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**United Republic of Tanzania**  
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**Mwanza Urban Water Supply and Sanitation Authority**  
**(MWAUWASA)**

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**Bidding Documents  
for**

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**Procurement of  
Construction Works for:  
Mwanza Sewer Connection Upgrade**

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**Volume 1**

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This document is based on the KfW Standard Procurement Document ("Works-SBD-PB-1stage-2env-Jan2019-EN.docx") and has been adjusted on MWAUWASA's / PEA's request to comply with the specific project requirements.

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# **PART 1 – BIDDING PROCEDURES**

# Section I. Instructions to Bidders

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## Section I. Instructions to Bidders

### A. GENERAL

- 1. Scope of Bid**

  - 1.1 In connection with the Invitation for Bids specified in the Qualification and Bid Data Sheet (QBDS), the Employer, as specified in the **QBDS**, issues these Bidding Documents (“Bidding Documents”) to Bidders (“Bidders”) interested in submitting bids (“Bids”) for the Works described in Section VII, Works Requirements. In case the Works are to be bid as individual contracts (i.e. the slice and package procedure), these are listed in the **QBDS**. The National Competitive Bidding (“NCB”) number corresponding to this bidding process is also provided in the **QBDS**.
  - 1.2 Throughout these Bidding Documents:

    - (a) The term “in writing” means communicated in written form and delivered against receipt;
    - (b) Except where the context requires otherwise, words indicating the singular also include the plural and words indicating the plural also include the singular; and
    - (c) “Day” means calendar day.
- 2. Source of Funds**

  - 2.1 The Employer as indicated in the **QBDS** has applied or received financing (hereinafter called “funds”) from KfW Development Bank (hereinafter called “KfW”) towards the cost of the project named in the **QBDS**. The Employer intends to apply a portion of the funds to eligible payments under the contract(s) resulting from this bidding process.
- 3. Corrupt and Fraudulent Practices**

  - 3.1 KfW requires compliance with its policy in regard to corrupt and fraudulent practices as set forth in Section VI.
  - 3.2 In further pursuance of this policy, Bidders shall permit and shall cause its agents to provide information and permit KfW or an agent appointed by KfW to inspect on site all accounts, records and other documents relating to bid submission and contract performance (in the case of award), and to have them audited by auditors or agents appointed by KfW.
- 4. Eligible Bidders**

  - 4.1 A Bidder may be a firm that is a private entity, a government-owned entity — subject to ITB 4.3 — or a combination of such entities in the form of a joint venture (“JV”) under an existing JV Agreement or with the intent to enter into such an agreement supported by a Letter of Intent to execute a JV Agreement, in accordance with ITB 11.2. In the case of a JV, all members shall

be jointly and severally liable for the execution of the Contract in accordance with the Contract terms. The Bidder shall nominate an authorized representative who shall have the authority to conduct all business for and on behalf of the Bidder and any and all its members, if the Bidder is a JV, during bidding and contract execution (in the event the Bidder is awarded the Contract). Unless specified in the **QBDS**, there is no limit on the number of members in a JV.

- 4.2 A Bidder shall not have a conflict of interest. Any Bidder found to have a conflict of interest shall be disqualified. A Bidder may be considered to have a conflict of interest for the purpose of this procurement process, if the Bidder:
- (a) Directly or indirectly controls, is controlled by or is under common control with another Bidder; or
  - (b) Receives or has received any direct or indirect subsidy from another Bidder; or
  - (c) Has the same legal representative as another Bidder; or
  - (d) Has a relationship with another Bidder, directly or through common third parties, that puts it in a position to influence the bid of another Bidder, or influence the decisions of the Employer regarding this bidding process; or
  - (e) Participates in more than one bid in this bidding process, both as an individual firm and as a JV member. Participation by a Bidder in more than one Bid will result in the disqualification of all Bids in which such Bidder is involved. However, this does not limit the inclusion of the same subcontractor in more than one Bid; or
  - (f) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the works that are the subject of the Bid; or
  - (g) Any of its affiliates has been hired (or is proposed to be hired) by the Employer as Engineer for the Contract implementation; or
  - (h) Has a close business or family relationship with a professional staff of the Employer (or of the project implementing agency, or of a recipient of a part of the funds) who: (i) are directly or indirectly involved in the preparation of the bidding documents or specifications of the contract, and/or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the KfW throughout the procurement process and execution of the contract.

- 4.3 The KfW's eligibility criteria to bid are described in Section V, Eligibility Criteria.
- 4.4 A Bidder shall not be under suspension from bidding by the Employer as the result of the execution of a Bid-Securing Declaration.
- 4.5 This bidding is open only to eligible Bidders, who will be subject to qualification.
- 4.6 A Bidder shall provide such evidence of eligibility satisfactory to the Employer, as specified in ITB 17.1 or as the Employer shall reasonably request.
- 5. Eligible Materials, Equipment, and Services**
- 5.1 The materials, equipment and services to be supplied under the Contract and financed by the KfW may have their origin in any country subject to the restrictions specified in Section V, Eligibility Criteria, and all expenditures under the Contract will not contravene such restrictions. At the Employer's request, Bidders may be required to provide evidence of the origin of materials, equipment and services.

## **B. CONTENTS OF QUALIFICATION AND BIDDING DOCUMENTS**

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

### **PART 1 Qualification and Bidding Procedures**

Section I. Instructions to Bidders (ITB);

Section II. Qualification and Bid Data Sheet (QBDS);

Section III. Qualification and Evaluation Criteria;

Section IV. Qualification and Bidding Forms;

Section V. Eligibility Criteria;

Section VI. KfW Policy - Corrupt and Fraudulent Practices - Social and Environmental Responsibility;

### **PART 2 Works Requirements**

Section VII. Works Requirements;

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

Section VIII. General Conditions (GC);

Section IX. Particular Conditions (PC);

Section X. Contract Forms.

- 6.2 The Invitation for Bids issued by the Employer is not part of the Qualification and Bidding Documents.
- 6.3 Unless obtained directly from the Employer, the Employer is not responsible for the completeness of the Qualification and Bidding Documents, responses to requests for clarification, minutes of the pre-Bid meeting (if any), or Addenda in accordance with ITB 8. In case of any contradiction, documents obtained directly from the Employer shall prevail.
- 6.4 The Bidder is expected to examine all instructions, forms, terms, and specifications in the Qualification and Bidding Documents and to furnish with its Bid all information and documentation as is required by the Qualification and Bidding Documents.

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

- 7.1 A Bidder requiring any clarification of the Qualification and Bidding Documents shall contact the Employer in writing at the Employer's address specified in the **QBDS** or raise its enquiries during the pre-bid meeting if provided for in accordance with ITB 7.4. The Employer will respond in writing to any request for clarification, provided that such request is received no later than fourteen (14) days prior to the deadline for submission of Qualification Documents and Bids. The Employer shall forward copies of its response to all Bidders who have acquired the Qualification and Bidding Documents in accordance with ITB 6.3, including a description of the inquiry but without identifying its source. If so indicated in the **QBDS**, the Employer shall also promptly publish its response at the web page identified in the **QBDS**. Should the Employer deem it necessary to amend the Qualification and Bidding Documents as a result of a 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 Qualification Document and Bid and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the Bidder's own expense.
- 7.3 The Bidder and any of its personnel or agents will be granted permission by the Employer to enter upon its premises and lands for the purpose of such visit, but only upon the express condition that the Bidder, its personnel, and agents will release and indemnify the Employer and its personnel and agents from and against all liability in respect thereof, and will be responsible for death or personal injury, loss of or damage to property, and any other loss, damage, costs, and expenses incurred as a result of the inspection.
- 7.4 If so specified in the **QBDS**, the Bidder's designated representative is invited to attend a pre-bid meeting. The purpose

of the meeting will be to clarify issues and to answer questions on any matter that may be raised at that stage.

- 7.5 Minutes of the pre-bid meeting, if applicable, including the text of the questions asked by Bidders, without identifying the source, and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Bidders who have acquired the Qualification and Bidding Documents in accordance with ITB 6.3. Any modification to the Qualification and 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. Unless otherwise specified in the **QBDS** nonattendance at the pre-bid meeting will not be a cause for disqualification of a Bidder.

**8. Amendment of Qualification and Bidding Documents**

- 8.1 At any time prior to the deadline for submission of Bids, the Employer may amend the Qualification and Bidding Documents by issuing an Addendum.
- 8.2 Any Addendum issued shall be part of the Qualification and Bidding Documents and shall be communicated in writing to all who have obtained the Qualification and Bidding Documents from the Employer in accordance with ITB 6.3. The Employer shall also promptly publish the Addendum on the Employer's web page in accordance with ITB 7.1.
- 8.3 To give Bidders reasonable time in which to take an Addendum into account in preparing their Qualification Documents and Bids, the Employer may, at its discretion, extend the deadline for the submission of Qualification Documents and Bids in accordance with ITB 22.2.

## **C. PREPARATION OF QUALIFICATION DOCUMENTS AND BIDS**

**9. Cost of Bidding**

- 9.1 The Bidder shall bear all costs associated with the preparation and submission of its Qualification Document and Bid, and the Employer will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the bidding process.

**10. Language of Qualification Document and Bid**

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

interpretation of the Qualification Document and the Bid, such translation shall govern.

**11. Documents  
Comprising the  
Qualification  
Document and the  
Bid**

11.1 The Qualification Document and the Bid shall comprise the following:

**(a) QUALIFICATION DOCUMENT**

- (i) Letter of Qualification, indicating the Bidder's name, address, telephone, fax and email. If the Bidder is an association, the Letter of Qualification shall also describe the form of association and list the association members;
- (ii) Written confirmation authorizing the signatory of the Qualification Document and the Bid to commit the Bidder, in accordance with ITB 20.2 and authorizing the representative of the Bidder, designated in accordance with ITB 4.1 to submit the Qualification Document and Bid on behalf of the Bidder. If the Bidder is a JV, the authorization shall be provided by the Lead Member nominated in the JV Agreement or in the Declarations of Association, submitted in accordance with ITB 4.1. If the representative of the Bidder is the owner, member or director of the Bidder or the Bidder's Lead Member, if so nominated in accordance with ITB 4.1, an authorization shall not be necessary.
- (iii) Presentation of the Bidder (maximum 10 pages, no brochures). If the Bidder is a single entity, the Presentation shall describe the Bidder's type of entity, ownership structure and organization chart, as well as its main business areas as they apply to the project. If the Bidder is a JV, the Presentation shall provide this information about each JV member as well as a description of the intended form of collaboration of the members within the JV. Where the Bidder's qualifications to carry out the assignment have been acquired as a result of a merger or acquisition, the presentation must include a detailed business history of the Bidder.
- (iv) Statements and Declarations: False information provided in the following Statements and Declarations by the Bidder or in the case of a JV by any of the JV members shall lead to the exclusion of the Bidder from the tender process:
  - (l) If the Bidder is an existing JV, the Bidder shall submit a proof of the existing Association Agreement, indicating the Lead Member. If the Bidder is a JV, which the members intend to form for the purpose of executing the contract, each member of the association shall submit a Declaration of Association, indicating the Lead Member, in the format provided in Section IV, Qualification and Bidding Forms.

- (II) Declaration of Undertaking in the format provided in Section IV, Qualification and Bidding Forms.
  - (III) Financial Capacity Statement in the format provided in Section IV, Qualification and Bidding Forms and supported by the Bidder's Balance Sheets and Profit and Loss Statements. If the Bidder is a JV, separate statements, including the supporting Balance Sheets and Profit and Loss Statements, shall be provided by each member of the JV. All Balance Sheets and Profit and Loss Statements shall be certified by a reputable auditor.
  - (IV) List of project references in the format provided in Section IV, Qualification and Bidding Forms. Unless otherwise stated in the **QBDS** the references shall be limited to a maximum of 10 projects carried out during the 5 years preceding the publication of these Bidding Documents. The Employer reserves the right to contact the clients indicated in the references to ascertain the information provided by the Bidder.
  - (V) List of Available Expertise and Human Resource Capacity in the format provided in Section IV, Qualification and Bidding Forms.
  - (v) All Qualification forms and required attachments, provided in Section IV, Qualification Forms. If the Bidder is a single entity, in accordance with ITB 4.1, it should not include form ELI 1.2 in its Application.
  - (vi) Any other document required in the **QBDS**.
- (b) **BID**
- (i) Letter of Bid and the Bidding Forms in accordance with ITB 12;
  - (ii) Completed schedules as required, including Price Schedules, in accordance with ITB 12 and ITB 14 and as indicated in the **QBDS**;
  - (iii) Bid Security, in accordance with ITB 19.1;
  - (iv) Alternative Bids, if permissible in accordance with ITB 13;
  - (v) Technical Proposal in accordance with ITB 16;
  - (vi) Any other document required in the **QBDS**.

11.2 In addition to the requirements under ITB 11.1(a), Bids submitted by a JV shall include a copy of the Joint Venture Agreement entered into by all members. Alternatively, a letter of intent to execute a Joint Venture Agreement in the event of a successful

Bid shall be signed by all members and submitted with the Bid, together with a copy of the proposed Agreement.

- 11.3 The Bidder shall furnish information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Bid.
- 12. Letter of Qualification, Declaration of Undertaking, Qualification Forms, Letter of Bid, Bidding Forms and Schedules**
- 12.1 The Letter of Qualification, the Declaration of Undertaking and the Qualification Forms shall be prepared using the relevant forms furnished in Section IV, Qualification and Bidding Forms. The Letter of Qualification and the Declaration of Undertaking must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.
- 12.2 The Letter of Bid, the Bidding Forms and Schedules, including the Bill of Quantities for unit price contracts or the Schedule of Prices in case of lump sum contracts, shall be prepared using the relevant forms furnished in Section IV, Qualification and Bidding Forms. The Letter of Bid must be completed without any alterations to the text, and no substitutes shall be accepted except as provided under ITB 20.4. All blank spaces shall be filled in with the information requested.
- 13. Alternative Bids**
- 13.1 Unless otherwise specified in the **QBDS**, 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 **QBDS**, and the method of evaluation shall be included in Section III, Qualification and Evaluation Criteria.
- 13.3 Except as provided under ITB 13.4 below, Bidders wishing to offer technical alternatives to the requirements of the Qualification and Bidding Documents must first price the Employer's design as described in the Bidding Documents and shall further provide all information necessary for a complete evaluation of the alternative by the Employer, including drawings, design calculations, technical specifications, breakdown of prices, and proposed construction methodology and other relevant details. Only the technical alternatives, if any, of the lowest evaluated Bidder conforming to the Employer's design of the Bidding Documents shall be considered by the Employer.
- 13.4 When specified in the **QBDS**, Bidders are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in Section VII, Works Requirements. The methods for their evaluation shall be described in Section III, Qualification and Evaluation Criteria.

**14. Bid Prices and Discounts**

- 14.1 The prices and discounts quoted by the Bidder in the Letter of Bid and in the Schedules shall conform to the requirements specified below.
- 14.2 The Bidder shall submit a Bid for the whole of the Works described in ITB 1.1, by filling in price(s) for all items of the Works, as identified in Section IV, Bidding Forms. The Bidder shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items against which no rate or price is entered by the Bidder shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the Employer. An item not listed in the priced Bill of Quantities shall be assumed to be not included in the Bid, and provided that the Bid is determined substantially responsive notwithstanding this omission, the highest price of the item quoted by substantially responsive Bidders will be added to the Bid price and the equivalent total cost of the Bid so determined will be used for price comparison.
- 14.3 The price to be quoted in the Letter of Bid shall be the total price of the Bid, excluding any discounts offered.
- 14.4 The Bidder shall quote any discounts and the methodology for their application in the Letter of Bid.
- 14.5 Unless otherwise specified in the **QBDS** and the Contract, the rate(s) and price(s) quoted by the Bidder are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract. In such a case, the Bidder shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the Employer may require the Bidder to justify its proposed indices and weightings.
- 14.6 If so specified in ITB 1.1, Bids are being invited for individual lots (contracts) or for any combination of lots (packages). Bidders wishing to offer discounts for the award of more than one Contract shall specify in their Bid the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted in accordance with ITB 14.4, provided the Bids for all lots (contracts) are opened at the same time.
- 14.7 Unless otherwise specified in the **QBDS**, the Bid price shall estimate, as separate amounts, (a) import duties and (b) taxes, fees, levies and other charges, which shall apply, in terms of the Applicable Law, to the Contractor and its sub-Contractors, including their personnel, other than nationals or permanent residents in the Employer's country as of the date 28 days prior to the deadline for submission of Bids. Unless otherwise stated in the

**QBDS**, the Contractor and its sub-Contractors are responsible for meeting all tax liabilities arising out of the Contract.

- 15. Currencies of Bid and Payment**
- 15.1 The currency(ies) of the Bid and the currency(ies) of payments shall be as specified in the **QBDS**.
- 15.2 Bidders may be required by the Employer to justify, to the Employer's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the prices shown in the Schedule of Adjustment Data in the Appendix to Bid are reasonable, in which case a detailed breakdown of the foreign currency requirements shall be provided by Bidders.
- 16. Documents Establishing the Qualifications of the Bidder**
- 16.1 In accordance with Section III, Qualification and Evaluation Criteria, qualification applies as specified in ITB 4.5 and the Bidder shall provide the information requested in the corresponding information sheets included in Section IV, Qualification and Bidding Forms.
- 17. Documents Comprising the Technical Proposal**
- 17.1 The Bidder shall furnish a Technical Proposal including a statement of work methods, equipment, personnel, Schedules and any other information as stipulated in Section IV, Qualification and Bidding Forms, in sufficient detail to demonstrate the adequacy of the Bidder's proposal to meet the Work requirements and the completion time.
- 18. Period of Validity of Bids**
- 18.1 Bids shall remain valid for the period specified in the **QBDS** after the Bid submission deadline date prescribed by the Employer in accordance with ITB 22.1. A Bid valid for a shorter period shall be rejected by the Employer as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Bid validity period, the Employer may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing. If a Bid Security is requested in accordance with ITB 19, it shall also be extended for forty-two (42) 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.
- 19. Bid Security**
- 19.1 The Bidder shall furnish as part of its Bid a Bid Security as specified in the **QBDS**, in original form and in the amount and currency specified in the **QBDS**.
- 19.2 Reserved.
- 19.3 The Bid Security shall be a demand guarantee in the form of an unconditional guarantee issued by a bank or financial institution (such as an insurance, bonding or surety company) from a reputable source from an eligible country as specified in Section V, Eligibility Criteria. If the unconditional guarantee is issued by a

financial institution located outside the Employer's Country, the issuing financial institution shall have a correspondent financial institution located in the Employer's Country to make it enforceable. The Bid Security shall be submitted either using the Bid Security Form included in Section IV, Bidding Forms, or in another substantially similar format approved by the Employer prior to bid submission. The Bid Security shall be valid for forty-two (42) days beyond the original validity period of the Bid, or beyond any period of extension if requested under ITB 18.2.

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

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

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

19.7 The Bid Security may be forfeited:

- (i) If a Bidder withdraws its Bid during the period of bid validity specified by the Bidder on the Letter of Bid, or any extension thereto provided by the Bidder; or
- (j) If the successful Bidder fails to:
  - (i) Sign the Contract in accordance with ITB 41; or
  - (ii) Furnish a Performance Security in accordance with ITB 42.

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

## 20. Format and Signing of Bid

20.1 The Bidder shall prepare one original each of the Qualification Document and the Bid comprising the documents as described in ITB 11 and clearly mark them "Original." Alternative bids, if permitted in accordance with ITB 13, shall be clearly marked "Alternative." In addition, the Bidder shall submit copies of the Qualification Document and the Bid, in the number specified in the **QBDS** and clearly mark them "Copy." In the event of any discrepancy between the original and the copies, the original shall prevail.

20.2 The original and all copies of the Qualification Document and 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 **QBDS** and shall be attached to the Qualification Document. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Qualification Document and the Bid where entries or amendments have been made shall be signed or initialled by the person signing the Qualification Document and the Bid. If the person signing on behalf of the Bidder is the owner, member, or director of the Bidder, if the Bidder is a single entity, or of the Bidder's Lead Member, if the Bidder is a JV, as demonstrated in the Bidder's Application, then no authorization shall be required.

20.3 In case the Bidder is a JV, the Qualification Document and Bid shall be signed by an authorized representative of the JV on behalf of the JV, and so as to be legally binding on all the members as evidenced by a power of attorney signed by their legally authorized representatives. If the JV has not been legally constituted into a legally enforceable JV at the time of bidding, then the Qualification Document and Bid shall be signed by every member of the proposed JV.

20.4 Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialled by the person signing the Qualification Document and the Bid.

## **D. SUBMISSION AND OPENING OF QUALIFICATION DOCUMENTS AND BIDS**

### **21. Sealing and Marking of Qualification Documents and Bids**

21.1 The Qualification Document and the actual Bid are to be submitted simultaneously in two separate envelopes (two-envelope procedure).

#### **(a) QUALIFICATION**

The Bidder shall enclose the original and all copies of the Qualification Document in separate sealed envelopes, duly marking the envelopes as "Qualification - Original" and "Qualification - Copy."

These envelopes containing the original and the copies shall then be enclosed in one single envelope marked "Qualification".

#### **(b) BID**

The Bidder shall enclose the original and all copies of the Bid, including alternative Bids, if permitted in accordance with ITB 13, in separate sealed envelopes, duly marking the envelopes as "Bid - Original", "Bid - Alternative" and "Bid - Copy."

These envelopes containing the original and the copies shall then be enclosed in one single envelope marked "Bid".

21.2 The inner and outer envelopes shall:

- (a) Bear the name and address of the Bidder;
- (b) Be addressed to the Employer in accordance with ITB 22.1;
- (c) Bear the specific identification of this bidding process specified in the **QBDS** 1.1; and
- (d) Bear a warning not to open before the time and date for Qualification Document and Bid opening.

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

**22. Deadline for Submission of Qualification Documents and Bids**

22.1 Qualification Documents and Bids must be received by the Employer in accordance with the instructions, including the address and deadline, specified in the **QBDS**.

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

**23. Late Submissions**

23.1 The Employer shall not consider any Qualification Document and Bid that arrives after the deadline for submission of Qualification Documents and Bids, in accordance with ITB 22. Any Qualification Document and Bid received by the Employer after the deadline for submission of Qualification Documents and 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 Qualification Document and Bid after it has been submitted by sending a written notice, duly signed by an authorized representative, and shall include a copy of the authorization in accordance with ITB 20.2. The corresponding substitution or modification of the Qualification Document and Bid must accompany the respective written notice. All notices must be:

- (a) Prepared and submitted in accordance with ITB 20 and ITB 21 (except that withdrawals notices do not require copies), and in addition, the respective envelopes shall be clearly marked "Withdrawal", "Substitution", "Modification"; and
- (b) Received by the Employer prior to the deadline prescribed for submission of Bids, in accordance with ITB 22.

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

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

**25. Opening of Qualification Documents and Bids**

**25.1 First Public Session**

In the first public session, only the Bidders' Qualification Documents will be opened. Bids of qualified Bidders will be opened at the second public session as specified in ITB 25.7. Except in the cases specified in ITB 23 and 24, the Employer shall publicly open and read out in accordance with ITB 25 all Qualification Documents received by the deadline (regardless of the number of Bids received), at the date, time and place specified in the **QBDS**, in public and in the presence of Bidders' designated representatives.

25.2 First, envelopes marked "Withdrawal" shall be opened and read out and the envelope with the corresponding Qualification Documents and envelope with the corresponding Bid shall not be opened, but returned to the Bidder. No Qualification document and/or Bid withdrawal shall be permitted unless the corresponding withdrawal notice contains a valid authorization to request the withdrawal and is read out at the Qualification Document opening. Next, envelopes marked "Substitution" shall be opened and read out and exchanged with the corresponding Qualification Documents and/or Bid being substituted, and the substituted Qualification Document and/or Bid shall not be opened, but returned to the Bidder. No Qualification Document and/or Bid substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at the Qualification Document opening. Envelopes marked "Modification" shall be opened and read out with the corresponding Qualification Document and/or Bid. No Qualification Document and/or Bid modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at the Qualification Document opening. Only Qualification Documents that are opened and read out at Qualification Document opening shall be considered further.

25.3 In the first public session only the Qualification Documents will be opened and examined for completeness and fulfillment of the responsiveness criteria specified in ITB 26.1. The qualification will be evaluated according to the criteria specified under ITB 26.

- 25.4 The Employer shall prepare a record of the qualification opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; Power of Attorney, nominating the Bidder's authorized representative, and Declaration of Undertaking. 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.
- 25.5 The Employer shall notify all Bidders in writing of the names of those Bidders who have been qualified. In addition, those Bidders who have been disqualified will be informed separately.
- 25.6 Those Bidders who have been qualified will be informed by the Employer of the date, time and place of the second public session for the opening of the qualified Bids.
- 25.7 Second Public Session
- Only the Bids of those Bidders who have fulfilled the qualification criteria will be opened in the second public session. The envelopes of the qualified Bidders shall be opened one at a time, reading out: the name of the Bidder and whether there is a modification; the total Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids; the presence or absence of a signed Letter of Bid and any other details as the Employer may consider appropriate. Only discounts and alternative Bids read out at Bid opening shall be considered for evaluation. The Letter of Bid and the Schedules are to be initialled by a minimum of three representatives of the Employer attending bid opening. At Bid opening, the Employer shall neither discuss the merits of any Bid nor reject any Bid (except for late Bids, in accordance with ITB 23.1).
- 25.8 The Employer shall prepare a record of the Bid opening that shall include, as a minimum: the name of the Bidder and whether there is a withdrawal, substitution, or modification; the Bid Price, per lot (contract) if applicable, including any discounts and alternative Bids; the presence or absence of a Bid Security, signed Letter of Bid, Power of Attorney, nominating the Bidder's authorized representative, and Declaration of Undertaking. 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 OF QUALIFICATION DOCUMENTS

### 26. Qualification Responsiveness, Evaluation of Qualification

#### 26.1 Qualification Responsiveness

The Employer shall reject a Bidder's qualification document that is not substantially responsive to the requirements of this bidding document. A Bidder's qualification document shall be considered as responsive if the following documents are submitted:

##### *Responsiveness Criteria*

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1. *Declaration of Undertaking; ITB 11.1 (a) (ii)*
2. *Financial Capability Statements and supporting documentation; ITB 11.1 (a) (iii); Section IV, Form FIN-3.1*
3. *Letter of Qualification; ITB 11.1 (a)(i)*
4. *Power(s) of Attorney authorizing the representative of the Bidder; ITB 11.1 (a)(i)*
5. *If the Bidder is an association, either proof of the existing Association Agreement or a Declaration of Association; ITB 11.1 (a) (iii)*

#### 26.2 Evaluation of Qualification

The Employer shall evaluate the qualifications of the responsive Bidders using the factors, methods, criteria, and requirements defined in Section III, Qualification and Evaluation Criteria, to evaluate the qualifications of the Bidders, and no other methods, criteria, or requirements shall be used.

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

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

26.5 The Employer shall assess the qualifications of the responsive Bidders in terms of the Eligibility and Qualification Criteria and methods set out in Section III, Qualification and Evaluation Criteria.

- 26.6 The Employer shall determine the fulfilment of minimum requirements on a pass/fail basis as per Section III, Qualification and Evaluation Criteria.
- 26.7 The Employer shall assign a numeric score to each of the sub-criteria, for which a maximum score is provided in accordance with ITB 26.5. All Sub-criteria Scores shall be summed to determine the Bidder's Qualification Score.
- 26.8 For the purposes of scoring individual Qualification Criteria in accordance with 26.6 the Employer shall apply the following qualitative approach:
- (a) 100% of the max. score: Outstanding, if the Qualification substantially exceeds the requirement in accordance with the respective sub-criterion. No errors or omissions are noted.
  - (b) 70% of the max. score: Above average, if the Qualification meets or marginally exceeds the requirement in accordance with the respective sub-criterion. Minor errors or omissions noted;
  - (c) 50% of the max. score: Average, if the Qualification marginally falls short of the requirement in accordance with the respective sub-criterion. Major errors or omissions noted;
  - (d) 30% of the max. score: Below average, if the Qualification substantially deviates from or indicates misunderstanding of the requirement in accordance with the respective sub-criterion. Major errors or omissions are noted comprising the fulfilment of the sub-criterion;
  - (e) 0 % of the max. score: Insufficient / Fail, if the Qualification does not meet the requirement at all in accordance with the respective sub-criterion, or does not provide any information regarding the requirement
- 26.9 A Bidder shall be considered qualified if:
- (a) its Qualification is considered responsive in accordance with ITB 26.1 and;
  - (b) its Qualification has met the pass/fail requirements in accordance with ITB 26.6 and;
  - (c) the Qualification scored at least 70 points out of 100 points in accordance with ITB 26.7.

## F. EVALUATION AND COMPARISON OF BIDS

- 27. Confidentiality**
- 27.1 Information relating to the examination, evaluation, and comparison of the Bids, and recommendation of contract award shall not be disclosed to Bidders or any other persons not officially concerned with the bidding process until information on Contract award is communicated to all Bidders in accordance with ITB 40.
- 27.2 Any attempt by a Bidder to influence the Employer in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, or Contract award decisions may result in the rejection of its Bid.
- 27.3 Notwithstanding ITB 27.2, from the time of Bid opening to the time of Contract award, if a Bidder wishes to contact the Employer on any matter related to the bidding process, it shall do so in writing.
- 28. Clarification of Bids**
- 28.1 To assist in the examination, evaluation, and comparison of the Bids, and qualification of the Bidders, the Employer may, at its discretion, ask any Bidder for a clarification of its Bid, given a reasonable time for a response. Any clarification submitted by a Bidder that is not in response to a request by the Employer shall not be considered. The Employer's request for clarification and the response shall be in writing. No change, including any voluntary increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the Employer in the evaluation of the Bids, in accordance with ITB 32.
- 28.2 If a Bidder does not provide clarifications of its Bid by the date and time set in the Employer's request for clarification, its Bid may be rejected.
- 29. Deviations, Reservations, and Omissions**
- 29.1 During the evaluation of Bids, the following definitions apply:
- (a) "Deviation" is a departure from the requirements specified in the Bidding Documents;
  - (b) "Reservation" is the setting of limiting conditions or withholding from complete acceptance of the requirements specified in the Bidding Documents; and
  - (c) "Omission" is the failure to submit part or all of the information or documentation required in the Bidding Documents.
- 30. Determination of Responsiveness**
- 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 ITB11.
- 30.2 A substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation,

or omission. A material deviation, reservation, or omission is one that,

- (a) If accepted, would:
  - (i) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or
  - (ii) Limit in any substantial way, inconsistent with the Bidding Documents, the Employer's rights or the Bidder's obligations under the proposed Contract; or
- (b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

30.3 The Employer shall examine the technical aspects of the Bid submitted in accordance with ITB 17, in particular, to confirm that all requirements of Section VII, Works Requirements have been met without any material deviation, reservation or omission.

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

**31. Nonmaterial Nonconformities**

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

31.2 Provided that a Bid is substantially responsive, the Employer may request that the Bidder submit the necessary information or documentation, within a reasonable period of time, to rectify nonmaterial nonconformities in the Bid related to documentation requirements. Requesting information or documentation on such nonconformities shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.

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

**32. Correction of Arithmetical Errors**

32.1 Provided that the Bid is substantially responsive, 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, only for admeasurement contracts, the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail subject to (a) and (b) above.
- 32.2 Bidders shall be requested to accept correction of arithmetical errors. Failure to accept the correction in accordance with ITB 32.1 shall result in the rejection of the Bid.
- 33. Conversion to Single Currency** 33.1 For evaluation and comparison purposes, the currency(ies) of the Bid shall be converted into a single currency as specified in the **QBDS**.
- 34. Margin of Preference** 34.1 Unless otherwise specified in the QBDS, a margin of preference for domestic Bidders shall not apply.
- 35. Subcontractors** 35.1 Unless otherwise stated in the **QBDS**, the Employer does not intend to execute any specific elements of the Works by subcontractors selected in advance by the Employer (nominated subcontractors).
- 36. Evaluation of Bids** 36.1 The Employer shall use the criteria and methodologies listed in this Clause. No other evaluation criteria or methodologies shall be permitted.
- 36.2 To evaluate a Bid, the Employer shall consider the following:
- (a) The Bid price, excluding Provisional Sums unless priced competitively and the provision, if any, for contingencies in the Schedules, but including Daywork items, where priced competitively;
  - (b) Price adjustment for correction of arithmetic errors in accordance with ITB 32.1;
  - (c) Price adjustment due to missing items, missing rates, or discounts offered in accordance with ITB 14.2 and 14.4;
  - (d) Price adjustment due to quantifiable nonmaterial nonconformities in accordance with ITB 31.3;
  - (e) Converting the amount resulting from applying (a) to (d) above, if relevant, to a single currency in accordance with ITB 33;
  - (f) The additional evaluation factors as specified in Section III, Qualification and Evaluation Criteria.

- 36.3 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.
- 36.4 If these Bidding Documents allow Bidders to quote separate prices for different lots (contracts), the methodology to determine the lowest evaluated price of the lot (contract) combinations, including any discounts offered in the Letter of Bid, is specified in Section III, Qualification and Evaluation Criteria.
- 36.5 If the Bid, which results in the lowest Evaluated Bid Price, is significantly lower than the Employer's estimate, the Employer shall require the Bidder to produce detailed price analyses for any or all items of the Schedules, to demonstrate the internal consistency of those prices with the construction methods, resources and schedule proposed. Notwithstanding the provisions of ITB 14.2 which shall not be applicable, if one or several inconsistencies are evidenced, the Bid shall be declared non-compliant and rejected. If the Bid is seriously unbalanced or front loaded in the opinion of the Employer and after evaluation of the price analyses, taking into consideration the schedule of estimated Contract payments, the Employer may require that the amount of the performance security be increased at the expense of the Bidder to a level sufficient to protect the Employer against financial loss in the event of default of the successful Bidder under the Contract.
- 37. Comparison of Bids** 37.1 The Employer shall compare the evaluated prices of all substantially responsive Bids established in accordance with ITB 36.2 to determine the lowest evaluated Bid.
- 38. Employer's Right to Reject All Bids** 38.1 The Employer reserves the right to annul the bidding process and reject all Bids at any time prior to contract award, without thereby incurring any liability to Bidders. In case of annulment, all Bids submitted and specifically, bid securities, shall be promptly returned to the Bidders.

## G. AWARD OF CONTRACT

- 39. Award Criteria** 39.1 Subject to ITB 38.1, the Employer shall award the Contract to the Bidder whose Bid has been determined to be the lowest evaluated Bid and is substantially responsive to the Bidding Documents, provided further that the Bidder is determined to be eligible and qualified to perform the Contract satisfactorily.
- 40. Notification of Award** 40.1 Prior to the expiration of the period of Bid validity, the Employer shall notify the successful Bidder, in writing, that its Bid has been accepted. The notification letter (hereinafter and in the Conditions of Contract and Contract Forms called the "Letter of Acceptance") shall specify the sum that the Employer will pay the Contractor in

consideration of the execution and completion of the Works and the requirement for the Contractor to remedy any defects therein (hereinafter and in the Conditions of Contract and Contract Forms called "the Contract Price"). Subsequently, the Employer shall also notify all other Bidders of the results of the bidding.

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

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

40.4 In exceptional circumstances, the Employer may need to communicate with the successful Bidder, established in terms of ITB 39.1, certain aspects of Contract performance prior to sending the Letter of Acceptance. Should such a need arise, this communication shall be limited to the following topics, as identified in the evaluation report,

- (a) coordination of mobilization timing;
- (b) coordination of actions or inputs involving the Employer and the Engineer;
- (c) technical alternatives offered by the successful Bidder.

Any such discussions and agreements as there shall occur between the Employer and the successful Bidder, (1) may not be interpreted as having the same legal effect as the Letter of Acceptance, (2) shall be summarized in Minutes, which shall be attached to the Letter of Acceptance.

**41. Signing of Contract** 41.1 Promptly upon notification, the Employer shall send the successful Bidder the Contract Agreement.

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

**42. Performance Security** 42.1 Within twenty-eight (28) days of the receipt of the Letter of Acceptance from the Employer, the successful Bidder shall furnish the performance security in accordance with the General Conditions of Contract, subject to ITB 36.5, using for that purpose the Performance Security Form included in Section X, Contract Forms, or another form acceptable to the Employer. If the performance security furnished by the successful Bidder is in the form of a bond, it shall be issued by a bonding or insurance company that has been determined by the successful Bidder to be acceptable to the Employer. A foreign institution providing a bond shall have a correspondent financial institution located in the Employer's Country.

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

## Section II. Qualification and Bid Data Sheet

<b>A. Introduction</b>	
<b>ITB 1.1</b>	<p>The Employer is: <b>Mwanza Urban Water Supply and Sanitation Authority (MWAUWASA)</b></p> <p>Attention: <b>Managing Director</b></p> <p>Address: <b>Maji House, Balewa Road P.O. Box 317, 33104 Mwanza United Republic of Tanzania</b></p> <p>Tel: +255 282 500 547</p> <p>E-mail: <a href="mailto:info@mwauwasa.go.tz">info@mwauwasa.go.tz</a></p>
<b>ITB 1.1</b>	<p>The name of the NCB is: <b>Mwanza Sewer Connection Upgrade</b></p> <p>The identification number of the NCB is: <b>TR184/2025/2026/513719/W/01</b></p> <p><b>BMZ No. 2015 68 211 &amp; 2019 67 207 &amp; 2022 67 532</b></p> <p><b>EU No. 3020 00 362</b></p> <p><b>KfW No. 513719</b></p> <p>The number and identification of lots (contracts) comprising this NCB is: <b>1 Lot (Construction Works for Mwanza Sewer Connection Upgrade)</b></p>
<b>ITB 2.1</b>	<p>The name of the Project is: <b>Lake Victoria Basin Integrated Water Resources Management Programme (LVB-IWRMP)</b></p> <p>Co-funded by the European Union and the Federal Republic of Germany through KfW.</p>
<b>ITB 4.1</b>	Maximum number of members in the JV shall be: <b>three (3)</b>
<b>ITB 4.3</b>	Bidders from the <b>Russian Federation</b> are not eligible to bid.
<b>B. Qualification and Bidding Documents</b>	
<b>ITB 7.1</b>	<p>For <b>clarification purposes</b> only, the Employer's address is:</p> <p>Attention: <b>Managing Director</b></p> <p>Address: <b>Mwanza Urban Water Supply and Sanitation Authority (MWAUWASA)</b></p> <p><b>Maji House, Balewa Road P.O. Box 317, 33104 Mwanza United Republic of Tanzania</b></p> <p>Tel: +255 282 500 547</p> <p>E-mail: <a href="mailto:info@mwauwasa.go.tz">info@mwauwasa.go.tz</a></p>
<b>ITB 7.1</b>	Web page: <b>not applicable</b>

<b>ITB 7.4</b>	<p>A Pre-Bid meeting <b>shall</b> take place at the following date, time and place:  Date: <b>17<sup>th</sup> June, 2026</b>  Time: <b>09:30hrs East Africa Time</b>  Place: <b>MWAUWASA Head Office – Conference Hall; Mwanza, Tanzania.</b></p> <p>A site visit conducted by the Employer <b>shall be</b> organized. Bidders to arrange for their own transportation and amenities.</p> <p>The Pre-Bid Meeting and Site Visit organized by the Employer at the above Date and Time is <b>compulsory</b> and the Employer will reject Bids from Bidders who do not attend. Bidders are responsible for their own transportation, and any other related logistics.</p> <p>After the Pre-Bid Meeting each bidder who attended will be issued with a duly signed Certificate of Bidder’s Representative’s Visit to Site which the Bidder has to submit together with his bid.</p>
<b>ITB 8.2</b>	Web page: <b>not applicable</b>
<b>C. Preparation of Qualification Documents and Bids</b>	
<b>ITB 10.1</b>	<p>The language of the bid is <b>English</b>  All correspondence exchange shall be in the <b>English</b> language.  Language for translation of supporting documents and printed literature is <b>English.</b></p>
<b>ITB 11.1 (b) (ii)</b>	<p>The following schedules shall be submitted with the Bid:</p> <ul style="list-style-type: none"> <li>• <b>Bill of Quantities</b></li> </ul>
<b>ITB 11.1 (b) (v)</b>	<p><i>Amended</i> <span style="float: right;"><i>to</i></span>  Technical Proposal in accordance with ITB 17</p>

<b>ITB 11.1 (b) (vi)</b>	<p>The Bidder shall submit with its Bid the following additional documents:</p> <ol style="list-style-type: none"> <li>a) Schedule of Sub-Contractors, if any, including details of work for which the Sub-Contractor shall be employed, value and % of Tender Price of Works sub-contracted and details of Sub-Contractor's experience in that field of work.</li> <li>b) Schedule of projected Cash-Flow – should be based on the outline Programme for execution of the whole of the Works.</li> <li>c) Schedule of Manufacturers for the following key materials / equipment: <ol style="list-style-type: none"> <li>1) Ferrous pipes and fittings</li> <li>2) Gate valves and butterfly valves</li> <li>3) Non-return valves</li> <li>4) Air valves</li> <li>5) Flow meters (battery powered electromagnetic type)</li> <li>6) Cement</li> <li>7) Reinforcement steel</li> <li>8) uPVC / HDPE pipes</li> <li>9) Submersible sludge pumps</li> </ol> <p>For each item above the Bidder must provide signed and stamped Manufacturer Authorization and detailed Technical Data Sheets from the Manufacturer and indicate the name of the Manufacturer, Country of Origin, make of the item where applicable and the standard to which the item is manufactured (ISO/EN/BS/AWWA/DIN etc).</p> <p><b>Note:</b> <i>At least 30% of the above listed key materials for the Permanent Works must be sourced locally. The monetary value of the materials as quoted by the Bidder in Section IV, Bidding Forms, Technical Proposal, Form (i) – Schedule of Manufacturers for key materials / equipment will be assessed by the Employer and used to evaluate compliance with this requirement. The evaluation will check whether the source of materials are from reputable manufacturers / suppliers, they meet requisite specifications as specified in the Drawings and Tender Documents and whether the details have been stamped by the manufacturer to indicate authenticity of the manufacturer.</i></p> <p>Any attempt to falsify information may lead to disqualification. Based on the details submitted by the bidders on the manufacturers, the 30% local supply of materials will be assessed.</p> </li> <li>d) The signed Certificate of Bidder's Representative visit to site.</li> </ol>
<b>ITB 13.1</b>	Alternative Bids <b>shall not</b> be permitted.
<b>ITB 13.2</b>	Alternative times for completion <b>shall not</b> be permitted.

<p><b>ITB 14.5</b></p>	<p>The prices quoted by the Bidder <b>shall not be subject to Adjustment over the original Contract period</b> (548 days construction and 365 days DNP). However, if an Extension of Time is granted / approved after determination of the same in accordance with sub-clause 8.4 [Extension of Time for Completion] of the General Conditions of Contract (GC), Price Adjustment shall be applicable on balance of works as assessed by the Engineer using the Adjustment for Changes in Cost formula given in sub-clause 13.8 of the GC. The base indices for price escalation shall be those on “Date of approval of Extension of Time”.</p> <p>No price escalation will be applicable if an Extension of Time is granted but the delays in completion of works are attributable to the Contractor.</p> <p>No price escalation will be applicable to any financial costs e.g. interest on delayed payments.</p>
<p><b>ITB 14.7</b></p>	<p>The rates to be indicated in the Bills of Quantities shall be exclusive of all applicable Government duties and taxes as all goods and services imported or purchased locally for exclusive use in the implementation of the project shall be exempt from Value Added Tax, Import Duty, Railway Development Levy and Import Declaration Fees in accordance with applicable Tanzania tax laws as specified in Section 7.1 in the Project Financing Agreement.</p> <p><b>The Grand Total from the Grand Summary inclusive and exclusive of Duties, Taxes and VAT shall be carried to the Letter of Bid.</b></p> <p>Detailed process of duties and tax exemptions is given in Appendix 1 of the Bid Data Sheet.</p>
<p><b>ITB 15.1</b></p>	<p>The currency(ies) of the Bid and the payment currency(ies) shall be as follows:</p> <p><b><u>Currency of Bid: Bidders to quote entirely in local currency:</u></b></p> <p>(a) The unit rates and the prices shall be quoted by the Bidder in the Bill of Quantities, entirely in <b>Tanzania Shillings [TZS]</b> (referred to as the local currency). A Bidder expecting to incur expenditures in the foreign currency for inputs to the Works supplied from outside the Employer’s country (referred to as “the foreign currency requirements” shall indicate in the Appendix to Bid-Table C, the percentage(s) of the Bid Price (excluding Provisional Sums), needed by the Bidder for the payment of such foreign currency requirements, limited to <b>Euro (EUR)</b> only.</p> <p>The rates of exchange to be used by the Bidder in arriving at the local currency equivalent and the percentage mentioned in (a) above shall be specified by the Bidder in the Appendix to Bid - Table C and shall apply for all payments under the Contract so that no exchange risk will be borne by the Employer.</p>

<b>ITB 17</b>	<p>The Technical Proposal shall include an environmental, social, health and safety (ESHS) methodology meeting the requirements of the ESHS specifications. The Bidder shall use the ESHS Methodology Form provided for this purpose in Section IV – Technical Proposal.</p> <p><b>A Bid not comprising an ESHS methodology shall be rejected.</b></p> <p>The Bidder shall show evidence of compliance with the Environmental and Social mitigation measures stipulated in Chapter 8, Table 8.1 of the Environmental Impact Statement (EIS) Report.</p> <p>The Bidder shall examine the ESMF and the Environmental Impacts Statement (EIS) Reports and shall make adequate provision in its Bid for all resources, personnel, equipment, monitoring, reporting, implementation measures and associated costs necessary with the Environmental and Social mitigation requirements (See Item 5 of the Preliminaries and General Bill in the BOQ).</p> <p><b>The ESMF and EIS reports shall be made available to the Bidders by the Employer upon request.</b></p>
<b>ITB 18.1</b>	The bid validity period shall be <b>120 days</b> .
<b>ITB 19.1</b>	The amount and currency of the Bid Security shall be <b>TZA 400,000,000 (Four hundred million Tanzania Shillings)</b> .
<b>ITB 20.1</b>	In addition to the original of the bid, the number of copies is: <b>Three (3) paper copies and one (1) digital copy (flash drive / USB stick)</b> .
<b>ITB 20.2</b>	<p>The written confirmation of authorization to sign on behalf of the Bidder shall consist of:</p> <ol style="list-style-type: none"> <li>a. An organizational document, board resolution or its equivalent, or power of attorney specifying the representative's authority as the signatory of the Bid, on behalf of, and to legally bound, the Bidder.</li> <li>b. If the Bidder is an intended or an existing Joint Venture, then the power of attorney shall be signed by all partners and specify the authority of the named representative of the Joint Venture to sign on behalf of, and legally bound, the intended or existing Joint Venture. If the Joint Venture has not yet been formed, also include evidence from all proposed Joint Venture partners of their intent to enter into a Joint Venture in the event of a contract award in accordance with ITB 11.2.</li> </ol>

### D. Submission and Opening of Qualification Documents and Bids

ITB 22.1	<p>The Original Qualification documents and Bid shall be submitted not later than:</p> <p>Date: <b>17<sup>th</sup> July, 2026</b>  Time: <b>10:00hrs East Africa Time</b></p> <p>at the following address, which shall be the controlling address for the purposes of the timely submission of the Bid:</p> <p>Attention: <b>Managing Director</b>  <b>Mwanza Urban Water Supply and Sanitation Authority</b>  <b>(MWAUWASA)</b></p> <p>Address: <b>Maji House, Balewa Road, P.O. Box 317, 33104</b>  City: <b>Mwanza</b>  Country: <b>United Republic of Tanzania</b>  Contact: <b>+255 282 500 547</b></p>
ITB 25.1	<p>The Qualification Document opening (first public session) shall take place at:</p> <p>Address: <b>Maji House, Balewa Road</b>  <b>P.O. Box 317, 33104</b></p> <p>City: <b>Mwanza</b>  Country: <b>United Republic of Tanzania</b>  Date: <b>17<sup>th</sup> July, 2026</b>  Time: <b>10:30hrs East Africa Time</b></p> <p>No minimum number of Bids is required in order to proceed to bid opening.</p>

### E. Evaluation of Qualification Documents

ITB 26.1	<p>The Employer shall reject a Bidder's qualification document that is not substantially responsive to the requirements of this bidding document (as specified in ITB 26.1).</p>
ITB 26.2	<p>The Employer shall evaluate the qualifications of the responsive Bidders using the factors, methods, criteria, and requirements defined in Section III, Evaluation and Qualification Criteria, to evaluate the qualifications of the Bidders, and no other methods, criteria, or requirements shall be used.</p>

### F. Evaluation and Comparison of Bids

ITB 30	<p>Compliance of the ESHS Methodology (as specified in QBDS 17) with the ESHS Specifications (Section VII - Works Requirements) shall be determined by using the method specified in Section III Clause 1.2.</p> <p>A Bid for which the <b>ESHS Methodology is not substantially responsive (i.e. without material deviation, reservation or omission) shall be rejected.</b></p>
ITB 33.1	<p>The currency that shall be used for bid evaluation and comparison purposes is: <b>Tanzania Shillings</b></p> <p>The source of exchange rate shall be the: <b>Bank of Tanzania</b></p> <p>The date for the exchange rate shall be seven (7) days prior to the date of submission</p>
ITB 34.1	<p>A margin of preference of <b>7.5% shall</b> apply.</p> <p>The application methodology has been defined in Section III, Qualification and Evaluation Criteria</p>

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<b>ITB 35.1</b>	At this time the Employer <b><i>does not intend</i></b> to execute certain specific parts of the Works by sub-contractors selected in advance.
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**Appendix 1****Process of Processing Tax Exemptions**

Immediately after the contract is signed, the Contractor shall prepare a schedule of all materials required for incorporation into the project. The Contractor shall prepare a Master List of all the items that require approval for Tax Exemption. The Master List contains all the items description, specifications and Quantities and all the figures should be in whole numbers. The units of the respective materials should be measurable and the corresponding costs should be exclusive of Value Added Tax (VAT). The Master List is categorized into the following four components as appropriate and as is applicable:

- **Project Consumables:** which comprises of items that are for permanent and temporary incorporation into the project.
- **Materials for permanent construction** in the project
- **Goods and Equipment:** that will revert to the Government (Employer) after completion of the project.
- **Goods and Equipment:** belonging to the Contractor and will be exported after completion of the project.
- **Services** to the project.

The Contractor shall forward the Master List to the Engineer for check, review, approval and forward to the Employer (MWAUWASA) for verification and onward submission to the Ministry of Water, (MoW) inclusive of relevant supporting documents, contract agreement and financing agreements.

MoW verifies, processes and submits the Master List to the Tanzania Revenue Authority (TRA) for review and approval as appropriate. The TRA then issue the VAT exemption certificate to Contractor through MWAUWASA.

## Section III. Qualification and Evaluation Criteria

This Section contains all the criteria that the Employer shall use to determine the qualification of Bidders and to evaluate the Bids. In accordance with ITB 26 and ITB 36, no other factors, methods or criteria shall be used. The Bidder shall provide all the information requested in the forms included in Section IV, Qualification and Bidding Forms.

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

- (a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year;
- (b) Value of single contract - Exchange rate prevailing on the date of the contract.

Exchange rates shall be taken from the publicly available source identified in the ITB 33.1. Any error in determining the exchange rates in the Bid may be corrected by the Employer.

### 1. Evaluation of Eligibility and Qualification

The following table contains all criteria and requirements the Bidders shall meet to be considered as eligible and qualified for the execution of the works:



No.	Subject	Criteria Requirement	Requirements / Max. Scores				Documentation Requirements / Forms
			Single Entity	Joint Venture (existing or intended)		One Member	
			All Parties Combined	Each Member			
<b>1. Eligibility</b>							
1.1	<b>Nationality</b>	Nationality in accordance with ITB 4.3. • Applicants from the Russian Federation are not eligible for this project <sup>1</sup> .	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI-1.1, 1.2(a) and 1.2(b), with attachments
1.2	<b>Conflict of Interest</b>	No conflicts of interest in accordance with ITB 4.4.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Application Submission Form
1.3	<b>KfW Eligibility</b>	Not being ineligible for KfW financing, as described in ITB 4.3.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Declaration of Undertaking
1.4	<b>Government-Owned Entity</b>	Meet conditions of ITB 4.3.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Forms ELI-1.1, 1.2(a) and 1.2(b), with attachments
<b>2. Historical Contract Non-Performance</b>							
2.1	<b>History of Non-Performing Contracts</b>	Termination of a contract did not occur as a result of contractor's default in the past five (5) years.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Form CON-2
2.2	<b>Suspension Based on Execution of Bid Securing Declaration by the Employer</b>	Not under suspension based on execution of a Bid Securing Declaration pursuant to ITB 4.5.	Must meet requirement	Must meet requirement	Must meet requirement	N/A	Application Submission Form
2.3	<b>Pending Litigation</b>	All pending litigation shall in total not represent more than one hundred percent (100%) of the Bidder's net worth and shall be treated as resolved against the Bidder.	Must meet requirement	N/A	Must meet requirement	N/A	Form CON-2
<b>3. Financial Situation and Performance</b>							
3.1	<b>Financial Capabilities: Liquidity</b>	The Bidder shall demonstrate that it has access to, or has available, liquid assets, unencumbered real assets, lines of credit, and other financial means (independent of any contractual advance payment) sufficient to meet the construction cash flow requirements estimated as <b>EUR 1,000,000.00 (one million Euro)</b> for the subject contract(s) net of the Bidders other commitments.	Must meet requirement	Must meet requirement	N/A	N/A	Form FIN-3.1 with attachments and FIN-3.3
3.2	<b>Financial Capabilities: Other Sources of Finance</b>	The Bidder shall also demonstrate, to the satisfaction of the Employer, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.	Must meet requirement	Must meet requirement	N/A	N/A	Forms FIN-3.1 and FIN-3.4

<sup>1</sup> This applies at present for all KfW-funded construction projects.

No.	Subject	Criteria Requirement	Requirements / Max. Scores			Documentation Requirements / Forms	
			Single Entity	Joint Venture (existing or intended) All Parties Combined	Each Member		One Member
3.3	<b>Financial Capabilities: Financial Position</b>	The audited balance sheets or, if not required by the laws of the Bidder's country, other financial statements acceptable to the Employer, for the last <b>five (5)</b> years shall be submitted and must demonstrate the current soundness of the Bidder's financial position based on the following criteria: a) Liquidity ratio $\geq 1.1$ $\frac{\text{Current Assets}}{\text{Current Liabilities}} \geq 1.1$ b) Indebtedness ratio $\leq 80\%$ $\frac{\text{Total Liabilities} * 100}{\text{Total Assets}} \leq 80\%$	Must meet requirement	N/A	Must meet requirement	N/A	Form FIN-3.1 with attachments
3.4	<b>Average Annual Construction Turnover</b>	Minimum annual construction turnover of <b>EUR 4,000,000.00 (four million Euro)</b> , for the last <b>five (5)</b> years, calculated as total certified annual payments received for contracts in progress and/or completed.	Must meet requirement	Must meet requirement	Must meet <b>25% [twenty five percent]</b> of the requirement	Must meet <b>40% [forty percent]</b> of the requirement	Form FIN-3.2
<b>4. Construction Experience</b>							
4.1	<b>General Construction Experience</b>	a) Experience under construction contracts in the role of prime contractor, JV member, subcontractor, or management contractor for at least the <b>last 5 years, starting 1<sup>st</sup> January 2021.</b> b) Implementation of civil engineering projects governed by Multilateral Development Bank Harmonized edition of June 2010 (FIDIC Pink Book)	Must meet requirement	N/A	Must meet requirement	N/A	Form EXP-4.1

No.	Subject	Criteria Requirement	Requirements / Max. Scores			Documentation Requirements / Forms	
			Single Entity	Joint Venture (existing or intended) All Parties Combined	Each Member		One Member
4.2 (a)	<b>Specific Construction &amp; Contract Management Experience</b>	Similar <sup>2</sup> contracts, satisfactorily and substantially <sup>3</sup> completed as a prime contractor, joint venture member <sup>4</sup> , management contractor or subcontractor <sup>4</sup> between <b>1<sup>st</sup> January 2016</b> and application submission deadline with <b>minimum value of EUR 750,000.00 (seven hundred and fifty thousand Euro)</b> Additionally: <ul style="list-style-type: none"> <li>Experience in the region or countries with similar climatic conditions</li> </ul>	Must meet requirement	Must meet requirements	N/A	N/A	Form EXP-4.2
4.2 (b)	<b>Construction Experience in key activities</b>	For the above or any other contracts completed and under implementation as prime contractor, joint venture member, management contractor or subcontractor <sup>4</sup> on or after the first day of the calendar year during the period stipulated in 4.2(a) above, a minimum construction experience in the following key activities successfully completed <sup>5</sup> (at least one reference each): <ul style="list-style-type: none"> <li>Excavation for sewer pipes, dia. n.e. 300mm including rock excavation approx. 2,900m<sup>3</sup>/month.</li> <li>Laying &amp; jointing of sewer pipes dia. n.e. 300mm, 3200mm/month including testing &amp; tests on completion up to the Employer's Taking Over</li> </ul>	Must meet requirements	Must meet requirements	N/A	N/A	Form EXP-4.2 (b)
<b>5. Environmental and Social and Health and Safety (ESHS) Experience and Capacity</b>							
5.1	<b>Certificates</b>	Availability of a valid ISO certification as below or nationally recognized equivalent (equivalence to be demonstrated by the Applicant): <ul style="list-style-type: none"> <li>Quality management certificate ISO 9001.</li> <li>Environmental management certificate ISO 14001:2014.</li> <li>Health and safety certificate OHSAS 18001.</li> </ul>	Must meet requirement	N/A	Must meet requirement, if member of a JV with substantial more than 40% (forty percent) of the value of works)	Must meet requirement	Form CER-5.1

<sup>2</sup> The similarity shall be based on the physical size, complexity, methods / technology and/or other characteristics described in Section VII, Scope of Works. Summation of number of small value contracts (less than the value specified under requirement) to meet the overall requirement will not be accepted.

<sup>3</sup> Substantial completion shall be based on 80% or more works completed under the contract.

<sup>4</sup> For contracts under which the Applicant / Bidder participated as a joint venture member or sub-contractor, only the Applicant's / Bidder's share, by value, shall be considered to meet this requirement.

<sup>5</sup> Volume, number or rate of production of any key activity can be demonstrated in one or more contracts combined if executed during same time period. The rate of production shall be the annual production rate for the key construction activity (or activities).

No.	Subject	Criteria Requirement	Requirements / Max. Scores			Documentation Requirements / Forms	
			Single Entity	Joint Venture (existing or intended) All Parties Combined	Each Member		One Member
5.2	<b>Experience in Projects with significant ESHS Impact</b>	For the above and any other contracts completed and under implementation as prime contractor, joint venture member, management contractor or subcontractor <sup>6</sup> on or after the first day of the calendar year during the period stipulated in 4.2(a) above, a minimum specific experience relating to the following ESHS requirements <sup>6</sup> : <ul style="list-style-type: none"> <li>• Implementation of site safety on construction sites.</li> <li>• Implementation of waste management.</li> <li>• Handling air emissions, noise and traffic.</li> <li>• Implementation of site rehabilitation and revegetation.</li> <li>• Prevention of erosion, protection of adjacent areas and biodiversity.</li> <li>• Provision of first aid and medical evacuation for staff.</li> </ul>	Max. 30 points	Max. 30 points <sup>7</sup>	N/A	Must have executed at least 3 contract(s) demonstrating experience with the key ESHS requirements as listed in the Requirements column.	Form EXP-5.2
5.3	<b>Environmental Capacity</b>	The Bidder must demonstrate that its business setup and operations meet the minimum requirements towards an effective environmental management system: The qualitative assessment of the Bidder's compliance will be carried out in terms of the scoring method described in ITB 26.8. The sub-criterion score will be calculated by adding the requirement scores.	Max. 10 points	Max. 10 points <sup>8</sup>	N/A	N/A	Form ENV-5.3
5.4	<b>Occupational Health and Safety Capacity</b>	The Bidder must demonstrate that its business setup and operations meet the minimum requirements towards an effective health and safety management system. For assessment and scoring see note in 5.3. above.	Max. 10 points	Max. 10 points <sup>9</sup>	N/A	N/A	Form OHSAS-5.4
5.5	<b>Socially Responsible Work Implementation</b>	The Bidder must demonstrate a comprehensive understanding of the requirements regarding work site implementation and operation. For assessment and scoring see note in 5.3. above.	Max. 20 points	Max. 20 points <sup>10</sup>	N/A	N/A	Form LOC-5.5

<sup>6</sup> For contracts under which the Applicant participated as a joint venture member or sub-contractor, only the Applicant's share, by value, shall be considered to meet this requirement.

<sup>7</sup> Members will be scored if their part in the JV is substantial (more than 40% (forty percent) of the works). Individual member scores will be averaged.

<sup>8</sup> Members will be scored if their part in the JV is substantial (more than 40% (forty percent) of the works). Individual member scores will be averaged.

<sup>9</sup> Members will be scored if their part in the JV is substantial (more than 40% (forty percent) of the works). Individual member scores will be averaged.

<sup>10</sup> Members will be scored if their part in the JV is substantial (more than 40% (forty percent) of the works). Individual member scores will be averaged.

No.	Subject	Criteria Requirement	Requirements / Max. Scores			Documentation Requirements / Forms	
			Single Entity	Joint Venture (existing or intended)			
				All Parties Combined	Each Member	One Member	
5.6 (a)	<b>ILO Core Labour Standards</b>	Undertaking to fully respect the ILO Core Labour Standards in the Bidder's business practice.	Must meet requirement	N/A	Must meet requirement	N/A	Application Submission Form (f) and Form COC-5.6
5.6 (b)	<b>Ethical business principles</b>	The Bidder must demonstrate that its business setup and operations meet the minimum requirements towards ethical Business principles. For assessment and scoring see note in 5.3. above.	Max. 10 points	Max. 10 points <sup>11</sup>	N/A	N/A	Form COC-5.6
5.7	<b>ESHS and Construction Personnel</b>	The Bidder must demonstrate that it has access to adequate candidates for the ESHS and Construction personnel profiles, listed in Section VII, Scope of Works. The candidates must fulfil the minimum specific profile requirements and the general requirements (if any). Combining several candidates to fulfil one candidate profile is not allowed. Providing multiple candidates for a single profile is allowed. For assessment and scoring see note in 5.3. above.	Max. 20 points	Max. 20 points	N/A	N/A	PER-5.7

<sup>11</sup> Members will be scored if their part in the JV is substantial (more than 40% (forty percent) of the works). Individual member scores will be averaged.

## 2. Domestic Preference

**2.1** A **margin of preference** of 7.5% (seven and one-half per cent) shall be granted to domestic Bidders, in accordance with, and subject to, the following provisions:

- (a) An individual firm is considered a domestic Bidder for purposes of the margin of preference if it is constituted in the country of the Employer, has more than 50 percent ownership by nationals of the country of the Employer, and if it does not subcontract more than 30 percent of the contract price, excluding provisional sums, to foreign contractors. JVs are considered as domestic Bidders and eligible for domestic preference only if the individual member firms are constituted in the country of the Employer, have more than 50 percent ownership by nationals of the country of the Employer, and the JV shall be constituted in the country of the Borrower. The JV shall not subcontract more than 30 percent of the contract price, excluding provisional sums, to foreign firms. JVs between foreign and national firms will not be eligible for domestic preference.
- (b) Bidders applying for such preference shall be asked to provide, as part of the data for qualification, such information, including details of ownership, as shall be required to determine whether, according to the classification established by the Employer and accepted by KfW, a particular Bidder or group of Bidders qualifies for a domestic preference.
- (c) After Bids have been received and reviewed by the Employer, responsive Bids shall be classified into the following groups:
  - (i) Group A: Bids offered by domestic Bidders eligible for the preference;
  - (ii) Group B: Bids offered by other Bidders.

**2.2** All **evaluated Bids in each group** shall, as a first evaluation step, be compared to determine the lowest Bid, and the lowest evaluated Bids in each group shall be further compared with each other. If, as a result of this comparison, a Bid from Group A is the lowest, it shall be selected for the award. If a Bid from Group B is the lowest, as a second evaluation step, all Bids from Group B shall then be further compared with the lowest evaluated Bid from Group A. For the purpose of this further comparison only, an amount equal to 7.5% (seven and one-half per cent) of the respective Bid price corrected for arithmetical errors, including unconditional discounts but excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each Bid from Group B. If the Bid from Group A is the lowest, it shall be selected for award. If not, the lowest evaluated Bid from Group B based on the first evaluation step shall be selected.

## 3. Evaluation of Bids

In addition to the criteria listed in ITB 36.2 (a) – (e) the following criteria shall apply:

### 3.1 Assessment of adequacy of Technical Proposal with Requirements

The assessment of the Technical Proposal submitted by a Bidder shall comprise (a) evaluation of the Bidder's plan to mobilize key equipment and key personnel to carry out the works, (b) construction method, (c) construction schedule and (d) sufficiently detailed supply sources, in accordance with requirements specified in Section VII, Works Requirements. A Bid not comprising Technical Proposal or a Bid for which the Technical Proposal is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

### **3.2 Assessment of adequacy of the Environmental, Social, Health and Safety (ESHS) Methodology**

The ESHS Methodology submitted by the Bidder shall be evaluated to determine whether it is substantially responsive (i.e. without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements - ESHS Specifications. The Bidder shall use the ESHS Methodology Form provided for this purpose in Section IV, Bidding Forms - Technical Proposal. A Bid not comprising an ESHS Methodology or a Bid for which the ESHS Methodology is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

**3.3 Multiple Contracts:** not applicable.

**3.4 Alternative Completion Times:** not applicable

**3.5 Technical alternatives,** not applicable

### **3.6 Personnel**

The Bidder's personnel shall be evaluated to determine whether it is substantially responsive (i.e. without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements – Personnel Requirements. The Bidder shall use the Forms PER-1 and PER-2 provided for this purpose in Section IV, Bidding Forms - Technical Proposal. A Bid not including proposed personnel or a Bid for which the proposed personnel is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

### **3.7 Equipment**

The Bidder's equipment shall be evaluated to determine whether it is substantially responsive (i.e. without material deviation, reservation or omission) to the requirements specified in Section VII, Works Requirements – Equipment Requirements. The Bidder shall use the Form EQU provided for this purpose in Section IV, Bidding Forms - Technical Proposal. A Bid not including proposed equipment or a Bid for which the proposed equipment is not substantially responsive (i.e. with material deviation, reservation or omission) shall be rejected.

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## QUALIFICATION FORMS

### Letter of Qualification

Date: *[insert day, month, year]*

NCB No.: *[insert NCB number]*

To: Managing Director  
Mwanza Urban Water Supply and Sanitation Authority  
Maji House, Barabara ya Balewa  
S.L.P 317  
Mwanza, Tanzania  
Tel: + 255 282 500 547  
E-mail: info@mwauwasa.go.tz

We, the undersigned, apply to be qualified for the referenced NCB and declare that:

- (a) we have examined and have no reservations to the qualification documents, including Addenda No., issued in accordance with ITB Clause 8: *[insert the number and issuing date of each addenda]*;
- (b) we, including any subcontractors or suppliers for any part of the contract resulting from this qualification process, have nationalities from eligible countries, in accordance with ITB Sub-Clause 4.3: *[insert the nationality of the Bidder, including that of all parties in case of a JV, and the nationality of each already identified subcontractor and supplier of related services, if applicable]*;
- (c) we, including any subcontractors or suppliers for any part of the contract resulting from this qualification do not have any conflict of interest, in accordance with ITB Sub-Clause 4.2;
- (d) we, including any subcontractors or suppliers for any part of the contract resulting from this qualification, have not been declared ineligible by KfW, and/or we are not subject to sanction from either Germany, the European Union or the United Nations in accordance with the lists of exclusion established by these institutions regarding fight against terrorism in accordance with ITB Sub-Clause 4.3;
- (e) *[we are not a government owned entity, or, we meet the requirements of ITB Sub-Clause 4.1]*;
- (f) we, including any major subcontractors and suppliers declare that we fully respect ILO Core Labour Standards in our business practice in accordance with ITB Sub-Clause 4.3 and Form COC-5.6;
- (g) we, in accordance with ITB Sub-Clause 35.1, plan to subcontract the following key activities and/or parts of the works: *[insert any of the key activities identified in Section III- 4.2 which the Bidder intends to subcontract]*;
- (h) We acknowledge and agree that the Employer reserves the right to annul the bidding process and reject all Bids at any time prior to contract award without thereby incurring any liability to us;

Signed *[insert signature of the Bidder's representative, authorized in accordance with ITB4.1, whose name and capacity are shown below]*

Name *[insert full name of person signing the application]*

In the Capacity of *[insert legal capacity of person signing the application]*

Duly authorized to sign the application for and on behalf of:

Bidder's Name *[insert full name of Bidder]*

Address *[insert street number/town or city/country address]*

Dated on *[insert day number]* day of *[insert month]*, *[insert year]*.

Attachments:

- Power of attorney, authorizing the Bidder's representative to act for and on behalf of the Bidder, in accordance with ITB 4.1.

## Declaration of Undertaking

Reference name of the Application / Offer / Contract: ("**Contract**") <sup>12</sup>

To: ("**Project Executing Agency**")

1. We recognise and accept that KfW only finances projects of the Project Executing Agency ("PEA") <sup>13</sup> subject to its own conditions which are set out in the Funding Agreement it has entered into with the PEA. As a matter of consequence, no legal relationship exists between KfW and our company, our Joint Venture or our Subcontractors under the Contract. The PEA retains exclusive responsibility for the preparation and implementation of the Tender Process and the performance of the Contract.
2. We hereby certify that neither we nor any of our board members or legal representatives nor any other member of our Joint Venture including Subcontractors under the Contract are in any of the following situations:
  - 2.1) being bankrupt, wound up or ceasing our activities, having our activities administered by courts, having entered into receivership, reorganisation or being in any analogous situation;
  - 2.2) having been convicted by a final judgment or a final administrative decision or a preliminary investigation / charge is pending against us for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings, or have been subject to (financial) sanctions and/or embargo provisions by the United Nations, the European Union or the Federal Republic of Germany. This exclusion criterion is also applicable to legal persons whose shares (or the majority thereof) are owned or de facto controlled by natural or legal persons against whom such judgments, administrative decisions, (financial) sanctions and/or embargoes have been imposed and – in the case of (financial) sanctions and/or embargoes – these restrictive measures continue to apply;
  - 2.3) having been convicted by a final court decision or a final administrative decision by a court, the European Union, national authorities in the Partner Country or in Germany for Sanctionable Practice in connection with a Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests (*in the event of such a conviction, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*);
  - 2.4) having been subject, within the past five years to a contract termination fully settled against us for significant or persistent failure to comply with our contractual obligations during such Contract performance, unless this termination was challenged and dispute resolution is still pending or has not confirmed a full settlement against us;
  - 2.5) not having fulfilled the applicable fiscal obligations with regard to the payment of taxes at the respective tax residence and in the country of origin of the PEA (*contractors based in Annex 1 countries (<https://www.consilium.europa.eu/de/policies/eu-list-of-non-cooperative-jurisdictions/>) must submit a fully completed and legally countersigned declaration of tax conformity (Appendix 1 to the Declaration of Undertaking) in addition to the Declaration of Undertaking at the time of award of the contract/contract review. This shall become an integral part of the contract. Failure to submit may result in exclusion from the awarding*).

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<sup>12</sup> Capitalised terms used, but not otherwise defined in this Declaration of Undertaking have the meaning given to such term in KfW's "Guidelines for the Procurement of Consulting Services, Works, Goods, Plant and Non-Consulting Services in Financial Cooperation with Partner Countries".

<sup>13</sup> The PEA means the purchaser, the employer, the client, as the case may be, for the procurement of Consulting Services, Works, Plant, Goods or Non-Consulting Services.

*procedure. For contractors based in countries not listed as Annex I countries, only the Declaration of Undertaking must be submitted, and not the declaration of tax conformity);*

- 2.6) being subject to an exclusion decision of the World Bank or any other multilateral development bank and being listed on the website <http://www.worldbank.org/debarr> or respectively on the relevant list of any other multilateral development bank (*in the event of such exclusion, the Applicant or Bidder shall attach to this Declaration of Undertaking supporting information showing that this exclusion is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction*); or
  - 2.7) being guilty of misrepresentation in supplying the information required as condition to participation in this Tender Procedure.
3. We hereby certify that neither we, nor any of the members of our Joint Venture or any of our Subcontractors under the Contract are in any of the following situations of conflict of interest:
- 3.1) being an affiliate controlled by the PEA or a shareholder controlling the PEA, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.2) having a business or family relationship with a PEA's staff involved in the Tender Process or the supervision of the resulting Contract, unless the stemming conflict of interest has been brought to the attention of KfW and resolved to its satisfaction;
  - 3.3) being controlled by or controlling another Applicant or Bidder, or being under common control with another Applicant or Bidder, or receiving from or granting subsidies directly or indirectly to another Applicant or Bidder, having the same legal representative as another Applicant or Bidder, maintaining direct or indirect contacts with another Applicant or Bidder which allows us to have or give access to information contained in the respective Applications or Offers, influencing them or influencing decisions of the PEA;
  - 3.4) being engaged in a Consulting Services activity, which, by its nature, may be in conflict with the assignments that we would carry out for the PEA;
  - 3.5) in the case of procurement of Works, Plant or Goods:
    - i. having prepared or having been associated with a Person who prepared specifications, drawings, calculations and other documentation to be used in the Tender Process of this Contract;
    - ii. having been recruited (or being proposed to be recruited) ourselves or any of our affiliates, to carry out works supervision or inspection for this Contract;
4. If we are a state-owned entity, and compete in a Tender Process, we certify that we have legal and financial autonomy and that we operate under commercial laws and regulations.
5. We undertake to bring to the attention of the PEA, which will inform KfW, any change in situation with regard to points 2 to 4 here above.
6. In the context of the Tender Process and performance of the corresponding Contract:
- 6.1) neither we nor any of the members of our Joint Venture nor any of our Subcontractors under the Contract have engaged or will engage in any Sanctionable Practice or violate the Guidelines during the Tender Process and in the case of being awarded a Contract will engage in any Sanctionable Practice during the performance of the Contract;

- 6.2) neither we nor any of the members of our Joint Venture or any of our Subcontractors under the Contract shall acquire or supply any equipment nor operate in any sectors under an embargo of the United Nations, the European Union or Germany; and
- 6.3) we commit ourselves to complying with and ensuring that our Subcontractors and major suppliers under the Contract comply with international environmental and labour standards, consistent with laws and regulations applicable in the country of implementation of the Contract and the fundamental conventions of the International Labour Organisation<sup>14</sup> (ILO) and international environmental treaties. Moreover, we shall implement environmental and social risks mitigation measures when specified in the relevant environmental and social management plans or other similar documents provided by the PEA and, in any case, implement measures to prevent sexual exploitation and abuse and gender based violence.
7. In the case of being awarded a Contract, we, as well as all members of our Joint Venture partners and Subcontractors under the Contract will, (i) upon request, provide information relating to the Tender Process and the performance of the Contract and (ii) permit the PEA and KfW or an auditor appointed by either of them, and in the case of financing by the European Union also to European institutions having competence under European Union law, to inspect the respective accounts, records and documents, to permit on the spot checks and to ensure access to sites and the respective project.
8. In the case of being awarded a Contract, we, as well as all our Joint Venture partners and Subcontractors under the Contract undertake to preserve above mentioned records and documents in accordance with applicable law, but in any case for at least six years from the date of fulfilment or termination of the Contract. Our financial transactions and financial statements shall be subject to auditing procedures in accordance with applicable law. Furthermore, we accept that our data (including personal data) generated in connection with the preparation and implementation of the Tender Process and the performance of the Contract are stored and processed according to the applicable law by the PEA and KfW.

.....  
Name

.....  
In the capacity of

Duly empowered to sign in the name and on behalf of <sup>15</sup>:

.....  
Date

.....  
Signature

<sup>14</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

<sup>15</sup> In the case of a JV, insert the name of the JV. The person who will sign the application, bid or proposal on behalf of the Applicant /Bidder shall attach a power of attorney from the Applicant / Bidder.

**Appendix 1****Declaration of tax conformity – binding confirmation for legal persons****Name of company**

I hereby confirm with my signature that:

1. I am authorised to make this declaration on behalf of the above company;
2. the company properly pays all taxes in accordance with the tax laws of the country in which the company is domiciled;
3. the company is not currently nor has been in the past involved in any legal proceedings concerning the taxation of the company;
4. the company will duly pay taxes that may arise from the provision of contracted services;
5. all information and statements provided in advance are complete, accurate in terms of content and currently correct.

.....  
(place)

.....  
(date)

.....  
(name of the consultant)

.....  
(signature(s))

**Declaration of tax conformity – binding confirmation for natural persons**

I hereby confirm with my signature that:

1. I make this declaration in my name/on my own account;
2. I duly pay taxes that I am obliged to pay under the tax law of my country of residence;
3. I am not currently involved in tax law court proceedings, nor have I been in the past;
4. I will duly pay taxes that may arise from the provision of contracted services;
5. I have filled in all the information and statements of this confirmation in full, accurately in terms of content and that they are up to date at this time.

.....  
(place)

.....  
(date)

.....  
(name of the person)

.....  
(signature(s))

## Form ELI-1.1: Bidder Information Form

*[The Bidder shall in this Form in accordance with the instructions indicated below. No alterations to its format shall be permitted and no substitutions shall be accepted.]*

Date: *[Insert]*

NCB No. and title: *[Insert]*

Page *[Insert]* of *[Insert]* pages

Bidder's name:	<i>[Insert Bidder's legal name]</i>
In case of Joint Venture (JV), legal name of each member:	<i>[Insert legal name of each member in JV]</i>
Bidder's actual or intended country of registration:	<i>[Insert actual or intended country of registration]</i>
Bidder's year of registration:	<i>[Insert Bidder's year of registration]</i>
Bidder's address in country of registration:	<i>[Insert Bidder's legal address in country of registration]</i>
Bidder's Authorized Representative Information	
Name:	<i>[Insert authorized representative's name]</i>
Address:	<i>[Insert authorized representative's address]</i>
Telephone numbers:	<i>[Insert authorized representative's telephone numbers]</i>
E-mail address:	<i>[Insert authorized representative's email address]</i>

1. General Presentation of the Bidder (name, legal structure, business areas, subsidiaries and shareholdings, number of staff, etc.)
2. Attached are copies of original documents of [Check the box(es) of the attached original documents]
  - Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITB 4.1;
  - In case of JV, JV agreement, in accordance with ITB 4.1 or Declaration of Association as per ELI-1.2(b).
  - In case of Government-owned enterprise or institution, in accordance with ITB 4.3 documents establishing:
    - a) Legal and financial autonomy;
    - b) Operation under commercial law;
    - c) Establishing that the Bidder is not dependent agency of the Employer.
3. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Title of the person signing the Bid *[Insert complete title of the person signing the Bid]*

Signature of the person named above *[Signature of the person named above]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

## Form ELI-1.2 (a): Bidder's JV Information Form

[The following table shall be filled by each member of a JV and, if applicable, by any specialized subcontractor]

Date: .....

NCB No. and title: .....

Page ..... of ..... pages

Each Bidder that is a JV Party and each main subcontractor in accordance with ITA 24 must submit this information.

Information	Data
Bidder's legal name:	[insert full legal name]
Bidder's JV member's legal name:	[indicate full legal name]
Bidder's JV member's country of registration:	[indicate country of registration]
Bidder JV member's year of constitution:	[indicate year of constitution]
Bidder JV Member's legal address in country of constitution:	[insert street / number / town or city / country]
Bidder JV Member's legal structure and ownership structure	
Legal structure:	[provide details]
Ownership structure:	[provide details of direct and indirect ownership]
Bidder JV Member's authorized representative information	
Name:	[insert full legal name]
Address:	[insert street / number / town or city / country]
Telephone / fax numbers:	[insert telephone / fax numbers, including country and city codes]
E-mail address:	[indicate e-mail address]

1. General Presentation of the Bidder (name, legal structure, business areas, subsidiaries and shareholdings, number of staff, etc.)
2. Attached are copies of original documents of:
  - Articles of Incorporation (or equivalent documents of constitution or association), and/or documents of registration of the legal entity named above, in accordance with ITA 4.1.
  - In case of JV, JV agreement, in accordance with ITA 4.1 or Declaration of Association as per ELI-1.2(b).
  - In case of Government-owned enterprise or institution, in accordance with ITA 4.3 documents establishing:
    - - Legal and financial autonomy
    - - Operation under commercial law
    - - Establishing that the Bidder is not a dependent agency of the Employer.
3. Included are the organizational chart, a list of Board of Directors, and the beneficial ownership.

Signed \_\_\_\_\_

Name \_\_\_\_\_

For and on behalf of  
[name of the Bidder or JVCA partner]

## Form ELI-1.2 (b): Declaration of Association

*[The following form shall be provided by each member of a Joint Venture and, if applicable, by any specialized subcontractor, nominated in accordance with ITA 24]*

Date: .....

NCB No. and title: .....

Page ..... of ..... pages

We hereby declare our intent to associate with the following firms for the purpose of forming a *[insert here "joint venture"]*:

*[Insert the names of the other JV Members here]*

*[Insert the name of the Lead Member]* shall be the Lead Member.

We hereby confirm that we have not associated with any other firms for the purposes of this assignment and that we will not submit an Application separately from the firms listed above. Further, we understand that if one of the above JV Members appears as a member in more than one Application, all Applications in which the Member appears shall be disqualified.

In the event that this JV is awarded a Contract, we shall perform the works in the composition and in the form of cooperation described above.

*[Signature of the authorised representative of the Member]*

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

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

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

### Non-Performing Contracts in accordance with Section III, Qualification and Evaluation

- Contract non-performance did not occur since **1<sup>st</sup> January 2021** specified in Section III, Qualification and Evaluation, criterion 2.1.
- Contract(s) not performed since **1<sup>st</sup> January 2021** specified in Section III, Qualification and Evaluation, criterion 2.1.

Year	Non performed portion of contract	Contract Identification	Total Contract Amount [current value, currency exchange rate and EUR equivalent]
		Contract Identification: Name of Employer: Address of Employer: Reason(s) for non-performance:	
		Contract Identification: Name of Employer: Address of Employer: Reason(s) for non-performance:	
...	...	...	...

### Pending Litigation, in accordance with Section III, Qualification and Evaluation

- No pending litigation in accordance with Section III, Qualification and Evaluation (criterion 2.3)
- Pending litigation in accordance with Section III, Qualification and Evaluation (criterion 2.3), as indicated below.

Year	Disputed Amount [currency]	Contract Identification	Total Contract Amount [current value, currency exchange rate and EUR equivalent]
[insert year]	[insert amount]	Contract Identification: [indicate complete contract name, number, and any other identification] Name of Employer: [insert full name] Address of Employer: [indicate full address of Employer] Matter in dispute: [indicate main issues in dispute] Party who initiated the dispute: [indicate "Employer" or "Contractor"] Status of dispute: [Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]	[insert amount]

Year	Disputed Amount [currency]	Contract Identification	Total Contract Amount [current value, currency exchange rate and EUR equivalent]
		Contract Identification: <i>[indicate complete contract name, number, and any other identification]</i> Name of Employer: <i>[insert full name]</i> Address of Employer: <i>[indicate full address of Employer]</i> Matter in dispute: <i>[indicate main issues in dispute]</i> Party who initiated the dispute: <i>[indicate "Employer" or "Contractor"]</i> Status of dispute: <i>[Indicate if it is being treated by the Adjudicator, under Arbitration or being dealt with by the Judiciary]</i>	
...	...	...	..

## Form FIN-3.1: Financial Situation and Performance

[The following table shall be filled in for the Applicant and for each JV Member]

Applicant's Name: .....

Date: .....

JV Member Name: .....

ICB No. and title: .....

Page ..... of ..... pages

### 1. Financial Data

Financial information	Historic information for previous five (5) years [EUR equivalent in 000s]*				
	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Information from Balance Sheet</b>					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity / Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					
Working Capital (WC)					
<b>Information from Income Statement</b>					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Profits After Taxes (PAT)					
<b>Cash Flow Information</b>					
Cash Flow from Operating Activities					

### 2. Financial documents

The Applicant and its parties shall provide copies of financial statements for [number] years pursuant Section III, Qualification and Evaluation, sub-factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Applicant or JV member, and not an affiliated entity (such as parent company or subsidiary).
- (b) be independently audited or certified in accordance with local legislation.
- (c) be complete, including all notes to the financial statements.
- (d) correspond to accounting periods already completed and audited.

Attached are copies of financial statements <sup>16</sup> for the [number] years required above; and complying with the requirements.

<sup>16</sup> If the most recent set of financial statements is for a period earlier than 12 months from the date of application, the reason for this should be justified.

## Form FIN-3.2: Average Annual Construction Turnover

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

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

### Annual turnover data for the last five (5) years (construction only)

Year	Amount and Currency	Exchange Rate*	EUR equivalent
<i>[indicate year]</i>	<i>[Insert amount and indicate currency. Include partial accounting for the year up to the date of submission of applications]</i>	<i>[insert based exchange rate for EUR conversion]</i>	<i>[insert amount converted to EUR at the rate of exchange at the end of the period reported]</i>

Average Annual Construction Turnover \*\* \_\_\_\_\_

\* Refer ITA 14 for date and source of exchange rate.

\*\* Total EUR equivalent for all years divided by the total number of years. See Section III, Qualification and Evaluation, clause 3.2.

## Form FIN-3.3: Sources of Finance

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

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

No.	Source of financing	Amount (EUR equivalent)
1		
2		
3		
...	...	

## Form FIN-3.4: Current Contract Commitments / Works in Progress

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

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

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

## Form EXP-4.1: General Construction Experience

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

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

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

Starting Month / Year	Ending Month / Year	Contract Identification*	Role of Bidder
[indicate month / year]	[indicate month / year]	Contract name: [insert full name] Brief Description of the Services performed by the Bidder: [describe Services performed briefly] Amount of contract: [insert amount in currency, mention currency used, exchange rate and EUR equivalent] Name of Employer: [indicate full name] Address: [indicate street/number/town or city/country address]	[insert "Prime Contractor", or "Sub-contractor" or "JV Member" or "Management Contractor"]
...	...	Contract name: Brief Description of the Services performed by the Bidder: Amount of contract**: Name of Employer: Address:	...
...	...	Contract name: Brief Description of the Services performed by the Bidder: Amount of contract**: Name of Employer: Address:	...
...	...	Contract name: Brief Description of the Services performed by the Bidder: Amount of contract**: Name of Employer: Address:	...

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

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

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

Similar Contract No. [insert number] of [insert number of similar contracts required]	Information*			
Contract Identification	[insert contract name and number, if applicable]			
Award date	[insert day, month, year]			
Completion date	[insert day, month, year]			
Role in Contract [check the appropriate box]	Prime Contractor	Member in JV	Management Contractor	Sub-contractor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total Contract Amount	[insert total contract amount in local currency]		EUR [insert exchange rate and total contract amount in EUR equivalent]	
If partner in a JV or Sub-contractor, specify share in value in total Contract amount	[insert a percentage amount]	[insert total contract amount in local currency]	[insert exchange rate and total contract amount in EUR equivalent]	
Employer's Name:				
Name:	[insert full name]			
Address	[indicate street / number / town or city / country]			
Telephone number	[insert telephone numbers, including country and city area codes]			
E-mail:	[insert e-mail address, if available]			

Similar Contract No. [insert number] of [number of similar contracts required] *	Information
1. Amount	[insert amount in EUR in words and in figures incl. currency]
2. Physical size of required work items	[insert physical size of items]
3. Complexity	[insert description of complexity]
4. Methods / Technology	[insert specific aspects of the methods / technology involved in the contract]
5. Construction rate for key activities	[insert yearly rates and items]
6. Other Characteristics	[insert other characteristics as described in Section VII "Scope of Works"]

\* Description of the similarity in accordance with sub-criterion 4.2 of Section III, Qualification and Evaluation.

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

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

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

Information	Data*			
Contract Identification	<i>[insert contract name and number, if applicable]</i>			
Award date	<i>[insert day, month, year, e.g., 15 June 2017]</i>			
Completion date	<i>[insert day, month, year, e.g., 03 October 2019]</i>			
Role in Contract <i>[check the appropriate box]</i>	Prime Contractor	Member JV	Management Contractor	Sub-contractor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total Contract Amount	<i>[insert total contract amount in contract currency(ies)]</i>		EUR <i>[insert exchange rate and total contract amount in EUR equivalent]</i>	
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year <i>[Insert extent of participation indicating actual quantity of key activity successfully completed in the role performed]</i>	Total quantity in the contract		Percentage participation	Actual Quantity Performed
	(i)		(ii)	(i) x (ii)
Year 1				
Year 2				
Year 3				
Year 4				
Employer's Name:				
Name:	<i>[insert full name]</i>			
Address	<i>[indicate street / number / town or city / country]</i>			
Telephone number	<i>[insert telephone numbers, including country and city area codes]</i>			
E-mail:	<i>[insert e-mail address, if available]</i>			
Description of key activities in accordance with sub-factor 4.2(b) of Section III				
...	<i>[insert response to inquiry indicated in left column]</i>			
...				
...				

### 2. Key Activity No. 2 (two): *[insert brief description of the activity, emphasizing its specificity]*

...

### 3. ....

## Form CER-5.1: Certification

*[Insert Quality Management, Environmental Management Certification, Health and Safety Certification]*

*It is mandatory for Applicants to be in the possession of all three valid certificates. The following table shall be provided by the Bidder for each certificate.*

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

Description	Information
Identification of the certificate	<i>[insert full name of the certificate]</i>
First award date	<i>[insert day, month, year of first certificate award]</i>
Last update of the certificate	<i>[insert day, month, year of latest renewal, if any]</i>
Issuers Name	<i>[insert full name]</i>
Address	<i>[insert street / number / town or city / country]</i>
Telephone number	<i>[insert phone, incl. country &amp; city area codes]</i>
E-mail	<i>[insert e-mail address, if available]</i>
Compliance with international standards	ISO 9001: <input type="checkbox"/> Yes / <input type="checkbox"/> No
	ISO 14001:2004: <input type="checkbox"/> Yes / <input type="checkbox"/> No
	OHSAS 18001 <input type="checkbox"/> Yes / <input type="checkbox"/> No
If no, proof of conformity with the international standard by the Bidder	<i>The Bidder shall demonstrate the equivalency of their management systems with the international standards.</i>

## Form EXP-5.2: Experience in Projects with significant ESHS Impact

[The following table shall be filled by the Bidder or in case of a JV the Lead Member. Project references provided here should reflect the ESHS requirements as defined in Section III, 5. If the Bidder is required to demonstrate different ESHS aspects this should be shown separately in the sheet below or in a separate sheet.]

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

ESHS Contract No. [insert number] of [insert number of S&E contracts required as per Section III, 5.]	Information			
Contract Identification	[insert contract name and number, if applicable]			
Award date	[insert day, month, year, i.e., 15 June, 2017]			
Completion date	[insert day, month, year, i.e., 03 October, 2019]			
Role in Contract [check the appropriate box]	Prime Contractor	Member JV	Management Contractor	Sub-contractor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Total Contract Amount	[insert total contract amount in local currency]		EUR [insert Exchange rate and total contract amount in EUR equivalent]	
If member in a JV or subcontractor, specify participation in total Contract amount	[insert a percentage amount]	[insert total contract amount in local currency]	[insert exchange rate and total contract amount in EUR equivalent]	
Employer's Name:				
Name:	[insert full name]			
Address	[indicate street / number / town or city / country]			
Telephone number	[insert telephone numbers, including country and city area codes]			
E-mail:	[insert e-mail address, if available]			

ESHS Contract No. [insert number] of [insert number of ESHS contracts required as per Section III, 5.]	Information and Documentation
1. ESHS Challenges	[describe the ESHS challenges faced in project implementation, including indication of scales/size by reference, if applicable project E&S categorization as per development bank categorization]
[insert brief description or, if applicable, short abstract of the documentation annexed]	
2. ESHS measures implemented	[description of measures implemented, incl. supporting documentation, if available]
[insert brief description or, if applicable, short abstract of the documentation annexed]	
3. ESHS knowhow transfer to local staff, local partners and subcontractors	[description of know how transfer and capacity building measures implemented, incl. supporting documentation, if available]

<b>ESHS Contract No.</b> <i>[insert number] of [insert number of ESHS contracts required as per Section III, 5.]</i>	<b>Information and Documentation</b>
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*[insert brief description or, if applicable, short abstract of the documentation annexed]*

Maximum points attributed to above requirements: **30 points**

*[Total points shall be distributed equally to the number of contract references as per requirement in Section III, criteria 5.]*

## Form ENV-5.3: Environmental Management Capacity

[The following table shall be filled by the Bidder or each member of a Joint Venture, whose part in the JV is substantial (more than 40 (forty) % of the works)]

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

	The Bidder shall demonstrate:	Information and Documentation	ESHS level
1	<ul style="list-style-type: none"> <li>the existence of an Environmental Policy and its application and enforcement in project implementation by a) own workforce and b) subcontractors.</li> </ul>	[Provide relevant details of the Corporate Values or similar policy documents and declarations]	③ 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
2	<ul style="list-style-type: none"> <li>the existence of an Environmental Management System, incl. an adequate organizational set-up for definition, enforcement and monitoring.</li> </ul>	[Provide details of the organizational set-up and procedures for relevant issues within your company, for qualification details of relevant key staff see Form PER-5.7]	③ 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
3	<ul style="list-style-type: none"> <li>that all members of a JV, suppliers, subcontractors and temporary workforce a) are aware of and b) comply with the Environmental Management System.</li> </ul>	[Provide information on a) how awareness, know how transfer and enforcement is implemented to external partners b) nature, content and frequency of internal trainings to employees.]	③ 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
4	<ul style="list-style-type: none"> <li>that regular monitoring and reviews of the status of the Environmental Management System takes place.</li> </ul>	[Provide details or samples of risk assessments, reviews, audits or reports which are carried out on a regular basis for the last three years.]	③ 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
5	<ul style="list-style-type: none"> <li>that procedures exist to respond to and mitigate environmental emergencies and other adverse impacts on work sites.</li> </ul>	[Provide supporting evidence like emergency manuals (index only), emergency procedures, etc.]	③ 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			

Maximum points attributed to above requirements: **10 points**

## Form OHSAS-5.4: Occupational Health and Safety Capacity

[The following table shall be filled by the Bidder or each member of a Joint Venture, whose part in the JV is substantial (more than forty percent (40%) of the works)]

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

	The Bidder shall demonstrate:	Information	ESHS level
1	<ul style="list-style-type: none"> <li>the existence of an Occupational Health &amp; Safety Policy</li> </ul>	[Provide a policy document and the index of the Occupational Health & Safety manual or other relevant documents and declarations]	<b>3</b> 3 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
2	<ul style="list-style-type: none"> <li>the existence of management system, incl. an adequate organizational set-up for definition, enforcement and monitoring.</li> </ul>	[Provide details of the organizational set-up and procedures for health and safety issues within your company, for qualification details of relevant key staff see Form PER-5.7]	<b>3</b> 3 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
3	<ul style="list-style-type: none"> <li>that regular reviews, audits and statistics of Health &amp; Safety events and procedures especially on work sites exist.</li> </ul>	[Please provide details or samples of risk assessments, reviews, audits or statistical reports which are carried out on a regular basis for the last three years]	<b>3</b> 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
4	<ul style="list-style-type: none"> <li>that all members of a JV, suppliers (in particular those for major supply items), sub-contractors and temporary workforce a) are aware of and b) comply with the Health &amp; Safety Policy.</li> </ul>	[Provide information on a) how awareness, know how transfer and enforcement is implemented to external partners b) nature, content and frequency of internal trainings to employees]	<b>3</b> 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			

Maximum points attributed to above requirements: **10 points**

## Form LOC-5.5: Socially Responsible Works Implementation

[The following table shall be filled by the Bidder or each member of a Joint Venture, whose part in the JV is substantial (more than forty percent (40 %) of the works)]

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

	The Bidder shall demonstrate:	Documentation	ESHS level
1	<ul style="list-style-type: none"> <li>a strategy for staff and labour incl. recruitment of temporary workforce and local labour, worker grievance mechanism, etc.</li> </ul>	[Provide information and relevant documents, if any]	③ 5 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
2	<ul style="list-style-type: none"> <li>a comprehensive strategy for ensuring public health and safety, including programs and procedures to combat the spread of communicable diseases (incl. HIV/AIDS)</li> </ul>	[Please provide supporting evidence]	③ 5 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
3	<ul style="list-style-type: none"> <li>a comprehensive strategy for staff accommodation, e.g. worksite camps, house rental, security, etc.</li> </ul>	[Provide information and relevant documents, if any]	③ 4 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
4	<ul style="list-style-type: none"> <li>a comprehensive training strategy for transfer of ESHS knowhow to temporary workforce and subcontractors</li> </ul>	[Provide information and relevant documents, if any]	③ 3 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
5	<ul style="list-style-type: none"> <li>a strategy for communication and interaction with stakeholders and local communities incl. grievance mechanism, incl. avoidance of damage to property and people</li> </ul>	[Provide a concept how this relationship has been managed in former contracts]	③ 3 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			

Maximum points attributed to above requirements: **20 points**

## Form COC-5.6: Ethical Business Principles

[The following table shall be filled by the Bidder or each member of a Joint Venture, whose part in the JV is substantial (more than forty percent (40%) of the works)]

Bidder's Name: .....

Date: .....

JV Member Name: .....

NCB No. and title: .....

Page ..... of ..... pages

	The Bidder shall demonstrate:	Documentation	ESHS level
1	<ul style="list-style-type: none"> <li>that ILO core labour standards <sup>17</sup> are fully respected in business operations by explicitly ticking the boxes.</li> </ul>	Our business operations respect the core labour standards on: <ul style="list-style-type: none"> <li><input type="checkbox"/> Freedom of Association</li> <li><input type="checkbox"/> Elimination of Forced Labour</li> <li><input type="checkbox"/> Non-Discrimination</li> <li><input type="checkbox"/> Abolishment of Child Labour</li> </ul>	Pass/fail ③
[insert brief description or, if applicable, short abstract of the documentation annexed]			
2	<ul style="list-style-type: none"> <li>the existence of a declaration on ethical business principles or similar declaration.</li> </ul>	[Provide written information and evidence on business principles (code of conduct, conflict of interest, bribery, corruption, bid-rigging, unfair competition, insider rules, confidentiality, money-laundering, etc.)]	③ 3 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
3	<ul style="list-style-type: none"> <li>the existence of an adequate organizational set-up to define, enforce and monitor the ethical business principles.</li> </ul>	[Provide details of the organizational set-up and staffing of the relevant department, for qualification details of relevant key staff see Form PER-5.7]	③ 3 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
4	<ul style="list-style-type: none"> <li>that all members of a JV, suppliers (in particular those for major supply items), subcontractors and temporary workforce a) are aware of and b) comply with these principles.</li> </ul>	[Provide information on <ul style="list-style-type: none"> <li>a) how awareness, know how transfer and enforcement is implemented to external partners</li> <li>b) nature, content and frequency of internal trainings to employees.]</li> </ul>	③ 2 points
[insert brief description or, if applicable, short abstract of the documentation annexed]			
5	<ul style="list-style-type: none"> <li>that a confidential and anonymous mechanism for employees and third parties to report violations of the ethical business principles exists.</li> </ul>	[Describe the mechanism and the offered reporting channels (ombudsmen, whistleblower scheme, website, etc.)]	③ 2 points

<sup>17</sup> See relevant ILO conventions C087, C098, C029, C105, C100, C111, C138, C182. In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions.

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	<b>The Bidder shall demonstrate:</b>	<b>Documentation</b>	<b>ESHS level</b>
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*[insert brief description or, if applicable, short abstract of the documentation annexed]*

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Maximum points attributed to above requirements 2 to 5, requirement 1 is pass / fail: **10 points**

## Form PER-5.7: List of Available ESHS and Construction Personnel

Complete the list below to demonstrate the extent to which you have access (internally / externally) to ESHS and Construction expertise required for personnel profiles described in Section VII; Scope of Works. Do not attach CVs as no personnel evaluation is carried out at the qualification stage. It is understood that qualified Bidders are not required to include staff named below into the proposal.

Name	Designation, in accordance with Section VII, Scope of Works	Education / Degree	Years of Professional Experience	Relationship with / years within the Bidder <sup>18</sup>	Country / Regional Experience	Relevant Project References (description of project-related experience)	Languages
	Project Manager						
	Site Agent						
	Surveyor						
	ESHS Supervisor						
	Sociologist						
	Health & Safety Expert						
	Foreman/Technician (Pipeline)						
	Foreman/Technician (Building Works)						

Maximum points attributed to above requirements: **20 points**

- 1) max 4 points for Project Manager
- 2) max 3 points for Site Agent
- 3) max 3 points for Surveyor
- 4) max 2 points for ESHS Officer
- 5) max 2 points for Sociologist
- 6) max 2 points for Health & Safety Expert
- 7) max 2 points for Foreman/ Technician (pipeline)
- 8) max 2 points for Technician (Building Works)

<sup>18</sup> For freelance experts (e.g. with retainer contracts or formal agreements) indicate "FE" and how long the expert has been associated with the Applicant. For sub-consultant staff indicate "Sub". Staff from affiliated firms of the Applicant shall be considered as sub-consultant staff.

## BIDDING FORMS

### Letter of Bid

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

Date: .....

NCB No.: .....

To: .....

We, the undersigned, declare that:

- (a) We have examined and have no reservations to the Bidding Documents, including Addenda issued in accordance with Instructions to Bidders (ITB 8) .....
- (b) We have no conflict of interest in accordance with ITB 4;
- (c) We have not been suspended nor declared ineligible by the Employer based on execution of a Bid Securing Declaration in the Employer's country in accordance with ITB 4.4;
- (d) We offer to execute in conformity with the Bidding Documents the following Works: .....  
.....;
- (e) The total price of our Bid, excluding taxes and excluding any discounts offered in item (f) below is:
  - i) In case of only one lot, total price (excluding taxes) of the Bid .....
  - ii) In case of multiple lots, total price (excluding taxes) of each lot .....
  - iii) In case of multiple lots, total price (excluding taxes) of all lots (sum of all lots) .....
  - iv) In case of acceptance of [indicate any technical alternatives offered in accordance with ITB 13], total price (excluding taxes) .....
- (f) The discounts offered and the methodology for their application are:
  - i) The discounts offered are: .....
  - ii) The exact method of calculations to determine the net price after application of discounts is shown below: .....
- (g) Our bid shall be valid for a period of ..... days from the date fixed for the bid submission deadline in accordance with the Bidding Documents, and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- (h) If our bid is accepted, we commit to obtain a performance security in accordance with ITB 42 of the Bidding Documents;
- (i) We are not participating, as a Bidder, in more than one bid in this bidding process in accordance with ITB 4.2(e), other than alternative bids submitted in accordance with ITB 13;
- (j) We understand that this bid, together with your written acceptance thereof included in your notification of award, shall constitute a binding contract between us, until a formal contract is prepared and executed; and

- (k) We acknowledge and agree that the Employer reserves the right to annul the bidding process and reject all bids at any time prior to contract award without thereby incurring any liability to us;
- (l) We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf will engage in any type of fraud and corruption.

Name of the Bidder\* .....

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

Title of the person signing the Bid .....

Signature of the person named above .....

Date signed ..... day of ....., .....

Note:

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

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

## Appendix to Bid

### Schedule of Adjustment Data

**Note:** this schedule is inserted only for the case that the project is delayed by others than the Contractor; in this event the Contractor may be eligible for adjustment of prices, provided the form has been completed correctly during the bidding phase.

#### Table of Weightings

Section(s) of Works: .....

Factor and description	(1) Range of values permitted	(2) Weightings for each payment currency		(3) Totals
		national currency [TZS]	foreign currency: [EUR]	
(a) Non-Adjustable	0.65			0.65
(b) Labour	0.05 to 0.25			
(c) Permanent construction material	0.10 to 0.25			
(d) Temporary construction material	0.01 to 0.10			
(e) Equipment, plant	0.05 to 0.25			
(f) Fuel	0.05 to 0.15			
etc.				
Total	1.00			1.00

The Bidder shall indicate in Columns (2) the specific weightings for each factor and bid currency, and in Column (3) the sub-totals for each factor, which must be within the range specified by the Employer in Column (1), respectively; furthermore, the sum of the sub-totals in Column (3) must be equal to 1 (one).

A formula shall be used for each payment currency, to be derived from the above Table as follows: the weightings to be used in each formula will be derived from the values in each currency column, respectively, by dividing each individual value by the sum of the values in the given column.

#### Table A: National Currency

Index code	Index description / identification	Publication source for the index	Base value in [month] <sup>(19)</sup>
(T)			
(S)			
(I)			

<sup>19</sup> Insert the month of the Base Date, i.e. the month of the Deadline for Bid Submission in accordance with ITB Clause 22.

**Table B: Foreign Currency**

The Bidder shall fill a table similar to the following one for each foreign currency of payment, as appropriate.

Index code	Index description / identification	Publication source for the index	Base value in [month] <sup>(20)</sup>
(T)			
(S)			
(I)			

Bidder's signature .....

Date signed ..... day of ....., .....

**Example**

The following example shows a table of weightings and the corresponding price adjustment formula which are derived from it, on the basis of the following assumptions:

- Three weightings / factors are shown in this example: X is the non-adjustable portion and two adjustment factors (a and b) contribute to price adjustment through the variation of Indices T and S respectively, for which the respective ranges permitted by the Employer and values selected by the Bidder are shown in the table; these values are to be used in the price adjustment formula.
- Two payment currencies are shown in this example: the national currency (I) and a foreign currency (f), the indices T and S are the respective indices in the country of the currency.
- The data in bold are those specified by the Employer in the Bidding Documents, whereas the other data are provided either by the Bidder in its Bid or by the Contractor in the payment requests

**Table of Weightings:**

Factor and description	(1) Range of Values permitted	(2) Weightings for each payment currency		(3) Totals
		national currency [TZS]	foreign currency: [EUR]	
X Non-Adjustable	0.15	0.05	0.10	0.15
(a) Labour	0.30 to 0.50	0.15	0.25	0.40
(b) Construction material and installation (without labour)	0.25 to 0.45	0.20	0.25	0.45
<b>Total</b>		0.40	0.60	1.00

Formula to be used for calculation of adjustment of payments:

$$\text{Payments in national currency (n): } P_{In} = \frac{0,05}{0,40} + \frac{0,15}{0,40} \frac{T_{In}}{T_{Io}} + \frac{0,20}{0,40} \frac{S_{In}}{S_{Io}}$$

$$\text{Payments in foreign currency (f): } P_{fn} = \frac{0,10}{0,60} + \frac{0,25}{0,60} \frac{T_{fn}}{T_{fo}} + \frac{0,25}{0,60} \frac{S_{fn}}{S_{fo}}$$

<sup>20</sup> Insert the month of the Base Date, i.e. the month of the Deadline for Bid Submission in accordance with ITB Clause 22.

## Summary of Payment Currencies

**Table C1: Foreign Currency (EUR)**

*“Bidders to quote entirely in either foreign (Euro) or in local currency” (ITB 15.1)*

**For** ..... *[Insert name of Section of the Works]*

	A	B	C	D
Name of payment currency	Amount of currency	Rate of exchange	Foreign currency equivalent	Percentage of Total Bid Price (TBP)
			$C = A \times B$	$\frac{100 \times C}{TBP}$
Local currency [TZS]				
Foreign currency [EUR]		1.0		
Total Bid Price in [EUR]				
Provisional sums expressed in local currency [TZS]	0.00]		0.00	0%
<b>TOTAL BID PRICE</b> (including provisional sum) [EUR]				

**Table C2: Local Currency**

*“Bidders to quote entirely in either foreign (Euro) or in local currency” (ITB 15.1)*

**For** ..... *[Insert name of Section of the Works]*

	A	B	C	D
Name of payment currency	Amount of currency	Rate of exchange	Local currency equivalent	Percentage of Total Bid Price (TBP)
			$C = A \times B$	$\frac{100 \times C}{TBP}$
Local currency [TZS]		1.0		
Foreign currency [EUR]				
Total Bid Price in Local currency [TZS]				
Provisional sums expressed in local currency [TZS]	0.00]		0.00	0%
<b>TOTAL BID PRICE</b> (including provisional sum) Local currency [TZS]				

**Table C3: Option B**

*“Bidders allowed to quote in local and foreign currencies” (ITB 15.1)*

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

Name of currency		Amounts Payable
Local currency	TZS	
Foreign currency	EUR	
Provisional sums expressed in local currency		0.00

## Schedules

The Schedule of Bills of Quantities is given below.

Bill No.	Bill Description
<b>1</b>	<b>Preliminaries &amp; General Items</b>
<b>2</b>	<b>Infill Sewers and Sewer Connections – Kirumba Ward</b>
2.1	Conventional Gravity Sewers (OD 200: total length 2.3 km)
2.2	Household Connections to Conventional Sewers (350 Nr)
<b>3</b>	<b>Infill Sewers and Sewer Connections – Kitangiri Ward</b>
3.1	Conventional Gravity Sewers (OD 200: total length 5.4 km)
3.2	Simplified Sewers (OD 110; Total length – 0.4km)
3.3	Household Connections to Conventional Sewers (250 Nr)
3.4	Household Connections to Simplified Sewers (100 Nr)
<b>4</b>	<b>Infill Sewers and Sewer Connections – Pasiansi Ward</b>
4.1	Conventional Gravity Sewers (OD 200: total length 0.5 km)
4.2	Simplified Sewers (OD 110; total length 0.3 km)
4.3	Household Connections to Conventional Sewers (50 Nr)
4.4	Household Connections to Simplified Sewers (50 Nr)
<b>5</b>	<b>Infill Sewers and Sewer Connections – Nyamanoro Ward</b>
5.1	Conventional Gravity Sewers (OD 200: total length 4.1 km)
5.2	Simplified Sewers (OD 110; total length 1.7 km)
5.3	Household Connections to Conventional Sewers (200 Nr)
5.4	Household Connections to Simplified Sewers (100 Nr)
<b>6</b>	<b>Infill Sewers and Sewer Connections – Nyakato Ward</b>
6.1	Conventional Gravity Sewers (OD 200: total length 7.3 km)
6.3	Household Connections to Conventional Sewers (350 Nr)
<b>7</b>	<b>Infill Sewers and Sewer Connections – Igogo Ward</b>
7.1	Conventional Gravity Sewers (OD 200: total length 2.6 km)
7.2	Simplified Sewers (OD 110; total length 1.1 km)
7.3	Household Connections to Conventional Sewers (50 Nr)
7.4	Household Connections to Simplified Sewers (100 Nr)
<b>8</b>	<b>Rehabilitation of Existing Sewerage System</b>
8.1	Rehabilitation of Existing Sewers
8.2	Rehabilitation of Existing Sewage Pumping Stations (3 Nr)
8.3	Rehabilitation of Existing Ilemela Wastewater Treatment Works
<b>9</b>	<b>Operation &amp; Maintenance Tools and Equipment</b>
<b>10</b>	<b>Day Works</b>

## Preamble

1. These Bills of Quantities form part of the Contract Documents and are to be read in conjunction with the Conditions of Contract, Technical Specifications and Drawings.
2. Whenever reference is made to "The Engineer" or "The Engineer's Representative" in the Bills of Quantities, it shall be construed to mean the person appointed by the Employer to act as the Project Manager or 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.
3. The quantities set forth in the Bills of Quantities represent the character of the work to be carried out. The Contractor is not guaranteed that the amounts of work listed in any item or group within the Bills of Quantities will need to be performed, nor that additional quantities will be necessary. Though on the Contract as a whole, the quantities are intended to represent the overall value of the work to be carried out.
4. The prices and rates inserted in the Bills of Quantities will be used for valuing the work executed and the Engineer will measure the whole of the works executed in accordance with the Contract.
5. The prices and rates inserted in the Bills of Quantities are to be the full inclusive costs of the works described under the items, complete in place and in accordance with the Specifications and Drawings, including setting out of the works, including costs and expenses which may be required in and for the construction of the works described, together with any temporary works and installations which may be necessary and all general risks, liabilities and obligations set forth or implied in the Documents on which the Contract is based.
6. The brief description of the items given in the Bills of Quantities are purely for the purpose of identification and in no way modify or supersede the detailed descriptions given in the Conditions of Contract, Specifications or Drawings. When pricing items, reference is to be made to the Conditions of Contract, Standard Specifications, Drawings and Special Specification for the full directions and description of work and materials.
7. A price or rate is to be inserted, in ink, against each item in the Bills of Quantities, whether quantities are stated or not, and if the Bidder includes the cost of a particular item elsewhere in the rates or prices, the Bidder shall insert the word "nil" against both the rate and extension of that particular item. Should the Bidder omit to price an item, then it will be assumed that the cost of the item are elsewhere included in the rates or prices.
8. No alteration shall be made to the Bills of Quantities and no extra item shall be inserted. The Bidder shall satisfy himself that the Contract Sum arrived at by pricing the quantities and items given is sufficient compensation for constructing and maintaining the whole of the works in accordance with the Contract Documents.
9. For the purpose of payment by Interim Certificate of "Lump Sum" items the Engineer may assess the portion of the work completed on the "Lump Sum" item and allow for payment of the portion of the "Lump Sum" the Engineer deems fair and reasonable. The total of all portions allowed shall not exceed the "Lump Sum". All interim payments shall be subject to the retention stipulated in the Contract Documents.
10. During construction, the unit rate established for an item in one Bill of Quantities may be used as a basis for establishing a unit rate for similar work in another Bill of Quantities which contains no such item. No additional cost will be considered for such an eventuality.
11. The Contractor will be provided by the Employer with all that land occupied by the Permanent Works including the specified working width for pipe laying and other permanent construction

works. The costs of compensation and entry upon land (if any) for the specified working width will be paid by the Employer. All other costs for temporary access to the works or additional working space shall be borne by the Contractor.

12. All costs related to strict adherence to all Health and Safety regulations stipulated in the National Legislation of Tanzania as well acceptable international good practices for both temporary and permanent works pertaining to nature of the works under this Contract, shall be deemed included in the Contractor's rates.
13. It shall be the responsibility of the Contractor to arrange for the removal of, or alteration to existing services where necessitated by the Works. Costs incurred will be paid under relevant items in the Bills of Quantities.
14. Quantities for site clearance, stripping and spreading shall be based on plan area cleared or stripped.
15. The rates for excavation items shall be deemed to include inter alia for setting aside spoil for reuse in the Works or disposing to approved tips identified by the Contractor in liaison with the Local Authority and approved by the Engineer, except where otherwise provided for in the Bills of Quantities.
16. Generally, excavation items are based on volumes for structures and on linear measurements for certain pipelines. The work may be covered by one or more items. The rates shall include as appropriate for:
  - a) Breaking through surfaces, handling different classes of material separately; excavation beyond the net plan area of the foundations, for safe working space and for battering or timbering etc.
  - b) Timbering;
  - c) Dealing with water from any source whatsoever;
  - d) Backfilling as specified;
  - e) Disposal of surplus spoil.

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

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

Items are included for "Extra Over for Rock" on a volume basis and within the specified trench dimensions. The rates shall include for breaking out, mucking and disposal by method(s) approved by the Engineer and any other additional costs for other works or special methods adopted for excavation and disposal by the Contractor, encountered within measured excavation.

Different rock classifications are defined in the Specifications and have been billed separately. Rock shall be measured as a volume calculated from the thickness encountered within the plan area of a mass excavation, within the plan dimensions of a structure, or within the nominal width of a trench. The decision of the Engineer on the classification of rock encountered in excavation shall be final and binding. **Note: Any excavation of murram in whatever form will be taken as common excavation.**

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

17. Excavation by mechanical equipment may not be possible in some area due to restricted wayleaves, slopes/topographical features, ground water from whatsoever source, existing structures, drains, roads, trees, fences, walls, etc. The Contractor's rates for pipe trench excavation shall be deemed to cover mechanical and/or manual excavation. No claim for restricted space or double haulage will be entertained.

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

18. When the site of any particular item of the Works has been sufficiently cleared of trees, undergrowth etc. and before any excavation or filling has been carried out, the Contractor shall carry out a survey under the Supervision of the Engineer's Representative to take, record and agree upon an adequate number of original ground levels. The data so obtained shall be used as a basis for the computation of excavation and filling and preparation of "As-Built" Drawings by the Contractor. If for whatever reason the Contractor commences excavation without taking levels, the Engineer's decision on the original ground levels to be used for computation will be final.
19. The volume of fill will be measured net to the finished levels as shown on drawings or as amended by the Engineer.

20. METHOD RELATED CHARGES

- a) In order that the Contractor may cover costs in executing specific portions of work, where those costs are not properly attributable to the quality of permanent works to be executed, the Contractor may cover such costs in the Bills of Quantities in accordance with the following provisions.
- b) For the purpose of these charges the following words and expressions shall have the meaning hereby assigned to them.
- i. **'Method Related Charge'** means the sum for an item inserted in the Bills of Quantities by a Bidder in accordance with paragraph 20 c).
  - ii. **'Time Related Charge'** means a Method Related Charge for work the cost of which is to be considered as proportional to the length of time taken to execute the work.
  - iii. **'Fixed Charge'** means a Method Related Charge which is not a Time Related Charge.
- c) A Bidder may insert in the Bills of Quantities, in the Bill provided, such items for Method Related Charges as the Bidder may decide to cover items of work relating to the intended method of executing the works, the costs of which are not to be considered as proportional to the quantities, rates and prices for the other items.
- d) Each item for a Method Related Charge inserted by the Bidder shall be fully described so as to define precisely the extent of work covered and to identify the constructional resources (plant, equipment, etc.) to be used and particular items of permanent or temporary works to which the items relate. The description shall include the type of charge (Time Related or Fixed) and in the case of a Time Related Charge, shall include also the expected duration, and the rate of charge.

- e) The insertion by a Bidder of an item for a Method Related Charge in the Bills of Quantities shall not bind him to adopt the method stated in the description of the item. However, in the case of a Time Related Charge, where the method is changed, a revised rate of charge shall be used taking account of the revised execution period to give the same total charge, had the original method, time and charge rate been adhered to.

If the charge is a Fixed Charge then payment to the Contractor for such an item shall be in equal instalments spread evenly throughout the duration of that part of the works which is the subject of the Fixed Charge.

- f) Method Related Charges shall not be admeasured but shall be deemed to be prices for the purpose of Clauses 12.1 of the Conditions of Contract and shall be paid in accordance with Clause 14 of the Conditions of Contract.
- g) In the event of the satisfactory execution of any part of the works which has been the subject of an item for a Method Related Charge using, whether in whole or in part, a method other than that described in the item, the Contractor shall nevertheless be entitled to payment of the Method Related Charge or the balance thereof, as the case may be, such instalments at such times and upon such events as may from time to time be agreed between the Engineer and the Contractor. In default of such agreement the Method Related Charge, or the balance then unpaid, shall be allowed to the Contractor by way of instalments in interim certificates at such times and upon such events as the Engineer shall decide.

The amount of Method Related Charge shall be neither increased nor decreased by reason of any change in method made by the Contractor, unless such change has been ordered by the Engineer, in which case the provisions of Clause 13 of the Conditions of Contract shall apply.

21. The rates for concrete shall include for fresh and hardened concrete tests prescribed in the Specifications including making and testing concrete cubes and forwarding the results to the Engineer. Testing to be carried out by a Test Laboratory approved by the Engineer. The Contractor shall maintain a written log of cubes prepared indicating date of testing and results achieved. The Contractor shall designate a qualified person for preparation and follow-up on cube tests in coordination with the Engineer / Engineer's Representative.
22. The rates for precast concrete paving shall include for all cutting, bedding, jointing and laying to falls.
23. The rates for precast concrete edging and kerbs shall include for formwork, concrete bed and backing, all cutting, jointing and laying.
24. All formwork must be cleaned and oiled prior to use. All exposed concrete edges shall have a 20mm chamfer unless otherwise directed and costs deemed to be included in formwork rates. The formwork rates shall also be inclusive of all necessary box outs and cut outs for individual holes up to 1 square metre.

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

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

25. Formwork for upper surfaces inclined at 30 degrees or less to the horizontal is not measured and the cost of any such formwork used will be deemed to be included in the relevant concrete item rate.
26. Wrought formwork where specified will be measured to 150 mm below final ground levels.

27. Items required for structural joints and construction joints shown on drawings shall be paid for as per the rates in the Bills of Quantities; the rate for providing and fixing PVC water bar is deemed to be inclusive of all joints, overlaps, junctions, welding, etc. formwork not shown on drawings shall be deemed to be included in the unit rates for concrete work.
28. All rates and sums in the Bills of Quantities shall be in Tanzania Shillings and Cents [TZS].
29. If possible a construction wayleave of up to 3 m for the infill sewers will generally be allowed. In the event the above mentioned wayleave widths are not available due to obstructions or restricted access, the Contractor will execute the works using suitable approved alternative methods. The costs for alternative methods are deemed to be covered by bid rates. No additional costs will be allowed.

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

No claim for additional space will be entertained by the Engineer. No claims for inconvenience and the like caused by obstruction will be entertained. The rates shall be deemed to include for reinstatement of fences, gates, etc.

30. All pipe diameters indicated in the Bills of Quantities and on Drawings are nominal. Fittings dimensions to suit size / type of pipes supplied by the Bidder and Bidder's rates are deemed to allow for this. No additional cost adjustment will be allowed.
31. Unless otherwise specified the method of measurement shall be in accordance with the Standard Method of Measurement of Civil Engineering Quantities (CESMM4) published by the Institution of Civil Engineers, London, 2012. In some cases variations to this method have been made to suit local practice. A Contractor shall be deemed to have priced the items accordingly and no claims relating to variation from the method of measurement stated in these documents shall be considered.
32. Items for buildings, electrical and mechanical works are not described using CESMM4 for clarity purposes.
33. All quantities have been measured in Metric Units.
34. Explanation of abbreviations used in the Bills of Quantities are as follows:

Avg.	average
B.L.	bitumen lined
C.I.	Cast Iron
C.L.	cement-mortar lined
D.I.	Ductile Iron
Dia.	diameter
Drg.	drawing
E.C.	epoxy coated
E.L.	epoxy lined
E.O.	Extra Over
FE/Fe	Ferrous
G.I.	Galvanised Iron

G.M.S.	Galvanised Mild Steel
H.T.	high tensile
Ha.	hectare
Hr.	hour
kg	kilogramme
L.S.	Lump Sum
m	linear metre
M.S.	mild steel
m <sup>2</sup>	square metre
m <sup>3</sup>	cubic metre
Max.	maximum
Min.	minimum
mm	millimetre
n.e.	not exceeding
Nr	number
P.C.	Prime Cost
P.E.H.	Palothene
P.S.	Provisional Sum
PE	Polyethylene
S & S	socket & spigot
SRN	Standard Reference Number
uPVC	Unplasticised Polyvinyl Chloride

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

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

37. Concrete Works

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

Concrete shall be measured by the cubic metre of each class calculated from the dimensions given on the drawings or as instructed by the Engineer.

No deduction shall be made in the measurement for:

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

iii) reinforcement.

The rates for concrete shall include for the cost of:

- i) provision and transport of cement, aggregate and water;
- ii) admixtures and workability agents including submission of details unless otherwise specified;
- iii) batching, mixing, transporting, placing, compacting and curing;
- iv) class UF1 finish;
- v) laying to sloping surfaces not exceeding 15 degrees from the horizontal and laying to falls;
- vi) formwork to blinding concrete;
- vii) placing and compacting against excavated surfaces where required including any additional concrete to fill overbreak or working space;
- viii) complying with all the requirements of the Specifications.

b) Item : Blinding Concrete

Unit : m<sup>3</sup>

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

The rate for blinding concrete shall include for all costs itemised in Note 37(a) of this Preamble.

c) Item : No Fines Concrete

Unit : m<sup>3</sup>

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

The rate for no fines concrete shall include for all costs stated in Note 37(a) of this Preamble.

d) Item : Unformed Surface Finishes

Unit : m<sup>2</sup> of each class of finish

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

The rate for concrete in Notes 35(a), (b) and (c) shall include for class UF1 finish.

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

e) Item : Formwork for Formed Surface Finishes

Unit : m<sup>2</sup> of formwork for each class of finish for each range of

### inclinations

Except as stated below, formwork shall be measured by the square metre of formwork actually in contact with the finished face of the concrete. No deduction shall be made in the measurement for openings, pipes, ducts and the like, provided that the area of each is less than 0.50 square metres. Unless otherwise stated, if the volume or area of concrete has not been deducted when measuring the concrete in accordance with Notes 37(a), (b) and (c), formwork to form or box out the void shall not be measured.

Formwork less than 300 mm high to edges of slabs shall be measured by the linear metre in accordance with Note 37(f) of this Preamble.

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

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

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

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

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

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

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

The rate shall include for the costs stated in Note 37 (e) of this Preamble.

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

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

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

h) Item : Mortar

Unit : m<sup>2</sup>

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

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

The rates for mortar shall include for the cost of providing and placing the mortar and of complying with all the requirements of the Specifications.

i) Item : Admixture Workability and Hardening Agents

Unit : As specified in the Special Specification

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

j) Item : Reinforcement

Unit : Tonne of each type for each range of diameters

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

i) of diameter equal to or less than 16mm

ii) of diameter greater than 16mm

Steel fabric reinforcement shall be measured in accordance with Note 37(k) of this Preamble.

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

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

k) Item : Fabric Reinforcement

Unit : m<sup>2</sup> of each type

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

The rate for steel fabric reinforcement shall include for the costs stated in Note 37(j) of this Preamble.

#### Sewers, Drains and Pipelines

38. The rates for pipes, pipework and specials shall include for supply of all materials, setting of concrete blocks and hardwood wedges where specified, providing any temporary support that may be necessary, preparing ends of pipes for jointing and all labour in jointing, protection to

detachable joints, cleaning pipelines and rectifying as specified any damage to surface coating. The rates shall also include for all cutting of pipes consequent upon structures, specials and fittings being constructed in the designated positions.

39. The rates for concrete surround, bed and haunching to pipes, concrete in anchor blocks to pipes, and to gully pots shall include for all formwork required and for any additional concrete the Contractor may place for own convenience or by reason of the method of carrying out the work.
40. Pipes, Fittings and Valves – General Specifications are given in applicable International Standards referred to in the following SRNs:
- a) uPVC pipes and fittings to SRN 300 Class 'E' (16 bar), or as specified in the Technical Specifications.
  - b) Steel pipes and fittings to SRN 210, SRN 212 and SRN 216.
  - c) Ductile Iron (DI) pipes and fittings to SRN 202.
  - d) Galvanised Iron (GI) pipes and fittings to SRN 203.
  - e) Flexible joint spigot and socket Polyvinyl Chloride (PVC) pipes to SRN 300.  
Rigid joint spigot and socket pre-cast concrete (pcc) pipes to SRN 409.  
Ogee joint pre-cast concrete (pcc) pipes to SRN 407.
  - f) All flanges to SRN 207, NP 16 or as specified in the Technical Specifications.
  - g) Gate valves to SRN 501, NP 16 or as specified in the Technical Specifications.
  - h) Double orifice air valves as specified in Clause 1035 in the Technical Specifications.
  - i) Fire hydrants to SRN 509.
  - j) Butterfly valves to SRN 506, NP 16 as specified in the Technical Specifications.
  - k) Ball float valves as specified in Clause 1302(i) in the Technical Specifications.
  - l) All pipe, fittings and valve diameters indicated are nominal diameters.
  - m) Supply of pipes and fittings to include for cost of supply of all jointing materials like bolts, nuts, washers, gaskets, packings, jointing glue, etc.
  - n) uPVC pipes to be supplied complete with compression joints.
  - o) Supply of C/L steel pipes to be with flange or push-in joints. If plain ended pipes are offered, one number coupling per length is to be included. Coupling is subject to approval by Project Manager.
  - p) Ductile Iron pipes to be with push-in type joints.
  - q) Galvanised Iron pipes to be with threaded coupling joints, or as specified.
  - r) Precast concrete ogee pipes to be complete with all jointing materials.

#### Shop Drawings

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

### Prime Cost Items

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

provided under the Contract, all labour, construction equipment, materials, erection, maintenance, superintendence, insurances, ESHS related costs etc. set forth or implied in the Contract. These are all deemed to include all allowances for waste or surplus of any kind, which are not subject to measurement.

**The rates to be indicated in the Bills of Quantities shall be exclusive of all applicable Government duties and taxes as all goods and services imported or purchased locally for exclusive use in the implementation of the project shall be exempt from Value Added Tax, Import Duty, Railway Development Levy and Import Declaration Fees in accordance with applicable Tanzania tax laws.**

**The Grand Total from the Grand Summary inclusive and exclusive of duties, taxes and VAT shall be carried to the Letter of Bid.**

## Technical Proposal

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

## Environmental, Social, Health and Safety (ESHS) Methodology

The Bidder shall provide an ESHS Methodology providing information on how the Bidder shall meet those requirements and objectives, which are specified in Section VII, Works Requirements - ESHS Specifications.

The ESHS Methodology submitted shall be informed by the Environmental Impact Statement (EIS) prepared and approved by National Environment Management Council (NEMC) and the Project Area Environmental and Social Management Plan (PA-ESMP) to be prepared on site, the content of which is detailed in Appendix 1 to ESHS Specifications.

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

In order to address the highly sensitive ESHS issues highlighted during the project's Environmental Impact statement (EIS) assessment, the ESHS Methodology shall provide detailed information on the management of the following items:

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

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

## Site Organization and Method Statement

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

- (a) Details of the arrangements and methods which the Bidder proposes to implement for the construction of the Works, in sufficient detail to demonstrate their adequacy to achieve the requirements of the Contract including completion within the Time for Completion stated in the Particular Conditions of Contract;
- (b) Outline of the arrangements of the Bidder to manage coordination of Site access;
- (c) Comments on the geotechnical and subsurface aspects of the Works including materials, material sources and any constraints;
- (d) Comments on any offshore or waterfront aspects of the Works (if relevant);
- (e) Comments on logistics and traffic management;
- (f) Outline of the arrangements and organisation of the Bidder to ensure compliance with the Works Requirements;
- (g) Outline of the arrangements of the Bidder to carry out testing upon completion as specified in the Works Requirements;
- (h) Details of the site organogram.

## Construction Schedule

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

- (a) Details of the proposed schedule for obtaining permits that may be necessary in order to commence the Works, including the preparation of required studies, supporting information, and applications;
- (b) Details of the proposed timeline for carrying out the Works within the Time for Completion, in the form of a bar chart showing notably the critical path;
- (c) Details of the proposed timeline for the testing, commissioning and handing over of the completed Works;
- (d) *[Other proposed measures as may be appropriate]*

## 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.

#	Title of position*	Name(s)
1	Project Manager	
2	Site Agent	
3	Surveyor	
4	ESHS Supervisor	
5	Sociologist	
6	Health & Safety Expert	
7	Foreman/ Technician (pipeline)	
8	Technician (Building Works)	
9		
10		

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

### Form PER-2: Resume of Proposed Personnel

<b>Position [#1]:</b>	<i>[title of position from Form PER-1]</i>	
<b>Personnel information</b>	Name:	
	Date of birth:	
	Address:	
	E-mail:	
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
<b>Present Employment</b>	Name of Employer:	
	Address of Employer:	
	Contact (manager / personnel officer):	
	Telephone:	
	E-mail:	
	Current job title:	
	Years with present employer:	

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

From	To	Company / project / position / relevant technical and management experience

## Form EQU: Equipment

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

Item of Equipment:			
Equipment Information	Name of manufacturer:		Model and power rating:
	Capacity:		Year of manufacture:
Current Status	Current location:		
	Details of current commitments:		
Planned Mobilization	Details on planned mobilization (time, location, work item):		
Source	Indicate source of equipment:		
	<input type="checkbox"/> owned	<input type="checkbox"/> rented	<input type="checkbox"/> leased

Omit the following information for equipment owned by the Bidder.

Owner	Name of owner, contact name + title:		
	Address of owner:		
	Telephone:	e-mail:	
Agreements	Details of rental / lease / manufacture agreements specific to the project:		

## Bid Security

Beneficiary: .....

Date: .....

BID GUARANTEE No.: .....

Guarantor: .....

We have been informed that *[Insert name and address of the bidder, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called “the Applicant”) has submitted or will submit to the Beneficiary its bid (hereinafter called “the Bid”) for the execution of **Construction of Mwanza Sewer Connection Upgrade** under National Competitive Bidding No. *[Insert NCB number]*.

We, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, waiving all objections and defences, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary’s first demand, supported by the Beneficiary’s statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that either the Bidder:

- (a) Has withdrawn its Bid during the period of bid validity set forth in the Bidder’s Bid Submission Form (the Bid Validity Period”); or
- (b) Having been notified of the acceptance of its Bid by the Beneficiary during the Bid Validity Period, (i) has failed to sign the contract agreement, or (ii) has failed to furnish the performance security, in accordance with the Instructions to Bidders (“ITB”) of the Beneficiary’s bidding document.

This guarantee shall expire not later than *[Insert expiry date]*<sup>21</sup>.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert*<sup>22</sup>*: This guarantee is subject to the Uniform Rule for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758.]*

\_\_\_\_\_ Place, date

\_\_\_\_\_ Guarantor’s authorized signature(s)

<sup>21</sup> Pursuant to ITB Clause 19.3 the guarantee must be valid for at least 42 days beyond the bid validity.

<sup>22</sup> In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank’s branch issuing the guarantee is physically located.

## Manufacturer's Authorization

*[The Bidder shall require the Manufacturer of at least the below listed items to each fill in this Form in accordance with the instructions indicated. This letter of authorization should be on the letterhead of the respective Manufacturer and should be signed by a person with the proper authority to sign documents that are binding on the Manufacturer.]*

Item No.	Item - Description
1.	Ferrous pipes and fittings
2.	Gate valves and butterfly valves
3.	Non-return valves
4.	Air valves
5.	Flow meters (battery powered electromagnetic type)
6.	Cement
7.	Reinforcement steel
8.	uPVC / HDPE pipes
9.	Submersible sludge pumps

***[Note: All italicized text is for use in preparing these forms by bidders and shall be deleted from the final document.]***

Date: *[Insert date]*  
NCB No.: *[Insert NCB No.]*

To: ...

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 28 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]*

Date signed *[Insert date of signing]* day of *[Insert month]* *[Insert year]*

## Section V. Eligibility Criteria

### Eligibility in KfW-Financed Procurement

1. Consulting Services, Works, Goods, Plant and Non-Consulting Services are eligible for KfW financing regardless of the country of origin of the Contractors (including Subcontractors and suppliers for the execution of the Contract), except where an international embargo or sanction by the United Nations, the European Union or the German Government applies.
2. Applicants / Bidders (including all members of a Joint Venture and proposed or engaged Subcontractors) shall not be awarded a KfW-financed Contract if, on the date of submission of their Application / Offer or on the intended date of Award of a Contract, they:
  - 2.1 are bankrupt or being wound up or ceasing their activities, are having their activities administered by courts, have entered into receivership, or are in any analogous situation;
  - 2.2 have been
    - (a) convicted by a final judgement or a final administrative decision or subject to financial sanctions by the United Nations, the European Union and/or the German Government for involvement in a criminal organisation, money laundering, terrorist-related offences, child labour or trafficking in human beings; this criterion of exclusion is also applicable to legal Persons, whose majority of shares are held or factually controlled by natural or legal Persons which themselves are subject to such convictions or sanctions;
    - (b) convicted by a final court decision or a final administrative decision by a court, the European Union or national authorities in the Partner Country or in Germany for Sanctionable Practice during any Tender Process or the performance of a Contract or for an irregularity affecting the EU's financial interests, unless they provide supporting information together with their Declaration of Undertaking (Form available as Appendix to the Application/Offer which shows that this conviction is not relevant in the context of this Contract and that adequate compliance measures have been taken in reaction;
  - 2.3 have been subject within the past five years to a Contract termination fully settled against them for significant or persistent failure to comply with their contractual obligations during Contract performance, unless this termination was challenged and the dispute resolution is still pending or has not confirmed a full settlement against them;
  - 2.4 have not fulfilled applicable fiscal obligations regarding payments of taxes either in the country where they are constituted or the PEA's country;
  - 2.5 are subject to an exclusion decision of the World Bank or any other multilateral development bank and are listed in the respective table with debarred and cross-debarred firms and individual available on the World Bank's website or any other multilateral development bank unless they provide supporting information together with their Declaration of Undertaking which shows that this exclusion is not relevant in the context of this Contract or
  - 2.6 have given misrepresentation in documentation requested by the PEA as part of the Tender Process of the relevant Contract.
3. State-owned entities may compete only if they can establish that they (i) are legally and financially autonomous, and (ii) operate under commercial law. To be eligible, a state-owned entity shall establish to KfW's satisfaction, through all relevant documents, including its charter and other information KfW may request, that it: (i) is a legal entity separate from their state (ii) does not currently receive substantial subsidies or budget support; (iii) operates like any commercial enterprise, and, inter alia, is not obliged to pass on its surplus to their state, can acquire rights and liabilities, borrow funds and be liable for repayment of its debts, and can be declared bankrupt.

## Section VI. KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

### 1. Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract, and to have them audited by auditors appointed by KfW.

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

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

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

<b>Coercive Practice</b>	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
<b>Collusive Practice</b>	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
<b>Corrupt Practice</b>	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.
<b>Fraudulent Practice</b>	Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
<b>Obstructive Practice</b>	Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.

**Sanctionable Practice** Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

## **2. Social and Environmental Responsibility**

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence). Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation<sup>23</sup> (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental Impact Statement (EIS) and further to be detailed in the Project Area Environmental and Social Management Plan (PA-ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

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<sup>23</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

# **PART 2 – WORKS REQUIREMENTS**

# Section VII. Works Requirements

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# 1 Introduction

## Description of the Works

### 1.1 Background

The overall programme objective is to contribute to the sustainable and equitable use of clean water and basic sanitation facilities by the population and to protection of water resources. The corresponding module aim is to contribute to the protection of Lake Victoria from pollution by improving the quality of wastewater discharged into the lake and catchment area.

The project focuses on Mwanza Sewer Connection Upgrade Project

### 1.2 Financing

The programme is financed by the German Development Cooperation (through the German Development Bank, KfW) and by the European Union (EU).

### 1.3 Materials and Technical Standards

All delivered materials and all works shall fulfil and be in compliance with the standards specified in the Employer's Requirements and technical specifications. All civil construction works shall conform to Standards and Code of Practice used in the Republic of Tanzania and to metric system. Any pipes, fittings, manhole covers etc. shall be in line with relevant and up-to-date internationally recognized standards (such as for example German DWA Design Standards). For other works, in case national standards are not available the relevant European Standards (EN) or Tanzania Bureau of Standards (TBS) shall prevail.

Only the most recent standards shall be applicable. Applied standards must be provided by the Contractor in English language.

### 1.4 Scope of Works

The Scope of Works comprises of the following:

- - Construction of Infill Sewers of approximate total length of 25.5km,
- - Installation of target 1,600Nr Sewer Connections
- - Rehabilitation of the Existing Sewerage System, Pumping Stations and Ilemela Wastewater Treatment Plant based on the Condition Survey.

### 1.5 Ambient Conditions

#### 1.5.1 Climate

Mwanza Region is located at an altitude of approximately 1200 – 1400 m above sea level and associated with favourable lake winds and experiences a tropical climate condition

Most parts of Mwanza Region experience a bimodal rainfall pattern; the short rains falling from October to December and the long rains between March and May, while dry periods spell from January to end of February and between June and end of September. The average annual rainfall for the Region is about 930 mm, ranging between 1,200 mm in Ukerewe islands to 700 mm in the Southern and South-Eastern parts of the Region.

Temperature in the Region is influenced by Lake Victoria waters, ranging from 25°C to 28°C from September to December, and ranging from 11°C to 20°C from June to August.

### 1.5.2 Land Use and Settlement Patters

According to Mwanza City Master Plan (2016), the settlements in Mwanza City are categorized into planned and unplanned settlements. The unplanned settlements occupy approximately 45% of the City area.

Land parcels categorized under unplanned settlements are seen as development constraints due to the associated legal framework, i.e., “right of occupancy of the land” and “customary ownership of the land”. As such, it is a challenge to integrate such land parcels within proposed development.

Approximately 25% of the land use constitutes of Industrial Zones, Institutional Areas, Special Areas and Wetlands while the Institutional Areas occupy approximately 7%. The Industrial Zones occupy approximately 5% of the City area.

### 1.6 Personnel Requirements

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

No.	Position	Qualifications (minimum requirements)	Total Work Experience (years)	Works Experience in similar projects (years)
1	Project Manager	<ul style="list-style-type: none"> <li>BSc. Civil Engineering</li> <li>Proof of fluency in written and spoken English</li> </ul>	15	8
2	Site Agent	<ul style="list-style-type: none"> <li>BSc. Civil Engineering</li> <li>Proof of fluency in written and spoken English</li> </ul>	10	5
3	Surveyor	<ul style="list-style-type: none"> <li>BSc. Surveying or Higher National Diploma in Surveying or equivalent</li> </ul>	10	5
4	ESHS Supervisor	<ul style="list-style-type: none"> <li>Degree in Environmental Science or related field</li> <li>Registered NEMC Lead Expert</li> <li>Experience in the implementation of projects in compliance with the World Bank Environmental and Social Standards.</li> <li>Proof of fluency in written and spoken English</li> </ul>	10	5
5	Sociologist	<ul style="list-style-type: none"> <li>Degree in Development Studies, Sociology or equivalent</li> <li>Experience in the implementation of projects in compliance with the World Bank Environmental and Social Standards.</li> <li>Proof of fluency in written and spoken English and Kiswahili</li> </ul>	10	5
6	Health & Safety Expert	<ul style="list-style-type: none"> <li>First Degree in a relevant field and a Course in Occupation Health and Safety</li> <li>Experience in the implementation of projects in compliance with the World Bank Environmental and Social Standards.</li> <li>Must have NEBOSH certificate</li> <li>Proof of fluency in written and spoken English</li> </ul>	6	3

No.	Position	Qualifications (minimum requirements)	Total Work Experience (years)	Works Experience in similar projects (years)
7	Foreman / Technician (Pipeline)	<ul style="list-style-type: none"> <li>Diploma in Civil Engineering / Building Construction or equivalent</li> </ul>	8	5
8	Technician (Building Works)	<ul style="list-style-type: none"> <li>Higher National Diploma or equivalent</li> </ul>	8	5

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. The above are only key staff, and the Contractor shall provide information on all other necessary staff for the supervision and construction of the works. After signature of the Works Contract the Contractor shall not, without prior consent of the Engineer, revoke the appointment of any of the key staff or appoint a replacement

### 1.7 Equipment Requirements

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

No.	Equipment Type and Characteristics	Minimum number required
1	Excavators, min. 4 m digging depth, min. 8 m reach along ground; min. bucket capacity not less than 0.8 (or 1.2) m <sup>3</sup> ; working capacity for rock breaking tool / attachment	3
2	7 / 10 / 15 ton tipper lorries	4
3	Concrete mixers (capacity 0.3 m <sup>3</sup> to 1 m <sup>3</sup> ), including batch weighing	2
4	Concrete vibrators (diameter 40 mm to 60 mm)	3
5	Concrete dumpers, 1m <sup>3</sup>	2
6	Pneumatic rock hammer, min. 1620 blows/minute (impact rate)	3
7	Compressors (5,000 l/min)	2
8	Total station (for surveying works)	2
9	Portable de-watering pumps, min. Q= 70m <sup>3</sup> /h, H=15m	3
10	Mechanical pressure testing equipment (for pipelines up to PN 10)	2
11	Mobile crane – crane lorry (15 ton)	2
12	Mobile 3 phase generators – 150 kVA	1
13	Mobile 3 phase welding machines (oil cooled)	1
14	Ramming compactors (backfill)	6
15	Plate vibrating compactors (sand), 150 kg	6
16	Trench shoring equipment, heavy duty	set
17	Construction safety equipment incl. PPE	set
18	Traffic control equipment incl. signage	set
19	All other construction equipment	set

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

## **2 Specifications**

### **2.1 Technical Specifications**

1. The Specifications to be used for the Works are the Technical Specifications given in Volume 2 of the Bidding Documents.
2. Standards, brand names, catalogue numbers or similar classifications provided in the Specifications are indicative of performance requirements and offers which have similar characteristics and which provide performance and quality equal or higher to the performance requirements specified would be accepted.
3. The Terms “The Engineer” (or “The Resident Engineer”) and “Engineer’s Representative” have the same meaning as “The Project Manager” and “The Project Manager’s Representative” respectively.

**THE DETAILED SPECIFICATIONS ARE GIVEN IN VOLUME 2 OF THE BIDDING DOCUMENT.**

## 2.2 Environmental and Social Management Plan (PA-ESMP)

The Environmental Impact Statement (EIS) Report prepared for the Project will be issued to the Contractor on Award.

Within 42 days of Commencement, the Contractor shall submit a Project Specific Environmental and Social Management Plan (PA-ESMP) for approval of the Engineer. The PA-ESMP shall be based on the Contractor's evaluation of the requirements of these Specifications. The Contractor must carry out all works in accordance with Tanzania Environmental Laws and Regulations, and the requirements of this document.

The PA-ESMP shall generally comply with the guidelines set out below.

The PA-ESMP is the Contractor's operative document on how to enforce, mitigate, inspect, and monitor potential Project impacts during mobilization, construction, and demobilization. In this sense, it is an eminently practical and concrete instrument.

Based on the above, the structure and content of the PA-ESMP shall emphasize the following aspects:

- i) Executive Summary
- ii) Introduction
- iii) Project Description
  - Focus on impact-generating activities (e.g., demand of water and permanent materials, earth movement, etc.).
  - Environmental liabilities: identify and include a photographic registry of pre-existing environmental liabilities (e.g., gully erosion areas, abandoned borrow pits, unauthorized dumping sites, etc.) that are not attribute to the implementation of the Project.
- iv) Potential Impacts during Mobilisation, Construction and Demobilisation
  - Apply simple rating of significance.
  - Quantity / quality impacts (e.g., surface and type of vegetation to be removed, amount and type of wastes to be generated, noise levels, etc.);
  - Identify places where specific impacts will manifest
- v) Mitigation Plan
  - Specify the detailed measures to mitigate the identified impacts (also by location)
  - Include designs for measures requiring structural solutions (e.g., gabions, etc.);
  - Include the schedule of implementation of mitigation measures in relation to the general construction schedule.
  - Health and Safety Plan (detailed).
  - Waste Management Plan (detailed) including decommissioning of the existing asbestos cement (AC) mains.
  - Traffic Management Plan (detailed).
  - Training programme (detailed).
  - Accident and Emergency Response Plan (detailed).
  - HIV/AIDS Awareness and Prevention Programme (include only a reference to this

programme to be prepared by an NGO).

- Community relations programme.
- Location and technical specifications for installation and operation of campsites, including workshops, garages, laboratories, offices, communal kitchenette / dining facilities, sanitary installations, etc.
- Location, and technical specifications for operation of quarries and borrow pits, and procedures for negotiation with and compensation of landowners where they are located.
- Location and technical specifications for installation and operation of concrete batching, stone crushing, cement mixing and asphalt plants.
- Location and technical specifications for installation and operation of temporary and permanent dump sites.

#### vi) Inspection Plan

- Inspection function: specify frequency, locations, and instruments (e.g., checklists, site reports, photo registry, etc.) to conduct site inspections.
- Permitting: required environmental permits and schedule to obtain them.
- Specific actions and responsibilities: what, who, where, when how and why.

#### vii) Monitoring Plan

- Specify, for each variable: frequency of measurement, locations, methods/equipment, units/measures, quality standards, and reporting requirements and periodicity, including establishment of trends.
- Specific actions and responsibilities: what, who, where, when how and why.

#### viii) Organisation and Management

- Specify organizational structure, personnel, resource and equipment requirements, reporting requirements and periodicity, and inter-institutional communication and coordination mechanisms.
- Specific actions and responsibilities: what, who, where, when how and why.

#### ix) Annexes

- If the Contractor wishes to incorporate information beyond the indicated above, such as the policy, institutional and regulatory framework for environmental management in Tanzania, biophysical and socio-economic characteristics of the area of influence of the Project, etc., that information should be included as an annex and not in the body of the PAESMP. Preferably, such information should not be attached and, further, if necessary, the pertinent chapter of the EIS should be referenced.
- Annexes should be used, if necessary, to include detailed information on the specific topics of the PA-ESMP (e.g., inspection forms or checklists, design of structural mitigation measures, photographic registry of environmental liabilities, etc.).

### 2.3 Environmental, Social, Health and Safety Management (ESHS)

Throughout the ESHS Specifications, a reference to the Conditions of Contract (CC) means a reference to both the General Conditions of Contract and the Particular Conditions of Contract. Readers should apply due care, when referring to a specific Clause or Sub-Clause, and:

- Read first the Clause or Sub-Clause text from the General Conditions of Contract;

Then check whether this text has been amended by the Particular Conditions of Contract, and if so, to which extent.

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## A. Environmental, Social, Health and Safety Management

- 1. Responsibilities and liabilities**
- 1.1. In conjunction with his obligations defined under the Contract, the Contractor will plan, execute and document construction works pursuant to the present Environment, Social, Health and Safety specifications (ESHS).
  - 1.2. The Contractor is liable for all damages to the environment and people caused by the execution of the works or the methods used for execution, unless it is established that the execution or methods were necessary, according to the provisions of the Contract or an Engineer's instruction.
  - 1.3. Under the Contract and as introduced by the present ESHS Specifications, the term "Project Area" means:
    - a) The land where work will be carried out; or
    - b) The land necessary for the implantation of construction facilities (work camp, workshops, offices, storage areas, concrete production plants) and including special access roads; or
    - c) Quarries for aggregates, rock material and riprap; or
    - d) Borrow areas for sand and other selected material; or
    - e) Stockpiling areas for backfill material or other demolition rubble; or
    - f) Any other location, specifically designated in the Contract as a Project Area.

The term "Project Area" encompasses any individual Project Area or all Project Areas.

For the sake of clarity, Project Area is a different concept than Site under CC Sub-Clause 1.1.6.7.

Project Area defines an area within which the Contractor is to comply with environmental, social, health and safety obligations defined in the present ESHS Specifications.

Site is the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered, and where right of access to, and possession of, is to be given by the Employer to the Contractor. The Employer is under no similar obligation for any area located outside the Site, even if within the Project Area, where access is at Contractor's risk.

In term of physical footprint, the CC Sub-Clause 1.1.6.7 Site is included in the Project Area. The Project Area is then of greater geographical extent than the Site.

1.4. The ESHS Specifications refer to:

- a) Protection of the natural environment (water, air, soil, vegetation, biological diversity) in areas within any Project Area and its surroundings, i.e. including but not limited to access roads, quarries, borrow areas, stockpiling of backfill material, camps or storage areas;
- b) Health and safety conditions to be maintained for the Contractor's personnel and any other person present on the Project Areas, or along access routes;
- c) Working practices and the protection of people and populations living near the Project Area, but exposed to the general disturbance caused by works.

1.5. Subcontractors

The Contractor shall ensure that all Subcontractors and Suppliers (in particular those for major supply items) are familiar with the ESHS requirements and guidelines valid on Site and Project Area.

1.6. Applicable regulations

The Contractor must identify all applicable laws, permits and regulations in relation to the protection of the environment (water, air, soils, noise, vibration, vegetation, fauna, flora, waste, groundwater) and, pursuant to Clauses 4 and 6 of the CC, the protection of people (labour law, indigenous populations, standards on occupational exposure, other). The Contractor must list all texts, standards and other regulatory limitations in its Project Area Environmental and Social Management Plan (PA-ESMP as specified in ESHS Specifications Sub-Clause 2.1) and specify the means taken for compliance.

**2. ESHS planning documents**

- 2.1. The Contractor prepares and ensures prior validation by the Engineer, implementation and regular update of the Project Area Environmental and Social Management Plan (PA-ESMP), which includes Health and Safety aspects.
- 2.2. The PA-ESMP represents the unique reference document in which the Contractor defines in detail all organisational and technical provisions implemented to satisfy the obligations of the present ESHS Specifications.

- 2.3. The Contractor defines in the PA-ESMP the number, the locations and the type of Project Area as defined in ESHS Specifications Sub-Clause 1.3. For each Project Area, unless otherwise agreed by the Engineer, the Contractor establishes site specific management strategies and implementation and monitoring plans (Site-ESMP) to manage and monitor Environmental, Social, Health and Safety (ESHS) risks, depending on the type, scope and risks of the project and as assessed in the project's existing Environmental Impact Statement (EIS). These sub-plans shall be included in the PA-ESMP and include:
- e.g. Health and Safety Plan
  - e.g. Traffic Management Plan (to ensure safety of local communities from construction traffic)
  - e.g. Water Resource Protection Plan (to prevent contamination of drinking water)
  - e.g. Boundary Marking and Protection Strategy (for mobilization and construction to prevent offsite adverse impacts)
  - e.g. Biodiversity Action Plan
  - e.g. Worksite Management Plan
  - e.g. Site Emergency Plan
  - e.g. Accommodation Plan
  - e.g. Waste Management Plan
  - e.g. Hazardous Materials Management Plan
  - e.g. Specific mitigation plan for endangered species in the wider area
  - e.g. Emergency plan
  - e.g. Community Interaction plan
- 2.4. The PA-ESMP (and the sub-plans) are structured according to the plan specified in Appendix 1 of the present ESHS Specifications.
- 2.5. PA-ESMP covers the entire period from the Contract Agreement signature date to the date of issue of the Performance Certificate by the Engineer.
- 2.6. Unless agreed otherwise by the Engineer, the PA-ESMP is written in the language of communication defined under Sub-Clause 1.4 of the CC.
- 2.7. The first draft version of the PA-ESMP is to be provided by the Contractor to the Engineer within 28 days from the date of execution of the Contract Agreement.
- 2.8. The Contractor shall proceed in accordance with the programme, subject to the Engineer's approval of the PA-ESMP. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

- 2.9. No physical work or activity shall commence on any Project Area until such time when the PA-ESMP, and the annexed Site ESMP corresponding to the Project Area, are approved by the Engineer.
- 2.10. During the execution of the works, whenever instructed by the Engineer, the PA-ESMP will be updated by the Contractor and reissued to the Engineer. The revised version shall highlight the new elements incorporated in the document. Such approval shall only be withheld if the PA-ESMP shows substantial deficits.
- 2.11. Related to the PA-ESMP, the Contractor will be responsible for:
  - a) communicating the contents of the ESMPs to their Subcontractors and Suppliers (in particular those for major supply items) and workers and training them to ensure that they understand their respective responsibilities
  - b) ensuring that adequate resources are mobilised to implement the specific Plans, including input from any specialist resources necessary to ensure effective planning and implementation of measures
  - c) ensuring that the procedures established in the PA-ESMPs are complied with by their workers and Suppliers (in particular those for major supply items)
  - d) implementing effective monitoring measures listed in the PA-ESMP to ensure that the effectiveness of the activities are assessed and any issues are promptly detected and addressed
  - e) ensuring that lessons are learned and corrective actions are taken
  - f) keeping the Engineer fully informed of any Project Area ESHS issues.

### **3. Management of Non-Conformities**

- 3.1. In application of Clause 5, non-conformities detected during inspections carried out by the Engineer are subject to a process adapted to the severity of the situation. The non-conformities will be defined as deviations from the requirements of the applicable regulations, the present ESHS Specifications, the ESMP, and the Worksite - ESMP. Non-conformities are divided into 4 categories as follows:
  - b) Notification of observation of minor non-conformities. The non-conformity results in a notification to the Contractor's Representative, followed-up by a signed notification of observation prepared by the Engineer. The multiplication of notifications of observation at the Project Area, or absence of corrective actions by the Contractor, can result in the severity of the non-conformity being raised to that of level 1.

- c) Level 1 non-conformity: Non-conformities that do not represent a serious immediate risk for health, environment, social or safety. The non-conformity is the subject of a report addressed to the Contractor and which shall be resolved within five (5) days. The Contractor addresses to the Engineer a report explaining how the non-conformity has been corrected. Further to an inspection and a favourable evaluation of effectiveness of the corrective action, the Engineer signs a close-out report for the non-conformity. In all cases where a non-conformity of level 1 is not resolved within one (1) month, the severity of the non-conformity is raised to level 2.
- d) Level 2 non-conformities: applies to all non-conformities that represent a risk with major consequences to health and/or the environment, social or safety. The same procedure as for level 1 non-conformities is applied. Corrective action shall be taken by the Contractor within three (3) days. The Contractor addresses a report explaining the corrective actions implemented. All level 2 non-conformities which are not resolved within one (1) month, are raised to level 3.
- e) Level 3 non-conformities: applies to all non-conformities that have resulted in damage to health or the environment, or which represent a high safety hazard or high social risk. The highest levels of the Contractor's and Engineer's hierarchies present in the Employer's country are informed immediately and the Contractor has twenty-four (24) hours to bring the situation under control. Pursuant to Clause 14.6 of the Particular Conditions of Contract (PC), a level 3 non-conformity results in the staged reduction of interim payments until the non-conformity has been resolved. Following the resolution of the Level 3 Non-Conformity the reduction(s) will be included in the next Interim Payment Certificate for payment. No interest will be paid on any reductions or suspended payment amounts. If the situation requires, and in pursuance to Clause 8.8 of the PC, the Engineer can order the suspension of work until the resolution of the non-conformity.

**4. Resources allocated to ESHS management**

**4.1. ESHS supervisors and managers**

- 4.1.1. Pursuant to Sub-Section Specifications (c) Personnel Requirements, Sub-Clause 4.18 of the CC and in addition to the provisions of Sub-Clause 6.7 of the CC, the Contractor appoints at one or several competent Environment, Social, Health and Safety manager in charge of implementing the present ESHS Specifications.
- 4.1.2. The appointment of the ESHS Manager shall include specific instruction to enforce regulations and delegated authority to take any action, measure or to issue instructions regarding their enforcement. All staff and labour within the Project Area shall be made aware of the name and authority of the ESHS managers and supervisors.

- 4.1.3. The ESHS manager holds the power within the Contractor's organisation to suspend the works if considered necessary in the event of severe non-conformities, and allocate all resources, personnel and equipment required to take any corrective action considered necessary. The ESHS Manager speaks fluently the language of communication of the Contract, and the official language of the Employer's country, if the language of communication of the Contract is not the official language.
    - 4.1.4. If so required in accordance with Sub-Section Specifications (c) Personnel Requirements, ESHS supervisors represent the ESHS Manager within work teams. Their role is to ensure that the works are carried out pursuant to the present ESHS Specifications and notify the ESHS Manager of any detected non-conformities.
  - 4.2. Personnel in charge of relations with external stakeholders
    - 4.2.1 If so required in accordance with Sub-Section Specifications (c) Personnel Requirements, the Contractor appoints an External Stakeholders Relations Manager responsible for relations local communities, administrative authorities, and representatives of economic activities located within one hour travel from the Project Area. In smaller projects, the person responsible for relations with external stakeholders can also be the ESHS Manager appointed under Sub-Clause 4.1.1 of the ESHS Specifications, providing that the latter speaks the local population language fluently.
    - 4.2.2 If so required in accordance with Sub-Section Specifications (c) Personnel Requirements, the Contractor shall appoint several subject specific Community Liaison Officers.
    - 4.2.3 Personnel in charge of relations with external stakeholders will be based on or near the Project Area on a permanent basis.
    - 4.2.4 Administrations and local authorities will be informed of the existence of this person as of the start of works and will be provided with telephone contact details so as to be able to contact this person if a problem arises during the execution of works, or concerning the behaviour of the Contractor's Personnel, inside or outside the Project Area.
  - 4.3. The team, including the ESHS supervisors and manager, and the person in charge of relations with external stakeholders, will be equipped with the necessary resources to operate independently and get to all location of the Project Area without delay. Commensurate with the size and location of the project, this may include:

- a) A 4WD vehicle (unless otherwise instructed by the Engineer) and the necessary operating budget;
- b) A complete IT workstation: computer, printer, Internet access;
- c) Field equipment: GPS, digital camera;
- d) One communication equipment per person adapted to the context (mobile phone, satellite phone, or, should coverage not be adequate, a long-range two-way radio).
- e) Lists of equipment will be maintained on site for inspection by Employer.

## 5. Inspections

- 5.1. The ESHS Manager will carry out an ESHS inspection of the facilities and Project Area on a weekly basis. A written report of reasonable length will be drafted for each weekly inspection, in a format approved by the Engineer, addressing non-conformities detected on the Project Area as specified in the present ESHS Specifications.
- 5.2. Any non-conformity shall be immediately addressed by corrective actions, which will be mentioned in the reports to the Engineer.
- 5.3. Each non-conformity will be documented by a digital photograph with captions to provide a visual illustration, explicitly indicating the location, date of inspection and the non-conformity in question.

## 6. Reporting

- 6.1. The Contractor includes a summary of ESHS activities implemented in relation to the execution of the works during the reporting period in the monthly Progress Report (as specified in Sub-Clause 4.21 of the CC) to the Engineer. The Contractor shall report on compliance with applicable laws, permits and regulations and the project related ESHS requirements. E.G. key issues shall include: monitoring results, covering amongst other issues, safety issues, incidents/accidents, need for corrective measures, conflicts amongst construction workforce or with local residents, grievances of workforce or stakeholders, any other details related to the social and environmental management and performance. Issues related to Subcontractors and Suppliers (in particular those for major supply items) shall also be included.
- 6.2. The ESHS progress report is written exclusively in the language of communication defined under Sub-Clause 1.4 of the CC.
- 6.3. Specific reporting requirements related to Health and Safety are detailed in the respective section (e.g. Health and Safety, accident reporting).

## 7. Code of Conduct

- 7.1. A Code of Conduct is established by the Contractor for the Project Areas, addressing the following: safety rules, zero tolerance for substance abuse (as defined in Clause 41 of these ESHS specifications), environmental sensitivity of areas around the Project Areas, the dangers of STDs and HIV/AIDS, gender issues (in particular sexual harassment) and respect for the beliefs and customs of the populations and community relations in general (drawing special attention to the risks of prostitution and human trafficking).
- 7.2. The rules are clearly displayed at the different Project Areas and posted in the Contractor's vehicles and machinery driving cabs.

- 7.3. The rules confirm the Contractor's commitment to implementing the ESHS provisions provided for in the Contract.
- 7.4. New Contractor's Personnel and existing Contractor's Personnel are made aware and acknowledge their understanding of the rules of procedure and the associated provisions. Rules of procedure document are initialled by all Contractors' Personnel prior to the start of any physical work at any Project Area.
- 7.5. Pursuant to Sub-Clauses 6.9 and 6.11 of the CC, the rules of procedure include a list of acts considered as serious misconduct and which must result in dismissal from any Project Area by the Contractor, or by the Engineer if the Contractor is not acting in due course, should a Contractor's Personnel repeatedly commit an offence of serious misconduct despite awareness of the rules of procedure, and this is without prejudice to any legal action by any public authority for non-compliance with applicable regulations:
- a) Drunkenness during working hours, leading to risks for the safety of local inhabitants, customers, users and personnel;
  - b) Punishable statements or attitudes, and sexual harassment in particular;
  - c) Violent behaviour;
  - d) Intentional damage to the assets and interests of others, or the environment;
  - e) Repeated negligence or imprudence leading to damage or prejudice to the environment, the population or properties, particularly breaching provisions intended to prevent the spreading of STD and AIDS;
  - f) Drug use;
  - g) Possession and/or consumption of meat or any other part of an endangered animal or plant as defined in the Washington convention (CITES) and national regulations.
  - h) Entering property of neighbouring people without permission of the landowners or those cultivating / renting the land.
- 7.6. Serious misconduct, such as organization of sex trade (pimping), committing paedophilia, physical aggression, drug trafficking, deliberate and severe pollution, trading and/or trafficking in all or part of protected species, shall lead to immediate dismissal as of the first report of misconduct is detected, in application of the rules of procedure and labour laws.
- 7.7. The Contractor establishes a record for each case of serious misconduct, and a copy will be provided to the Contractor's Personnel in question, indicating all action taken to terminate the misconduct by the Contractor's Personnel in question and to bring the attention of other Contractor's Personnel to the type of incident detected. This record will be provided to the Engineer as an attachment to the ESHS progress report (see ESHS Specifications Sub-Clause 6.1.).

- 7.8. The Contractor shall without delay inform the Engineer who in case of serious misconduct shall immediately inform the Employer.
- 8. ESHS training**
- 8.1. The Contractor prepares a training programme adequate for the works to be performed within the Project Areas and the personnel engaged in the works.
- 8.2. The Contractor ensures that Employees with direct responsibility for activities relevant to the Project's ESHS performance are adequately qualified and trained so that they have the knowledge and skills necessary to perform their work.
- 8.3. Training sessions are two-fold: introductory sessions for starting work at the Project Area, and technical training as required in relation to the execution of the works.
- i. Starting work sessions are organised for each Contractor's Personnel and shall cover as a minimum:
- a) Rules of procedure;
  - b) Safety rules on Project Areas;
  - c) Protection of areas adjacent to Project Area;
  - d) Risks relating to sexually transmitted diseases (Sub-Clause 6.7 of the CC), prostitution, human trafficking, and sexual harassment;
  - e) Basic health: combating malaria (if prevalent) and waterborne diseases, improving hygiene;
  - f) HIV/AIDS sensitization training;
  - g) Gender sensitization;
  - h) Emergency response procedures or evacuation;
  - i) Community relations training for workers interacting with local communities;
  - j) Communication of the contents of the Employment, Training and Worksite Management Plans to workers and all Subcontractors and Suppliers (in particular those for major supply items) and training them to ensure they understand their responsibilities with respect to employment, training and worksite management, incident reporting and response.
  - k) Health and Safety awareness training;
  - l) The Contractor shall be responsible for informing all workers of the Worker Grievance Mechanism at the time of hiring.

- 8.4. The Contractor shall ensure that adequate resources are mobilised for these trainings, including input from any specialist resources necessary to ensure effective planning and implementation of measures and that trainings are delivered in a timely manner.
- 8.5. Technical training:
- a) Training in the skills needed for tasks requiring a work permit (see ESHS Specifications Clause 27)'
  - b) Training in first aid and transporting the injured'
  - c) If applicable: appropriate driving skills'
  - d) If applicable: the Contractor establishes and implements a transparent and binding Local Workforce and Supplier Training plan to enhance the capabilities of local people and companies, with a view to increasing local content'
  - e) a matrix of training requirements showing the training frequency and interval between refresher courses and covering:
    - The Contractor details in the training programme the actions and ESHS training for all Subcontractors and Suppliers (in particular those for major supply items) or personnel of a joint venture when applicable.
    - The Contractor prepares an awareness program for local communities on the risks of prostitution, human trafficking and other forms of illegal trafficking.
    - The Contractor shall develop means of confirming that the training system is effective.

## 9. Standards

- 9.1. The Contractor complies with all applicable norms, standards and discharge limit values defined in the national regulations of the Employer's country regulations and pursuant to Sub-Clause 1.6 of the present ESHS Specifications.
- 9.2. The Contractor complies with norms, standards and discharge limit values recommended by the specialised international organisations affiliated to the United Nations, as described in ESHS Specifications 9.3 below. In the event of discrepancies in between international standards and national regulations, the Contractor shall comply with the most stringent requirements.

9.3. The specialised international organisations affiliated to the United Nations referred to in ESHS Specifications Sub-Clause 9.2 include:

- a) World Bank, including the IFC and its Environmental, Health and Safety guidelines available from:

<http://www.ifc.org/ehsguidelines>;

For matters not addressed in the above mentioned IFC document, the most stringent of the norms, standards and discharge limit values of the following institutions shall apply:

- a) World Health Organization (WHO);
- b) International Labour Organization (ILO) (in particular in pursuance to Clauses 6.20, 6.21, 6.23 and 6.24 of the CC);
- c) International Maritime Organization (IMO).

## **B. Protection of the Environment and People**

### **10. Protection of adjacent areas**

10.1. The Contractor shall be responsible for any foreseeable adverse environmental and social impacts arising from its activities and operations and for putting in place any necessary measures to avoid or if not possible mitigate them.

10.2. Pursuant to Sub-Clause 4.18 of the CC, and unless instructed otherwise by the Engineer, the Contractor uses construction methods and means of protection in order to avoid or minimize adverse effects that are incurred on vegetation, soils, groundwater and surface water, biodiversity, natural drainage and the water quality in areas within any Project Area and its surroundings for the entire duration of the works.

10.3. Prior to the start of Project activities, the Contractor will stake out the alignments, boundaries and limits of Project sites in accordance with plan(s) agreed upon in advance with the Engineer. The Contractor will establish the working strip to restrict the area of impacts to within the working corridor and limit personnel and vehicle movements to only within working areas.

10.4. All Project work activities will stay within the staked-out alignments and boundaries, and outside the designated ecologically and archaeologically / culturally / traditional sensitive areas unless specifically authorised by the Employer as part of the Project.

10.5. Prior to construction, the Contractor shall place signs with environmental protection information in areas identified as environmentally sensitive, and other areas where sensitive flora and fauna species are situated immediately adjacent to construction areas and that may be inadvertently disturbed or damaged during construction. Sensitive areas may include, but are not limited to, nest sites, plant and wildlife species of high conservation value, site-specific habitat features to be protected.

- 10.6. Wetland areas include marshes, fens, mires or natural or artificial bodies of water, whether permanent or temporary, where water is stagnant or flowing, fresh, saline or briny, including seawater with a low-tide depth of six metres or less. Filling of all or part of a wetland area is not permitted, unless the works are necessary according to the provisions of the Contract or the instructions of the Engineer.
- 10.7. With the exception of access roads, or unless instructed otherwise by the Engineer, the entire perimeter of land sites with a surface area of less than 2 hectares shall physically demarcated with a fence or tape. For Project Area with a surface area of more than 2 hectares, the perimeter shall physically demarcated by a perimeter track, road, signs or any other means leaving no possible ambiguity as to the location of the Project Area perimeter.
- 10.8. The Contractor shall perform a topographic survey of all additional areas and facilities, including ground elevations in order to reinstate the land after termination of the works; this includes recording all perimeter GPS coordinates; and ensuring that the entire area proposed for land take or temporary usage is included in the survey and recorded via photographs. Access roads shall be identified as new, upgraded or existing. All data, including GPS coordinates, shall be provided electronically to the Engineer.
- 10.9. The bailiff's sworn statement is prepared and provided to the Engineer with the Site ESMP.
- 11. Selection of borrow areas, backfill material stockpile sites and access road**
- 11.1. The Contractor will submit to the Engineer for prior approval, including but not limited to (i) the location of proposed borrow areas or areas to be excavated, or (ii) proposed backfill material stockpile locations or zones designated for the rubble from demolition works; maintenance facilities, storage areas, batch plants, etc.
- 11.2. This requirement also applies to the side casting during the construction of linear infrastructure (roads, pipelines, transport routes) and which are included in the category of stockpiling of waste material.
- 11.3. The opening or rehabilitation of all access routes between Project Areas will be shown on a map and approved by the Engineer prior to the start of the corresponding works.
- 12. Pollution prevention**
- 12.1. The Contractor shall take the necessary measures to ensure that pollution to air, water or land is prevented or, where this is not possible, reduced and mitigated as far as practicable during the construction phase. If required in the PA-ESMP the Contractor will develop a pollution prevention Plan for managing e.g. atmospheric emissions and dust, e.g. noise and vibrations, e.g. waste (specified in ESHS Specifications 13, 14 and 15 below):
- a) liquid effluents (see Clause 15 of these ESHS specifications)
  - b) air emissions
  - c) noise and vibration management
  - d) vehicle and equipment maintenance and selection
  - e) fuel, oil and chemical storage and handling.

12.2. Environmental and/or occupational health and safety regulators will be notified and informed as required by applicable laws about any Environmental pollution. The Contractor shall ensure that all appropriate environmental protection measures are adopted during the clean-up process after termination of works and that clean-up activities are appropriately documented.

### 13. Effluents

13.1. Effluents consist of liquid discharges, including infiltration, from Project Area, transporting a pollutant (dissolved, colloidal or particles).

13.2. A pollutant is a given chemical compound that is at a concentration greater than the limit value established for that compound according to the Clause 9 of the present ESHS Specifications.

13.3. If no recognized threshold exists for a chemical compound pursuant to ESHS Specifications Sub-Clause 12.2, the Contractor provides proof that the concentrations of the chemical in effluents released (discharged) to the environment are harmless to it and human beings.

13.4. No effluent is discharged by the Contractor neither into water courses or bodies including marine environment nor to ground surface or infiltrated into subsoils, without prior treatment and without monitoring quality of the treatment's performance to guarantee the absence of pollution in the effluent. Effluent discharge and flow rates into natural water bodies will be managed to control erosion / sediment freight.

13.5. The Contractor is responsible for carrying out or contracting the monitoring of the effluent quality pursuant to Sub-Clause 12.4 of the present ESHS Specifications by in-situ measurements, and sampling and laboratory analysis. In the first case, the Contractor provides the ESHS manager with the resources, equipment and skills to carry out in-situ monitoring and laboratory analysis of the performance indicators. In the second case, the Contractor establishes a contract with a specialised laboratory, accredited with the Employer's country authorities for this activity.

13.6. The physical and chemical parameters of an effluent that require quantity and quality monitoring are those listed in the Employer's country environmental regulations or in additional international standards or guidelines, or if these do not exist, the parameters are based on the recommendations of specialised international organisations pursuant to Clause 9 of the present ESHS Specifications. The list of monitoring parameters requires approval from the Engineer.

13.7. The Contractor will list, locate, and characterise (flow, expected quality, discharge frequency) all sources of effluents and outlets to the natural environment in the Site Environment Management Plan(s).

13.8. The Contractor will submit to the Engineer an Effluent Quality Monitoring Report on a monthly basis, including documentation for the following for each effluent discharge point: (i) average flow rates of discharged effluents, (ii) discharge frequencies and durations over the month, and (iii) the physical and chemical quality of the effluent discharged, for the conformity with parameters listed in ESHS Specifications Sub-Clause 12.1 above.

13.9. Wastewater run-off

The Contractor will take appropriate measures to ensure that discharges of process wastewater, sanitary wastewater, wastewater from utility operations or stormwater to surface water will not result in contaminant concentrations in excess of local ambient water quality criteria or, in the absence of local criteria, other sources of ambient water quality.

13.10. Rainwater run-off

13.10.1 Run-off consists of the rainwater flow on the surface or the soil and other technical surfaces at Project Areas.

13.10.2 In the context of the Contract, surface run-off is considered as an effluent unless demonstrated otherwise, as documented and substantiated by the Contractor, and approved by the Engineer.

13.10.3 All platforms where generators, hydrocarbon storage tanks and refuelling stations are installed have impervious and chemical resistant surfaces are drained separately and equipped with an oil removal treatment (oil-water-separator) to prevent pollution pursuant to ESHS Specifications Sub-Clause 12.4 above. For concrete batching plants, run-off will be drained to settling basin, where the pH will be buffered.

13.11. Contractors shall prohibit its workers and its subcontractors from bathing or washing clothes and vehicles/equipment in rivers or watercourses.

**14. Atmospheric emissions and dust**

14.1. Emissions refer to any discharge into the air of solid substances, aerosols, gases, radiation, or energy, whether point sources (e.g. incineration stack) or diffuse (e.g. fugitive dust emissions from road use by trucks).

14.2. The Contractor will use equipment and adopt construction and transport methods with atmospheric emissions which are not in excess of the threshold emission values recommended by the Employer's country standards, or the organisations mentioned in Clause 9.

14.3. Once having received the agreement from the Engineer, the Contractor will document the maintenance records for its fleet of vehicles, machinery and equipment. The records will be in the language of communication defined under CC Sub-Clause 1.4, or any other language approved by the Engineer, and will be at the disposal of the Engineer.

- 14.4. The fleet of vehicles or equipment emitting combustion gases will be maintained at the intervals and according to the methods specified by the manufacturer.
- 14.5. The Contractor shall exercise care to minimize emissions of dust from its activities, including traffic, at work sites, in residential areas and on access roads. Where it is deemed that dust is impacting or may have an impact on human, plant or animal receptors or where dust may cause sedimentation of watercourses/water bodies or unacceptable levels of soil loss, the Contractor shall apply water to the area creating the dust and consider implementing other dust control measures such as using windbreaks, netting screens or semi-permeable fences; controlling vehicle speeds to reduce traffic-induced dust dispersion and resuspension by setting and enforcing speed limits (Contractor vehicle speed limits are specified in ESHS Specifications Sub-Clause 50.10).
- 14.6. This shall include: posting speed limit signs in sensitive areas; ensuring trucks hauling sand, dirt or other loose materials are covered (sheeting trucks); suspending topsoil stripping and replacement during strong winds; using a dust collection system for bulk materials unloading; wet suppression (as needed, depending on the soil type) in the dry season, where unpaved roads and/or the working strip is located < 200 m from settlements taking appropriate abatement measures.
- 14.7. The Contractor describes in the PA-ESMP the road sections designated for the application of dust suppression agents and the methods and frequencies programmed. The Contractor will implement the measures approved by the Engineer.
- 14.7.1 Where applicable, visual inspections of atmospheric emissions shall be conducted, especially dust and emissions from vehicles and machinery as agreed with the Engineer. The inspections shall identify areas where the implementation of dust reduction measures is required,
- 14.7.2 When storage, transport and handling of bulk materials is made in the open air and exposed to the wind, the Contractor implements the necessary dust abatement measures.

## **15. Noise and vibration**

- 15.1. The Contractor uses equipment and adopts construction and transport methods so not to generate noise levels in excess of values recommended by the Employer's country regulations and organisations mentioned in Clause 9.
- 15.2. The Contractor will plan high noise generating works (e.g. pile driving, blasting, rock clearing, drilling, percussion drilling) in line with national regulations and respect maximum ambient noise-levels and nighttime rest hours at the nearest receptor area. A receptor is defined as an area used for nocturnal socioeconomic activities (e.g. accommodation camps, residential areas, hotels, health centres).

- 15.3. The Contractor shall locate stationary equipment (such as power generators and compressors) as far as possible from nearby receptors (e.g. worker resting areas, populated areas and environmentally sensitive areas). Equipment known to emit noise strongly in one direction, whenever possible, will be orientated so that the noise is directed away from sensitive receptors
- 15.4. The use of heavy vehicles at night is specified in ESHS Specifications Sub-Clause 50.9.
- 15.5. Standard noise abatement equipment shall be fitted to equipment by the Contractor, used and maintained in accordance with manufacturers' instructions.

## 16. Waste

- 16.1. The Contractor is responsible for identifying, collecting, transporting and treating all waste produced on the Project Areas.
- 16.2. The Contractor shall minimize the generation of waste and reuse, recycle and recover waste in a manner that is safe for human health and the environment.
- 16.3. The Contractor shall establish a Waste Management Plan which details a concept to manage non-hazardous and hazardous waste in line with the local legislations and adapted to the level of danger for human health or the natural environment. In absence of adequate legislation, waste shall be managed according to the guidance provided in the respective sections of the General World Bank Group EHS Guidelines with the objective of protecting soil and water resources. The Waste Management Plan shall include provisions for the training of workers.

### 16.4. Waste register and categorization:

The Contractor establishes and maintains a waste register which is at the disposal of the Engineer. This register will record all waste management operations: production, collection, transport, treatment. It will be available as of the Contractors mobilisation to any Project Area. Waste shall be categorized according to the following definitions:

- a) Non-hazardous solid waste generated at construction and decommissioning sites includes excess fill materials from grading and excavation activities, scrap wood and metals, and small concrete spills. Other non-hazardous solid wastes include office, kitchen, and dormitory wastes when these types of operations are part of construction project activities.
- b) Hazardous solid waste includes contaminated soils, which could potentially be encountered on-site due to previous land use activities, or small amounts of machinery maintenance materials, such as oily rags, used oil filters, and used oil, as well as spill clean-up materials from oil and fuel spills.
- c) Hazardous liquid waste includes effluents and waste material containing "free liquids" (e.g. used cutting oil or wastewater mixed with oil after cleaning machinery).

- 16.5. The following aspects are documented in this register:
- a) Type of waste, using the nomenclature specified in Sub-Clause 16.3.1 above;
  - b) Waste quantities;
  - c) Name and address of the third-party waste management facilities receiving waste or parties taking possession of the substances no longer considered as waste;
  - d) Name and address of waste transport Contractors;
  - e) Planned waste treatment.
- 16.6. In accordance with national regulations, the Contractor files and maintains at the disposition of the Engineer the waste manifests for the collection, transport, treatment and/or elimination of waste.
- 16.7. The Contractor assesses, documents and effectively implements any local recycling or re-use options for its waste.
- 16.8. Waste is stored separately prior to removal from the Project Areas, depending on the level of danger, phase (liquid, solid or gas), the waste management solution to be applied and its potential in terms of recycling or reuse.
- 16.9. Waste is collected from each Project Area at the same rate that it is produced and is placed in temporary locations meeting the following criteria:
- It shall be located at a distance of over 100 m from any natural sensitive area and over 500 m from any socioeconomic sensitive area (school, market, healthcare centre, water well or catchment area), with the exception of waste storage area in camps; and on a flat impervious surface to prevent infiltrations.
- 16.10. Unless otherwise specified in the Contract or instructed by the Engineer, waste incineration is prohibited on Project Areas. Two exceptions are medical waste and green waste, which unless instructed to the contrary by the Engineer, are managed pursuant to Clause 16.3 of the present ESHS Specifications.
- 16.11. The use of third-party waste management services is subject to a documented prior audit of the treatment, storage and recycling facilities by the Contractor, to guarantee the conformity with the provisions of the present ESHS Specifications on waste.
- 16.12. Pursuant to Sub-Clause 1.5 of the present ESHS Specifications, the provisions applicable to the Contractor regarding waste management also apply to any third-party waste management Subcontractor. The Engineer reserves its right to inspect third party waste management facilities and prohibit the Contractor from using the facilities if considered unacceptable.

### 16.13. Non-hazardous waste management

The management of non-hazardous waste shall comply with the following conditions:

- i. The Employer will communicate information to the Contractor about the location of and distance to the nearest landfill area and the disposal conditions.
- ii. If no landfill area exists nearby, the Employer will communicate to the Contractor where the Contractor shall establish a temporary landfill area. The Employer is responsible for obtaining the respective permits.

### 16.14. Hazardous waste management

16.14.1 The Contractor shall develop a Hazardous Materials Management Plan for those hazardous materials the Contractor is directly responsible for, and detailed procedures for working with chemical products and hazardous materials and handling hazardous waste.

16.14.2 Hazardous materials are those that pose a potential risk to human health or the environment and include cleaning chemicals, solvents and fuels.

16.14.3 Fuel and hazardous chemicals/materials shall be stored in designated areas, pursuant to Sub-Clause 26.8 of the present ESHS Specifications, except for quantities generated or required for the daily construction activities. Fuel, oil or hazardous materials required to be temporarily stored onsite shall be stored within secondary containment located further than 100m from a watercourse or water body.

16.14.4 Fuel and hazardous chemical storage areas shall not be allowed within 30m of a minor watercourse, within 100m of a major watercourse, within a floodplain or where there is the potential for spilled fuel to enter groundwater.

16.14.5 All fuel and hazardous chemical storage facilities shall be located on flat or gently sloping ground and shall be contained within a bund designed to contain at least 110% of the total capacity of the storage containers plus 10% of the aggregate tank volume within the containment area or as otherwise specified by regulatory requirements. The bund walls and floor shall be constructed of concrete or other suitably impermeable material. The filling connection must be within the bund. No drain valves or other connections through the bund walls shall be permitted. Tanks shall be fitted with a gauge to allow the fill level to be monitored during refilling and preferably with a high-level alarm.

16.14.6 When the Contractor's hazardous waste management is conducted by third parties, they must be reputable and accredited in the Employer's country for this activity.

- 16.15. If applicable and in the absence of an existing waste management solution for hazardous waste, the Contractor takes the following action:
- 16.15.1 Medical waste is incinerated in a specific facility constructed and accredited for this purpose. The Contractor will submit the technical specifications of the facility to the Engineer before importing or procuring the equipment.
  - 16.15.2 Hydrocarbons, lubricants, paints, solvents and batteries are transported in drums to suitable waste management facilities available, if available.
  - 16.15.3 If not otherwise instructed by the Engineer, contaminated soils from construction/demolition and drilling muds shall be treated, stabilized and disposed of to landfill. Prior approval is required from the Engineer regarding the method and site location. The Employer obtains authorization from the competent local authorities prior to any disposal to landfill.
  - 16.15.4 Prior approval from the Engineer is required before implementing waste management solutions on any other hazardous waste.
  - 16.15.5 Prior to the issue of the Taking Over Certificate for the Works, the Contractor provides documentation on hazardous waste, produced by the Contractor's works, landfilled at other sites than accredited third-party waste management facilities. The documentation includes a plan showing the location of landfill sites. The document is provided to the competent local authorities whose jurisdiction covers the landfill sites.

## **17. Vegetation clearing**

- 17.1. The works, including the opening up of the right of way and other worksites (e.g. camps, access roads, storage yards) may require vegetation clearance in work areas. Vegetation includes crops, trees, shrubs, bushes, grasses and other minor vegetation. Supervisors shall be trained in the controlled felling of trees to prevent impacts beyond worksites. They shall also be trained on the importance of identification and preservation of wild fauna encountered and disturbed during the stripping operation.
- 17.2. The Contractor describes in the PA-ESMP the planned methods and schedule for vegetation clearing. Specific agreement from the Engineer is obtained prior to any clearing works.
- 17.3. Vegetation clearing using chemicals is not permitted. Vegetation clearing using bulldozer is not permitted in zones less than 30 m from areas designated as sensitive by the Engineer, where only manual clearing is authorised.
- 17.3.2 Where it is not possible to restrict the timing of construction practices, vegetation shall be removed outside the breeding period so that works can carry on into this period unhindered.

- 17.3.3 The felling of trees shall be avoided where possible. Felled trees may be used for building gabions if required for land stabilization. Vegetative material (slash) is not to be used for construction purposes and shall be stockpiled at the edge of worksites. Areas of gathered plant material shall be separated to prevent flames spreading in the event of a fire.
- 17.3.4 Unless otherwise specified in the Contract or if otherwise instructed by the Engineer, burning vegetation is not permitted. Green waste can be burnt with prior approval from the Engineer regarding the location, method and schedule.
- 17.3.5 The collection of wild plants is prohibited.
- 17.3.6 Lighting fires in work areas is prohibited unless specifically authorised by the Employer.
- 17.3.7 It is prohibited to introduce foreign/non-adapted vegetation to the worksites.
- 17.3.8 Removed vegetation will be placed far from surface water. Large woody debris will be stored along the outside edge of worksites in clear areas. Small twigs, branches and pieces of vegetation shall be used for composting along with biodegradable waste generated in the camp and work areas.
- 17.3.9 Clearing of vegetation shall be limited to that which is strictly necessary.
- 17.3.10 Where possible, cutting of vegetation on steep hillsides will be minimal.
- 17.4. Areas cleared prior to undertaking earthworks are shown on a plan with a minimum scale of 1/10,000. Plans are submitted to the Engineer, for validation prior to starting clearing works.
- 17.5. The Contractor undertakes physical demarcation of zones to be cleared using a method approved by the Engineer
- 17.6. The characteristics (location, species, diameter at chest height) of trees not to be cut down are defined by the Engineer in coordination with the Employer. Such trees are marked with paint and protected against clearing machinery using a method approved by the Engineer.

17.7. Trees and areas to be cleared are to be marked precisely so that clearing is undertaken without damage to adjacent non-cleared areas. Topsoil is stored within the cleared areas at the edge of the cleared zone. Clearing is undertaken working from the edge of the zone inwards.

17.7.1 During clearing, the Contractor stockpiles separately:

- (i) tree trunks with a diameter at chest height greater than the size defined by the Engineer, and
- (ii) trunks with a smaller diameter, branches, leaves, stumps and roots.

17.7.2 Unless instructed otherwise by the Engineer the trunks of trees exceeding the diameter defined by the Engineer are the property of the Contractor.

## **18. Biodiversity**

18.1. The Contractor shall ensure that all personnel are informed and aware of the importance to protect species, habitats, fauna and flora and are informed about wildlife encounter procedures. Information and awareness training is documented.

18.2. If applicable, the Employer will provide to the Contractor a range of ecological surveys prior to the start of construction, conducted by the Employer. These will include but not be limited to the type and location of identified species and habitats of conservation interest within the Project Area, and any resulting measures that are required by Contractor.

18.3. The Employer will provide to the Contractor a constraints map, showing the areas where sensitive, endangered or breeding species are known to occur, including protected areas, sites of importance for nature conservation, wildlife refuges, nature and national parks, important bird areas.

18.4. The Employer will inform the Contractor about seasons for the protection of birds and wildlife. If applicable, the Employer will inform the Contractor if, as a result of protecting birds and wildlife, construction is restricted during a certain period and/or the Contractor must take precautionary measures in compliance with respective national laws and/or as stipulated by the respective local authorities.

18.5. The Employer may update information on the presence of wildlife or sensitive or endangered species in the Project Area following any additional wildlife / endangered species' survey. If any are identified, the Employer will notify the Contractor who will ensure that all personnel are informed and aware of the required mitigation procedures as communicated by the Employer.

18.6. The Contractor shall apply the Contracting Authority's procedures with regards to fauna and flora management prior to clearing activities.

- 18.7. The Employer will communicate to Contractor his specific responsibilities related to protecting endangered species, biodiversity and wildlife, present within the Project Area. Responsibilities may include but not be limited to the following measures:
- a) The Contractor's personnel shall not approach, injure, hunt, capture, possess, feed, transport, rear or trade wild animals and/or collect birds' eggs on the Project Areas.
  - b) The Contractor's personnel shall avoid where possible breeding, feeding and nesting sites of endangered species, as identified by the Employer's environmental experts and as communicated to the Contractor by the Employer.
  - c) The Contractor personnel shall not collect flora or fauna species on the Project Areas.
  - d) The Contractor shall report any sighting or finding of dead wildlife killed by the works to the Engineer immediately.
  - e) The Contractor shall protect excavations with temporary fencing to prevent injury to animals.
  - f) The Contractor shall release any trapped uninjured animals immediately.
  - g) The Contractor shall report injured endangered and/or larger animals to the Engineer who will inform the appropriate Environmental Authority.
  - h) The Contractor shall not disturb natural habitats outside the Project Areas.
  - i) The Contractor shall only use designated roads or paths and abide by speed limits.
  - j) The Contractor shall not start forest fires.
  - k) The Contractor shall not introduce Invasive Alien Species (IAS).
  - l) All construction machinery imported from overseas shall be inspected to detect IAS and washed before dispatching to the Project Areas.
  - m) Where necessary, the Contractor shall develop IAS control procedures (e.g. physical removal, slashing, mulching, herbicides, etc.). Methods used to control or prevent such species shall not cause adverse impacts on the environment or communities.
  - n) To limit the risk of introducing marine invasive species, the Contractor shall control the ballast water and anti-fouling systems of vessels arriving from other bioregions in accordance with International Maritime Organization (IMO) conventions and guidelines.

- 18.8. For impacts to biological resources:
- a) development of a specific mitigation plan for endangered species in the wider area
  - b) trenches or holes created during site works must be covered at night.
- 18.9. Regarding habitat loss/degradation and habitat fragmentation Contractor will:
- a) site permanent infrastructure on unused land of no particular ecological value
  - b) take no construction materials from the surrounding environment unless otherwise specified in the respective management plan
  - c) monitor the impacts on flora and fauna at sensitive locations.
- 18.10. The Contractor will adopt best construction site practices to minimize the risks of adverse effects on neighbouring habitats/species from construction activities (dust, noise, waste disposal etc.). This will include appropriate toilet and litter collection facilities as inspected by the environmental coordinator.

**19. Erosion and sediment transport**

- 19.1. Erosion and sediment control shall be taken into consideration from the beginning of the construction phase, i.e. from site clearance.
- 19.2. The Contractor plans earthworks and optimises the management of space to ensure that all cleared surfaces and areas exposed to soil erosion are minimised on all Project Areas and erosion is minimised as far as practical.
- 19.3. The Contractor shall determine the appropriate locations and the type of erosion control measures required, to be agreed with the Engineer.
- 19.4. If not instructed otherwise by the Employer, the Contractor shall install erosion matting to provide an immediate protection for slopes against erosion, prevent the washing-out of seeds and enhance the micro-climatic conditions in the soil for plant growth. Erosion matting is used to provide temporary protection of the soil surface until sufficient natural vegetation cover has been established.
- 19.5. Topsoil
- Topsoil is the uppermost and most fertile portion of the soil (unless indicated otherwise, the top 25 centimetres), containing organic matter, seeds and nutrients that promote vegetation growth. Its presence is a key factor in promoting revegetation success. Consequently, preserving topsoil is a key component of revegetating worksites and restoring the soil's ability to protect itself against erosion. Contractor shall observe the following basic principles of good topsoil management:

- (a) Topsoil shall be removed from working areas only when absolutely necessary and in accordance with Project guidelines. Areas subject to topsoil stripping will be identified prior to grading activities.
- (b) Any plant, turf layer or root mass will be stripped together with the topsoil, except in wetlands where the turf will be stripped separately from the topsoil layer where practical. Topsoil will be removed using backhoes only.
- (c) Topsoil is stored according to the provisions approved by the Engineer to enable reuse during Project Area rehabilitation.

#### 19.6. Draining rainwater run-off

- 19.6.1 Run-off from the working corridor will be intercepted. Surface water run-off will not be permitted to enter surface watercourses. Contractor will take appropriate measures.
- 19.6.2 The gradient of Project Areas allows the collection and drainage of rainwater from the entire surface area to one or several discharge points. No pools of water are created.
- 19.6.3 Suspended solids in rainwater are removed using sediment traps / settling ponds. Rainwater from vehicle parking areas, machinery areas, workshops is subject to treatment with oily water separators.
- 19.6.4 Rainwater pre-treatment units are sized, cleaned, maintained and accessible to ensure compliance with the effluent quality criteria defined in ESHS Specifications Sub-Clause 12.9 and to allow monitoring of performance.

#### 19.7. Sediment control

- 19.7.1 The Contractor installs sediment control barriers to slow the flow of water and control sediment transport at Project Areas with (i) a gradient of more than 20%, and (ii) where land is disturbed by the works or where stockpiled mineral material exposed to sheet or rill erosion.
- 19.7.2 Sediment control barriers are installed on the slope or at the base of the slope to protect the natural drainage system from sediment accumulation at levels higher than the natural situation. These barriers comply with the following principles:
  - a) Made with geotextiles or straw bales or any other means pre-approved by the Engineer;
  - b) Deployed before the start of works and removal of topsoil. Barriers can be used for the physical demarcation of working areas;
  - c) Installed, cleaned, maintained and replaced according to manufacturer recommendations;

- d) If applicable, drainage surface area does not exceed 1,000 m<sup>2</sup> per 30 m of barrier. The length of the slope behind the barrier is less than 30 m, and is not used for flows in excess of 30 l/s.

- 19.7.3 For the dredging of marine sediments, if applicable and unless specified otherwise in the Contract, or instructed otherwise by the Engineer, and particularly if the working area is exposed to currents, the Contractor will install a geotextile silt curtain, or any other technique approved by the Engineer to control turbidity clouds.

#### 19.8. Backfilling and stockpiling of backfill materials

- 19.8.1 In case mineral material stockpiles do exceed a height of 6 m, with a maximum slope of 3:2 (height: volume), the slope has to be crossed at a height of 3 m by a berm with a minimum width of 2 m and with a peripheral drainage trench, to ensure stability and resistance to rainwater runoff erosion.

- 19.8.2 For permanent backfill material stockpiles, the stockpile is shaped and compacted every 30 cm to ensure long-term stability.

- 19.8.3 Temporary stockpiles in place for more than 60 days are protected against runoff erosion by (i) revegetation using fast-growing grass species, either by direct seeding or by hydro-seeding, or (ii) using other natural anti-erosion cover with prior approval from the Engineer.

#### 19.9. Side casting during the construction of linear structures (roads, pipelines, transport lines), will be permitted in the following conditions:

- 19.9.1 For natural gradients with a slope <40%, the side cast materials are piled to create a slope of less than 2H: 1V.

- 19.9.2 For natural gradients with a slope >40%, to ensure stability 3m wide berms will be installed perpendicular to the slope and onto which the side cast material is deposited. Regular earthworks to maintain the form of the side case and long-term stability of the side cast is carried out. The slope of the side cast in general does not exceed 3H: 2V.

- 19.9.3 The provisions of Clauses 10 and 19.6 for the protection of water courses exposed to erosion induced by the works apply.

### 20. Site rehabilitation

- 20.1. Unless instructed otherwise by the Engineer, the Contractor will rehabilitate all Project Areas and landscapes disturbed by the works, to their original condition where possible upon completion of construction and prior to the provisional acceptance of the works. Close collaboration with all statutory stakeholders will be conducted in cooperation with the Employer during the reinstatement.

- 20.2. The Contractor describes in the PA-ESMP the planned revegetation works to ensure sustainable Project Area rehabilitation: methods, plant species to be used and their origins, activity schedule based on a progressive taking over of Project Areas.
- 20.3. As a minimum, the Contractor shall carry out the following reinstatement activities:
- 20.3.1 If not otherwise instructed by the Engineer, all buildings, campsites and free standing and underground structures (e.g. piping, underground tanks, sumps and basins) are removed pursuant to the provisions of Sub-Clause 4.23 of the CC. All waste and rubble are removed in accordance to the provisions of Clause 16 of the present ESHS Specifications. After removal of buildings structures and rubble, the Contractor returns Project Areas to their original condition, according to the following provisions.
  - 20.3.2 Land is levelled to ensure that run-off water drains without eroding soil or stagnating in pools.
  - 20.3.3 Rehabilitated Project Areas do not represent hazards for people. Areas near steep drops at quarries are fenced off and indicated with permanent concrete warning signs. Holes are refilled. Sharp or unstable items are rendered inoffensive.
  - 20.3.4 Unless specified otherwise in the Contract, or instructed otherwise by the Engineer, the Contractor undertakes revegetation of all Project Areas disturbed by the works and bears the cost of such work.
- 20.4. Fertiliser application shall be limited to areas where it is necessary to establish a rapid vegetative cover for erosion control purposes in areas of high risk. Any fertiliser applications must be formulated and performed so that natural nutrient balances in adjacent ecosystems are not altered, particularly where there are nearby water bodies.
- 20.5. The Contractor shall perform routine maintenance of revegetated areas until such time that occupation of the land is officially handed back to the Employer or third parties.
- 20.6. The Contractor shall control noxious weeds and invasive species within revegetated areas.
- 20.7. Prior approval by the Engineer is required regarding the origin of seeds and plants proposed by the Contractor. The species used for revegetation must be suitable for the local environmental conditions, and selected according to the rehabilitation programme: stabilisation of backfill, landscaping, drainage, prevention of erosion, etc.
- 20.8. Revegetation is undertaken throughout the duration of construction works and is not limited to the rehabilitation of Project Areas at completion of the works.
- 20.9. The present Clause applies to the side casting of waste mineral materials generated during the construction of linear structures (roads, pipelines, transport lines).

- 21. Documentation on site conditions**
- 21.1. The Constructor documents changes in condition of all Project Areas from the start of works until the Performance Certificate is issued. Documentation comprises dated and geo-referenced colour photographs taken from a constant angle and viewpoint.
- 21.2. The Project Area condition is documented as a minimum for the following stages:
- a) Before any Project Area disturbance at the start of works;
  - b) On completion of works, but prior to starting rehabilitation;
  - c) On completion of rehabilitation and revegetation, if necessary, but prior to the Taking Over Certificate issuing;
  - d) After the end of the Defects Notification Period and prior to the Performance Certificate issuing.
- 21.3. The Contractor specifies in the PA-ESMP (i) the list of viewpoints to be used, (ii) areas to be photographed, and (iii) methods used for taking and archiving photographs, according to industry photographing and archiving standards.
- 21.4. Adjacent areas (100 m from the perimeter of the Project Area) are included in photographic documentation.

## C. Health and Safety

- 22. Health and safety plan**
- 22.1. In application of Clauses 4 and 6 of the CC, the Contractor shall develop a Health and Safety Plan (HS Plan) section of the PA-ESMP, its organization for managing health and safety, pursuant to its Health and Safety Management system (HSMS).
- 22.2. Pursuant to Clause 6 of the CC, the HS plan identifies and specifies:
- a) That Contractor understands and manages all health and safety risks relating to the execution of the works, including gender-specific risks;
  - b) Prevention and protection measures to control risks related to the execution of the works, by differentiating, where necessary, measures concerning the protection of women and men;
  - c) Human and material resources involved;
  - d) Works requiring a permit (e.g. blasting, butting of trees);
  - e) Emergency plans to be implemented in the case of an accident.
- 22.3. The Contractor implements prevention, protection and monitoring measures, as described in the health and safety plan.
- 22.4. The Contractor shall have in place a Behavioural Safety Based Programme and actively train and encourage Personnel to intervene on unsafe behaviours and situations and report on deviations.

**23. Health and safety reporting**

- 23.1. The Contractor shall document in a structured system (e.g. a Site Accident record sheet) all accidents, dangerous occurrences and investigations which shall be available at all times for inspection by the Engineer.
- 23.2. The Contractor shall investigate any incident and record and report systematic follow-up of relevant findings and recommendations. Problem areas related to HS shall be recorded with information about status, responsible person(s) and alternative solutions.
- 23.3. As specified in Sub-Clause 4.21 of the CC, the Contractor includes in the Progress Report to the Engineer a monthly HS Performance Report. The format and content of the HS Performance Report shall be agreed with the Engineer prior to the commencement of the works and report them to the Engineer.
- 23.4. In pursuance to clauses 4 and 6 of the CC, this report shall contain the following data, as related to the works:
- a) Progress against implementation of the Contractor`s HS Plan;
  - b) A list, including a brief description, of all incidents and dangerous occurrences;
  - c) Number of fatalities;
  - d) Number of serious incident frequency;
  - e) Total Recordable injury frequency;
  - f) Number and type of accidents with and without lost-time;
  - g) Serious illness;
  - h) Total number of “near miss” events;
  - i) Number of theft incidents;
  - j) Number of security and number and type of other incidents.
- 23.5. In the event that the Contractor receives communication from the Engineer on HS under-performance, the Contractor shall prepare and implement an HS Improvement Plan to rectify such.

**24. Accident reporting procedure**

- 24.1. The Engineer is informed within one hour day/night of any accident involving serious bodily injury to a member of personnel, a visitor or any other third party, caused by the execution of the works or the behaviour of the personnel of the Contractor.
- 24.2. The Engineer is informed as soon as possible of any near-accident (near misses) relating to the execution of the works which, in slightly different conditions, could have led to bodily injury to people, or damage to private property or the environment.
- 24.3. The Contractor shall prepare a report on each accident or dangerous occurrence and a copy of the report, together with witness statements and any other relevant information, shall be submitted to the Engineer as soon as possible.

- 24.4. A reportable accident shall include any accident to any person on Site requiring medical attention or resulting in the loss of working hours or any incident that resulted, or could have resulted in injury, damage or a danger to the Works, persons, property or the environment. Contractors will also notify and report of incidents of Subcontractors and Suppliers (in particular those for major supply items) and their Contractors Sites.
- 24.5. The Contractor shall report any HS accident, related to Contractor activities or personnel, to national or local authorities as required by relevant legislation. A copy of all such reports shall be provided to the Engineer.
- 24.6. The Contractor shall not notify or give any information to the media or other units or people without the employer's consent.
- 24.7. The Contractor shall immediately rectify any situation or condition that could result in injury or a danger to the Works, person, property or the environment. If the situation or condition cannot be corrected immediately, the Contractor shall provide temporary barriers and appropriate warning signs and devices and/or take other appropriate action necessary for the protection of persons, property and the environment.

## **25. Health and Safety meetings**

- 25.1. Contractor shall ensure efficient and effective HS communication and consultation with all Personnel involved in the Work. This includes but is not limited to toolbox meetings prior to the start of the Work, worksite HS meetings on a regular basis with all parties involved (including Subcontractors, the Engineer and third parties). It may also comprise other forms of communication.
- 25.2. Contractor shall ensure that supervision, directly in charge of construction activities, fully brief and discuss with Personnel at HS Toolbox Talks at the start of each work day and prior to commencing new activities. These talks shall be conducted in a language understood by the workforce. A checklist shall be utilised for this purpose. At a minimum it shall include the following;
- a) Nature of the job;
  - b) Associated hazards;
  - c) Safe working methods to be adopted;
  - d) Requirements of the Permit to Work.
- 25.3. The Contractor shall convene weekly team talks, extended to Subcontractors if applicable.

- 26. Security**
- 26.1. The Contractor shall evaluate the security strategy and arrangements required for all worksites including transport. This evaluation shall be performed by qualified security experts and shall form the basis for the Worksite Security Strategy and Plan which shall be submitted and approved by the Engineer as part of the PA-ESMP. The Security Strategy and Plan shall describe:
- Security risks and the identified mitigation / management measures;
  - Roles and responsibilities including details of the Contractor and Sub-contractors;
  - Detection, monitoring and management procedures;
  - Escalation plans including resources.
- 27. Equipment and operating standards**
- 27.1. The facilities and equipment used by the Contractor are installed, maintained, revised, inspected and tested pursuant to the manufacturer's recommendations. The recommendations are available in the language of communication defined under CC Sub-Clause 1.4 (or any other language approved by the Engineer).
- 28. Work permit**
- 28.1. The Contractor puts in place a work permit procedure, prior to the starting of the works. The procedures define the approval process between the person qualified to issue the work permit and the personnel (or Sub-contractors) carrying out the work.
- 28.2. Permits are issued in writing. Unless specified otherwise in the Contract, or instructed otherwise by the Engineer, works which require a work permit are defined in the health and safety plan. All other work permits required by the Engineer will be implemented by the Contractor.
- 29. Personal protective equipment**
- 29.1. The Contractor ensures that all personnel, visitors or third parties entering a Project Area are equipped with Personal Protection Equipment (PPE) pursuant to the practices and standards specified in Clause 9.
- 29.2. All PPE shall be provided by the Contractor free of charge to all personnel.
- 29.3. Where appropriate, PPE must be worn by women as well as by men.
- 29.4. The Contractor describes in the PA-ESMP the PPE to be used per Project Area and per activity.
- 29.5. Personnel and visitors to Project Areas are equipped with a safety helmet, safety shoes and a reflective jacket as a minimum.
- 29.6. Adequate quantities of PPE are available on the Project Areas. Storage conditions must be compatible with usage pursuant to the provisions of ESHS Specifications Clause 30.
- 29.7. Contractor personnel are trained in how to use and care for PPE and the Engineer has access to training certificates.
- 29.8. When handling acids, caustics, and chemicals with corrosive or toxic properties, suitable protection shall be worn to prevent accidental contact with the substance.

- 30. Dangerous substances**
- 30.1. A substance is considered dangerous if one or several of its properties render it dangerous, as defined in Appendix 2 of the present ESHS Specifications. The Contractor identifies and manages dangerous substances planned for use on the Project Area in the manner described in the present Clause.
- 30.2. The assessment of the impact of the toxicity of dangerous substances on the reproductive functions of women and men must be taken into account.
- 30.3. The transport to the Project Area and use of dangerous substances requires prior authorisation from the Engineer.
- 30.4. Details of risks and related prevention and protection measures are included in the health and safety plan.
- 30.5. The Contractor obtains all necessary authorisations and/or licenses for the storage and use of dangerous substances from local authorities. A copy of the authorisations is provided to the Engineer.
- 30.6. For each dangerous substance used, the Contractor will implement the recommendations described (i) in the Material Safety Data Sheets (MSDS), and (ii) by the Globally Harmonized System of Classification and Labelling of Chemicals established by the United Nations for hazardous chemicals.
- 30.7. Copies of MSDSs are kept on the Project Area and made available to personnel. The Contractor provides the Engineer with copies of all MSDSs.
- 30.8. Storage of dangerous substances
- 30.8.1 Storage areas are designed and equipped by the Contractor based on the chemical and physical properties of the substances, on the types of containers stored, the number of people requiring access, the ventilation requirements, the quantities of the substance used and potential chemical reaction with other substances (see ESHS Specifications Sub-Clause 30.8.5 below).
- 30.8.2 Pursuant to ESHS Specifications in Clause 16.12, the Contractor anticipates and plans for the storage and management of hazardous waste.
- 30.8.3 Storage areas for dangerous substances are subject to strict rules, which are regularly checked by the ESHS manager. The rules include the following as a minimum:
- a) Access to the storage area is limited to trained and authorised individuals;
  - b) An inventory is maintained up-to-date;
  - c) MSDSs must be available for all stored dangerous substances, and the substances must be clearly labelled;

- d) A strict and methodical storage system is implemented (storage plan posted, large or heavy packaging may not be stored at heights, equipment and tools may not be stored in the dangerous substance storage room);
- e) Compliance with product expiry dates and implementation of a disposal procedure for substances which are not needed or which have expired;
- f) Entrances, exits and access to emergency equipment are kept clear at all times.

30.8.4 Storage areas are clearly identified with warning signs at the entrance. The Contractor displays the storage plan (location of the different products, maximum inventory), a summary of labelling system and information on chemical incompatibilities.

30.8.5 Chemicals which could react together (leading to explosions, fire, projections or the emission of dangerous gases) are physically separated.

30.8.6 Products that react violently with water are stored so as to prevent contact with water, even in the event of flooding.

30.8.7 Inflammable products are stored separately in a dedicated area with adequate ventilation at all times.

30.8.8 Buildings used to store large quantities of dangerous substances are isolated from other buildings to avoid the spreading of fire. Such buildings are constructed using solid and non-combustible building materials and are equipped with evacuation systems and the appropriate firefighting equipment. Access to the buildings is clear, allowing for rapid evacuation in the event of an accident. The electrical systems are reduced to the essential minimum, and access points are equipped with adequate lighting (300 lux).

30.8.9 All storage areas are equipped with secondary retentions. Each storage area acts as a general secondary retention. Suitable absorbents (neutralising and non-combustible) are available in the storage area to clean up any spills and leaks.

30.8.10 The Contractor maintains the storage area at a suitable temperature for dangerous substances to prevent overpressure and bursting of containers.

### **31. Planning for emergency situations**

31.1. The Contractor shall establish an emergency plan as a section of the PA-ESMP. It covers the following emergency situations as a minimum:

- a) e.g. Fire or explosion;
- b) e.g. Collapse of structures, or scaffolding;
- c) e.g. Loss of the containment of dangerous substances;
- d) e.g. Safety incident or malicious act.

- 31.2. The Contractor shall maintain fit-for-purpose Emergency Response Capability, which shall be clearly documented.
- 31.3. At a minimum, the Contractor shall make contingency arrangements for calling a Doctor and transporting injured persons to hospital. The telephone numbers of the emergency services and the name, address and telephone number of the Doctor and the nearest hospital shall be prominently displayed in the Contractor's office.
- 31.4. The Contractor ensures that all personnel are informed and aware of how to react in an emergency situation, and responsibilities are defined. Information and awareness training is documented, and available on all Project Areas.
- 31.5. The Contractor organises and documents emergency simulation exercises within 3 months of the physical start of the works, and subsequently once every 12 months up to the issue of the Taking-Over Certificate. The Engineer is invited to participate in each of these exercises.
- 31.6. Fire protection
- 31.6.1 Based on a fire safety risk assessment, the Contractor will ensure that adequate and appropriate fire safety measures are in place to minimise the risk of injury or loss of life in the event of a fire. Appropriate actions include: Keeping sources of ignition and flammable substances apart; Avoiding accidental fires; Ensuring good housekeeping at all times, e.g. avoiding build-up of rubbish that could burn; Installing smoke alarms and fire alarms or bells; Installing fire warning systems; Having correct fire-fighting equipment; Keeping fire exits and escape routes clearly marked and unobstructed at all times; Ensuring workers receive appropriate training on procedures they need to follow, including fire drills.
- 31.6.2 Fire will not be used as a method of forest or vegetation clearance.
- 31.6.3 Fire extinguishers are made available in each building at clearly identified locations, and fires are strictly forbidden outside of the cooking area.
- 31.6.4 If applicable, the Contractor makes arrangements with local fire-brigades for emergencies.

## 32. Medical check-ups

- 32.1. The Contractor organises free of charge medical check-ups carried out by a doctor or an appropriately qualified nurse for all Contractor's Personnel prior to the initial mobilisation to the Project Area to check aptitude for the work. Medical check-ups are adapted to the anticipated occupied positions and carried out pursuant to the recommendations of the International Labor Organization. Subsequent to the check-up, a written medical certificate is issued declaring the aptitude of the worker for the allocated tasks.
- 32.2. Hearing tests are conducted for the Contractor's personnel exposed to noise levels above 80 dB(A) in order to establish initial audiograms. Annual tests are carried out to monitor any changes and detect any deterioration.

- 32.3. The Engineer can request additional medical examinations for the Contractor's Personnel if considered necessary, all costs to be borne by the Contractor.
- 32.4. A medical examination is carried out on any Contractor's Personnel returning to work after leave caused by a work-related accident. A written medical certificate is issued confirming the Contractor's Personnel's aptitude to return to work at the designated workstation.
- 32.5. The Contractor can produce a copy of its Contractor's Personnel's work aptitude certificates at the request of the Engineer or any competent authority.
- 32.6. Specific arrangements for tasks' assignments or workstations shall be made for pregnant Personnel.
- 33. First-aid**
- 33.1. The Contractor ensures a minimum of first-aid provisions on any work site, including: suitably stocked first-aid kits; a person, respectively an adequate number of staff appointed and trained to take charge of first-aid arrangements and ensure that staff and workers are informed about first-aid arrangements.
- 33.2. The Contractor equips the Project Area with a communication system exclusively for the purposes of communication with the first aid services. Information on how to communicate with the first aid services is clearly indicated near the communications equipment.
- 34. Medical services and personnel**
- 34.1. The Employer will inform the Contractor about the presence and number of medical personnel in the Project Area. If not otherwise instructed by the Engineer, in application of clause CC 6.7, the Contractor shall collaborate with local health authorities and make arrangement with an appropriate number of local doctors, and/or nurses, hospitals and ambulance services to ensure that medical staff, first aid facilities, sick bay and ambulance service are available at a minimum within 45 minutes at the Site, and at any accommodation for Contractor's and Employer's Personnel or if appropriate, be based in the Project Area.
- 35. Health care**
- 35.1. The Contractor guarantees access to health care for all personnel in case of accident or illness occurring during the execution of the works.
- 35.2. In absence of a health or health post in the vicinity, or within the Project Area, the Contractor shall make contingency arrangement for transporting injured persons to a hospital in application of ESHS specification Clause 36.
- 36. Emergency medical evacuations**
- 36.1. The Contractor allocates rapid emergency transportation for first aid purposes to the first aid station pursuant to standard NF EN 1789:2007.

- 36.2. In cases where there is no first aid emergency vehicle available to evacuate severely ill or injured personnel, the Contractor establishes an agreement with a specialised company for the handling of personnel in the event of a serious accident requiring an emergency medical evacuation and ensures that transport is guaranteed any time and as fast as possible. The Contractor will provide a copy of the agreement to the Engineer within one month of the physical start of works.
- 36.3. The agreement includes a convention with a referring hospital where the member of personnel evacuated in emergency conditions will be treated.
- 36.4. In highly remote areas or in demonstrably life-threatening cases, the agreement may cover the use of air transportation (if available) in order to evacuate the injured patient(s) to the referring hospital.
- 36.5. The telephone numbers of the emergency services and the name of the service providers and the doctors shall be prominently displayed in the Contractor's site office.
- 37. Access to health care and training**
- 37.1. The Contractor guarantees access to health care as defined in Clause 34 for all personnel in case of accident or illness occurring during the execution of the works, i.e.:
- a) Medical check-ups: initial (recruitment), annual and upon returning to work after sick leave;
  - b) Screening, vaccinations and preventive healthcare;
  - c) General healthcare during the execution of the works;
  - d) Medical assistance in the event of an accident and assistance for emergency evacuations.
- 37.2. Subcontractor's personnel, other contractors, the Employer or the Engineer, present at the Project Area, must never be refused medical assistance, under the pretext that they are not directly employed by the Contractor. The Contractor may however define a unit rate cost per medical act for personnel, other than its own Contractor's Personnel, display this rate in the healthcare centre and forward the information to the Engineer.
- 37.3. In the event of accident or serious illness, medical personnel must be trained, available and equipped with the necessary material, medicines and consumables to provide first aid for the patient, stabilise their condition, until the patient is:
- a) Either treated or discharged; or
  - b) Hospitalized at the camp or in a larger hospital; or
  - c) Evacuated to a medical centre which is well equipped for intensive care, if necessary.
- 38. Health monitoring**
- 38.1. The Contractor cannot recruit workers in poor health.
- 38.2. The initial pre-recruitment examination must confirm that applicants are physically able to carry out the tasks required for the position.

- 38.3. The detection of pregnancy during the initial pre-recruitment examination of female applicants shall not constitute grounds for declining recruitment, unless medical risk is proven.
- 38.4. The Contractor organises annual medical check-ups for its Contractor's Personnel and keeps up to date a medical record for each Contractor's Personnel. The presence of Contractor's Personnel for medical check-ups, treatment and hospitalisation is incorporated into the Contractors planning.
- 38.5. If applicable and as recommended by a doctor or instructed by the Engineer, the Contractor provides the Contractor's Personnel with prophylaxis and vaccinations against local diseases and vectors. In particular, the Contractor will promote the use of impregnated mosquito nets by its Contractor's Personnel in camps or offsite lodging, and distributes these nets appropriately.
- 38.6. The health and safety plan includes a Contractor's Personnel health risk assessment based on exposure to dangerous substances and describes the medical monitoring implemented.

**39. Sanitary repatriation**

- 39.1. The Contractor is responsible for the sanitary repatriation of Contractor's Personnel in the event of a serious injury or illness, based on a diligent examination and a statement of the doctor in charge. The Contractor will take out the necessary insurance to cover the cost of the sanitary repatriation of its Contractor's Personnel.

**40. Hygiene, accommodation and food**

- 40.1. Drinking water
- 40.1.1 Pursuant to Sub-Clause 6.14 of the CC, the Contractor provides personnel with drinking water at all Project Areas. The quantity and quality of this water complies with the standards of the World Health Organization at supply points.
- 40.1.2 Unless the supply of drinking water is provided by a certified supplier, the quality of the drinking water provided to workers is tested at least at the start of the works and then on a monthly basis. The protocol for taking and analysing samples is based on the recommendations of the World Health Organization. The results shall be documented and made available on the Project Areas.
- 40.2. Accommodation conditions
- 40.2.1 The accommodation provided for non-resident Personnel in a camp or an alternative structure outside of the Project Areas, such as a hotel or rented house, will comply with the conditions of the present ESHS Sub-Clause in pursuance of Sub-Clause 6.6 of the CC.
- 40.2.2 The person in charge of managing the accommodation has a specific duty to report to the ESHS manager or if existent, the HS manager, the outbreak of any contagious diseases, food poisoning and other important casualties. The ESHS Manager in turn will inform the appropriate health authorities.

- 40.2.3 Rooms are lit and equipped with power sockets, beds and windows fitted with mosquito nets. Flooring is of a hard and impervious material.
- 40.2.4 The temperature in rooms and common areas shall be kept at an appropriate level during occupied hours (20 degrees in moderate to cold zones and providing adequate ventilation in hot zones).
- 40.2.5 The Contractor provides one drinking water tap per 10 Contractor's Personnel, one shower per 10 Contractor's Personnel as a minimum, one individual toilet for 15 Contractor's Personnel as a minimum, and one urinal per 25 Contractor's Personnel at accommodation camps. Separate showers and toilets must be made available for women.

#### 40.3. Hygiene in shared areas

- 40.3.1 Sanitary areas (showers, sinks, urinals, toilets) are cleaned and disinfected by the Contractor's cleaning service at least once every 24 hours. Cleaning operations are documented.
- 40.3.2 The canteen, kitchen and kitchen utensils are cleaned after each meal service.
- 40.3.3 The number and location of toilets on Project Areas shall be adapted to the number of employees and the configuration of the Project Areas (distance, isolated area, etc.). For urinals and toilets, usual standards are 1 unit to max15 persons.
- 40.3.4 Toilet facilities are conveniently located and easily accessible. In addition, all toilet rooms shall be well-lit, have good ventilation or external windows, have sufficient hand wash basins and be conveniently located.

#### 40.4. Food

- 40.4.1 In application of Sub-Clause 6.13 of the CC and ESHS Specifications Sub-Clause 46.1 of the present ESHS specification, the Contractor provides meals at a reasonable cost or free of charge to its Contractor's Personnel per shift in a canteen area and according to a procurement system which complies with the provisions of this ESHS Specifications Sub-Clause.
- 40.4.2 The Contractor defines and implements actions in order to guarantee (i) the quality and quantities of food stuffs, (ii) compliance with health rules when preparing meals, (iii) fitting out and servicing premises and equipment, both in the kitchen and food storage areas.
- 40.4.3 The Contractor inspects the cleanliness of food transport vehicles, temperature control and the cold chain, as well as best-before dates, and takes the necessary corrective actions. The temperatures of chillers are regularly checked.

40.4.4 The Contractor checks that health requirements are met for food storage conditions in the kitchen or other locations, food cooking times and temperatures, and the conditions in which prepared products are left prior to consumption, to ensure no health risks. Prepared food is eaten or thrown away, no food remains are reused.

40.4.5 The Contractor recruits trained canteen personnel and ensures that supervisors monitor compliance with sanitary instructions. The Contractor ensures that canteen personnel have means of ensuring compliance with health rules (changing rooms, linen, hand washers, the condition of flooring and paint, and the existence of a cleaning plan).

40.5. At the request of the Engineer, the doctor at the health centre specified in Clause 35.2.2 of the present ESHS Specifications, carries out an audit on all Project Areas every 3 months, and documents the results, and includes the conditions of hygiene in which meals are prepared and food conserved. The results of this audit are provided to the Engineer.

40.6. The Contractor, on the basis of the advice of the doctor at the health centre, informs Contractor's Personnel on appropriate behaviour in terms of workplace hygiene. The occasional distribution of information is not sufficient, the Contractor regularly reiterates the importance of hygiene, documents these reminders, and ensures that the information is understood, easy to apply and scrupulously complied with.

#### **41. Substance abuse**

41.1. Pursuant to Sub-Clause 6.16 of the CC, the use, possession, distribution or sale of illegal drugs, controlled substances (as per local regulations) and alcohol is totally prohibited on the Project Areas. The Contractor implements a zero-tolerance policy for the consumption of these substances.

41.2. Any person suspected by the Engineer to be under the influence of alcohol or controlled substances on any Project Area is immediately suspended from his position by the Contractor, pending the results of medical tests.

## **D. Local Labour and Relations with Local Communities**

#### **42. Labour conditions**

42.1. The Contractor shall ensure decent labour conditions for workers and notably compliance with applicable law and regulations in the country of implementation of the contract, and with the fundamental conventions of the International Labour Organisation (ILO). This includes workers' rights related to wages, working hours, rest and leave, overtime, minimum age, regular payment, compensation and benefits, equal opportunities, a non-discriminatory workplace, best practice on human resource management and occupational health and safety. Wages, benefits and conditions of work will be comparable to employers in the relevant region of that country / region and sector concerned.

- 42.2. The Contractor shall respect and facilitate workers' rights to organize and provide a Worker Grievance Mechanism for all workers, including the workers of subcontractors, shall receive an induction on their rights and on the Worker Grievance Mechanism. The Contractor will display the contact details of the Worker Grievance Mechanism at well visible places in all camps and work sides.
- 42.3. The Contractor shall issue and implement internal policies and procedures to assure that no employee or job applicant will be subject to discrimination and/or harassment.
- 42.4. The Contractor shall establish for their personnel and those of their main contractors a system to monitor hours worked on the Project and seek to identify and remedy any practices which lead to long working hours in excess of national legislation.

#### **43. Local recruitment**

- 43.1. Local recruitment is defined as the number of positions actually allocated to people residing in the region of the Works (less than two hours by land transport to the Project Area) for more than one year and citizen of the Employer's country.
- 43.2. Pursuant to Sub-Clause 6.1 of the CC, and if requested by the Employer, the Contractor, and/or respectively the Sub-contractor hiring local workers, establishes and initiates a local recruitment policy and a procurement plan to ensure that recruitment procurement procedures are transparent and disseminated to the project affected communities for the duration of the Works.
- 43.3. The policy and plan shall be enforced by the Sub-contractors and suppliers of major supply items, responsible for hiring local workers.
- 43.4. The Contractor demonstrates the effective implementation of this policy to the Engineer in its monthly activity report as defined in Sub-Clause 6.1 of the present ESHS Specifications.
- 43.5. Pursuant to Clause 8 of the present ESHS Specifications and if requested by the Employer, the Contractor develops a training programme aiming to support the local recruitment policy.
- 43.6. This training programme must be available also to women and adjusted to their level of education.
- 43.7. An incentive mechanism to increase the share of women recruited by the Contractor and the Sub-contractors may be established.

- 43.8. Local labour needs are estimated prior to the start of works and described in the PA-ESMP with the following information:
- a) Identification of positions that could be filled by local staff and the level of qualification required;
  - b) Definition of the planned procedure for the effective recruitment of these members of staff;
  - c) Establishment of mechanisms to ensure non-discrimination of women in accessing recruitment procedures;
  - d) Deployment schedule for these positions;
  - e) Initial training to be provided by the Contractor for each job description.
- 43.9. In order to prevent outsiders from entering the Project Area, local recruitment at the Project Area, including at the entrance, is prohibited.
- 43.10. Local recruitment office
- 43.10.1 One month prior to the start of Works, the Contractor establishes a local recruitment office in the district where the main Project Area is located, at a location pre-approved by the Engineer.
  - 43.10.2 A representative of the Contractor is present in this office at least two mornings each week, from the start of the works to a date pre-approved by the Engineer.
  - 43.10.3 The representative provides information on job vacancies with the Contractor for the execution of the works (required qualifications, duration, and location) and on the information to be provided in applications.
  - 43.10.4 Lists of local candidates are drafted by the representative allocated to the office and forwarded to the Contractor's Humans Resources manager on a weekly basis.
- 43.11. The Contractor's Human Resources manager selects candidates listed by the local recruitment office based on requirements for the Works and the Contractor's recruitment procedures. A written contract between the Contractor and the local Contractor's Personnel is drafted, signed and archived by the Contractor.
- 43.12. If the Project Areas are located near to several different communities, the Human Resources manager ensures a fair distribution of local recruitment between the different communities.
- 43.13. The Human Resources manager will ensure that recruitment campaigns in local communities have been spread to women and that the latter have not been discriminated in recruitments.

43.14. Pursuant to Sub-Clause 6.22 of the CC, the Contractor maintains one record per local Contractor's Personnel indicating the hours worked per person allocated to the works, the type of tasks carried out, the wages paid and any training provided. Records are available at the main Project Area at all times, so the Engineer and the authorised representatives of the government can assess the content.

#### **44. Transport**

44.1. Unless specified otherwise in the Contract, or instructed otherwise by the Engineer, the Contractor provides or enables access to daily transport for Contractor's Personnel not housed in the camps managed by the Contractor and living more than 15 minutes' walk from the Project Area and less than one hour by land transport.

44.2. The transport is organised under conditions which comply with local regulations and which ensure the safety of the people transported.

44.3. The Contractor organises collective transport: pick-up times and locations are defined and services organised appropriately.

44.4. Transport from the living facilities to his wages worksite is safe and free. If the Project Area is moved during the working season and if the Contractor retains the local personnel trained at the start of the works, the accommodation of the Contractor's Personnel is managed by the Contractor:

- a) Within a mobile camp with the other non-local Contractor's Personnel; or
- b) In villages located near to the mobile Project Area, in this case, each local Contractor's Personnel will receive a housing allowance in addition areas within each camp and a sports field for use by Personnel.

#### **45. Workers' accommodation**

45.1. Workers' accommodation is to be provided for workers / Contractor's personnel in case no housing allowance is being paid in compliance with the applicable local labour laws.

45.2. Living facilities are located to avoid flooding and other natural hazards.

45.3. Where possible, living facilities are located within a reasonable distance from the worksite.

45.4. The living facilities are built with adequate materials, the sites are adequately drained to avoid the accumulation of stagnant water, kept in good repair and kept clean and free from rubbish and other refuse.

45.5. Rooms shall not be mixed: separate rooms must be made available for both men and women.

45.6. Separate toilets and locker rooms shall be provided for women and men.

45.7. The Contractor constructs and maintains a range of recreational facilities and shared leisure

45.8. The Contractor ensures that at campsites:

- a) Workers have access to an adequate and convenient supply of free potable water,
- b) that drinking water meets national/local or WHO drinking water standards,
- c) that all tanks used for the storage of drinking water are constructed and covered as to prevent water stored therein from becoming polluted or contaminated,
- d) that drinking water quality is regularly monitored.

45.9. Dormitories

A separate bed for each worker is provided. The practice of “hot-bedding” shall be avoided. Rooms shall not host more than 4 individuals.

- a) There is a minimum space between beds of 1 metre.
- b) Double deck bunks are not advisable for fire safety and hygiene reasons, and their use is minimised. Where they are used, there must be enough clear space between the lower and upper bunk of the bed. Standards range from to 0.7 to 1.10 metres.
- c) Triple deck bunks are prohibited.
- d) Each worker is provided with a comfortable mattress, pillow, cover and clean bedding.
- e) Bed linen is washed frequently and applied with repellents and disinfectants where conditions warrant (malaria).
- f) Facilities for the storage of personal belongings for workers are provided, including 0.5 m<sup>3</sup> and 1 meter of shelf unit.

45.10. The Contractor shall mitigate impacts of activities (e.g. those that create noise or light) at worksites in order to avoid any public disturbance or disturbance of camp residents.

## 46. Meals

46.1. Meals for workers / Contractor’s personnel is to be provided in case no meal allowance is being paid in compliance with the applicable local labour laws.

46.2. Food supplies for the meals of the Contractor personnel will exclude any meat obtained from hunting or poaching, with the exception of fish.

46.3. The Contractor provides for at least two meals per shift to local Contractor’s Personnel pursuant to the hygiene conditions specified in Clause 40 of the present ESHS Specifications, at reasonable price for the Contractor’s Personnel. If no canteen is available, the Contractor at least pays for a minimum of 2 meals per day per shift.

46.4. The Contractor shall avoid any local disputes through respecting local culture and values. The Contractor shall ensure that workers are aware of local issues and sensitivities, and respect local culture and values in order to avoid any local disputes and crime.

- 47. Community interaction**
- 47.1. Commensurate with the size of Construction activities and unsolved potential disturbances of the community and risks to public health and safety, the Contractor shall produce an Implementation Plan related to Community Interaction and submit it to the Engineer for review and acceptance prior the commencement of any works or traffic related to works.
- 47.2. The plan shall include a schedule of planned work activities which may impact a neighbouring community and describe (i) the activities per task and phase which may impact the neighbouring communities (ii) the approach to engage and communicate with stakeholders related to the works defined in (i); (iii) responsibilities for community interaction per task and phase.
- 47.3. When meeting stakeholders in neighbouring communities, minutes of meetings shall be produced and recorded as by Employer's guidelines;
- 47.4. The Contractor shall disclose relevant information related to the involved impacts and risks to communities (e.g. related to Traffic Management or e.g. to entering of private property for surveys) in local language and at a level of complexity that is commensurate with local realities to ensure that stakeholders fully understand the content.
- 47.5. The Contractor shall include information about the Employer's grievance mechanism and the contact details in all community communication materials.
- 48. Damage to people and property**
- 48.1. The Contractor shall implement a worker's Code of Conduct and not disturb or interfere with the inhabitants of local communities close to or in the Project Area, and shall respect their houses, cultures, animals, properties, customs and practices.
- 48.2. The Contractor's personnel shall be trained to understand the requirements about use of unapproved land and the need to stay strictly within site boundaries and within the working areas, using only approved access and service roads.
- 48.3. Pursuant to Clauses 4.14 and 17.1 of the CC, the Contractor is responsible for damages to people and property caused by the execution of the works or the procedures used for execution (e.g. project vehicles demolishing local fences or houses, driving accidentally over crops or causing any other material grievances).
- 48.4. Access to the Project Areas is prohibited to unauthorized persons. The Contractor is responsible for the security and access control of the Project Areas.
- 48.5. The Engineer is informed of any damage caused to people, or the property of individuals, other than the Contractor's personnel, within 6 hours of the event, regardless of the value of the prejudice.
- 48.6. The Contractor shall establish procedures to manage and rectify and record incidents related to community disturbances.

#### 48.7. Blasting

- 48.7.1 Housing existing before the start of the works, located within a minimum radius of 800 m around the perimeter of the quarries and within a minimum radius of 500 m around the other Project Areas that will be subject to blasting, will be examined by a bailiff unless agreed upon otherwise with the Engineer.
- 48.7.2 The bailiff's sworn statement is prepared and provided to the Engineer with the Site ESMP.
- 48.7.3 Should any problems be detected due to the intensity of blasting, the Engineer is entitled to request that the Contractor carry out seismic measurements of the intensity of the vibrations induced by the blasting, at variable distances from the blasting points, under the supervision of the Engineer, and at the cost of the Contractor.

#### 49. Land acquisition and land take

- 49.1. Pursuant to Sub-Clause 7.8 of the CC, the Contractor will cover (i) occupancy indemnities for the extraction or use of construction materials and (ii) the cost of acquiring the necessary land to stockpile excess backfill material.
- 49.2. The Contractor provides compensation for any prejudice suffered by the owners of the land mentioned in Sub-Clause 48.1 of the present ESHS Specifications, but also for any prejudice incurred by users of this land, if these users are not the same parties as the owners.
- 49.3. If not otherwise instructed by the Employer, the Contractor demonstrates to the Engineer (i) who are the owner and the users, if different parties have been identified, and (ii) a written agreement governing the temporary occupancy or acquisition of this land has been negotiated and duly paid up to the two parties, if different.

#### 50. Traffic management

- 50.1. The Contractor defines the characteristics of its fleet of vehicles and site machinery in the PA-ESMP, in the form of a traffic management plan with the aim to prevent construction site vehicle incidents by the effective management of transport operations throughout the construction process.
- 50.2. The Contractor defines in the traffic management plan the itineraries used on a map for each route between the different Project Areas and for each phase of the construction works and obtains the validation of the Engineer. The Contractor requests that the Employer obtain the authorisations of the competent administrative authorities if public roads are used. Any Engineer's instruction to update the traffic management plan shall be implemented.
- 50.3. To reduce accidents, the Contractor will ensure that:
  - a) Pedestrians and vehicles are kept apart (e.g. through providing separate entrances, walkways, signals)
  - b) Vehicle movements are minimized
  - c) Drivers are adequately trained and have the appropriate permits for driving vehicles
  - d) Turning circles for turning vehicles are installed.

- 50.4. Within one month of the physical start of works, the Contractor informs the administrative authorities of areas crossed by the Contractor's vehicles, of the itinerary and characteristics (frequency of passing, size and weight of trucks, materials carried) of the Contractor's fleet of vehicles.
- 50.5. If public roads are used, and unless approved otherwise by the Engineer, the Contractor mandates a bailiff to make a sworn report regarding the state of the road prior to use by the Contractor's vehicles. The report is annexed to the PA-ESMP.
- 50.6. The Contractor describes in the traffic management plan the expected traffic created by its fleet of vehicles (frequency of trips between Project Areas, working hours, convoys).
- 50.7. The Contractor also describes the number and positioning of flagmen.
- 50.8. Unless specified otherwise in the Contract or instructed otherwise by the Engineer, heavy vehicles (i.e. with a GVWR of more than 3.5 tons) may not be used at night between 22:00 and 06:00.
- 50.9. Speed limits
- 50.9.1 The Contractor takes action to limit and check the speed of all vehicles and machinery used to execute the works at an appropriate level.
- 50.9.2 The maximum speed of all machinery and vehicles of the Contractor comply with the lowest of the following: the speed limit defined according to the Employer's country regulations or the following limits.
- 50.9.3 20 km/h within the Project Areas;
- 50.9.4 30 km/h in villages or hamlets, in towns, from 100m before the first house;
- 50.9.5 80 km/h on unpaved roads outside of towns, villages, hamlets and camps.
- 50.9.6 Pursuant to Sub-Clause 4.15 of the CC, and in coordination with the competent Employer's country authorities, the Contractor provides and installs signs for the fleet of vehicles along public roads, when public signs are inadequate.
- 50.9.7 The Contractor provides each of its drivers with a map at the appropriate scale of the roads authorised for the execution of the works, clearly indicating the maximum speeds authorised, and ensures their understanding.
- 50.10. It is strictly prohibited to transport people, equipment or products other than those required for the Works and the management of Project Areas, on board any of the Contractor's vehicles. This provision also applies to the transport of live animals and meat obtained from hunting, fishing or poaching.

50.11. The trailers and skips used to carry materials which could be projected (sand, crushed material, aggregates, selected materials) are covered with a tarpaulin for the entire itinerary between two Project Areas.

**51. Fossils /  
archaeological chance  
finds**

51.1. The Contractor shall establish specific procedures to manage the protection of archaeological and historical sites, chance finds and fossils as stipulated in Sub-Clause 4.24 of CC.

### **3 Drawings**

The Engineering Drawings forming part of the Employer's requirements are contained in the attached Book of Drawings, Volume III of the Tender Documents

## Appendix 1 - Example for the Contents of a PA-ESMP

1. **Environmental policy** ➤ Declaration of ESHS policy signed by the Managing director of the Contractor and clearly defining the commitment of the Contractor in terms of (i) ESHS management for its construction sites and (ii) compliance with the ESHS Specifications of the Contract.
2. **PA-ESMP** ➤ Target and content of the Project Area Environmental and Social Management Plan (including Health and Safety);  
➤ Preparation and updating schedule;  
➤ Quality assurance and validation.
3. **ESHS resources** ➤ Human resources:
  - ESHS manager;
  - ESHS supervisors;
  - Person in charge of relations with stakeholders;
  - Medical personnel.➤ Logistics & communications:
  - ESHS vehicles;
  - IT stations;
  - In situ noise, air and water measuring equipment;
  - Analysis laboratory used.➤ Reporting:
  - Weekly inspections;
  - Monthly progress report;
  - Accident / incident flash report.
4. **ESHS regulations** ➤ Definition of standards for the applicable national ESHS regulations and the ESHS recommendations of institutions affiliated to the United Nations (WHO, ILO, IMO, IFC), applicable to the execution of works:
  - Environment;
  - Noise and vibration soil erosion;
  - Air quality;
  - Solid waste;
  - Hazardous materials;
  - Wastewater discharges;
  - Contaminated land;
  - Occupational health and safety;
  - Community health and safety;
  - General site hazards;
  - Disease prevention;
  - Traffic safety;
  - Discharge standards;
  - Minimum wage;
  - Day and/or night traffic restrictions;

- Other.
  - Definition of ESHS standards for the industry applied.
- 5. ESHS operational inspection resources**
- Site tracking procedure:
    - Frequency;
    - Personnel;
    - Assessment criteria.
  - Non-conformity handling and detection procedure:
    - Distribution of information;
    - Notification depending on the level of importance allocated to non-conformities;
    - Tracking of the closing of the non-conformity.
  - Management of data on tracking and non-conformities:
    - Archiving;
    - Use as a performance indicator.
- 6. Project Areas**
- Description of Project Areas (as per definition in ESHS Specifications Sub-Clause 1.3:
    - Number;
    - Location on a topographical map;
    - Activities;
    - Opening & closing schedule;
    - Access.
  - Reference to the Appendix: a Site-ESMP for each Project Area.
- 7. Health and safety plan**
- Identification and characterisation of health and safety risks, including the exposure of personnel to chemicals, biological hazards and radiation;
  - Description of working methods to minimise hazards and control risks;
  - List of the types of work for which a work permit is required;
  - Personal protection equipment;
  - Presentation of the medical facilities at Project Areas:
    - Healthcare centre, medical equipment and allocation of medical staff;
    - Medical treatments that can be carried out on-site;
    - Ambulance, communications;
    - Referring hospital.
  - Evacuation procedure for medical emergencies;
  - Description of the internal organisation and action to be taken in the event of an accident or incident.
- 8. Training plan**
- Basic training for non-qualified staff;
  - Health and Safety inductions;
  - Health & safety training.
- 9. Labour Conditions**
- Description of Human Resource Policy for construction works of direct and indirect workers.
- 10. Local Recruitment**
- Local labour requirements:
    - Job descriptions and the levels of qualifications required;
    - Recruitment procedure and deployment schedule;
    - Initial training to be provided by the Contractor for each job description.

- 11. Project machinery and vehicle traffic**
  - Location and management of the local recruitment office(s).
  - Description of the fleet of vehicles/machinery used for the execution of the works and emission levels and safety requirements;
  - Deployment (Project Area & schedule) and maintenance sites for each vehicle and machine;
  - Mapping of itineraries, travel times, and areas where speeds are limited;
  - Dust suppression:
    - Mapping or road sections where dust reduction initiatives apply;
    - Water points identified or to be created for refuelling tanker trucks;
    - Capacity of the tanker trucks used and calculation of the number of trucks required;
    - Width of the track to determine if one watering run or equivalent is adequate (narrow track) or if two runs are required (wide track);
    - Number of watering or equivalent operations proposed per day depending on the climate.
- 12. Dangerous substances**
  - Inventory of dangerous substances per Project Area and per period;
  - Transport and storage conditions and chemical incompatibility.
- 13. Effluents**
  - Characterisation of effluents discharged to the receiving environment;
  - Facilities for the treatment or pre-treatment of effluents including sufficient run-off;
  - Measures for reducing the sediment content of rainwater runoff;
  - Measures for monitoring the efficiency and performance of facilities for reducing sediment content of rainwater runoff;
  - Resources and methods for monitoring effluent and rainwater runoff quality.
- 14. Noise and vibrations**
  - Estimation of the frequencies, duration, days of the week and noise levels per Project Area.
- 15. Waste**
  - Inventory of waste per Project Area and per period;
  - Collection, intermediate storage, handling and treatment methods for ordinary or inert waste;
  - Storage and handling methods for dangerous waste.
- 16. Clearing and revegetation**
  - Methods & schedule for clearing vegetation and earthwork activities;
  - Methods, species and schedule for the revegetation of Project Areas disturbed by the works.
- 17. Biodiversity**
  - Schedule for adequate fauna and flora management;
  - Measures for minimizing impact on fauna and flora species based on the Contracting Authority procedures;
  - Measures for monitoring the efficiency and performance of the plan in place;
  - Measures for limiting IAS;
  - Measures for monitoring the efficiency and performance of the plan in place.
- 18. Prevention of erosion**
  - Location of zones suffering from erosion;
  - Methods and schedule for the implementation of anti-erosive actions, including topsoil storage.

- 19. Documentation of site condition**
  - List and cover of viewpoints;
  - Imaging method;
  - Archiving photographs.
- 20. Rehabilitation**
  - Method and schedule for Project Area rehabilitation;
- 21. Appendices**
  - Site-ESMPs (number and location specified in Section 6 “Project Areas” above):
    - Marking out of the Project Area perimeter on a map;
    - Definition of zones for vegetation clearing, zones for the storage of usable timber, zones for burning of green waste;
    - Definition of on-site activities: construction, storage areas, accommodation areas, offices, workshops, concrete making units;
    - Layout of activity areas on the Project Area: construction works, production/operation areas, rehabilitation and closure;
    - Zones for the storage of topsoil, spoil from earthworks, materials;
    - Access routes and checkpoints;
    - Project Area occupancy schedule;
    - Organisation of Project Area preparation;
    - Liquid discharge outlet points;
    - Proposed sampling points for monitoring water quality;
    - Atmospheric emission outlet points;
    - Location of the storage site for dangerous products;
    - Location and mapping of waste treatment facilities when handled by an external service provider;
    - Any other information relating to the environmental management of the Project Area.
  - Emergency plan:
    - Description of facilities;
    - Characterisation of hazards;
    - Emergency situations;
    - Organisation structure - roles and responsibilities;
    - Emergency procedures;
    - Human and material resources;
    - Triggering of the plan;
    - Reporting.

## Appendix 2 - Properties Rendering a Product Dangerous

1. **Explosive** Substances and preparations which could explode in the presence of a flame or which are more sensitive to impacts and friction than dinitrobenzene.
2. **Combustive** Substances and preparations which, when in contact with other substances, particularly inflammable substances, undergo strongly exothermic reactions.
3. **Easily inflammable** Substances and preparations (i) in liquid phase (including extremely inflammable liquids), with a flash point below 21°C, or which can heat up to the extent of spontaneous combustion in ambient air; or (ii) in solid phase, which can burst into flames easily in the brief presence of a source of inflammation and which will continue to burn after the removal of the source of inflammation or (iii) in gaseous phase, which are inflammable in air at normal pressure; or (iv) – which, when in contact with moist air or water, produce dangerous quantities of gases which are easily inflammable.
4. **Inflammable** Liquid substances and preparations, with a flash point equal to or above 21°C and less than or equal to 55°C.
5. **Irritant** Non-corrosive substances and preparations which, when in immediate, extended or repeated contact with the skin and mucosa, can cause inflammation.
6. **Harmful** Substances and preparations which, in case of inhaling, swallowing or cutaneous penetration, can lead to risks of limited severity.
7. **Toxic** Substances and preparations (including highly toxic substances and preparations), which, in case of inhaling, swallowing or cutaneous penetration, can lead to serious, acute or chronic risks, and even death.
8. **Carcinogenic** Substances and preparations which, in case of inhaling, swallowing or cutaneous penetration, can lead to or increase the frequency of cancer.
9. **Corrosive** Substances and preparations which, in case of contact with living tissues, can destroy the latter.
10. **Infectious** Substances containing viable micro-organisms or their toxins, for which it is known or we have good reasons to believe that they cause disease in humans or other living organisms.
11. **Harmful to reproduction function** Substances and preparations which, in case of inhaling, swallowing or cutaneous penetration, can induce or increase the frequency of undesirable non-hereditary effects in offspring or have a negative effect on reproductive functions and abilities.
12. **Mutagenic** Substances and preparations which, in case of inhaling, swallowing or cutaneous penetration, can lead to hereditary genetic disorders or increase the frequency of these disorders.
13. **React with water** Substances and preparations which, in case of contact with water, air or an acid, release a toxic or highly toxic gas.

- 14. Sensitising** Substances and preparations which, in case of inhaling or cutaneous penetration, can lead to a hypersensitisation, so that renewed exposure to the substance or preparation will cause characteristic harmful effects. This property can only be considered if test methods are available.
- 15. Ecotoxic** Substances and preparations with inherent or potential immediate or deferred risks for one or several environmental components.
- 16. Dangerous for the environment** Substances and preparations which are likely, after elimination, to lead to another substance, by any means, e.g. a lixiviation product, with one of the above characteristics.

### 3. Drawings

The Engineering Drawings are provided in Volume 3 of the Bidding Documents as per the Schedule given below.

DRG NO.	DESCRIPTION
	<b>GENERAL LAYOUT</b>
M394(j)/MWZ/LP/01	PROJECT LOCATION PLAN
	<b>INFILL SEWERS - KIRUMBA</b>
M394(j)/MWZ/KR/01	Layout Plan of Kirumba Infill Sewers - Sheet 1 of 1
M394(j)/MWZ/KR/02	Plan and longitudinal section of infill sewer KR-IS-1 & KR-IS-2 - Sheet 1 of 1
M394(j)/MWZ/KR/03	Plan and longitudinal section of infill sewer KR-IS-3 - Sheet 1 of 1
M394(j)/MWZ/KR/04	Plan and longitudinal section of infill sewer KR-IS-4, KR-IS-4-3 & KR-IS-5 - Sheet 1 of 1
M394(j)/MWZ/KR/05	Plan and longitudinal section of infill sewer KR-IS-5-4, KR-IS-5-5 & KR-IS-5-6 - Sheet 1 of 1
M394(j)/MWZ/KR/06	Plan and longitudinal section of infill sewer KR-IS-6 & KR-IS-8 - Sheet 1 of 1
M394(j)/MWZ/KR/07	Plan and longitudinal section of infill sewer KR-IS-7 - Sheet 1 of 1
M394(j)/MWZ/KR/08	Plan and longitudinal section of infill sewer KR-IS-9 - Sheet 1 of 1
M394(j)/MWZ/KR/09	Plan and longitudinal section of infill sewer KR-IS-10 - Sheet 1 of 1
	<b>INFILL SEWERS - KITANGIRI</b>
M394(j)/MWZ/KT/01	Layout Plan of Kitangiri Infill Sewers - Sheet 1 of 1
M394(j)/MWZ/KT/02	Plan and longitudinal section of infill sewer KT-IS-1 - Sheet 1 of 4
M394(j)/MWZ/KT/03	Plan and longitudinal section of infill sewer KT-IS-1 - Sheet 2 of 4
M394(j)/MWZ/KT/04	Plan and longitudinal section of infill sewer KT-IS-1 - Sheet 3 of 4
M394(j)/MWZ/KT/05	Plan and longitudinal section of infill sewer KT-IS-1 - Sheet 4 of 4
M394(j)/MWZ/KT/06	Plan and longitudinal section of infill sewer KT-IS-1-52 - Sheet 1 of 1
M394(j)/MWZ/KT/07	Plan and longitudinal section of infill sewer KT-IS-2 - Sheet 1 of 1
M394(j)/MWZ/KT/08	Plan and longitudinal section of infill sewer KT-IS-2-1 & KT-IS-2-7 - Sheet 1 of 1
M394(j)/MWZ/KT/09	Plan and longitudinal section of infill sewer KT-IS-3 - Sheet 1 of 1
M394(j)/MWZ/KT/10	Plan and longitudinal section of infill sewer KT-IS-3-4 - Sheet 1 of 1
M394(j)/MWZ/KT/11	Plan and longitudinal section of infill sewer KT-IS-4 - Sheet 1 of 1
M394(j)/MWZ/KT/12	Plan and longitudinal section of infill sewer KT-IS-5 & KT-IS-6 - Sheet 1 of 1
M394(j)/MWZ/KT/13	Plan and longitudinal section of infill sewer KT-IS-7 & KT-IS-8 - Sheet 1 of 1
M394(j)/MWZ/KT/14	Plan and longitudinal section of infill sewer KT-IS-1-9 - Sheet 1 of 1
	<b>INFILL SEWERS - PASIANSI</b>
M394(j)/MWZ/PS/01	Layout Plan of Pasiansi Infill Sewers - Sheet 1 of 1
M394(j)/MWZ/PS/02	Plan and longitudinal section of infill sewer PS-IS-1, PS-IS-1-3 & PS-IS-1-4 - Sheet 1 of 1
M394(j)/MWZ/PS/03	Plan and longitudinal section of infill sewer PS-IS-2 & PS-2-5 - Sheet 1 of 1
	<b>INFILL SEWERS - NYAMANORO</b>
M394(j)/MWZ/NM/01	Layout Plan of Nyamanoro Infill Sewers - Sheet 1 of 1
M394(j)/MWZ/NM/02	Plan and longitudinal section of infill sewer NM-IS-1 - Sheet 1 of 1
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M394(j)/MWZ/NM/06	Plan and longitudinal section of infill sewer NM-IS-6-4-2 - Sheet 1 of 1
M394(j)/MWZ/NM/07	Plan and longitudinal section of infill sewer NM-IS-9 - Sheet 1 of 1
M394(j)/MWZ/NM/08	Plan and longitudinal section of infill sewer NM-IS-10 - Sheet 1 of 1
M394(j)/MWZ/NM/09	Plan and longitudinal section of infill sewer NM-IS-11 - Sheet 1 of 1

<b>DRG NO.</b>	<b>DESCRIPTION</b>
M394(j)/MWZ/NM/10	Plan and longitudinal section of infill sewer NM-IS-12 & NM-IS-13 - Sheet 1 of 1
M394(j)/MWZ/NM/11	Plan and longitudinal section of infill sewer NM-IS-14 & NM-IS-14-7 - Sheet 1 of 1
M394(j)/MWZ/NM/12	Plan and longitudinal section of infill sewer NM-IS-1-7 - Sheet 1 of 1
M394(j)/MWZ/NM/13	Plan and longitudinal section of infill sewer NM-IS-2 & NM-IS-4 - Sheet 1 of 1
M394(j)/MWZ/NM/14	Plan and longitudinal section of infill sewer NM-IS-6-4-4 & NM-IS-7 - Sheet 1 of 1
M394(j)/MWZ/NM/15	Plan and longitudinal section of infill sewer NM-IS-9-3 - Sheet 1 of 1
M394(j)/MWZ/NM/16	Plan and longitudinal section of infill sewer NM-IS-10-5 - Sheet 1 of 1
M394(j)/MWZ/NM/17	Plan and longitudinal section of infill sewer NM-IS-11-2, NM-IS-11-7 & NM-IS-11-13 - Sheet 1 of 1
M394(j)/MWZ/NM/18	Plan and longitudinal section of infill sewer NM-IS-14-9 - Sheet 1 of 1
	<b><u>INFILL SEWERS - NYAKATO</u></b>
M394(j)/MWZ/NK/01	Layout Plan of Nyakato Infill Sewers - Sheet 1 of 1
M394(j)/MWZ/NK/02	Plan and longitudinal section of infill sewer NK-IS-1 - Sheet 1 of 7
M394(j)/MWZ/NK/03	Plan and longitudinal section of infill sewer NK-IS-1 - Sheet 2 of 7
M394(j)/MWZ/NK/04	Plan and longitudinal section of infill sewer NK-IS-1 - Sheet 3 of 7
M394(j)/MWZ/NK/05	Plan and longitudinal section of infill sewer NK-IS-1 - Sheet 4 of 7
M394(j)/MWZ/NK/06	Plan and longitudinal section of infill sewer NK-IS-1 - Sheet 5 of 7
M394(j)/MWZ/NK/07	Plan and longitudinal section of infill sewer NK-IS-1 - Sheet 6 of 7
M394(j)/MWZ/NK/08	Plan and longitudinal section of infill sewer NK-IS-1 - Sheet 7 of 7
M394(j)/MWZ/NK/09	Plan and longitudinal section of infill sewer NK-IS-2 - Sheet 1 of 2
M394(j)/MWZ/NK/10	Plan and longitudinal section of infill sewer NK-IS-2 - Sheet 2 of 2
M394(j)/MWZ/NK/11	Plan and longitudinal section of infill sewer NK-IS-2-7 & NK-IS-2-13 - Sheet 1 of 1
M394(j)/MWZ/NK/12	Plan and longitudinal section of infill sewer NK-IS-3 - Sheet 1 of 3
M394(j)/MWZ/NK/13	Plan and longitudinal section of infill sewer NK-IS-3 - Sheet 2 of 3
M394(j)/MWZ/NK/14	Plan and longitudinal section of infill sewer NK-IS-3 - Sheet 3 of 3
M394(j)/MWZ/NK/15	Plan and longitudinal section of infill sewer NK-IS-3-32, NK-IS-3-34 & NK-IS-3-37 - Sheet 1 of 1
	<b><u>INFILL SEWERS - IGOGO</u></b>
M394(j)/MWZ/IG/01	Layout Plan of Igogo Infill Sewers - Sheet 1 of 1
M394(j)/MWZ/IG/02	Plan and longitudinal section of infill sewer IG-IS-1 - Sheet 1 of 2
M394(j)/MWZ/IG/03	Plan and longitudinal section of infill sewer IG-IS-1 - Sheet 2 of 2
M394(j)/MWZ/IG/04	Plan and longitudinal section of infill sewer IG-IS-1-20 - Sheet 1 of 1
M394(j)/MWZ/IG/05	Plan and longitudinal section of infill sewer IG-IS-2 - Sheet 1 of 3
M394(j)/MWZ/IG/06	Plan and longitudinal section of infill sewer IG-IS-2 - Sheet 2 of 3
M394(j)/MWZ/IG/07	Plan and longitudinal section of infill sewer IG-IS-2 - Sheet 3 of 3
M394(j)/MWZ/IG/08	Plan and longitudinal section of infill sewer IG-IS-2-30 - Sheet 1 of 1
M394(j)/MWZ/IG/09	Plan and longitudinal section of infill sewer IG-IS-2-30-6 & IG-IS-2-30-7 - Sheet 1 of 1
M394(j)/MWZ/IG/10	Plan and longitudinal section of infill sewer IG-IS-2-30-11 & IG-IS-4 - Sheet 1 of 1
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M394(j)/MWZ/IG/12	Plan and longitudinal section of infill sewer IG-IS-3 - Sheet 1 of 1
	<b><u>STANDARD DRAWINGS</u></b>
M394(j)/MWZ/SD/01	Standard Details - Project Sign Board
M394(j)/MWZ/SD/02	Standard Details - Details of Manholes and Inspection Chambers
M394(j)/MWZ/SD/03	Standard Details - Details of Manhole Covers, Backdrop for Manholes and Flow Splitting Chamber
M394(j)/MWZ/SD/04	Standard Details - Manhole Covers, Backdrop for Manholes and Flow Splitting Chamber

<b>DRG NO.</b>	<b>DESCRIPTION</b>
M394(j)/MWZ/SD/05	Standard Details - Bedding and Haunches for Pipes, Typical Sewer Connection & Soak Away Pit
M394(j)/MWZ/SD/06	Standard Details - Bedding and Haunches for Pipes, Typical Sewer Connection & Soak Away Pit
M394(j)/MWZ/SD/07	Standard Details - Piers for Pipe Aerial Crossings and Stepped Footpath
M394(j)/MWZ/SD/08	Standard Details - Trenchless Road Crossing
M394(j)/MWZ/SD/09	Standard Details - Permanent Reinstatement of Pavement
M394(j)/MWZ/SD/10	Standard Details - Anchor Blocks
M394(j)/MWZ/SD/11	Standard Details - Details of Stormwater Catch Pit and Earth Drains
M394(j)/MWZ/SD/12	Standard Details - Typical Road Cross Section Details
M394(j)/MWZ/SD/13	Standard Details - Invert Block Drains and Headwall Details

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

## Section VIII. General Conditions

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# General Conditions

## 1. General Provisions

### 1.1 Definitions

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

#### 1.1.1 The Contract

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

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

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

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

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

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

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

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

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

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

#### 1.1.2 Parties and Persons

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

- 1.1.2.2 “Employer” means the person named as employer in the Contract Data and the legal successors in title to this person.
- 1.1.2.3 “Contractor” means the person(s) named as contractor in the Letter of Tender accepted by the Employer and the legal successors in title to this person(s).
- 1.1.2.4 “Engineer” means the person appointed by the Employer to act as the Engineer for the purposes of the Contract and named in the Contract Data, or other person appointed from time to time by the Employer and notified to the Contractor under Sub-Clause 3.4 [Replacement of the Engineer].
- 1.1.2.5 “Contractor’s Representative” means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.3 [Contractor’s Representative], who acts on behalf of the Contractor.
- 1.1.2.6 “Employer’s Personnel” means the Engineer, the assistants referred to in Sub-Clause 3.2 [Delegation by the Engineer] and all other staff, labour and other employees of the Engineer and of the Employer; and any other personnel notified to the Contractor, by the Employer or the Engineer, as Employer’s Personnel.
- 1.1.2.7 “Contractor’s Personnel” means the Contractor’s Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.
- 1.1.2.8 “Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works; and the legal successors in title to each of these persons.
- 1.1.2.9 “DB” means the person or three persons appointed under Sub-Clause 20.2 [Appointment of the Dispute Board] or Sub-Clause 20.3 [Failure to Agree on the Composition of the Dispute Board]
- 1.1.2.10 “FIDIC” means the Fédération Internationale des Ingénieurs-Conseils, the international federation of consulting engineers.
- 1.1.2.11 “Bank” means the financing institution (if any) named in the Contract Data.
- 1.1.2.12 “Borrower” means the person (if any) named as the borrower in the Contract Data.
- 1.1.3.1 “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 Dates, Tests, Periods and Completion**

**1.1.4 Money and Payments**

- 1.1.3.4 “Tests on Completion” means the tests which are specified in the Contract or agreed by both Parties or instructed as a Variation, and which are carried out under Clause 9 [Tests on Completion] before the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.5 “Taking-Over Certificate” means a certificate issued under Clause 10 [Employer’s Taking Over].
- 1.1.3.6 “Tests after Completion” means the tests (if any) which are specified in the Contract and which are carried out in accordance with the Specification after the Works or a Section (as the case may be) are taken over by the Employer.
- 1.1.3.7 “Defects Notification Period” means the period for notifying defects in the Works or a Section (as the case may be) under Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects], which extends over 365 days except if otherwise stated in the Contract Data (with any extension under Sub-Clause 11.3 [Extension of Defects Notification Period]), calculated from the date on which the Works or Section is completed as certified under Sub-Clause 10.1 [Taking Over of the Works and Sections].
- 1.1.3.8 “Performance Certificate” means the certificate issued under Sub-Clause 11.9 [Performance Certificate].
- 1.1.3.9 “Day” means a calendar day and “year” means 365 days.
- 1.1.4.1 “Accepted Contract Amount” means the amount accepted in the Letter of Acceptance for the execution and completion of the Works and the remedying of any defects.
- 1.1.4.2 “Contract Price” means the price defined in Sub-Clause 14.1 [The Contract Price], and includes adjustments in accordance with the Contract.
- 1.1.4.3 “Cost” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
- 1.1.4.4 “Final Payment Certificate” means the payment certificate issued under Sub-Clause 14.13 [Issue of Final Payment Certificate].
- 1.1.4.5 “Final Statement” means the statement defined in Sub-Clause 14.11 [Application for Final Payment Certificate].
- 1.1.4.6 “Foreign Currency” means a currency in which part (or all) of the Contract Price is payable, but not the Local Currency.
- 1.1.4.7 “Interim Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment], other than the Final Payment Certificate.
- 1.1.4.8 “Local Currency” means the currency of the Country.
- 1.1.4.9 “Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment].
- 1.1.4.10 “Provisional Sum” means a sum (if any) which is specified in the Contract as a provisional sum, for the execution of any part of the

Works or for the supply of Plant, Materials or services under Sub-Clause 13.5 [Provisional Sums].

- 1.1.4.11 “Retention Money” means the accumulated retention moneys which the Employer retains under Sub-Clause 14.3 [Application for Interim Payment Certificates] and pays under Sub-Clause 14.9 [Payment of Retention Money].
- 1.1.4.12 “Statement” means a statement submitted by the Contractor as part of an application, under Clause 14 [Contract Price and Payment], for a payment certificate.
- 1.1.5 Works and Goods**
- 1.1.5.1 “Contractor’s Equipment” means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor’s Equipment excludes Temporary Works, Employer’s Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
- 1.1.5.2 “Goods” means Contractor’s Equipment, Materials, Plant and Temporary Works, or any of them as appropriate.
- 1.1.5.3 “Materials” means things of all kinds (other than Plant) intended to form or forming part of the Permanent Works, including the supply-only materials (if any) to be supplied by the Contractor under the Contract.
- 1.1.5.4 “Permanent Works” means the permanent works to be executed by the Contractor under the Contract.
- 1.1.5.5 “Plant” means the apparatus, machinery and other equipment intended to form or forming part of the Permanent Works, including vehicles purchased for the Employer and relating to the construction or operation of the Works.
- 1.1.5.6 “Section” means a part of the Works specified in the Contract Data as a Section (if any).
- 1.1.5.7 “Temporary Works” means all temporary works of every kind (other than Contractor’s Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects.
- 1.1.5.8 “Works” mean the Permanent Works and the Temporary Works, or either of them as appropriate.
- 1.1.6 Other Definitions**
- 1.1.6.1 “Contractor’s Documents” means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature (if any) supplied by the Contractor under the Contract.
- 1.1.6.2 “Country” means the country in which the Site (or most of it) is located, where the Permanent Works are to be executed.
- 1.1.6.3 “Employer’s Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Specification; but does not include Plant which has not been taken over by the Employer.
- 1.1.6.4 “Force Majeure” is defined in Clause 19 [Force Majeure].

- 1.1.6.5 “Laws” means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.
- 1.1.6.6 “Performance Security” means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security].
- 1.1.6.7 “Site” means the places where the Permanent Works are to be executed, including storage and working areas, and to which Plant and Materials are to be delivered, and any other places as may be specified in the Contract as forming part of the Site.
- 1.1.6.8 “Unforeseeable” means not reasonably foreseeable by an experienced contractor by the Base Date.
- 1.1.6.9 “Variation” means any change to the Works, which is instructed or approved as a variation under Clause 13 [Variations and Adjustments].
- 1.1.6.10 “Notice of Dissatisfaction” means the notice given by either Party to the other under Sub-Clause 20.4 [Obtaining Dispute Board’s Decision] indicating its dissatisfaction and intention to commence arbitration.

## 1.2 Interpretation

In the Contract, except where the context requires otherwise:

- (a) Words indicating one gender include all genders;
- (b) Words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;
- (d) “Written” or “in writing” means hand-written, type-written, printed or electronically made, and resulting in a permanent record; and
- (e) The word “tender” is synonymous with “Bid” and “tenderer” with “Bidder” and the words “tender documents” with “bidding documents”.

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

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

## 1.3 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 Contractor within 21 days after receiving a copy of the Performance Certificate.

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

**4.3 Contractor's Representative**

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

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

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

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

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

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

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

**4.4 Subcontractors**

The Contractor shall not subcontract the whole of the Works.

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

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

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

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

**4.5 Assignment of Benefit of Subcontract**

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

**4.6 Co-operation**

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

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

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

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

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

**4.7 Setting Out**

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

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

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

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

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

- 4.8 Safety Procedures** The Contractor shall:
- (a) Comply with all applicable safety regulations;
  - (b) Take care for the safety of all persons entitled to be on the Site;
  - (c) Use reasonable efforts to keep the Site and Works clear of unnecessary obstruction so as to avoid danger to these persons;
  - (d) Provide fencing, lighting, guarding and watching of the Works until completion and taking over under Clause 10 [Employer's Taking Over]; and
  - (e) Provide any Temporary Works (including roadways, footways, guards and fences) which may be necessary, because of the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land.
- 4.9 Quality Assurance** The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.
- Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.
- Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.
- 4.10 Site Data** The Employer shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the Employer's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The Employer shall similarly make available to the Contractor all such data which come into the Employer's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.
- To the extent which was practicable (taking account of cost and time), the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Tender or Works. To the same extent, the Contractor shall be deemed to have inspected and examined the Site, its surroundings, the above data and other available information, and to have been satisfied before submitting the Tender as to all relevant matters, including (without limitation):
- (a) The form and nature of the Site, including sub-surface conditions;
  - (b) The hydrological and climatic conditions;
  - (c) The extent and nature of the work and Goods necessary for the execution and completion of the Works and the remedying of any defects;
  - (d) The Laws, procedures and labour practices of the Country; and
  - (e) The Contractor's requirements for access, accommodation, facilities, personnel, power, transport, water and other services.
- 4.11 Sufficiency of the Accepted Contract Amount** The Contractor shall be deemed to:
- (a) Have satisfied himself as to the correctness and sufficiency of the Accepted Contract Amount; and

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

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

**4.12 Unforeseeable Physical Conditions**

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

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

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

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

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

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

However, before additional Cost is finally agreed or determined under subparagraph (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 subparagraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.

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

- 4.13 Rights of Way and Facilities** Unless otherwise specified in the Contract the Employer shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.
- 4.14 Avoidance of Interference** The Contractor shall not interfere unnecessarily or improperly with:
- (a) The convenience of the public; or
  - (b) The access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or of others.
- The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.
- 4.15 Access Route** The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site at Base Date. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.
- Except as otherwise stated in these Conditions:
- (a) The Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
  - (b) The Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
  - (c) The Employer shall not be responsible for any claims which may arise from the use or otherwise of any access route;
  - (d) The Employer does not guarantee the suitability or availability of particular access routes; and
  - (e) Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.
- 4.16 Transport of Goods** Unless otherwise stated in the Particular Conditions:
- (a) The Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site;
  - (b) The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods and other things required for the Works; and
  - (c) The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods, and shall negotiate and pay all claims arising from their transport.
- 4.17 Contractor's Equipment** The Contractor shall be responsible for all Contractor's Equipment. When brought on to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any major items of Contractor's Equipment without the consent of the

Engineer. However, consent shall not be required for vehicles transporting Goods or Contractor's Personnel off Site.

**4.18 Protection of the Environment**

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

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

**4.19 Electricity, Water and Gas**

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

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

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

**4.20 Employer's Equipment and Free-Issue Materials**

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

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

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

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

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

**4.21 Progress Reports**

Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month

following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

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

Each report shall include:

- (a) Charts and detailed descriptions of progress, including each stage of design (if any), Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing; and including these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]);
- (b) Photographs showing the status of manufacture and of progress on the Site;
- (c) For the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
  - (i) Commencement of manufacture;
  - (ii) Contractor's inspections;
  - (iii) Tests; and
  - (iv) Shipment and arrival at the Site;
- (d) The details described in Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment];
- (e) Copies of quality assurance documents, test results and certificates of Materials;
- (f) List of notices given under Sub-Clause 2.5 [Employer's Claims] and notices given under Sub-Clause 20.1 [Contractor's Claims];
- (g) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) Comparisons of actual and planned progress, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.

**4.22 Security of the Site** Unless otherwise stated in the Particular Conditions:

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

**4.23 Contractor's Operations on Site**

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

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

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

#### **4.24 Fossils**

All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the Employer. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.

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

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

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

## **5. Nominated Subcontractors**

### **5.1 Definition of "nominated Subcontractor"**

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

- (a) Who is stated in the Contract as being a nominated Subcontractor; or
- (b) Whom the Engineer, under Clause 13 [Variations and Adjustments], instructs the Contractor to employ as a Subcontractor subject to Sub-Clause 5.2 [Objection to Notification].

### **5.2 Objection to Nomination**

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

- (a) There are reasons to believe that the Subcontractor does not have sufficient competence, resources or financial strength;
- (b) The nominated Subcontractor does not accept to indemnify the Contractor against and from any negligence or misuse of Goods by the nominated Subcontractor, his agents and employees; or

- (c) The nominated Subcontractor does not accept to enter into a subcontract which specifies that, for the subcontracted work (including design, if any), the nominated Subcontractor shall:
  - (i) Undertake to the Contractor such obligations and liabilities as will enable the Contractor to discharge his obligations and liabilities under the Contract;
  - (ii) Indemnify the Contractor against and from all obligations and liabilities arising under or in connection with the Contract and from the consequences of any failure by the Subcontractor to perform these obligations or to fulfil these liabilities; and
  - (iii) Be paid only if and when the Contractor has received from the Employer payments for sums due under the Subcontract referred to under Sub-Clause 5.3 [Payment to nominated Subcontractors].

**5.3 Payments to nominated Subcontractors**

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

**5.4 Evidence of Payments**

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

- (a) Submits this reasonable evidence to the Engineer, or
- (b)
  - (i) Satisfies the Engineer in writing that the Contractor is reasonably entitled to withhold or refuse to pay these amounts; and
  - (ii) Submits to the Engineer reasonable evidence that the nominated Subcontractor has been notified of the Contractor's entitlement,

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

## **6. Staff and Labour**

**6.1 Engagement of Staff and Labour**

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

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

- 6.2 Rates of Wages and Conditions of Labour** The Contractor shall pay rates of wages, and observe conditions of labour, which are not lower than those established for the trade or industry where the work is carried out. If no established rates or conditions are applicable, the Contractor shall pay rates of wages and observe conditions which are not lower than the general level of wages and conditions observed locally by employers whose trade or industry is similar to that of the Contractor.
- The Contractor shall inform the Contractor's Personnel about their liability to pay personal income taxes in the Country in respect of such of their salaries, wages, allowances and any benefits as are subject to tax under the Laws of the Country for the time being in force, and the Contractor shall perform such duties in regard to such deductions thereof as may be imposed on him by such Laws.
- 6.3 Persons in the Service of Employer** The Contractor shall not recruit, or attempt to recruit, staff and labour from amongst the Employer's Personnel.
- 6.4 Labour Laws** The Contractor shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- The Contractor shall require his employees to obey all applicable Laws, including those concerning safety at work.
- 6.5 Working Hours** No work shall be carried out on the Site on locally recognised days of rest, or outside the normal working hours stated in the Contract Data, unless:
- (a) Otherwise stated in the Contract;
  - (b) The Engineer gives consent; or
  - (c) The work is unavoidable, or necessary for the protection of life or property or for the safety of the Works, in which case the Contractor shall immediately advise the Engineer.
- 6.6 Facilities for Staff and Labour** Except as otherwise stated in the Specification, the Contractor shall provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor shall also provide facilities for the Employer's Personnel as stated in the Specification.
- The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.
- 6.7 Health and Safety** The Contractor shall at all times take all reasonable precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance service are available at all times at the Site and at any accommodation for Contractor's and Employer's Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.
- The Contractor shall appoint an accident prevention officer at the Site, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Works, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority.

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

HIV-AIDS Prevention. The Contractor shall conduct an HIV-AIDS awareness programme via an approved service provider, and shall undertake such other measures as are specified in this Contract to reduce the risk of the transfer of the HIV virus between and among the Contractor's Personnel and the local community, to promote early diagnosis and to assist affected individuals.

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

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

**6.8 Contractor's Superintendence**

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

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

**6.9 Contractor's Personnel**

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

- (a) Persists in any misconduct or lack of care;
- (b) Carries out duties incompetently or negligently;

- (c) Fails to conform with any provisions of the Contract; or
- (d) Persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

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

- 6.10 Records of Contractor's Personnel and Equipment** The Contractor shall submit, to the Engineer, details showing the number of each class of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Engineer, until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Works.
- 6.11 Disorderly Conduct** The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel, and to preserve peace and protection of persons and property on and near the Site.
- 6.12 Foreign Personnel** The Contractor may bring in to the Country any foreign personnel who are necessary for the execution of the Works to the extent allowed by the applicable Laws. The Contractor shall ensure that these personnel are provided with the required residence visas and work permits. The Employer will, if requested by the Contractor, use his best endeavours in a timely and expeditious manner to assist the Contractor in obtaining any local, state, national or government permission required for bringing in the Contractor's personnel.
- The Contractor shall be responsible for the return of these personnel to the place where they were recruited or to their domicile. In the event of the death in the Country of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.
- 6.13 Supply of Foodstuffs** The Contractor shall arrange for the provision of a sufficient supply of suitable food as may be stated in the Specification at reasonable prices for the Contractor's Personnel for the purposes of or in connection with the Contract.
- 6.14 Supply of Water** The Contractor shall, having regard to local conditions, provide on the Site an adequate supply of drinking and other water for the use of the Contractor's Personnel.
- 6.15 Measures against Insect and Pest Nuisance** The Contractor shall at all times take the necessary precautions to protect the Contractor's Personnel employed on the Site from insect and pest nuisance, and to reduce the danger to their health. The Contractor shall comply with all the regulations of the local health authorities, including use of appropriate insecticide.
- 6.16 Alcoholic Liquor or Drugs** The Contractor shall not, otherwise than in accordance with the Laws of the Country, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs, or permit or allow importation, sale, gift, barter or disposal thereof by Contractor's Personnel.
- 6.17 Arms and Ammunition** The Contractor shall not give, barter, or otherwise dispose of, to any person, any arms or ammunition of any kind, or allow Contractor's Personnel to do so.
- 6.18 Festivals and Religious Customs** The Contractor shall respect the Country's recognized festivals, days of rest and religious or other customs.

- 6.19 Funeral Arrangements** The Contractor shall be responsible, to the extent required by local regulations, for making any funeral arrangements for any of his local employees who may die while engaged upon the Works.
- 6.20 Prohibition of Forced or Compulsory Labour** The Contractor shall not employ forced labour, which consists of any work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty, and includes any kind of involuntary or compulsory labour, such as indentured labour, bonded labour or similar labour-contracting arrangements.
- 6.21 Prohibition of Harmful Child Labour** The Contractor shall not employ children in a manner that is economically exploitative, or is likely to be hazardous, or to interfere with, the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Where the relevant labour laws of the Country have provisions for employment of minors, the Contractor shall follow those laws applicable to the Contractor. Children below the age of 18 years shall not be employed in dangerous work.
- 6.22 Employment Records of Workers** The Contractor shall keep complete and accurate records of the employment of labour at the Site. The records shall include the names, ages, genders, hours worked and wages paid to all workers. These records shall be summarized on a monthly basis and submitted to the Engineer. These records shall be included in the details to be submitted by the Contractor under Sub-Clause 6.10 [Records of Contractor's Personnel and Equipment].
- 6.23 Workers' Organisations** In countries where the relevant labour laws recognise workers' rights to form and to join workers' organisations of their choosing without interference and to bargain collectively, the Contractor shall comply with such laws. Where the relevant labour laws substantially restrict workers' organisations, the Contractor shall enable alternative means for the Contractor's Personnel to express their grievances and protect their rights regarding working conditions and terms of employment. In either case described above, and where the relevant labour laws are silent, the Contractor shall not discourage the Contractor's Personnel from forming or joining workers' organisations of their choosing or from bargaining collectively, and shall not discriminate or retaliate against the Contractor's Personnel who participate, or seek to participate, in such organisations and bargain collectively. The Contractor shall engage with such workers' representatives. Workers' organisations are expected to fairly represent the workers in the workforce.
- 6.24 Non-Discrimination and Equal Opportunity** The Contractor shall not make employment decisions on the basis of personal characteristics unrelated to inherent job requirements. The Contractor shall base the employment relationship on the principle of equal opportunity and fair treatment, and shall not discriminate with respect to aspects of the employment relationship, including recruitment and hiring, compensation (including wages and benefits), working conditions and terms of employment, access to training, promotion, termination of employment or retirement, and discipline. In countries where the relevant labour laws provide for non-discrimination in employment, the Contractor shall comply with such laws. When the relevant labour laws are silent on non-discrimination in employment, the Contractor shall meet this Sub-Clause's requirements. Special measures of protection or assistance to remedy past discrimination or selection for a particular job based on the inherent requirements of the job shall not be deemed discrimination.

## 7. Plant, Materials and Workmanship

- 7.1 Manner of Execution** The Contractor shall carry out the manufacture of Plant, the production and manufacture of Materials, and all other execution of the Works:
- (a) In the manner (if any) specified in the Contract;
  - (b) In a proper workmanlike and careful manner, in accordance with recognised good practice; and
  - (c) With properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

- 7.2 Samples** The Contractor shall submit the following samples of Materials, and relevant information, to the Engineer for consent prior to using the Materials in or for the Works:

- (a) Manufacturer's standard samples of Materials and samples specified in the Contract, all at the Contractor's cost; and
- (b) Additional samples instructed by the Engineer as a Variation.

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

- 7.3 Inspection** The Employer's Personnel shall at all reasonable times:
- (a) Have full access to all parts of the Site and to all places from which natural Materials are being obtained; and
  - (b) During production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

- 7.4 Testing** This Sub-Clause shall apply to all tests specified in the Contract, other than the Tests after Completion (if any).

Except as otherwise specified in the Contract, the Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Works.

The Engineer may, under Clause 13 [Variations and Adjustments], vary the location or details of specified tests, or instruct the Contractor to carry out additional tests. If these varied or additional tests show that the tested Plant,

Materials or workmanship is not in accordance with the Contract, the cost of carrying out this Variation shall be borne by the Contractor, notwithstanding other provisions of the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

If the Contractor suffers delay and/or incurs Cost from complying with these instructions or as a result of a delay for which the Employer is responsible, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

#### **7.5 Rejection**

If, as a result of an examination, inspection, measurement or testing, any Plant, Materials or workmanship is found to be defective or otherwise not in accordance with the Contract, the Engineer may reject the Plant, Materials or workmanship by giving notice to the Contractor, with reasons. The Contractor shall then promptly make good the defect and ensure that the rejected item complies with the Contract.

If the Engineer requires this Plant, Materials or workmanship to be retested, the tests shall be repeated under the same terms and conditions. If the rejection and retesting cause the Employer to incur additional costs, the Contractor shall subject to Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer.

#### **7.6 Remedial Work**

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

- (a) Remove from the Site and replace any Plant or Materials which is not in accordance with the Contract;
- (b) Remove and re-execute any other work which is not in accordance with the Contract; and
- (c) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

The Contractor shall comply with the instruction within a reasonable time, which shall be the time (if any) specified in the instruction, or immediately if urgency is specified under sub-paragraph (c).

If the Contractor fails to comply with the instruction, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor

shall subject to Sub-Clause 2.5 [Employer's Claims] pay to the Employer all costs arising from this failure.

- 7.7 Ownership of Plant and Materials** Except as otherwise provided in the Contract, each item of Plant and Materials shall, to the extent consistent with the Laws of the Country, become the property of the Employer at whichever is the earlier of the following times, free from liens and other encumbrances:
- (a) When it is incorporated in the Works;
  - (b) When the Contractor is paid the corresponding value of the Plant and Materials under Sub-Clause 8.10 [Payment for Plant and Materials in Event of Suspension].
- 7.8 Royalties** Unless otherwise stated in the Specification, the Contractor shall pay all royalties, rents and other payments for:
- (a) Natural Materials obtained from outside the Site, and
  - (b) The disposal of material from demolitions and excavations and of other surplus material (whether natural or man-made), except to the extent that disposal areas within the Site are specified in the Contract.

## **8. Commencement, Delays and Suspension**

- 8.1 Commencement of Works** Except as otherwise specified in the Particular Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Engineer's notification recording the agreement of both Parties on such fulfilment and instructing to commence the Work is received by the Contractor:
- (a) Signature of the Contract Agreement by both Parties, and if required, approval of the Contract by relevant authorities of the Country;
  - (b) Delivery to the Contractor of reasonable evidence of the Employer's financial arrangements (under Sub-Clause 2.4 [Employer's Financial Arrangements]);
  - (c) Except if otherwise specified in the Contract Data, effective access to and possession of the Site given to the Contractor together with such permission(s) under (a) of Sub-Clause 1.13 [Compliance with Laws] as required for the commencement of the Works,
- If the said Engineer's instruction is not received by the Contractor within 180 days from his receipt of the Letter of Acceptance, the Contractor shall be entitled to terminate the Contract under Sub-Clause 16.2 [Termination by Contractor].
- The Contractor shall commence the execution of the Works as soon as is reasonably practicable after the Commencement Date, and shall then proceed with the Works with due expedition and without delay.
- 8.2 Time for Completion** The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:
- (a) Achieving the passing of the Tests on Completion; and
  - (b) Completing all work which is stated in the Contract as being required for the Works or Section to be considered to be completed for the purposes

of taking-over under Sub-Clause 10.1 [Taking Over of the Works and Sections].

### **8.3 Programme**

The Contractor shall submit a detailed time programme to the Engineer within 28 days after receiving the notice under Sub-Clause 8.1 [Commencement of Works]. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Each programme shall include:

- (a) The order in which the Contractor intends to carry out the Works, including the anticipated timing of each stage of design (if any), Contractor's Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing;
- (b) Each of these stages for work by each nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]);
- (c) The sequence and timing of inspections and tests specified in the Contract; and
- (d) A supporting report which includes:
  - (i) A general description of the methods which the Contractor intends to adopt, and of the major stages, in the execution of the Works; and
  - (ii) Details showing the Contractor's reasonable estimate of the number of each class of Contractor's Personnel and of each type of Contractor's Equipment, required on the Site for each major stage.

Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.

The Contractor shall promptly give notice to the Engineer of specific probable future events or circumstances which may adversely affect the work, increase the Contract Price or delay the execution of the Works. The Engineer may require the Contractor to submit an estimate of the anticipated effect of the future event or circumstances, and/or a proposal under Sub-Clause 13.3 [Variation Procedure].

If, at any time, the Engineer gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the Engineer in accordance with this Sub-Clause.

### **8.4 Extension of Time for Completion**

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) A Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract;
- (b) A cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions;
- (c) Exceptionally adverse climatic conditions;

- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions; or
- (e) Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's Personnel, or the Employer's other contractors.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

#### **8.5 Delays Caused by Authorities**

If the following conditions apply, namely:

- (a) The Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country;
- (b) These authorities delay or disrupt the Contractor's work; and
- (c) The delay or disruption was Unforeseeable,

then this delay or disruption will be considered as a cause of delay under subparagraph (b) of Sub-Clause 8.4 [Extension of Time for Completion].

#### **8.6 Rate of Progress**

If, at any time:

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

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

Unless the Engineer notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel and/or Goods, at the risk and cost of the Contractor. If these revised methods cause the Employer to incur additional costs, the Contractor shall subject to notice under Sub-Clause 2.5 [Employer's Claims] pay these costs to the Employer, in addition to delay damages (if any) under Sub-Clause 8.7 below.

Additional costs of revised methods including acceleration measures, instructed by the Engineer to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the Employer, without generating, however, any other additional payment benefit to the Contractor.

#### **8.7 Delay Damages**

If the Contractor fails to comply with Sub-Clause 8.2 [Time for Completion], the Contractor shall subject to notice under Sub-Clause 2.5 [Employer's Claims] pay delay damages to the Employer for this default. These delay damages shall be the sum stated in the Contract Data, which shall be paid for every day which shall elapse between the relevant Time for Completion and the date stated in the Taking-Over Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages (if any) stated in the Contract Data.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 15.2 [Termination by Employer] prior to completion of the Works. These damages shall not relieve the Contractor from his obligation to complete the Works, or from any other duties, obligations or responsibilities which he may have under the Contract.

**8.8 Suspension of Work** The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works. During such suspension, the Contractor shall protect, store and secure such part or the Works against any deterioration, loss or damage.

The Engineer may also notify the cause for the suspension. If and to the extent that the cause is notified and is the responsibility of the Contractor, the following Sub-Clauses 8.9, 8.10 and 8.11 shall not apply.

**8.9 Consequences of Suspension** If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

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

**8.10 Payment for Plant and Materials in Event of Suspension** The Contractor shall be entitled to payment of the value (as at the date of suspension) of Plant and/or Materials which have not been delivered to Site, if:

- (a) The work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days; and
- (b) The Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

**8.11 Prolonged Suspension** If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].

**8.12 Resumption of Work** After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Plant and Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Plant or Materials, which has occurred during the suspension after receiving from the Engineer an instruction to this effect under Clause 13 [Variations and Adjustments].

## 9. Tests on Completion

### 9.1 Contractor's Obligations

The Contractor shall carry out the Tests on Completion in accordance with this Clause and Sub-Clause 7.4 [Testing], after providing the documents in accordance with sub-paragraph (d) of Sub-Clause 4.1 [Contractor's General Obligations].

The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion. Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.

In considering the results of the Tests on Completion, the Engineer shall make allowances for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works. As soon as the Works, or a Section, have passed any Tests on Completion, the Contractor shall submit a certified report of the results of these Tests to the Engineer.

### 9.2 Delayed Tests

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

If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.

If the Contractor fails to carry out the Tests on Completion within the period of 21 days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

### 9.3 Retesting

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Engineer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

### 9.4 Failure to Pass Tests on Completion

If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Engineer shall be entitled to:

- (a) Order further repetition of Tests on Completion under Sub-Clause 9.3 [Retesting];
- (b) If the failure deprives the Employer of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the Employer shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 11.4 [Failure to Remedy Defects]; or
- (c) Issue a Taking-Over Certificate, if the Employer so requests.

In the event of sub-paragraph (c), the Contractor shall proceed in accordance with all other obligations under the Contract, and the Contract Price shall be reduced by such amount as shall be appropriate to cover the reduced value to the Employer as a result of this failure. Unless the relevant reduction for this failure is stated (or its method of calculation is defined) in the Contract, the

Employer may require the reduction to be (i) agreed by both Parties (in full satisfaction of this failure only) and paid before this Taking-Over Certificate is issued, or (ii) determined and paid under Sub-Clause 2.5 [Employer's Claims] and Sub-Clause 3.5 [Determinations].

## **10. Employer's Taking Over**

- 10.1 Taking Over of the Works and Sections** Except as stated in Sub-Clause 9.4 [Failure to Pass Tests on Completion], the Works shall be taken over by the Employer when (i) the Works have been completed in accordance with the Contract, including the matters described in Sub-Clause 8.2 [Time for Completion] and except as allowed in sub-paragraph (a) below, and (ii) a Taking-Over Certificate for the Works has been issued, or is deemed to have been issued in accordance with this Sub-Clause.

The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections, the Contractor may similarly apply for a Taking-Over Certificate for each Section.

The Engineer shall, within 28 days after receiving the Contractor's application:

- (a) Issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or
- (b) Reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days, and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.

- 10.2 Taking Over of Parts of the Works** The Engineer may, at the sole discretion of the Employer, issue a Taking-Over Certificate for any part of the Permanent Works.

The Employer shall not use any part of the Works (other than as a temporary measure which is either specified in the Contract or agreed by both Parties) unless and until the Engineer has issued a Taking-Over Certificate for this part. However, if the Employer does use any part of the Works before the Taking-Over Certificate is issued:

- (a) The part which is used shall be deemed to have been taken over as from the date on which it is used;
- (b) The Contractor shall cease to be liable for the care of such part as from this date, when responsibility shall pass to the Employer, and
- (c) If requested by the Contractor, the Engineer shall issue a Taking-Over Certificate for this part.

After the Engineer has issued a Taking-Over Certificate for a part of the Works, the Contractor shall be given the earliest opportunity to take such steps as may

be necessary to carry out any outstanding Tests on Completion. The Contractor shall carry out these Tests on Completion as soon as practicable before the expiry date of the relevant Defects Notification Period.

If the Contractor incurs Cost as a result of the Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor, the Contractor shall (i) give notice to the Engineer and (ii) be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to payment of any such Cost plus profit, which shall be included in the Contract Price. After receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this Cost and profit.

If a Taking-Over Certificate has been issued for a part of the Works (other than a Section), the delay damages thereafter for completion of the remainder of the Works shall be reduced. Similarly, the delay damages for the remainder of the Section (if any) in which this part is included shall also be reduced. For any period of delay after the date stated in this Taking-Over Certificate, the proportional reduction in these delay damages shall be calculated as the proportion which the value of the part so certified bears to the value of the Works or Section (as the case may be) as a whole. The Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these proportions. The provisions of this paragraph shall only apply to the daily rate of delay damages under Sub-Clause 8.7 [Delay Damages], and shall not affect the maximum amount of these damages.

### **10.3 Interference with Tests on Completion**

If the Contractor is prevented, for more than 14 days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.

The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.

If the Contractor suffers delay and/or incurs Cost as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

### **10.4 Surfaces Requiring Reinstatement**

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

## 11. Defects Liability

- 11.1 Completion of Outstanding Work and Remedying Defects**
- In order that the Works and Contractor's Documents, and each Section, shall be in the condition required by the Contract (fair wear and tear excepted) by the expiry date of the relevant Defects Notification Period or as soon as practicable thereafter, the Contractor shall:
- (a) Complete any work which is outstanding on the date stated in a Taking-Over Certificate, within such reasonable time as is instructed by the Engineer; and
  - (b) Execute all work required to remedy defects or damage, as may be notified by (or on behalf of) the Employer on or before the expiry date of the Defects Notification Period for the Works or Section (as the case may be).
- If a defect appears or damage occurs, the Contractor shall be notified accordingly, by (or on behalf of) the Employer.
- 11.2 Cost of Remedying Defects**
- All work referred to in sub-paragraph (b) of Sub-Clause 11.1 [Completion of Outstanding Work and Remedying Defects] shall be executed at the risk and cost of the Contractor, if and to the extent that the work is attributable to:
- (a) Any design for which the Contractor is responsible;
  - (b) Plant, Materials or workmanship not being in accordance with the Contract; or
  - (c) Failure by the Contractor to comply with any other obligation.
- If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the Employer, and Sub-Clause 13.3 [Variation Procedure] shall apply.
- 11.3 Extension of Defects Notification Period**
- The Employer shall be entitled subject to Sub-Clause 2.5 [Employer's Claims] to an extension of the Defects Notification Period for the Works or a Section if and to the extent that the Works, Section or a major item of Plant (as the case may be, and after taking over) cannot be used for the purposes for which they are intended by reason of a defect or by reason of damage attributable to the Contractor. However, a Defects Notification Period shall not be extended by more than two years.
- If delivery and/or erection of Plant and/or Materials was suspended under Sub-Clause 8.8 [Suspension of Work] or Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work], the Contractor's obligations under this Clause shall not apply to any defects or damage occurring more than two years after the Defects Notification Period for the Plant and/or Materials would otherwise have expired.
- 11.4 Failure to Remedy Defects**
- If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by (or on behalf of) the Employer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.
- If the Contractor fails to remedy the defect or damage by this notified date and this remedial work was to be executed at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Employer may (at his option):
- (a) Carry out the work himself or by others, in a reasonable manner and at the Contractor's cost, but the Contractor shall have no responsibility for this work; and the Contractor shall subject to Sub-Clause 2.5 [Employer's

Claims] pay to the Employer the costs reasonably incurred by the Employer in remedying the defect or damage;

- (b) Require the Engineer to agree or determine a reasonable reduction in the Contract Price in accordance with Sub-Clause 3.5 [Determinations]; or
- (c) If the defect or damage deprives the Employer of substantially the whole benefit of the Works or any major part of the Works, terminate the Contract as a whole, or in respect of such major part which cannot be put to the intended use. Without prejudice to any other rights, under the Contract or otherwise, the Employer shall then be entitled to recover all sums paid for the Works or for such part (as the case may be), plus financing costs and the cost of dismantling the same, clearing the Site and returning Plant and Materials to the Contractor.

**11.5 Removal of Defective Work**

If the defect or damage cannot be remedied expeditiously on the Site and the Employer gives consent, the Contractor may remove from the Site for the purposes of repair such items of Plant as are defective or damaged. This consent may require the Contractor to increase the amount of the Performance Security by the full replacement cost of these items, or to provide other appropriate security.

**11.6 Further Tests**

If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 28 days after the defect or damage is remedied.

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

**11.7 Right of Access**

Until the Performance Certificate has been issued, the Contractor shall have such right of access to the Works as is reasonably required in order to comply with this Clause, except as may be inconsistent with the Employer's reasonable security restrictions.

**11.8 Contractor to Search**

The Contractor shall, if required by the Engineer, search for the cause of any defect, under the direction of the Engineer. Unless the defect is to be remedied at the cost of the Contractor under Sub-Clause 11.2 [Cost of Remedying Defects], the Cost of the search plus profit shall be agreed or determined by the Engineer in accordance with Sub-Clause 3.5 [Determinations] and shall be included in the Contract Price.

**11.9 Performance Certificate**

Performance of the Contractor's obligations shall not be considered to have been completed until the Engineer has issued the Performance Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.

Only the Performance Certificate shall be deemed to constitute acceptance of the Works.

- 11.10 Unfulfilled Obligations** After the Performance Certificate has been issued, each Party shall remain liable for the fulfilment of any obligation which remains unperformed at that time. For the purposes of determining the nature and extent of unperformed obligations, the Contract shall be deemed to remain in force.
- 11.11 Clearance of Site** Upon receiving the Performance Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.
- If all these items have not been removed within 28 days after receipt by the Contractor of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.
- Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the Employer's costs, the Contractor shall pay the outstanding balance to the Employer.

## **12. Measurement and Evaluation**

- 12.1 Works to be Measured** The Works shall be measured, and valued for payment, in accordance with this Clause. The Contractor shall show in each application under Sub-Clauses 14.3 [Application for Interim Payment Certificates], 14.10 [Statement on Completion] and 14.11 [Application for Final Payment Certificate] the quantities and other particulars detailing the amounts which he considers to be entitled under the Contract.
- Whenever the Engineer requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's Representative, who shall:
- (a) Promptly either attend or send another qualified representative to assist the Engineer in making the measurement; and
  - (b) Supply any particulars requested by the Engineer.
- If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Engineer shall be accepted as accurate.
- Except as otherwise stated in the Contract, wherever any Permanent Works are to be measured from records, these shall be prepared by the Engineer. The Contractor shall, as and when requested, attend to examine and agree the records with the Engineer, and shall sign the same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.
- If the Contractor examines and disagrees the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Engineer of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Engineer shall review the records and either confirm or vary them and certify the payment of the undisputed part. If the Contractor does not so give notice to the Engineer within 14 days after being requested to examine the records, they shall be accepted as accurate.
- 12.2 Method of Measurement** Except as otherwise stated in the Contract and notwithstanding local practice:
- (a) Measurement shall be made of the net actual quantity of each item of the Permanent Works; and

- (b) The method of measurement shall be in accordance with the Bill of Quantities or other applicable Schedules.

### 12.3 Evaluation

Except as otherwise stated in the Contract, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the Contract Price by evaluating each item of work, applying the measurement agreed or determined in accordance with the above Sub-Clauses 12.1 and 12.2 and the appropriate rate or price for the item.

For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work.

Any item of work included in the Bill of Quantities for which no rate or price was specified shall be considered as included in other rates and prices in the Bill of Quantities and will not be paid for separately.

However, a new rate or price shall be appropriate for an item of work if:

- (a)
- (i) The measured quantity of the item is changed by more than 25% from the quantity of this item in the Bill of Quantities or other Schedule;
  - (ii) This change in quantity multiplied by such specified rate for this item exceeds 0.25% of the Accepted Contract Amount;
  - (iii) This change in quantity directly changes the Cost per unit quantity of this item by more than 1%; and
  - (iv) This item is not specified in the Contract as a "fixed rate item";

or

- (b)
- (i) The work is instructed under Clause 13 [Variations and Adjustments];
  - (ii) No rate or price is specified in the Contract for this item; and
  - (iii) No specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.

Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in sub-paragraph (a) and/or (b), as applicable. If no rates or prices are relevant for the derivation of a new rate or price, it shall be derived from the reasonable Cost of executing the work, together with profit, taking account of any other relevant matters.

Until such time as an appropriate rate or price is agreed or determined, the Engineer shall determine a provisional rate or price for the purposes of Interim Payment Certificates as soon as the concerned work commences.

### 12.4 Omissions

Whenever the omission of any work forms part (or all) of a Variation, the value of which has not been agreed, if:

- (a) The Contractor will incur (or has incurred) cost which, if the work had not been omitted, would have been deemed to be covered by a sum forming part of the Accepted Contract Amount;

- (b) The omission of the work will result (or has resulted) in this sum not forming part of the Contract Price; and
- (c) This cost is not deemed to be included in the evaluation of any substituted work;

then the Contractor shall give notice to the Engineer accordingly, with supporting particulars. Upon receiving this notice, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

### **13. Variations and Adjustments**

#### **13.1 Right to Vary**

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (i) the Contractor cannot readily obtain the Goods required for the Variation, or (ii) such Variation triggers a substantial change in the sequence or progress of the Works. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each Variation may include:

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

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

#### **13.2 Value Engineering**

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the Employer of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the Employer of the completed Works, or (iv) otherwise be of benefit to the Employer.

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

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

- (a) The Contractor shall design this part;
- (b) Sub-paragraphs (a) to (d) of Sub-Clause 4.1 [Contractor's General Obligations] shall apply; and

- (c) If this change results in a reduction in the contract value of this part, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine a fee, which shall be included in the Contract Price. This fee shall be half (50%) of the difference between the following amounts:
  - (i) Such reduction in contract value, resulting from the change, excluding adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost]; and
  - (ii) The reduction (if any) in the value to the Employer of the varied works, taking account of any reductions in quality, anticipated life or operational efficiencies.

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

### **13.3 Variation Procedure**

If the Engineer requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) A description of the proposed work to be performed and a programme for its execution;
- (b) The Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion; and
- (c) The Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Engineer instructs or approves otherwise in accordance with this Clause.

### **13.4 Payment in Applicable Currencies**

If the Contract provides for payment of the Contract Price in more than one currency, then whenever an adjustment is agreed, approved or determined as stated above, the amount payable in each of the applicable currencies shall be specified. For this purpose, reference shall be made to the actual or expected currency proportions of the Cost of the varied work, and to the proportions of various currencies specified for payment of the Contract Price.

### **13.5 Provisional Sums**

Each Provisional Sum shall only be used, in whole or in part, in accordance with the Engineer's instructions, and the Contract Price shall be adjusted accordingly. The total sum paid to the Contractor shall include only such amounts, for the work, supplies or services to which the Provisional Sum relates, as the Engineer shall have instructed. For each Provisional Sum, the Engineer may instruct:

- (a) Work to be executed (including Plant, Materials or services to be supplied) by the Contractor and valued under Sub-Clause 13.3 [Variation Procedure]; and/or

- (b) Plant, Materials or services to be purchased by the Contractor, from a nominated Subcontractor (as defined in Clause 5 [Nominated Subcontractors]) or otherwise; and for which there shall be included in the Contract Price:
  - (i) The actual amounts paid (or due to be paid) by the Contractor; and
  - (ii) A sum for overhead charges and profit, calculated as a percentage of these actual amounts by applying the relevant percentage rate (if any) stated in the appropriate Schedule. If there is no such rate, the percentage rate stated in the Contract Data shall be applied.

The Contractor shall, when required by the Engineer, produce quotations, invoices, vouchers and accounts or receipts in substantiation.

### 13.6 Daywork

For work of a minor or incidental nature, the Engineer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the Daywork Schedule included in the Contract, and the following procedure shall apply. If a Daywork Schedule is not included in the Contract, this Sub-Clause shall not apply.

Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Engineer accurate statements in duplicate which shall include the following details of the resources used in executing the previous day's work:

- (a) The names, occupations and time of Contractor's Personnel;
- (b) The identification, type and time of Contractor's Equipment and Temporary Works; and
- (c) The quantities and types of Plant and Materials used.

One copy of each statement will, if correct, or when agreed, be signed by the Engineer and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the Engineer, prior to their inclusion in the next Statement under Sub-Clause 14.3 [Application for Interim Payment Certificates].

### 13.7 Adjustments for Changes in Legislation

The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.

If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

### 13.8 Adjustments for Changes in Cost

In this Sub-Clause, “table of adjustment data” means the completed table of adjustment data for local and foreign currencies included in the Schedules. If there is no such table of adjustment data, this Sub-Clause shall not apply.

If this Sub-Clause applies, the amounts payable to the Contractor shall be adjusted for rises or falls in the cost of labour, Goods and other inputs to the Works, by the addition or deduction of the amounts determined by the formulae prescribed in this Sub-Clause. To the extent that full compensation for any rise or fall in Costs is not covered by the provisions of this or other Clauses, the Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of other rises and falls in costs.

The adjustment to be applied to the amount otherwise payable to the Contractor, as valued in accordance with the appropriate Schedule and certified in Payment Certificates, shall be determined from formulae for each of the currencies in which the Contract Price is payable. No adjustment is to be applied to work valued on the basis of Cost or current prices. The formulae shall be of the following general type:

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

“ $P_n$ ” is the adjustment multiplier to be applied to the estimated contract value in the relevant currency of the work carried out in period “ $n$ ”, this period being a month unless otherwise stated in the 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

“ $L_o$ ”, “ $E_o$ ”, “ $M_o$ ”, ... are the base cost indices or reference prices, expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the Base Date.

The cost indices or reference prices stated in the table of adjustment data shall be used. If their source is in doubt, it shall be determined by the Engineer. For this purpose, reference shall be made to the values of the indices at stated dates for the purposes of clarification of the source; although these dates (and thus these values) may not correspond to the base cost indices.

In cases where the “currency of index” is not the relevant currency of payment, each index shall be converted into the relevant currency of payment at the selling rate, established by the central bank of the Country, of this relevant currency on the above date for which the index is required to be applicable.

Until such time as each current cost index is available, the Engineer shall determine a provisional index for the issue of Interim Payment Certificates. When a current cost index is available, the adjustment shall be recalculated accordingly.

If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price, whichever is more favourable to the Employer.

The weightings (coefficients) for each of the factors of cost stated in the table(s) of adjustment data shall only be adjusted if they have been rendered unreasonable, unbalanced or inapplicable, as a result of Variations.

## **14. Contract Price and Payment**

### **14.1 The Contract Price**

Unless otherwise stated in the Particular Conditions:

- (a) The Contract Price shall be agreed or determined under Sub-Clause 12.3 [Evaluation] and be subject to adjustments in accordance with the Contract;
- (b) The Contractor shall pay all taxes, duties and fees required to be paid by him under the Contract, and the Contract Price shall not be adjusted for any of these costs except as stated in Sub-Clause 13.7 [Adjustments for Changes in Legislation];
- (c) Any quantities which may be set out in the Bill of Quantities or other Schedule are estimated quantities and are not to be taken as the actual and correct quantities:
  - (i) Of the Works which the Contractor is required to execute, or
  - (ii) For the purposes of Clause 12 [Measurement and Evaluation]; and
- (d) The Contractor shall submit to the Engineer, within 28 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Engineer may take account of the breakdown when preparing Payment Certificates, but shall not be bound by it.

Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts therefor, imported by the Contractor for the sole purpose of executing the Contract shall be exempt from the payment of import duties and taxes upon importation.

### **14.2 Advance Payment**

The Employer shall make an advance payment, as an interest-free loan for mobilisation and cash flow support, when the Contractor submits a guarantee in accordance with this Sub-Clause. The total advance payment, the number and timing of instalments (if more than one), and the applicable currencies and proportions, shall be as stated in the Contract Data.

Unless and until the Employer receives this guarantee, or if the total advance payment is not stated in the Contract Data, this Sub-Clause shall not apply.

The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate for the advance payment or its first instalment after receiving a Statement (under Sub-Clause 14.3 [Application for Interim Payment Certificates]) and after the Employer receives (i) the Performance Security in accordance with Sub-Clause 4.2 [Performance Security] and (ii) a guarantee in amounts and currencies equal to the advance payment. This guarantee shall be issued by a

reputable bank or financial institution selected by the Contractor and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer.

The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount shall be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.

Unless stated otherwise in the Contract Data, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Engineer in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates], as follows:

- (a) Deductions shall commence in the next interim Payment Certificate following that in which the total of all certified interim payments (excluding the advance payment and deductions and repayments of retention) exceeds 30 percent (30%) of the Accepted Contract Amount less Provisional Sums; and
- (b) Deductions shall be made at the amortisation rate stated in the Contract Data of the amount of each Interim Payment Certificate (excluding the advance payment and deductions for its repayments as well as deductions for retention money) in the currencies and proportions of the advance payment until such time as the advance payment has been repaid; provided that the advance payment shall be completely repaid prior to the time when 90 percent (90%) of the Accepted Contract Amount less Provisional Sums has been certified for payment.

If the advance payment has not been repaid prior to the issue of the Taking-Over Certificate for the Works or prior to termination under Clause 15 [Termination by Employer], Clause 16 [Suspension and Termination by Contractor] or Clause 19 [Force Majeure] (as the case may be), the whole of the balance then outstanding shall immediately become due and in case of termination under Clause 15 [Termination by Employer], except for Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], payable by the Contractor to the Employer.

### **14.3 Application for Interim Payment Certificates**

The Contractor shall submit a Statement in six copies to the Engineer after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the report on the progress during this month in accordance with Sub-Clause 4.21 [Progress Reports].

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

- (a) The estimated contract value of the Works executed and the Contractor's Documents produced up to the end of the month (including Variations but excluding items described in sub-paragraphs (b) to (g) below);
- (b) Any amounts to be added and deducted for changes in legislation and changes in cost, in accordance with Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost];
- (c) Any amount to be deducted for retention, calculated by applying the percentage of retention stated in the Contract Data to the total of the above

amounts, until the amount so retained by the Employer reaches the limit of Retention Money (if any) stated in the Contract Data;

- (d) Any amounts to be added for the advance payment and (if more than one instalment) and to be deducted for its repayments in accordance with Sub-Clause 14.2 [Advance Payment];
- (e) Any amounts to be added and deducted for Plant and Materials in accordance with Sub-Clause 14.5 [Plant and Materials intended for the Works];
- (f) Any other additions or deductions which may have become due under the Contract or otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- (g) The deduction of amounts certified in all previous Payment Certificates.

#### **14.4 Schedule of Payments**

If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:

- (a) The instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates];
- (b) Sub-Clause 14.5 [Plant and Materials intended for the Works] shall not apply; and
- (c) If these instalments are not defined by reference to the actual progress achieved in executing the Works, and if actual progress is found to be less or more than that on which this schedule of payments was based, then the Engineer may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine revised instalments, which shall take account of the extent to which progress is less or more than that on which the instalments were previously based.

If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

#### **14.5 Plant and Materials intended for the Works**

If this Sub-Clause applies, Interim Payment Certificates shall include, under sub-paragraph (e) of Sub-Clause 14.3, (i) an amount for Plant and Materials which have been sent to the Site for incorporation in the Permanent Works, and (ii) a reduction when the contract value of such Plant and Materials is included as part of the Permanent Works under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates].

If the lists referred to in sub-paragraphs (b)(i) or (c)(i) below are not included in the Schedules, this Sub-Clause shall not apply.

The Engineer shall determine and certify each addition if the following conditions are satisfied:

- (a) The Contractor has:
  - (i) Kept satisfactory records (including the orders, receipts, Costs and use of Plant and Materials) which are available for inspection; and
  - (ii) Submitted a statement of the Cost of acquiring and delivering the Plant and Materials to the Site, supported by satisfactory evidence;

and either:

- (b) The relevant Plant and Materials:
  - (i) Are those listed in the Schedules for payment when shipped;
  - (ii) Have been shipped to the Country, en route to the Site, in accordance with the Contract; and
  - (iii) Are described in a clean shipped bill of lading or other evidence of shipment, which has been submitted to the Engineer together with evidence of payment of freight and insurance, any other documents reasonably required, and a bank guarantee in a form and issued by an entity approved by the Employer in amounts and currencies equal to the amount due under this Sub-Clause: this guarantee may be in a similar form to the form referred to in Sub-Clause 14.2 [Advance Payment] and shall be valid until the Plant and Materials are properly stored on Site and protected against loss, damage or deterioration;

or

- (c) The relevant Plant and Materials:
  - (i) Are those listed in the Schedules for payment when delivered to the Site; and
  - (ii) Have been delivered to and are properly stored on the Site, are protected against loss, damage or deterioration, and appear to be in accordance with the Contract.

The additional amount to be certified shall be the equivalent of eighty percent (80%) of the Engineer's determination of the cost of the Plant and Materials (including delivery to Site), taking account of the documents mentioned in this Sub-Clause and of the contract value of the Plant and Materials.

The currencies for this additional amount shall be the same as those in which payment will become due when the contract value is included under sub-paragraph (a) of Sub-Clause 14.3 [Application for Interim Payment Certificates]. At that time, the Payment Certificate shall include the applicable reduction which shall be equivalent to, and in the same currencies and proportions as, this additional amount for the relevant Plant and Materials.

#### **14.6 Issue of Interim Payment Certificates**

No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, deliver to the Employer and to the Contractor an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Engineer on the Statement if any.

However, prior to issuing the Taking-Over Certificate for the Works, the Engineer shall not be bound to issue an Interim Payment Certificate in an amount which would (after retention and other deductions) be less than the minimum amount of Interim Payment Certificates (if any) stated in the Contract Data. In this event, the Engineer shall give notice to the Contractor accordingly.

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

- (a) If anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and/or

- (b) If the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by the Engineer, the value of this work or obligation may be withheld until the work or obligation has been performed.

The Engineer may in any Payment Certificate make any correction or modification that should properly be made to any previous Payment Certificate. A Payment Certificate shall not be deemed to indicate the Engineer's acceptance, approval, consent or satisfaction.

#### **14.7 Payment**

The Employer shall pay to the Contractor:

- (a) The first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;
- (b) The amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the amount shown on any statement submitted by the Contractor within 14 days after such statement is submitted, any discrepancy being rectified in the next payment to the Contractor; and
- (c) The amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate; or, at a time when the Bank's loan or credit (from which part of the payments to the Contractor is being made) is suspended, the undisputed amount shown in the Final Statement within 56 days after the date of notification of the suspension in accordance with Sub-Clause 16.2 [Termination by Contractor].

Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (for this currency) specified in the Contract.

- 14.8 Delayed Payment** If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay. This period shall be deemed to commence on the date for payment specified in Sub-Clause 14.7 [Payment], irrespective (in the case of its sub-paragraph (b)) of the date on which any Interim Payment Certificate is issued.

Unless otherwise stated in the Particular Conditions, these financing charges shall be calculated at the annual rate of three percentage points above the discount rate of the central bank in the country of the currency of payment, or if not available, the interbank offered rate, and shall be paid in such currency.

The Contractor shall be entitled to this payment without formal notice or certification, and without prejudice to any other right or remedy.

- 14.9 Payment of Retention Money** When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Engineer for payment to the Contractor. If a Taking-Over Certificate is issued for a Section or part of the Works, a proportion of the Retention Money shall be certified and paid. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section or part, by the estimated final Contract Price.

Promptly after the latest of the expiry dates of the Defects Notification Periods, the outstanding balance of the Retention Money shall be certified by the Engineer for

payment to the Contractor. If a Taking-Over Certificate was issued for a Section, a proportion of the second half of the Retention Money shall be certified and paid promptly after the expiry date of the Defects Notification Period for the Section. This proportion shall be half (50%) of the proportion calculated by dividing the estimated contract value of the Section by the estimated final Contract Price.

However, if any work remains to be executed under Clause 11 [Defects Liability], the Engineer shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

When calculating these proportions, no account shall be taken of any adjustments under Sub-Clause 13.7 [Adjustments for Changes in Legislation] and Sub-Clause 13.8 [Adjustments for Changes in Cost].

Unless otherwise stated in the Particular Conditions, when the Taking-Over Certificate has been issued for the Works and the first half of the Retention Money has been certified for payment by the Engineer, the Contractor shall be entitled to substitute a guarantee, in the form annexed to the Particular Conditions or in another form approved by the Employer and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money. The Contractor shall ensure that the guarantee is in the amounts and currencies of the second half of the Retention Money and is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects, as specified for the Performance Security in Sub-Clause 4.2. On receipt by the Employer of the required guarantee, the Engineer shall certify and the Employer shall pay the second half of the Retention Money. The release of the second half of the Retention Money against a guarantee shall then be in lieu of the release under the second paragraph of this Sub-Clause. The Employer shall return the guarantee to the Contractor within 21 days after receiving a copy of the Performance Certificate.

If the Performance Security required under Sub-Clause 4.2 is in the form of a demand guarantee, and the amount guaranteed under it when the Taking-Over Certificate is issued is more than half of the Retention Money, then the Retention Money guarantee will not be required. If the amount guaranteed under the Performance Security when the Taking-Over Certificate is issued is less than half of the Retention Money, the Retention Money guarantee will only be required for the difference between half of the Retention Money and the amount guaranteed under the Performance Security.

#### **14.10 Statement at Completion**

Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:

- (a) The value of all work done in accordance with the Contract up to the date stated in the Taking-Over Certificate for the Works;
- (b) Any further sums which the Contractor considers to be due; and
- (c) An estimate of any other amounts which the Contractor considers will become due to him under the Contract. Estimated amounts shall be shown separately in this Statement at completion.

The Engineer shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

- 14.11 Application for Final Payment Certificate**
- Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer:
- (a) The value of all work done in accordance with the Contract; and
  - (b) Any further sums which the Contractor considers to be due to him under the Contract or otherwise.
- If the Engineer disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Engineer may reasonably require within 28 days from receipt of said draft and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the Engineer the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".
- However if, following discussions between the Engineer and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Engineer shall deliver to the Employer (with a copy to the Contractor) an Interim Payment Certificate for the agreed parts of the draft final statement. Thereafter, if the dispute is finally resolved under Sub-Clause 20.4 [Obtaining Dispute Board's Decision] or Sub-Clause 20.5 [Amicable Settlement], the Contractor shall then prepare and submit to the Employer (with a copy to the Engineer) a Final Statement.
- 14.12 Discharge**
- When submitting the Final Statement, the Contractor shall submit a discharge which confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.
- 14.13 Issue of Final Payment Certificate**
- Within 28 days after receiving the Final Statement and discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall deliver, to the Employer and to the Contractor, the Final Payment Certificate which shall state:
- (a) The amount which he fairly determines is finally due; and
  - (b) After giving credit to the Employer for all amounts previously paid by the Employer and for all sums to which the Employer is entitled, the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer, as the case may be.
- If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days, the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.
- 14.14 Cessation of Employer's Liability**
- The Employer shall not be liable to the Contractor for any matter or thing under or in connection with the Contract or execution of the Works, except to the extent that the Contractor shall have included an amount expressly for it:
- (a) In the Final Statement; and also
  - (b) (Except for matters or things arising after the issue of the Taking-Over Certificate for the Works) in the Statement at completion described in Sub-Clause 14.10 [Statement at Completion].

However, this Sub-Clause shall not limit the Employer's liability under his indemnification obligations, or the Employer's liability in any case of fraud, deliberate default or reckless misconduct by the Employer.

#### **14.15 Currencies of Payment**

The Contract Price shall be paid in the currency or currencies named in the Schedule of Payment Currencies. If more than one currency is so named, payments shall be made as follows:

- (a) If the Accepted Contract Amount was expressed in Local Currency only:
  - (i) The proportions or amounts of the Local and Foreign Currencies, and the fixed rates of exchange to be used for calculating the payments, shall be as stated in the Schedule of Payment Currencies, except as otherwise agreed by both Parties;
  - (ii) Payments and deductions under Sub-Clause 13.5 [Provisional Sums] and Sub-Clause 13.7 [Adjustments for Changes in Legislation] shall be made in the applicable currencies and proportions; and
  - (iii) Other payments and deductions under sub-paragraphs (a) to (d) of Sub-Clause 14.3 [Application for Interim Payment Certificates] shall be made in the currencies and proportions specified in sub-paragraph (a)(i) above;
- (b) Payment of the damages specified in the Contract Data, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- (c) Other payments to the Employer by the Contractor shall be made in the currency in which the sum was expended by the Employer, or in such currency as may be agreed by both Parties;
- (d) If any amount payable by the Contractor to the Employer in a particular currency exceeds the sum payable by the Employer to the Contractor in that currency, the Employer may recover the balance of this amount from the sums otherwise payable to the Contractor in other currencies; and
- (e) If no rates of exchange are stated in the Schedule of Payment Currencies, they shall be those prevailing on the Base Date and determined by the central bank of the Country.

### **15. Termination by Employer**

**15.1 Notice to Correct** If the Contractor fails to carry out any obligation under the Contract, the Engineer may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

**15.2 Termination by Employer** The Employer shall be entitled to terminate the Contract if the Contractor:

- (a) Fails to comply with Sub-Clause 4.2 [Performance Security] or with a notice under Sub-Clause 15.1 [Notice to Correct];
- (b) Abandons the Works or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;
- (c) Without reasonable excuse fails:
  - (i) To proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension]; or

- (ii) To comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it;
- (d) Subcontracts the whole of the Works or assigns the Contract without the required agreement;
- (e) Becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events; or
- (f) Gives or offers to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
  - (i) For doing or forbearing to do any action in relation to the Contract; or
  - (ii) For showing or forbearing to show favour or disfavour to any person in relation to the Contract,

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.

The Employer's election to terminate the Contract shall not prejudice any other rights of the Employer, under the Contract or otherwise.

The Contractor shall then leave the Site and deliver any required Goods, all Contractor's Documents, and other design documents made by or for him, to the Engineer. However, the Contractor shall use his best efforts to comply immediately with any reasonable instructions included in the notice (i) for the assignment of any subcontract, and (ii) for the protection of life or property or for the safety of the Works.

After termination, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.

The Employer shall then give notice that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

**15.3 Valuation at Date of Termination** As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of the Works, Goods and Contractor's Documents, and any other sums due to the Contractor for work executed in accordance with the Contract.

**15.4 Payment after Termination** After a notice of termination under Sub-Clause 15.2 [Termination by Employer] has taken effect, the Employer may:

- (a) Proceed in accordance with Sub-Clause 2.5 [Employer's Claims];
- (b) Withhold further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delay in completion (if any), and all other costs incurred by the Employer, have been established; and/or
- (c) Recover from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works, after allowing for any sum due to the Contractor under Sub-Clause 15.3 [Valuation at Date of Termination]. After recovering any such losses, damages and extra costs, the Employer shall pay any balance to the Contractor.

**15.5 Employer's Entitlement to Termination for Convenience**

The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor or to avoid a termination of the Contract by the Contractor under Clause 16.2 [Termination by Contractor].

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

**15.6 Corrupt or Fraudulent Practices**

If the Employer determines, based on reasonable evidence, that the Contractor has engaged in corrupt, fraudulent, collusive or coercive practices, in competing for or in executing the Contract, then the Employer may, after giving 14 days notice to the Contractor, terminate the Contract and expel him from the Site, and the provisions of Clause 15 shall apply as if such termination had been made under Sub-Clause 15.2 [Termination by Employer].

Should any employee of the Contractor be determined, based on reasonable evidence, to have engaged in corrupt, fraudulent or coercive practice during the execution of the work then that employee shall be removed in accordance with Sub-Clause 6.9 [Contractor's Personnel].

For the purposes of this Sub-Clause:

- (i) "Corrupt practice" is the offering, giving, receiving or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) "Fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) "Collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) "Coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) "Obstructive practice" is

- (i) Deliberately destroying, falsifying, altering or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or
- (ii) Acts intended to materially impede the exercise of the Bank's inspection and audit rights provided for under Sub-Clause 1.15 [Inspections and Audits by the Bank].

## 16. Suspension and Termination by Contractor

### 16.1 Contractor's Entitlement to Suspend Work

If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.

Notwithstanding the above, if the Bank has suspended disbursements under the loan or credit from which payments to the Contractor are being made, in whole or in part, for the execution of the Works, and no alternative funds are available as provided for in Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor may by notice suspend work or reduce the rate of work at any time, but not less than 7 days after the Borrower having received the suspension notification from the Bank.

The Contractor's action shall not prejudice his entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Contractor subsequently receives such Payment Certificate, evidence or payment (as described in the relevant Sub-Clause and in the above notice) before giving a notice of termination, the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall give notice to the Engineer and shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to:

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

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

### 16.2 Termination by Contractor

The Contractor shall be entitled to terminate the Contract if:

- (a) The Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's Entitlement to Suspend

Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements];

- (b) The Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
- (c) The Contractor does not receive the amount due under an Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer's Claims]);
- (d) The Employer substantially fails to perform his obligations under the Contract in such manner as to materially and adversely affect the economic balance of the Contract and/or the ability of the Contractor to perform the Contract;
- (e) The Employer fails to comply with Sub-Clause 1.6 [Contract Agreement] or Sub-Clause 1.7 [Assignment];
- (f) A prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension]; or
- (g) The Employer becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against him, compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which (under applicable Laws) has a similar effect to any of these acts or events;
- (h) The Contractor does not receive the Engineer's instruction recording the agreement of both Parties on the fulfilment of the conditions for the Commencement of Works under Sub-Clause 8.1 [Commencement of Works].

In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of subparagraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

In the event the Bank suspends the loan or credit from which part or whole of the payments to the Contractor are being made, if the Contractor has not received the sums due to him upon expiration of the 14 days referred to in Sub-Clause 14.7 [Payment] for payments under Interim Payment Certificates, the Contractor may, without prejudice to the Contractor's entitlement to financing charges under Sub-Clause 14.8 [Delayed Payment], take one of the following actions, namely (i) suspend work or reduce the rate of work under Sub-Clause 16.1 above, or (ii) terminate the Contract by giving notice to the Employer, with a copy to the Engineer, such termination to take effect 14 days after the giving of the notice.

The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

### **16.3 Cessation of Work and Removal of Contractor's Equipment**

After a notice of termination under Sub-Clause 15.5 [Employer's Entitlement to Termination for Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 19.6 [Optional Termination, Payment and Release] has taken effect, the Contractor shall promptly:

- (a) Cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works;
- (b) Hand over Contractor's Documents, Plant, Materials and other work, for which the Contractor has received payment; and

- (c) Remove all other Goods from the Site, except as necessary for safety, and leave the Site.

**16.4 Payment on Termination**

After a notice of termination under Sub-Clause 16.2 [Termination by Contractor] has taken effect, the Employer shall promptly:

- (a) Return the Performance Security to the Contractor;
- (b) Pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release]; and
- (c) Pay to the Contractor the amount of any loss or damage sustained by the Contractor as a result of this termination.

## **17. Risk and Responsibility**

**17.1 Indemnities**

The Contractor shall indemnify and hold harmless the Employer, the Employer's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- (a) Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents; and
- (b) Damage to or loss of any property, real or personal (other than the Works), to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's design (if any), the execution and completion of the Works and the remedying of any defects, unless and to the extent that any such damage or loss is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

The Employer shall indemnify and hold harmless the Contractor, the Contractor's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of (1) bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer's Personnel, or any of their respective agents, and (2) the matters for which liability may be excluded from insurance cover, as described in sub-paragraphs (d)(i), (ii) and (iii) of Sub-Clause 18.3 [Insurance Against Injury to Persons and Damage to Property].

**17.2 Contractor's Care of the Works**

The Contractor shall take full responsibility for the care of the Works and Goods from the Commencement Date until the Taking-Over Certificate is issued (or is deemed to be issued under Sub-Clause 10.1 [Taking Over of the Works and Sections]) for the Works, when responsibility for the care of the Works shall pass to the Employer. If a Taking-Over Certificate is issued (or is so deemed to be issued) for any Section or part of the Works, responsibility for the care of the Section or part shall then pass to the Employer.

After responsibility has accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work which is outstanding on the date stated in a Taking-Over Certificate, until this outstanding work has been completed.

If any loss or damage happens to the Works, Goods or Contractor's Documents during the period when the Contractor is responsible for their care, from any cause

not listed in Sub-Clause 17.3 [Employer's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform to 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 anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to (i) the manufacture, use, sale or import of any Goods, or (ii) any design for which the Contractor is responsible.

If a Party is entitled to be indemnified under this Sub-Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be prejudicial to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

**17.6 Limitation of Liability**

Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than as specifically provided in Sub-Clause 8.7 [Delay Damages]; Sub-Clause 11.2 [Cost of Remedying Defects]; Sub-Clause 15.4 [Payment after Termination]; Sub-Clause 16.4 [Payment on Termination]; Sub-Clause 17.1 [Indemnities]; Sub-Clause 17.4(b) [Consequences of Employer’s Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].

The total liability of the Contractor to the Employer, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [Employer’s Equipment and Free-Issue Materials], Sub-Clause 17.1 [Indemnities] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights], shall not exceed the sum resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

**17.7 Use of Employer’s 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 subparagraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.

The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations (including those under Clause 11 [Defects Liability]).

The insuring Party shall insure the Contractor's Equipment for not less than the full replacement value, including delivery to Site. For each item of Contractor's Equipment, the insurance shall be effective while it is being transported to the Site and until it is no longer required as Contractor's Equipment.

Unless otherwise stated in the Particular Conditions, insurances under this Sub-Clause:

- (a) Shall be effected and maintained by the Contractor as insuring Party;
- (b) Shall be in the joint names of the Parties, who shall be jointly entitled to receive payments from the insurers, payments being held or allocated to the Party actually bearing the costs of rectifying the loss or damage,
- (c) Shall cover all loss and damage from any cause not listed in Sub-Clause 17.3 [Employer's Risks];

- (d) Shall also cover, to the extent specifically required in the bidding documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the Employer of another part of the Works, and loss or damage from the risks listed in sub-paragraphs (c), (g) and (h) of Sub-Clause 17.3 [Employer's Risks], excluding (in each case) risks which are not insurable at commercially reasonable terms, with deductibles per occurrence of not more than the amount stated in the Contract Data (if an amount is not so stated, this sub-paragraph (d) shall not apply); and
- (e) May however exclude loss of, damage to, and reinstatement of:
  - (i) A part of the Works which is in a defective condition due to a defect in its design, materials or workmanship (but cover shall include any other parts which are lost or damaged as a direct result of this defective condition and not as described in sub-paragraph (ii) below);
  - (ii) A part of the Works which is lost or damaged in order to reinstate any other part of the Works if this other part is in a defective condition due to a defect in its design, materials or workmanship;
  - (iii) A part of the Works which has been taken over by the Employer, except to the extent that the Contractor is liable for the loss or damage; and
  - (iv) Goods while they are not in the Country, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].

If, more than one year after the Base Date, the cover described in sub-paragraph (d) above ceases to be available at commercially reasonable terms, the Contractor shall (as insuring Party) give notice to the Employer, with supporting particulars. The Employer shall then (i) be entitled subject to Sub-Clause 2.5 [Employer's Claims] to payment of an amount equivalent to such commercially reasonable terms as the Contractor should have expected to have paid for such cover, and (ii) be deemed, unless he obtains the cover at commercially reasonable terms, to have approved the omission under Sub-Clause 18.1 [General Requirements for Insurances].

### **18.3 Insurance against Injury to Persons and Damage to Property**

The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under Sub-Clause 18.2 [Insurance for Works and Contractor's Equipment]) or to any person (except persons insured under Sub-Clause 18.4 [Insurance for Contractor's Personnel]), which may arise out of the Contractor's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall be for a limit per occurrence of not less than the amount stated in the Contract Data, with no limit on the number of occurrences. If an amount is not stated in the Contract Data, this Sub-Clause shall not apply.

Unless otherwise stated in the Particular Conditions, the insurances specified in this Sub-Clause:

- (a) Shall be effected and maintained by the Contractor as insuring Party;
- (b) Shall be in the joint names of the Parties;
- (c) Shall be extended to cover liability for all loss and damage to the Employer's property (except things insured under Sub-Clause 18.2) arising out of the Contractor's performance of the Contract; and
- (d) May however exclude liability to the extent that it arises from:

- (i) The Employer's right to have the Permanent Works executed on, over, under, in or through any land, and to occupy this land for the Permanent Works;
- (ii) Damage which is an unavoidable result of the Contractor's obligations to execute the Works and remedy any defects; and
- (iii) A cause listed in Sub-Clause 17.3 [Employer's Risks], except to the extent that cover is available at commercially reasonable terms.

**18.4 Insurance for Contractor's Personnel**

The Contractor shall effect and maintain insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel.

The insurance shall cover the Employer and the Engineer against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Contractor or any other of the Contractor's Personnel, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Employer or of the Employer's Personnel.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works. For a Subcontractor's employees, the insurance may be effected by the Subcontractor, but the Contractor shall be responsible for compliance with this Clause.

## **19. Force Majeure**

**19.1 Definition of Force Majeure**

In this Clause, "Force Majeure" means an exceptional event or circumstance:

- (a) Which is beyond a Party's control;
- (b) Which such Party could not reasonably have provided against before entering into the Contract
- (c) Which, having arisen, such Party could not reasonably have avoided or overcome; and
- (d) Which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

- (i) War, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (ii) Rebellion, terrorism, sabotage by persons other than the Contractor's Personnel, revolution, insurrection, military or usurped power, or civil war;
- (iii) Riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel;
- (iv) Munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and

- (v) Natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

- 19.2 Notice of Force Majeure** If a Party is or will be prevented from performing its substantial obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.
- The Party shall, having given notice, be excused performance of its obligations for so long as such Force Majeure prevents it from performing them.
- Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.
- 19.3 Duty to 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 a price is stated in the Contract;
- (b) The Cost of Plant and Materials ordered for the Works which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Plant and Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
- (c) Other Cost or liabilities which in the circumstances were reasonably and necessarily incurred by the Contractor in the expectation of completing the Works;
- (d) The Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
- (e) The Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Works at the date of termination.

**19.7 Release from Performance**

Notwithstanding any other provision of this Clause, if any event or circumstance outside the control of the Parties (including, but not limited to, Force Majeure) arises which makes it impossible or unlawful for either or both Parties to fulfil its or their contractual obligations or which, under the law governing the Contract, entitles the Parties to be released from further performance of the Contract, then upon notice by either Party to the other Party of such event or circumstance:

- (a) The Parties shall be discharged from further performance, without prejudice to the rights of either Party in respect of any previous breach of the Contract; and
- (b) The sum payable by the Employer to the Contractor shall be the same as would have been payable under Sub-Clause 19.6 [Optional Termination, Payment and Release] if the Contract had been terminated under Sub-Clause 19.6.

## **20. Claims, Disputes and Arbitration**

**20.1 Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) This fully detailed claim shall be considered as interim;
- (b) The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) The Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within the above defined time period.

Within the above defined period of 42 days, the Engineer shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Sub-Clause 8.4 [Extension of Time for Completion], and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

If the Engineer does not respond within the timeframe defined in this Clause, either Party may consider that the claim is rejected by the Engineer and any of the Parties may refer to the Dispute Board in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision].

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

**20.2 Appointment of the Dispute Board** Disputes shall be referred to a DB for decision in accordance with Sub-Clause 20.4 [Obtaining Dispute Board's Decision]. The Parties shall appoint a DB by the date stated in the Contract Data.

The DB shall comprise, as stated in the Contract Data, either one or three suitably qualified persons ("the members"), each of whom shall be fluent in the language for communication defined in the Contract and shall be a professional experienced in the type of construction involved in the Works and with the interpretation of contractual documents. If the number is not so stated and the Parties do not agree otherwise, the DB shall comprise three persons.

If the Parties have not jointly appointed the DB 21 days before the date stated in the Contract Data and the DB is to comprise three persons, each Party shall nominate one member for the approval of the other Party. The first two members shall recommend and the Parties shall agree upon the third member, who shall act as chairman.

However, if a list of potential members has been agreed by the Parties and is included in the Contract, the members shall be selected from those on the list, other than anyone who is unable or unwilling to accept appointment to the DB.

The agreement between the Parties and either the sole member or each of the three members shall incorporate by reference the General Conditions of Dispute Board Agreement contained in the Appendix to these General Conditions, with such amendments as are agreed between them.

The terms of the remuneration of either the sole member or each of the three members, including the remuneration of any expert whom the DB consults, shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

If at any time the Parties so agree, they may jointly refer a matter to the DB for it to give its opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

If a member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, a replacement shall be appointed in the same manner as the replaced person was required to have been nominated or agreed upon, as described in this Sub-Clause.

The appointment of any member may be terminated by mutual agreement of both Parties, but not by the Employer or the Contractor acting alone. Unless otherwise agreed by both Parties, the appointment of the DB (including each member) shall expire when the discharge referred to in Sub-Clause 14.12 [Discharge] shall have become effective.

**20.3 Failure to Agree on the Composition of the Dispute Board** If any of the following conditions apply, namely:

- (a) The Parties fail to agree upon the appointment of the sole member of the DB by the date stated in the first paragraph of Sub-Clause 20.2 [Appointment of the Dispute Board];
- (b) Either Party fails to nominate a member (for approval by the other Party), or fails to approve a member nominated by the other Party, of a DB of three persons by such date;
- (c) The Parties fail to agree upon the appointment of the third member (to act as chairman) of the DB by such date; or

- (d) The Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment;

then the appointing entity or official named in the Contract Data shall, upon the request of either or both of the Parties and after due consultation with both Parties, appoint this member of the DB. This appointment shall be final and conclusive. Each Party shall be responsible for paying one-half of the remuneration of the appointing entity or official.

**20.4 Obtaining Dispute Board's Decision**

If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation of the Engineer, either Party may refer the dispute in writing to the DB for its decision, with copies to the other Party and the Engineer. Such reference shall state that it is given under this Sub-Clause.

For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

Both Parties shall promptly make available to the DB all such additional information, further access to the Site, and appropriate facilities, as the DB may require for the purposes of making a decision on such dispute. The DB shall be deemed to be not acting as arbitrator(s).

Within 84 days after receiving such reference, or within such other period as may be proposed by the DB and approved by both Parties, the DB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause. The decision shall be binding on both Parties, who shall promptly give effect to it unless and until it shall be revised in an amicable settlement or an arbitral award as described below. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

If either Party is dissatisfied with the DB's decision, then either Party may, within 28 days after receiving the decision, give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration. If the DB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference, then either Party may, within 28 days after this period has expired, give a Notice of Dissatisfaction to the other Party.

In either event, this Notice of Dissatisfaction shall state that it is given under this Sub-Clause, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Sub-Clause 20.7 [Failure to Comply with Dispute Board's Decision] and Sub-Clause 20.8 [Expiry of Dispute Board's Appointment], neither Party shall be entitled to commence arbitration of a dispute unless a Notice of Dissatisfaction has been given in accordance with this Sub-Clause.

If the DB has given its decision as to a matter in dispute to both Parties, and no Notice of Dissatisfaction has been given by either Party within 28 days after it received the DB's decision, then the decision shall become final and binding upon both Parties.

**20.5 Amicable Settlement**

Where a Notice of Dissatisfaction has been given under Sub-Clause 20.4 above, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a

Notice of Dissatisfaction in accordance with Sub-Clause 20.4 above should move to commence arbitration after the fifty-sixth day from the day on which a Notice of Dissatisfaction was given, even if no attempt at an amicable settlement has been made.

## **20.6 Arbitration**

Any dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.5 above and in respect of which the DB's decision (if any) has not become final and binding shall be finally settled by arbitration. Arbitration shall be conducted as follows:

(a) If the contract is with foreign contractors,

International arbitration (1) with proceedings administered by the arbitration institution designated in the Contract Data, and conducted under the rules of arbitration of such institution; or, if so specified in the Contract Data, (2) international arbitration in accordance with the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or (3) if neither an arbitration institution nor UNCITRAL arbitration rules are specified in the Contract Data, with proceedings administered by the International Chamber of Commerce (ICC) and conducted under the ICC Rules of Arbitration; by one or more arbitrators appointed in accordance with said arbitration rules;

(b) If the Contract is with domestic contractors, arbitration with proceedings conducted in accordance with the laws of the Employer's country.

The place of arbitration shall be the neutral location specified in the Contract Data; and the arbitration shall be conducted in the language for communications defined in Sub-Clause 1.4 [Law and Language].

The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DB, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Engineer from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.

Neither Party shall be limited in the proceedings before the arbitrators to the evidence or arguments previously put before the DB to obtain its decision, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction. Any decision of the DB shall be admissible in evidence in the arbitration.

Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, the Engineer and the DB shall not be altered by reason of any arbitration being conducted during the progress of the Works.

## **20.7 Failure to Comply with Dispute Board's Decision**

In the event that a Party fails to comply with a final and binding DB decision, then the other Party may, without prejudice to any other rights it may have, refer the failure itself to arbitration under Sub-Clause 20.6 [Arbitration]. Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply to this reference.

## **20.8 Expiry of Dispute Board's Appointment**

If a dispute arises between the Parties in connection with, or arising out of, the Contract or the execution of the Works and there is no DB in place, whether by reason of the expiry of the DB's appointment or otherwise:

(a) Sub-Clause 20.4 [Obtaining Dispute Board's Decision] and Sub-Clause 20.5 [Amicable Settlement] shall not apply; and

(b) The dispute may be referred directly to arbitration under Sub-Clause 20.6 [Arbitration].

## APPENDIX

### A General Conditions of Dispute Board Agreement

#### 1. Definitions

Each "Dispute Board Agreement" is a tripartite agreement by and between:

- (a) The "Employer";
- (b) The "Contractor"; and
- (c) The "Member" who is defined in the Dispute Board Agreement as being:
  - (i) The sole member of the "DB" and, where this is the case, all references to the "Other Members" do not apply, or
  - (ii) One of the three persons who are jointly called the "DB" (or "Dispute Board") and, where this is the case, the other two persons are called the "Other Members".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Board Agreement, which incorporates this Appendix. In the Dispute Board Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

#### 2. General Provisions

Unless otherwise stated in the Dispute Board Agreement, it shall take effect on the latest of the following dates:

- (a) The Commencement Date defined in the Contract;
- (b) When the Employer, the Contractor and the Member have each signed the Dispute Board Agreement; or
- (c) When the Employer, the Contractor and each of the Other Members (if any) have respectively each signed a dispute board agreement.

This employment of the Member is a personal appointment. At any time, the Member may give not less than 70 days' notice of resignation to the Employer and to the Contractor, and the Dispute Board Agreement shall terminate upon the expiry of this period.

#### 3. Warranties

The Member warrants and agrees that he/she is and shall be impartial and independent of the Employer, the Contractor and the Engineer. The Member shall promptly disclose, to each of them and to the Other Members (if any), any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.

When appointing the Member, the Employer and the Contractor relied upon the Member's representations that he/she is:

- (a) Experienced in the work which the Contractor is to carry out under the Contract;
- (b) Experienced in the interpretation of contract documentation; and
- (c) Fluent in the language for communications defined in the Contract.

**4. General Obligations of the Member** The Member shall:

- (a) Have no interest financial or otherwise in the Employer, the Contractor or Engineer, nor any financial interest in the Contract except for payment under the Dispute Board Agreement;
- (b) Not previously have been employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Board Agreement;
- (c) Have disclosed in writing to the Employer, the Contractor and the Other Members (if any), before entering into the Dispute Board Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer, the Contractor or the Engineer, and any previous involvement in the overall project of which the Contract forms part;
- (d) Not, for the duration of the Dispute Board Agreement, be employed as a consultant or otherwise by the Employer, the Contractor or the Engineer, except as may be agreed in writing by the Employer, the Contractor and the Other Members (if any);
- (e) Comply with the annexed procedural rules and with Sub-Clause 20.4 of the Conditions of Contract;
- (f) Not give advice to the Employer, the Contractor, the Employer's Personnel or the Contractor's Personnel concerning the conduct of the Contract, other than in accordance with the annexed procedural rules;
- (g) Not while a Member enter into discussions or make any agreement with the Employer, the Contractor or the Engineer regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Board Agreement;
- (h) Ensure his/her availability for all site visits and hearings as are necessary;
- (i) Become conversant with the Contract and with the progress of the Works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
- (j) Treat the details of the Contract and all the DB's activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer, the Contractor and the Other Members (if any); and
- (k) Be available to give advice and opinions, on any matter relevant to the Contract when requested by both the Employer and the Contractor, subject to the agreement of the Other Members (if any).

**5. General Obligations of the Employer and the Contractor**

The Employer, the Contractor, the Employer's Personnel and the Contractor's Personnel shall not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB's activities under the Contract and the Dispute Board Agreement. The Employer and the Contractor shall be responsible for compliance with this provision, by the Employer's Personnel and the Contractor's Personnel respectively.

The Employer and the Contractor undertake to each other and to the Member that the Member shall not, except as otherwise agreed in writing by the Employer, the Contractor, the Member and the Other Members (if any):

- (a) Be appointed as an arbitrator in any arbitration under the Contract;
- (b) Be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract; or
- (c) Be liable for any claims for anything done or omitted in the discharge or purported discharge of the Member's functions, unless the act or omission is shown to have been in bad faith.

The Employer and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he is relieved from liability under the preceding paragraph.

Whenever the Employer or the Contractor refers a dispute to the DB under Sub-Clause 20.4 of the Conditions of Contract, which will require the Member to make a site visit and attend a hearing, the Employer or the Contractor shall provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member. No account shall be taken of any other payments due or paid to the Member.

**6. Payment**

The Member shall be paid as follows, in the currency named in the Dispute Board Agreement:

- (a) A retainer fee per calendar month, which shall be considered as payment in full for:
  - (i) Being available on 28 days' notice for all site visits and hearings;
  - (ii) Becoming and remaining conversant with all project developments and maintaining relevant files;
  - (iii) All office and overhead expenses including secretarial services, photocopying and office supplies incurred in connection with his duties; and
  - (iv) All services performed hereunder except those referred to in sub-paragraphs (b) and (c) of this Clause.

The retainer fee shall be paid with effect from the last day of the calendar month in which the Dispute Board Agreement becomes effective; until the last day of the calendar month in which the Taking-Over Certificate is issued for the whole of the Works.

With effect from the first day of the calendar month following the month in which the Taking-Over Certificate is issued for the whole of the Works, the retainer fee shall be reduced by one third. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the Dispute Board Agreement is otherwise terminated.

- (b) A daily fee which shall be considered as payment in full for:
- (i) Each day or part of a day up to a maximum of two days' travel time in each direction for the journey between the Member's home and the Site, or another location of a meeting with the Other Members (if any);
  - (ii) Each working day on Site visits, hearings or preparing decisions; and
  - (iii) Each day spent reading submissions in preparation for a hearing;
- (c) All reasonable expenses including necessary travel expenses (air fare in less than first class, hotel and subsistence and other direct travel expenses) incurred in connection with the Member's duties, as well as the cost of telephone calls, courier charges, faxes and telexes: a receipt shall be required for each item in excess of five percent of the daily fee referred to in sub-paragraph (b) of this Clause;
- (d) Any taxes properly levied in the Country on payments made to the Member (unless a national or permanent resident of the Country) under this Clause 6.

The retainer and daily fees shall be as specified in the Dispute Board Agreement. Unless it specifies otherwise, these fees shall remain fixed for the first 24 calendar months, and shall thereafter be adjusted by agreement between the Employer, the Contractor and the Member, at each anniversary of the date on which the Dispute Board Agreement became effective.

If the parties fail to agree on the retainer fee or the daily fee, the appointing entity or official named in the Contract Data shall determine the amount of the fees to be used.

The Member shall submit invoices for payment of the monthly retainer and air fares quarterly in advance. Invoices for other expenses and for daily fees shall be submitted following the conclusion of a Site visit or hearing. All invoices shall be accompanied by a brief description of activities performed during the relevant period and shall be addressed to the Contractor.

The Contractor shall pay each of the Member's invoices in full within 56 calendar days after receiving each invoice and shall apply to the Employer (in the Statements under the Contract) for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.

If the Contractor fails to pay to the Member the amount to which he/she is entitled under the Dispute Board Agreement, the Employer shall pay the amount due to the Member and any other amount which may be required to maintain the operation of the DB; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.8 of the Conditions of Contract.

If the Member does not receive payment of the amount due within 70 days after submitting a valid invoice, the Member may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice under Clause 7.

## **7. Termination**

At any time: (i) the Employer and the Contractor may jointly terminate the Dispute Board Agreement by giving 42 days' notice to the Member; or (ii) the Member may resign as provided for in Clause 2.

If the Member fails to comply with the Dispute Board Agreement, the Employer and the Contractor may, without prejudice to their other rights, terminate it by notice to the Member. The notice shall take effect when received by the Member.

If the Employer or the Contractor fails to comply with the Dispute Board Agreement, the Member may, without prejudice to his other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.

Any such notice, resignation and termination shall be final and binding on the Employer, the Contractor and the Member. However, a notice by the Employer or the Contractor, but not by both, shall be of no effect.

## **8. Default of the Member**

If the Member fails to comply with any of his obligations under Clause 4 (a) - (d) above, he shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Member and the Other Members (if any), for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

If the Member fails to comply with any of his obligations under Clause 4 (e) - (k) above, he shall not be entitled to any fees or expenses hereunder from the date and to the extent of the non-compliance and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses already received by the Member, for proceedings or decisions (if any) of the DB which are rendered void or ineffective by the said failure to comply.

## **9. Disputes**

Any dispute or claim arising out of or in connection with this Dispute Board Agreement, or the breach, termination or invalidity thereof, shall be finally settled by institutional arbitration. If no other arbitration institute is agreed,

the arbitration shall be conducted under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration.

## PROCEDURAL RULES

Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the Site at intervals of not more than 140 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 70 days, except as required to convene a hearing as described below.

The timing of and agenda for each Site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of Site visits is to enable the DB to become and remain acquainted with the progress of the Works and of any actual or potential problems or claims, and, as far as reasonable, to endeavour to prevent potential problems or claims from becoming disputes.

Site visits shall be attended by the Employer, the Contractor and the Engineer and shall be co-ordinated by the Employer in co-operation with the Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each Site visit and before leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three persons, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these persons.

If any dispute is referred to the DB in accordance with Sub-Clause 20.4 of the Conditions of Contract, the DB shall proceed in accordance with Sub-Clause 20.4 and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall:

- (a) Act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting his case and responding to the other's case; and
- (b) Adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have power to adopt an inquisitorial procedure, to refuse admission to hearings or audience at hearings to any persons other than representatives of the Employer, the Contractor and the Engineer, and to proceed in the absence of any party who the DB is satisfied received notice of the hearing; but shall have discretion to decide whether and to what extent this power may be exercised.

The Employer and the Contractor empower the DB, among other things, to:

- (a) Establish the procedure to be applied in deciding a dispute;
- (b) Decide upon the DB's own jurisdiction, and as to the scope of any dispute referred to it;

- (c) Conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract and these Rules;
- (d) Take the initiative in ascertaining the facts and matters required for a decision;
- (e) Make use of its own specialist knowledge, if any;
- (f) Decide upon the payment of financing charges in accordance with the Contract;
- (g) Decide upon any provisional relief such as interim or conservatory measures; and
- (h) Open up, review and revise any certificate, decision, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute.

The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make and give its decision in accordance with Sub-Clause 20.4, or as otherwise agreed by the Employer and the Contractor in writing. If the DB comprises three persons:

- (a) It shall convene in private after a hearing, in order to have discussions and prepare its decision;
- (b) It shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members, who may require the minority Member to prepare a written report for submission to the Employer and the Contractor; and
- (c) If a Member fails to attend a meeting or hearing, or to fulfil any required function, the other two Members may nevertheless proceed to make a decision; unless:
  - (i) Either the Employer or the Contractor does not agree that they do so; or
  - (ii) The absent Member is the chairman and he/she instructs the other Members not to make a decision.

## **Section IX. Particular Conditions**

The following Particular Conditions (PC) shall supplement the General Conditions (GC). Whenever there is a conflict, the provisions herein shall prevail over those in the GC.

## Part A - Contract Data

Conditions	Sub-Clause	Data
Employer's name and address	1.1.2.2 & 1.3	<b>Mwanza Urban Water Supply and Sanitation Authority</b> <b>Maji House, Balewa Road</b> <b>P.O. Box 317, 33104</b> <b>Mwanza, Tanzania</b> Tel: <b>+255 282500547</b> E-mail: <b>info@mwauwasa.go.tz</b>
Engineer's name and address	1.1.2.4 & 1.3	Joint Venture lead: CES Consulting Engineers Salzgitter GmbH Nordstrasse 23, 38106 Braunschweig, Germany Joint Venture partner: AKUT Umweltschutz Ingenieure Burkard und Partner mbH Schwedenstrasse 9, 13359 Berlin, Germany
Bank's name	1.1.2.11	KfW Development Bank ("KfW")
Recipient's name	1.1.2.12	<b>Lake Victoria Basin Commission (LVBC)</b>
Time for Completion of the Works	1.1.3.3	548 days
Defects Notification Period	1.1.3.7	365 days
Sections	1.1.5.6	<b>not applicable</b>
Profit	1.2	<b>10%</b> of cost
Electronic transmission systems	1.3	Electronic communication shall consist of an: Un-editable record of communication (such as a signed and stamped scanned letter in pdf-format) attached to an electronic mail (email) and body text of an email. All other parts of the transmitted communication, such as short messages (sms) etc. shall not be construed as communication under the Contract
Contractor's name and address	1.3	
Governing Law	1.4	<b>The Law of the United Republic of Tanzania</b>
Ruling language	1.4	<b>English</b>
Language for communications	1.4	<b>English</b>
Time for the Parties entering into a Contract Agreement	1.6	<b>Within 28 days after Contractor receives Letter of Acceptance</b>
Care and Supply of Documents No. of copies of Contractor's Documents	1.8	One (1) soft (digital) copies on flash drives and three (3) hard (paper) copies The Employer will provide all the Contract Documents including drawings to the Contractor in electronic form. The Contractor shall prepare and provide to the Employer for signature in total three (3) copies at the cost of the Contractor.
Time for Access to the Site	2.1	Not later than 28 days after Commencement Date and/or provision of evidence of insurance payment (whatever is later) and in accordance with the agreed work programme.
Engineer's Duties and Authority	3.1 (B)(ii)	Any variation of the Contract, including Extension of Time for Completion shall require approval of the Employer.

Conditions	Sub-Clause	Data
<b>Contractor's design obligations</b>	4.1	All temporary works, including but not limited to: <ul style="list-style-type: none"> <li>- Trench and excavation shoring;</li> <li>- Formwork design;</li> <li>- Concrete mix design;</li> <li>- Dewatering system.</li> </ul>
<b>Performance Security</b>	4.2	The Performance Security will be in the form of an unconditional on-demand Bank Guarantee in the amount(s) of <b>8%</b> of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.  <b>If the Guarantee is issued by a Bank located outside Tanzania, the issuing Bank shall have a correspondent Bank in Tanzania to make it enforceable within Tanzania.</b>
<b>Environmental, Social, Health &amp; Safety (ESHS) Performance Security</b>	4.2	The ESHS Performance Security will be in the form of an unconditional on-demand Bank Guarantee in the amount(s) of <b>2%</b> of the Accepted Contract Amount and in the same currency(ies) of the Accepted Contract Amount.  <b>If the Guarantee is issued by a Bank located outside Tanzania, the issuing Bank shall have a correspondent Bank in Tanzania to make it enforceable within Tanzania.</b>
<b>Progress reports</b>	4.21	Frequency of progress reports: <b>monthly</b>
<b>Normal working hours</b>	6.5	<b>As per the Laws of the United Republic of Tanzania</b> 08:00 to 17:00 hours Monday to Friday, but excluding locally recognized public holidays
<b>Supply of water</b>	6.14	Safe drinking water as well as water required to ensure the hygiene of the personnel shall be provided free of charge to the Contractor's Personnel.
<b>Child labour</b>	6.21	Definition of child: persons below 18 years of age.
<b>Commencement Date</b>	8.1	To be confirmed through "Letter of Commencement" upon fulfilment of the following conditions: <ul style="list-style-type: none"> <li>• Approval of the master list;</li> <li>• Receipt of advance payment.</li> </ul>
<b>Effective access to the Site</b>	8.1(c)	Within 14 days after commencement date.
<b>Delay damages for the Works</b>	8.7 & 14.15(b)	0.1% of the final Contract Amount per day.
<b>Maximum amount of delay damages</b>	8.7	5.0% of the final Contract Amount
<b>Provisional Sums</b>	13.5.(b)(ii)	10% of the Provisional Sum for Contractor's Overhead Charges and Profit for items without a provision for this rate.  A percentage for overhead charges and profit shall not be applicable to Daywork Rates.

Conditions	Sub-Clause	Data
<b>Adjustments for Changes in Cost</b>	13.8	<p>Period “n” applicable to the adjustment multiplier “Pn”: one (1) month</p> <p>Adjustment to Change in Cost shall be applicable to specific component(s) of works for which Extension of Time is approved / granted due to reasons outside the contractor’s control and/or contractual risks, for period beyond the Contract Duration, after determination of the same in accordance with sub-clause 8.4 [Extension for Time for Completion].</p> <p>Price Adjustment shall be applicable on balance of works as assessed by the Engineer using the Adjustment for Changes in Cost formula given in sub-clause 13.8. The base indices for computation of Price Adjustment shall be those on “date of approval of the Extension of Time”.</p> <p>No Price Adjustment will be applicable to any financial costs (e.g. interest on delayed payment) payable for Extension of Time.</p>
<b>Contract Price</b>	14.1(b)	<p>The following taxes, duties and fees exemptions apply to the Contract:</p> <p><b>Import duties, VAT, Import Declaration Fee (IDF), Railway Development Levy and all applicable taxes in accordance with Applicable Law(s) and as stated in the Project Financing Agreement, which can be requested from the Employer, by the Bidder.</b></p>
	14.1(e)	<p>Item (e) of Sub-Clause 14.1 - Part B of the PC regarding the exemption of import duties and taxes on Contractor’s equipment is applicable:</p> <p><b>Yes</b></p>
<b>Total advance payment</b>	14.2	<b>20%</b> (twenty percent) of the Accepted Contract Amount (excl. taxes) payable in the currencies and proportions in which the Accepted Contract Amount is payable.
<b>Repayment amortization rate of advance payment</b>	14.2(b)	<p><b>Not less than 30% of the value of each Interim Payment Certificate.</b></p> <p>Repayment of the Advance Payment will commence when thirty (30) percent of the value of the Works has been completed according to the Engineer’s Certificates.</p> <p>Refund will then be made by the Contractor to the Employer in such a manner that the refund is completed when 80% of the value of Works has been completed according to the Engineer’s Certificates.</p>
<b>Application for Interim Payment Certificates Copies of Statement</b>	14.3	<b>The number of copies for each Interim Payment Certificate to be submitted is one (1) original and eight (8) paper copies</b>
<b>Percentage of Retention</b>	14.3(c)	<b>10%</b>
<b>Limit of Retention Money</b>	14.3(c)	<b>5%</b> of the Accepted Contract Amount (exclusive of VAT)
<b>Plant and Materials</b>	14.5(b)(i)	Plant and Materials for payment Free on Board: <b>None</b>
	14.5(c)(i)	Plant and Materials for payment when delivered to the Site: <b>Pipes and Fittings (70% of respective bill item rate)</b>

Conditions	Sub-Clause	Data
Minimum Amount of Interim Payment Certificates	14.6	5% of the Accepted Contract Amount, but not less than EUR 200,000 (exclusive of VAT)
Time for Payment of Interim Payment Certificates	14.7	56 days
Contractor's Bank Account	14.7	[insert bank account details at the time of contract signing]
Publishing source of commercial interest rates for financial charges in case of delayed payment	14.8	Bank of Tanzania (BOT)
Delayed Payment	14.8	The interest rate for payments in foreign currency is Euro Short-Term Rate ("Ester") + 200 bp
Statement at Completion No. of Copies	14.10	One (1) original copy and Six (6) hard (paper) copy(ies)
Application for Final Payment Certificate No. of Copies	14.11	One (1) original copy and Six (6) hard (paper) copy(ies)
Maximum total liability of the Contractor to the Employer	17.6	The Accepted Contract Amount (inclusive of VAT)
Periods for submission of insurance: a. relevant policies b. evidence of insurance	18.1	14 days after commencement date 28 days after commencement date
Maximum amount of deductibles for insurance of the Employer's risks	18.2(d)	The minimum insurance amounts and deductibles shall be: (a) For loss or damage to the Works, Plant, Materials and Contractor's Equipment: <ul style="list-style-type: none"> <li>• Minimum Insurance Amount shall be the <b>Contract Sum (inclusive of Duties and Taxes) plus the value of the Contractor's Plant &amp; Equipment plus TZS 85,000,000 for clearance of debris</b></li> <li>• Maximum Deductible shall be <b>10%</b> of Each Loss</li> </ul> (b) For Personal Injury or Death of the Contractor's Employees: <ul style="list-style-type: none"> <li>• Minimum Insurance Amount shall be <b>TZS 34,000,000 per occurrence</b>, number of occurrences unlimited.</li> <li>• Maximum Deductible <b>TZS 425,000</b>.</li> </ul>
Minimum amount of third party insurance per occurrence	18.3	i) For damage to Third Party Property: <b>TZS 340,000,000 per occurrence with number of occurrences unlimited. Maximum deductible TZS 850,000.</b> ii) For Personal Injury or Death of Third Parties: <b>TZS 85,000,000 per occurrence with number of occurrences unlimited. Maximum deductible TZS 450,000</b>
Date by which the DB shall be appointed	20.2	28 days after the Commencement Date
The DB shall be comprised of	20.2	<b>Three Members</b>

<b>Conditions</b>	<b>Sub-Clause</b>	<b>Data</b>
<b>List of potential DB sole members</b>	20.2	<b>None</b>
<b>Appointment (if not agreed) to be made by</b>	20.3	<i>President of FIDIC or a person appointed by the President</i>
<b>Arbitration institution</b>	20.6(a)	<i>President of FIDIC or a person appointed by the President</i>
<b>Arbitration rules</b>	20.6(a)	<b>International Arbitration with proceedings administered by Tanzania Institute of Arbitrators and conducted in accordance with UNCITRAL Arbitration Rules.</b>
<b>Place of arbitration</b>	20.6	<b>Arusha, Tanzania</b>

## Part B - Specific Provisions

Conditions	Sub-Clause	Specific Provisions
<b>Contract</b>	1.1.1	<p><i>Add under 1.1.1.1 "Contract" the sentence:</i></p> <p>"The Contract requires the non-objection by the Bank for becoming eligible for any disbursement under the Bank's loan."</p>
<b>Defects Notification Period</b>	1.1.3.7	Add, at the end of the Sub-Clause "or taken over under Sub-Clause 10.2 [Taking Over of Parts of the Works]"
<b>Exceptionally Adverse Climatic Conditions</b>	1.1.6.11	<p><i>Additional Sub-Clause</i></p> <p>"Exceptionally Adverse Climatic Conditions" means: those conditions, in excess of 1.2 times the average of the conditions of the specific period over the last 15 years, detailed in the "Ambient Conditions" for temperatures, rain, and wind in Mwanza. The Bidder shall take account of the average of the detailed conditions and the frequencies of temperatures and rain, as shown, for the preparation of their bid.</p>
<b>Communications</b>	1.3	<p><i>Add the following at the end of item (a), after "Contract Data" and before ":</i></p> <p>"In case of electronic transmission, these communications shall be in the form of an un-editable record attached to an electronic mail, such as a PDF document for instance, and any other communication transmitted in a different manner, such as the email body text, shall not be construed as communication under the Contract".</p>
<b>Inspections and Audit by KfW</b>	1.15	<p><i>This Sub-Clause is deleted in its entirety and replaced by:</i></p> <p>"The Contractor shall permit, and shall cause its agents (whether declared or not), sub-contractors, sub-consultants, service providers, or suppliers and any personnel thereof, to permit, KfW and/or persons appointed by the KfW to inspect the Site and all accounts and records relating to the performance of the Contract and the submission of the Bid, and to have such accounts and records audited by auditors appointed by KfW if requested by KfW.</p> <p>The Contractor's attention is drawn to Sub-Clause 15.6 [Corrupt or Fraudulent Practices] which provides, inter alia, that acts intended to materially impede the exercise of KfW's inspection and audit rights provided for under Sub-Clause 1.15 constitute a prohibited practice subject to contract termination."</p>
<b>The Employer's Claims</b>	2.5	<i>In the first line of the second paragraph delete the words: "28 days" and replace with the words "42 days".</i>
<b>Replacement of the Engineer</b>	3.4	Not applicable

<b>Conditions</b>	<b>Sub-Clause</b>	<b>Specific Provisions</b>
<b>Contractor's General Obligations</b>	4.1	<i>Insert the following at the end of the 2nd paragraph:</i> "Goods and services from countries under embargo from Germany the European Union or the United Nations are not eligible and shall not be used by the Contractor."
<b>Performance Security</b>	4.2	<i>Delete last sentence of second paragraph and replace by the sentence:</i> "The Performance Security shall be issued by a reputable bank or financial institution selected by the Contractor and requiring the Bank's non-objection, and shall be in the form annexed to the Particular Conditions."
<b>Subcontractors</b>	4.4	Add the following at the end of the Sub-Clause: "Unless explicitly agreed to by the Engineer, the ESHS Specifications apply to all Subcontractors and Suppliers used for the execution of the Works. The Contractor is fully liable for all actions, non-compliance and negligence by Subcontractors and Suppliers their representatives, employees and workers, to the same degree as it would be held liable for its own actions, non-compliance or negligence or that of its own representatives, employees or workers."
<b>Safety Procedures</b>	4.8	<i>Add the following at the end of the Sub-Clause:</i> f) The Contractor shall ensure compliance with the ESHS Specifications.
<b>Protection of the Environment</b>	4.18	<i>Add the following after the last paragraph:</i> "These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure compliance with."
<b>Progress reports</b>	4.21	<i>Add the following new item at the end of the Sub-Clause:</i> "(i) matters requested under the ESHS Specifications."
<b>Facilities for Staff and Labour</b>	6.6	<i>The last paragraph is deleted in its entirety and replaced by the following:</i> "The Contractor shall not permit any of the Contractor's Personnel to maintain any temporary or permanent living quarters within the Site, except with the prior and express Engineer's consent after consultation with the Employer. The Employer and/or the Engineer may inspect the living quarters from time to time in order to verify their compliance with the Laws and the Contract. The Contractor shall accordingly grant the Employer and/or the Engineer full access to the living quarters as and when they require."

<b>Conditions</b>	<b>Sub-Clause</b>	<b>Specific Provisions</b>
<b>Health and Safety</b>	6.7	<p><i>Add the following at the end of the Sub-Clause:</i></p> <p>“These provisions are complemented by those listed under the ESHS Specifications which the Contractor must ensure compliance with.”</p>
<b>Commencement of Works</b>	8.1	<p><i>Add the following at the end of the Sub-Clause:</i></p> <p>“As defined in the ESHS Specifications, no physical work may commence on any Project Area until such time the Contractor has prepared and submitted to the Engineer the PA-ESMP and the Engineer has approved this.”</p>
<b>Suspension of Work</b>	8.8	<p><i>Add the following after the last sentence of the Sub-Clause:</i></p> <p>“As an example, and without limitation to other possible causes, any suspension of work caused by any failure from the Contractor to comply with the obligations stated:</p> <ul style="list-style-type: none"> <li>(a) Under the ESHS Specifications (if any), in the event of a level 3 non-compliance;</li> <li>(b) Under Sub-Clause 4.8 as to safety procedures;</li> <li>(c) Under Sub-Clause 4.9 as to the quality assurance;</li> <li>(d) Under Sub-Clause 4.18 as to the protection of the environment; or</li> <li>(e) Under Sub-Clause 6.7 as to health and safety;</li> </ul> <p>shall be considered as cause of suspension which is the responsibility of the Contractor”.</p>
<b>Contract Price</b>	14.1 (b)	<p><i>If the QBDS foresees exemptions then add the following new sentence:</i></p> <p>“In terms of <i>[insert reference to the funding agreement here]</i>, the Contractor and its sub-Contractors shall be exempt from the duties, taxes, fees, levies and other charges, stated in the Contract Data, including any limitations of the exemption and the procedure through which the tax exemption will be put into effect.”</p>
<b>Advance Payment</b>	14.2	<p><i>Delete last sentence of third paragraph and replace by the sentence:</i> "This guarantee shall be issued by a reputable bank or financial institution selected by the Contractor and requiring the Bank's non-objection, and shall be in the form annexed to the Particular Conditions."</p> <p><i>At the end of the third paragraph add the sentence</i> "Guarantees are to be made payable to the Employer's account at the Bank as listed in the annexed form."</p>
<b>Application for Interim Payment Certificates</b>	14.3	<p><i>In the 1st sentence of the 1st paragraph, replace “six copies” by “in the number of copies specified in the Contract Data”.</i></p>

<b>Conditions</b>	<b>Sub-Clause</b>	<b>Specific Provisions</b>
<b>Issue of Interim Payment Certificates</b>	14.6 (c)	<p><i>After paragraph (b) add paragraph (c) as follows:</i></p> <p>In the event of an unresolved level 3 non-compliance specified in the ESHS Specifications, the Engineer shall reduce the value of the Interim Payment Certificates as follows:</p> <ul style="list-style-type: none"> <li>(i) If Level 3 Non-conformity not resolved after the first occurrence: 33.3% for the first Interim Payment Certificate</li> <li>(ii) If Level 3 Non-conformity still not resolved: 66.6% for the second Interim Payment Certificate</li> <li>(iii) If Level 3 Non-conformity still not resolved: 100% for the third Interim Payment Certificate</li> </ul> <p>If the Level 3 Non-conformity is still not resolved after the last Interim Payment Certificate in (iii) above then payments will be suspended indefinitely until such time as the Level 3 Non-conformity has been resolved.</p> <p>Following the resolution of the Level 3 Non-Conformity the reduction(s) will be included in the next Interim Payment Certificate for payment. No interest will be paid on any reductions or suspended payment amounts.</p>
<b>Time for Payment of Interim Payment Certificates</b>	14.7	<p><i>In (b) after "56 days" insert:</i></p> <p><i>"or such time as may be stated in the Contract Data".</i></p>
<b>Contractor's Bank Account</b>	14.7	<p><i>In the last sentence after "Contractor" insert:</i></p> <p><i>"and as stated in the Contract Data".</i></p>
<b>Delayed Payment Interest – local currency</b>	14.8	<p><i>In the second paragraph after "Conditions," add:</i></p> <p><i>"for local currency payments only".</i></p>
<b>Delayed Payment Interest – foreign currency</b>	14.8	<p><i>After the second paragraph insert a new paragraph as follows:</i></p> <p>The interest rate for payments in foreign currency is as stated in the Contract Data.</p>
<b>Payment of Retention Money</b>	14.9	<p><i>In the fifth paragraph, delete first sentence and replace by the sentence "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 may substitute a guarantee issued by a reputable bank or financial institution selected by the Contractor and requiring the Bank's non-objection, for the second half of the Retention Money. The guarantee for the release of the Retention Money has to be acceptable in form and substance to the Bank."</i></p>
<b>Statement at Completion</b>	14.10	<p><i>In the 1st paragraph, replace "six copies" by "the number of copies stated in the Contract Data"</i></p>

<b>Conditions</b>	<b>Sub-Clause</b>	<b>Specific Provisions</b>
<b>Application for Final Payment Certificate</b>	14.11	<i>In the 1st paragraph, replace “six copies” by “the number of copies stated in the Contract Data”</i>
<b>Currencies of Payment</b>	14.15	<i>In the first sentence replace “Schedule of Payment Currencies” by “Summary of Payment Currencies of the Contract”</i>
<b>Corrupt or Fraudulent Practices</b>	15.6	<i>Add the following at the end of the Sub-Clause:</i> <p>“In addition to the provisions of this Sub-Clause, the Contractor is also bound by the provisions found under Appendix 1 to the Particular Conditions of Contract, named “Corrupt and Fraudulent Practices Policy – Social and Environmental Responsibility”.”</p>

# Appendix 1 to Particular Conditions of Contract KfW Policy – Sanctionable Practice – Social and Environmental Responsibility

## 1. Sanctionable Practice

The PEA and the Contractors (including all members of a Joint Venture and proposed or engaged Subcontractors) must observe the highest standard of ethics during the Tender Process and performance of the Contract.

By signing the Declaration of Undertaking the Contractors declare that (i) they did not and will not engage in any Sanctionable Practice likely to influence the Tender Process and the corresponding Award of Contract to the PEA's detriment, and that (ii) in case of being awarded a Contract they will not engage in any Sanctionable Practice.

Moreover, KfW requires to include in the Contracts a provision pursuant to which Contractors must permit KfW and in case of financing by the European Union also to European institutions having competence under European law to inspect the respective accounts, records and documents relating to the Tender Process and the performance of the Contract , and to have them audited by auditors appointed by KfW.

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

- (a) reject an Offer for Award of Contract if during the Tender Process the Bidder who is recommended for the Award of Contract has engaged in Sanctionable Practice, directly or by means of an agent in view of being awarded the Contract;
- (b) declare misprocurement and exercise its rights on the ground of the Funding Agreement with the PEA relating to suspension of disbursements, early repayment and termination if, at any time, the PEA, Contractors or their legal representatives or Subcontractors have engaged in Sanctionable Practice during the Tender Process or performance of the Contract without the PEA having taken appropriate action in due time satisfactory to KfW to remedy the situation, including by failing to inform KfW at the time they knew of such practices.

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

<b>Coercive Practice</b>	The impairing or harming, or threatening to impair or harm, directly or indirectly, any person or the property of the person with a view to influencing improperly the actions of a person.
<b>Collusive Practice</b>	An arrangement between two or more persons designed to achieve an improper purpose, including influencing improperly the actions of another person.
<b>Corrupt Practice</b>	The promising, offering, giving, making, insisting on, receiving, accepting or soliciting, directly or indirectly, of any illegal payment or undue advantage of any nature, to or by any person, with the intention of influencing the actions of any person or causing any person to refrain from any action.

- Fraudulent Practice** Any action or omission, including misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a person to obtain a financial benefit or to avoid an obligation.
- Obstructive Practice** Means (i) deliberately destroying, falsifying, altering or concealing evidence material to the investigation or the making of false statements to investigators, in order to materially impede an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice, or threatening, harassing or intimidating any Person to prevent them from disclosing their knowledge of matters relevant to the investigation or from pursuing the investigation, or (ii) any act intended to materially impede the exercise of KfW's access to contractually required information in connection with an official investigation into allegations of a Corrupt Practice, Fraudulent Practice, Coercive Practice or Collusive Practice.
- Sanctionable Practice** Any Coercive Practice, Collusive Practice, Corrupt Practice, Fraudulent Practice or Obstructive Practice (as such terms are defined herein) which is unlawful under the Financing Agreement.

## **2. Social and Environmental Responsibility**

Projects financed in whole or partly in the framework of Financial Cooperation have to ensure compliance with international Environmental, Social, Health and Safety (ESHS) standards (including issues of sexual exploitation and abuse and gender based violence) Contractors in KfW-financed projects shall consequently undertake in the respective Contracts to:

- (a) comply with and ensure that all their Subcontractors and major suppliers, i.e. for major supply items comply with international environmental and labour standards, consistent with applicable law and regulations in the country of implementation of the respective Contract and the fundamental conventions of the International Labour Organisation<sup>24</sup> (ILO) and international environmental treaties and;
- (b) implement any environmental and social risks mitigation measures, as identified in the environmental Impact Statement (EIS) and further to be detailed in the Project Area Environmental and Social Management Plan (PA-ESMP) as far as these measures are relevant to the Contract and implement measures for the prevention of sexual exploitation and abuse and gender-based violence.

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<sup>24</sup> In case ILO conventions have not been fully ratified or implemented in the Employer's country the Applicant / Bidder / Contractor shall, to the satisfaction of the Employer and KfW, propose and implement appropriate measures in the spirit of the said ILO conventions with respect to a) workers grievances on working conditions and terms of employment, b) child labour, c) forced labour, d) worker's organisations and e) non-discrimination.

## Section X. Contract Forms

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Notification of Award

### Letter of Acceptance

*[Letterhead paper of the Employer]*

*[Date]*

To: *[name and address of the Contractor]*

This is to notify you that your Bid dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Contract Price *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Bidders, is hereby accepted by our institution.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the Performance Security Form included in Section X, Contract Forms, of the Bidding Documents.

Authorized Signature: .....

Name and Title of Signatory: .....

Name of institution: .....

**Attachment: Contract Agreement**

## Contract Agreement

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_ of \_\_\_\_\_ (hereinafter "the Employer"), of the one part, and \_\_\_\_\_ of \_\_\_\_\_ (hereinafter "the Contractor"), of the other part:

WHEREAS the Employer desires that the Works known as \_\_\_\_\_ should be executed by the Contractor, and has accepted a Bid by the Contractor for the execution and completion of these Works and the remedying of any defects therein, in the sum of [*insert Contract Price or Ceiling in words and figures, expressed in the Contract currency(ies)*] (hereafter called "the Contract Price").

The Employer and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
  - (i) The Letter of Acceptance;
  - (ii) The Letter of Bid and Appendix to Bid (including the signed Declaration of Undertaking);
  - (iii) The addenda Nos \_\_\_\_\_ (if any);
  - (iv) The Particular Conditions including Appendix 1;
  - (v) The General Conditions;
  - (vi) The Specifications;
  - (vii) The Drawings;
  - (viii) The completed Schedules; and
  - (ix) The Contractor's Bid and any other documents forming part of the contract.
3. In consideration of the payments to be made by the Employer to the Contractor as specified in this Agreement, the Contractor hereby covenants with the Employer to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of \_\_\_\_\_ on the day, month and year specified above.

Signed by \_\_\_\_\_ (for the Employer)

Signed by \_\_\_\_\_ (for the Contractor)

## Performance Security

**Beneficiary:** *[Insert name and Address of Purchaser]*

**Date:** *[Insert date of issue]*

**PERFORMANCE GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the 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 for *[Insert percentage in words and figures]* % of the contract price.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]*<sup>25</sup> upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

This guarantee shall expire not later than *[Insert expiry date]*<sup>26</sup>.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert*<sup>27</sup>*: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]*

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Place, date

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Guarantor's authorized signature(s)

<sup>25</sup> This guarantee shall be issued in the contract currency only.

<sup>26</sup> The guarantee shall be valid for at least 28 days from the date of contractual contract completion (including warranty obligations).

<sup>27</sup> In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

## Advance Payment Security

**Beneficiary:** *[Insert name and Address of Purchaser]*

**Date:** *[Insert date of issue]*

**ADVANCE PAYMENT GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the 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 of *[Insert amount and currency in words and figures]*<sup>28</sup>, representing *[Insert percentage in words and figures]* % of the contract price, is to be made against an advance payment guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary, any sum or sums not exceeding in total an amount of *[Insert guarantee amount and currency in words and figures]* upon receipt by us of the Beneficiary's first demand, supported by the Beneficiary's statement, whether in the demand itself or a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for the demand or the sum specified therein.

The advance payment guarantee shall come into force and effect as soon as the advance payment has been credited to the Applicant on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) per cent of the Accepted Contract Amount, less provisional sums, has been certified for payment, or on the *[Insert date]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date, by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

*[As preferred option regarding guarantee rules insert*<sup>29</sup>*: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]*

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Place, date

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Guarantor's authorized signature(s)

<sup>28</sup> This guarantee must be issued in the contract currency only.

<sup>29</sup> In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.

## Retention Money Security

**Beneficiary:** *[Insert name and Address of Purchaser]*

**Date:** *[Insert date of issue]*

**RETENTION MONEY GUARANTEE No.:** *[Insert guarantee reference number]*

**Guarantor:** *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[Insert name and address of contractor, which in the case of a joint venture shall be the name and address of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[Insert reference number of the contract]* dated *[Insert contract date]* with the Beneficiary, for the execution of *[Insert object of the contract and brief description of Works]* (hereinafter called "the Contract").

Furthermore we understand that, according to the conditions of the Contract, the Beneficiary retains moneys up to the limit set forth in the Contract ("the Retention Money"), and that when the Taking-Over Certificate has been issued under the Contract and the first half of the Retention Money has been certified for payment, payment of *[insert the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security]* is to be made against a Retention Money guarantee.

Waiving all objections and defences, we, as Guarantor, hereby irrevocably and independently undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert guarantee amount and currency in words and figures]*<sup>30</sup> upon receipt by us of the Beneficiary's first demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or show grounds for the demand or the sum specified therein.

The retention money guarantee shall come into force and effect as soon as the second half of the Retention Money has been credited to the Applicant on its account. Minor deductions of the above mentioned amount notably due to bank fees shall have no effect on the entry into force.

In the event of any claim under this guarantee, payment shall be effected to *[Insert the account on which payments are to be made]*, for the account of *[Insert name of the Purchaser and the Purchaser's country]*.

This guarantee shall expire not later than *[Insert expiry date]*<sup>31</sup>.

By this date we must have received any claims for payment by letter or encoded telecommunication.

It is understood that you will return this guarantee to us on expiry or after payment of the total amount to be claimed hereunder.

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30 The Guarantor shall insert an amount representing the amount of the second half of the Retention Money or if the amount guaranteed under the Performance Guarantee when the Taking-Over Certificate is issued is less than half of the Retention Money, the difference between half of the Retention Money and the amount guaranteed under the Performance Security and denominated in the contract currency(ies) only.

31 Insert the same expiry date as set forth in the performance security, representing the date twenty-eight days after the completion date described in the Appendix to Bid. The Employer should note that in the event of an extension of this date for completion of the Contract, the Employer would need to request an extension of this guarantee from the Guarantor. Such request must be in writing and must be made prior to the expiration date established in the guarantee. In preparing this guarantee, the Employer might consider adding the following text to the form, at the end of the penultimate paragraph: "The Guarantor agrees to a one-time extension of this guarantee for a period not to exceed [six months][one year], in response to the Beneficiary's written request for such extension, such request to be presented to the Guarantor before the expiry of the guarantee."

*[As preferred option regarding guarantee rules insert* <sup>32</sup>*: This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 Revision, ICC Publication No. 758, except that the supporting statement under Article 15(a) is hereby excluded.]*

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Place, date

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Guarantor's authorized signature(s)

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<sup>32</sup> In the case the issuing bank will not add the preferred option, the following must be added instead: This guarantee is governed by the laws of *[Insert country of jurisdiction]*. Note: the country of jurisdiction shall be the country where the bank's branch issuing the guarantee is physically located.