(s) of <i>[insert related figure(s)]</i> percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p> <p data-bbox="435 663 1433 779">(b) Performance Security – Performance Bond: in the amount(s) of <i>[insert related figure(s)]</i> percent of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.</p>
<b>E. Finishing the Contract</b>	
<b>GCC 56. a.</b>	<p data-bbox="435 900 984 932"><b>Operating and Maintenance Manuals</b></p> <p data-bbox="435 963 1433 1037">The date by which operating and maintenance manuals are required is <i>[insert date]</i>.</p> <p data-bbox="435 1068 1289 1100">The date by which “as built” drawings are required is <i>[insert date]</i>.</p>
<b>GCC 56. b.</b>	<p data-bbox="435 1142 984 1173"><b>Operating and Maintenance Manuals</b></p> <p data-bbox="435 1205 1433 1320">The amount to be withheld for failing to produce “as built” drawings and/or operating and maintenance manuals by the date required in GCC 58.1 is <i>[insert amount in local currency]</i>.</p>
<b>GCC 57. (g)</b>	<p data-bbox="435 1356 626 1388"><b>Termination</b></p> <p data-bbox="435 1419 1433 1493">The maximum number of days is: <i>[insert number; consistent with Clause 47.1 on liquidated damages]</i>.</p>
<b>GCC 58. a.</b>	<p data-bbox="435 1530 854 1562"><b>Payment upon Termination</b></p> <p data-bbox="435 1593 1433 1667">The percentage to apply to the value of the work not completed, representing The Buyer’s additional cost for completing the Works, is <i>[insert percentage]</i>.</p>

## Form of Agreement

THIS AGREEMENT made the \_\_\_\_\_ *[insert: number]* day of \_\_\_\_\_ *[insert: month]*, *[insert: year]*. BETWEEN (1) **MICRO ENTERPRISES SUPPORT PROGRAMME TRUST (MESPT)** and having its principal place of business at *[insert: address of The Buyer]* (hereinafter called “The Buyer”), of the one part; and (2) \_\_\_\_\_ *[insert name of Supplier]*, a corporation incorporated under the laws of *[insert: country of Supplier]* and having its principal place of business at \_\_\_\_\_ *[insert: address of Supplier]* (hereinafter called “the Supplier”), of the other part.

1. WHEREAS The Buyer invited Bids for certain Goods and ancillary services, viz.,

\_\_\_\_\_ *[insert brief description of Goods and Services]* and has accepted a Bid by the Supplier for the supply of those Goods and Services, the Buyer and the Supplier agree as follows:

- i) In this Agreement words and expressions shall have the same meanings as \_\_\_\_\_ are respectively assigned to them in the Contract documents referred to.
  - ii) 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 Form of Bid
    - c) the Addenda Nos.\_\_\_\_(if any)
    - d) Particular Conditions of Contract
    - e) General Conditions of Contract
    - f) the Specification (including Schedule of Requirements and Technical Specifications)
    - g) the completed Schedules (including Price Schedules)
    - h) any other document listed in GCC as forming part of the Contract
  - iii) In consideration of the payments to be made by The Buyer to the Supplier as specified in this Agreement, the Supplier hereby covenants with The Buyer to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
2. The Buyer hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services 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.
3. IN WITNESS whereof the parties hereto have caused this Agreement to be

executed in accordance with the Laws of Kenya on the day, month and year indicated above.

For and on behalf of the Buyer

Signed: \_\_\_\_\_ *[insert signature]*

in the capacity of \_\_\_\_\_ *[insert title or other appropriate designation]* In the presence of \_\_\_\_\_ *[insert identification of official witness]* **For and on behalf**

**of the Supplier**

Signed: \_\_\_\_\_ *[insert signature of authorized representative(s) of the Supplier]* in the capacity of \_\_\_\_\_ *[insert title or other appropriate designation]* in the presence of \_\_\_\_\_ *[insert identification of official witness]*