BIDDING DOCUMENTS

For

Establishment of Kenya Advanced Institute of Science and Technology Project

Volume I

TENDER NO: KAIST-KEN 4-001-2019-2020

Instruction to Bidder (ITB)
(Single-Stage Two-Envelope)

EDCF Loan Agreement No: KEN-4

Ministry of Education,
The Government of Kenya

Economic Development Cooperation Fund
The Export-Import Bank of Korea

ISSUE DATE: 10TH MARCH 2020
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Invitation for Bids (IFB)

Issuing date: 10th March 2020

Republic of Kenya

Establishment of Kenya Advanced Institute of Science and Technology Project

Loan Agreement No: KEN-4

1. The government of Kenya has received a Loan from the Export-Import Bank of Korea from the resources of the Economic Development Cooperation Fund (EDCF) of the Republic of Korea in the amount of USD 94,697,000 (Ninety Four Million and Six Hundred Ninety Seven thousand US Dollars) toward the cost of Establishment of Kenya Advanced Institute of Science and Technology Project and intends to apply a portion of the proceeds of this loan to payments under the contract for Establishment Kenya Advanced Institute of Science and Technology Project.

2. The terms and conditions of the contract and payments by the Bank, therefore, shall be subject in all respects to the terms and conditions of the Loan Agreement, including the Guidelines for the Procurement under the EDCF Loan (the Guidelines). Except as the Bank may specially otherwise agree, no party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the loan proceeds.

3. The Ministry of Education which is the Project Executing Agency (PEA) appointed Konza Technopolis Development Authority (KoTDA) to take up the overall responsibility for coordination of the project, specifically the procurement process on behalf of the PEA.

4. The Ministry of Education, on behalf of the Borrower now invites bids to provide the necessary works for the Project. More details on the services are provided in the Works Requirements (Section 6).

The Works and Procurement to be performed in this project are as below:

- Construction of Education Buildings and Facilities
  - Campus Core Building (three [3] Storied) with a gross floor area of 4,802 m²
  - Student Dormitory (six [6] Storied) with a gross floor area of 5,404m²
- Staff & Married Housing Building (five [5] Storied) with a gross floor area of 2,274m²
- Two [2] Faculty Housing Buildings (four [4] Storied) with a gross floor area of 4,997m²

- Supply and Installation of Educational and/or Research Equipment and Furniture
- Establishment of University ERP System and Digital Library System
- Estimated Construction Period: 24 months

5. Bidding will be conducted through Competitive Bidding (CB) procedures specified in the Guideline for Procurement under EDCF Loans and is open to all eligible bidders that meet the following minimum qualification criteria.

For all bidders
i. The bidder and all other parties constituting the bidder shall have the nationality of Republic of Korea
ii. All pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than fifty percent [50%] of the bidder’s net worth.
iii. Bidder’s net profit for the last three years [2016,2017,2018] shall be positive respectively

For construction firms
i. Minimum Average Annual Construction Turnover for the last three [3] years from 2016 to 2018 shall be more than USD 50,000,000 [Fifty Million US Dollars]
ii. Bidders shall demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the cash-flow requirement of USD 7,000,000 [Seven Million US Dollars]
iii. Bidders shall have at least one [1] General Building Construction contract successfully completed as a main contractor for the last five [5] years from the issuing date of IFB
iv. Bidders shall have at least one [1] Educational and/or Research Building Construction Contract successfully completed with a completion value of more than USD 20,000,000 [Twenty Million US Dollars] for the last ten [10] years from the issuing date of IFB
v. Bidders shall have at least one [1] Educational and/or Research Building Construction Contract successfully completed with a gross floor area of more than 20,000m² for the last ten [10] years from the issuing date of IFB

For educational and/or research equipment suppliers
i. Minimum average annual turnover of USD 10,000,000 [Ten Million US Dollars] calculated as total certified payments received for contracts in progress or completed, within the last three [3] years from 2016 to 2018.
ii. Bidders shall demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet the cash-flow requirement of USD 1,000,000 [One Million US Dollars]

6. Bidders shall have at least one [1] Contract as a Supplier for Educational and/or Research Equipment with a contract amount of more than USD 2,000,000 [Two Million US Dollars] for the last ten [10] years from the issuing date of IFB

7. Tender documents with detailed information may be viewed and downloaded from www.konza.go.ke website free of charge from Tuesday 10th March 2020 to Friday 8th May 2020. Bidders who download the tender document from the website will be required to email their detailed contact information to procurement@konza.go.ke for recording and to be issued with Bills of Quantities (BoQs), Equipment Specifications, Drawings, further clarifications and addenda. In addition, all addenda will also be posted on the website as they become available.

8. All questions/clarifications regarding the tender or offer of submission should be sent by email to procurement@konza.go.ke and copied to ceo@konza.go.ke by Thursday 16th April 2020 at 1700hrs local Kenyan time. No other email addresses shall be used, and Ministry of Education shall not be liable if bidders choose to send their information and/or enquiries to other email addresses. Interested bidders are required to attend a MANDATORY site visit scheduled for Thursday 2nd April 2020 at 11:00am, Kenya time at the Konza Complex Office in Konza Technopolis located along Nairobi- Mombasa Highway near Malili Township.

9. Bids must be delivered to the address below at or before 1200hrs on Friday 8th May, 2020. All bids must be accompanied by a bid security of USD 1,000,000 [One Million US Dollars]. Late bids shall be rejected. Bids will be opened in the presence of the Bidder’s representatives who choose to attend at the address below at 1200hrs on Friday 8th May 2020.

10. The Ministry of Education will not be responsible for any costs or expenses incurred by Bidders in connection with the preparation or delivery of Bids.

11. Tenderers shall submit One Original of all tender documents in plain sealed envelopes, with the Tender Number KAIST-KEN 4-001-2019-2020 clearly marked on the right-hand side corner and bearing no indication of the tenderer’s name and addressed to:

The Chief Executive Officer
Konza Technopolis Development Authority
P.O. Box 1 - 90150,
KONZA TECHNOPOLIS, KENYA.
E-Mail: procurement@konza.go.ke and ceo@konza.go.ke
Tel; +254-20-4343013/4

TENDER NO. KAIST-KEN 4-001-2019-2020
and placed in the KoTDA Tender Box on the 7th Floor of Konza Complex, KonzaTechnopolis, located along Nairobi - Mombasa road near Malili Township to reach the above address not later than Friday 8th May 2020 at 12.00pm local time.

Submitted bids will be opened publicly at the same venue shortly thereafter in the presence of the tenderers or their representatives who choose to attend.

Any form of canvassing will lead to automatic disqualification.

12. The Ministry of Education and KoTDA will not be responsible for any costs or expenses incurred by Bidders in connection with the preparation or delivery of Bids.

Please inform us in writing in the address [procurement@konza.go.ke], upon receipt:

(a) that you received the Letter of Invitation; and
(b) whether you will submit a proposal alone or in association.

Yours sincerely,

Amb. Simon Nabukwesi
PRINCIPAL SECRETARY
Ministry of Education
Government of The Republic of Kenya
PART 1 – BIDDING PROCEDURES
Section I. Instructions to Bidders
(Single-Stage, Two-Envelope Bidding Procedure)

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Section I. Instructions to Bidders
(Single-Stage, Two-Envelope Bidding Procedure)

A. General

1. Scope of Bid

1.1 In connection with the Invitation for Bids indicated in the Bid Data Sheet (BDS), the Employer, as indicated in the BDS, issues these Bidding Documents for the procurement of Works as specified in Section VI, Works Requirements. The name, identification, and number of lots (contracts) of the Competitive Bidding (CB) are provided in the BDS.

1.2 Throughout these Bidding Documents:

(a) the term “in writing” means communicated in written form and delivered against receipt;

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

(b) “day” means calendar day.

2. Source of Funds

2.1 The Borrower or Recipient (hereinafter called “Borrower”) indicated in the BDS has applied for or received financing (hereinafter called “funds”) from the Export-Import Bank of Korea (hereinafter called the “Bank”) toward the cost of the project named in the BDS. The Borrower intends to apply a portion of the funds to eligible payments under the contract(s) for which these Bidding Documents are issued.

2.2 Payments by the Bank will be made only at the request of the Borrower and upon approval by the Bank in accordance with the terms and conditions of Loan Agreement between the Borrower and the Bank (hereinafter called the Loan Agreement), and will be subject in all respects to the terms and conditions of that Loan Agreement. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds. The Loan Agreement prohibits a withdrawal from the loan account for the purpose of any payment to persons or entities, or for any import of goods, if such payment or import, to the knowledge of the Bank, is prohibited by decision of the Bank. No party other than the Borrower shall derive any rights from the Loan Agreement or have any claim to the funds.
3. Fraud and Corruption

3.1 It is the Bank’s policy to require that Borrowers (including beneficiaries of EDCF Loans), as well as bidders, suppliers, and contractors under contracts financed by EDCF Loans, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, the Bank:

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

(i) “corrupt practice” means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the procurement process or in contract execution; and

(ii) “fraudulent practice” means a misrepresentation or omission of facts in order to influence a procurement process or the execution of a contract

(b) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question;

(c) will declare a firm ineligible, for a period determined by the Bank, to be awarded a contract financed by an EDCF Loan if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract financed by an EDCF Loan

(d) shall recognize a firm as ineligible to be awarded a contract financed by an EDCF loan if the firm is debarred under the cross debarment decision by Multilateral Development Banks. Such period of ineligibility shall be equated to the debarment period decided by the Multilateral Development Banks. The Borrower shall confirm the eligibility of bidders, taking into account the decisions of MDBs.

3.2 Bidders (including all parties/partners and the Representative in case of JVA) shall submit the original signed form (with certificate of corporate seal registration) of the “Declaration of participation in EDCF financed projects” as attached in the last page of Section IV (Bidding Forms Following/Without Prequalification) to the Bank (see the address specified in the
BDS) by mail or in person at or before the Deadline for bid submission in the BDS and submit a copy of the original signed form to the Employer along with the Bid upon the submission of the Bid. Bidders who fail to submit the original signed form to the Bank and to include the copy of it in the Bid, as set forth above, shall not be substantially responsive subject to ITB Clause 30.

3.3 Furthermore, Bidders shall be aware of the provision stated in Sub-Clause 1.15 and Sub-Clause 15.6 of the General Conditions.

4. Eligible Bidders

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

(a) Unless otherwise specified in the BDS, all partners shall be jointly and severally liable for the execution of the Contract in accordance with the Contract terms, and

(b) the JVA shall nominate a Representative who shall have the authority to conduct all business for and on behalf of any and all the parties of the JVA during the bidding process and, in the event the JVA is awarded the Contract, during contract execution.

4.2 A Bidder, and all parties constituting the Bidder, shall have the nationality of any country as defined under the Guidelines; Guidelines for Procurement under the EDCF Loan (hereinafter referred to as the Guidelines), subject to the restrictions specified in Section V (Eligible Countries). A Bidder shall be deemed to have the nationality of a country if the Bidder is a citizen or is constituted, incorporated, or registered and operates in conformity with the provisions of the laws of that country. This criterion shall also apply to the determination of the nationality of proposed subcontractors or suppliers for any part of the Contract including related Services.

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

(a) they have controlling partners in common; or

(a) they receive or have received any direct or indirect subsidy
from any of them; or

(b) they have the same legal representative for purposes of this bid; or

(c) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about or influence on the bid of another Bidder, or influence the decisions of the Purchaser regarding this bidding process; or

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

(e) a Bidder participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the bid;

(f) a Bidder was affiliated with a firm or entity that has been hired (or is proposed to be hired) by the Employer or Borrower as Engineer for the contract.

4.4 A Bidder that has been determined to be ineligible by the Bank in relation to the Bank’s Guidelines on preventing and combating Fraud and Corruption in projects financed by EDCF loan, shall not be eligible to be awarded a contract.

4.5 Government-owned entities in the Employer’s country shall be eligible only if they can establish that they;

(a) are legally and financially autonomous,

(b) operate under commercial law, and

(c) are not a dependent agency of the Employer.

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

4.7 Bidders shall be excluded if the Borrower’s country prohibits any import of goods or contracting of Works or services from that country or any payments to persons or entities in that country.

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

5.2 For purposes of ITB 5.1 above, “origin” means the place where the materials and equipment are mined, grown, produced or manufactured, and from which the services are provided. Materials and equipment are produced when, through manufacturing, processing, or substantial or major assembling of components, a commercially recognized product results that is substantially in its basic characteristics or in purpose or utility from its components.

B. Contents of Bidding Document

6. Sections of Bidding Document

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

PART 1 Bidding Procedures

• Section I. Instructions to Bidders (ITB)
• Section II. Bid Data Sheet (BDS)
• Section III. Evaluation Criteria and Qualification Criteria
• Section IV. Bidding Forms
• Section V. Eligible Countries

PART 2 Works Requirements

• Section VI. Works Requirements

PART 3 Conditions of Contract and Contract Forms

• Section VII. General Conditions (GC)
• Section VIII. Particular Conditions (PC)
• Section IX. Annex to the Particular Conditions - Contract Forms

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

6.3 The Employer is not responsible for the completeness of the Bidding Documents and their addenda, if they were not
obtained directly from the source stated by the Employer in the Invitation for Bids.

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

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

7.1 A prospective Bidder requiring any clarification of the Bidding Document shall contact the Employer in writing at the Employer’s address indicated in the BDS or raise his inquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than twenty-one (21) days prior to the deadline for submission of bids. The Employer shall forward copies of its response to all Bidders who have acquired the Bidding Document in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. Should the Employer deem it necessary to amend the Bidding Document as a result of a request for clarification, it shall do so following the procedure under ITB 8 and ITB 22.2.

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

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

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

7.5 The Bidder is requested, as far as possible, to submit any questions in writing, to reach the Employer not later than one
7.6 Minutes of the pre-bid meeting, including the text of the questions raised, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Bidding Documents in accordance with ITB 6.3. Any modification to the Bidding Documents that may become necessary as a result of the pre-bid meeting shall be made by the Employer exclusively through the issue of an Addendum pursuant to ITB 8 and not through the minutes of the pre-bid meeting.

7.7 Mandatory site visit on 2nd April 2020 at 11:00 am. Nonattendance at the pre-bid meeting will lead to automatic disqualification of a Bidder. The schedule for the mandatory site visit might be changed depending on the circumstances of travel bans emerging from COVID-19 outbreak. Bidders are encouraged to nominate local representatives for the site meeting in case they are unable to get travel clearance to travel to the site on time.

8. Amendment of Bidding Document

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

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

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

C. Preparation of Bids

9. Cost of Bidding

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

10. Language of Bid

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

11. Documents Comprising the Bid

11.1 The Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in ITB 11.2 and the other the Price Bid containing the documents listed in ITB 11.3, both envelopes enclosed together in an outer single envelope.

11.2 The Technical Bid shall comprise the following:

(a) Letter of Technical Bid.
(b) Bid Security or Bid Securing Declaration, in accordance with ITB 19;
(c) alternative bids, if permissible, in accordance with ITB 13;
(d) written confirmation authorizing the signatory of the Bid to commit the Bidder, in accordance with ITB 20.2;
(e) documentary evidence in accordance with ITB 17 establishing the Bidder’s qualifications to perform the contract;
(f) Technical Proposal in accordance with ITB 16; and
(g) any other document required in the BDS.

11.3 The Price Bid shall comprise the following:

(a) Letter of Price Bid;
(b) completed Price Schedules, in accordance with ITB 12 and 14;
(c) alternative price bids, at Bidder’s option and if permissible, in accordance with ITB 13;
(d) Any other document required in the BDS.

11.4 In addition to the requirements under ITB 11.1, bids submitted by a JVA shall include a copy of the Joint Venture Agreement entered into by all partners. Alternatively, a Letter of Intent to execute a Joint Venture Agreement in the event of a successful bid shall be signed by all partners and submitted with the bid, together with a copy of the proposed agreement.
12. Letter of Bid, and Schedules

12.1 The Letter of Technical Bid and Price Bid, and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Bidding Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.2. All blank spaces shall be filled in with the information requested.

13. Alternative Bids

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

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

13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the bidding document must first price the Employer’s design as described in the bidding document and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the basic technical requirements shall be considered by the Employer.

13.4 When specified in the BDS, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the BDS, as will the method for their evaluating, and described in Section IV (Works Requirements).

14. Bid Prices and Discounts

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

14.2 The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder will not be paid for by the Employer when executed and shall be deemed covered by the rates for other items and prices in the Bill of Quantities.

14.3 The price to be quoted in the Letter of Price Bid, in accordance with ITB 12.1, shall be the total price of the Bid, excluding any discounts offered.
14.4 The Bidder shall quote any unconditional discounts and the methodology for their application in the Letter of Bid, in accordance with ITB 12.1.

14.5 Unless otherwise provided in the BDS and the Contract, the rates and prices quoted by the Bidder are subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data included in Section IV. (Bidding Forms) and the Employer may require the Bidder to justify its proposed indices and weightings. Price adjustment provisions are usually not necessary for simple contracts involving delivery of goods within about a year.

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

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

15. Currencies of Bid and Payment

15.1 The bidder shall quote the bid price in the currency specified in the BDS.

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

15.3 Notwithstanding ITB 15.1 above, a portion of the contract price may be stated in US Dollars within the amount of the Loan to be disbursed in US Dollars under the provisions of the Loan Agreement.
16. Documents Comprising the Technical Proposal

16.1 The Bidder shall furnish, as part of the Technical Bid, a Technical Proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV (Bidding Forms), in sufficient detail to demonstrate the adequacy of the Bidders’ proposal to meet the work requirements and the completion time.

17. Documents Establishing the Qualifications of the Bidder

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

18. Period of Validity of Bids

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

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

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

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

(b) In the case of adjustable price contracts, to determine the Contract price, the fixed portion of the bid price shall be adjusted by the factor specified in the BDS.

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

19.1 The Bidder shall furnish as part of its bid, either a bid securing declaration or a bid security as specified in the BDS, in original form and, in case of a bid security, in the amount and currency specified in the BDS.

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

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

(a) an unconditional bank guarantee issued by a bank or surety;

(a) an irrevocable letter of credit;

(b) a cashier’s or certified check; or

(c) another security indicated in the BDS

from a reputable source from the bidder's country. In the case of a bank guarantee, the bid security shall be submitted either using the Bid Security Form included in Section IV (Bidding Forms) or another form acceptable to the Employer. The form must include the complete name of the Bidder. The bid security shall be valid for twenty-eight (28) days beyond the original validity period of the bid, or beyond any period of extension if requested under ITB 18.2.

19.4 If a bid security is specified pursuant to ITB 19.1, any bid not accompanied by a substantially responsive bid security or Bid-Securing Declaration shall be rejected by the Employer as non responsive.

19.5 If a bid security is specified pursuant to ITB 19.1, the bid security of unsuccessful Bidders shall be returned as promptly as possible upon the successful Bidder’s furnishing of the performance security pursuant to ITB 40.

19.6 The bid security of the successful Bidder shall be returned as promptly as possible once the successful Bidder has signed the Contract and furnished the required performance security.
19.7 The bid security may be forfeited or the Bid Securing Declaration executed:

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 18.2 or

(a) if the successful Bidder fails to:

(i) sign the Contract in accordance with ITB 40; or

(ii) furnish a performance security in accordance with ITB 41.

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

19.9 If a bid security is not required in the BDS, and

(a) if a Bidder withdraws its bid during the period of bid validity specified by the Bidder on the Letter of Bid Form, except as provided in ITB 18.2, or

(b) if the successful Bidder fails to:

(i) sign the Contract in accordance with ITB 40; or

(ii) furnish a performance security in accordance with ITB 41;

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

20. Format and Signing of Bid

20.1 Bidders shall submit One (1) original soft copy in PDF file (or MS-word) for all of TECHNICAL BID in non-rerewriteable CDs and/or Flash disks, and Five (5) printed copies

In addition, One (1) soft copy in the form of PRICE BID (MS-excel, MS-word or PDF file type) in non-rerewriteable CDs and/or Flash disks, and Five (5) printed copies

In the event of any discrepancy between the original and the copies, the original shall prevail.

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

20.3 A bid submitted by a JVA shall comply with the following requirement;

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

(b) Include the Representative’s authorization referred to in ITB 4.1 (b), consisting of a power or attorney signed by those legally authorized to sign on behalf of the JVA.

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

D. Submission and Opening of Bids

21. Sealing and Marking of Bids

21.1 The Bidder shall enclose the original of the Technical Bid, the original of the Price Bid, and each copy of the Technical Bid and each copy of the Price Bid, in separate sealed envelopes, duly marking the envelopes as “ORIGINAL – TECHNICAL BID”, “ORIGINAL – PRICE BID” and “COPY NO… – TECHNICAL BID” and “COPY NO – PRICE BID.” These envelopes, the first containing the originals and the others containing copies, shall then be enclosed in one single envelope per set. If permitted in accordance with ITB 13, alternative bids shall be similarly sealed, marked and included in the sets.

21.2 The inner and outer envelopes shall:

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

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

(c) bear the specific identification of this bidding process indicated in the BDS 1.1;
Section I. Instructions to Bidders (Single-Stage, Two-Envelope Bidding Procedure)

21.3 The outer envelopes and the inner envelopes containing the Technical Bid shall bear a warning not to open before the time and date for the opening of Technical Bid, in accordance with ITB 25.1.

21.4 The inner envelopes containing the Price Bid shall bear a warning not to open until advised by the Employer in accordance with ITB 25.7.

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

22. Deadline for Submission of Bids

22.1 Bids must be received by the Employer at the address and no later than the date and time indicated in the BDS. When so specified in the BDS, bidders shall NOT have the option of submitting their bids electronically. [Not Applicable]

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

23. Late Bids

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

24. Withdrawal, Substitution, and Modification of Bids

24.1 A Bidder may withdraw, substitute, or modify its bid – Technical or Price - after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2, (except that withdrawal notices do not require copies). The corresponding substitution or modification of the bid must accompany the respective written notice. All notices must be:

(a) prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked “WITHDRAWAL,” “SUBSTITUTION,” “MODIFICATION;” and

(b) received by the Employer prior to the deadline prescribed for submission of bids, in accordance with ITB 22.

TENDER NO. KAIST-KEN 4-001-2019-2020
24.2 Bids requested to be withdrawn in accordance with ITB 24.1 shall be returned unopened to the Bidders.

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

25. Bid Opening

25.1 The Employer shall open the Technical bids in public at the address, date and time specified in the BDS in the presence of Bidders’ designated representatives and anyone who choose to attend. Any specific electronic bid opening procedures required if electronic bidding is permitted in accordance with ITB 22.1, shall be as specified in the BDS. The Price Bids and Bills of Quantities (BoQs) will remain unopened and will be held in custody of the Employer until Friday 8th May 2020 at 12:00pm local Kenya time. Submitted bids will be opened in the presence of bidders or their representatives who choose to attend in the Board Room of Konza Technopolis Development Authority (KoTDA) located on the 7th Floor of Konza Complex, Konza Technopolis, located along Mombasa road near Malili Township.

25.2 First, envelopes marked “WITHDRAWAL” shall be opened and read out and the envelope with the corresponding bid shall not be opened, but returned to the Bidder. No bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at bid opening.

25.3 Second, outer envelopes marked “SUBSTITUTION” shall be opened. The inner envelopes containing the Substitution Technical Bid and/or Substitution Price Bid shall be exchanged for the corresponding envelopes being substituted, which are to be returned to the Bidder unopened. Only the Substitution Technical Bid, if any, shall be opened, read out, and recorded. Substitution Price Bid will remain unopened in accordance with ITB 25.1. No envelope shall be substituted unless the corresponding Substitution Notice contains a valid authorization to request the substitution and is read out and recorded at bid opening.

25.4 Next, outer envelopes marked “MODIFICATION” shall be opened. No Technical Bid and/or Price Bid shall be modified unless the corresponding modification notice contains a valid authorization to request the modification and is read out and recorded at the opening of Technical bid.
Only the Technical Bids, both Original as well as Modification, are to be opened, read out, and recorded at the opening. Price Bids and Bills of Quantities (BoQs), both Original as well as Modification, will remain unopened in accordance with ITB 25.1

25.5 All other envelopes holding the Technical Bids shall be opened one at a time, and the following read out and recorded:

(a) the name of the Bidder;
(b) whether there is a modification or substitution;
(c) the presence of a bid security, if required; and
(d) any other details as the Employer may consider appropriate.

Only Technical Bids and alternative Technical Bids read out and recorded at bid opening shall be considered for evaluation. **If so required by the Employer in the BDS,** the letter of Bid and Bill of Quantities are to be initialed by representatives of the Employer attending bid opening in the manner indicated in the BDS. No bid shall be rejected at the opening of Technical Bids except for late bids, in accordance with ITB 23.1.

25.6 The Employer shall prepare a record of the opening of Technical Bids that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; alternative proposals; and the presence or absence of a bid security, if one was required. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

25.7 At the end of the evaluation of the Technical Bids, the Employer will invite bidders who have submitted substantially responsive Technical Bids and who have been determined as being qualified for award to attend the opening of the Price Bids. The date, time, and location of the opening of Price Bids will be advised in writing by the Employer. Bidders shall be given reasonable notice of the opening of Price Bids.

25.8 The Employer will notify Bidders in writing who have been rejected on the grounds of their Technical Bids being substantially non-responsive to the requirements of the
Bidding Document and return their Price Bids unopened.

25.9 The Employer shall conduct the opening of Price Bids of all Bidders who submitted substantially responsive Technical Bids, in the presence of Bidders’ representatives who choose to attend at the address, date and time specified by the Employer. The Bidder’s representatives who are present shall be requested to sign a register evidencing their attendance.

25.10 All envelopes containing Price Bids shall be opened one at a time and the following read out and recorded;

(a) The name of the Bidder;
(b) whether there is a modification or substitution;
(c) the Bid Prices, including any discounts and alternative offers; and
(d) any other details as the Employer may consider appropriate.

Only Price Bids discounts, and alternative offers read out and recorded during the opening of Price Bids shall be considered for evaluation. If so required by the Employer in the BDS, the letter of Bid and Bill of Quantities are to be initialed by representatives of the Employer attending bid opening in the manner indicated in the BDS. No Bid shall be rejected at the opening of Price Bids.

25.11 The Employer shall prepare a record of the opening of Price Bids that shall include, as a minimum: the name of the Bidder, the Bid Price (per lot if applicable), any discounts, and alternative offers. The Bidders’ representatives who are present shall be requested to sign the record. The omission of a Bidder’s signature on the record shall not invalidate the contents and effect of the record. A copy of the record shall be distributed to all Bidders.

E. Evaluation and Comparison of Bids

26. Confidentiality

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

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

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

27. Clarification of Bids

27.1 To assist in the examination, evaluation, and comparison of the Technical and Price Bids, the Employer may, at its discretion, ask any Bidder for a clarification of its bid. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer’s request for clarification and the response shall be in writing. No change in the substance of the Technical Bid or prices in the Pricing Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Price Bids, in accordance with ITB 33.

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

28. Deviations, Reservations, and Omissions

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

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

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

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

29. Preliminary Examination of Technical Bids

29.1 The Employer shall examine the Technical Bid to confirm that all documents and technical documentation requested in ITB 11.2 have been provided, and to determine the completeness of each document submitted.

29.2 The Employer shall confirm that the following documents and information have been provided in the Technical Bid. If any of these documents or information is missing, the offer
shall be rejected.

(a) Letter of Technical Bid;
(b) written confirmation of authorization to commit the Bidder;
(c) Bid Security, if applicable; and
(d) Technical Proposal in accordance with ITB 16.

30. Responsiveness of Technical Bid

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

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

(a) if accepted, would

(i) affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
(ii) limit in any substantial way, inconsistent with the Bidding Document, the Employer’s rights or the Bidder’s obligations under the proposed Contract; or

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

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

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

31. Nonmaterial Nonconformities

31.1 Provided that a bid is substantially responsive, the Employer may waive any nonconformities in the bid that do not constitute a material deviation, reservation or omission.

31.2 Provided that a Technical bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of
Section I. Instructions to Bidders (Single-Stage, Two-Envelope Bidding Procedure)

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

31.3 Provided that a Technical bid is substantially responsive, the Employer shall rectify nonmaterial nonconformities related to the Bid Price. To this effect, the Bid Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component. The adjustment shall be made using the method indicated in Section III (Evaluation and Qualification Criteria).

32. Qualification of Bidder

32.1 The Employer shall determine to its satisfaction during the evaluation of Technical Bids whether Bidder meet the qualifying criteria specified in Section III (Evaluation and Qualification Criteria).

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

32.3 An affirmative determination shall be a prerequisite for the opening and evaluation of a Bidder’s Price Bid. A negative determination shall result in disqualification of the bid, in which event the Employer shall return the unopened Price Bid to the Bidder.

33. Correction of Arithmetical Errors

33.1 During the evaluation of Price Bids, the Employer shall correct arithmetical errors on the following basis:

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

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

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

33.2 If the Bidder that obtained the highest score in Bid does not accept the correction of errors, its bid shall be disqualified.

34. Conversion to Single Currency

34.1 For evaluation and comparison purposes, the currency(ies) of the bid shall be converted into a single currency **as specified in the BDS**, using the selling exchange rates established by the source and on the date **specified in the BDS**.

* In the BDS, the specified exchange rate to be applied for evaluation shall be the exchange rate of telegraphic transfer selling rate notified by the KEB Hana Bank on the last banking day of the very previous month from the issuing date of IFB.

35. Evaluation of Price Bids

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

35.2 To evaluate the Price Bid, the Employer shall consider the following:

(a) the bid price, excluding Provisional Sums and the provision, if any, for contingencies in the Summary Bill of Quantities, but including Daywork items, where priced competitively;

(b) price adjustment for correction of arithmetic errors in accordance with ITB 33.1;

(c) price adjustment due to discounts offered in accordance with ITB 14.4;

(d) converting the amount resulting from applying (a) to (c) above, if relevant, to a single currency in accordance with ITB 34;

(e) adjustment for nonconformities in accordance with ITB 31.3;

(f) application of all the evaluation factors indicated in Section III (Evaluation and Qualification Criteria);

35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be taken into account in bid evaluation.
<table>
<thead>
<tr>
<th>Section</th>
<th>Instruction</th>
</tr>
</thead>
<tbody>
<tr>
<td>35.4</td>
<td>If these Bidding Documents allows Bidders to quote separate prices for different contracts, and the award to a single Bidder of multiple contracts, the methodology to determine the lowest evaluated price of the contract combinations, including any discounts offered in the Letter of Price Bid, is specified in Section III (Evaluation and Qualification Criteria).</td>
</tr>
<tr>
<td>35.5</td>
<td>If the bid, which results in the lowest Evaluated Bid Price, is seriously unbalanced or front loaded in the opinion of the Employer, the Employer may require the Bidder to produce detailed price analyses for any or all items of the Bill of Quantities, to demonstrate the internal consistency of those prices with the construction methods and schedule proposed. After evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.</td>
</tr>
<tr>
<td>36. Comparison of Bids</td>
<td>36.1 The Employer shall compare all substantially responsive bids to determine the lowest evaluated bid, in accordance with ITB 35.2.</td>
</tr>
<tr>
<td>37. Employer’s Right to Accept Any Bid, and to Reject Any or All Bids</td>
<td>37.1 The Employer reserves the right to accept or reject any bid, and to annul the bidding process and reject all bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.</td>
</tr>
<tr>
<td>38. Award Criteria</td>
<td>38.1 The Employer shall award the Contract to the Bidder whose offer has been determined to be the highest scored bid and is substantially responsive to the Bidding Document, provided further that the Bidder is determined to be qualified to perform the Contract satisfactorily.</td>
</tr>
</tbody>
</table>

**F. Award of Contract**
39. Notification of Award

39.1 Prior to the expiration of the period of bid validity, the Employer shall notify the successful Bidder, in writing, that its bid has been accepted. At the same time, the Employer shall also notify unsuccessful Bidders of the results of the bidding including the following information:

(a) name of each Bidder who submitted a Bid;

(b) bid prices as read out at Bid Opening;

(c) name and evaluated prices of each Bid that was evaluated;

(d) name of bidders whose bids were rejected and the reasons for their rejection; and

(e) name of the winning Bidder, and Price it offered, as well as the duration and summary scope of the contract awarded.

39.2 The Employer shall inform the bidders that any bidder who wishes to ascertain the grounds, on which its bid was not selected, shall request an explanation from the Employer after the award of contract. The Employer shall promptly provide an explanation of why such bid was not selected, either in writing and/or in a debriefing meeting, at the option of the Employer. The requesting bidder shall bear all the costs of attending such a debriefing.

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

40. Signing of Contract

40.1 Promptly after notification, the Employer shall send the successful Bidder the Contract Agreement.

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

41. Performance Security

41.1 Within twenty-eight (28) days of the receipt of notification of award from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions of Contract, subject to ITB 35.5, using for that purpose the Performance Security Form included in Section IX, Annex to the Particular Conditions - Contract Forms, or another form acceptable to the Employer.
41.2 Failure of the successful Bidder to submit the above-mentioned Performance Security or sign the Contract Agreement shall constitute sufficient grounds for the annulment of the award and forfeiture of the bid security. In that event the Employer may award the Contract to the next highest scored Bidder whose offer is substantially responsive and is determined by the Employer to be qualified to perform the Contract satisfactorily.
# Section II. Bid Data Sheet

## A. Introduction

<table>
<thead>
<tr>
<th>ITB 1.1</th>
<th>The number of the Invitation for Bids is: KEN-4</th>
</tr>
</thead>
<tbody>
<tr>
<td>ITB 1.1</td>
<td>The Employer is: The Ministry of Education</td>
</tr>
<tr>
<td>ITB 1.1</td>
<td>The name of the CB is: <strong>Establishment of Kenya Advanced Institute of Science and Technology Project</strong>&lt;br&gt;The identification number of the CB is: KEN-4</td>
</tr>
<tr>
<td>ITB 2.1</td>
<td>The Borrower is the National Treasury of the Republic of Kenya&lt;br&gt;The Project Executing Agency is the Ministry of Education&lt;br&gt;Chief Executive Officer&lt;br&gt;Konza Technopolis Development Authority&lt;br&gt;P.O. BOX 1- 90150&lt;br&gt;KONZA TECHNOPOLIS, KENYA&lt;br&gt;E-Mail: <a href="mailto:procurement@konza.go.ke">procurement@konza.go.ke</a> and <a href="mailto:ceo@konza.go.ke">ceo@konza.go.ke</a>&lt;br&gt;Tel; +254-20-4343013/4</td>
</tr>
<tr>
<td>ITB 2.1</td>
<td>The name of the Project is: <strong>Establishment of Kenya Advanced Institute of Science and Technology Project</strong></td>
</tr>
<tr>
<td>ITB 3.2</td>
<td>Address for the Bank:</td>
</tr>
<tr>
<td>ITB 4.1 (a)</td>
<td>Bidders are allowed to associate in the form of Joint Venture or, association (JVA) or consortium through written agreement.&lt;br&gt;The number of members in JVA or consortium is unlimited</td>
</tr>
</tbody>
</table>
## B. Bidding Documents

<table>
<thead>
<tr>
<th>ITB 7.1</th>
<th>For <strong>clarification purposes</strong> only, the Employer’s address is:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Chief Executive Officer</td>
</tr>
<tr>
<td></td>
<td>Konza Technopolis Development Authority</td>
</tr>
<tr>
<td></td>
<td>P.O.BOX 1 - 90150</td>
</tr>
<tr>
<td></td>
<td>KONZA TECHNOPOLIS, KENYA</td>
</tr>
<tr>
<td></td>
<td>E-Mail: <a href="mailto:procurement@konza.go.ke">procurement@konza.go.ke</a> and <a href="mailto:ceo@konza.go.ke">ceo@konza.go.ke</a></td>
</tr>
<tr>
<td></td>
<td>Tel; +254-20-4343013/4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ITB 7.4</th>
<th><strong>A Mandatory Pre-Bid meeting</strong> will take place at the following date, time and place:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Date: <strong>Thursday 2nd April 2020</strong></td>
</tr>
<tr>
<td></td>
<td>Time: <strong>11:00AM</strong></td>
</tr>
<tr>
<td></td>
<td>Place: Board Room of Konza Technopolis Development Authority (KoTDA) located on the 7th Floor of Konza Complex, Konza Technopolis, located along Nairobi-Mombasa Highway near Malili Township. Thereafter, a site tour/visit organized by the Employer will be conducted.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ITB 7.7</th>
<th>Due to the outbreak of COVID-19, the schedule for the mandatory pre-bid meeting might be changed if the situation gets more serious and Kenya imposes travel bans on visitors from Korea making it difficult to attend. This is just as a precaution but does not imply the Mandatory Pre-bid Meeting is rescheduled.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Bidders who will not be able to attend in person the pre-bid meeting due to COVID-19 outbreak, are encouraged to nominate local representatives to represent them in the mandatory pre-bid.</td>
</tr>
<tr>
<td></td>
<td>In case of a new schedule, Bidders will be informed through the contact information provided by bidders when they download the bidding documents as per the instructions.</td>
</tr>
</tbody>
</table>

## C. Preparation of Bids

<table>
<thead>
<tr>
<th>ITB 11.2 (g)</th>
<th>In case of Single-Stage, Two-Envelope Bidding Procedure.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Bidder shall submit with its Technical Bid the following additional documents:</td>
</tr>
<tr>
<td></td>
<td>1) Joint Venture or Consortium Agreement, Letter of Intent from Sub-Contractors if any</td>
</tr>
<tr>
<td></td>
<td>2) A Power of Attorney, duly authorized by a Notary Public, indication that</td>
</tr>
</tbody>
</table>
the person(s) signing the Bid have the authority to sign the Bid and thus that the Bid is binding upon the Bidder during the full period of its validity in accordance with ITB Clause 18;

3) A Power of Attorney, nominating one of the partners, responsible for performing the major scope of project, authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture or consortium during the Bidding process and entire execution for the Contract;

4) Copies of original documents defining the constitution or legal status, place of registration and principal place of business of the company or firm or partnership of each party thereto constituting the Bidder;

5) Audited Annual Report: Reports on the financial standing of each member of JV or Consortium such as profit and loss statements, balance sheets and auditor's reports for the past three years;

6) Certificates that proves the Bidder’s work and procurement experience as required and specified in Section III. Evaluation and Qualification Criteria

7) Certificates that proves the Key personnel’s work experience as required and specified in Section III. Evaluation and Qualification Criteria

For educational and/or research equipment supply, bidders shall submit the certificates that prove its contract amount and similarity of procurement as required in Section III. Evaluation and Qualification Criteria

Bidders for supply of educational and/or research equipment shall submit warranty certificates of main equipment and ERP system.

8) Original Letter of Intent or Memorandum of Understanding for the subcontract agreement between the Bidder and local partners (construction and/or educational and/or research equipment) if any;

9) Documents as the evidence of the bidder’ applied quality, safety, and environmental management system: ISO 9001, ISO14001, and/or equivalent certificates if any;

10) Documents that prove the Bidder shall own, or have assumed access (through hire, lease, purchase agreement, other commercial means, or approved subcontracting) to key items of equipment, in full working order, and must demonstrate that based on known commitments, they will be available for timely use in the proposed contract.
11) Project Management Organization with the Curriculum vitae of key personnel of the Bidder for the proposed for administration and execution of the contract, both on and off site

12) Information regarding any current litigation in which the Bidder is involved

13) Maintenance Services Plan of Equipment for covering two (2) years after completion of the acceptance test, which meets the requirements specified in Section VI. Works Requirements. The Plan shall include the method how to perform the warranty and maintenance services, such as subcontracting with local service provider who has similar experience in maintenance services for the educational and research equipment after signing the Contract or setting up the maintenance service office or center in the Employer’s country. And a description (with supporting documents as necessary) of the service facilities of the likely maintenance and spare parts that will be required in service of the equipment specified in Section VI. Works of Requirement, and how the maintenance will be undertaken and spare part supplied (including list of technical staff with appropriate certificates, service network, facilities)

14) The evidence to establish the eligibility (country of origin declarations) of the equipment as a list of origin it offers to supply

15) Detailed Implementation Schedule including construction works, delivery, installation and testing schedule for the equipment

16) Acknowledgement of Addendum, if any Addendum issued.

17) Any other materials required to be completed and submitted in accordance with the bidding documents.

| ITB 13.1 | Alternative bids shall not be permitted. |
| ITB 13.2 | Alternative times for completion shall not be permitted. |
| ITB 13.4 | Alternative technical solutions shall not be permitted. |
| ITB 15.1 | The bid price shall be stated in US Dollars. However, the contract price shall be stated in Korean Won converted by using the exchange rate which is the average of the telegraphic transfer selling rates on the Korean Won against the US Dollar as quoted and publicly displayed by the Bank, during the one month period from the sixteenth (16th) day of two calendar months prior to the month when the contract is signed, to the fifteen (15th) day of one calendar month prior thereto. |
| ITB 18.1 | The bid validity period shall be 180 days. |
| ITB 18.3 (a) | The bid price shall be adjusted by the following factor(s): Not Applicable |
| ITB 18.3 (b) | The fixed portion of the bid price shall be adjusted by the following factor(s): Not Applicable |
| ITB 19.1 | A bid security shall be required.  
A Bid-Securing Declaration shall not be required.  
The amount of bid security: USD 1,000,000 [One Million US Dollars] |
| ITB 19.3 (d) | A bid security shall be issued by the reputable banks located in Bidder’s Country |
| ITB 20.1 | Bidders shall submit its Technical and Price Bids Separately  
For Technical Bids:  
Bidders shall submit One (1) original soft copy in PDF file (or MS-word) for all of TECHNICAL BID in non-rewriteable CDs and/or Flash disks, and Five (5) printed copies.  
For Price Bids:  
In addition, One (1) original soft copy in the form of PRICE BID (MS-excel, MS-word or PDF file type) in non-rewriteable CDs and/or Flash disks and Five (5) printed copies.  
If there is discrepancy between the Original and Copy, the Original one shall prevail. |
| ITB 20.2 | The written confirmation of authorization to sign on behalf of the Bidder shall consist of:  
Power of Attorney which demonstrates that the signatory is dully authorized to sign the bid on behalf of the bidder.  
Power of Attorney shall be signed and stamped by the representatives. |

**D. Submission and Opening of Bids**

| ITB 22.1 | For **bid submission purposes** only, the Employer’s address is:  
The Chief Executive Officer  
Konza Technopolis Development Authority  
7th Floor Konza Complex, Konza Technopolis  
P.O. Box 1 – 90150,  
KONZA TECHNOPOLIS, KENYA  
E-Mail: procurement@konza.go.ke and ceo@konza.go.ke |
Submitted bids will be placed in the KoTDA Tender Box on the 7th Floor of Konza Complex, Konza Technopolis, located along Nairobi - Mombasa road near Malili Township to reach the above address not later than Friday 8th May 2020 at 12.00pm local time.

The submitted bids will be opened publicly at the same venue shortly thereafter in the presence of the tenderers or their representatives who choose to attend.

**The deadline for bid submission is:**
Date: Friday 8th May 2020
Time: 12:00hrs

Bidders shall not have the option of submitting their bids electronically.

| ITB 25.1 | The bid opening shall take place at:
| Street Address: The Chief Executive Officer
| Konza Technopolis Development Authority
| 7th Floor Konza Complex, Konza Technopolis
| P.O. Box 1 – 90150,
| KONZA TECHNOPOLIS. KENYA
| E-Mail: procurement@konza.go.ke and ceo@konza.go.ke
| Tel; +254-20-4343013/4
| Floor/Room number: 7th Floor, Konza Complex, Main Board Room
| City: Konza Technopolis, located on Mombasa road near Malili township
| Country: Kenya
| Date: Friday 8th May 2020
| Time: 12:00hrs or 12:00PM

The Price Bids and Bills of Quantities (BoQs) will remain unopened and will be held in custody of the Employer.

| E. Evaluation, and Comparison of Bids | The currency that shall be used for bid evaluation and comparison purposes to convert all bid prices expressed in various currencies into a single currency is: US Dollars
Indicate the exchange rate…consider to use the exchange rate indicated in 3.2.2 of Section III. Evaluation and Qualification Criteria
Section III. Evaluation and Qualification Criteria (Without Prequalification)

1. Evaluation
   1.1 Adequacy of Technical Proposal
   1.2 Multiple Contracts
   1.3 Completion Time
   1.4 Technical Alternative
   1.5 Quantifiable Deviation and Omissions (In case of Single-Stage Two-envelope)

1.6 Evaluation Forms
   1.6.1 Form-1; Completeness of Bid Documents
   1.6.2 Form-2; Substantive Responsiveness of Bids

2. Qualification
   2.1 Eligibility
      2.1.1 Nationality
      2.1.2 Conflict of Interest
      2.1.3 EDCF Eligibility
      2.1.4 Government-owned Entity

2.2 Pending Litigation
   2.2.1 Pending Litigation

2.3 Financial Situation
   2.3.1 Historical Financial Performance
   2.3.2 Average Annual Turnover
   2.3.3 Financial Resources

2.4 Experience
   2.4.1 General Construction Experience
   2.4.2 Specific Construction Experience
      (A) Number of Similar Contracts over the amount
      (B) Number of Similar Contracts in key activates
      (C) Number of Similar Contracts over the amount

2.5 Personnel

2.6 Equipment

3. Technical Bid Evaluation

TENDER NO. KAIST-KEN 4-001-2019-2020
1. Evaluation

Given the difficulties inherent in the evaluation process and in the preparation of complete, accurate and concise Bid Evaluation Report, the Employer shall evaluate and compare Bids in accordance with the guidance for bid evaluation form as attached;

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

1.1 Adequacy of Technical Proposal

Evaluation of the Bidder's Technical Proposal will include an assessment of the Bidder's technical capacity to mobilize key equipment and personnel for the contract consistent with its proposal regarding work methods, scheduling, and material sourcing in sufficient detail and fully in accordance with the requirements stipulated in Section VI. (Work's Requirements)

1.2 Multiple Contracts

Not Applicable

1.3 Completion Times

An alternative Completion Time, if permitted under ITB 13.2, will be evaluated as follows: Not Applicable

1.4 Technical alternatives

Technical alternatives, if permitted under ITB 13.4, will be evaluated as follows: Not Applicable

1.5 Quantifiable Deviation and Omissions

The evaluated cost of quantifiable deviations and/or omissions is determined as follows:

i. The cost of minor omissions or missing items in the scope of Works will be added to the bid price by the executing agency, employer, engineer, consultants or bid evaluation committee, taking into consideration the corresponding quoted prices from other bids

   The price of the omitted item shall be equal to the highest price quoted for the same item by the other bidders.
ii. In case of a deviation in the quantity of items offered compared to that required by the Purchaser, the quantity shall be adjusted to that required by the Purchaser. The unit bid price to correspond to the total quantity required by the Purchaser.

iii. If the price of an offered item is left blank, the price of such item shall be assumed to be included in total bid price.
iv. 1.6 Evaluation Forms

**Form-1; COMPLETENESS OF BID DOCUMENTS**

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
<th>Bidder No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td><strong>Bid Documents</strong></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>Bidders shall submit one (1) soft copy in PDF file (or MS-word) for all of TECHNICAL BID in non-rewriteable CDs and/or Flash disks and Five (5) printed copies. In addition, One (1) soft copy in the form of PRICE BID (MS-excel, MS-word or PDF file type) in non-rewriteable CDs and/or Flash disks and Five (5) printed copies.</td>
<td></td>
</tr>
<tr>
<td>1.2</td>
<td><strong>Form of Bid</strong></td>
<td></td>
</tr>
<tr>
<td>1.3</td>
<td><strong>Appendix to Bid</strong></td>
<td></td>
</tr>
<tr>
<td>1.4</td>
<td><strong>Bid Security</strong></td>
<td></td>
</tr>
<tr>
<td>1.5</td>
<td><strong>Tax Compliance Certificate and/or Clearance for the last 3 years (2016-2018)</strong> (Supporting Document from Tax Service Agency in Bidder’s Country)</td>
<td></td>
</tr>
<tr>
<td>1.7</td>
<td><strong>Drawings and Documents (to be submitted with bid)</strong></td>
<td></td>
</tr>
</tbody>
</table>
Section III. Evaluation and Qualification Criteria (Without Prequalification)

<table>
<thead>
<tr>
<th>1.8</th>
<th>1) Joint Venture Agreement (if Bidder is a joint venture)</th>
<th>2) Manufacturer’s Authorization¹</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>2</th>
<th><strong>Propriety of Signature and Completeness</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>Power of Attorney submitted or not</td>
</tr>
<tr>
<td>2.2</td>
<td>Bid Form properly signed or not</td>
</tr>
<tr>
<td>2.3</td>
<td>Completeness of Bids</td>
</tr>
<tr>
<td>2.4</td>
<td>Declaration of participation in Economic Development Cooperation Fund (EDCF) financed projects</td>
</tr>
</tbody>
</table>

**Note:**

Y=Yes; N=No; P=Partial; NA=Not Applicable

1) Bidders shall submit the Manufacturer’s Authorization (List of Equipment Required Manufacturer's Authorization) using the form included in Section IV.

Manufacturer’s Authorization shall be issued by Manufacture Company or Authorized supplier/vendor certified by Manufacturer Company.

Notes:

A. The above criteria will be evaluated on a “Yes or “No” Basis.

B. A technical proposal shall be disqualified if it has a “No” in anyone of the above criteria.
### Form-2; SUBSTANTIVE RESPONSIVENESS OF BIDS

<table>
<thead>
<tr>
<th>No.</th>
<th>Requirements</th>
<th>Bidding Doc. Reference</th>
<th>Bidder No. (Example)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Power of Attorney</td>
<td>Section 1, ITB 20</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Signature on Documents</td>
<td>Section 1, ITB 11 &amp; 20</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Joint Venture Agreement</td>
<td>Section 1, ITB 4 &amp; 11</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Eligibility</td>
<td>Section 1, ITB 4 &amp; 5</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Bidder &amp; Sub-Contractor</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Bidder Affiliated with Consultant</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Material &amp; Equipment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Bid Validity (120 days)</td>
<td>Section 1, ITB 18</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Bid Security</td>
<td>Section 1, ITB 19</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Amount and Validity</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Format and Terms</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Time for Completion</td>
<td>Section 1, ITB 13 &amp; 16</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Terms of Payment</td>
<td>Section 8, ITB 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Advance Payment (20 %)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Retention Money (5 %)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(c) Price Adjustment</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Liquidated Damages</td>
<td>Section 8, ITB 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Rate (0.03% per day)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Maximum Limit (5%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Defect Liability Period</td>
<td>Section 8, ITB 14</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(12 months for construction)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(24 months for educational and/or research equipment)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Performance Security</td>
<td>Section 1, ITB 40</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(10 %)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**FINDINGS**

**Note:**  C = Complied, NA = Not Applicable, PC = Partially Complied
R = Substantially Responsive NC = Not Complied

A. The above criteria will be evaluated on a “Complied” or “Not Complied” Basis.
B. A technical proposal shall be disqualified if it has a “Not Complied” in anyone of the above criteria.
2. Qualification

2.1 Eligibility

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Compliance Requirements</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Single Entity</td>
<td>Joint Venture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Partners Combined</td>
</tr>
<tr>
<td>Nationality</td>
<td>must meet requirement</td>
<td>existing or intended JVA must meet requirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conflict of Interest</td>
<td>must meet requirement</td>
<td>existing or intended JVA must meet requirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government-owned Entity</td>
<td>must meet requirement</td>
<td>existing or intended JVA must meet requirement</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2.1.1 Nationality
Nationality in accordance with ITB 4.2. must meet requirement existing or intended JVA must meet requirement must meet requirement not applicable Forms ELI-1; ELI-2 with attachments

2.1.2 Conflict of Interest
No conflicts of interest in accordance with ITB 4.3. must meet requirement existing or intended JVA must meet requirement must meet requirement not applicable Letter of Bid

2.1.3 EDCF Eligibility
Not having been declared ineligible by the Bank, as described in ITB 4.4. must meet requirement existing or intended JVA must meet requirement must meet requirement not applicable Letter of Bid

2.1.4 Government-owned Entity
Not Applicable
2.2 Pending Litigation

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Compliance Requirements</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Single Entity</td>
<td>Joint Venture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Partners Combined</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

2.2.1 Pending Litigation

All pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than fifty percent (50%) of the Bidder's net worth.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Compliance Requirements</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>must meet requirement</td>
<td>not applicable</td>
</tr>
</tbody>
</table>
2.3 **FINANCIAL SITUATION**

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Compliance Requirements</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Single Entity</td>
<td>Joint Venture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Partners</td>
</tr>
</tbody>
</table>

2.3.1 **HISTORICAL FINANCIAL PERFORMANCE**

Submission of audited balance sheets or, if not required by the law of the Bidder’s country, other financial statements acceptable to the Employer, for the last three [3] years to demonstrate the current soundness of the Bidders financial position and its prospective long-term profitability. As a minimum, a Bidder’s net worth for the last three [3] years from 2016 to 2018 shall be positive respectively

**Last 3 years: 2016, 2017, 2018**

* The financial information provided by a Bidder should be reviewed in its entirety to allow a truly informed judgment, and the pass-fail decision on the financial position of the Bidder should be given on this basis. Any abnormal features which may lead to financial problems should alert the Employer to seek expert professional advice for further review and interpretation.

2.3.2 **AVERAGE ANNUAL TURNOVER**

For construction firms

Minimum average annual construction turnover of USD 50,000,000 [Fifty Million US Dollars] calculated as total certified payments received for contracts in progress or completed, within the last three [3] years.

**Last 3 years: 2016, 2017, 2018**

For educational and/or research equipment suppliers

Minimum average annual turnover of USD 10,000,000 [Ten Million US Dollars] calculated as total certified payments received for contracts in progress or completed, within the last three [3] years.

**Last 3 years: 2016, 2017, 2018**

* TENDER NO. KAIST-KEN 4-001-2019-2020
### 2.3.3 Financial Resources

Using Forms FIN – 3 and FIN - 4 in Section 4 (Bidding Forms) the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments to meet:

- **For construction firms**
  - (1) the following cash-flow requirement, USD 7,000,000 [Seven Million US Dollars], and
  - (2) the overall cash flow requirements for this contract and its current works commitment.

- **For educational and/or research equipment suppliers**
  - (1) the following cash-flow requirement, USD 1,000,000 [One Million US Dollars], and
  - (2) the overall cash flow requirements for this contract and its current works commitment.

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Must Meet Requirement</th>
<th>Must Meet Twenty Five percent [25%] of the Requirement</th>
<th>Must Meet Forty percent [40%] of the Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Firms</td>
<td>must meet requirement</td>
<td>must meet Twenty Five percent [25%] of the requirement</td>
<td>must meet Forty percent [40%] of the requirement</td>
</tr>
<tr>
<td>Educational and/or Research Equipment Suppliers</td>
<td>must meet requirement</td>
<td>must meet Twenty Five percent [25%] of the requirement</td>
<td>must meet Forty percent [40%] of the requirement</td>
</tr>
</tbody>
</table>

- **Form FIN – 3**
- **Form FIN – 4**
### 2.4 EXPERIENCE

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Compliance Requirements</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requirement</td>
<td>Single Entity</td>
<td>Joint Venture</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Partners Combined</td>
</tr>
</tbody>
</table>

#### 2.4.1 GENERAL CONSTRUCTION EXPERIENCE

For construction firms

<table>
<thead>
<tr>
<th>Experience</th>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>At least one [1] general building construction contract successfully completed as a main contractor for the last five [5] years from the issuing date of IFB</td>
<td>must meet requirement</td>
<td>N/A</td>
<td>must meet requirement</td>
<td>N/A</td>
</tr>
</tbody>
</table>

#### 2.4.2 SPECIFIC EXPERIENCE

For construction firms

<table>
<thead>
<tr>
<th>Experience</th>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) Number of Similar Contracts over the amount At least one [1] *education and/or research building construction contract successfully completed with a completion value of more than USD 20,000,000 for the last ten [10] years from the issuing date of IFB</td>
<td>must meet requirement</td>
<td>N/A</td>
<td>not applicable</td>
<td>must meet requirement</td>
</tr>
<tr>
<td>(B) Number of Similar Contracts in key activities At least one [1] education and/or research building construction Contract successfully completed with a gross floor area of more than 20,000m² for the last ten [10] years from the issuing date of IFB</td>
<td>must meet requirement</td>
<td>N/A</td>
<td>not applicable</td>
<td>must meet requirement</td>
</tr>
</tbody>
</table>

For educational and/or research equipment suppliers

<table>
<thead>
<tr>
<th>Experience</th>
<th>Requirement</th>
<th>Single Entity</th>
<th>Joint Venture</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>(C) Number of Similar Contracts over the amount At least one [1] contract as a supplier for educational and/or research equipment with a contract amount of more than USD 2,000,000 for the last ten [10] years from the issuing date of IFB</td>
<td>must meet requirement</td>
<td>N/A</td>
<td>not applicable</td>
<td>must meet requirement</td>
</tr>
</tbody>
</table>

*education and/or research building construction refers to Educational/University/Research Buildings; Classrooms, Hostels/Dormitories, Research Laboratories, Administration Blocks, Staff Residential houses/Apartments, Tenement houses, Multi household residences among others.

- In case the bidder forms a JVA in accordance with ITB 4.1, the number of projects shall be summed up regardless of the shareholding ratio. The shareholding ratio shall be mentioned in the Information Sheet.

TENDER NO. KAIST-KEN 4-001-2019-2020
- If a bidder or, in case of JVA, any partner of the JVA conducted a project as a member of JVA, i) the completion value, ii) Gross Floor Area shall be evaluated after multiplying pro rata to the shareholding ratio of such project, and the number of projects shall be summed up regardless of the shareholding ratio of participation in the bidding.

In case i) the completion value, ii) Gross Floor Area of each project after multiplying pro rata to the shareholding ratio are more than i) USD 20,000,000, ii) more than 20,000m², the number of projects shall be evaluated as one (1) project, if not, it shall not be considered.

Ex) If a bidder participating in this bidding with a shareholding ratio of 45% has completed such Education and/or Research Building Construction (completion value is 50,000,000 USD) with a shareholding of 80%, then its completion value will be evaluated as 40,000,000 USD and counted as one (1) project for Criteria 2.4.2 (A) regardless of its shareholding ratio of 45%.

- The Bidder shall submit the evidence (or certificate) of experience issued by its clients or authorities with notarized copy of related contract and/or other documents which can prove the similarity of its scope of work. Detailed description of actual activities/services must be included. If the submitted experience that was performed by the bidder as a member of JVA, the total value (amount), shareholding ratio of bidder, bidder’s value(amount) and detailed scope of work that the bidder implemented, shall be specified in the evidence. If the evidence is not written in English, the notarized translation of the evidence into English shall be submitted together.
2.5 PERSONNEL

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

**For Construction**

<table>
<thead>
<tr>
<th>No.</th>
<th>Position</th>
<th>Total Work Experience(^1) (years)</th>
<th>Experience in Similar Work(^2) (years)</th>
<th>Overseas Experience(^3) (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Project Manager</td>
<td>15</td>
<td>5</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>Engineer / Architectural Work</td>
<td>10</td>
<td>5</td>
<td>N/A</td>
</tr>
<tr>
<td>3</td>
<td>Engineer / Electrical Work</td>
<td>10</td>
<td>5</td>
<td>N/A</td>
</tr>
<tr>
<td>4</td>
<td>Engineer / Mechanical Work</td>
<td>10</td>
<td>5</td>
<td>N/A</td>
</tr>
<tr>
<td>5</td>
<td>QA/QC Engineer</td>
<td>5</td>
<td>3</td>
<td>N/A</td>
</tr>
</tbody>
</table>

1) Total Work Experience means professional activities for general building construction.
2) Similar Work Experience means assignment activities for Education and/or Research Building Construction
3) Overseas Experience means any construction building project implemented out of bidder’s country of origin

**For educational and/or research equipment supply**

<table>
<thead>
<tr>
<th>No.</th>
<th>Position</th>
<th>Total Work Experience (years)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Equipment Provision Project Leader (Equipment PM)</td>
<td>10(^1)</td>
</tr>
<tr>
<td>2</td>
<td>Educational and/or Research Equipment/Facilities Expert</td>
<td>10(^2)</td>
</tr>
<tr>
<td>3</td>
<td>ERP System Expert</td>
<td>5(^3)</td>
</tr>
<tr>
<td>4</td>
<td>Digital Library System Expert</td>
<td>5(^4)</td>
</tr>
</tbody>
</table>

1) Total Work Experience means professional activities for the provision of educational and/or research equipment.
2) Total Work Experience means professional activities relevant to educational and/or research equipment/facilities.
3) Total Work Experience means professional activities for ERP system establishment and/or development(improvement) projects.
4) Total Work Experience means professional activities for Digital Library system establishment and/or development(improvement) projects.

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

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

**List of Construction Equipment**

<table>
<thead>
<tr>
<th>No.</th>
<th>Equipment Type and Characteristics</th>
<th>Min. Number required</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Dump Truck (15 tons)</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td>Tower Crane (60 m 10 tons)</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>Excavator ($2m^3$)</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Construction Lift (1 ton)</td>
<td>2</td>
</tr>
<tr>
<td>5</td>
<td>Generator (150kW)</td>
<td>2</td>
</tr>
<tr>
<td>6</td>
<td>Fork Lift (8 tons)</td>
<td>2</td>
</tr>
<tr>
<td>7</td>
<td>Concrete Pump Car (50m$^3$/hr)</td>
<td>2</td>
</tr>
<tr>
<td>8</td>
<td>Water Truck (3,000 liter)</td>
<td>2</td>
</tr>
</tbody>
</table>

The Bidder shall provide further details of proposed items of equipment using the relevant Form in Section IV, Bidding Forms.

The Bidder shall own, or have assumed access (through hire, lease, purchase agreement, other commercial means, or approved subcontracting) to key items of equipment, in full working order, and must demonstrate that based on known commitments, they will be available for timely use in the proposed contract.

**Note**

An inventory of construction equipment represents a high capital cost overhead to a contractor. Consequently, not all competent potential bidders will maintain an inventory of high-value items that are in suitable condition for major contracts. This is particularly so with management contractors, who undertake construction projects mainly by subcontracting. In most cases Bidders can readily purchase, lease, or hire equipment; thus, it is usually unnecessary for the assessment of a contractor's qualification to depend on the contractor's owning readily available items of equipment. The pass–fail criteria adopted should therefore be limited only to those bulky or specialized items that are critical for the type of project to be implemented, and that may be difficult for the contractor to obtain quickly. Examples may include items such as heavy lift cranes and piling barges, dredgers, tunnel boring machines, asphalt mixing plants, etc. Even in such cases, contractors may not own the specialized items of equipment, and may rely on specialist subcontractors or equipment–hire firms. The availability of such subcontractors and of the specified equipment should be subject to verification prior to contract award. The terms of any lease or hire agreement for equipment should preferably include a provision that the equipment will remain on the site (or be vested in the Employer) in the event of default of the Contractor, thereby ensuring more timely continuity of work by a replacement contractor.
List of Educational /or Research Equipment Required Manufacture’s Authorization

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>K043</td>
<td>Digital Light process (DLP) 3D Printer</td>
</tr>
<tr>
<td>K072</td>
<td>Electro Discharge Machine (EDM)</td>
</tr>
<tr>
<td>K074</td>
<td>Lathe Machine</td>
</tr>
<tr>
<td>K073</td>
<td>Milling Machine</td>
</tr>
<tr>
<td>K093</td>
<td>Gas Chromatography (GC)</td>
</tr>
<tr>
<td>K091</td>
<td>High-performance liquid chromatography (HPLC)</td>
</tr>
<tr>
<td>K092</td>
<td>GPC (Gel Permeation Chromatography)</td>
</tr>
<tr>
<td>K094</td>
<td>Micro element analyzer (Carbon Nitrogen Analyzer)</td>
</tr>
<tr>
<td>K106</td>
<td>Geo Triaxial Testing System</td>
</tr>
<tr>
<td>K121</td>
<td>Universal Testing Machine</td>
</tr>
<tr>
<td>K137</td>
<td>Oscilloscope (2.5GHz)</td>
</tr>
<tr>
<td>K138</td>
<td>Oscilloscope (8GHz)</td>
</tr>
<tr>
<td>K151</td>
<td>Spectrum Analyzer</td>
</tr>
<tr>
<td>K145</td>
<td>Function Generator</td>
</tr>
<tr>
<td>K152</td>
<td>Power Analyzer</td>
</tr>
<tr>
<td>K148</td>
<td>Frequency Counter</td>
</tr>
<tr>
<td>K147</td>
<td>Wave Generator</td>
</tr>
<tr>
<td>K153</td>
<td>Collaborative Robot</td>
</tr>
<tr>
<td>K082</td>
<td>Rotatory Evaporator</td>
</tr>
<tr>
<td>K206</td>
<td>Field Emission Scanning Electron Microscope System (FE-SEM)</td>
</tr>
<tr>
<td>K207</td>
<td>Liquid Chromatograph-Mass Spectrometer (LC-MS)</td>
</tr>
<tr>
<td>K208</td>
<td>Gas Chromatograph-Mass Spectrometer (GC-MS)</td>
</tr>
<tr>
<td>K209</td>
<td>X-ray Photoelectron Spectroscopy (XPS)</td>
</tr>
<tr>
<td>K202</td>
<td>Fourier-Transform Infrared spectrometer (FT-IR)</td>
</tr>
<tr>
<td>K200</td>
<td>Inductive Coupled Plasma Optical Emission Spectrometer (ICP-OES)</td>
</tr>
<tr>
<td>K205</td>
<td>X-Ray Diffractometer (XRD)</td>
</tr>
<tr>
<td>K201</td>
<td>Differential Scanning Calorimeter (DSC)</td>
</tr>
<tr>
<td>K203</td>
<td>Thermogravimetric Analyzer (TGA)</td>
</tr>
<tr>
<td>K244</td>
<td>Coating Machine</td>
</tr>
<tr>
<td>K245</td>
<td>Grinding Machine A</td>
</tr>
</tbody>
</table>
Section III. Evaluation and Qualification Criteria (Without Prequalification)

<table>
<thead>
<tr>
<th>Item No.</th>
<th>Item</th>
</tr>
</thead>
<tbody>
<tr>
<td>K246</td>
<td>Grinding Machine B</td>
</tr>
<tr>
<td>K247</td>
<td>Up-right Drilling &amp; Tapping Machine</td>
</tr>
<tr>
<td>K248</td>
<td>Universal Cylindrical Grinding Machine</td>
</tr>
</tbody>
</table>

<<Note>>

Bidders shall submit the Manufacturer’s Authorization (List of Equipment Required Manufacturer's Authorization) using the form included in Section IV. Manufacturer’s Authorization shall be issued by the Manufacture Company or Authorized supplier.
3. Technical Bid Evaluation

3.1 Criteria for Technical Evaluation

The evaluation shall be implemented based on the criteria indicated herewith, and detailed information on the criteria shall be provided.

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Technical Solution</strong></td>
<td></td>
</tr>
<tr>
<td>a) Project understanding and approach &amp; methodology for works</td>
<td>10</td>
</tr>
<tr>
<td>b) Measures of work schedule and mobilization</td>
<td>10</td>
</tr>
<tr>
<td>c) Quality assurance and staffing schedule for work performance</td>
<td>10</td>
</tr>
<tr>
<td>d) Overall implementation plan of equipment supplies include technology transfer, warranty &amp; maintenance.</td>
<td>15</td>
</tr>
<tr>
<td><strong>2. Number of similar work experience</strong></td>
<td></td>
</tr>
<tr>
<td>For construction firms</td>
<td></td>
</tr>
<tr>
<td>a) Management Status</td>
<td>2</td>
</tr>
<tr>
<td>b) Project Experience</td>
<td>26</td>
</tr>
<tr>
<td>The number of similar contracts over the amount</td>
<td>8</td>
</tr>
<tr>
<td>The number of similar contracts in key activities</td>
<td>8</td>
</tr>
<tr>
<td>The number of contracts in similar conditions</td>
<td>10</td>
</tr>
<tr>
<td>For educational and/or research equipment suppliers</td>
<td></td>
</tr>
<tr>
<td>c) Management Status</td>
<td>2</td>
</tr>
<tr>
<td>d) Project Experience</td>
<td>10</td>
</tr>
<tr>
<td>The sum of amount of similar contracts</td>
<td>5</td>
</tr>
<tr>
<td>The number of similar contracts over the amount</td>
<td>5</td>
</tr>
<tr>
<td><strong>3. Key personnel</strong></td>
<td>15</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100</td>
</tr>
</tbody>
</table>

Minimum Qualification in technical evaluation shall be 70% of the total technical Point.

Bidders who score 70% or more of technical evaluation points shall be invited to price bid evaluation.
3.2 Detailed Criteria

3.2.1 Technical Solution (45 points)

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Points</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Project understanding and approach &amp; methodology for works (10 points)</strong></td>
<td></td>
</tr>
<tr>
<td>In order to demonstrate that the bidder has a good understanding on construction methodology for carrying out the work. Bidders shall indicate adequate information including, but not limited to:</td>
<td></td>
</tr>
<tr>
<td>A-1) Understanding on the project and work requirement (2.5 points)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td>A-2) Methodology for carrying out the construction (4 points)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td>A3) Integrated construction management (Cost, Risk, Safety, Environmental) (2.5 points)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td>A-4) Any Additional information to demonstrate the bidder’s capacity (1 point)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td><strong>B. Measures of work schedule and mobilization for the successful completion of the work on time, Bidders shall provide the proper work schedule that facilitates the possible work completion on the basis of local conditions (10 points)</strong></td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td>B-1) Site plan organization (5 points)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td>B-2) Construction Schedule (5 points)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td><strong>C. Quality assurance and staffing schedule for work performance (10 points)</strong></td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td>C-1) For the successful completion of the work, Bidders shall provide the expected input schedule of Technical staff with details (4 points)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
<tr>
<td>C-2) To assure the work qualification, Bidders shall stipulate overall quality management plan in the light of local site condition (4 points)</td>
<td>Excellent 70% 50% 30%</td>
</tr>
</tbody>
</table>
C-3) The performance of quality management from Bidder’s headquarter will be introduced for Employer’s understanding  
(2 points)  

<table>
<thead>
<tr>
<th>D. Overall procurement plan of equipment supplies according to the construction progress as well as warranty &amp; maintenance (15 points)</th>
<th>100%</th>
<th>70%</th>
<th>50%</th>
<th>30%</th>
</tr>
</thead>
<tbody>
<tr>
<td>D-1) Overall Equipment Implementation plan (3 points)</td>
<td>Excellent</td>
<td>Good</td>
<td>Average</td>
<td>Below</td>
</tr>
</tbody>
</table>

D-2) Appropriateness of Equipment, Conformity (X) of equipment (10 points)  
*For the Purpose of the Evaluation and comparison, Bidders shall submit for following documents  
- Specification Form  
- Catalog or Brochure  
- Design Drawing (if necessary)  
- Identification of manufacturer and model (if necessary)  

Conformity (X) with the requirements calculated by the number and estimated prices of both equal or over-qualified and under-qualified items  

<table>
<thead>
<tr>
<th>X ≥ 110</th>
<th>110 &gt; X ≥ 100</th>
<th>100 &gt; X ≥ 90</th>
<th>90 &gt; X ≥ 80</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>10 &gt; P ≥ 8</td>
<td>8 &gt; P ≥ 6</td>
<td>6 &gt; P ≥ 4</td>
</tr>
</tbody>
</table>

If Bidder will be evaluated below 80 (eighty) of D-2) Conformity (X) of equipment, its bid shall be disqualified.

D-3) Technology Transfer and Operation (1 point)  

D-4) Warranty, Maintenance and Spare Parts Plan (1 point)  

100% | 70% | 50% | 30% |

Technical solution will be evaluated according to the following.

1) Excellent  
- In addition to the requirements stated below under "Good," important issues are approached in an innovative and efficient way, indicating that the bidder has understood the main issues of the work and have outstanding knowledge of new solutions. The proposal details ways to improve the results and the quality of the assignment by using advanced approaches, methodologies and knowledge.

2) Good  
- The proposed approach is discussed in detail and methodology is specifically tailored to the characteristics of the work and flexible enough to allow it to adapt to changes that occur during the execution of the work.

3) Average  
- The way to carry out the different activities of the roles and responsibilities is discussed generically. The approach is standard and not specifically tailored to the work. Although the approach and methodology are suitable, they do not include a discussion on how the Bidders propose to deal with critical characteristics and specific features of the work.
4) Below Average
- The technical approach and/or the methodology to carry out important activities indicated in the roles and responsibilities is inappropriate or very poorly presented, indicating that the Bidders have not properly understood important aspects of the work.

<<Note>>

1. For the Evaluation Criteria D-2, the following formula will be applied for conformity calculation.

\[
X = \left(1 + \sum_{i=1}^{n_1} \frac{T_1}{T_s} - \sum_{i=1}^{n_2} \frac{T_2}{T_s}\right) \times 100
\]

Where, X: Conformity (%) of proposed products
- \(n_1\): Number of items equal or over-qualified from the specification in Volume II
- \(n_2\): Number of items under-qualified from the specification in Volume II
- \(T_2\): Estimated total price of equipment
- \(T_1\): Estimated price of individual items over-qualified and under-qualified from the specification in Volume II, where \(T_i = \text{Quantity} \times \text{Unit Price}\)

(i) In case that \(X \geq 110\), the point(P) will be calculated as follows:
- Point(P) = 10
(ii) In a case of \(110 > X \geq 100\), the point(P) will be calculated as follows:
- Point(P) = \(8 + \frac{\text{Conformity}(X)}{10 - 10} \times 2\)
(iii) In a case of \(100 > X \geq 90\), the point(P) will be calculated as follows:
- Point(P) = \(6 + \frac{\text{Conformity}(X)}{10 - 9} \times 2\)
(iv) In a case of \(90 > X \geq 80\), the point(P) will be calculated as follows:
- Point(P) = \(4 + \frac{\text{Conformity}(X)}{10 - 8} \times 2\)
3.2.2 Number of similar work experience (40 points)

For management status

<table>
<thead>
<tr>
<th>Construction firms</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit rating of CP, CB or Credit Rating by a reputable credit rating agency 5) (1 points)</td>
<td>Class A</td>
</tr>
<tr>
<td>100%</td>
<td>70%</td>
</tr>
<tr>
<td>An average annual turnover (X) in the past 3 fiscal years 6) (2016–2018) (1 point) (unit: one (1) million USD)</td>
<td>X ≥ 65</td>
</tr>
<tr>
<td>100%</td>
<td>70%</td>
</tr>
</tbody>
</table>

* One company must satisfy the above requirement for Single entity or JV.

<table>
<thead>
<tr>
<th>Educational and/or research equipment suppliers</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit rating of CP, CB or Credit Rating by a reputable credit rating agency 5) (1 point)</td>
<td>Class A</td>
</tr>
<tr>
<td>100%</td>
<td>70%</td>
</tr>
<tr>
<td>An average annual turnover (X) in the past 3 fiscal years 6) (2016–2018) (1 point) (unit: one (1) million USD)</td>
<td>X ≥ 25</td>
</tr>
<tr>
<td>100%</td>
<td>70%</td>
</tr>
</tbody>
</table>

* One company must satisfy the above requirement for Single entity or JV.

5) The Certificate of Credit Rating shall be issued from the one of following authority: NICE dun & bradstreet or ECREDIBLE or NICE Information Service or Korea Investors Service or Korea Ratings or SCI Information Service

For the purpose of evaluation of the proposals, the Bidder shall submit following documents:
- Original copy of the certificate of CP, CB or Corporate Credit Rating which is valid until to the proposal submission deadline.
- Certificate of business registration

<table>
<thead>
<tr>
<th>Grade of Credit Rating (X)</th>
<th>Item</th>
<th>Class A</th>
<th>Class B</th>
<th>Class C</th>
<th>Class D</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corporate Bond</td>
<td>X ≥ (A-)</td>
<td>(BBB-) ≤ X &lt; (A-)</td>
<td>(BB-) ≤ X &lt; (BBB-)</td>
<td>X &lt; (BB-)</td>
<td></td>
</tr>
<tr>
<td>Commercial Paper</td>
<td>X ≥ (A2-)</td>
<td>(A3-) ≤ X &lt; (A2-)</td>
<td>(B0) ≤ X &lt; (A3-)</td>
<td>X &lt; (B0)</td>
<td></td>
</tr>
<tr>
<td>Corporate Credit Rating</td>
<td>X ≥ (A-)</td>
<td>(BBB-) ≤ X &lt; (A-)</td>
<td>(BB-) ≤ X &lt; (BBB-)</td>
<td>X &lt; (BB-)</td>
<td></td>
</tr>
</tbody>
</table>

6) For the purpose of evaluation and comparison of the proposals, the Bidder’s average annual turnover which was not presented in USD shall be converted to USD. The exchange rate to be applied for evaluation of the Bidder’s average annual turnover shall be the exchange rate of telegraphic transfer selling rate notified by the KEB Hana Bank on the last banking day of the very previous month from the issuing date of IFB.

For the purpose of evaluation of the proposals, the Bidder shall submit following documents:
- Standard Financial Statement for the last three years (2016, 2017, 2018) issued by National Tax Service

TENDER NO. KAIST-KEN 4-001-2019-2020
For project experience

In case the bidder forms a JVA in accordance with ITB 4.1, the number of projects shall be summed up regardless of the shareholding ratio. The shareholding ratio shall be mentioned in the Information Sheet.

If a bidder or, in case of JVA, any partner of the JVA conducted a project as a member of JVA, i) the completion value, ii) Gross Floor Area shall be evaluated after multiplying pro rata to the shareholding ratio of such project, and the number of projects shall be summed up regardless of the shareholding ratio.

In case i) the completion value, ii) Gross Floor Area of each project after multiplying pro rata to the shareholding ratio are more than i) USD 20,000,000, ii) more than 20,000m$^2$, the number of projects shall be counted, if not, it shall not be considered.

e.g.) If a bidder participating in this bidding with a shareholding ratio of 45% has completed such Education and/or Research Building Construction (completion value is 50,000,000 USD) with a shareholding of 80%, then its completion value will be evaluated as 40,000,000 USD and counted as one [1] project regardless of its shareholding ratio of 45%

The Bidder shall submit the evidence (or certificate) of experience issued by its clients or authorities with notarized copy of related contract and/or other documents which can prove the similarity of its scope of work. If the submitted experience that was performed by the bidder as a member of JVA, the total value (amount), shareholding ratio of bidder, bidder’s value(amount) and detailed scope of work that the bidder implemented, shall be specified in the evidence. If the evidence is not written in English, the notarized translation of the evidence into English shall be submitted together.

<table>
<thead>
<tr>
<th>Construction firms</th>
<th>Rate</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number (N) of Similar Contracts over the amount $^1$ (8 points)</td>
<td>$N \geq 3$</td>
<td>$N=2$</td>
</tr>
<tr>
<td>100%</td>
<td>70%</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td>Form EXP-2(a)</td>
<td></td>
</tr>
<tr>
<td>Number (N) of Similar Contracts in Key Activities $^2$ (8 points)</td>
<td>$N \geq 3$</td>
<td>$N=2$</td>
</tr>
<tr>
<td>100%</td>
<td>70%</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td>Form EXP-2(b)</td>
<td></td>
</tr>
<tr>
<td>Number (N) of Contracts in Similar Conditions $^3$ (10 points)</td>
<td>$N \geq 3$</td>
<td>$N=2$</td>
</tr>
<tr>
<td>100%</td>
<td>70%</td>
<td>50%</td>
</tr>
<tr>
<td></td>
<td>Form EXP-2(b)</td>
<td></td>
</tr>
</tbody>
</table>

1) Similar Contracts over the amount mean Education and/or Research Building Construction successfully completed (not renovation construction) with a completion value of more than USD 20,000,000 per project successfully completed for the last Ten [10] years from the issuing date of IFB.

2) Similar Contracts in Key Activities mean Education and/or Research Building Construction successfully completed (not renovation construction) with a Gross floor Area of more than 20,000m$^2$ per project successfully completed for the last Ten [10] years from the issuing date of IFB.

3) Contract in Similar Conditions mean any construction work successfully completed in overseas Countries for the last Ten [10] years from the issuing date of IFB.
Section III. Evaluation and Qualification Criteria (Without Prequalification)

- In case the currency(ies) of contracts are not USD: Contract amounts shall be converted to US Dollars by applying the telegraphic selling exchange rate notified by KEB HANA Bank in Korea. The Date of the telegraphic selling exchange rate to be applied shall be rate notified by the KEB Hana Bank on the last banking day of the very previous month from the issuing date of IFB.

<table>
<thead>
<tr>
<th>Educational and/or research equipment suppliers</th>
<th>Rate</th>
<th>Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sum of Amount (A) of similar contracts④ (5 points)</td>
<td>A ≥ US$ 5Mil</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>US 5 Mil &gt; A ≥ US 4Mil</td>
<td>70%</td>
</tr>
<tr>
<td></td>
<td>US 4Mil &gt;A</td>
<td>50%</td>
</tr>
<tr>
<td>Number (N) of Contracts in Similar Conditions⑤ (5 points)</td>
<td>N ≥3</td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>N=2</td>
<td>70%</td>
</tr>
<tr>
<td></td>
<td>N=1</td>
<td>50%</td>
</tr>
</tbody>
</table>

4) Similar Contracts mean contracts in supplying educational and/or research equipment with a contract amount of at least USD 2,000,000 per project for the last Ten [10] years from the issuing date of IFB. Bidder should fill up the Form EXP - 2(a) with the Certificate of Completion of Contract.

5) Contracts in Similar Conditions mean any educational and/or research equipment supply successfully completed in overseas Countries for the last Ten [10] years from the issuing date of IFB. Bidder should fill up the Form EXP - 2(b) with the Certificate of Completion of Contract.

- In case the currency(ies) of contracts are not USD: Contract amounts shall be converted to US Dollars by applying the telegraphic selling exchange rate notified by KEB HANA Bank in Korea. The Date of the telegraphic selling exchange rate to be applied shall be rate notified by the KEB Hana Bank on the last banking day of the very previous month from the issuing date of IFB.

6) If a Bidder or, in case of JVA, any partner of the JVA conducted a project as a member of JVA, i) the completion value, ii) Gross Floor Area shall be evaluated after multiplying pro rata. In case of the Bidder’s experiences (projects) which composed with various field/part such as construction, equipment and capacity building, i) the completion value, ii) Gross Floor Area shall be calculated in accordance with their ratio of shareholding and work scope in each field/part total ratio.

3.2.3 Key personnel (15 points)

For Construction

<table>
<thead>
<tr>
<th>Position</th>
<th>Experience</th>
<th>Points Assigned</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Manager (5 Points)</td>
<td>Total Work Experience ① (years)</td>
<td>2</td>
<td>Over 20 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>Experience in Similar Work ② (years)</td>
<td>2</td>
<td>Over 8 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td></td>
<td>Overseas Experience ③ (years)</td>
<td>1</td>
<td>Over 5 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Engineer / Architectural Work (2 point)</td>
<td>Total Work Experience (years)</td>
<td>1</td>
<td>Over 15 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>
### Section III. Evaluation and Qualification Criteria (Without Prequalification)

<table>
<thead>
<tr>
<th>Position</th>
<th>Experience</th>
<th>Points Assigned</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Engineer / Electrical Work (1 point)</td>
<td>Experience in Similar Work (years)</td>
<td>1</td>
<td>Over 8 years</td>
</tr>
<tr>
<td>Total Work Experience (years)</td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Experience in Similar Work (years)</td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Experience in Similar Work (years)</td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Experience in Similar Work (years)</td>
<td></td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

1) Total Work Experience means professional activities for general building construction.
2) Similar Work Experience means assignment activities for Education and/or Research Building Construction
3) Overseas Experience means any construction building project implemented out of bidder’s country of origin

### For educational and/or research equipment supply

<table>
<thead>
<tr>
<th>Position</th>
<th>Experience</th>
<th>Points Assigned</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equipment Provision Project Leader (Equipment PM) (2 point)</td>
<td>Experience in Similar Work 4) (years)</td>
<td>2</td>
<td>Over 15 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Educational and/or Research Equipment/Facilities Expert (1 point)</td>
<td>Experience in Similar Work 5) (years)</td>
<td>1</td>
<td>Over 8 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>ERP System Expert (1 point)</td>
<td>Experience in Similar Work 6) (years)</td>
<td>1</td>
<td>Over 5 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
<tr>
<td>Digital Library System Expert</td>
<td>Experience in Similar Work 7) (years)</td>
<td>1</td>
<td>Over 5 years</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100%</td>
</tr>
</tbody>
</table>

**TENDER NO. KAIST-KEN 4-001-2019-2020**
<table>
<thead>
<tr>
<th>(1 point)</th>
<th>(years)</th>
<th>100%</th>
<th>50%</th>
<th>30%</th>
</tr>
</thead>
</table>

4) Similar Work Experience means professional activities for the provision of educational and/or research equipment/facilities to universities and/or research institutes.

5) Similar Work Experience means professional activities for the management and/or operation of research equipment/facilities at universities and/or research institutes.

6) Similar Work Experience means professional activities relevant to establishment and/or development (improvement) of University ERP system.

7) Similar Work Experience means professional activities relevant to establishment and/or development (improvement) of University Digital Library.

Note) Bidders shall submit the relevant evidence for experience of each key personnel indicated above.
3.3 Evaluation Result / Bid Ranking

The Employer will proceed the evaluation of technical bids by steps as below in order to select a successful bidder.

3.3.1 Completeness and Satisfaction of Bids
The Employer shall determine whether bidders meet the completeness of its technical bids in accordance with relevant clauses stipulated in ITB. Bidders who do not meet the completeness of its technical bids shall be deemed non-responsive and disqualified for the bidding.

3.3.2 Minimum Qualification and Detailed Evaluation
Responsive technical bids shall be evaluated in accordance with Section III. Evaluation and qualification criteria.
The minimum technical score to pass is 70% of total points. Bidders who do not meet the minimum technical score shall not proceed with price bid evaluation.

3.3.3 Price Bid Evaluation
The Employer shall examine the quantities of the items submitted by bidders, and determine whether the items including educational and/or research equipment fully meet the issued specification. All the responsive and qualified bidder’s price bids will be opened at public in compliance with ITB 35.

3.3.4 Award Criteria
The Employer will take into account the technical and financial factors and the final bid score shall be determined as the following formula which has a comprehensive assessment of the price and technical bids.

\[ F \equiv \left( \frac{C_{low}}{C} \times 100 \right) X + T(1 - X) \]

F: Final bid score
C: Proposed Bid Price
\( C_{low} \): The lowest Price among the proposed bide prices
T: Total Technical Score
X: Weight for the Price bid (20%, X=0.2)

If Two [2] or more bidders have the same final bid score, the successful bidder shall be the one who obtains lowest evaluated price.
# Section IV. Bidding Forms (Without Prequalification)

## Table of Forms

<table>
<thead>
<tr>
<th>Form Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Letter of Technical Bid</td>
<td>66</td>
</tr>
<tr>
<td>Letter of Price Bid</td>
<td>68</td>
</tr>
<tr>
<td>Appendix to Bid</td>
<td>70</td>
</tr>
<tr>
<td>Schedule of Payment Currencies</td>
<td>70</td>
</tr>
<tr>
<td>Form of Bid Security</td>
<td>71</td>
</tr>
<tr>
<td>Technical Proposal</td>
<td>75</td>
</tr>
<tr>
<td>Bidder’s Qualification</td>
<td>79</td>
</tr>
<tr>
<td>Form ELI – 1 : Bidder's Information Sheet</td>
<td>79</td>
</tr>
<tr>
<td>Form ELI – 2 : JVA Information Sheet</td>
<td>81</td>
</tr>
<tr>
<td>Form LIT – 1 : Pending Litigation</td>
<td>81</td>
</tr>
<tr>
<td>Form FIN – 1 : Financial Situation</td>
<td>83</td>
</tr>
<tr>
<td>Form FIN – 2 : Average Annual Turnover</td>
<td>84</td>
</tr>
<tr>
<td>Form FIN – 3 : Financial Resources</td>
<td>85</td>
</tr>
<tr>
<td>Form FIN – 4 : Current Contract Commitments / Works in Progress</td>
<td>87</td>
</tr>
<tr>
<td>Form EXP – 1 : General Construction Experience</td>
<td>88</td>
</tr>
<tr>
<td>Form EXP – 2(a) : Specific Experience</td>
<td>89</td>
</tr>
<tr>
<td>Form EXP - 2(b) : Specific Experience in Key Activities</td>
<td>90</td>
</tr>
<tr>
<td>Manufacturer’s Authorization</td>
<td>91</td>
</tr>
<tr>
<td>Declaration of participation in EDCF financed projects</td>
<td>95</td>
</tr>
</tbody>
</table>
Letter of Technical Bid  
(Single-Stage Two-Envelope Bidding Procedure)

Date: __________________________
CB No.: ________________________
Invitation for Bid No.: _____________

To:

__________________________________________________________________________________

We, the undersigned, declare that:

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

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

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

(d) Our firm, including any subcontractors or suppliers for any part of the Contract, have nationalities from eligible countries [Insert the nationality of the Bidder, including that of all parties that comprise the Bidder if the Bidder is a consortium or association, and the nationality of each Subcontractor and Supplier];

(e) We, including any subcontractors or suppliers for any part of the contract, do not have any conflict of interest in accordance with ITB 4.3;

(f) We are not participating, as a Bidder or as a subcontractor, in more than one bid in this bidding process in accordance with ITB 4.3, other than alternative offers submitted in accordance with ITB 13;

(g) Our firm, its affiliates or subsidiaries, including any Subcontractors or Suppliers for any part of the contract, has not been declared ineligible by the Bank, under the Employer’s country laws or official regulations.
(h) We are not a government owned entity / We are a government owned entity but meet the requirements of ITB4.5; *

Name ______________________________  In the capacity of ____________________________

Signed ______________________________

Duly authorized to sign the bid for and on behalf of ________________________________

Dated on ______________________________ day of ____________________________, ______

* Use one of the two options as appropriate
Letter of Price Bid  
(Single-Stage Two-Envelope Bidding Procedure)

Date: ________________________________  
CB No.: ______________________________  
Invitation for Bid No.: __________

To: ........................................................................................................................................................................

We, the undersigned, declare that:

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

(b) We offer to execute in conformity with the Bidding Documents and the Technical Bid submitted for the following Works:

(c) The total price of our Bid, excluding any discounts offered in item (d) below is:

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

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

(f) If our Bid is accepted, we commit to obtain a performance security in accordance with the Bidding Documents;
(g) We have paid, or will pay the following commissions, gratuities, or fees with respect to the bidding process or execution of the Contract: **

<table>
<thead>
<tr>
<th>Name of Recipient</th>
<th>Address</th>
<th>Reason</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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

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

Name ________________________________ In the capacity of ________________________________

Signed ______________________________

Duly authorized to sign the bid for and on behalf of ________________________________

Dated on ________________________________ day of ________________________________

** If none has been paid or is to be paid, indicate “none”
## Appendix to Bid

### Schedule of Payment Currencies

For ......................... *insert name of Section of the Works* .................

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

<table>
<thead>
<tr>
<th>Name of Payment Currency</th>
<th>Amount of Currency</th>
<th>Rate of Exchange to Local Currency</th>
<th>Local Currency Equivalent $C = A \times B$</th>
<th>Percentage of Net Bid Price (NBP) $rac{100 \times C}{NBP}$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local currency</td>
<td></td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign Currency #1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign Currency #2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Foreign Currency #3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Bid Price</td>
<td></td>
<td></td>
<td>100.00</td>
<td></td>
</tr>
<tr>
<td>Provisional Sums Expired</td>
<td></td>
<td>1.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BID PRICE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Note**

The rates of exchange shall be applied the calculation of the amount of the Loan under the provisions of the Loan Agreement.
Form of Bid Security

(Bank Guarantee)

__________________________ [Bank’s Name, and Address of Issuing Branch or Office]

Beneficiary: ____________________________ [Name and Address of Employer]

Date: ____________________________

Bid Security No.: ____________________________

We have been informed that ____________________________ [name of the Bidder] (hereinafter called “the Bidder”) has submitted to you its bid dated ___________ (hereinafter called “the Bid”) for the execution of ________________ [name of contract] under Invitation for Bids No. ___________ (“the IFB”).

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

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

(a) has withdrawn its Bid during the period of bid validity specified by the Bidder in the Form of Bid;
(b) does not accept the correction of errors in accordance with the Instructions to Bidders (hereinafter “the ITB”); or
(c) has been notified of the acceptance of its Bid by the Employer during the period of bid validity, (i) fails or refuses to execute the Contract Agreement or (ii) fails or refuses to furnish the performance security, in accordance with the ITB.

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

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

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

___________________________________

[Banker’s seal and authorized signature(s)]

Note: All italicized text is for use in preparing this form and shall be deleted from the final product.
Bill of Quantities

A. Preamble

1. The Bill of Quantities shall be read in conjunction with the Instructions to Bidders, General and Particular Conditions of Contract, Technical Specifications, and Drawings.

2. The quantities given in the Bill of Quantities are estimated and provisional, and are given to provide a common basis for bidding. The basis of payment will be the actual quantities of work ordered and carried out, as measured by the Contractor and verified by the Engineer and valued at the rates and prices bid in the priced Bill of Quantities, where applicable, and otherwise at such rates and prices as the Engineer may fix within the terms of the Contract.

3. The rates and prices bid in the priced Bill of Quantities shall, except as otherwise provided under the Contract, include all construction equipment, labor, supervision, materials, erection, maintenance, insurance, profit, taxes, and duties, together with all general risks, liabilities, and obligations set out or implied in the Contract.

4. A rate or price shall be entered against each item in the priced Bill of Quantities, whether quantities are stated or not. The cost of Items against which the Contractor has failed to enter a rate or price shall be deemed to be covered by other rates and prices entered in the Bill of Quantities.

5. The whole cost of complying with the provisions of the Contract shall be included in the Items provided in the priced Bill of Quantities, and where no Items are provided, the cost shall be deemed to be distributed among the rates and prices entered for the related Items of Work.

6. General directions and descriptions of work and materials are not necessarily repeated nor summarized in the Bill of Quantities. References to the relevant sections of the Contract documentation shall be made before entering prices against each item in the priced Bill of Quantities.

7. Provisional Sums included and so designated in the Bill of Quantities shall be expended in whole or in part at the direction and discretion of the Engineer in accordance with the Conditions of Contract.

8. Arithmetic errors will be corrected by the Employer as follows:

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

(b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail and the total shall be corrected; and
(c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.

9. Rock is defined as all materials that, in the opinion of the Engineer, require blasting, or the use of metal wedges and sledgehammers, or the use of compressed air drilling for their removal, and that cannot be extracted by ripping with a tractor of at least 150 brake hp with a single, rear-mounted, heavy-duty ripper.

Refer to Volume VI Bill of Quantities
## Grand Summary

**Contract Name:**

**Contract No.:**

<table>
<thead>
<tr>
<th>General Summary</th>
<th>Page</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill No. 1: Preliminary Items</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill No. 2: Earthworks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bill No. 3: Drainage Structures</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>— etc. —</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bid Price (D + E) (Carried forward to Form of Bid)</td>
<td>(F)</td>
<td></td>
</tr>
</tbody>
</table>

a. All Provisional Sums are to be expended in whole or in part at the direction and discretion of the Engineer in accordance with Sub-Clause 52.4 and Clause 58 of Part I of the Conditions of Contract.

b. To be entered by the Employer.
Technical Proposal

Technical Proposal - Personnel

Form PER -1 : Proposed Personnel

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

<table>
<thead>
<tr>
<th></th>
<th>Title of position*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Title of position*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Title of position*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>Title of position*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Name</td>
</tr>
</tbody>
</table>

*As listed in Section III (Evaluation and Qualification Criteria).
Form PER-2 : Resume of Proposed Personnel

<table>
<thead>
<tr>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personnel information</td>
</tr>
<tr>
<td>Name</td>
</tr>
<tr>
<td>Professional qualifications</td>
</tr>
<tr>
<td>Present employment</td>
</tr>
<tr>
<td>Name of employer</td>
</tr>
<tr>
<td>Address of employer</td>
</tr>
<tr>
<td>Telephone</td>
</tr>
<tr>
<td>Fax</td>
</tr>
<tr>
<td>Job title</td>
</tr>
<tr>
<td>Experience</td>
</tr>
<tr>
<td>Total work experience (years)</td>
</tr>
<tr>
<td>Overseas experience(years)</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>From</th>
<th>To</th>
<th>Company / Project / Position / Relevant technical and management experience</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
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</tr>
</tbody>
</table>

*NB: Bidders are allowed to modify the form in accordance with the required personnel and qualifications*
## Technical Proposal - Equipment

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

<table>
<thead>
<tr>
<th>Item of equipment</th>
<th>Equipment information</th>
<th>Name of manufacturer</th>
<th>Model and power rating</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Capacity</td>
<td>Year of manufacture</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Current status</th>
<th>Current location</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Details of current commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source</th>
<th>Indicate source of the equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>□ Owned □ Rented □ Leased □ Specially manufactured</td>
</tr>
</tbody>
</table>

Omit the following information for equipment owned by the Bidder.

<table>
<thead>
<tr>
<th>Owner</th>
<th>Name of owner</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Address of owner</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Telephone</th>
<th>Contact name and title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fax</th>
<th>Telex</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agreements</th>
<th>Details of rental / lease / manufacture agreements specific to the project</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Technical Proposal (Technical Solution)

1. Project understanding and approach & methodology for works

2. Measures of work schedule and mobilization

3. Quality assurance and staffing schedule for work performance

4. Overall procurement plan of equipment supplies according to the construction progress as well as warranty & maintenance
Bidder’s Qualification

To establish its qualifications to perform the contract in accordance with Section III (Evaluation and Qualification Criteria) the Bidder shall provide the information requested in the corresponding Information Sheets included hereunder.
# Form ELI – 1: Bidder’s Information Sheet

<table>
<thead>
<tr>
<th>Bidder’s Information</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder’s legal name</td>
<td></td>
</tr>
<tr>
<td>In case of JVA, legal name of each partner</td>
<td></td>
</tr>
<tr>
<td>Bidder’s country of constitution</td>
<td></td>
</tr>
<tr>
<td>Bidder’s year of constitution</td>
<td></td>
</tr>
<tr>
<td>Bidder’s legal address in country of constitution</td>
<td></td>
</tr>
<tr>
<td>Bidder’s authorized representative (name, address, telephone numbers, fax numbers, e-mail address)</td>
<td></td>
</tr>
</tbody>
</table>

Attached are copies of the following original documents.

- **(d)** 1. In case of single entity, articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.
- **(e)** 2. Authorization to represent the firm or JVA named in above, in accordance with ITB 20.2.
- **(f)** 3. In case of JVA, letter of intent to form JV or JV agreement, in accordance with ITB 4.1.
- **(g)** 4. In case of a government-owned entity, any additional documents not covered under 1 above required to comply with ITB 4.5.
Form ELI – 2 : JVA Information Sheet

*Each member of a JVA must fill in this form*

<table>
<thead>
<tr>
<th>JVA / Specialist Subcontractor Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bidder’s legal name</td>
</tr>
<tr>
<td>JV/Partner’s or Subcontractor’s legal name</td>
</tr>
<tr>
<td>JV/Partner’s or Subcontractor’s country of constitution</td>
</tr>
<tr>
<td>JV/Partner’s or Subcontractor’s year of constitution</td>
</tr>
<tr>
<td>JV/Partner’s or Subcontractor’s legal address in country of constitution</td>
</tr>
<tr>
<td>JV/Partner’s or Subcontractor’s authorized representative information (name, address, telephone numbers, fax numbers, e-mail address)</td>
</tr>
</tbody>
</table>

Attached are copies of the following original documents:

- 1. Articles of incorporation or constitution of the legal entity named above, in accordance with ITB 4.1 and 4.2.
- 2. Authorization to represent the firm named above, in accordance with ITB 20.2.
- 3. In the case of government-owned entity, documents establishing legal and financial autonomy and compliance with commercial law, in accordance with ITB 4.5.
Form LIT – 1 : Pending Litigation

*Each Bidder or member of a JVA must fill in this form*

<table>
<thead>
<tr>
<th>Year</th>
<th>Matter in Dispute</th>
<th>Value of Pending Claim in US$ Equivalent</th>
<th>Value of Pending Claim as a Percentage of Net Worth</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>
Form FIN – 1 : Financial Situation

Each Bidder or member of a JVA must fill in this form

<table>
<thead>
<tr>
<th>Financial Data for Previous 3 Years [US$ Equivalent]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Year 1:</td>
</tr>
</tbody>
</table>

Information from Balance Sheet

| Total Assets | | |
| Total Liabilities | | |
| Net Worth | | |
| Current Assets | | |
| Current Liabilities | | |

Information from Income Statement

| Total Revenues | | |
| Profits Before Taxes | | |
| Profits After Taxes | | |

Attached are copies of financial statements (balance sheets including all related notes, and income statements) for the last three years, as indicated above, complying with the following conditions.

- All such documents reflect the financial situation of the Bidder or partner to a JVA, and not sister or parent companies.
- Historic financial statements must be audited by a certified accountant.
- Historic financial statements must be complete, including all notes to the financial statements.
- Historic financial statements must correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted).
Form FIN – 2(a): Average Annual Turnover

*Each Bidder or member of a JVA must fill in this form*

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount Currency</th>
<th>Exchange Rate</th>
<th>US$ Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>

**Average Annual Construction Turnover**

The information supplied should be the Annual Turnover of the Bidder or each member of a JVA in terms of the amounts billed to clients for each year for work in progress or completed, converted to US Dollars at the rate of exchange at the end of the period reported.
Form FIN – 2(b) : Average Annual Turnover

*Each Bidder or member of a JVA must fill in this form*

<table>
<thead>
<tr>
<th>Year</th>
<th>Amount Currency</th>
<th>Exchange Rate</th>
<th>US$ Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

**Average Equipment Supply Turnover**

The information supplied should be the Annual Turnover of the Bidder or each member of a JVA in terms of the amounts billed to clients for each year for work in progress or completed, converted to US Dollars at the rate of exchange at the end of the period reported.
Form FIN – 3: Financial Resources

Specify proposed sources of financing, such as liquid assets, unencumbered real assets, lines of credit, and other financial means, net of current commitments, available to meet the total cash flow demands of the subject contract or contracts as indicated in Section 3 (Evaluation and Qualification Criteria)

<table>
<thead>
<tr>
<th>Financial Resources (Construction)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>Source of financing</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Financial Resources (Equipment Supply)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No.</td>
<td>Source of financing</td>
</tr>
<tr>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
</tr>
</tbody>
</table>
Form FIN – 4: Current Contract Commitments / Works in Progress

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

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of Contract</th>
<th>Employer’s Contact Address, Tel, Fax</th>
<th>Value of Outstanding Work [Current US$ Equivalent]</th>
<th>Estimated Completion Date</th>
<th>Average Monthly Invoicing Over Last Six Months [US$/month]</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td></td>
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<tr>
<td>4</td>
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<tr>
<td>5</td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
Form EXP – 1: General Construction Experience

*Each Bidder or member of a JVA must fill in this form*

<table>
<thead>
<tr>
<th>General Construction Experience</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Starting Month Year</strong></td>
</tr>
<tr>
<td>---------------------------</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
</tr>
</tbody>
</table>
Form EXP – 2(a) : Specific Experience

*Fill up one (1) form per contract.*

<table>
<thead>
<tr>
<th>Contract of Similar Size and Nature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract No. . . . of . . . .</td>
</tr>
<tr>
<td>Award Date</td>
</tr>
<tr>
<td>Role in Contract</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Total Contract Amount</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>If partner in a JV or subcontractor, specify participation of total contract amount</td>
</tr>
<tr>
<td>Employer’s Name</td>
</tr>
<tr>
<td>Telephone/Fax Number</td>
</tr>
</tbody>
</table>

**Description of the similarity in accordance with Criteria 2.4.2(a) of Section 3**

*Describe the project summary in accordance with major criteria indicated in Section III*
Form EXP - 2(b) : Specific Experience

*Fill up one (1) form per contract*

<table>
<thead>
<tr>
<th>Contract with Similar Key Activities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Contract No. . . . . . . . . . . . . .</td>
</tr>
<tr>
<td>Award Date</td>
</tr>
<tr>
<td>Role in Contract</td>
</tr>
<tr>
<td>Total Contract Amount</td>
</tr>
<tr>
<td>GFA(m²)</td>
</tr>
<tr>
<td>If partner in a JVA or subcontractor, specify participation of total contract amount</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Employer's Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Telephone Number</td>
<td>Fax Number</td>
</tr>
<tr>
<td>E-mail</td>
<td></td>
</tr>
</tbody>
</table>

**Description of the key activities in accordance with Criteria 2.4.2(b) of Section 3**

*Describe the project summary in accordance with major criteria indicated in Section III*

For Construction Firms
- Country:
- Location within the country:
- Type of Building
- Gross Floor Area and etc.

For Educational and/or research equipment suppliers
- Country:
- Location within the country:
Manufacturer’s Authorization

[The Bidder shall require the Manufacturer to fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer. The Bidder shall include it in its bid, if so indicated in the BDS.]

Date: [insert date (as day, month and year) of Bid Submission]
CB No.: [insert number of bidding process]
Alternative No.: [insert identification No if this is a Bid for an alternative]

To: [insert complete name of Purchaser]

WHEREAS

We [insert complete name of Manufacturer], who are official manufacturers of [insert type of goods manufactured], having factories at [insert full address of Manufacturer’s factories], do hereby authorize [insert complete name of Bidder] to submit a bid the purpose of which is to provide the following Goods, manufactured by us [insert name and or brief description of the Goods], and to subsequently negotiate and sign the Contract.

We hereby extend our full guarantee and warranty in accordance with Clause 27 of the General Conditions of Contract, with respect to the Goods offered by the above firm.

Signed: [insert signature(s) of authorized representative(s) of the Manufacturer]

Name: [insert complete name(s) of authorized representative(s) of the Manufacturer]

Title: [insert title]

Duly authorized to sign this Authorization on behalf of: [insert complete name of Bidder]

Dated on ____________ day of ______________________, [insert date of signing]
(별표 2)

경협기금 지원사업 참여관련 확약서

한국수출입은행 귀중

사 업 명 :

당사는 표제의 대외경제협력기금(EDCF)(이하 “기금”이라 한다) 지원사업 참여와 관련하여, 다음 사항을 확인하고 준수할 것을 확약합니다.

- 다 응 -

1. 부정당행위 제재 관련

1. 당사는 「국제상거래에 있어서 외국공무원에 대한 뇌물방지법」의 내용을 충분히 숙지하고 이를 정히 준수하며, 표제 사업과 관련하여 동 법에 규정된 외국공무원 등에 대한 뇌물 제공 등 부패행위와 사실왜곡 등 부정당행위에 관여한 사실이 없으며, 앞으로도 이러한 행위에 관련되지 않겠음.

2. 당사는 본 확약서 제출일 현재 대한민국의 ‘국가를 당사자로 하는 계약에 관한 법률’ 및 ‘공기업·준정부기관 계약사무규칙’에 의거 입찰 참가자격이 제한되는 제재를 받고 있지 않으며, 다자개발은행(MDB)으로부터 부패행위와 사실왜곡 등 부정당행위로 인하여 제재를 받고 있지 않음.

3. 당사는 공정한 입찰 진행을 위해 민원을 제기하는 경우 민원내용의 출처를 명확히 밝혀고 기술평가 및 가격평가 결과 등 낙찰자 선정과 관련하여 입찰서류에 명시된 민원제기
절차를 철저히 준수할 것을 확약함.

4. 당사는 컨설팅고용계약 또는 구매계약을 신의에 따라 성실히 이행하며, 정당한 사유 없는 계약 미이행, 대금 부당청구 등의 불성실한 계약 이행을 하지 않을 것임을 확약함.

5. 당사는 다음에 해당하는 부정당행위를 유발한 경우 또는 확약서에 기재된 내용이 거짓으로 판명되거나 확약한 내용을 준수하지 않을 경우 귀행이 2년 이내의 기금지원사업 참여 제한 등 조치를 취하더라도 어떠한 이의를 제기하지 않겠습니다.
   가. 계약과 관련된 서류의 위.변조 또는 허위기재
   나. 과실에 의한 하자 또는 보수 발생
   다. 부정한급
   라. 조사설계 및 타당성조사용역 부실
   마. 계약위반
   바. 공중 손해 사고
   사. 업무 관계자 사고
   아. 뇌물공여
   자. 당 합
   차. 입찰 및 계약체결 등 방해
   카. 부정 또는 불성실한 행위

II. 법적 권리 및 청구권 관련

1. 당사는 입찰서류 또는 계약서가 당사와 차주(사업실시기관 포함. 이하 같다)의 권리의무 관계를 규율하는 바. 당사는 동 입찰서 또는 계약서를 근거로 귀행에 대한 어떠한 법적 권리 또는 청구권을 갖지 않음을 확약함.
2. 당사는 차관공여계약서의 당사자는 귀행과 차주이며, 제3자인 당사는 동 차관계약서를 근거로 귀행을 상대로 어떠한 권리나 청구권도 갖지 않음을 확인함.

3. 이에 따라, 당사는 당사가 입찰에 탈락하거나 입찰서류 및 계약서의 하자 또는 불이행 등으로 손실을 입는 경우에도 귀행을 상대로 법적 소송을 포함하여 어떠한 형태의 이의도 제기하지 않을 것을 확약함.

Ⅲ. 인권 및 환경보호, 건강, 안전 기준 준수 관련

1. 당사는 사업을 수행함에 있어서 적용되는 노동법 및 국제노동기구(ILO)의 핵심노동기준(Core labor standard)을 준수할 것을 확약함.

2. 당사는 사업을 수행함에 있어서 적용되는 환경보호, 건강 및 안전에 관한 국제 또는 현지국 기준을 준수할 것을 확약함.

Ⅳ. 사회적 가치 구현 관련

1. 당사는 사업을 수행함에 있어서 일자리 창출, 균등한 기회 및 사회통합, 상생협력, 반부패·청렴 및 윤리경영 등 다양한 사회적 가치를 존중하고 이를 구현하기 위해 노력할 것을 확약함.

년월일

회사명:

대표자: (인)
DECLARATION OF PARTICIPATION IN
ECONOMIC DEVELOPMENT COOPERATION FUND (EDCF) FINANCED PROJECTS

To The Export-Import Bank of Korea (the "Bank")

Name of the Project (the "Project"): [Project Name]

We hereby confirm the following with regard to participation in the above-stated Project financed by the Economic Development Cooperation Fund (EDCF):

I. Declaration on Anti-Corruption and Anti-Malpractice

1. We undertake full understanding and compliance with the Act on Combating Bribery of Foreign Public Officials in International Business Transactions, and declare that neither we nor any other party acting on our behalf with regard to the Project has engaged or will engage in corrupt practices such as bribery and malpractices such as false statement.

2. We hereby confirm that our company is not under any sanction in accordance with ‘Act on Contracts to which the State is a Party’ and 'Regulation on Contracts to which the Public enterprise is a Party’ of the Republic of Korea, nor is under any sanction imposed by Multilateral Development Banks (MDBs) as a result of engaging in malpractices such as corruption and false statement, as of the date of submission of this Declaration of participation in Economic Development Cooperation Fund (EDCF) financed projects.

3. We hereby confirm that for fair bidding, our company must abide by the bidding procedure related to the selection of a successful bidder, including the result of a technical evaluation and price evaluation, specified in the bidding documents and must clarify the sources of complaints when filing complaints.

4. We declare to carry out the consultant contract/procurement contract with utmost good faith, and not to engage in irresponsible misconduct such as nonfulfillment of a contract without proper reasoning or fraudulent claims.

5. In the event that our company engages in any activity falling under the malpractice category set out below, be under sanctions imposed by the Republic of Korea and MDBs, or fails to abide by the bidding procedure, we declare not to raise any objections to the Bank’s measures with regard to such activity, including the prohibition of participation in projects financed by EDCF loan for up to two years.
Section IV. Bidding Forms (Without Prequalification)

a. False Statements
b. Negligent Operations
c. Improper Subcontracting
d. Poor Survey and Design Services, Feasibility Studies
e. Breach of Contract
f. Damage or Injury to the Public
g. Damage or Injury to a Person Involved in the Operation
h. Bribery
i. Bid Rigging
j. Interference in Bidding and Contract Conclusion
k. Wrongful or Dishonest Acts

Ⅰ. Declaration on Legal Rights and Claims

1. We acknowledge that the bidding documents and the contract stipulate the rights and obligations of the Supplier and the Borrower(including the Project Executing Agency), and thus we do not have any legal rights nor claims whatsoever against the Bank, which is not a party to the contract, with regard to the bidding documents or the contract.

2. We also acknowledge that Loan Agreement governs the relationship between the Borrower and the Bank, and that our company, as a third party, do not have any legal rights nor claims whatsoever derived therefrom.

3. Therefore, we hereby declare not to raise any objections against the Bank including lawsuits, in the event of tender failure or losses due to defects or nonfulfillment of the contract.

Ⅱ. Declaration on Human Rights, Environment Protection, Health and Safety

1. We undertake to comply with relevant labor laws and the Core Labor Standards of the International Labour Standards(ILO) in the process of contract execution.

2. We undertake to comply with relevant international/local standards with regard to environment protection, health and safety in the process of contract execution.

Ⅳ. Declaration on Upholding Social Value

1. We declare to uphold social values including job creation, equal opportunity with social integration,
cooperation for co-prosperity and ethical management, and to endeavor to realize those values in the process of contract execution.

Year Month Date

Name of Company :

Name of Authorized Signatory Signature
Section V. Eligible Countries

This Section contains eligible countries as follows;

1. In accordance with the Loan Agreement No. KEN-4, a Bidder, and all parties constituting the Bidder, shall have the nationality of Republic of Korea

2. All goods and related services to be supplied under the Contract and financed by the Bank shall have their origin in the countries as follows:

   A. Foreign Currency Portion shall be procured from Republic of Korea

   B. Local Currency Portion shall be procured from Republic of Kenya within USD 18,811,000

   C. Third Currency Portion: All the Goods and Services to be financed out of the proceeds of the Loan shall be procured from the Eligible Source Countries, provided that a part of goods and services may, with the prior consent of the Bank, be procured from the countries (the 3rd countries) other that the Eligible Source Countries up to 29,845,000 USD

* All bidders must comply with the Kenya Local Procurement Act
PART 2 – WORKS REQUIREMENTS
Section VI. Works Requirements

Contents

Scope of Works .......................................................... 103
Specification ........................................................................ 141
Drawings ........................................................................... 142
Supplementary Information ............................................... 143
Scope of works

1. General Requirements

1.1 Delivery and Completion Schedule

The Building Construction, delivery and installation of Equipment, ERP and Digital Library System, Goods and Related services except the Post-Project Operational Support shall be completed within 24 months from the effective date of the Contract.

1.1.1 Targeted Schedule of the Project

<table>
<thead>
<tr>
<th>Const. Period</th>
<th>Construction Phase (24M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Site Mobilization</td>
<td>Confirm the construction site &amp; Review the commencement report of contractor</td>
</tr>
<tr>
<td>Pile &amp; Earthwork</td>
<td>Pile work, Earth work for 3 facilities</td>
</tr>
<tr>
<td>Landscape</td>
<td>Landscape, Pavement, etc.</td>
</tr>
<tr>
<td>Structure (frame work)</td>
<td>Structure, Foundation, etc.</td>
</tr>
<tr>
<td>Final</td>
<td>Finish Work of Education Facility, Campus Core, Hostel</td>
</tr>
<tr>
<td>MRP, ICTs, etc.</td>
<td>Review Spec. / Procurement</td>
</tr>
<tr>
<td>T&amp;O</td>
<td>Over Head, Equipment mounting &amp; Installation, etc.</td>
</tr>
<tr>
<td>Hand-Over</td>
<td>Commissioning, Test, etc.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Period</th>
<th>ERP Development Phase (24M)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone</td>
<td>Project Start</td>
</tr>
<tr>
<td>TDBA</td>
<td>TDBA Visiting</td>
</tr>
<tr>
<td>Development Start</td>
<td>Development Start</td>
</tr>
<tr>
<td>T&amp;O &amp; Preparation</td>
<td>T&amp;O &amp; Preparation</td>
</tr>
<tr>
<td>ERP Go-Live</td>
<td>ERP Go-Live</td>
</tr>
<tr>
<td>Project Finish</td>
<td>Project Finish</td>
</tr>
</tbody>
</table>

1.2 Roles and Responsibilities

Roles and Responsibilities of the Contractor (Construction firm) The Contractor (construction firm) shall be responsible for the completion of permanent and temporary works indicated in this bidding document in accordance with the Drawings, Specification, Bill of Quantities as well as Contract Conditions.

b. The Contractor (construction firm) shall be responsible for the execution of the works through adequate methods of construction based on the bidding documents.
Roles and Responsibilities of the Contractor (Equipment Supplier)

a. The Contractor (Equipment Supplier) shall be responsible for all the matters related to the copyright, license to use, and patent right related to the products and services it shall provide.
b. The Contractor (Equipment Supplier) shall be responsible for establishment of wired/wireless telecommunication network within the buildings that are going to be constructed in the Project.

1.3 The Contractor (Equipment Supplier) shall be responsible for deploying and configuring ERP system based on the institute’s curriculum and internal policies.

Development, Customization, and Installation Services

a. The Contractor (Equipment Supplier) shall be responsible for providing all services related to development, customization, installation for all equipment/system covered by this Project.
b. The Contractor (Equipment Supplier) shall provide a plan and methodology for Software Development and Customization.
c. The Contractor (Equipment Supplier) shall provide a plan for shipment, delivery, and storage for all items by this Project.
d. The Contractor (Equipment Supplier) shall comply with the Telecommunication Standard for installation of Server & Network Room and computer/server room.
e. All services of Development, customization, and installation shall be considered with expandability, satisiability, maintainability and security in the future for this Project.

1.5 Testing and Quality Assurance Requirements

The Contractor (Equipment Supplier) shall perform all necessary testing activities to ensure a defect-free system prior to full system operation. The Bidder shall suggest all kinds of tests and detailed plans, test items with checklist and test procedure for each test to undertake various testing activities for the Project. Such testing shall be structured to achieve full compliance with the functional and technical specifications of the system’s Application, H/W, S/W, N/W and other equipment/devices.

Inspections

Inspections consist mainly of “Factory Inspection” and “Inspection after Shipment.” The Supplier shall be responsible for providing all services related to inspections for all equipment covered by this Purchase.

Factory Inspection

a. Factory Inspection is performed to supervise the production process and to certify the quality of the product. The Supplier shall prepare and perform the inspections,
accompanied by the Consultants, who also attend the inspections.

b. The Inspection shall be performed according to the established inspection procedures of the manufacturing company. Before finalizing the inspection procedure, the Supplier should discuss with the Consultant who have the right to confer, and select the inspection criteria in order to execute the Inspection efficiently.

c. The Bidder’s proposal shall include detailed contents regarding the execution of the Inspection.

Inspection after Shipment

a. Inspection following delivery is important in that it is a reliable quality control method for checking the quality of Goods after clients purchase them from the Supplier.

b. The Supplier shall establish their own inspection plan and perform the inspection on the delivered equipment.

2. Overview

<table>
<thead>
<tr>
<th>Title</th>
<th>Establishment of Kenya Advanced Institute of Science and Technology</th>
</tr>
</thead>
<tbody>
<tr>
<td>Location</td>
<td>Konza Technopolis in Kenya</td>
</tr>
<tr>
<td>Site Area</td>
<td>58,278 m²</td>
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<tr>
<td>Project Components</td>
<td>Campus Core, Education Facility, Housing</td>
</tr>
<tr>
<td>Building Area</td>
<td>11,685.27 m²</td>
</tr>
<tr>
<td>Ground Coverage Ratio</td>
<td>20.05%</td>
</tr>
<tr>
<td>Gross Floor Area</td>
<td>35,539 m² (above ground)</td>
</tr>
<tr>
<td>Floor area ratio</td>
<td>60.98%</td>
</tr>
</tbody>
</table>

3. Building Summary

<table>
<thead>
<tr>
<th>Building</th>
<th>Stories / Height</th>
<th>Floor Area(m²)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Campus Core</td>
<td>Administrative Office (2nd Floor)</td>
<td>2,209</td>
</tr>
<tr>
<td></td>
<td>Library (1st Floor)</td>
<td>1,266</td>
</tr>
<tr>
<td></td>
<td>Cafeteria (Ground Floor)</td>
<td>1,327</td>
</tr>
<tr>
<td></td>
<td>Sub Total</td>
<td>4,802</td>
</tr>
<tr>
<td>Education Facility</td>
<td>Building A Four stories above</td>
<td>7,948</td>
</tr>
</tbody>
</table>
### Section VI. Works Requirements

<table>
<thead>
<tr>
<th>Building</th>
<th>Ground / Stories</th>
<th>Volume</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building B</td>
<td>19.5m</td>
<td>9,553</td>
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</table>

| Sub Total | 17,501 |

<table>
<thead>
<tr>
<th>Housing</th>
<th>Stories Above Ground</th>
<th>Volume</th>
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</thead>
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<tr>
<td>Student Dormitory</td>
<td>Six stories above ground / 22.72m</td>
<td>5,404</td>
</tr>
<tr>
<td>Staff &amp; Married</td>
<td>Five stories above ground / 18.42m</td>
<td>2,274</td>
</tr>
<tr>
<td>Faculty Housing 1</td>
<td>Four stories above ground / 15.92m</td>
<td>2,497</td>
</tr>
<tr>
<td>Faculty Housing 2</td>
<td>Four stories above ground / 15.92m</td>
<td>2,500</td>
</tr>
<tr>
<td>Utility Building</td>
<td>One story above ground / 7.2m</td>
<td>561</td>
</tr>
</tbody>
</table>

| Sub Total | 13,236 |

| Total | 35,539 |

[ Bird Eye View ]
### 4. Space Program and Building Area Table

#### 4.1 Education Building A

<table>
<thead>
<tr>
<th>Floor</th>
<th>Item</th>
<th>No.</th>
<th>ROOM</th>
<th>Area (m²)</th>
<th>Remark</th>
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<tbody>
<tr>
<td>3F</td>
<td></td>
<td></td>
<td>DEPT. OFFICE</td>
<td>35.25</td>
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<tr>
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<td></td>
<td>STORAGE</td>
<td>29.38</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>COMMON ROOM</td>
<td>22.66</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>LECTURE ROOM-1</td>
<td>80.04</td>
<td>36 Seats</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>LECTURE ROOM-2</td>
<td>76.28</td>
<td>36 Seats</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SEMINAR ROOM-1</td>
<td>28.50</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>SEMINAR ROOM-2</td>
<td>32.14</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FACULTY OFFICE(1-6)</td>
<td>147.42</td>
<td>24.48x6 ROOMs</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>FACULTY LOUNGE</td>
<td>52.55</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FACULTY Meeting ROOM-1</td>
<td>28.50</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>FACULTY Meeting ROOM-2</td>
<td>46.58</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>STUDENT LAB(DRY)</td>
<td>537.92</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>CORE INSTRUMENTATION LAB</td>
<td>44.05</td>
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<tr>
<td></td>
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<td>BASIC EXPERIMENTAL LAB</td>
<td>105.73</td>
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<td></td>
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<td></td>
<td>GAS ROOM</td>
<td>26.88</td>
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**EXCLUSIVE USE AREA**

<table>
<thead>
<tr>
<th>Floor</th>
<th>Item</th>
<th>No.</th>
<th>ROOM</th>
<th>Area (m²)</th>
<th>Remark</th>
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<td></td>
<td></td>
<td>COMMON USE AREA</td>
<td>922.81</td>
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[Site Plan]

 MDB Harmonised Conditions of Contract for Construction - for participating development bank-financed contract use only. © FIDIC 2010
## Section VI. Works Requirements

<table>
<thead>
<tr>
<th>2F</th>
<th>Electrical/ Electronic Engineering</th>
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<tr>
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<td></td>
<td>STORAGE 29.38</td>
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<tr>
<td></td>
<td>COMMON ROOM 22.66</td>
</tr>
<tr>
<td>4</td>
<td>LECTURE ROOM-1 80.04, 36 Seats</td>
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<tr>
<td>5</td>
<td>LECTURE ROOM-2 76.28, 36 Seats</td>
</tr>
<tr>
<td>6</td>
<td>SEMINAR ROOM-1 28.50</td>
</tr>
<tr>
<td>7</td>
<td>SEMINAR ROOM-2 32.14</td>
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<tr>
<td>8</td>
<td>FACULTY OFFICE(1-6) 147.42, 24.48x6 ROOMs</td>
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<tr>
<td>9</td>
<td>FACULTY LOUNGE 52.55</td>
</tr>
<tr>
<td>10</td>
<td>FACULTY Meeting ROOM-1 28.50</td>
</tr>
<tr>
<td>11</td>
<td>FACULTY Meeting ROOM-2 46.58</td>
</tr>
<tr>
<td>12</td>
<td>STUDENT LAB(DRY) 537.92</td>
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<td>13</td>
<td>CORE INSTRUMENTATION LAB 70.93</td>
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<td>14</td>
<td>BASIC EXPERIMENTAL LAB 105.73</td>
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<table>
<thead>
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<tbody>
<tr>
<td>Floor Area Total</td>
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<td>2,216.69</td>
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<tr>
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<td>STORAGE 28.38</td>
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<tr>
<td></td>
<td>COMMON ROOM 25.64</td>
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<tr>
<td>4</td>
<td>LECTURE ROOM-1 77.27, 36 Seats</td>
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<tr>
<td>5</td>
<td>LECTURE ROOM-2 76.57, 36 Seats</td>
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<tr>
<td>6</td>
<td>SEMINAR ROOM(1-4) 69.05</td>
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<tr>
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<td>FACULTY OFFICE(1-6) 149.28, 24.48x2RMs, 22.36x4RMs</td>
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<td>8</td>
<td>FACULTY LOUNGE 64.44</td>
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<td>9</td>
<td>FACULTY Meeting ROOM-1 37.49</td>
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<tr>
<td>10</td>
<td>FACULTY Meeting ROOM-2 31.14</td>
</tr>
<tr>
<td>11</td>
<td>STUDENT LAB(DRY) 348.04, Include 4 Seminar rooms</td>
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<tr>
<td>12</td>
<td>CORE INSTRUMENTATION LAB 45.07</td>
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<tr>
<td>13</td>
<td>SERVER ROOM 25.41</td>
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<td>14</td>
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<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Floor Area Total</td>
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<table>
<thead>
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<tbody>
<tr>
<td></td>
<td>DEPT. OFFICE 35.42</td>
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<tr>
<td></td>
<td>LECTURE HALL 380.14, 234 Seats</td>
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<td>STORAGE 8.88</td>
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<tbody>
<tr>
<td>Floor Area Total</td>
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<td>1,853.07</td>
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</tbody>
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MDB Harmonised Conditions of Contract for Construction - for participating development bank-financed contract use only. © FIDIC 2010
Section VI. Works Requirements

<table>
<thead>
<tr>
<th>Item</th>
<th>ROOM</th>
<th>Area(m²)</th>
<th>Remark</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>PREPARATION</td>
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<td>5</td>
<td>COMMON LECTURE ROOM</td>
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<td>COMPUTER ROOM</td>
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<td>FIRE COMMAND ROOM</td>
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**EXCLUSIVE USE AREA Total**
995.13

**COMMON USE AREA**

<table>
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<tbody>
<tr>
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</table>

**COMMON USE AREA Total**
666.06

**Floor Area Total**
1,661.19

**EXCLUSIVE USE AREA Total (A)**
4,631.89

**COMMON USE AREA Total (A)**
3,315.75

**Area Total (A)**
7,947.64

### 4.2 Education Building B

**EDUCATION-B_(Wet LAB)**

<table>
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<tr>
<th>Floor</th>
<th>Item</th>
<th>No.</th>
<th>ROOM</th>
<th>Area(m²)</th>
<th>Remark</th>
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</thead>
<tbody>
<tr>
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**EXCLUSIVE USE AREA Total**
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**COMMON USE AREA**

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**COMMON USE AREA Total**
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MDB Harmonised Conditions of Contract for Construction - for participating development bank-financed contract use only. © FIDIC 2010
### Section VI. Works Requirements

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MDB Harmonised Conditions of Contract for Construction - for participating development bank-financed contract use only. © FIDIC 2010
### 4.3 Campus Core (Administration Building)

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## Section VI. Works Requirements

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Section VI. Works Requirements

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4.4 Faculty Housing 1

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#### Faculty Housing 2 (FH2)

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# 4.7 Staff & Married Student Housing

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<td>- Importance category : III</td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Wind Load</strong></td>
<td>Basic wind Velocity : 30m/sec</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Foundation System</strong></td>
<td>Soil Supported Mat/Isolated Footing (fe = 300kN/m²)</td>
<td>Soil Supported Isolated Footing (fe = 200kN/m²)</td>
<td></td>
</tr>
<tr>
<td></td>
<td>* Education B : Pile Foundation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Before construction, ‘PLATE BEARING TEST’ should be proceeded in order to make secure an allowable bearing capacity</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

![Diagram of structure design](image-url)
## 6. Civil Design

| Pavement | - Road: Asphalt Pavement  
| - Emergency Road: Concrete Pavement |
| Excavation | Determine the slope inclinations for slope stability  
| - Cut-slope (soil) ⇒ Less than 1(V) : 1.2(H)  
| - Banking slope (soil) ⇒ Less than 1(V) : 1.5(H) |
| Rainwater Drainage | - Smooth drainage planning by securement of discharge allowance after considering localized heavy rain  
| - Connection to the public network for storm water drainage |
| Sewage Drainage | - Planning of gravitational flowing and separate system for storm water and sewage  
| - Planning for leakage protection of sewage structure & Connection to the public network for sewage |
| Water Supply | City Water |

![Excavation Diagram](image1)

![Water Supply Diagram](image2)
7. **Mechanical Design**

| **HAVC System** | - Air conditioning system  
|                 | - Ventilation system |
| **Water Supply System** | - Water tank capacity in mechanical room (applied capacity on 3days)  
|                  | : Education & Campus Core Water tank capacity: 255 TON  
|                  | : Housing Water tank capacity: 304 TON  
|                  | - Elevated water tank for each building (applied capacity on a 1day basis) |
| **Hot Water Supply System** | - Hot water supply system is applied as a reliable supply of hot water by the electrical boiler and hot water storage tank.  
|                             | - Application of Solar Hot Water System with Solar Heat Collector (Back up heat source) |
| **Storm Water System** | Collect roof storm water from each building and use it as outdoor Irrigation water |

---

### Mechanical Design Diagram

- **MECH. Room**
- **Electric Room**

<table>
<thead>
<tr>
<th><strong>PIPE NAME</strong></th>
<th><strong>SUPPLY AVAILABLE</strong></th>
<th><strong>MARK</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>City Water</td>
<td>○</td>
<td></td>
</tr>
<tr>
<td>City Service</td>
<td>○</td>
<td></td>
</tr>
<tr>
<td>Storm Water</td>
<td>○</td>
<td></td>
</tr>
</tbody>
</table>

---

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8. **Electrical Design**

<table>
<thead>
<tr>
<th><strong>Primary Energy Source</strong></th>
<th>Receiving power from KenGen will be 11kv and will supply the substations</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Load Estimation</strong></td>
<td>Campus Core, Education Facility - Transformer Total : 2,700 [kVA] - Generator : 1,340 [kW]</td>
</tr>
<tr>
<td></td>
<td>Housing - Transformer Total : 1,000 [kVA] - Generator : 565 [kW]</td>
</tr>
<tr>
<td><strong>Power Distribution</strong></td>
<td>Low Voltage Distribution, High Voltage Cabling</td>
</tr>
<tr>
<td><strong>UPS</strong></td>
<td>2* 100kva (for Labs in Education Facility)</td>
</tr>
<tr>
<td><strong>Lighting System</strong></td>
<td>Normal Lighting, Emergency Lighting (LED lighting fixtures)</td>
</tr>
<tr>
<td><strong>Branch Circuit</strong></td>
<td>Provide For Lighting And Power In All Areas</td>
</tr>
<tr>
<td><strong>Lightning Protection</strong></td>
<td>Air Terminal, Down Conductor, Earth Mash (2Ω)</td>
</tr>
</tbody>
</table>

Outdoor power and communication incoming construction plan
- POWER : 11kV line enters from S/S to electric room at each
- ICT : Constructing conduit from the ICT manhole near each building to each MDF room
9. **Telecommunication Design**

<table>
<thead>
<tr>
<th>LAN system</th>
<th>Dual backbone network system for high performance and reliability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public address system</td>
<td>Application of digital broadcasting system using PC</td>
</tr>
<tr>
<td>Telecommunication system</td>
<td>- Each building has a TPS</td>
</tr>
<tr>
<td>Access control and CCTV</td>
<td>- For maintenance and increased facilities, IDF is installed on each floor of the building</td>
</tr>
<tr>
<td>TV SYSTEM</td>
<td>Campus Core, Education Facility TV outlet will be installed in Faculty Office only</td>
</tr>
<tr>
<td>Access control and CCTV</td>
<td>Housing TV outlet will be installed in each room</td>
</tr>
<tr>
<td>Audio and Visual system</td>
<td>- A/V facilities are applied to seminar room, meeting room, and lecture hall</td>
</tr>
<tr>
<td></td>
<td>- Only BGM facilities are applied to library and cafeteria</td>
</tr>
</tbody>
</table>

- **LAN system**
  - Dual backbone network system for high performance and reliability
  - Composed of 1:1 star topology from IDF to outlet

- **Public address system**
  - Application of digital broadcasting system using PC
  - The groups were organized by zone, usage, and floor
  - To prepare for maintenance and increased facilities, public address terminal box for television was installed on each floor of the building
  - It is configured to work in conjunction with the fire receiver

- **Telecommunication system**
  - Each building has a TPS
  - To prepare for maintenance and increased facilities, IDF was installed on each floor of the building
  - Vertical wiring: F/0 MM 16Core
  - Horizontal wiring: UTP Cat 5e 0.5mm

- **Access control and CCTV**
  - It prevents noise by using UTP cable and optical cable and it is easy to connect with main equipment
  - You can monitor, control and save high resolution (1920 x 1080 or higher) images
  - In order to prevent crime and ensure the safety of students, CCTV was installed in the hallway, hall, Inside the elevator
car
  - Card key can be used to manage access to lecture rooms, conference rooms, and laboratories
  - This system is configured only on campus

---

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### 10. Fire Protection

<table>
<thead>
<tr>
<th>Fire Water Suppression System</th>
<th>Automatic Fire, Sprinkler System, Hydrant And Hose Reel System</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire Fighting Extinguishing System</td>
<td>MDF, Control Room, Generator, UPS, Low Voltage Gear, Middle Voltage Gear</td>
</tr>
<tr>
<td>Fire Alarm</td>
<td>Fire receiver (R type)</td>
</tr>
</tbody>
</table>

![Fire Protection Diagram](image)
11. **Landscape**

<table>
<thead>
<tr>
<th>Planting Plan</th>
<th>All trees will be planted as 1m high considering local procurement conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paving</td>
<td>Locally available Paving material (e.g. from Mazeras) is primarily considered</td>
</tr>
<tr>
<td>Facilities</td>
<td>Lighting, Pergola, Sitting Wall, Bench, Planting Box</td>
</tr>
</tbody>
</table>

![Landscape Plan]

1. Landscape Mounds
2. Lawn Space
3. Designed Seating
4. Sculpture
5. Outdoor Cafe
6. Decorative Wall
7. Walking Path
8. Multi-purpose Lawn
9. Fountain
10. Knot garden
11. Lawn Space
12. Open Lawn Space

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12. Certification of G-SEED

12.1 The works to be conducted through this bidding document is to obtain the certification of G-SEED (at least rating of Green 2) in terms of saving energy, maintenance costs as well as reducing carbon emissions for the pleasant

12.2 The Contractor shall take the necessary measures for the certification of G-SEED in close cooperation with the Employer.

12.3 The Contractor shall bear all of the expenses incurred in connection with obtaining the certification of G-SEED. The Contractor shall take account of the expenses in their price bids.

12.4 General requirements for the certification of G-SEED

1) The contractor shall submit all the necessary documents, and facilitate a site inspection for the Certification of G-SEED in close discussion with the Employer

2) The main requirements of obtaining the certification of G-SEED to be performed by the Contractor are to establish the Green Environment Management plans, to submit the construction-related documents, to procure Materials and equipment, to implement test upon the presentation of results on such as windows and doors, to carry out T.A.B. and so on in terms of the certification of G-SEED. The Contractor shall refer to the specifications in details.

3) The Contractor shall appoint a person in charge of G-SEED to obtain the certification

4) The contractor shall not change any G-SEED-related design items (Design, Materials, Equipment, and etc.) stipulated in the bidding documents. However, for the changes in the design due to other circumstances or events, the contractor shall take consider the relevant items in terms of the certification of G-SEED in advance, and shall prove that the changes do not affect the contractor’s obtaining the certification of G-SEED (at least rating of Green 2)
13. Establishment of University ERP System

13.1 Overview

Developing an integrated university information system, not an information system oriented to unit tasks. Develop an integrated information system specially designed for educational administration concerning the faculty, staff, students, etc. Drastically lower the amount of circulated physical documents and task processing time through online linkage between relevant departments in the university and establish an integrated information circulation system.

13.2 Target System Configuration

ERP system should be composed of each business functions with single technology platform and with integrated ERD. All functions and data should be integrated each other to fulfill the single source of data concept.

c. General administration (finance, accounting, human resources management, materials purchase, facilities management)
d. Research administration (research achievements, research funds and expenses, project execution information management, etc.)
e. Academic administration (entrance examinations, school register, classes, admission, scholarship, graduation, students management, etc.)

![Image](image_url)

Table 1. Target Configuration Example

1.2 The list of System and Equipment

List below shows minimum quantity and specification of ERP System’s hardware and software which should be implemented. If more H/W and S/W are considered...
necessary for systems’ design and reliability, the Bidder shall include such items in the proposal.

Refer to Appendix #01. Equipment Specification for the detailed product specification.

f. List of Equipment

<table>
<thead>
<tr>
<th>No.</th>
<th>Division</th>
<th>Item</th>
<th>Qty.</th>
<th>Unit</th>
<th>Specification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ERP Development</td>
<td>AP Server</td>
<td>1</td>
<td>set</td>
<td>▪ CPU 2.4Ghz X 16core ↑</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>▪ Memory: 64 GB</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>▪ Disk: 600GB X 4</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>DB Server</td>
<td>1</td>
<td>set</td>
<td>▪ Memory 256GB</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>▪ HDD: 1TB</td>
</tr>
<tr>
<td>3</td>
<td>ERP Operation</td>
<td>AP Server</td>
<td>2</td>
<td>set</td>
<td>▪ CPU 2.4Ghz X 16core ↑</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>▪ Memory: 128 GB</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>▪ Disk: 600GB X 4</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td>DB Server</td>
<td>1</td>
<td>set</td>
<td>▪ Memory 1 TB</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>▪ HDD: 4TB</td>
</tr>
</tbody>
</table>

13.3 Function & Requirements

g. Development Direction

(a) All ERP System and Equipment must comply with this project’s requirements
(b) All proposed system should be support Multi-language (Include English)
(c) Establish an information system that integrates the physical locations of resources for higher efficiency in system operation, maintenance, integrated management of data, etc.
(d) Enable efficient administration through structuralizing administrative formats, regulations, workflows, etc. for each basic element of educational administration
(e) Adopt the new IT technologies to enable continuous system level-up.
(f) Utilize the advanced IT technologies to reduce the total cost of ownership.

h. General Requirements

(a) An integrated information system specially designed for educational administration concerning the faculty, staff, students, etc.
(b) Establish the system through ERP experts and consultants who have at least of one experience at in establishing university systems

(c) For the academic system, ensure to propose a solution that has a specialized academic management function.

(d) The administration and academic systems must not be different in the structures and how to use. Propose solutions that have the same technological platform and development language.

(e) Only propose software products that have been proven for versatility, stability, security, and efficiency.

i. ERP System Requirement

(a) Scope of general administration

<table>
<thead>
<tr>
<th>Task Classification</th>
<th>Task Classification (detailed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human Resources Management (HR)</td>
<td>HR_Personnel records management</td>
</tr>
<tr>
<td></td>
<td>HR_Faculty management</td>
</tr>
<tr>
<td></td>
<td>HR_Staff management</td>
</tr>
<tr>
<td></td>
<td>HR_Office management</td>
</tr>
<tr>
<td>Salary Management (HR)</td>
<td>Salary_Standards management</td>
</tr>
<tr>
<td></td>
<td>Salary_Salary and reward management</td>
</tr>
<tr>
<td></td>
<td>Salary_Lecturer’s fee management</td>
</tr>
<tr>
<td></td>
<td>Salary_Settlement management</td>
</tr>
<tr>
<td>Budget management (FM)</td>
<td>Budget_Budget planning management</td>
</tr>
<tr>
<td></td>
<td>Budget_Budget allocation management</td>
</tr>
<tr>
<td></td>
<td>Budget_Budget management</td>
</tr>
<tr>
<td></td>
<td>Budget_Budget control management</td>
</tr>
<tr>
<td></td>
<td>Budget_Budget execution management</td>
</tr>
<tr>
<td>Accounting management (FI)</td>
<td>Accounting_Standards management</td>
</tr>
<tr>
<td></td>
<td>Accounting_Voucher management</td>
</tr>
<tr>
<td></td>
<td>Accounting_Settlement management</td>
</tr>
<tr>
<td></td>
<td>Accounting_Tax management</td>
</tr>
<tr>
<td></td>
<td>Accounting_Ledger management</td>
</tr>
<tr>
<td>Purchase Management (MM)</td>
<td>Purchase_Standards management</td>
</tr>
<tr>
<td></td>
<td>Purchase_Order management</td>
</tr>
<tr>
<td></td>
<td>Purchase_Purchase inspection management</td>
</tr>
</tbody>
</table>
### Section VI. Works Requirements

<table>
<thead>
<tr>
<th>Task Classification</th>
<th>Task Classification (detailed)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Product Management (AA)</strong></td>
<td><strong>Product_Stands management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Product_Asset management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Product_Property inspection management</strong></td>
</tr>
<tr>
<td><strong>Facilities Management (PM)</strong></td>
<td><strong>Facilities_Space management</strong></td>
</tr>
</tbody>
</table>

#### (b) Scope of research administration

<table>
<thead>
<tr>
<th>Task Classification</th>
<th>Task Classification (detailed)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Research support (PS)</strong></td>
<td><strong>Research support_Research project management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Research support_Research fund management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Research support_Research achievements management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Research support_Laboratory management</strong></td>
</tr>
<tr>
<td><strong>Laboratory Center (PS)</strong></td>
<td><strong>Lab center_Materials and equipment use management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Lab center_Hazardous materials management</strong></td>
</tr>
</tbody>
</table>

#### (c) Scope of academic administration

<table>
<thead>
<tr>
<th>Task Classification</th>
<th>Task Classification (detailed)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Entrance Examination Management (SLCM)</strong></td>
<td><strong>Entrance exam_Graduate school application</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Entrance exam_Examination management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Entrance exam_Successful applicants processing</strong></td>
</tr>
<tr>
<td><strong>School Register Management (SLCM)</strong></td>
<td><strong>School register_Basic information management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>School register_School register management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>School register_Management of changes in school register</strong></td>
</tr>
<tr>
<td></td>
<td><strong>School register_Major management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>School register_Statistics management</strong></td>
</tr>
<tr>
<td><strong>School record management (SLCM)</strong></td>
<td><strong>School record_Basic information management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>School record_School record input management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>School record_School record confirmation</strong></td>
</tr>
<tr>
<td></td>
<td><strong>School record_Statistics management</strong></td>
</tr>
<tr>
<td><strong>Scholarship Management (SLCM)</strong></td>
<td><strong>Scholarship_Basic information management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Scholarship_Scholarship students management</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Scholarship_Statistics management</strong></td>
</tr>
<tr>
<td>Task Classification</td>
<td>Task Classification (detailed)</td>
</tr>
<tr>
<td>----------------------------------</td>
<td>-------------------------------------------------------------------</td>
</tr>
<tr>
<td>Enrollment Management (SLCM)</td>
<td>Enrollment_Basic information management</td>
</tr>
<tr>
<td></td>
<td>Enrollment_Tuition fee management</td>
</tr>
<tr>
<td></td>
<td>Enrollment_Enrolling students management</td>
</tr>
<tr>
<td></td>
<td>Enrollment_Tuition fee receipt and refund management</td>
</tr>
<tr>
<td></td>
<td>Enrollment_Statistics management</td>
</tr>
<tr>
<td>Graduation Management (SLCM)</td>
<td>Graduation_Graduates management</td>
</tr>
<tr>
<td></td>
<td>Graduation_Graduation assessment</td>
</tr>
<tr>
<td></td>
<td>Graduation_Graduation confirmation management</td>
</tr>
<tr>
<td>Curriculum Management (SLCM)</td>
<td>Curriculum_Curriculum management</td>
</tr>
<tr>
<td></td>
<td>Curriculum_Substitute course management</td>
</tr>
<tr>
<td>Class Management (SLCM)</td>
<td>Class_Course opening and class schedule building</td>
</tr>
<tr>
<td></td>
<td>Class_Lecture evaluation management</td>
</tr>
<tr>
<td></td>
<td>Class_Course registration/modification</td>
</tr>
<tr>
<td></td>
<td>Class_Lecturer’s fee management</td>
</tr>
</tbody>
</table>

14. **Establishment of Digital Library System** Overview

The Digital Library is a library of knowledge centers and future visions that effectively support education, learning and research. It is planned to maximize the utilization of digital academic information resources.

Digital Library is composed and planned as RFID based facilities, operating system, ubiquitous user convenience system, and designed to support various interworking between each system equipment and Digital Library integrated information system.

It is designed to perform the function of the complex academic culture space that can perform the information education culture function with the optimal space and facilities, and to allow users to enjoy various information freely and comfortably.

After thoroughly reviewing the usage system (use, movements, management system) and operating system for the internal / external components of the Digital Library and after consulting various IT device design suitable for the design (fixed, removable, buried) and usage of the housing with the user convenient facilities for each space with experts with experience in building u-e-Library, it is planned and organized.

14.2 Target System Configuration

j. RFID System: Access Gate, RFID Tag, Anti-theft Antenna, Book Loan Return
Machine, Search PC
k. Management System: Library Management Program, Homepage, Search, Search PC
l. Smart Service System: Smart Service Integrated Management System, Server

14.3 The list of System and Equipment

List below shows minimum quantity and specification of Digital Library’s hardware and software which should be implemented. If more H/W and S/W are considered necessary for systems’ design and reliability, the Bidder shall include such items in the proposal.

Refer to Appendix #01, Equipment Specification for the detailed product specification

m. List of Equipment

<table>
<thead>
<tr>
<th>No.</th>
<th>Division</th>
<th>Item</th>
<th>Qty.</th>
<th>Unit</th>
<th>Specification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>Speedgate</td>
<td>5</td>
<td>ea</td>
<td>Glass Wing Sliding Gate</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Barcode, RFID Support</td>
</tr>
<tr>
<td>2</td>
<td>RFID System</td>
<td>Collection checker</td>
<td>1</td>
<td>ea</td>
<td>RFID Type(WLAN, Wi-Fi)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Protocol: ISO 15693/18000-3-A</td>
</tr>
<tr>
<td>3</td>
<td>RFID System</td>
<td>Librarian Desktop Reader</td>
<td>2</td>
<td>ea</td>
<td>RFID Type (13.56 Mhz)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Barcode, RFID Support</td>
</tr>
<tr>
<td>4</td>
<td>RFID System</td>
<td>RFID Tag</td>
<td>30,000</td>
<td>ea</td>
<td>RFID Tag</td>
</tr>
<tr>
<td>5</td>
<td>Management System</td>
<td>Self Book Loan Machine / Return Machine</td>
<td>1</td>
<td>ea</td>
<td>Printer, Internal Reader Module</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Protocol: ISO15963/18000-3</td>
</tr>
<tr>
<td>6</td>
<td>Management System</td>
<td>anti-theft antenna</td>
<td>1</td>
<td>ea</td>
<td>Recognize Distance: 1,500mm</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Interface: RS232-C Ethernet</td>
</tr>
<tr>
<td>7</td>
<td>Management System</td>
<td>Unmanned Book Box</td>
<td>1</td>
<td>ea</td>
<td>Size: 1,380x510x650mm</td>
</tr>
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14.4  Function & Requirements

n.  RFID System Requirement

(a) The construction and linkage of the RFID system for book users is planned for management through the automation of the Digital Library and the minimum number of people.

(b) The design idea of the RFID-based facility is planned and constructed based on securing operational efficiency, increasing user convenience, and improving the librarian system.

(c) The book RFID system is designed to have 13.56MHz (or 900MHz) of tags attached to the books and operate using various recognition equipment.

(d) The user's RFID system is operated through the infrastructure of the access control system (RFID reader, ACU, 13.56Mhz Tag, etc.) and is configured to be linked with the multifunction card and to check the access information on a separate screen.

(e) Tags that can be attached to books, multimedia materials (CDs, videos, etc.) are used.

(f) Using the attached RFID tag, equipment such as manager's loan / return machine, unmanned loan return machine, collection checker, and theft prevention device are operated.

(g) The TAG for Book RFID consists of 30,000 copies and is expected to submit metadata for books and multimedia materials initially introduced.
Section VI. Works Requirements

(h) Librarian desktop readers should be able to borrow and return books, and support multi-book processing, tag information input, multimedia data processing, and multi-function card authentication.

(i) The self-book lending machine / returning machine is a system that allows users to borrow and return books directly, enabling unmanned operation of multi-book processing, multimedia data processing, and multi-function card authentication using a touch screen-based screen.

(j) The library checker is portable and is planned to provide various information via a display attached to the equipment.

(k) The anti-theft device is a function to prevent unauthorized release of data, and it is displayed as a sound and a lamp at the time of unauthorized release and should be detected only when a user passes.

(l) The Speedgate is configured to be secured at the entrance and exit, respectively, which requires the release of books and materials, and is configured for the stability of users.

(m) The speed gate is arranged on the first floor with one 3Lane and one 2Lane, and each lane should be freely designed to switch between entrances and exits.

(n) The access gate operates in conjunction with the infrastructure for access control by interlocking with access control devices (RFID reader, barcode reader).

(o) Unauthenticated users are blocked from entering and exiting, and the administrator can force the opening and closing.

(p) By interlocking with Speedgate and the anti-theft device (sensor), it is planned to block the user’s random export of books / data when entering or exiting.

(q) It is possible to display personalized information by attaching 12.1 ” or more LCD monitor to Speedgate, and it usually displays promotional videos and produces 3D contents and VR related to facility guidance for user convenience.

o. Management System Requirement

(a) The operating system consists of library automation system (LAS), digital library function, user support function and Digital Library homepage function.

(b) Digital Library's operating system is planned to integrate the system resources and increase the use and management efficiency so that the management object can be operated efficiently and the facility can be used conveniently.
p. Library Automation System Requirement

(a) Support the collection and catalogue, serials, article index, loan return and collection management within the system.

(b) In conjunction with the Digital Library Integrated Information System DataBase, identify book lending and return processing and ineligibility.

(c) Build a Unicode (UTF-8 charset) based system.

(d) Provide reporting tool for modifying and editing application and output forms such as statistics and outputs Excel, PDF, Text, etc.

(e) Provide various functions for smooth communication between the library and users.

(f) Accept all standard MARC such as KORMARC and MARC21.

(g) Support batch import function of new book MARC.

(h) Notify users of book purchase application feedback (E-Mail)

(i) Support serial and electronic data collection.

(j) Support donation, receipt data management and import and export of external bibliographic data.

(k) Support various searches (author, signature, registration number, worker and work date).

(l) Support collection check function linked with RFID system.

(m) Support collection management such as damage, damage, loss, and disposal.

q. Digital Library System Requirement

(a) Support contents, text, VOD / AOD, electronic data management and user service.

(b) Support Unicode-based systems with U Character Set TF-8 support.

(c) Support various types of formats (MARC, XML, etc.) through the Contents Management System (CMS).

(d) Real-time service linked with web service possible.

(e) Support creation, modification, addition and deletion of unit system by content (web journal, electronic academic materials, etc.).

(f) Support a form of contents, index, release, and abstract input forms associated with bibliographic data.

(g) Provide batch import / export function in standard format (MARC, XML, etc.) of all data.

(h) Support links via electronic data matching and automatic data copying among the collection
r. User Service System Requirement

(a) Support integrated academic information search, SDI, original copy, book purchase application.
(b) Provide WEB based service.
(c) Provide multilingual input, help, reset, authority control (keyword control).
(d) Inquiry and recombination search possible because all search queries and results performed after login are managed as a history.
(e) Plan to provide English module to detailed information item.
(f) Provide unit search and integrated search service for all information resources (unit system such as books, serials, articles, texts, multimedia, web resources, etc.) managed through the electronic library system.
(g) Support search service environment management function by system administrator.
(h) Support editing search results (saved in various forms of reference).
(i) Provide the Selective Dissemination of Information (SDI) service through E-Mail by searching for information that the users want.
(j) Provide various questions and answers.
(k) Support unicode search (using foreign languages other than English).
(l) Support processing functions as search result XML

s. Digital Library Web-Page Requirement

(a) User menu: Quick Link function / Original search function.
(b) Admin Menu: Screen Settings & Management / Menu. Organization and Modification of Content.
(c) Search: Support search by unit and system / limited search.
(d) Statistical calculation: Viewing authority setting function according to user class.
(e) Others: Automatic installation of various administrator modules / multimedia viewers.
(f) Service component.

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t. Ubiquitous System Requirement

(a) Promotion and guidance of Digital Library.
(b) Provide optimal space and facilities to maximize the utilization of digital academic information resources.
(c) Provide advanced IT infrastructure and operation system supporting ubiquitous information environment.
(d) Designed for the purpose of each terminal, such as effective promotion, guidance, and education.

u. Wall Type Notification System Requirement

(a) Announcements and content display linked to the integrated management system.
(b) Provide administrator-generated content, event information, and library usage guide.
Section VI. Works Requirements

(c) Information such as new materials guided in real time in conjunction with the library DB.

(d) Content display (PPT / image / text / movie) registered by the administrator.

(e) Provide content for the alarm system.

v. Portal

(a) User Menu: Introduction of universities and departments

(b) Admin Menu: Screen Settings & Management / Menu, Contents Configuration and Modification

(c) Integrated login linkage function implementation(book management system, library homepage)

(d) Addition of content

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15.1 The List and Specification of Equipment is described in (Volume II).

15.2 The basic and important function of proposed equipment shall be the same or be substantially equivalent to the requirements given on the List and Specification of Equipment described in (Volume II).

15.3 If there are any brand names or model numbers in the List and Specification of Equipment, it shall be considered that the phrase, “or at least equivalent” follows such references.

15.4 Over-view for equipment supply:

a. Appropriate equipment shall be furnished by occupation, organization and curricula development in order to achieve the goal of training.

b. Equipment related to new and specified technologies shall be furnished to promote the accreditation and quality control of Kenya’s higher educational institutions and the Science, Technology, and Innovation Act 2013 enacted to assign national priority to S&T, considering vision 2030 of Kenya, improvement of the students and professors, and S&T trends at an international stage.

c. Selection is to include related software, computer sets and peripherals in order to improve education quality by aid of the educational applied programs.

d. Selection is to be considered with the annual number of students in regular course.

e. Equipment and room fittings shall be durable against local climate and environment.

f. General facilities are to include entire general office facilities and products which are generally used in the classroom, office, and dormitory and the administration block.

g. The description is to be prepared recognizing the importance of the equipment following the directions of:

i. Considering the suitability of educational purpose, possibility of local maintenance, and possibility to access Korean equipment.

ii. Reconfirming service voltage and frequency for the equipment not to cause any inconvenience in use.

iii. Guaranteeing durable goods with sturdy appearance.
h. Operating and management training is to be conducted following the directions:

i. Installation engineers shall fully inform the instructor of related department of how to use and manage. In this regard, the equipment description is to include a notice

ii. To ensure the user is taught within one (1) month after equipment installation.

iii. Equipment supplier shall establish a local warranty system in Kenya to provide maintenance service for 2 years after delivery in order to respond immediately in case of any trouble.

iv. Additional notices are to be made and displayed in the practice room or on the related equipment. Maintenance and management shall not be influenced by substitution of the equipment manager.

v. In case of a problem, emergency network shall be working to prevent any accident and further crisis and to respond promptly to the situation.

15.5 Equipment operation and manual language

- All equipment and furniture must be supplied with operation manual shall be provided in English.
Specification

Refer to Volume III Specification
Drawings

Refer to Volume II Drawings
Supplementary Information
PART 3 – CONDITIONS OF CONTRACT AND CONTRACT FORMS
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Section VII. General Conditions (GC)

[Name of Employer]

[Name of Contract]

The General Conditions that follow are Multilateral Development Bank (MDB) Harmonised Edition of the Conditions of Contract for Construction prepared and copyrighted by the International Federation of Consulting Engineers (Fédération Internationale des Ingénieurs-Conseils, or FIDIC), FIDIC 2010 rights reserved. This publication is exclusive for the use of the Export-Import Bank of Korea Borrowers and their project implementing agencies as provided under the License Agreement dated August 3rd, 2009, between the Export-Import Bank of Korea and FIDIC, and consequently, no part of this publication may be reproduced, translated, adapted, stored in a retrieval system or communicated, in any form or by any means, whether mechanical, electronic, magnetic, photocopying, recording or otherwise, without prior permission in writing from FIDIC, except by the Employer identified above and only for the exclusive purpose of preparing these Standard Bidding Documents for the Contract also identified above.
General Conditions


1.1 Definitions

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

1.1.1 The Contract

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

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

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

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

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

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

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

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

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

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

1.1.2 Parties and Persons

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

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

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

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

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

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

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

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

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

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

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

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

1.1.3 Dates, Tests, Periods and Completion

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

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

1.1.3.3 “Time for Completion” means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [Time for Completion], as stated in the Contract Data (with any extension under Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

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

1.1.3.5 “Taking-Over Certificate” means a certificate issued under Clause 10 [Employer’s Taking Over].

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

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

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

1.1.3.9 “Day” means a calendar day and “year” means 365 days.

1.1.4 Money and Payments

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

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

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

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

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

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

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

1.1.4.8 “Local Currency” means the currency of the
1.1.4.9 “Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment].

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

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

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

1.1.5 Works and Goods

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

1.1.5.2 “Goods” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.

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

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

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

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

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

1.1.6 Other Definitions

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

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

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

1.1.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].

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

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

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

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

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

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

1.2 Interpretation

In the Contract, except where the context requires otherwise:

(a) words indicating one gender include all genders;

(b) words indicating the singular also include the plural and words indicating the plural also include the singular;

(c) provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;

(d) “written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and

(e) the word “tender” is synonymous with “bid” and “tenderer” with “bidder” and the words “tender documents” with “bidding documents.

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

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

1.3 Communications

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

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

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

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

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

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

1.4 Law and Language

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

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

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

1.5 Priority of Documents

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

(a) the Contract Agreement (if any),
(b) the Letter of Acceptance,
(c) the Letter of Tender,
(d) the Particular Conditions – Part A,
(e) the Particular Conditions – Part B
(f) these General Conditions
(g) the Specification,
(h) the Drawings, and
(i) the Schedules and any other documents forming part of the Contract.

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

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

1.7 **Assignment**

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

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

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

1.8 **Care and Supply of Documents**

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

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

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

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

1.9 **Delayed Drawings or Instructions**

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

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

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

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

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

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

**1.10 Employer’s Use of Contractor’s Documents**

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

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

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

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

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

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

1.11 Contractor’s Use of Employer’s Documents

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

1.12 Confidential Details

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

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

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

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

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

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

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

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

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

2. The Employer

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

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

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

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

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

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

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

### 2.2 Permits, Licences or Approvals

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

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

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

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

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

(iii) for the export of Contractor’s Equipment when it is removed from the Site.
2.3 **Employer’s Personnel**

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

(a) co-operate with the Contractor’s efforts under Sub-Clause 4.6 [Co-operation], and

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

2.4 **Employer’s Financial Arrangements**

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

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

2.5 **Employer’s Claims**

If the Employer considers himself to be entitled to any payment under any Clause of these Conditions or otherwise in connection with the Contract, and/or to any extension of the Defects Notification Period, the Employer or the Engineer shall give notice and particulars to the Contractor. However, notice is not required for payments due under Sub-Clause 4.19 [Electricity, Water and Gas], under Sub-Clause 4.20 [Employer’s Equipment and Free-Issue Materials], or for other services requested by the Contractor.

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

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

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

3. The Engineer

3.1 Engineer’s Duties and Authority

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

The Engineer shall have no authority to amend the Contract.

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

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

Except as otherwise stated in these Conditions:

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

(b) the Engineer has no authority to relieve either Party of any duties, obligations or responsibilities under the Contract;
(c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Engineer (including absence of disapproval) shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances; and

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

The following provisions shall apply:

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

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

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

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

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

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

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

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

3.2 Delegation by the Engineer

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

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

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

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

3.3 Instructions of the Engineer

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

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

(a) gives an oral instruction,

(b) receives a written confirmation of the instruction, from (or on behalf of) the Contractor, within two working days after giving the instruction, and
(c) does not reply by issuing a written rejection and/or instruction within two working days after receiving the confirmation,

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

3.4 Replacement of the Engineer

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

3.5 Determinations

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

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

4.1 Contractor’s General Obligations

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

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

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

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

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

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

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

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

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

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

### 4.2 Performance Security

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

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

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

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

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

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

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

4.3 Contractor’s Representative

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

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

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

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

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

The Contractor’s Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the Engineer has received prior notice signed by the Contractor’s Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
The Contractor’s Representative shall be fluent in the language for communications defined in Sub-Clauses 1.4 [Law and Language]. If the Contractor’s Representative’s delegates are not fluent in the said language, the Contractor shall make competent interpreters available during all working hours in a number deemed sufficient by the Engineer.

4.4 Subcontractors

The Contractor shall not subcontract the whole of the Works.

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

(a) the Contractor shall not be required to obtain consent to suppliers solely of Materials, or to a subcontract for which the Subcontractor is named in the Contract;

(b) the prior consent of the Engineer shall be obtained to other proposed Subcontractors;

(c) the Contractor shall give the Engineer not less than 28 days’ notice of the intended date of the commencement of each Subcontractor’s work, and of the commencement of such work on the Site; and

(d) each subcontract shall include provisions which would entitle the Employer to require the subcontract to be assigned to the Employer under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination under Sub-Clause 15.2 [Termination by Employer].

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

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

4.5 Assignment of Benefit of Subcontract

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

4.6 Co-operation

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

(a) the Employer’s Personnel,

(b) any other contractors employed by the Employer, and

(c) the personnel of any legally constituted public authorities,

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

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

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

4.7 Setting Out

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

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

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

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

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

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

4.8 Safety Procedures

The Contractor shall:

(a) comply with all applicable safety regulations,

(b) take care for the safety of all persons entitled to be on

the Site,

(c) use reasonable efforts to keep the Site and Works clear

of unnecessary obstruction so as to avoid danger to

these persons,

(d) provide fencing, lighting, guarding and watching of the

Works until completion and taking over under Clause

10 [Employer’s Taking Over], and

(e) provide any Temporary Works (including roadways,

footways, guards and fences) which may be necessary,

because of the execution of the Works, for the use and

protection of the public and of owners and occupiers of

adjacent land.

4.9 Quality Assurance

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

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

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

4.10 Site Data

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

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

(a) the form and nature of the Site, including sub-surface conditions,
(b) the hydrological and climatic conditions,
(c) the extent and nature of the work and Goods necessary for the execution and completion of the Works and the remediaging of any defects,
(d) the Laws, procedures and labour practices of the Country, and
(e) the Contractor’s requirements for access, accommodation, facilities, personnel, power, transport, water and other services.

4.11 Sufficiency of the Accepted Contract Amount

The Contractor shall be deemed to:

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

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

4.12 Unforeseeable Physical Conditions

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

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

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

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

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

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

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

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

The Engineer shall take account of any evidence of the physical conditions foreseen by the Contractor when submitting the Tender, which shall be made available by the Contractor, but shall not be bound by the Contractor’s interpretation of any such evidence.
### 4.13 Rights of Way and Facilities

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

### 4.14 Avoidance of Interference

The Contractor shall not interfere unnecessarily or improperly with:

(a) the convenience of the public, or

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

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

### 4.15 Access Route

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

Except as otherwise stated in these Conditions:

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

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

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

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

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

### 4.16 Transport of Goods

Unless otherwise stated in the Particular Conditions:

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

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

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

4.17 Contractor’s Equipment

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

4.18 Protection of the Environment

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

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

4.19 Electricity, Water and Gas

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

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

The quantities consumed and the amounts due (at these prices) for such services shall be agreed or determined by the Engineer in accordance with Sub-Clause 2.5 [Employer’s Claims] and Sub-Clause 3.5 [Determinations]. The Contractor shall pay these amounts to the Employer.
4.20 **Employer’s Equipment and Free-Issue Materials**

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

(a) the Employer shall be responsible for the Employer’s Equipment, except that

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

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

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

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

4.21 **Progress Reports**

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

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

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

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

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

(i) commencement of manufacture,

(ii) Contractor’s inspections,

(iii) tests, and

(iv) shipment and arrival at the Site;

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

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

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

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

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

4.22 Security of the Site

Unless otherwise stated in the Particular Conditions:

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

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

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

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

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

4.24 Fossils

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor’s Personnel or other persons from removing or damaging any of these findings.

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

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

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

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

5.1 **Definition of “nominated Subcontractor”**

In the Contract, “nominated Subcontractor” means a Subcontractor:

(a) who is stated in the Contract as being a nominated Subcontractor, or

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

5.2 **Objection to Nomination**

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

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

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

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

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

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

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

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

5.4 Evidence of Payments

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

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

(b)

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

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

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

6. Staff and Labour

6.1 Engagement of Staff and Labour

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

The Contractor is encouraged, to the extent practicable and reasonable, to employ staff and labour with appropriate qualifications and experience from sources within the Country.
6.2 Rates of Wages and Conditions of Labour
The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.

(a) The Contractor shall inform the Contractor’s Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.

6.3 Persons in the Service of Employer
The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer’s Personnel.

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

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

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

(a) otherwise stated in the Contract,

(b) the Engineer gives consent, or

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

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

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

6.7 Health and Safety

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

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

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

HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor’s Personnel and the local community, to promote early diagnosis and to assist affected individuals.

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

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

6.8 Contractor’s Superintendence

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

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

6.9 Contractor’s Personnel

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

(a) persists in any misconduct or lack of care,

(b) carries out duties incompetently or negligently,

(c) fails to conform with any provisions of the Contract, or

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

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

6.10 Records of Contractor’s

The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor’s Personnel and of
Personnel and Equipment

Each type of Contractor’s Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.

6.11 Disorderly Conduct

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

6.12 Foreign Personnel

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

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

6.13 Supply of Foodstuffs

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

6.14 Supply of Water

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

6.15 Measures against Insect and Pest Nuisance

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

6.16 Alcoholic Liquor or Drugs

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

6.17 Arms and
6.18 Festivals and Religious Customs

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

6.19 Funeral Arrangements

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

6.20 Prohibition of Forced or Compulsory Labour

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

6.21 Prohibition of Harmful Child Labour

The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.

6.22 Employment Records of Workers

The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor’s Personnel and Equipment].

6.23 Workers’ Organisations

In countries where the relevant labour laws recognise workers’ rights to form and to join workers’ organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers’ organisations, the Contractor shall enable alternative means for the Contractor’s Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor’s Personnel from forming or joining workers’ organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate.
against the Contractor’s Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers’ representatives. Workers’ organisations are expected to fairly represent the workers in the workforce.

6.24 Non-Discrimination and Equal Opportunity

The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause’s requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

7. Plant, Materials and Workmanship

7.1 Manner of Execution

The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:

(a) in the manner (if any) specified in the Contract,

(b) in a proper workmanlike and careful manner, in accordance with recognised good practice, and

(c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

7.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer for consent prior to using the Materials in or for the Works:

(a) manufacturer’s standard samples of Materials and samples specified in the Contract, all at the Contractor’s cost, and

(b) additional samples instructed by the Engineer as a Variation.

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

The Employer’s Personnel shall at all reasonable times:

(a) have full access to all parts of the Site and to all places from which natural Materials are being obtained, and

(b) during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer’s Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor’s cost.

7.4 Testing

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

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

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

The Engineer shall give the Contractor not less than 24 hours’ notice of the Engineer’s intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed
to have been made in the Engineer’s presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to:

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

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

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

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor’s test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

7.5 Rejection

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Employer’s Claims] pay these costs to the Employer.

7.6 Remedial Work

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

(a) remove from the Site and replace any Plant or Materials which is not in accordance with the Contract,

(b) remove and re-execute any other work which is not in accordance with the Contract, and

(c) execute any work which is urgently required for the safety of the Works, whether because of an accident,
unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall subject to Sub-Clause 2.5 [Employer’s Claims] pay to the Employer all costs arising from this failure.

7.7 Ownership of Plant and Materials

Except as otherwise provided in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:

(a) when it is incorporated in the Works;

(b) when the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].

7.8 Royalties

Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:

(a) natural Materials obtained from outside the Site, and

(b) the disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

8. Commencement, Delays and Suspension

8.1 Commencement of Works

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

(a) signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;

(b) delivery to the Contractor of reasonable evidence of the Employer’s financial arrangements (under Sub-
Clause 2.4 [Employer’s Financial Arrangements]);

(c) except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works

(d) receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

If the said Engineer’s instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].

The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

8.2 Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

(a) achieving the passing of the Tests on Completion, and

(b) completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

8.3 Programme

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor’s obligations. Each programme shall include:

(a) the order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor’s Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing,

(b) each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]),
(c) the sequence and timing of inspections and tests specified in the Contract, and

(d) a supporting report which includes:

(i) a general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works, and

(ii) details showing the Contractor’s reasonable estimate of the number of each class of Contractor’s Personnel and of each type of Contractor’s Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer’s Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor’s stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

**8.4 Extension of Time for Completion**

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

(a) a Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract,

(b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
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(c) exceptionally adverse climatic conditions,

(d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or

(e) any delay, impediment or prevention caused by or attributable to the Employer, the Employer’s Personnel, or the Employer’s other contractors.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor’s Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 Delays Caused by Authorities

If the following conditions apply, namely:

(a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country,

(b) these authorities delay or disrupt the Contractor’s work, and

(c) the delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

8.6 Rate of Progress

If, at any time:

(a) actual progress is too slow to complete within the Time for Completion, and/or

(b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme],

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

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor’s Personnel and/or Goods, at the risk and cost of the
Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Employer’s Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

Additional costs of revised methods including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.

### 8.7 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to notice under Sub-Clause 2.5 [Employer’s Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Contract Data.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

### 8.8 Suspension of Work

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

### 8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer’s instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to:

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

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

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

8.10 Payment for Plant and Materials in Event of Suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

(a) the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days, and

(b) the Contractor has marked the Plant and/or Materials as the Employer’s property in accordance with the Engineer’s instructions.

8.11 Prolonged Suspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Engineer’s permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

8.12 Resumption of Work

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Engineer an instruction to this effect under Clause 13 [Variations and Adjustments].

9. Tests on Completion

9.1 Contractor’s Obligations

(b) The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor’s
General Obligations.

The Contractor shall give to the Engineer not less than 21 days’ notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

9.2 Delayed Tests

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

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer’s Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

9.4 Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

(a) order further repetition of Tests on Completion under Sub-Clause 9.3;

(b) if the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to
Remedy Defects]; or

(c) issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Employer’s Claims] and Sub-Clause 3.5 [Determinations].

10. Employer’s Taking Over

10.1 Taking Over of the Works and Sections

Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor’s opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 28 days after receiving the Contractor’s application:

(a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or

(b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.
10.2 Taking Over of Parts of the Works

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor’s application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

(a) the part which is used shall be deemed to have been taken over as from the date on which it is used,

(b) the Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and

(c) if requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to payment of any such Cost plus profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this
Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these damages.

10.3 Interference with Tests on Completion

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days’ notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to:

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

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

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

10.4 Surfaces Requiring Reinstatement

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

11. Defects Liability

11.1 Completion of Outstanding Work and Remediing Defects

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

(a) complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer, and

(b) execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).

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

11.2 Cost of Remedying Defects

All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedyng Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:

(a) any design for which the Contractor is responsible,

(b) Plant, Materials or workmanship not being in accordance with the Contract, or

(c) failure by the Contractor to comply with any other obligation.

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

11.3 Extension of Defects Notification Period

The Employer shall be entitled subject to Sub-Clause 2.5 [Employer’s Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.

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

11.4 Failure to Remedy Defects

If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the
Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.

If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Employer may (at his option):

(a) carry out the work himself or by others, in a reasonable manner and at the Contractor’s cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [Employer’s Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;

(b) require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or

(c) if the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

11.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

11.6 Further Tests

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

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

11.7 Right of Access

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer’s reasonable security restrictions.

11.8 Contractor to Search

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedyng Defects], the Cost of the search plus profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.

11.9 Performance Certificate

Performance of the Contractor’s obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor’s Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

11.10 Unfulfilled Obligations

After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.

11.11 Clearance of Site

Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor’s Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.

If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.

Any balance of the moneys from the sale shall be paid to the
Contractor. If these moneys are less than the Employer’s costs, the Contractor shall pay the outstanding balance to the Employer.

12. Measurement and Evaluation

12.1 Works to be Measured

The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificate], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.

Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor’s Representative, who shall:

(a) promptly either attend or send another qualified representative to assist the Engineer in making the measurement, and

(b) supply any particulars requested by the Engineer.

If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.

Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.

If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.

12.2 Method of Measurement

Except as otherwise stated in the Contract and notwithstanding local practice:

(a) measurement shall be made of the net actual quantity of each item of the Permanent Works, and

(b) the method of measurement shall be in accordance
12.3 Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, a new rate or price shall be appropriate for an item of work if:

(a)

(i) the measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule,

(ii) this change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount,

(iii) this change in quantity directly changes the Cost per unit quantity of this item by more than 1%, and

(iv) this item is not specified in the Contract as a “fixed rate item”;

or

(b)

(i) the work is instructed under Clause 13 [Variations and Adjustments],

(ii) no rate or price is specified in the Contract for this item, and

(iii) no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.
Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.

12.4 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

(a) the Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;

(b) the omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and

(c) this cost is not deemed to be included in the evaluation of any substituted work;

then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

13. Variations and Adjustments

13.1 Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:

(a) changes to the quantities of any item of work included...
in the Contract (however, such changes do not necessarily constitute a Variation),

(b) changes to the quality and other characteristics of any item of work,

(c) changes to the levels, positions and/or dimensions of any part of the Works,

(d) omission of any work unless it is to be carried out by others,

(e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or

(f) changes to the sequence or timing of the execution of the Works.

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

13.2 Value Engineering

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor’s opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

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

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

(a) the Contractor shall design this part,

(b) sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor’s General Obligations] shall apply, and

(c) if this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:

(i) such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause
13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost], and

(ii) the reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

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

13.3 Variation Procedure

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

(a) a description of the proposed work to be performed and a programme for its execution,

(b) the Contractor’s proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion, and

(c) the Contractor’s proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this Clause.

13.4 Payment in Applicable Currencies

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

13.5 Provisional Sums

Each Provisional Sum shall only be used, in whole or in part,
in accordance with the Engineer’s instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

(a) work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or

(b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:

(i) the actual amounts paid (or due to be paid) by the Contractor, and

(ii) a sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

13.6 Daywork

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day’s work:

(a) the names, occupations and time of Contractor’s Personnel,

(b) the identification, type and time of Contractor’s
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13.7 Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to:

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

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

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

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

13.8 Adjustments for Changes in Cost

In this Sub-Clause, “table of adjustment data” means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition...
or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

\[ P_n = a + b \frac{L_n}{L_0} + c \frac{E_n}{E_0} + d \frac{M_n}{M_0} + \ldots \]

where:

“\( P_n \)” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “\( n \)”, this period being a month unless otherwise stated in the Contract Data;

“\( a \)” is a fixed coefficient, stated in the relevant table of adjustment data, representing the non-adjustable portion in contractual payments;

“\( b \)”, “\( c \)”, “\( d \)”, … are coefficients representing the estimated proportion of each cost element related to the execution of the Works, as stated in the relevant table of adjustment data; such tabulated cost elements may be indicative of resources such as labour, equipment and materials;

“\( L_n \)”, “\( E_n \)”, “\( M_n \)”, … are the current cost indices or reference prices for period “\( n \)”, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and

“\( L_0 \)”, “\( E_0 \)”, “\( M_0 \)”, … are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates (quoted in the fourth and fifth columns respectively of the table) for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.
In cases where the “currency of index” is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favourable to the Employer.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

14. Contract Price and Payment

14.1 The Contract Price

Unless otherwise stated in the Particular Conditions:

(a) the Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;

(b) the Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];

(c) any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:

(i) of the Works which the Contractor is required to execute, or

(ii) for the purposes of Clause 12 [Measurement and Evaluation]; and

(d) the Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may
take account of the breakdown when preparing Payment
Certificates, but shall not be bound by it.

(c) Notwithstanding the provisions of subparagraph (b),
Contractor’s Equipment, including essential spare parts
therefor, imported by the Contractor for the sole purpose of
executing the Contract shall be exempt from the payment of
import duties and taxes upon importation.

14.2 Advance Payment

The Employer shall make an advance payment, as an interest-
free loan for mobilisation and cash flow support, when the
Contractor submits a guarantee in accordance with this Sub-
Clause. The total advance payment, the number and timing of
instalments (if more than one), and the applicable currencies
and proportions, shall be as stated in the Contract Data.

Unless and until the Employer receives this guarantee, or if
the total advance payment is not stated in the Contract Data,
this Sub-Clause shall not apply.

The Engineer shall deliver to the Employer and to the
Contractor an Interim Payment Certificate for the advance
payment or its first instalment after receiving a Statement
(under Sub-Clause 14.3 [Application for Interim Payment
Certificates]) and after the Employer receives (i) the
Performance Security in accordance with Sub-Clause 4.2
[Performance Security] and (ii) a guarantee in amounts and
currencies equal to the advance payment. This guarantee shall
be issued by a reputable bank or financial institution selected
by the Contractor and shall be in the form annexed to the
Particular Conditions or in another form approved by the
Employer.

The Contractor shall ensure that the guarantee is valid and
enforceable until the advance payment has been repaid, but its
amount shall be progressively reduced by the amount repaid
by the Contractor as indicated in the Payment Certificates. If
the terms of the guarantee specify its expiry date, and the
advance payment has not been repaid by the date 28 days
prior to the expiry date, the Contractor shall extend the
validity of the guarantee until the advance payment has been
repaid.

Unless stated otherwise in the Contract Data, the advance
payment shall be repaid through percentage deductions from
the interim payments determined by the Engineer in
accordance with Sub-Clause 14.6 [Issue of Interim Payment
Certificates], as follows:

(a) deductions shall commence in the next interim Payment
Certificate following that in which the total of all
certified interim payments (excluding the advance
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payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and

(b) deductions shall be made at the amortisation rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

(d) If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Employer], except for Sub-Clause 15.5 [Employer’s Entitlement to Termination for Convenience], payable by the Contractor to the Employer.

14.3 Application for Interim Payment Certificates

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

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

(a) the estimated contract value of the Works executed and the Contractor’s Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);

(b) any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];

(c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above amounts, until the
amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;

(d) any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];

(e) any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];

(f) any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and

(g) the deduction of amounts certified in all previous Payment Certificates.

14.4 Schedule of Payments

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

(a) the instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];

(b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and

(c) if these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

14.5 Plant and Materials intended for the Works

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the
Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under subparagraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.

The Engineer shall determine and certify each addition if the following conditions are satisfied:

(a) the Contractor has:

(i) kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection, and

(ii) submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

(b) the relevant Plant and Materials:

(i) are those listed in the Schedules for payment when shipped,

(ii) have been shipped to the Country, en route to the Site, in accordance with the Contract; and

(iii) are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

(c) the relevant Plant and Materials:

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

The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Engineer’s determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

14.6 Issue of Interim Payment Certificates

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Contract Data. In this event, the Engineer shall give notice to the Contractor accordingly.

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

(a) if any thing supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

(b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any
correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

14.7 Payment

The Employer shall pay to the Contractor:

(a) the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;

(b) the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; or, at a time when the Bank’s loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and

(c) the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank’s loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

14.8 Delayed Payment

If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.
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The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

14.9 Payment of Retention Money

When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu
of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

14.10 Statement at Completion

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:

(a) the value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works,

(b) any further sums which the Contractor considers to be due, and

(c) an estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

14.11 Application for Final Payment Certificate

Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:

(a) the value of all work done in accordance with the Contract, and

(b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt of said draft and shall make such changes in
the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the “Final Statement”.

However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board’s Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.

14.12 Discharge

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

14.13 Issue of Final Payment Certificate

Within 28 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall deliver, to the Employer and to the Contractor, the Final Payment Certificate which shall state:

(a) the amount which he fairly determines is finally due, and

(b) after giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.

If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14 Cessation of Employer’s Liability

The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the
Contractor shall have included an amount expressly for it:

(a) in the Final Statement and also

(b) (except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

However, this Sub-Clause shall not limit the Employer’s liability under his indemnification obligations, or the Employer’s liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

14.15 Currencies of Payment

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

(a) if the Accepted Contract Amount was expressed in Local Currency only:

(i) the proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;

(ii) payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and

(iii) other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;

(b) payment of the damages specified in the Contract Data, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;

(c) other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;

(d) if any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this
amount from the sums otherwise payable to the Contractor in other currencies; and

(e) if no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

15. Termination by Employer

15.1 Notice to Correct
If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

15.2 Termination by Employer
The Employer shall be entitled to terminate the Contract if the Contractor:

(a) fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct],

(b) abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract,

(c) without reasonable excuse fails:

(i) to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension], or

(ii) to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,

(d) subcontracts the whole of the Works or assigns the Contract without the required agreement,

(e) becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events, or

(f) gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:

(i) for doing or forbearing to do any action in relation to the Contract, or
(ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract, or if any of the Contractor’s Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor’s Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days’ notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer’s election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor’s Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor’s Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor’s Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

15.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor’s Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

15.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2
[Termination by Employer] has taken effect, the Employer may:

(a) proceed in accordance with Sub-Clause 2.5 [Employer’s Claims],

(b) withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established, and/or

(c) recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

15.5 Employer’s Entitlement to Termination for Convenience

The Employer shall be entitled to terminate the Contract, at any time for the Employer’s convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor].

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor’s Equipment] and shall be paid in accordance with Sub-Clause 16.4 [Payment on Termination].

15.6 Corrupt or Fraudulent Practices

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [Termination by Employer].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor’s Personnel].

For the purposes of this Sub-Clause:

(i) “corrupt practice” is the offering, giving,
receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;¹

(ii) “fraudulent practice” is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;²

(iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;³

(iv) “coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;⁴

(v) “obstructive practice” is

(aa) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or

(bb) acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under Sub-Clause 1.15 [Inspections and Audits by the Bank].

¹ “Another party” refers to a public official acting in relation to the procurement process or contract execution. In this context, “public official” includes World Bank staff and employees of other organizations taking or reviewing procurement decisions.

² “Party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

³ “Parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non-competitive levels.

⁴ “Party” refers to a participant in the procurement process or contract execution.
16. Suspension and Termination by Contractor

16.1 Contractor’s Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer’s Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days’ notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer’s Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor’s action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to:

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

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

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

16.2 Termination by

The Contractor shall be entitled to terminate the Contract if:
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Contractor (a) the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor’s Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer’s Financial Arrangements],

(b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,

(c) the Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer’s Claims]),

(d) the Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract,

(e) the Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment],

(f) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or

(g) the Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events.

(h) the Contractor does not receive the Engineer’s instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

In any of these events or circumstances, the Contractor may, upon giving 14 days’ notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him
upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor’s election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

16.3 Cessation of Work and Removal of Contractor’s Equipment

After a notice of termination under Sub-Clause 15.5 [Employer’s Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

(a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works,

(b) hand over Contractor’s Documents, Plant, Materials and other work, for which the Contractor has received payment, and

(c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

16.4 Payment on Termination

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Employer shall promptly:

(a) return the Performance Security to the Contractor,

(b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and

(c) pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

17. Risk and Responsibility

17.1 Indemnities

The Contractor shall indemnify and hold harmless the Employer, the Employer’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

(a) bodily injury, sickness, disease or death, of any person
whatsoever arising out of or in the course of or by reason of the Contractor’s design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer’s Personnel, or any of their respective agents, and

(b) damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor’s design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer’s Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer’s Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in subparagraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

17.2 Contractor’s Care of the Works

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor’s Documents during the period when the Contractor is responsible for their care, from any cause not listed in Sub-Clause 17.3 [Employer’s Risks], the Contractor shall rectify the
loss or damage at the Contractor’s risk and cost, so that the Works, Goods and Contractor’s Documents conform with the Contract.

The Contractor shall be liable for any loss or damage caused by any actions performed by the Contractor after a Taking-Over Certificate has been issued. The Contractor shall also be liable for any loss or damage which occurs after a Taking-Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

### 17.3 Employer’s Risks

The risks referred to in Sub-Clause 17.4 [Consequences of Employer’s Risks] below, insofar as they directly affect the execution of the Works in the Country, are:

(a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

(b) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war, within the Country,

(c) riot, commotion or disorder within the Country by persons other than the Contractor’s Personnel,

(d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, within the Country, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity,

(e) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,

(f) use or occupation by the Employer of any part of the Permanent Works, except as may be specified in the Contract,

(g) design of any part of the Works by the Employer’s Personnel or by others for whom the Employer is responsible, and

(h) any operation of the forces of nature which is Unforeseeable or against which an experienced contractor could not reasonably have been expected to have taken adequate preventive precautions.

### 17.4 Consequences of Employer’s Risks

If and to the extent that any of the risks listed in Sub-Clause 17.3 above results in loss or damage to the Works, Goods or Contractor’s Documents, the Contractor shall promptly give notice to the Engineer and shall rectify this loss or damage to the extent required by the Engineer.

If the Contractor suffers delay and/or incurs Cost from
rectifying this loss or damage, the Contractor shall give a further notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

(b) payment of any such Cost, which shall be included in the Contract Price. In the case of sub-paragraphs (f) and (g) of Sub-Clause 17.3 [Employer's Risks], Cost plus profit shall be payable.

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

17.5 Intellectual and Industrial Property Rights

In this Sub-Clause, “infringement” means an infringement (or alleged infringement) of any patent, registered design, copyright, trade mark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and “claim” means a claim (or proceedings pursuing a claim) alleging an infringement.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was:

(a) an unavoidable result of the Contractor’s compliance with the Contract, or

(b) a result of any Works being used by the Employer:

   (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or

   (ii) in conjunction with any thing not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.
17.6 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedy]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Employer’s Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer’s Equipment and Free-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

17.7 Use of Employer’s Accommodation/Facilities

The Contractor shall take full responsibility for the care of the Employer provided accommodation and facilities, if any, as detailed in the Specification, from the respective dates of hand-over to the Contractor until cessation of occupation (where hand-over or cessation of occupation may take place after the date stated in the Taking-Over Certificate for the Works).

If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the Employer is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.
18. Insurance

18.1 General Requirements for Insurances

In this Clause, “insuring Party” means, for each type of insurance, the Party responsible for effecting and maintaining the insurance specified in the relevant Sub-Clause.

Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the Employer. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

Wherever the Employer is the insuring Party, each insurance shall be effected with insurers and in terms acceptable to the Contractor. These terms shall be consistent with any terms agreed by both Parties before the date of the Letter of Acceptance. This agreement of terms shall take precedence over the provisions of this Clause.

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer’s Personnel, (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other direct dealings with the insurer, and (iii) the insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.

The relevant insuring Party shall, within the respective periods stated in the Contract Data (calculated from the Commencement Date), submit to the other Party:

(a) evidence that the insurances described in this Clause have been effected, and

(b) copies of the policies for the insurances described in Sub-Clause 18.2 [Insurance for Works and Contractor’s Equipment] and Sub-Clause 18.3 [Insurance against Injury to Persons and Damage to Property].

When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence
or policies are submitted, the insuring Party shall also give notice to the Engineer.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contract, or fails to provide satisfactory evidence and copies of policies in accordance with this Sub-Clause, the other Party may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage and pay the premiums due. The insuring Party shall pay the amount of these premiums to the other Party, and the Contract Price shall be adjusted accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the Employer, under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the Employer in accordance with these obligations, liabilities or responsibilities. However, if the insuring Party fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the other Party neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the insuring Party.

Payments by one Party to the other Party shall be subject to Sub-Clause 2.5 [Employer’s Claims] or Sub-Clause 20.1 [Contractor’s Claims], as applicable.

The Contractor shall be entitled to place all insurance relating to the Contract (including, but not limited to the insurance referred to Clause 18) with insurers from any eligible source country.

18.2 Insurance for Works and Contractor’s Equipment

The insuring Party shall insure the Works, Plant, Materials and Contractor’s Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall
be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The insuring Party shall insure the Contractor’s Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor’s Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor’s Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

(a) shall be effected and maintained by the Contractor as insuring Party,

(b) shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,

(c) shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Employer’s Risks],

(d) shall also cover, to the extent specifically required in the bidding documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Employer’s Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Contract Data (if an amount is not so stated, this sub-paragraph (d) shall not apply), and

(e) may however exclude loss of, damage to, and reinstatement of:

(i) a part of the Works which is in a defective
condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below),

(ii) a part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship,

(iii) a part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage, and

(iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [Employer’s Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

18.3 Insurance against Injury to Persons and Damage to Property

The insuring Party shall insure against each Party’s liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor’s Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor’s Personnel]), which may arise out of the Contractor’s performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

(a) shall be effected and maintained by the Contractor as
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insuring Party,

(b) shall be in the joint names of the Parties,

(c) shall be extended to cover liability for all loss and damage to the Employer’s property (except things insured under Sub-Clause 18.2) arising out of the Contractor’s performance of the Contract, and

(d) may however exclude liability to the extent that it arises from:

(i) the Employer’s right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works,

(ii) damage which is an unavoidable result of the Contractor’s obligations to execute the Works and remedy any defects, and

(iii) a cause listed in Sub-Clause 17.3 [Employer’s Risks], except to the extent that cover is available at commercially reasonable terms.

18.4 Insurance for Contractor’s Personnel

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor’s Personnel.

The insurance shall cover the Employer and the Engineer against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor’s Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer’s Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor’s employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

19. Force Majeure

19.1 Definition of Force Majeure

In this Clause, “Force Majeure” means an exceptional event or circumstance:

(a) which is beyond a Party’s control,
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(b) which such Party could not reasonably have provided against before entering into the Contract,

(c) which, having arisen, such Party could not reasonably have avoided or overcome, and

(d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

(i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,

(ii) rebellion, terrorism, sabotage by persons other than the Contractor’s Personnel, revolution, insurrection, military or usurped power, or civil war,

(iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor’s Personnel,

(iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor’s use of such munitions, explosives, radiation or radio-activity, and

(v) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

19.2 Notice of Force Majeure

If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

19.3 Duty to Minimise Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to
be affected by the Force Majeure.

19.4 Consequences of Force Majeure

If the Contractor is prevented from performing his substantial obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor’s Claims] to:

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

(b) if the event or circumstance is of the kind described in sub-paragraphs (i) to (iv) of Sub-Clause 19.1 [Definition of Force Majeure] and, in sub-paragraphs (ii) to (iv), occurs in the Country, payment of any such Cost, including the costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure, to the extent they are not indemnified through the insurance policy referred to in Sub-Clause 18.2 [Insurance for Works and Contractor’s Equipment].

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

19.5 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor’s non-performance or entitle him to relief under this Clause.

19.6 Optional Termination, Payment and Release

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor’s Equipment].

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

(a) the amounts payable for any work carried out for which
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19.7 Release from Performance

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

(a) the Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract, and

(b) the sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

20. Claims, Disputes and Arbitration

20.1 Contractor’s Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor

a price is stated in the Contract;

(b) the Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer’s disposal;

(c) other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;

(d) the Cost of removal of Temporary Works and Contractor’s Equipment from the Site and the return of these items to the Contractor’s works in his country (or to any other destination at no greater cost); and

(e) the Cost of repatriation of the Contractor’s staff and labour employed wholly in connection with the Works at the date of termination.
became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer’s liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

(a) this fully detailed claim shall be considered as interim;

(b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and

(c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request
any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board in accordance with Sub-Clause 20.4 [Obtaining Dispute Board’s Decision].

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

20.2 Appointment of the Dispute Board

Disputes shall be referred to a DB for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Board’s Decision]. The Parties shall appoint a DB by the date stated in the Contract Data.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons (“the members”), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the Parties have not jointly appointed the DB 21 days before the date stated in the Contract Data and the DB is to
comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [Discharge] shall have become effective.

### 20.3 Failure to Agree on the Composition of the Dispute Board

If any of the following conditions apply, namely:

(a) the Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Sub-Clause 20.2, [Appointment of the Dispute Board],

(b) either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB of three persons
20.4 Obtaining Dispute Board’s Decision

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB’s decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If
the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other Party.

In either event, this Notice of Dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Board’s Decision] and Sub-Clause 20.8 [Expiry of Dispute Board’s Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 28 days after it received the DB’s decision, then the decision shall become final and binding upon both Parties.

20.5 Amicable Settlement

Where a Notice of Dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

20.6 Arbitration

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB’s decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

(a) if the contract is with foreign contractors,

(i) for contracts financed by all participating Banks except under sub-paragraph (a) (2) below: international arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings
administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules

(b) if the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer’s country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

20.7 Failure to Comply with Dispute Board’s Decision

In the event that a Party fails to comply with a final and binding DB decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration]. Sub-Clause 20.4 [Obtaining Dispute Board’s Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.

20.8 Expiry of Dispute Board’s Appointment

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place, whether by reason of the expiry of the DB’s appointment or otherwise:

(a) Sub-Clause 20.4 [Obtaining Dispute Board’s Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply, and
(b) the dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration].
APPENDIX

A General Conditions of Dispute Board Agreement

1. Definitions

Each “Dispute Board Agreement” is a tripartite agreement by and between:

(a) the “Employer”;

(b) the “Contractor”; and

(c) the “Member” who is defined in the Dispute Board Agreement as being:

(i) the sole member of the "DB" and, where this is the case, all references to the “Other Members” do not apply, or

(ii) one of the three persons who are jointly called the “DB” (or “Dispute Board”) and, where this is the case, the other two persons are called the “Other Members”.

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

(a) the Commencement Date defined in the Contract,

(b) when the Employer, the Contractor and the Member have each signed the Dispute Board Agreement, or

(c) when the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days’ notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor
relied upon the Member’s representations that he/she is:

(a) experienced in the work which the Contractor is to carry out under the Contract,

(b) experienced in the interpretation of contract documentation, and

(c) fluent in the language for communications defined in the Contract.

4. **General Obligations of the Member**

The Member shall:

(a) have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;

(b) not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;

(c) have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;

(d) not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);

(e) comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;

(f) not give advice to the Employer, the Contractor, the Employer’s Personnel or the Contractor’s Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;

(g) not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;

(h) ensure his/her availability for all site visits and hearings as
are necessary;

(i) become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;

(j) treat the details of the Contract and all the DB’s activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and

(k) be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

5. General Obligations of the Employer and the Contractor

The Employer, the Contractor, the Employer’s Personnel and the Contractor’s Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB’s activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer’s Personnel and the Contractor’s Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

(a) be appointed as an arbitrator in any arbitration under the Contract;

(b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or

(c) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member’s functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate
6. **Payment**

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

(a) a retainer fee per calendar month, which shall be considered as payment in full for:

(i) being available on 28 days’ notice for all site visits and hearings;

(ii) becoming and remaining conversant with all project developments and maintaining relevant files;

(iii) all office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and

(iv) all services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

(b) a daily fee which shall be considered as payment in full for:

(i) each day or part of a day up to a maximum of two days’ travel time in each direction for the journey between the Member’s home and the Site, or another location of a meeting with the Other Members (if any);

(ii) each working day on Site visits, hearings or preparing decisions; and

(iii) each day spent reading submissions in preparation for a hearing.

(c) all reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member’s duties, as well as the cost of telephone calls, courier charges, faxes and telexes; a receipt shall be required for each item in excess of five percent of the daily
fee referred to in sub-paragraph (b) of this Clause;

(d) any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a Site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member’s invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer’s rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

7. Termination

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days’ notice to the Member; or (ii) the Member may resign as provided
for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

8. Default of the Member

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

9. Disputes

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed, the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.
Section VII. General Conditions (GC)

PROCEDURAL RULES

Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each Site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of Site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each Site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

(a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other’s case, and

(b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.
The Employer and the Contractor empower the DB, among other things, to:

(a) establish the procedure to be applied in deciding a dispute,

(b) decide upon the DB’s own jurisdiction, and as to the scope of any dispute referred to it,

(c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules,

(d) take the initiative in ascertaining the facts and matters required for a decision,

(e) make use of its own specialist knowledge, if any,

(f) decide upon the payment of financing charges in accordance with the Contract,

(g) decide upon any provisional relief such as interim or conservatory measures, and

(h) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

(a) it shall convene in private after a hearing, in order to have discussions and prepare its decision;

(b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and

(c) if a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision, unless:

(i) either the Employer or the Contractor does not agree that they do so, or

(ii) the absent Member is the chairman and he/she instructs the other Members not to make a decision.
Section VIII. Particular Conditions (PC)

The following Particular Conditions shall supplement the GC. Whenever there is a conflict, the provisions herein shall prevail over those in the GC.
**Part A - Contract Data**

<table>
<thead>
<tr>
<th>Conditions</th>
<th>Ref. GCC</th>
<th>Data</th>
</tr>
</thead>
</table>
| Employer’s name and address         | 1.1.2.2 & 1.3 | The Ministry of Education  
State Department for University Education and Research  
Jogoo House, 10th Floor  
P.O. Box 9583-00200, NAIROBI  
TEL.: +254-20-2228617 (DL)/3318581 Ext. 31452  
Email: cas.psuer@gmail.com |
| Engineer’s name and address         | 1.1.2.4 & 1.3 | Korea Advanced Institute of Science and Technology  
KAIST, 291 Daehak-ro, Yuseong-gu, Daejeon 34141, Republic of Korea  
SUNJIN Engineering & Architecture  
26F, Obiz Tower, 126, Beolmal-ro, Dongan-gu, Anyang-si, Gyeonggi-do, Korea |
| Bank’s name                         | 1.1.2.11 | The Export-Import Bank of Korea |
| Borrower’s name                     | 1.1.2.12 | Republic of Kenya |
| Time for Completion                 | 1.1.3.3 | 24 months |
| Defects Notification Period         | 1.1.3.7 | 12 months for construction  
24 months for educational and/or research equipment |
| Sections                            | 1.1.5.6 | Not applicable |
| Electronic transmission systems     | 1.3      | E-mail |
| Governing Law                       | 1.4      | The Law of Republic of Kenya |
| Ruling language                     | 1.4      | English |
| Language for communications         | 1.4      | English |
| Time for access to the Site         | 2.1      | Within One (1) Month after the commencement date |
| Engineer’s Duties and Authority     | 3.1(b)(ii) | Variations resulting in an increase of the Accepted Contract Amount in excess of 10,000 USD shall require approval of the Employer. |
| Performance Security                | 4.2      | The performance security will be in the form of an unconditional bank guarantee in the amount(s) of Ten percent (10%) of the accepted contract price  
The Performance guarantee issued from a reputable bank in Bidder’s country and counter guaranteed by a reputable bank in the Employer’s country. |
| Normal working hours                | 6.5      | 08:00AM to 05:00 PM  
Monday to Friday |
| Delay damages for the Works         | 8.7 & 14.15(b) | 0.03% of the final Contract Price per day, in the currencies and proportions in which the Contract Price is payable. |
| Maximum amount of delay damages      | 8.7      | 5% of the final Contract Price. |
| Right to Vary                       | 13.1     | If eligible source countries for any material, labor, or equipment need to be changed during the implementation, the Contract may be amended under the relevant provision of the Contract subject to the prior consent of the Bank. |
| Provisional Sums                    | 13.5.(b)(ii) | Not Applicable |
| Adjustments for Changes in Cost; Table(s) of Adjustment Data | 13.8 | Not Applicable |
Payment Currency : Korean Won  
The payment will be made in accordance with Disbursement Rules |
Procedures under the EDCF Loan.

Disbursement of the Loan shall be made through Commitment Procedure and/or Direct Payment Procedure

With reference to the provisions of General Conditions (GC) Clause 14, the Employer shall pay the accepted contract price to the contractor in accordance with terms and conditions specified below;

Unless otherwise stated, the total contract price means the total cost of goods or services under the certain payment category.

1. Advance Payment
Twenty Percent (20%) of the accepted contract price shall be paid to the contractor upon presentation of
   a) Contractor’s invoice with payment request
   b) Original advance payment guarantee from a reputable bank in Bidder’s country and counter guaranteed by a reputable bank in the Employer's country.

2. Mobilization Payment
Ten Percent (10 %) of the accepted contract price shall be paid to the contractor upon presentation of
   a) Project site office rent contract
   b) Physical relocation of Project Manager Presentation of review and delivery plan on imported goods and equipment

3. Payment of contract price for goods and educational and/or research equipment
This price shall include but not limited to installation and/or start-up of the supplied goods and educational and/or research equipment, furnishing of any tools and necessary manual required for the maintenance of the supplied goods and equipment.

The suppliers or manufacturers shall guarantee the warranty obligations on the goods and equipment under this contract, and shall provide relevant services for training of the Employer’s personnel on site to effectively operate the goods and equipment.

The price shall include the transportation, freight, storage and insurance.

1) Terms of Payment for imported Goods and Equipment
Thirty percent (30%) of the contract price shall be paid to the Supplier / Contractor upon the presentation of
   a) Contractor’s invoice with payment request
   b) Copy of complete shipping documents
   c) Certificate of origin from the Supplier.

Thirty percent (30%) of the contract price shall be paid to the Supplier / Contractor on delivery to the site upon the presentation of
   a) Contractor's invoice with payment request
b) Certificates of inspection issued by the Consultant

Ten percent (10%) of the contract price shall be paid to the Supplier / Contractor upon the presentation of
a) Contractor’s invoice with payment request
b) Taking Over certificate issued by the Employer
c) Retention Security issued by the reputable bank in Bidder’s country and counter guaranteed by a reputable bank in the Employer's country.

2) Terms of Payment for local Goods and Equipment
Sixty percent (60%) of the contract price shall be paid to the Supplier / Contractor upon the presentation of
a) Contractor’s invoice with payment request
b) Certificates of inspection issued by the Consultant

ten percent (10%) of the contract price shall be paid to the Supplier / Contractor upon the presentation of
a) Contractor’s invoice with payment request
b) Taking Over certificate issued by the Employer
c) Retention Security issued by the reputable bank in Employer’s country

4. Payment of contract price for works
1) Sixty percent (60%) of Interim payment shall be paid to the Contractor upon presentation of
a) Contractor’s invoice with payment request
b) Inspection Report by the Consultant
c) Progress Certificate issued by the Employer

2) Ten percent (10%) of the contract price shall be paid to the Contractor upon the presentation of
a) Contractor’s invoice with payment request
b) Taking Over certificate issued by the Employer
c) Retention Security issued by the reputable bank in Employer’s country

5. Payment of ERP System and Digital Library System
1) Thirty percent (30%) of Interim payment shall be paid to the Contractor upon presentation of
a) Contractor’s invoice with payment request
b) To-Be Report by the project team (To-Be Report means Blueprint for system development which including Organization structures and Business processes for each roles)
c) Progress Certificate issued by the Employer

2) Thirty percent (30%) of Interim payment shall be paid to the Contractor upon presentation of
a) Contractor’s invoice with payment request
b) Go-lived ERP and Digital Library system by the project team (Go-live means opening ERP system to the end-users and start to use ERP for business transaction. In short, customers start to use ERP system for their business transaction, so the phase is changed from development to Production)
c) Progress Certificate issued by the Employer
### Section VIII. Particular Conditions (PC)

<table>
<thead>
<tr>
<th>Payment of taxes, duties and levies</th>
<th>14.1(b)</th>
<th>All taxes, duties and levies imposed on goods and services in Republic of Kenya provided by the Contractor under the Loan Agreement for the implementation of the Project shall either be exempted or borne by the Borrower.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total advance payment</td>
<td>14.2</td>
<td>20% Percentage of the Accepted Contract Amount payable in the currencies and proportions in which the Accepted Contract Amount is payable</td>
</tr>
<tr>
<td>Repayment amortization of advance payment</td>
<td>14.2(b)</td>
<td>20% Percentage of the Accepted Contract Amount</td>
</tr>
<tr>
<td>Percentage of Retention</td>
<td>14.3</td>
<td>Refer to Particular Conditions 14</td>
</tr>
<tr>
<td>Limit of Retention Money</td>
<td>14.3</td>
<td>Refer to Particular Conditions 14</td>
</tr>
<tr>
<td>Plant and Materials</td>
<td>14.5 b (iii)</td>
<td>Details of shipping documents for imported Goods and Equipment to be provided by the Contractor shall be: Upon shipment, the contractor shall notify the Employer and the Insurance Company by email or fax the full details of the shipment, including Contract number, description of Goods, quantity, the vessel, the bill of lading number and date, port of loading, date of shipment, port of discharge, etc. The Contractor shall send the following documents to the Employer, with a copy to the Insurance Company:</td>
</tr>
<tr>
<td>Minimum Amount of Interim Payment Certificates</td>
<td>14.6</td>
<td>2% of the Accepted Contract Amount.</td>
</tr>
<tr>
<td>Maximum total liability of the Contractor to the Employer</td>
<td>17.6</td>
<td>100% of the accepted contract amount</td>
</tr>
</tbody>
</table>

3) Ten percent (10%) of the contract price shall be paid to the Contractor upon the presentation of
   a) Contractor’s invoice with payment request
   b) Taking Over certificate issued by the Employer
   c) Retention Security issued by the reputable bank in Employer’s country

The Employer shall receive the above documents at least two (2) weeks before arrival of the Goods at the port or place of arrival and, if not received, the Contractor will be responsible for any consequent expenses.

The Employer shall take full responsibility for any levies or penalties including demurrage charges at the destination port which may arise from the Employer’s default including mishandling of above documents even if they are delivered within the above mentioned time.

Details of shipping documents for imported Goods and Equipment to be provided by the Contractor shall be:

i. two (2) copies of the invoice showing the description of the Goods, quantity, unit price, and total amount;
ii. original and three (3) copies of the negotiable, clean, on-board bill of lading marked “freight prepaid” and three (3) copies of non-negotiable bill of lading;
iii. three (3) copies of the packing list identifying contents of each package;
iv. insurance certificate;
v. Manufacturer's or Supplier's warranty certificate;
vi. inspection certificate, issued by the Consultant
vii. the Supplier’s factory inspection report;
viii. certificate of origin;
ix. estimated time and point of arrival in the Employer’s Country.

The Employer shall take full responsibility for any levies or penalties including demurrage charges at the destination port which may arise from the Employer’s default including mishandling of above documents even if they are delivered within the above mentioned time.
| Periods for submission of insurance: | 18.1 | 28 days From Commencement Date  
56 days From Commencement Date |
<table>
<thead>
<tr>
<th></th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>a. evidence of insurance.</td>
<td></td>
<td></td>
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<tr>
<td>b. relevant policies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum amount of deductibles for</td>
<td>18.2(d)</td>
<td>5,000 USD</td>
</tr>
<tr>
<td>insurance of the Employer’s risks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minimum amount of third party</td>
<td>18.3</td>
<td>300,000 USD</td>
</tr>
<tr>
<td>insurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date by which the DAB shall be</td>
<td>20.2</td>
<td>The DB shall be appointed</td>
</tr>
<tr>
<td>appointed</td>
<td></td>
<td>within 21 days after a</td>
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<tr>
<td></td>
<td></td>
<td>dispute arises and a Party</td>
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<td></td>
<td>notifies the other of its</td>
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<td></td>
<td></td>
<td>intention to refer the</td>
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<tr>
<td></td>
<td></td>
<td>dispute to DB.</td>
</tr>
<tr>
<td>The DAB shall be comprised of</td>
<td>20.2</td>
<td>Three Members</td>
</tr>
<tr>
<td>List of potential DB sole members</td>
<td>20.2</td>
<td>None</td>
</tr>
<tr>
<td>Appointment (if not agreed) to be</td>
<td>20.3</td>
<td>Chairman of the Chartered</td>
</tr>
<tr>
<td>made by</td>
<td></td>
<td>Institute of Arbitrators</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Kenya Branch)</td>
</tr>
<tr>
<td>Rules of arbitration</td>
<td>20.6(a)</td>
<td>Rules of Arbitration of the</td>
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<td></td>
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<td>Chartered Institute of</td>
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<td>Arbitrators, and the 1995</td>
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<tr>
<td></td>
<td></td>
<td>Arbitration Act Kenya</td>
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</table>
### Table: Summary of Sections

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<th>Section Name/Description (Sub-Clause 1.1.5.6)</th>
<th>Time for Completion (Sub-Clause 1.1.3.3)</th>
<th>Damages for Delay (Sub-Clause 8.7)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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Section IX. Annex to the Particular Conditions - Contract Forms

Table of Forms

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<td>Retention Money Security</td>
<td>271</td>
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</table>
Letter of Acceptance
[on letterhead paper of the Employer]

........ date ......

To: ............ name and address of the Contractor ............

Subject: ............ Notification of Award Contract No. ............

This is to notify you that your Bid dated ........ date ....... for execution of the ........ name of the contract and identification number, as given in the Contract Data ............ for the Accepted Contract Amount of the equivalent of ........ amount in numbers and words and name of currency ....... as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Agency.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section 9 (Contract Forms) of the Bidding Document.

Authorized Signature: .................................................................

Name and Title of Signatory: ....................................................... 

Name of Agency: ........................................................................

Attachment: Contract Agreement
Contract Agreement

THIS AGREEMENT made the . . . . day of . . . . . . . . . . . . . . , between . . . . name of the Employer . . . . (hereinafter “the Employer”), of the one part, and . . . . name of the Contractor . . . . (hereinafter “the Contractor”), of the other part:

WHEREAS the Employer desires that the Works known as . . . . name of the Contract . . . . should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remediing of any defects therein,

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.

2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.

(a) - the Letter of Acceptance

1. - the Letter of Bid
2. - the Addenda Nos . . . . insert addenda numbers if any . . . .
3. - the Particular Conditions
4. - the General Conditions;
5. - the Specification
6. - the Drawings; and
7. - the completed Schedules,

3. In consideration of the payments to be made by the Employer to the Contractor as indicated in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.

4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remediing of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of . . . . name of the borrowing country . . . . on the day, month and year indicated above.

Signed by ................................................................. Signed by .................................................................
for and on behalf of the Employer for and on behalf the Contractor
in the presence of in the presence of

Witness, Name, Signature, Address, Date Witness, Name, Signature, Address, Date
Performance Security

Bank’s Name, and Address of Issuing Branch or Office

Beneficiary: Name and Address of Employer

Date:

Performance Guarantee No.:

We have been informed that name of the Contractor (hereinafter called “the Contractor”) has entered into Contract No. reference number of the Contract dated with you, for the execution of name of contract and brief description of Works (hereinafter called “the Contract”). Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required. At the request of the Contractor, we name of the Bank hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of name of the currency and amount in figures amount in words such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of , and any demand for payment under it must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, except that subparagraph (ii) of Sub-article 20(a) is hereby excluded.

Seal of Bank and Signature(s)

Note: All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

* The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

** Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: “The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer’s written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee.”
Advance Payment Security

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

Beneficiary: Name and Address of Employer

Date:

Advance Payment Guarantee No.:

We have been informed that name of the Contractor (hereinafter called "the Contractor") has entered into Contract No. reference number of the Contract dated with you, for the execution of name of contract and brief description of Works (hereinafter called "the Contract").

Furthermore, we understand that, according to the Conditions of the Contract, an advance payment in the sum name of the currency and amount in figures (amount in words) is to be made against an advance payment guarantee.

At the request of the Contractor, we name of the Bank hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of name of the currency and amount in figures (amount in words) upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

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

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Contractor as indicated in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that eighty (80) percent of the Contract Price has been certified for payment, or on the day of , whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

This guarantee is subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458.

Note: All italicized text is for guidance on how to prepare this demand guarantee and shall be deleted from the final document.

* The Guarantor shall insert an amount representing the percentage of the Contract Price specified in the Contract and denominated either in the currency(ies) of the Contract or a freely convertible currency acceptable to the Employer.

** Insert the date twenty-eight days after the expected completion date. The Employer should note that in the event of an extension of the time for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Employer's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."
RetentionPolicy Money Security

________________________________ [Bank’s Name, and Address of Issuing Branch or Office]

Beneficiary: ______________________ [Name and Address of Employer]

Date: ________________

Retention Money Guarantee No.: ______________________

We have been informed that ________________ [name of Contractor] (hereinafter called "the Contractor") has entered into Contract No. ________________ [reference number of the contract] dated ____________ with you, for the execution of ________________ [name of contract and brief description of Works] (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment, payment of [insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security] is to be made against a Retention Money guarantee.

At the request of the Contractor, we ________________ [name of Bank] hereby irrevocably undertake to pay you any sum or sums not exceeding in total an amount of ________________ [amount in figures] ( ) [amount in words] upon receipt by us of your first demand in writing accompanied by a written statement stating that the Contractor is in breach of its obligation under the Contract because the Contractor used the advance payment for purposes other than the costs of mobilization in respect of the Works.

It is a condition for any claim and payment under this guarantee to be made that the payment of the second half of the Retention Money referred to above must have been received by the Contractor on its account number ____________ at __________________ [name and address of Bank].

This guarantee shall expire, at the latest, 21 days after the date when the Employer has received a copy of the Performance Certificate issued by the Engineer. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

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

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

* The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated either in the currency(ies) of the second half of the Retention Money as specified in the Contract, or in a freely convertible currency acceptable to the Employer.
Section VIII. Particular Conditions (PC)

Seal of Bank and Signature(s)