

STANDARD TENDER DOCUMENTS



**THE NATIONAL GOVERNMENT CONSTITUENCIES
DEVELOPMENT FUND BOARD**

SABOTI CONSTITUENCY

**PROPOSED CONSTRUCTION TO COMPLETION OF SABOTI
CONSTITUENCY DIGITAL HUB AT TRANS NZOIA WEST
DEPUTY COUNTY COMMISSIONER'S OFFICE**

**TENDER No:
DIGITAL HUB/NGCDFC/138/2211311/108/1**

JULY 2025

INVITATION TO TENDER

PROCURING ENTITY: NG-CDF Saboti

CONTRACT NAME AND DESCRIPTION: Proposed Construction To Completion Of The Saboti Constituency Digital Hub At The Trans Nzoia West Deputy County Commissioner's Office

1. The NG-CDF Saboti invites sealed tenders for the construction of Saboti Constituency Digital Hub for the F/Y 2024/2025 at the County Commissioner's compound
 2. Tendering will be conducted under an open competitive method (National) using a standardized tender document. Tendering is open to **all qualified and interested Tenderers**.
 3. Qualified and interested tenderers may obtain further information and inspect the Tender Documents during office hours 0900 to 1500 hours at the NG-CDF office premises
 4. A complete set of tender documents may be purchased or obtained by interested tenders upon payment of a non-refundable fees of Kshs.5,000 in cash or Banker's Cheque and payable to the address given
 5. Tender documents may be viewed and downloaded for free from the website cdfsaboti@ngcdf.go.ke
 6. Tenders shall be quoted be in Kenya Shillings and shall include all taxes. Tenders shall remain valid for seven (7) days from the date of opening of tenders.
 7. All Tenders must be accompanied by a "tender Security" or "Tender-Securing Declaration," of Kshs 160,000
 8. The Tenderer shall chronologically serialize all pages of the tender documents submitted.
 9. Completed tenders must be delivered to the address below on or before 07/07/2025 at 10:00AM Electronic Tenders **will not** be permitted.
 10. Tenders will be opened immediately after the deadline date and time specified above or any dead line date and time specified later. Tenders will be publicly opened in the presence of the Tenderers' designated representatives who choose to attend.
 11. Late tenders will be rejected.
- A. Address for obtaining further information and for purchasing tender documents
- (1) NG-CDF Saboti.
 - (2) County Commissioner's Compound
 - (3) P.O. Box 1330- 30200, Kitale
- B. Tel No: 0714 263673 Address for Submission of Tenders.
- (1) NG-CDF Saboti.
 - (2) County Commissioner's Compound
 - (3) P.O. Box 1330- 30200, Kitale
 - (4) Tel No: 0714 263673
- C. Address for Opening of Tenders.
- (1) NG-CDF Saboti.
 - (2) County Commissioner's Compound
 - (3) P.O. Box 1330- 30200, Kitale
 - (4) Tel No: 0714 263673

Name: CHRISTOPHER SIMONA KWEYU

Designation: NG-CDFC CHAIRPERSON

Signature: _____

Date: _____



PART 1: TENDERING PROCEDURES

SECTION I - INSTRUCTIONS TO TENDERERS

A GENERAL PROVISIONS

1.0 Scope of tender

1.1 The NG-CDF Saboti as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents.

1.2 Throughout this tendering document:

- a) The term “inwriting” means communicated in written form
- b) “Day” means calendar day, unless otherwise specified as “Business Day”. A Business Day is any day that is an official working day of the NG-CDF Saboti. It excludes official public holidays.

2.0 Fraud and corruption

2.1 The NG-CDF Saboti requires compliance with the provisions of the Public Procurement and Asset Disposal Act, 2015, Section 62 “Declaration not to engage in corruption”.

2.2 The NG-CDF Saboti requires compliance with the provisions of the Competition Act 2010, regarding collusive practices in contracting. Any tenderer found to have engaged in collusive conduct shall be disqualified and criminal and/or civil sanctions may be imposed.

2.3 Tenderers shall permit and shall cause their agents (whether declared or not), subcontractors, sub-consultants, service providers, suppliers, and their personnel, to permit the NG-CDF Saboti to inspect all accounts, records and other documents relating to any initial selection process, pre-qualification process, tender submission, proposal submission, and contract performance (in the case of award), and to have them audited by auditors appointed by the NG-CDF Saboti.

2.4 Unfair Competitive Advantage - Fairness and transparency in the tender process require that the firms or their Affiliates competing for a specific assignment do not derive a competitive advantage from having provided consulting services related to this tender. To that end, the NG-CDF Saboti shall indicate in the **Data Sheet** and make available to all the firms together with this tender document all information that would in that respect give such firm any unfair competitive advantage over competing firms.

3.0 Eligible tenderers

3.1 A Tenderer may be a firm that is a private entity, a state-owned enterprise or institution subject to ITT 3.8, or an individual or any combination of such entities in the form of a joint venture (JV) under an existing agreement with the intent to enter into such an agreement supported by a letter of intent. In the case of a joint venture, all members shall be jointly and severally liable for the execution of the entire Contract in accordance with the Contract terms.

3.2 Public Officers of the NG-CDF Saboti, their Spouses, Child, Parent, Brothers or Sister. Child, Parent, Brother or Sister of a Spouse, their business associates or agents and firms/organizations in which they have a substantial or controlling interest shall not be eligible to tender or be awarded a contract.

3.3 A Tenderer shall not have a conflict of interest. Any tenderer found to have a conflict of interest shall be disqualified. A tenderer may be considered to have a conflict of interest for the purpose of this tendering process, if the tenderer:

- a) Directly or indirectly controls, is controlled by or is under common control with another tenderer;
- b) Receives or has received any director indirect subsidy from another tenderer;
- c) Has the same legal representative as another tenderer;
- d) Has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the NG-CDF Saboti regarding this tendering process;
- e) Any of its affiliates participated as a consultant in the preparation of the design or technical specifications of the goods or works that are the subject of the tender;
- f) Any of its affiliates has been hired (or is proposed to be hired) by the NG-CDF Saboti as a consultant for Contract implementation;
- g) Would be providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of the contract specified in this Tender Document;
- h) Has a close business or personal relationship with senior management or professional staff of the NG-CDF Saboti who has the ability to influence the bidding process and:
 - i) Are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract; or
 - ii) May be involved in the implementation or supervision of such Contract unless the conflicts stemming from such relationship has been resolved in a manner acceptable to the NG-CDF Saboti throughout the tendering process and execution of the Contract.

3.4 A tenderer shall not be involved in corrupt, coercive, obstructive or fraudulent practice. A tenderer that is proven to have been involved in any of these practices shall be automatically disqualified

3.5 A Tenderer (either individually or as a JV member) shall not participate in more than one Tender, except for permitted alternative tenders. This includes participation as a subcontractor in other Tenders. Such participation shall result in the disqualification of all Tenders in which the firm is involved.

3.6 A Tenderer may have the nationality of any country, subject to the restrictions pursuant to ITT3.9. A Tenderer shall be deemed to have the nationality of a country if the Tenderer is constituted, incorporated or registered in and operates in conformity with the provisions of the laws of that country, as evidenced by its articles of incorporation (or equivalent documents of constitution or association) and its registration documents, as the case may be.

3.7 A Tenderer that is a state-owned enterprise or a public institution in Kenya may be eligible to tender and be awarded Contract(s) only if it is determined by the NG-CDF Saboti to meet the following conditions, i.e. if it is:

- i) A legal public entity of Government and/or public administration,
- ii) financially autonomous and not receiving any significant subsidies or budget support from any public entity or Government, and;
- (iii) operating under commercial law and vested with legal rights and liabilities similar to any commercial enterprisetoenableitcompetewithfirmsintheprivatesectoronanequalbasis.

- 3.8** The National Construction Authority Act of Kenya requires that all local and foreign contractors be registered with the National Construction Authority and be issued with a Registration Certificate before they can undertake any construction works in Kenya. Registration shall not be a condition for tender, but it shall be a condition of contract award and signature. A selected tenderer shall be given opportunity to register before such award and signature of contract.
- 3.9** The Competition Act of Kenya requires that firms wishing to tender as Joint Venture undertakings which may prevent, distort or lessen competition in provision of services are prohibited unless they are exempt in accordance with the provisions of Section 25 of the Competition Act, 2010. JVs will be required to seek for exemption from the Competition Authority. Exemption shall not be a condition for tender, but it shall be a condition of contract award and signature.
- 4.14** A Kenyan tenderer shall be eligible to tender if it provides evidence of having fulfilled his/her tax obligations by producing valid tax compliance certificate or tax exemption certificate issued by the Kenya Revenue Authority.

4.0 Eligible goods, equipment, and services

- 4.1** Goods, equipment and services to be supplied under the Contract may have their origin in any country that is not ineligible. At the NG-CDF Saboti's request, Tenderers may be required to provide evidence of the origin of Goods, equipment and services.
- 4.2** Any goods, works and production processes with characteristics that have been declared by the relevant national environmental protection agency or by other competent authority as harmful to human beings and to the environment shall not be eligible for procurement.

5.0 Tenderer's responsibilities

- 5.1** The tenderer shall bear all costs associated with the preparation and submission of his/her tender, and the NG-CDF Saboti will in no case be responsible or liable for those costs.
- 5.2** The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the Site of the Works and its surroundings and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works.
- 5.3** The Tenderer and any of its personnel or agents will be granted permission by the NG-CDF Saboti to enter upon its premises and lands for the purpose of such visit. The Tenderer shall indemnify the NG-CDF Saboti against liability arising from death or personal injury, loss of or damage to property, and any other losses and expenses incurred as a result of the examination and inspection.
- 5.4** The tenderer shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including charts, as necessary or required.

B. CONTENTS OF TENDER DOCUMENTS

6.0 Sections of Tender Document

- 6.1** The tender document consists of Parts 1, 2, and 3, which includes all the sections specified below, and which should be read in conjunction with any Addenda issued.

PART 1: Tendering Procedures

Section I – Instructions to Tenderers

Section II – Tender Data Sheet (TDS)

Section III- Evaluation and Qualification

Criteria Section IV – Tendering Forms

PART 2: Works' Requirements

Section V - Bills of
Quantities Section VI -
Specifications Section VII -
Drawings

PART 3: Conditions of Contract and Contract Forms

Section VIII - General Conditions

Section IX - Special Conditions of Contract

Section X- Contract Forms

62 The Invitation to Tender Notice issued by the NG-CDF Saboti is not part of the Contract documents. Unless obtained directly from the NG-CDF Saboti, the NG-CDF Saboti is not responsible for the completeness of the Tender document, responses to requests for clarification, the minutes of a pre-arranged site visit and those of the pre-Tender meeting (if any), or Addenda to the Tender document

63 The Tenderer is expected to examine all instructions, forms, terms, and specifications in the Tender Document and to furnish with its Tender all information and documentation as is required by the Tender document.

7.0 Clarification of Tender Document, Site Visit, Pre-tender Meeting

7.1 A Tenderer requiring any clarification of the Tender Document shall contact the NG-CDF Saboti in writing at the NG-CDF Saboti's address specified in the **TDS** or raise its enquiries during the pre-Tender meeting if provided for. The NG-CDF Saboti will respond in writing to any request for clarification, provided that such request is received no later than the period specified in the **TDS** prior to the deadline for submission of tenders. The NG-CDF Saboti shall forward copies of its response to all tenderers who have acquired the Tender documents, including a description of the inquiry but without identifying its source.

7.2 The Tenderer, at the Tenderer's own responsibility and risk, is encouraged to visit and examine and inspect the site(s) of the required contracts and obtain all information that may be necessary for preparing a tender. The costs of visiting the Site shall be at the Tenderer's own expense.

7.3 The Tenderer is requested to submit any questions in writing, to reach the NG-CDF Saboti not later than the period specified in the **TDS** before the meeting.

8.0 Minutes of a pre-arranged site visit and those of the pre-tender meeting, if applicable, including the text of the questions asked by Tenderers and the responses given, together with any responses prepared after the meeting, will be transmitted promptly to all Tenderers who have acquired the Tender Documents. Amendment of Tender Documents

8.1 At any time prior to the deadline for submission of Tenders, the NG-CDF Saboti may amend the Tender Documents by issuing addenda.

8.2 Any addendum issued shall be part of the Tender Documents and shall be communicated in writing to all who have obtained the Tender Documents from the NG-CDF Saboti. The NG-CDF Saboti shall also promptly publish the addendum on the NG-CDF Saboti's website.

8.3 To give Tenderers reasonable time in which to take an addendum into account in preparing their Tenders, the NG-CDF Saboti should extend the dead line for the submission of Tenders

C. PREPARATION OF TENDERS

9. Cost of Tendering

The Tenderer shall bear all costs associated with the preparation and submission of its Tender, and the NG-CDF Saboti shall not be responsible or liable for those costs, regardless of the conduct or outcome of the tendering process.

10.0 Language of Tender

The Tender, as well as all correspondence and documents relating to the tender exchanged by the tenderer and the NG-CDF Saboti, shall be written in the English Language Documents Comprising the Tender

11.0 The Tender shall comprise the following:

- a) Form of Tender prepared
- b) Schedules including priced Bill of Quantities, completed
- c) Tender Security or Tender-Securing Declaration
- d) Alternative Tender, if permissible
- e) **Authorization:** written confirmation authorizing the signatory of the Tender to commit the Tenderer
- f) **Qualifications:** documentary evidence establishing the Tenderer's qualifications to perform the Contract if its Tender is accepted;
- g) **Conformity:** a technical proposal
- h) Any other document required

11.1 In addition to the requirements, Tenders 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 Tender shall be signed by all members and submitted with the Tender, together with a copy of the proposed JV Agreement. Change of membership and conditions of the JV prior to contract signature will render the tender liable for disqualification.

12.0 Form of Tender and Schedules

12.1 The Form of Tender and Schedules, including the Bill of Quantities, shall be prepared using the relevant forms furnished in Section IV, Tendering Forms. The forms must be completed without any alterations to the text, and no substitutes shall be accepted except as provided. All blank spaces shall be filled in with the information requested. The Tenderer shall chronologically serialize all pages of the tender documents submitted.

12.2 The Tenderer shall furnish in the Form of Tender information on commissions and gratuities, if any, paid or to be paid to agents or any other party relating to this Tender.

13. Alternative Tenders

13.1 Unless otherwise specified in the TDS, alternative Tenders shall not be considered.

13.2 When alternative times for completion are explicitly invited, a statement to that effect will be included in the **TDS**, and the method of evaluating different alternative times for completion will be described in Section III, Evaluation and Qualification Criteria.

13.3 Except as provided under ITT 13.4 below, Tenderers wishing to offer technical alternatives to the requirements of the Tender Documents must first price the NG-CDF Saboti's design as described in the Tender Documents and ~~shall~~ further provide all information necessary for a complete evaluation of the alternative by the NG-CDF Saboti, 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 Tenderer with the Winning Tender conforming to the basic technical requirements shall be considered by the NG-CDF Saboti.

- 134 When specified in the **TDS**, Tenderers are permitted to submit alternative technical solutions for specified parts of the Works, and such parts will be identified in the **TDS**, as will the method for their evaluating, and Works' Requirements.

14.0 Tender Prices and Discounts

- 14.1 The prices and discounts (including any price reduction) quoted by the Tenderer in the Form of Tender and in the Bill of Quantities shall conform to the requirements specified below.
- 14.2 The Tenderer 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 Tenderer shall be deemed covered by the rates for other items in the Bill of Quantities and will not be paid for separately by the NG-CDF Saboti.
- 14.3 The price to be quoted in the Form of Tender, shall be the total price of the Tender, including any discounts offered.
- 14.4 The Tenderer shall quote any discounts and the methodology for their application in the Form of Tender. It will be specified in the **TDS** if the rates and prices quoted by the Tenderer are or are not subject to adjustment during the performance of the Contract in accordance with the provisions of the Conditions of Contract, except incases where the contract is subject to fluctuations and adjustments, not fixed price. In such a case, the Tenderer shall furnish the indices and weightings for the price adjustment formulae in the Schedule of Adjustment Data and the NG-CDF Saboti may require the Tenderer to justify its proposed indices and weightings.
- 14.5 Where tenders are being invited for individual lots (contracts) or for any combination of lots (packages), tenderers wishing to offer discounts for the award of more than one Contract shall specify in their Tender the price reductions applicable to each package, or alternatively, to individual Contracts within the package. Discounts shall be submitted, provided the Tenders for all lots (contracts) are opened at the sametime.
- 14.6 All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause, as of the date 30 days prior to the deadline for submission of Tenders, shall be included in the rates and prices and the total Tender Price submitted by the Tenderer.

15.0 Currencies of Tender and Payment

- 15.1 The currency(ies) of the Tender and the currency(ies) of payments shall be the same.
- 15.2 Tenderers shall quote entirely in Kenya Shillings. The unit rates and the prices shall be quoted by the Tenderer in the Bill of Quantities, entirely in Kenya shillings.

A Tenderer expecting to incur expenditures in other currencies for inputs to the Works Tenderers may be required by the NG-CDF Saboti to justify, to the NG-CDF Saboti's satisfaction, their local and foreign currency requirements, and to substantiate that the amounts included in the unit rates and prices and shown in the Schedule of Adjustment Data in the Appendix to Tender are reasonable, in which case a detailed break down of the foreign currency requirements shall be provided by Tenderers.

16.0 Documents Comprising the Technical Proposal

The Tenderer shall furnish a technical proposal including a statement of work methods, equipment, personnel, schedule and any other information as stipulated in Section IV, Tender

Forms, insufficient detail to demonstrate the adequacy of the Tenderer's proposal to meet the work's requirements and the completion time.

17.0 Documents Establishing the Eligibility and Qualifications of the Tenderer

- 17.1** Tenderers shall complete the Form of Tender, included in Section IV, Tender Forms, to establish Tenderer's eligibility
- 17.2** In accordance with Section III, Evaluation and Qualification Criteria, to establish its qualifications to perform the Contract the Tenderer shall provide the information requested in the corresponding information sheets included in Section IV, Tender Forms.
- 17.3** If a margin of preference applies as specified, national tenderers, individually or in joint ventures, applying for eligibility for national preference shall supply all information required to satisfy the criteria for eligibility specified.
- 17.4** Tenderers 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 NG-CDF Saboti, a particular contractor or group of contractors qualifies for a margin of preference. Further the information will enable the NG-CDF Saboti identify any actual or potential conflict of interest in relation to the procurement and/or contract management processes, or a possibility of collusion between tenderers, and thereby help to prevent any corrupt influence in relation to the procurement process or contract management.
- 17.5** The purpose of the information above overrides any claims to confidentiality which a tenderer may have. There can be no circumstances in which it would be justified for a tenderer to keep information relating to its ownership and control confidential where it is tendering to undertake public sector work and receive public sector funds. Thus, confidentiality will not be accepted by the NG-CDF Saboti as a justification for a Tenderer
- 17.6** The Tenderer shall provide further documentary proof, information or authorizations that the NG-CDF Saboti may request in relation to ownership and control which information on any changes to the information which was provided by the tenderer. The obligations to require this information shall continue for the duration of the procurement process and contract performance and after completion of the contract, if any change to the information previously provided may reveal a conflict of interest in relation to the award or management of the contract.
- 17.7** All information provided by the tenderer pursuant to these requirements must be complete, current and accurate as at the date of provision to the NG-CDF Saboti.
- 17.8** If a tenderer fails to submit the information required by these requirements, its tender will be rejected. Similarly, if the NG-CDF Saboti is unable, after taking reasonable steps, to verify to a reasonable degree the information submitted by a tenderer pursuant to these requirements, then the tender will be rejected.
- 17.9** If information submitted by a tenderer pursuant to these requirements, or obtained by the NG-CDF Saboti shows any conflict of interest which could materially and improperly benefit the tenderer in relation to the procurement or contract management process, then:
- i) If the procurement process is still ongoing, the tenderer will be disqualified from the procurement process,
 - ii) if the contract has been awarded to that tenderer, the contract award will be set aside depending the outcome of (iii),
 - iii) the tenderer will be referred to the relevant law enforcement authorities for investigation of whether the tenderer or any other person have committed any criminal offence.

18.0 Period of Validity of Tenders

- 18.1. Tenders shall remain valid for the Tender Validity period specified in the **TDS**. The Tender Validity period starts from the date fixed for the Tender submission deadline (as prescribed by the NG-CDF Saboti a tender valid for a shorter period shall be rejected by the NG-CDF Saboti as non-responsive.
- 18.2 In exceptional circumstances, prior to the expiration of the Tender validity period, the NG CDF Saboti may request Tenderers to extend the period of validity of their Tenders. The request and the responses shall be made in writing. If a Tender Security is requested, it shall also be extended for thirty (30) days beyond the deadline of the extended validity period. A Tenderer may refuse the request without forfeiting its Tender security.
- 19.0 The Tenderer shall furnish as part of its Tender, either a Tender-Securing Declaration or a Tender Security as specified in the **TDS**, in original form and, in the case of a Tender Security, in the amount and currency **specified** in the **TDS**.
- 19.1 If a Tender Security is specified, the Tender Security shall be a demand guarantee in any of the following forms at the Tenderer's option:
- I) cash;
 - ii) a bank guarantee;
 - iii) a guarantee by an insurance company registered and licensed by the Insurance Regulatory Authority listed by the Authority;
 - (iv) a guarantee issued by a financial institution approved and licensed by the Central Bank of Kenya, from a reputable source, and an eligible country.
- 19.2 If an unconditional bank guarantee is issued by a bank located outside Kenya, the issuing bank shall have a correspondent bank located in Kenya to make it enforceable. The Tender Security shall be valid for thirty (30) days beyond the original validity period of the Tender, or beyond any period of extension if requested
- 19.3 If a Tender Security or Tender-Securing Declaration is specified any Tender not accompanied by a substantially responsive Tender Security or Tender-Securing Declaration shall be rejected by the NG-CDF Saboti as non-responsive.
- 19.4 If a Tender Security is specified, the Tender Security of unsuccessful Tenderers shall be returned as promptly as possible upon the successful Tenderer's signing the Contract and furnishing the Performance Security and any other documents required in the **TDS**. The NG-CDF Saboti shall also promptly return the tender security to the tenderers where the procurement proceedings are terminated, all tenders were determined non-responsive or a bidder declines to extend tender validity period.
- 19.5 The Tender Security of the successful Tenderer shall be returned as promptly as possible once the successful Tenderer has signed the Contract and furnished the required Performance Security, and any other documents required in the **TDS**.
- 19.6 The Tender Security may be forfeited or the Tender-Securing Declaration executed:
- a) if a Tenderer withdraws its Tender during the period of Tender validity specified by the Tenderer on the Form of Tender, or any extension there to provided by the Tenderer; or
 - b) if the successful Tenderer fails to: -
 - i) sign the Contract
 - ii) furnish a Performance Security and if required in the **TDS**, and any other documents

20.0 Format and Signing of Tender

- 20.1** The Tenderer shall prepare one original of the documents comprising the Tender as described in ITT 11 and clearly mark it "ORIGINAL." Alternative Tenders, if permitted in accordance with ITT 13, shall be clearly marked "ALTERNATIVE." In addition, the Tenderer shall submit copies of the Tender, and clearly mark them "COPY." In the event of any discrepancy between the original and the copies, the original shall prevail.
- 20.2** Tenderers shall mark as "CONFIDENTIAL" all information in their Tenders which is confidential to their business. This may include proprietary information, trade secrets, or commercial or financially sensitive information.
- 20.3** The original and all copies of the Tender shall be typed or written in indelible ink and shall be signed by a person duly authorized to sign on behalf of the Tenderer. This authorization shall consist of a written confirmation and shall be attached to the Tender. The name and position held by each person signing the authorization must be typed or printed below the signature. All pages of the Tender where entries or amendments have been made shall be signed or initialed by the person signing the Tender.
- 20.4** In case the Tenderer is a JV, the Tender 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.
- 20.5** Any inter-lineation, erasures, or overwriting shall be valid only if they are signed or initialed by the person signing the Tender.

D. SUBMISSION AND OPENING OF TENDERS

21.0 Sealing and Marking of Tenders

- 21.1** The Tenderer shall deliver the Tender in a single sealed envelope, or in a single sealed package, or in a single sealed container bearing the name and Reference number of the Tender, addressed to the NG-CDF Saboti and a warning not to open before the time and date for Tender opening date. Within the single envelope, package or container, the Tenderer shall place the following separate, sealed envelopes:
- a) in an envelope or package or container marked "ORIGINAL", all documents comprising the Tender, and
 - b) in a new envelope or package or container marked "COPIES", all required copies of the Tender; and
 - c) if alternative Tenders are permitted in accordance with ITT 13, and if relevant:
 - i) in an envelope or package or container marked "ORIGINAL –ALTERNATIVE TENDER", the alternative Tender; and

The inner envelopes or packages or containers shall:

- a) bear the name and address of the NG-CDF Saboti,
 - b) bear the name and address of the Tenderer; and
 - c) bear the name and Reference number of the Tender.
- 21.2** If an envelope or package or container is not sealed and marked as required, the NG-CDF Saboti will assume no responsibility for the misplacement or premature opening of the Tender. Tenders misplaced or opened prematurely will not be accepted.

22.0 Deadline for Submission of Tenders

- 22.1** Tenders must be received by the NG-CDF Saboti at the address specified in the **TDS** and no later than the date and time also specified in the **TDS**. When so specified in the **TDS**, tenderers shall have the option of submitting their Tenders electronically. Tenderers submitting Tenders

electronically shall follow the electronic Tender submission procedures specified in the **TDS**.

22.2 The NG-CDF Saboti may, at its discretion, extend the deadline for the submission of Tenders by amending the Tender Documents in accordance with ITT 8, in which case all rights and obligations of the NG-CDF Saboti and Tenderers previously subject to the deadline shall thereafter be subject to the deadline as extended.

23.0 Late Tenders

The NG-CDF Saboti shall not consider any Tender that arrives after the deadline for submission of tenders. Any Tender received by the NG-CDF Saboti after the deadline for submission of Tenders shall be declared late, rejected, and returned unopened to the Tenderer.

24.0 Withdrawal, Substitution, and Modification of Tenders

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

- a) prepared and submitted (except that withdrawal notices do not require copies), and in addition, the respective envelopes shall be clearly marked "WITHDRAWAL," "SUBSTITUTION," "MODIFICATION;" and
- b) received by the NG-CDF Saboti prior to the deadline prescribed for submission of Tenders

24.2 Tenders requested to be withdrawn shall be returned unopened to the Tenderers.

24.3 No Tender may be withdrawn, substituted, or modified in the interval between the deadline for submission of Tenders and the expiration of the period of Tender validity specified by the Tenderer on the Form of Tender or any extension thereof.

25. Tender Opening

25.1 The NG-CDF Saboti shall publicly open and read out all Tenders received by the deadline, at the date, time and place specified in the **TDS**, in the presence of Tenderers' designated representatives who chooses to attend. Any specific electronic Tender opening procedures required if electronic Tendering is permitted, shall be as specified in the **TDS**.

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

25.3 Next, envelopes marked "SUBSTITUTION" shall be opened and read out and exchanged with the corresponding Tender being substituted, and the substituted Tender shall not be opened, but returned to the Tenderer. No Tender substitution shall be permitted unless the corresponding substitution notice contains a valid authorization to request the substitution and is read out at Tender opening.

25.4 Next, envelopes marked "MODIFICATION" shall be opened and read out with the corresponding Tender. No Tender modification shall be permitted unless the corresponding modification notice contains a valid authorization to request the modification and is read out at Tender opening.

25.5 Next, all remaining envelopes shall be opened one at a time, reading out: the name of the

Tenderer and whether there is a modification; the total Tender Price, per lot (contract) if applicable, including any discounts and alternative Tenders; the presence or absence of a Tender Security or Tender-Securing Declaration, if required; and any other details as the NG-CDF Saboti may consider appropriate.

- 256 Only Tenders, alternative Tenders and discounts that are opened and read out at Tender opening shall be considered further for evaluation. The Form of Tender and pages of the Bill of Quantities (to be decided on by the tender opening committee) are to be initialed by the members of the tender opening committee attending the opening.
- 257 At the Tender Opening, the NG-CDF Saboti shall neither discuss the merits of any Tender nor reject any Tender
- 258 The NG-CDF Saboti shall prepare minutes of the Tender Opening that shall include, as a minimum: -
- a) the name of the Tenderer and whether there is a withdrawal, substitution, or modification;
 - b) the Tender Price, per lot (contract) if applicable, including any discounts;
 - c) any alternative Tenders;
 - d) the presence or absence of a Tender Security, if new as required;
 - e) number of pages of each tender document submitted.
- 259 The Tenderers' representatives who are present shall be requested to sign the minutes. The omission of a Tenderer's signature on the minutes shall not invalidate the contents and effect of the minutes. A copy of the tender opening register shall be distributed to all Tenderers.

E. EVALUATION AND COMPARISON OF TENDERS

26. Confidentiality

- 261 Information relating to the evaluation of Tenders and recommendation of contract award shall not be disclosed to Tenderers or any other persons not officially concerned with the Tender process until information on Intention to Award the Contract is transmitted to all Tenderers.
- 262 Any effort by a Tenderer to influence the NG-CDF Saboti in the evaluation of the Tenders or Contract award decisions may result in the rejection of its tender.
- 263 From the time of tender opening to the time of contract award, if a tenderer wishes to contact the NG-CDF Saboti on any matter related to the tendering process, it shall do so in writing.

27.0 Clarification of Tenders

- 271 To assist in the examination, evaluation, and comparison of the tenders, and qualification of the tenderers, the NG-CDF Saboti may, at its discretion, ask any tenderer for a clarification of its tender, given a reasonable time for a response. Any clarification submitted by a tenderer that is not in response to a request by the NG-CDF Saboti shall not be considered. The NG-CDF Saboti'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 tender shall be sought, offered, or permitted, except to confirm the correction of arithmetic errors discovered by the NG-CDF Saboti in the evaluation of the tenders.
- 272 If a tenderer does not provide clarifications of its tender by the date and time set in the NG-CDF Saboti's request for clarification, its Tender may be rejected.

29.0 Determination of Responsiveness

- 29.1 The NG-CDF Saboti's determination of a tender's responsiveness is to be based on the contents of the tender itself

- 29.2** A substantially responsive Tender is one that meets the requirements of the Tender document without material deviation, reservation, or omission. A material deviation, reservation, or omission is one that, if accepted, would:
- a) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract;
 - b) limit in any substantial way, inconsistent with the tender document, the NG-CDF Saboti's rights or the tenderer's obligations under the proposed contract;
 - c) if rectified, would unfairly affect the competitive position of other tenderers presenting substantially responsive tenders.
- 29.3** The NG-CDF Saboti shall examine the technical aspects of the tender submitted, to confirm that all 'Works' Requirements have been met without any material deviation, reservation or omission.
- 29.4** If a tender is not substantially responsive to the requirements of the tender document, it shall be rejected by the NG-CDF Saboti and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.
- 30.0 Non-material non-conformities**
- 30.1** Provided that a tender is substantially responsive, the NG-CDF Saboti may waive any non-conformities in the tender.
- 30.2** Provided that a Tender is substantially responsive, the NG-CDF Saboti may request that the tenderer submit the necessary information or documentation, within a reasonable period of time, to rectify non-material non-conformities in the tender related to documentation requirements. Requesting information or documentation on such non-conformities shall not be related to any aspect of the price of the tender. Failure of the tenderer to comply with the request may result in the rejection of its tender.
- 30.3** Provided that a tender is substantially responsive, the NG-CDF Saboti shall rectify quantifiable non-material non-conformities related to the Tender Price. To this effect, the Tender Price shall be adjusted, for comparison purposes only, to reflect the price of a missing or non-conforming item or component
- 33.0 Margin of Preference and Reservations**
- 33.1** A margin of preference may be allowed only when the contract is open to international competitive tendering where foreign contractors are expected to participate in the tendering process and where the contract exceeds the value/threshold specified in the Regulations.
- 33.2** A margin of preference shall not be allowed unless it is specified so in the **TDS**.
- 33.3** Contracts procured on basis of international competitive tendering shall not be subject to reservations exclusive to specific groups as provided in ITT 33.4.
- 33.4** Where it is intended to reserve a contract to a specific group of businesses (these groups are Small and Medium Enterprises, Women Enterprises, Youth Enterprises and Enterprises of persons living with disability, as the case may be), and who are appropriately registered as such by the authority to be specified in the **TDS**, a NG-CDF Saboti shall ensure that the invitation to tender specifically indicates that only businesses or firms belonging to the specified group are eligible to tender. No tender shall be reserved to more than one group. If not so stated in the Invitation to Tender and in the Tender documents, the invitation to tender will be open to all interested tenderers.
- 34.0** Tenderers may propose sub-contracting up to the percentage of total value of contracts or the volume of works as specified in the **TDS**. Subcontractors proposed by the Tenderer shall

be fully qualified for their parts of the Works.

35. Evaluation of Tenders

- 35.1 The NG-CDF Saboti shall use the criteria and methodologies listed in this ITT and Section III, Evaluation and Qualification Criteria. No other evaluation criteria or methodologies shall be permitted. By applying the criteria and methodologies the NG-CDF Saboti shall determine the Lowest Evaluated Tender.
- 35.2 To evaluate a Tender, the NG-CDF Saboti shall consider the following:
- a) Price adjustment, excluding provisional sums and contingencies, if any, but including Daywork items, where priced competitively;
 - b) price adjustment due to discounts offered
 - c) converting the amount resulting from applying (a) and (b) above, if relevant, to a single currency
 - d) price adjustment due to quantifiable non-material non-conformities
 - e) any additional evaluation factors, Evaluation and Qualification Criteria.
- 35.3 The estimated effect of the price adjustment provisions of the Conditions of Contract, applied over the period of execution of the Contract, shall not be considered in Tender evaluation.
- 35.4 Where the tender involves multiple lots or contracts, the tenderer will be allowed to tender for one or more lots (contracts). Each lot or contract will be evaluated. The methodology to determine the lowest evaluated tenderer or tenderers based on one lot (contract) or based on a combination of lots (contracts), will be specified in Section III, Evaluation and Qualification Criteria. In the case of multiple lots or contracts, tenderer will be required to prepare the Eligibility and Qualification Criteria Form for each Lot.

36.0 Comparison of tenders

The NG-CDF Saboti shall compare the evaluated costs of all substantially responsive Tenders established to determine the Tender that has the lowest evaluated cost.

37.0 Abnormally low tenders and abnormally high tenders

Abnormally Low Tenders

- 37.1 An Abnormally Low Tender is one where the Tender price, in combination with other elements of the Tender, appears so low that it raises material concerns as to the capability of the Tenderer in regards to the Tenderer's ability to perform the Contract for the offered Tender Price or that genuine competition between Tenderers is compromised.
- 37.2 In the event of identification of a potentially Abnormally Low Tender, the NG-CDF Saboti shall seek written clarifications from the Tenderer, including detailed price analyses of its Tender price in relation to the subject matter of the contract, scope, proposed methodology, schedule, allocation of risks and responsibilities and any other requirements of the Tender document.
- 37.3 After evaluation of the price analyses, in the event that the NG-CDF Saboti determines that the Tenderer has failed to demonstrate its capability to perform the Contract for the offered Tender Price, the NG-CDF Saboti shall reject the Tender.

Abnormally high tenders

- 37.4 An abnormally high tender price is one where the tender price, in combination with other

constituent elements of the Tender, appears unreasonably too high to the extent that the NG-CDF Saboti is concerned that it (the NG-CDF Saboti) may not be getting value for money or it may be paying too high a price for the contract compared with market prices or that genuine competition between Tenderers is compromised.

37.5 In case of an abnormally high price, the NG-CDF Saboti shall make a survey of the market prices, check if the estimated cost of the contract is correct and review the Tender Documents to check if the specifications, scope of work and conditions of contract are contributory to the abnormally high tenders. The NG-CDF Saboti may also seek written clarification from the tenderer on the reason for the high tender price. The NG-CDF Saboti shall proceed as follows:

- i) If the tender price is abnormally high based on wrong estimated cost of the contract, the NG-CDF Saboti may accept or not accept the tender depending on the NG-CDF Saboti's budget considerations.
- ii) If specifications, scope of work and/or conditions of contract are contributory to the abnormally high tender prices, the NG-CDF Saboti shall reject all tenders and may retender for the contract based on revised estimates, specifications, scope of work and conditions of contract, as the case may be.

37.6 If the NG-CDF Saboti determines that the Tender Price is abnormally too high because genuine competition between tenderers is compromised (*often due to collusion, corruption or other manipulations*), the NG-CDF Saboti shall reject all Tenders and shall institute or cause competent Government Agencies to institute an investigation on the cause of the compromise, before retendering.

39.0 Qualifications of the tenderer

39.1 The NG-CDF Saboti shall determine to its satisfaction whether the eligible Tenderer that is selected as having submitted the lowest evaluated cost and substantially responsive Tender, meets the qualifying criteria specified in Section III, Evaluation and Qualification Criteria.

39.2 The determination shall be based upon an examination of the documentary evidence of the Tenderer's qualifications submitted by the Tenderer. The determination shall not take into consideration the qualifications of other firms such as the Tenderer's subsidiaries, parent entities, affiliates, subcontractors (other than Specialized Sub-contractors if permitted in the Tender document), or any other firm(s) different from the Tenderer.

39.3 An affirmative determination shall be a prerequisite for award of the Contract to the Tenderer. A negative determination shall result in disqualification of the Tender, in which event the Procuring Entity shall proceed to the Tenderer who offers a substantially responsive Tender with the next lowest evaluated price to make a similar determination of that Tenderer's qualifications to perform satisfactorily.

40.0 Lowest evaluated tender

Having compared the evaluated prices of Tenders, the NG-CDF Saboti shall determine the Lowest Evaluated Tender. The Lowest Evaluated Tender is the Tender of the Tenderer that meets the Qualification Criteria and whose Tender has been determined to be:

- a) Most responsive to the Tender document; and
- b) the lowest evaluated price.

41.0 NG-CDF Saboti's right to accept any tender, and to reject any or all tenders.

The NG-CDF Saboti reserves the right to accept or reject any Tender and to annul the Tender process and reject all Tenders at any time prior to Contract Award, without thereby incurring any liability to Tenderers. In case of annulment, all Tenders submitted and specifically, Tender securities, shall be promptly returned to the Tenderers.

F. AWARD OF CONTRACT

42.0 Award criteria

The NG-CDF Saboti shall award the Contract to the successful tenderer whose tender has been determined to be the Lowest Evaluated Tender.

43.0 Notice of Intention to Enter into a Contract/Notification of Award

Upon award of the contract and prior to the expiry of the Tender Validity Period the NG-CDF Saboti shall issue a Notification of Intention to Enter into a Contract/Notification of award to all tenderers which shall contain, at a minimum, the following information:

- a) the name and address of the Tenderer submitting the successful tender;
- b) the Contract price of the successful tender;
- c) a statement of the reason(s) the tender of the unsuccessful tenderer to whom the letter is addressed was unsuccessful, unless the price information in (c) above already reveals the reason;
- d) the expiry date of the Standstill Period; and
- e) instruction on how to request a debriefing and/ or submit a complaint during the stand still period;

44.0 Stand still Period

44.1 The Contract shall not be signed earlier than the expiry of a Standstill Period of 14 days to allow any dissatisfied tender to launch a complaint. Where only one Tender is submitted, the Standstill Period shall not apply.

44.2 Where a Standstill Period applies, it shall commence when the NG-CDF Saboti has transmitted to each Tenderer the Notification of Intention to Enter into a Contract with the successful Tenderer.

45.0 Debriefing by the NG-CDF Saboti

45.1 On receipt of the NG-CDF Saboti's Notification of Intention to Enter into a Contract an unsuccessful tenderer may make a written request to the NG-CDF Saboti for a debriefing on specific issues or concerns regarding their tender. The NG-CDF Saboti shall provide the debriefing within five days of receipt of the request.

45.2 Debriefings of unsuccessful Tenderers may be done in writing or verbally. The Tenderer shall bear its own costs of attending such a debriefing meeting.

46.0 Letter of Award

Prior to the expiry of the Tender Validity Period and upon expiry of the Standstill Period, upon addressing a complaint that has been filed within the Standstill Period, the NG-CDF Saboti shall transmit the Letter of Award to the successful Tenderer. The letter of award shall request the successful tenderer to furnish the Performance Security within 21 days of the date of the letter.

47.0 Signing of Contract

47.1 Upon the expiry of the fourteen days of the Notification of Intention to enter into contract and upon the parties meeting their respective statutory requirements, the NG-CDF Saboti shall send the successful Tenderer the Contract Agreement.

47.2 Within fourteen (14) days of receipt of the Contract Agreement, the successful Tenderer shall sign, date, and return to the Procuring Entity.

47.3 The written contract shall be entered into within the period specified in the notification of award and before expiry of the tender validity period.

48.0 Performance Security

48.1 Within twenty-one (21) days of the receipt of the Letter of Award from the NG-CDF Saboti, the successful Tenderer shall furnish the Performance Security and, any other documents, in accordance with the General Conditions of Contract, using the Performance Security and other Forms included in Section X, Contract Forms, or another form acceptable to the NG-CDF Saboti. A foreign institution providing a bank guarantee shall have a correspondent financial institution located in Kenya, unless the NG-CDF Saboti has agreed in writing that a correspondent bank is not required.

48.2 Failure of the successful Tenderer to submit the above-mentioned Performance Security and other documents required or sign the Contract shall constitute sufficient grounds for the annulment of the award and forfeiture of the Tender Security. In that event the NG-CDF Saboti may award the Contract to the Tenderer offering the next Best Evaluated Tender.

48.3 Performance security shall not be required for contracts estimated to cost less than the amount specified in the Regulations.

49.0 Publication of Procurement Contract

Within fourteen days after signing the contract, the NG-CDF Saboti shall publish the awarded contract at its notice boards and websites; and on the Website of the Authority. At the minimum, the notice shall contain the following information:

- a) name and address of the NG-CDF Saboti;
- b) name and reference number of the contract being awarded, a summary of its scope and the selection method used;
- c) the name of the successful Tenderer, the final total contract price, the contract duration;
- d) dates of signature, commencement and completion of contract;
- e) names of all Tenderers that submitted Tenders, and their Tender prices as readout at Tender opening.

50.0 Procurement related Complaints and Administrative Review

50.1 The procedures for making Procurement-related Complaints are as specified in the.

50.2 A request for administrative review shall be made in the form provided under contract forms.

Section II - Tender Data Sheet (TDS)

The following specific data shall complement, supplement, or amend the provisions in the Instructions to Tenderers (ITT). Whenever there is a conflict, the provisions herein shall prevail over those in ITT.

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
A. General	
ITT 1.1	The name of the contract is: PROPOSED CONSTRUCTION OF THE TRANS NZOIA WEST DIGITAL HUB AT THE COUNTY COMMISSIONER'S COMPOUND The reference number of the Contract is DIGITAL HUB/ NGCDFC /138 /2211311 /108/1
ITT 2.4	The firms that provided consulting services for the contract being tendered for are:
ITT 3.1	Maximum number of members in the Joint Venture (JV) shall be: <i>[insert a number]</i> .
B. Contents of Tender Document	
ITT 7.1	(i) The Tenderer will submit any request for clarifications in writing at the Address THE CHAIRPERSON SABOTI NGCDFC to reach the NG-CDF Saboti not later than 07/07/2025
ITT 7.3	The Tenderer will submit any questions in writing, to reach the NG-CDF Saboti not later than 07/07/2025 before the meeting.
ITT 9.1	For Clarification of Tender purposes, for obtaining further information and for purchasing tender documents, the NG-CDF Saboti's address is: NG-CDF Saboti. County Commissioner's Compound P.O. Box 1330- 30200, Kitale Tel No: 0714 263673
C. Preparation of Tenders	
ITT 11.1 (h)	The Tenderer shall submit the following additional documents in its Tender: <i>[list any additional document not already listed in ITT 11.1 that must be submitted with the Tender. The list of additional documents should include the following:]</i>
ITT 13.1	Alternative Tenders <i>[insert "shall be" or "shall not be"]</i> _____ considered. <i>[If alternatives shall be considered, the methodology shall be defined in Section III, Evaluation and Qualification Criteria.]</i>
ITT 13.2	Alternative times for completion shall not be permitted.
ITT 13.4	Alternative technical solutions shall be permitted for the following parts of the Works: installation of LAN and other necessary internet resources
ITT 14.5	The prices quoted by the Tenderer shall be: fixed
ITT 15.2 (a)	Foreign currency requirements not allowed .
ITT 18.1	The Tender validity period shall be <u>seven (7) days</u> <i>counting as of the deadline</i>

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 18.3	(a) The Number of days beyond the expiry of the initial tender validity period will be 7 days. (b) The Tender price shall be adjusted by the following percentages of the tender price
ITT 19.1	Tender shall provide a Tender-Securing Declaration or a Tender Security (<i>select one</i>) The type of Tender security shall be Kshs 160,000 in the amount of Kenya shillings
ITT 20.1	In addition to the original of the Tender, the number of copies is: one (1)
ITT 20.3	The written confirmation of authorization to sign on behalf of the Tenderer shall consist of: ____ <i>[insert the name and description of the documentation required to demonstrate the authority of the signatory to sign the Tender]</i>
D. Submission and Opening of Tenders	
ITT 22.1	(A) For <u>Tender submission purposes</u> only, the NG-CDF Saboti's address is: (1) NG-CDF Saboti. County Commissioner's Compound P.O. Box 1330- 30200, Kitale Tel No: 0714 263673 Tenders shall not submit tenders electronically.
ITT 25.1	The Tender opening shall take place at the time and the address for Opening of Tenders provided below: NG-CDF Saboti. County Commissioner's Compound P.O. Box 1330- 30200, Kitale Tel No: 0714 263673 On 07/07/2025 at 10:00AM
E. Evaluation, and Comparison of Tenders	
ITT 30.3	The adjustment shall be based on the average price of the item or component as quoted in other substantially responsive Tenders. If the price of the item or component cannot be derived from the price of other substantially responsive Tenders, the NG-CDF Saboti shall use its best estimate.
TT 32.1	The currency that shall be used for Tender evaluation and comparison purposes only to convert at the selling exchange rate all Tender prices expressed in various currencies into a single currency is Kenya shillings

Reference to ITC Clause	PARTICULARS OF APPENDIX TO INSTRUCTIONS TO TENDERS
ITT 34.1	At this time, the NG-CDF Saboti <i>does not intend</i> to execute certain specific parts of the Works by subcontractors selected in advance.
ITT 34.2	Contractor's may propose subcontracting: Maximum percentage of subcontracting permitted is: <i>20% of the total contract amount</i> . Tenderers planning to subcontract more than 10% of total volume of work shall
ITT 50.1	The procedures for making a Procurement-related Complaint are detailed in the "Notice of Intention to Award the Contract" herein and are also available from the PPRA Website www.ppra.go.ke or email complaints@ppra.go.ke. In summary, a Procurement-related Complaint may challenge any of the following (among others): (i) the terms of the Tender Documents; and (ii) the NG-CDF Saboti's decision to award the contract.

SECTION III - EVALUATION AND QUALIFICATION CRITERIA

10 GENERAL PROVISIONS

- 11** This section contains the criteria that the Employer shall use to evaluate tender and qualify tenderers. No other factors, methods or criteria shall be used other than specified in this tender document. The Tenderer shall provide all the information requested in the forms included in Section IV, Tendering Forms.
- 12** Wherever a Tenderer is required to state a monetary amount, Tenderers should indicate the Kenya Shilling equivalent using the rate of exchange determined as follows:
- a) For construction turnover or financial data required for each year - Exchange rate prevailing on the last day of the respective calendar year (in which the amounts for that year is to be converted) was originally established.
 - b) Value of single contract - Exchange rate prevailing on the date of the contract signature. Exchange rates shall be taken from the publicly available source

13 EVALUATION AND CONTRACT AWARD CRITERIA

The NG-CDF Saboti shall use the criteria and methodologies listed in this Section to evaluate tenders and arrive at the Lowest Evaluated Tender. The tender that (i) meets the qualification criteria, (ii) has been determined to be substantially responsive to the Tender Documents, and (iii) is determined to have the Lowest Evaluated Tender price shall be selected for award of contract.

2.0 PRELIMINARY EXAMINATION FOR DETERMINATION OF

RESPONSIVENESS Preliminary examination for Determination of

Responsiveness

The NG-CDF Saboti will start by examining all tenders to ensure they meet in all respects the eligibility criteria and other mandatory requirements, and that the tender is complete in all aspects in meeting the requirements provided for in the preliminary evaluation criteria outlined below. The Standard Tender Evaluation Report Document for Goods and Works for evaluating Tenders provides very clear guide on how to deal with review of these requirements. Tenders that do not pass the Preliminary Examination will be considered non-responsive and will not be considered further.

30 TENDER EVALUATION

Price evaluation: in addition to the criteria listed in ITT 35.2 (a) – (d) the following criteria shall apply:

- (i) Alternative Completion Times, will be evaluated as follows:
.....
- (ii) Alternative Technical Solutions for specified parts of the Works, will be evaluated as follows:.....

60 MARGIN OF PREFERENCE

- 61** If the TDS so specifies, the NG-CDF Saboti will grant a margin of preference of fifteen percent (15%) to be loaded on evaluated prices of the foreign tenderers, where the percentage of share holding of Kenyan citizens is less than fifty- one percent (51%).

- 62 Contractors 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 NG-CDF Saboti, a particular contractor or group of contractors qualifies for a margin of preference.
- 63 After Tenders have been received and reviewed by the NG-CDF Saboti, responsive Tenders shall be assessed to ascertain their percentage of shareholding of Kenyan citizens
- 64 All evaluated tenders in each group shall, as a first evaluation step, be compared to determine the lowest tender, and the lowest evaluated tender in each group shall be further compared with each other. If, as a result of this comparison, a tender from Group A is the lowest, it shall be selected for the award of contract. If a tender from Group B is the lowest, an amount equal to the percentage indicated in Item 6.1 of the respective tender price, including unconditional discounts and excluding provisional sums and the cost of day works, if any, shall be added to the evaluated price offered in each tender from Group B. All tenders shall then be compared using new prices with added prices to Group B and the lowest evaluated tender from Group A. If the tender from Group A is still the lowest tender, it shall be selected forward. If not, the lowest evaluated tender from Group B based on the first evaluation price shall be selected.

7. Post qualification and Contract Award (ITT 39), more specifically,

- a) In case the tender was subject to post-qualification, the contract shall be awarded to the lowest evaluated tenderer, subject to confirmation of pre-qualification data, if so required.
- i) Incase the tender was not subject to post-qualification, the tender that has been determined to be the lowest evaluated tenderer shall be considered for contract award, subject to meeting each of the following conditions.
- ii) Atleast three (3) of contract(s) of a similar nature executed within Kenya, or the East African Community or a broad, that have been satisfactorily and substantially completed as a prime contractor, or joint venture member or sub-contractor each of minimum value Kenya shillings Kshs 5,000,000 or equivalent.
- iii) Contractor's Representative and Key Personnel
- iv) Contractors key equipment listed on the table "Contractor's Equipment"
- iv) Other conditions depending on their seriousness.

a) History of non-performing contracts:

Tenderer and each member of JV in case the Tenderer is a JV, shall demonstrate that Non-performance of a contract did not occur because of the default of the Tenderer, or the member of a JV in the last **3 years**. The required information shall be furnished in the appropriate form.

b) Pending Litigation

Financial position and prospective long-term profit ability of the Single Tenderer, and in the case the Tenderer is a JV, of each member of the JV, shall remain sound according to criteria established with respect to Financial Capability under Paragraph (i) above if all pending litigation will be resolved against the Tenderer. Tenderer shall provide information on pending litigations in the appropriate form.

c) Litigation History

There shall be no consistent history of court/arbitral award decisions against the Tenderer, in the last **3 years**. All parties to the contract shall furnish the information in the appropriate form about any litigation or arbitration resulting from contracts completed or ongoing under its execution over the year specified.

QUALIFICATION FORM*

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For NG-CDF Saboti's Use (Qualification met or Not Met)
1	Nationality	Nationality in accordance with ITT 3.6	Forms ELI – 1.1 and 1.2, with attachments	
2	Tax Obligations for Kenyan Tenderers	Has produced a current tax clearance certificate or tax exemption certificate issued by Kenya Revenue Authority in accordance with ITT 3.14.	Attachment	
3	Conflict of Interest	No conflicts of interest in accordance with ITT 3.3	Form of Tender	
4	PPRA Eligibility	Not having been declared ineligible by the PPRA as described in ITT 3.7	Form of Tender	
5	State- owned Enterprise	Meets conditions of ITT 3.8	Forms ELI – 1.1 and 1.2, with attachments	
6	Goods, equipment and services to be supplied under the contract	To have their origin in any country that is not determined ineligible under ITT 4.1	Forms ELI – 1.1 and 1.2, with attachments	
7	History of Non-Performing Contracts	Non-performance of a contract did not occur as a result of contractor default since 1 st January [.....].	Form CON-2	
8	Suspension Based on Execution of Tender/Proposal Securing Declaration by the NG-CDF Saboti	Not under suspension based on-execution of a Tender/Proposal Securing Declaration pursuant to ITT 19.9	Form of Tender	
9	Pending Litigation	Tender's financial position and prospective long-term profitability still sound according to criteria established in 3.1 and assuming that all pending litigation will NOT be resolved against the Tenderer.	Form CON – 2	
10	Litigation History	No consistent history of court/arbitral award decisions against the Tenderer since 1 st January [insert year].	Form CON – 2	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For NG-CDF Saboti's Use (Qualification met or Not Met)
11	Financial Capabilities	(i) The Tenderer 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 Kenya Shillings <i>[insert amount]</i> equivalent for the subject contract(s) net of the Tenderer's other commitments. (ii) The Tenderers shall also demonstrate, to the satisfaction of the NG-CDF Saboti, that it has adequate sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments. (iii) The audited balance sheets or, if not required by the laws of the Tenderer's country, other financial statements acceptable to the NG-CDF Saboti, for the last <i>[insert number of years]</i> years shall be submitted and must demonstrate the current soundness of the Tenderer's financial position and indicate its prospective long-term profitability.	Form FIN – 3.1, with attachments	
12	Average Annual Construction Turnover	Minimum average annual construction turnover of Kenya Shillings <i>[insert amount]</i> , equivalent calculated as total certified payments received for contracts in progress and/or completed within the last <i>[insert of year]</i> years, divided by <i>[insert number of years]</i> years	Form FIN – 3.2	
13	General Construction Experience	Experience under construction contracts in the role of prime contractor, JV member, sub-contractor, or management contractor for at least the last <i>[insert number of years]</i> years, starting 1 st January <i>[insert year]</i> .	Form EXP – 4.1	
14	Specific Construction	A minimum number of <i>[state the number]</i> similar	Form EXP 4.2(a)	

1	2	3	4	5
Item No.	Qualification Subject	Qualification Requirement	Document To be Completed by Tenderer	For NG-CDF Saboti's Use (Qualification met or Not Met)
	& Contract Management Experience	contracts specified below that have been satisfactorily and substantially completed as a prime contractor, joint venture member, management contractor or sub-contractor between 1st January [<i>insert year</i>] and tender submission deadline i.e. (number) contracts, each of minimum value Kenya shillings..... equivalent.		

SECTION IV - TENDERING FORMS

QUALIFICATION FORMS

1. FOREIGN TENDERERS 40%RULE

Pursuant to ITT 3.9, a foreign tenderer must complete this form to demonstrate that the tender fulfils this condition.

ITEM	Description of Work Item	Describe location of Source	COST in K. shillings	Comments, if any
A	Local Labor			
1				
2				
3				
4				
5				
B	Sub contracts from Local sources			
1				
2				
3				
4				
5				
C	Local materials			
1				
2				
3				
4				
5				
D	Use of Local Plant and Equipment			
1				
2				
3				
4				
5				
E	Add any other items			
1				
2				
3				
4				
5				
6				
	TOTAL COST LOCAL CONTENT		XXXXX	
	PERCENTAGE OF CONTRACT PRICE			

2. FORM: EQUIPMENT

The Tenderer 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 Tenderer.

Item of equipment		
Equipment information	Name of manufacturer	Model and power rating
	Capacity	Year of manufacture
Current status	Current location	
	Details of current commitments	
Source	Indicate source of the equipment ☐ Owned ☐ Rented ☐ Leased ☐ Specially manufactured	

Omit the following information for equipment owned by the Tenderer.

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

3. FORM PER -1

Contractor's Representative and Key Personnel Schedule

Tenderers should provide the names and details of the suitably qualified Contractor's Representative and Key Personnel to perform the Contract. The data on their experience should be supplied using the Form PER-2 below for each candidate.

Contractor' Representative and Key Personnel

1.	Title of position: Contractor's Representative	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
2.	Title of position: []	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
3.	Title of position: []	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
4.	Title of position: []	
	Name of candidate:	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>
	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
5.	Title of position: <i>[insert title]</i>	
	Name of candidate	
	Duration of appointment:	<i>[insert the whole period (start and end dates) for which this position will be engaged]</i>
	Time commitment: for this position:	<i>[insert the number of days/week/months/ that has been scheduled for this position]</i>

	Expected time schedule for this position:	<i>[insert the expected time schedule for this position (e.g. attach high level Gantt chart)]</i>
--	---	---



4. FORM PER - 2:

Resume and Declaration - Contractor's Representative and Key Personnel.

Name of Tenderer

Position [#1]: <i>[title of position from Form PER-1]</i>		
Personnel information	Name:	Date of birth:
	Address:	E-mail:
	Professional qualifications:	
	Academic qualifications:	
	Language proficiency: <i>[language and levels of speaking, reading and writing skills]</i>	
Details	Address of NG-CDF Saboti:	
	Telephone:	Contact (manager / personnel officer):
	Fax:	
	Job title:	Years with present NG-CDF Saboti:

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

Project	Role	Duration of involvement	Relevant experience
<i>[main project details]</i>	<i>[role and responsibilities on the project]</i>	<i>[time in role]</i>	<i>[describe the experience relevant to this position]</i>

Declaration

I, the undersigned _____
certify that to the best of my knowledge and belief, the information contained in this Form PER-2
correctly describes myself, my qualifications and my experience.

I confirm that I am available as certified in the following table and throughout the expected time
schedule for this position as provided in the Tender:

Commitment	Details
Commitment to duration of contract:	
Time commitment:	

I understand that any misrepresentation or omission in this Form may:

- (a) be taken into consideration during Tender evaluation;
- (b) result in my disqualification from participating in the Tender;
- (c) result in my dismissal from the contract.

Name of Contractor's Representative or Key Personnel: _____

Signature: _____

Date: (day month year): _____

Counter signature of authorized representative of the Tenderer:

Signature: _____

Date: (day month year): _____

5. TENDERERS QUALIFICATION WITHOUT PREQUALIFICATION

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

5.1 FORM ELI -1.1

Tenderer

InformationForm

Date: _____

Title: _____

Tenderer's name
In case of Joint Venture (JV), name of each member:
Tenderer's actual or intended country of registration:
Tenderer's actual or intended year of incorporation:
Tenderer's legal address [in country of registration]:
Tenderer's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. 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 ITT 3.6 ☐ In case of JV, letter of intent to form JV or JV agreement, in accordance with ITT 3.5 ☐ In case of state-owned enterprise or institution, in accordance with ITT 3.8, documents establishing: • Legal and financial autonomy • Operation under commercial law 1. Establishing that the Tenderer is not under the supervision of the NG-CDF Saboti 2. Included are the organizational chart and a list of Board of Directors

52 FORM ELI -1.2

Tenderer's JV Information Form (to be completed for each member of Tenderer's JV)

Date: _____

ITT No. and title: _____

Tenderer's JV name:
JV member's name:
JV member's country of registration:
JV member's year of constitution:
JV member's legal address in country of constitution:
JV member's authorized representative information Name: _____ Address: _____ Telephone/Fax numbers: _____ E-mail address: _____
1. Attached are copies of original documents of ☐ Articles of Incorporation (or equivalent documents of constitution or association), and/or registration documents of the legal entity named above ☐ In case of a state-owned enterprise or institution, documents establishing legal and financial autonomy, operation in accordance with commercial law, and that they are not under the supervision of the NG-CDF Saboti

53 FORM CON -2

Historical Contract Non-Performance, Pending Litigation and Litigation History

Tenderer's Name: _____

Date: _____

JV Member's Name: _____

ITT No. and title: _____

Non-Performed Contracts in accordance with Section III, Evaluation and Qualification Criteria	
☐	Contract non-performance did not occur since 1 st January <i>[insert year]</i> specified in Section III, Evaluation and Qualification Criteria, Sub-Factor 2.1.
☐	Contract(s) not performed since 1 st January ³⁷ <i>[insert year]</i> specified in Section III, Evaluation

and Qualification Criteria, requirement 2.1			
☐ Contract(s) withdrawn since 1 st January <i>[insert year]</i> specified in Section III, Evaluation and Qualification Criteria, requirement 2.1			
Year	Non-performed portion of contract	Contract Identification	Total Contract Amount (current value, currency, exchange rate and Kenya Shilling equivalent)
<i>[insert year]</i>	<i>[insert amount and percentage]</i>	Contract Identification: NG-CDF Saboti P.O. Box 1330 Kitale Reason(s) for non-performance:	<i>[insert amount]</i>
Pending Litigation, in accordance with Section III, Evaluation and Qualification Criteria			
☐ No pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3.			
☐ Pending litigation in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.3 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
		Contract Identification: Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _	
		Contract Identification: Matter in dispute: _____ Party who initiated the dispute: _____ Status of dispute: _	
Litigation History in accordance with Section III, Evaluation and Qualification Criteria			
☐ No Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4.			
☐ Litigation History in accordance with Section III, Evaluation and Qualification Criteria, Sub-Factor 2.4 as indicated below.			

Year of dispute	Amount in dispute (currency)	Contract Identification	Total Contract Amount (currency), Kenya Shilling Equivalent (exchange rate)
<i>[insert year]</i>	<i>[insert percentage]</i>	Contract Identification: Matter in dispute: Party who initiated the dispute: Reason(s) for Litigation and award decision	<i>[insert amount]</i>

5.4 FORM FIN – 3.1:

Financial Situation and Performance

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

5.4.1. Financial Data

Type of Financial information in _____ (currency)	Historic information for previous _____ years, _____ (amount in currency, currency, exchange rate*, USD equivalent)				
	Year 1	Year 2	Year 3	Year 4	Year 5
Statement of Financial Position (Information from Balance Sheet)					
Total Assets (TA)					
Total Liabilities (TL)					
Total Equity/Net Worth (NW)					
Current Assets (CA)					
Current Liabilities (CL)					

Working Capital (WC)					
Information from Income Statement					
Total Revenue (TR)					
Profits Before Taxes (PBT)					
Cash Flow Information					
Cash Flow from Operating Activities					

5.4.2 Sources of Finance

Specify sources of finance to meet the cash flow requirements on works currently in progress and for future contract commitments.

No	Source of finance	Amount (Kenya Shilling equivalent)
1		
2		
3		

5.4.3 Financial documents

The Tenderer and its parties shall provide copies of financial statements for _____ years pursuant Section III, Evaluation and Qualifications Criteria, Sub-factor 3.1. The financial statements shall:

- (a) reflect the financial situation of the Tenderer or in case of JV member, and not an affiliated entity (such as parent company or group member).
- (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 statements¹ for the _____ years required above; and complying with the requirements

5.5 FORM FIN – 3.2:

Average Annual Construction Turnover

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Annual turnover data (construction only)			
Year	Amount Currency	Exchange rate	Kenya Shilling equivalent
<i>[indicate year]</i>	<i>[insert amount and indicate currency]</i>		
Average Annual Construction Turnover *			

5.6 FORM FIN – 3.3:

Financial Resources

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

Financial Resources		
No.	Source of financing	Amount (Kenya Shilling equivalent)
1		
2		
3		

5.7 FORM FIN – 3.4:

Current Contract Commitments / Works in Progress

Tenderers 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.

Current Contract Commitments					
No.	Name of Contract	NG-CDF Saboti's Contact Address, Tel,	Value of Outstanding Work [Current Kenya Shilling /month Equivalent]	Estimated Completion Date	Average Monthly Invoicing Over Last Six Months [Kenya Shilling /month]
1					
2					
3					
4					
5					

5.8 FORM EXP - 4.1

General Construction Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Page _____ of _____ pages

Starting Year	Ending Year	Contract Identification	Role of Tenderer
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of NG-CDF Saboti: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of NG-CDF Saboti: _____ Address: _____	
		Contract name: _____ Brief Description of the Works performed by the Tenderer: _____ Amount of contract: _____ Name of NG-CDF Saboti: _____ Address: _____	

5.9 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount	Kenya Shilling			
If member in a JV or sub-contractor, specify participation in total Contract amount				
NG-CDF Saboti's Name:				
Address:				
Telephone/fax number				
E-mail:				

5.9 FORM EXP - 4.2(a)

Specific Construction and Contract Management Experience

Tenderer's Name: _____

Date: _____

JV Member's Name _____

ITT No. and title: _____

Similar Contract No.	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount	Kenya Shilling			
If member in a JV or sub-contractor, specify participation in total Contract amount				
NG-CDF Saboti's Name:				
Address:				
Telephone/fax number				
E-mail:				

Construction Experience in Key Activities

Tenderer's Name: _____

Date: _____

Tenderer's JV Member Name: _____

Sub-contractor's Name² (as per ITT 34): _____

ITT No. and title: _____

All Sub-contractors for key activities must complete the information in this form as per ITT 34 and Section III, Evaluation and Qualification Criteria, Sub-Factor 4.2.

1. Key Activity No One: _

	Information			
Contract Identification				
Award date				
Completion date				
Role in Contract	Prime Contractor ☐	Member in JV ☐	Management Contractor ☐	Sub-contractor ☐
Total Contract Amount	Kenya Shilling			
Quantity (Volume, number or rate of production, as applicable) performed under the contract per year or part of the year	Total quantity in the contract (i)	Percentage participation (ii)	Actual Quantity Performed (i) x (ii)	
Year 1				
Year 2				
Year 3				
Year 4				
NG-CDF Saboti's Name:				
Address: Telephone/fax number E-mail:				

OTHER FORMS

6. FORM OF TENDER

(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

Date of this Tender submission _____

Tender name:

Tender Identification no:

To: NG-CDF Saboti

Date of this Tender submission:

Dear Sir/Madam,

1. In accordance with the Conditions of Contract, Specifications, Drawings and Bills of Quantities for the execution of the above-named Works, we, the undersigned offer to construct and complete the Works and remedy any defects therein for the sum³ of Kenya Shillings [*Amount in figures*] _____ Kenya Shillings [*amount in words*] _____
2. We undertake, if our tender is accepted, to commence the Works as soon as is reasonably possible after the receipt of the Architect notice to commence, and to complete the whole of the Works comprised in the Contract within the time stated in the Special Conditions of Contract.
3. We agree to adhere by this tender until _____ [*Insert date*], and it shall remain binding upon us and may be accepted at any time before that date.
4. We understand that you are not bound to accept the lowest or any tender you may receive.
5. We, the under signed, further declare that:
 - i) No reservations: We have examined and have no reservations to the tender document, including Addenda issued in accordance with ITT 28;
 - ii) Eligibility: We meet the eligibility requirements and have no conflict of interest in accordance with ITT 3 and 4;
 - iii) Tender - Securing Declaration: We have not been suspended nor declared ineligible by the NG-CDF Saboti based on execution of a Tender-Securing or Proposal-Securing Declaration in the NG-CDF Saboti
 - iv) Conformity: We offer to execute in conformity with the tendering documents and in accordance with the implementation and completion specified in the construction schedule, the following Works: [*insert a brief description of the Works*];
 - v) Tender Price: The total price of our Tender, excluding any discounts offered in item 1 above is: [*Insert one of the options below as appropriate*]

³ This sum should be carried forward from the Summary of the Bills of Quantities.

- vii) Tender Validity Period: Our Tender shall be valid for the period specified (as amended, if applicable) from the date fixed for the Tender submission deadline specified (as amended, if applicable), and it shall remain binding upon us and may be accepted at any time before the expiration of that period;
- viii) Performance Security: If our Tender is accepted, we commit to obtain a Performance Security in accordance with the Tendering document;
- ix) Binding Contract: We understand that this Tender, together with your written acceptance thereof included in your Letter of Acceptance, shall constitute a binding contract between us, until a formal contract is prepared and executed;
- x) Not Bound to Accept: We understand that you are not bound to accept the lowest evaluated cost Tender, the Most Advantageous Tender or any other Tender that you may receive;
- xi) Fraud and Corruption: We hereby certify that we have taken steps to ensure that no person acting for us or on our behalf engages in any type of Fraud and Corruption; and
- xii) Collusive practices: We hereby certify and confirm that the tender is genuine, non-collusive and made with the intention of accepting the contract if awarded. To this effect we have signed the "Certificate of Independent Tender Determination" attached below.
- xiii) **Beneficial Ownership Information**: We commit to provide to the NG-CDF Saboti the Beneficial Ownership Information in conformity with the Beneficial Ownership Disclosure Form upon receipt of notification of intention to enter into a contract in the event we are the successful tenderer in this subject procurement proceeding.
- xiv) We, the Tenderer, have duly completed, signed and stamped the following Forms as part of our Tender:
 - a) Tenderer's Eligibility; Confidential Business Questionnaire - to establish we are not in any conflict of interest.
 - (b) Certificate of Independent Tender Determination - to declare that we completed the tender without colluding with other tenderers.
 - (a) Self-Declaration of the Tenderer - to declare that we will, if awarded a contract, not engage in any form of fraud and corruption.
 - (d) Declaration and commitment to the Code of Ethics for Persons Participating in Public Procurement and Asset Disposal.

Name of the Tenderer:

Name of the person duly authorized to sign the Tender on behalf of the Tenderer:

Title of the person signing the Tender:

Signature of the person named above:

Date signed _____ day of _____, _____

(a) TENDERER'S ELIGIBILITY-CONFIDENTIAL BUSINESS QUESTIONNAIRE

Instruction to Tenderer

Tender is instructed to complete the particulars required in this Form, *one form for each entity if Tender is a JV*. Tenderer is further reminded that it is an offence to give false information on this Form.

(a) Tenderer's details

	ITEM	DESCRIPTION
1	Name of the NG-CDF Saboti	
2	Reference Number of the Tender	
3	Date and Time of Tender Opening	
4	Name of the Tenderer	
5	Full Address and Contact Details of the Tenderer.	1. Country 2. City 3. Location 4. Building 5. Floor 6. Postal Address 7. Name and email of contact person.
6	Current Trade License Registration Number and Expiring date	
7	Name, country and full address	
8	Description of Nature of Business	
9	Maximum value of business which the Tenderer handles.	
10	State if Tenders Company is listed in stock exchange, give name and full address	

General and Specific Details

(b) Sole Proprietor, provide the following details.

Name in full _____ Age _____
Nationality _____ Country of Origin _____
Citizenship _____

(c) Partnership, provide the following details.

	Names of Partners	Nationality	Citizenship	% Shares owned
1				
2				
3				

(d) **Registered Company**, provide the following details.

- i) Private or public Company _____
ii) State the nominal and issued capital of the Company _____

Nominal Kenya Shillings (Equivalent).....
Issued Kenya Shillings (Equivalent).....

- iii) Give details of Directors as follows.

	Names of Director	Nationality	Citizenship	% Shares owned
1				
2				
3				

(e) **DISCLOSURE OF INTEREST - Interest of the Firm in the NG-CDF Saboti.**

- i) Are there any person/persons in..... (*Name of NG-CDF Saboti*) who has/have an interest or relationship in this firm? Yes/No.....

If yes, provide details as follows.

	Names of Person	Designation in the NG-CDF Saboti	Interest or Relationship with Tenderer
1			
2			
3			

(i) **Conflict of interest disclosure**

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
1	Tenderer is directly or indirectly controls, is controlled by or is under common control with another tenderer.		
2	Tenderer receives or has received any direct or indirect subsidy from another tenderer.		
3	Tenderer has the same legal representative as another tenderer		
4	Tender has a relationship with another tenderer, directly or through common third parties, that puts it in a position to influence the tender of another tenderer, or influence the decisions of the NG-CDF Saboti regarding this tendering process.		
5	Any of the Tenderer's affiliates participated as a consultant in the preparation of the design	49	

	Type of Conflict	Disclosure YES OR NO	If YES provide details of the relationship with Tenderer
	or technical specifications of the works that are the subject of the tender.		
6	Tenderer would be providing goods, works, non-consulting services or consulting services during implementation of the contract specified in this Tender Document.		
7	Tenderer has a close business or family relationship with a professional staff of the NG-CDF Saboti who are directly or indirectly involved in the preparation of the Tender document or specifications of the Contract, and/or the Tender evaluation process of such contract.		
8	Tenderer has a close business or family relationship with a professional staff of the NG-CDF Saboti who would be involved in the implementation or supervision of the such Contract.		
9	Has the conflict stemming from such relationship stated in item 7 and 8 above been resolved in a manner acceptable to the NG-CDF Saboti throughout the tendering process and execution of the Contract.		

Certification

On behalf of the Tenderer, I certify that the information given above is complete, current and accurate as at the date of submission.

Full Name_____

Title or Designation_____

(Signature)

(Date)

b) CERTIFICATE OF INDEPENDENT TENDER DETERMINATION

I, the undersigned, in submitting the accompanying Letter of Tender to the NG-CDF Saboti for: _____ in response to the request for tenders made by: _____ *[Name of Tenderer]* do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of _____ *[Name of Tenderer]*, that:

1. I have read and I understand the contents of this Certificate;
2. I understand that the Tender will be disqualified if this Certificate is found not to be true and complete in every respect;
3. the authorized representative of the Tenderer with authority to sign this Certificate, and to submit the Tender on behalf of the Tenderer;
4. For the purposes of this Certificate and the Tender, I understand that the word “competitor” shall include any individual or organization, other than the Tenderer, whether or not affiliated with the Tenderer, who:
 - a) Has been requested to submit a Tender in response to this request for tenders;
 - b) could potentially submit a tender in response to this request for tenders, based on their qualifications, abilities, or experience;
5. The Tenderer discloses that [check one of the following, as applicable]:
 - a) The Tenderer has arrived at the Tender independently from, and without consultation, communication, agreement, or arrangement with, any competitor;
 - b) The Tenderer has entered into consultations, communications, agreements or arrangements with one or more competitors regarding this request for tenders, and the Tenderer discloses, in the attached document(s), complete details thereof, including the names of the competitors and the nature of, and reasons for, such consultations, communications, agreements or arrangements;
6. In addition, there has been no consultation, communication, agreement or arrangement with any competitor regarding the quality, quantity, specifications or delivery particulars of the works or services to which this request for tenders relates, except as specifically authorized by the procuring authority or as specifically disclosed pursuant to paragraph (5)(b) above;
7. The terms of Tender have not been, and will not be, knowingly disclosed by the Tenderer, directly or indirectly, to any competitor, before the date and time of the official tender opening, or of the awarding of the Contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant to paragraph (5)(b) above.

Name _____

Title _____

Date _____

[Name, title and signature of authorized agent of Tenderer and Date]

(c) SELF- DECLARATION FORMS

FORM SD1

SELF DECLARATION THAT THE PERSON/TENDERER IS NOT DEBARRED IN THE MATTER OF THE PUBLIC PROCUREMENT AND ASSET DISPOSAL ACT 2015.

I, ... of Post Office Box being a resident of..... in the Republic of do hereby make a statement as follows: -

- 1. THAT I am the Company Secretary/ Chief Executive/Managing Director/Principal Officer/Direct or of *(insert name of the Company)* who is a Bidder in respect of **Tender No.** for *(insert tender title/description)* for *(insert name of the NG-CDF Saboti)* and duly authorized and competent to make this statement.
- 2. THAT the aforesaid Bidder, its Directors and subcontractors have not been debarred from participating in procurement proceeding under Part IV of the Act.
- 3. THAT what is deponed to here in above is true to the best of my knowledge, information and belief.

.....
..... (Title) (Signature)
(Date)

Bidder Official Stamp

FORM SD2

SELF DECLARATION THAT THE PERSON/TENDERER WILL NOT ENGAGE IN ANY CORRUPT OR FRAUDULENT PRACTICE.

I, ... of P.O. Box being a resident of in the Republic of do hereby make a statement as follows: -

1. THAT I am the Chief Executive/Managing Director/Principal Officer/Director of (insert name of the Company) who is a Bidder in respect of **Tender No.**..... for.....
..... (*insert tender title/description*) for the *NG-CDF Saboti* and duly authorized and competent to make this statement.
2. THAT theafore said Bidder, its servants and/oragents/subcontractorswillnotengageinanycorruptorfraudulent practice and has not been requested to pay any inducement to any member of the Board, Management, Staff and/or employees and/or agents which is the *NG-CDF Saboti*.
3. THAT the aforesaid Bidder, its servants and/or agents /subcontractors have not offered any inducement to any member of the Board, Management, Staff and/or employees and/or agents of *NG-CDF Saboti*
4. THAT the aforesaid Bidder will not engage /has not engaged in any corrosive practice with other bidders participating in the subject tender
5. THAT what is deponed to here in above is true to the best of my knowledge information and belief.

.....
(Title)

.....
(Signature)

.....
(Date)

Bidder's Official Stamp

DECLARATION AND COMMITMENT TO THE CODE OF ETHICS

I (person) on behalf of *(Name of the Business/ Company/Firm)*
.....
..... declare that I have read and fully understood the contents of the Public Procurement & Asset Disposal Act, 2015, Regulations and the Code of Ethics for persons participating in Public Procurement and Asset Disposal and my responsibilities under the Code.

I do here by commit to abide by the provisions of the Code of Ethics for persons participating in Public Procurement and Asset Disposal.

Name of Authorized signatory

.....

Sign.....

Position.....

Office address.....

Telephone.....

Email.....

Name of the Firm/Company.....

Date.....

(Company Seal/ Rubber Stamp where applicable)

Witness

Name

.....

Sign.....

Date.....

(d) APPENDIX 1 - FRAUD AND CORRUPTION

1. Purpose

- 1.1 The Government of Kenya's Anti-Corruption and Economic Crime laws and their sanction's policies and procedures, Public Procurement and Asset Disposal Act (*no. 33 of 2015*) and its Regulation, and any other Kenya's Acts or Regulations related to Fraud and Corruption, and similar offences, shall apply with respect to Public Procurement Processes and Contracts that are governed by the laws of Kenya.

2. Requirements

- 2.1 The Government of Kenya requires that all parties including Procuring Entities, Tenderers, (applicants/proposers), Consultants, Contractors and Suppliers; any Sub-contractors, Sub-consultants, Service providers or Suppliers; any Agents (whether declared or not); and any of their Personnel, involved and engaged in procurement under Kenya's Laws and Regulation, observe the highest standard of ethics during the procurement process, selection and contract execution of all contracts, and refrain from Fraud and Corruption and fully comply with Kenya's laws and Regulations as per paragraphs 1.1 above.
- 2.2 Kenya's public procurement and asset disposal act (*no. 33 of 2015*) under Section 66 describes rules to be followed and actions to be taken in dealing with Corrupt, Coercive, Obstructive, Collusive or Fraudulent practices, and Conflicts of Interest in procurement including consequences for offences committed. A few of the provisions noted below highlight Kenya's policy of no tolerance for such practices and behavior:
 - 1) A person to whom this Act applies shall not be involved in any corrupt, coercive, obstructive, collusive or fraudulent practice; or conflicts of interest in any procurement or as set disposal proceeding;
 - 2) A person referred to under subsection (1) who contravenes the provisions of that subsection commits an offence;
 - 3) Without limiting the generality of the subsection (1) and (2), the person shall be: -
 - a) disqualified from entering into a contract for a procurement or asset disposal proceeding; or
 - b) if a contract has already been entered into with the person, the contract shall be voidable;
 - 4) The voiding of a contract by the NG-CDF Saboti under subsection (7) does not limit any legal remedy the NG-CDF Saboti may have;
 - 5) An employee or agent of the NG-CDF Saboti or a member of the Board or committee of the NG-CDF Saboti who has a conflict of interest with respect to a procurement: -
 - a) Shall not take part in the procurement proceedings;
 - b) shall not, after a procurement contract has been entered in to, take part in any decision relating to the procurement or contract; and
 - c) shall not be a subcontract or for the tender to whom was awarded contract, or a member of the group of tenderers to whom the contract was awarded, but the subcontractor appointed shall meet all the requirements of this Act.
 - 6) An employee, agent or member described in subsection (1) who refrains from doing anything prohibited under that subsection, but for that subsection, would have been

within his or her duties shall disclose the conflict of interest to the procuring entity;

- 7) If a person contravenes subsection (1) with respect to a conflict of interest described in subsection (5)(a) and the contract is awarded to the person or his relative or to another person in whom one of them had a direct or indirect pecuniary interest, the contract shall be terminated and all costs incurred by the public entity shall be made good by the awarding officer. Etc.

3. In compliance with Kenya's laws, regulations and policies mentioned above, the NG-CDF Saboti:

- a) Defines broadly, for the purposes of the above provisions, the terms set forth below as follows:
 - i) "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
 - ii) "fraudulent practice" is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain financial or other benefit or to avoid an obligation;
 - iii) "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party; "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;
 - iv) "obstructive practice" is:
 - Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede investigation by Public Procurement Regulatory Authority (PPRA) or any other appropriate authority appointed by Government of Kenya 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
 - acts intended to materially impede the exercise of the PPRA's or the appointed authority's inspection and audit rights provided for under paragraph 2.3 e. below.
- b) Defines more specifically, in accordance with the above procurement Act provisions set forth for fraudulent and collusive practices as follows:

"fraudulent practice" includes a misrepresentation of fact in order to influence a procurement or disposal process or the exercise of a contract to the detriment of the NG-CDF Saboti or the tenderer or the contractor, and includes collusive practices amongst tenderers prior to or after tender submission designed to establish tender prices at artificial non-competitive levels and to deprive the NG-CDF Saboti of the benefits of free and open competition.
- c) Rejects a proposal for award¹ of a contract if PPRA determines that the firm or individual recommended for award, any of its personnel, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/ or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
- d) Pursuant to the Kenya's above stated Acts and Regulations, may recommend to appropriate authority(ies) for sanctioning and debarment of a firm or individual, as applicable under the Acts and Regulations;

- e) Requires that a clause be included in Tender documents and Request for Proposal documents requiring(i) Tenderers (applicants/proposers), Consultants, Contractors, and Suppliers, and their Sub-contractors, Sub-consultants, Service providers, Suppliers, Agents personnel, permit the PPRA or any other appropriate authority appointed by Government of Kenya to inspect² all accounts, records and other documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the PPRA or any other appropriate authority appointed by Government of Kenya; and
- f) Pursuant to Section 62 of the above Act, requires Applicants/Tenderers to submit along with their Applications/Tenders/Proposals a “Self-Declaration Form” as included in the procurement document declaring that they and all parties involved in the procurement process and contract execution have not engaged/will not engage in any corrupt or fraudulent practices.



FORM OF TENDER SECURITY-[Option 1–Demand Bank Guarantee]

Beneficiary: _____

Request for Tenders No: _____

Date: _____

TENDER GUARANTEE No.: _____

Guarantor: _____

1. We have been informed that _____ (here inafter called "the Applicant") has submitted or will submit to the Beneficiary its Tender (here inafter called "the Tender") for the execution of _____ under Request for Tenders No. _____
2. Furthermore, we understand that, according to the Beneficiary's conditions, Tenders must be supported by a Tender guarantee.
3. At the request of the Applicant, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ upon receipt by us of the Beneficiary's complying 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 Applicant:
 - (a) has withdrawn its Tender during the period of Tender validity set forth in the Applicant's Letter of Tender ("the Tender Validity Period"), or any extension thereto provided by the Applicant; or
 - b) having been notified of the acceptance of its Tender by the Beneficiary during the Tender Validity Period or any extension there to provided by the Applicant, (i) has failed to execute the contract agreement, or (ii) has failed to furnish the Performance.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) thirty days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[signature(s)]

FORMAT OF TENDER SECURITY [Option 2–Insurance Guarantee]

TENDER GUARANTEE No.: _____

1. Whereas _____ (hereinafter called “the tenderer”) has submitted its tender dated the _____ (hereinafter called “the Tender”) for the execution of the work under Request for Tenders No. _____

2. KNOW ALL PEOPLE by these presents that WE of [**Name of Insurance Company**], having our registered office at (hereinafter called “the Guarantor”), are bound unto *NG-CDF Saboti* (hereinafter called “the procuring entity”) in the sum of (Currency and guarantee amount) for which payment well and truly to be made to the said NG-CDF Saboti, the Guarantor binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with the Common Seal of the said Guarantor this ____ day of _____ 20 ____.
3. NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Applicant:
 - a) has withdrawn its Tender during the period of Tender validity set forth in the Principal's Letter of Tender (“the Tender Validity Period”), or any extension thereto provided by the Principal; or
 - b) having been notified of the acceptance of its Tender by the Procuring Entity during the Tender Validity Period or any extension thereto provided by the Principal; (i) failed to execute the Contract agreement; or (ii) has failed to furnish the Performance Security, in accordance with the Instructions to tenderers of the Procuring Entity's Tendering document.
4. This guarantee will expire: (a) if the Applicant is the successful Tenderer, upon our receipt of copies of the contract agreement signed by the Applicant and the Performance Security and, or (b) if the Applicant is not the successful Tenderer, upon the earlier of (i) our receipt of a copy of the Beneficiary's notification to the Applicant of the results of the Tendering process; or (ii) twenty-eight days after the end of the Tender Validity Period.
5. Consequently, any demand for payment under this guarantee must be received by us at the office indicated above on or before that date.

[Date]

[Witness]

[Signature of the Guarantor]

[Seal]

PART II - WORKS REQUIREMENTS

BILLS OF QUANTITIES

(a) Preambles

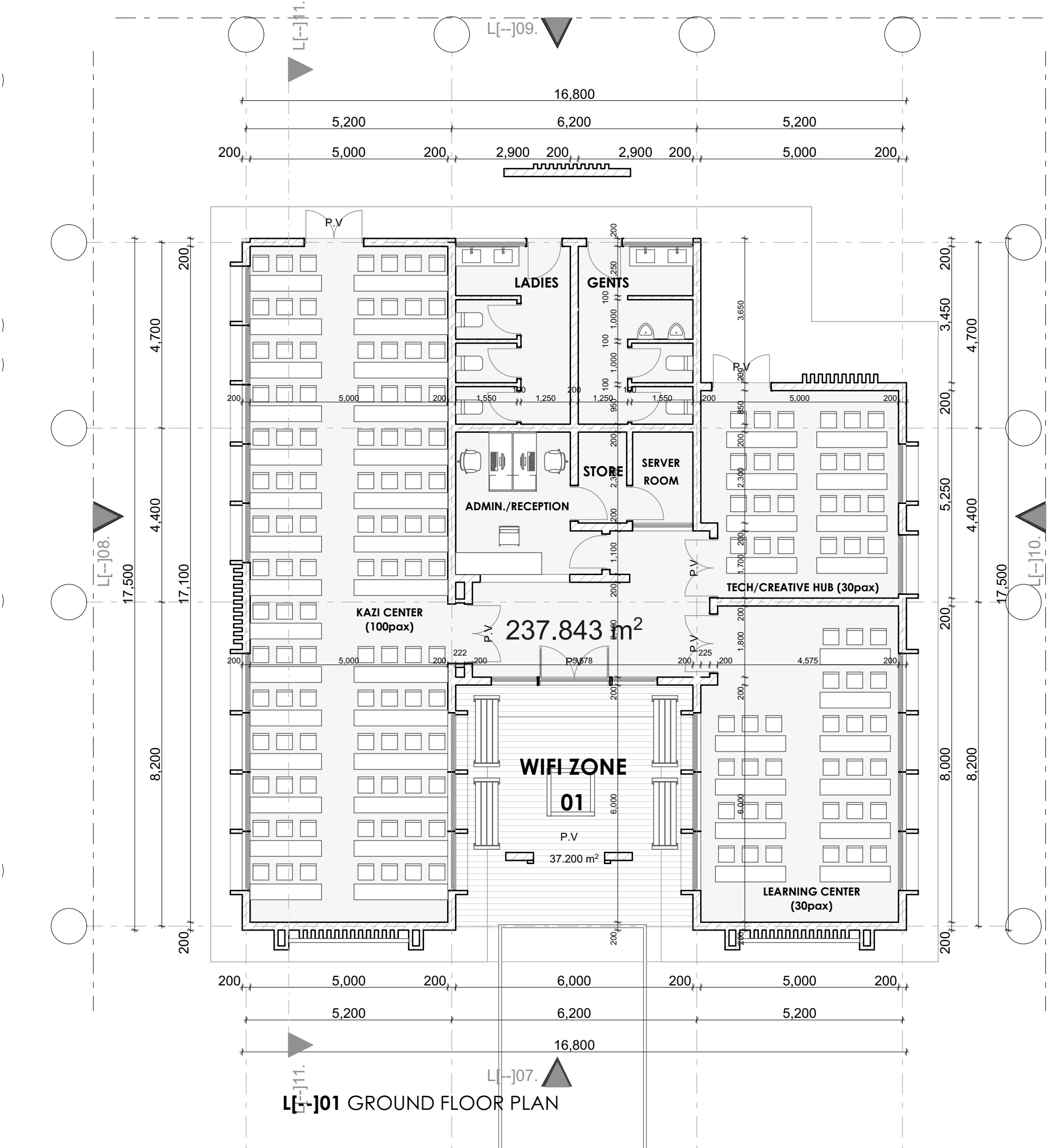
1. The method of measurement of completed work for payment shall be in accordance with *[insert the name of a standard reference guide, or full details of the methods to be used]*.
2. The Site is situated in *(provide full description where the site is situated, coordinates from the nearest known landmark like a town and its size)*__It is approximately_____Kilometers from Nairobi. Access to the site shall be through_____.
3. The Contractor shall obtain the Architect's approval on the siting of all temporary buildings, spoil heaps, temporary access path, and storage of materials. The Contractor shall also obtain the Architect approval and direction regarding the use of any materials found on the Site.
4. The drawings used in the preparation of these Bills of Quantities can be inspected at the offices of the NG-CDF Saboti NG-CDF Saboti's Representative during normal working hours. Two sets of the Working Drawings shall be provided to the contractor but additional copies shall be provided at a cost to be determined by the Engineer.
5. The Contractor shall allow for the payment of all bank charges in connection with the procurement of Bank Guarantees and stamp charges in connection with this contract Agreement.
6. The Contractor shall carry out the various sections of the Works in such an order as the Architect May direct. The NG-CDF Saboti reserves the right to occupy the Works by sections on completion provided that such occupation is considered to be both practical and reasonable and will not interfere with the Works. The Contractor shall allow any costs associated with such occupation.
7. The main Contractor will be fully responsible for paying his Sub-Contractor but the NG-CDF Saboti reserves the right in very exceptional circumstances to make such payments direct in the interests of the project where the completion thereof might be jeopardized by any dispute or vicariousness between the Contractor and the Sub- Contractor involve.
8. The Contractor shall complete and deliver the Works in the period inserted in the Form of Tender as his time for completion of the Works from the date for Possession, to be agreed with the Engineer. The Contract Period is presumed to have been calculated making due allowance for seasonal inclement weather conditions. No claim for extension of time due to the normal inclement weather for this area shall be entertained.
9. The Contractor shall, upon receiving instructions to proceed with the Works, draw up a Programme and Progress Chart setting out the order in which the Works are to be carried out, with the appropriate dates there of. This Chart shall be agreed with the Architect and no deviation from the order set out in it will be permitted without the written consent of the Engineer. The Contractor will be responsible for arranging the above programme with all his sub-Contractors and Specialties. The Contractor shall allow in his rates for carrying out this exercise, and for updating it as required.
10. The Contractor shall submit to the Architect on the first day of each week or such longer period as the Architect from time to time direct, a Progress Report and any information for the proceeding period, showing the progress during the period and the up-to-date cumulative progress on all important items of each section or portion of the Works.
11. The Contractor shall arrange for photographs of the Site to be taken by a professional photographer approved by the Engineer. The Photographs shall provide a record of the Site and adjacent areas as prior to the commencement of the Works and shall cover such portion of

the works in progress and completion as the Architect shall direct.

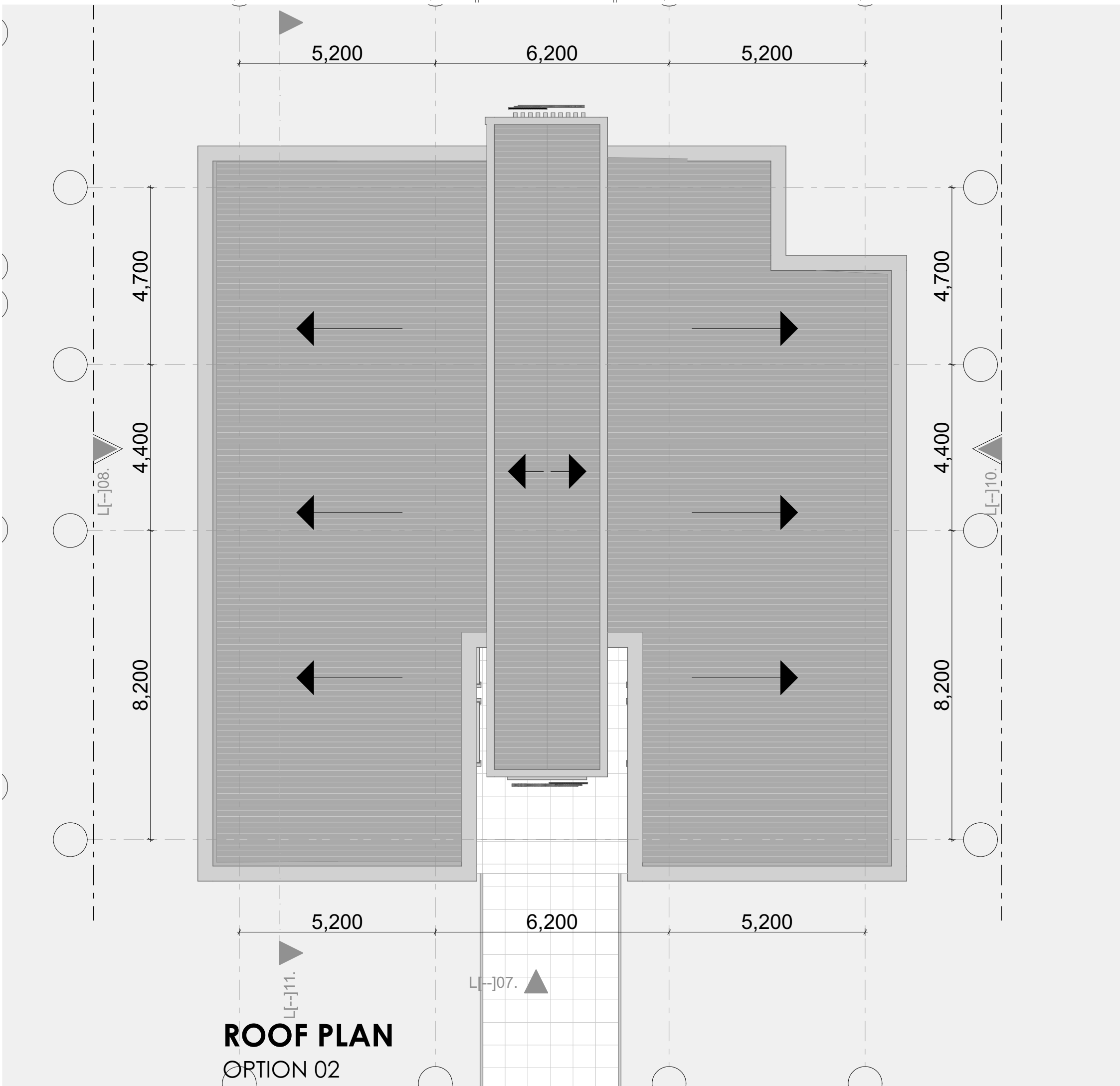
12. Figured dimensions are to be followed in preference to dimensions scaled from the Drawings, but whenever possible dimensions are to be taken on the Site or from the buildings. Before any work is commenced by Sub- Contractors or Specialist Firms, dimensions must be checked on the site comparable dimensions shown on the drawings.
13. Prior to commencement of any work the Contractor is to ascertain from the relevant Authorities the exact position, depth and level of all existing electric cables, waterpipes or other services in the area and he shall make whatever provisions may be required by the Authorities concerned for the support and protection of such services. Any damage or disturbance caused to any services shall be reported immediately to the Architect and the relevant Authority and shall be made good to their satisfaction at the Contractor's expense. Where appropriate the Contractor shall open up the ground in advance of the main work by hand digging if necessary, to locate precisely the position and details of the services which are likely to affect his operations.
14. The Contractor shall include in his prices for the transport of materials, workmen, etc./, to and from the site of the proposed works, at such hours and by such route as are permitted by the Authorities.
15. The Contractor will be required to make good, at his own expense and damage he may cause to the present road surface and pavements within or beyond the boundary of the Site, during the period of the works. All existing paths, storm water channels, etc., that may be destroyed or damaged during the progress of the Works shall be reinstated by the Contractor to the satisfaction of the Engineer.
16. The Contractor is to allow for complying with all instructions and regulations of the Police Authorities.
17. All water shall be fresh, clean and pure, free from earthly, vegetable or organic matter, acid or alkaline substance in solution. The Contractor shall provide at his own risk and cost all water for use in connection with the Works, (including works of sub-contractors). If need be, he shall make arrangements with the Local Water Authority for the installation of a separate meter for all water used by him throughout the Contract and pay all cost and fees in connection therewith. He shall also provide temporary storage tanks and tubing, etc., as may be necessary, and clear away at completion.
18. The Contractor shall provide all artificial lighting and power for his own use on the Works, (including Sub – Contractor's) including all temporary connections, wiring, fittings, etc., and clearing away on completion. The Contractor shall pay all fees and obtain all permits in connection therewith.
19. The Contractor shall constantly keep on the Works a Literate English-speaking Agent or Representative, competent and experienced in the kind of work involved, who shall give his whole time to the superintendence of the works. (Including works of sub – contractors). Such Agent or Representative shall receive on behalf of the Contractor directions and instruction from the Engineer, and such directions and instructions shall be deemed to be given to the contractor in accordance with the Conditions of Contract. The Agent shall not be replaced without the specific approval of the Engineer.
20. The Contractor shall take such steps and exercise such care and diligence as to minimize nuisance arising from dust, noise or any other cause to the occupiers of the existing and adjacent property. He must provide such temporary and special screens and tarpaulins or gummy bags, hoarding, barriers, warning signs etc. as he considers necessary and sufficient for the protection of the existing and adjacent property and or prevention of nuisance etc. as directed by Engineer.

21. The Contractor's attention is drawn to the standards levy order which was amended on 15th October 1998. Legal notice No.154 of 1998. The Contractor is required to pay a monthly level of 0.2% of his factory price of construction works with effect from January 1999. Tenderer shall allow for this in the build-up of his rates.
22. The Contractor shall provide temporary sheds, offices, messrooms, sanitary, accommodation and other temporary buildings for the use of the contractor and sub-contractors, including lighting, furniture, equipment and attendance.
23. Contractor shall provide/build labor camp sites to be agreed with the Engineer. Labor camps shall be complete with sanitary accommodation and fencing gates.
24. The Contractor must provide the necessary toilet facilities to the requirement and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees during the period of the Works and remove when no longer required.
25. The Contractor shall provide at his own risk and cost all watching and lighting as necessary to safeguard the Works, Plant and materials against damage and theft.

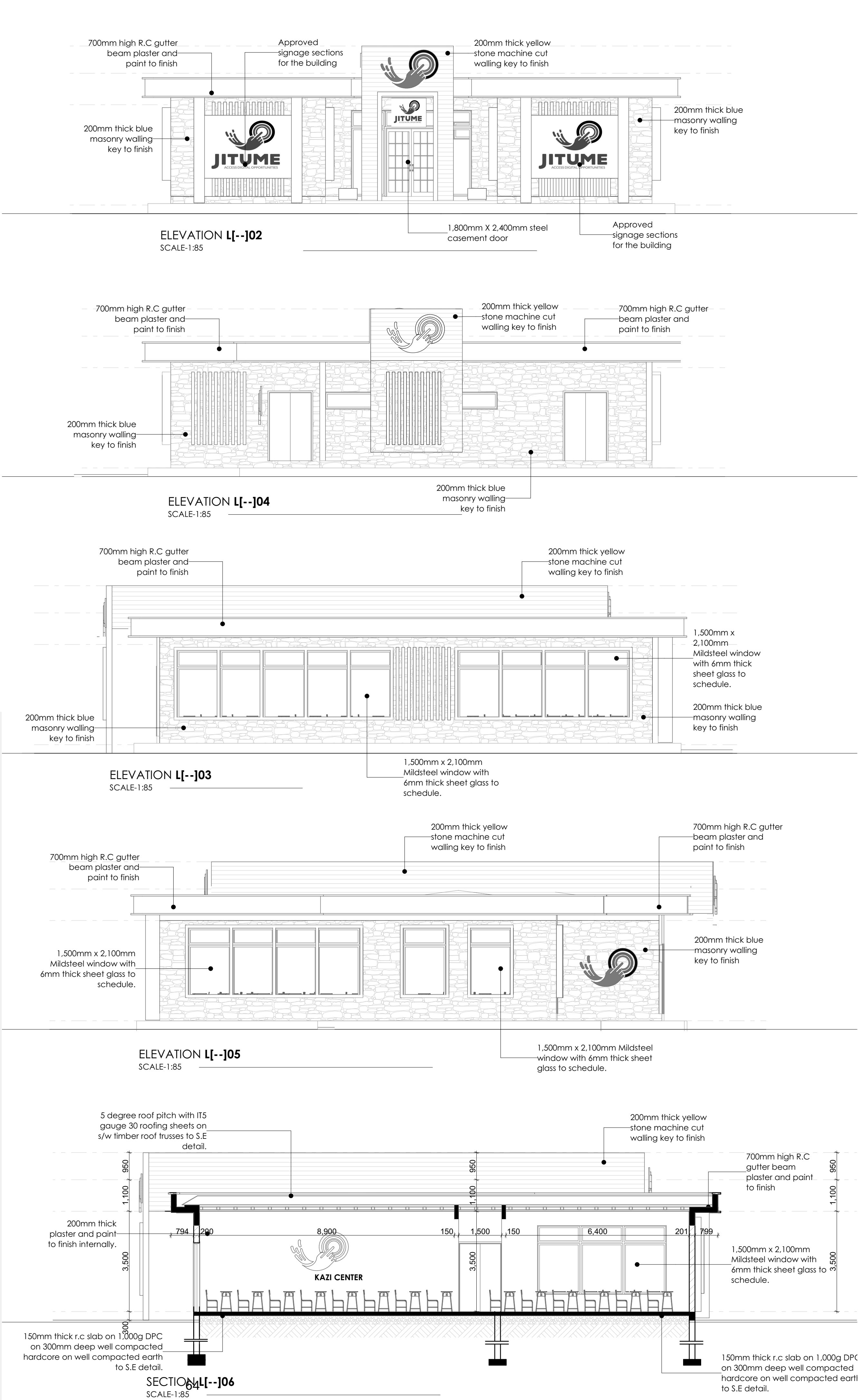




L1-01 GROUND FLOOR PLAN



ROOF PLAN
OPTION 02



Notes:

1. This drawing is copyright
2. Do not scale off this drawing
3. All levels and dimensions to be checked on site before any building work commences
4. Any discrepancies to be reported to the office of the consultant
5. All work to be strictly in accordance to with the standard specifications and notes
6. This drawing is to be read in conjunction with specifications and all other relevant drawings
7. Walls below 200mm thick to be reinforced with hoop iron at every alternate course
8. Depth of foundations to be decided on site
9. pv denotes permanent air vents over doors and windows as shown on drawings
10. A single layer of 3-ply bituminous felt to be provided between masonry and r.c. work
11. Drain pipes passing under tarmac, driveways, and buildings to be encased in 150mm thick concrete surround
12. All reinforced concrete work to Structural Engineer's drawings
13. All sanitary works to the entire satisfaction of MoH
14. All internal doors to be semi solid core doors with mahogany veneer facing

Client:

MINISTRY OF INFORMATION
COMMUNICATION AND
TECHNOLOGY

Project Title:

PROPOSED JITUME
DIGITAL HUB PROJECT.

Architect:

ARCH. MORIS MUCHERU

Registration No. _____

Signature: _____

KENYA SCHOOL OF
TVETS. NAIROBI

Drawn:

M.M.M

Checked:

Date:

03 November 2023

Scale:

Job No.

KSTVET/2023-001

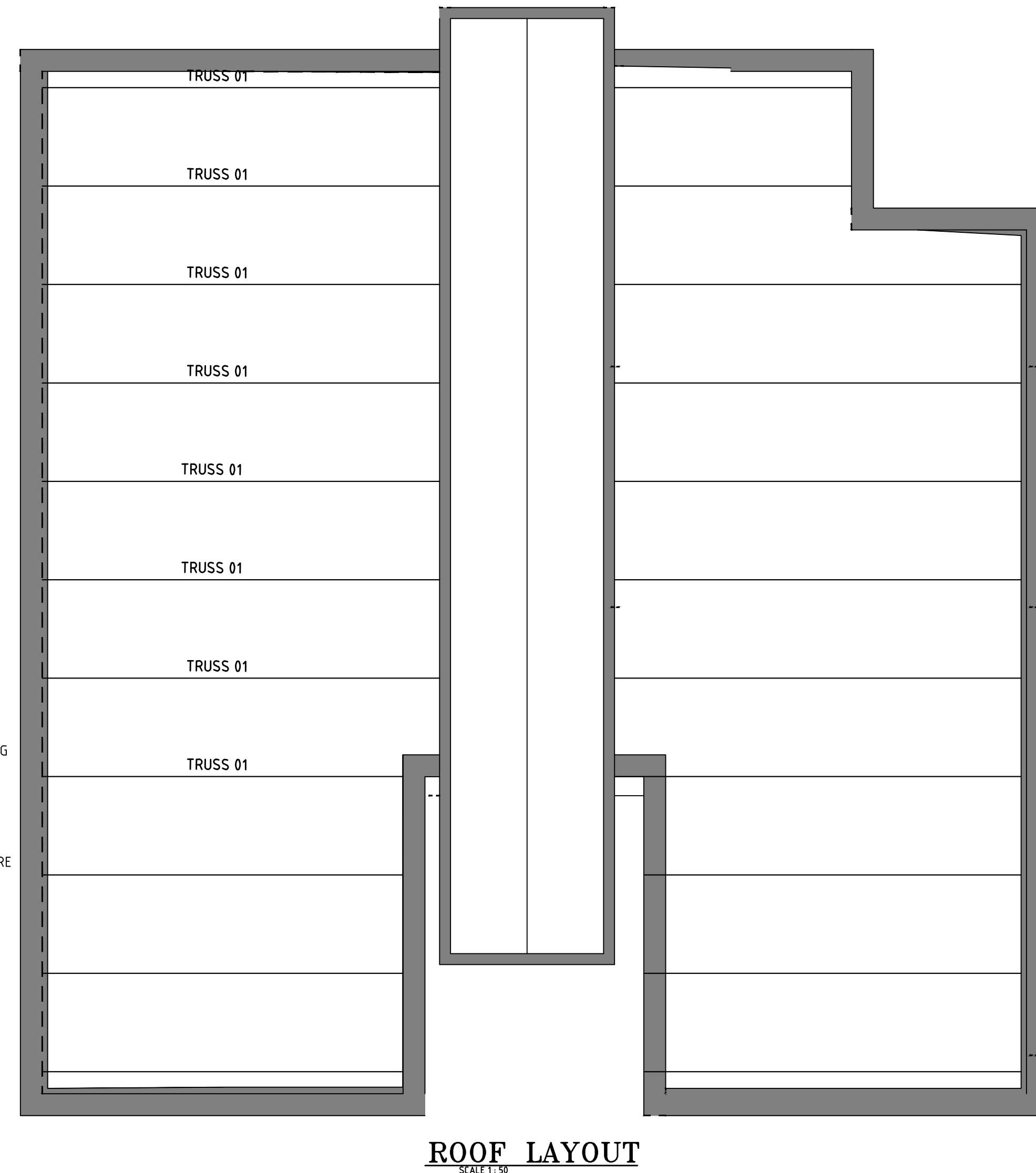
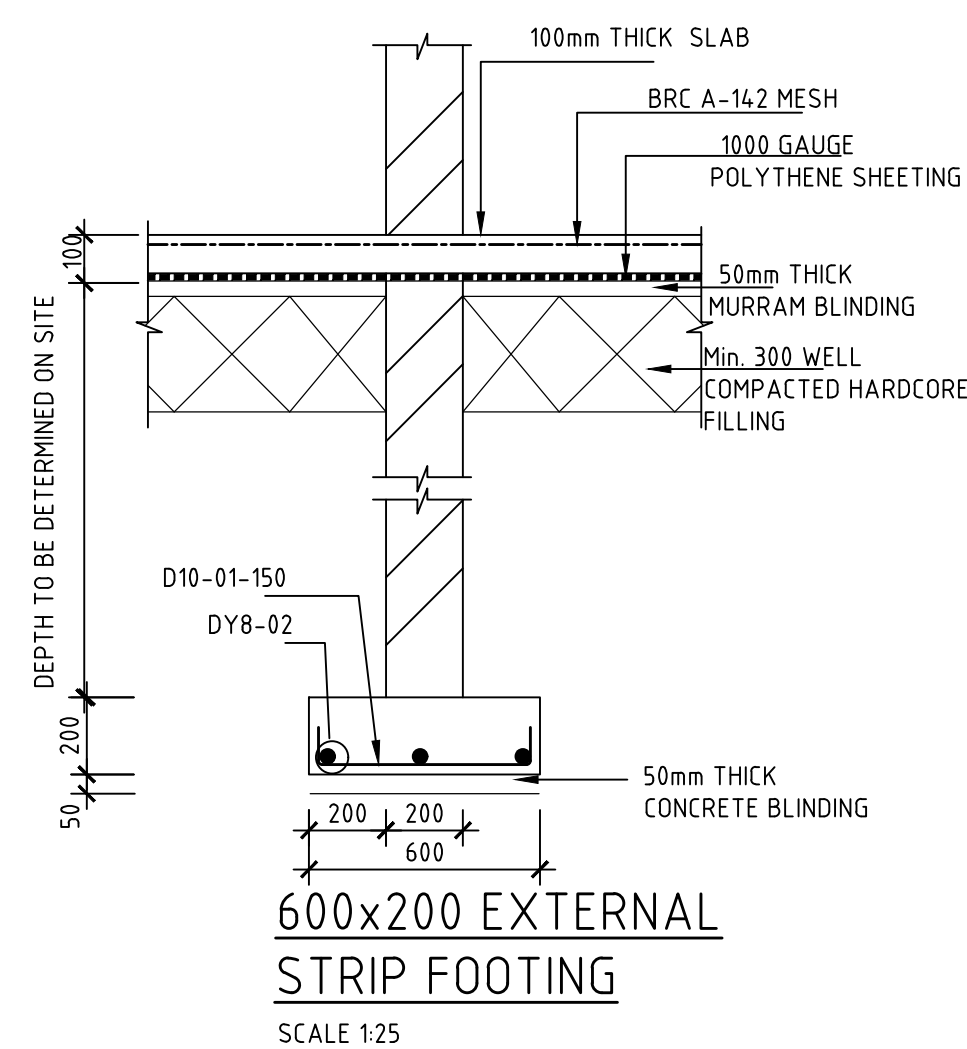
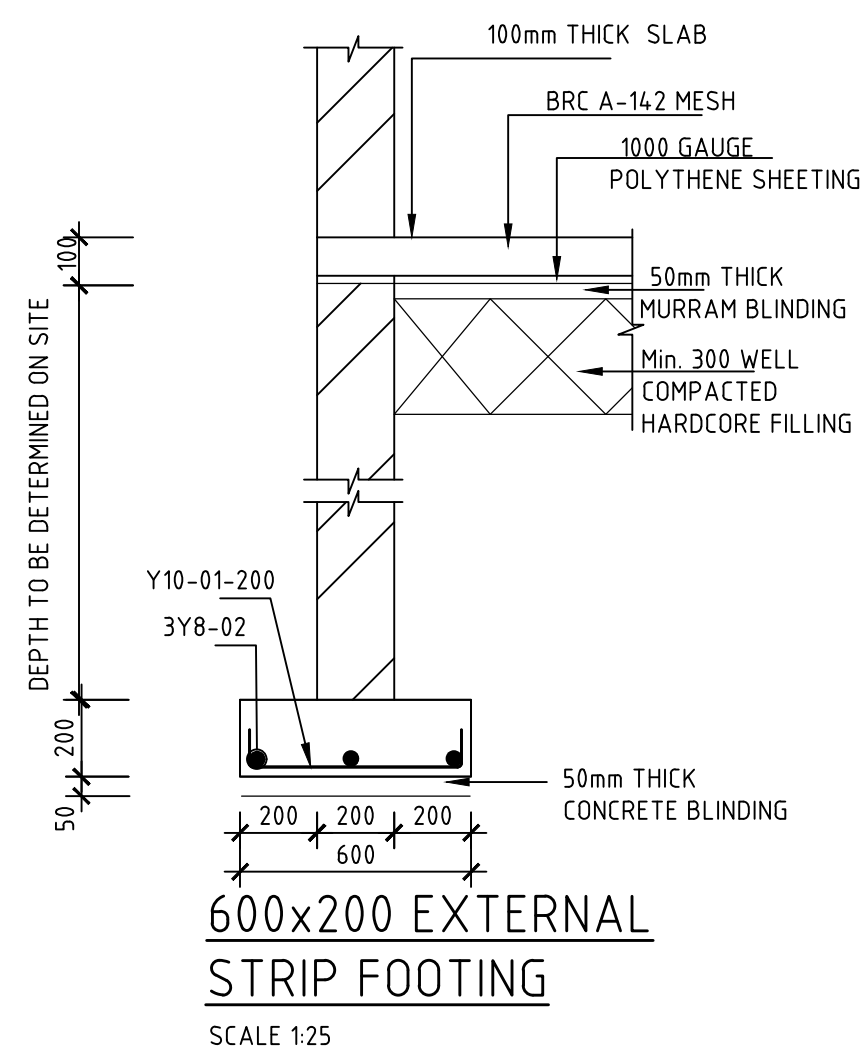
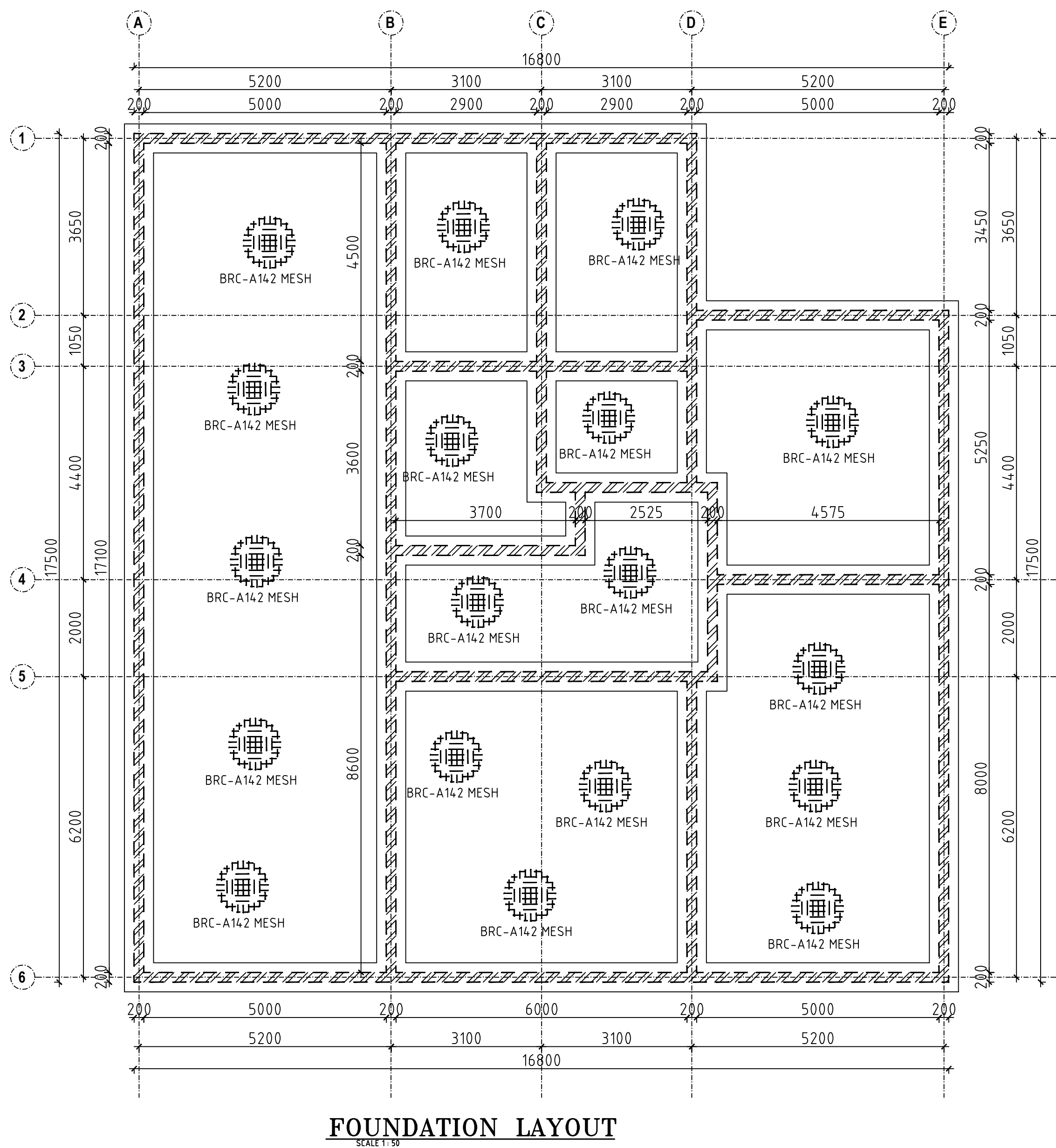
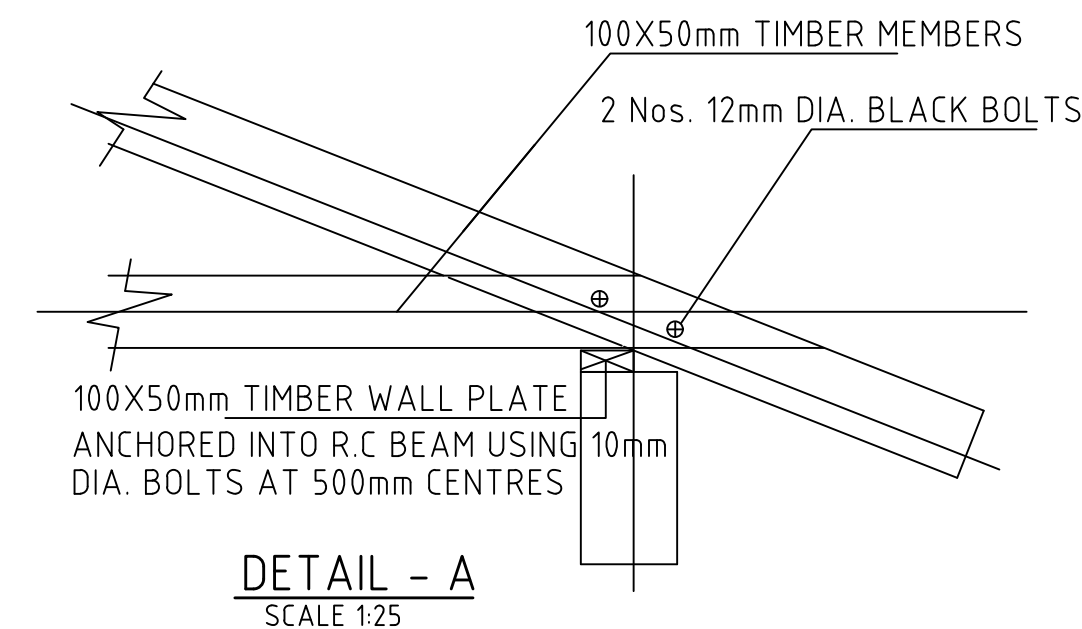
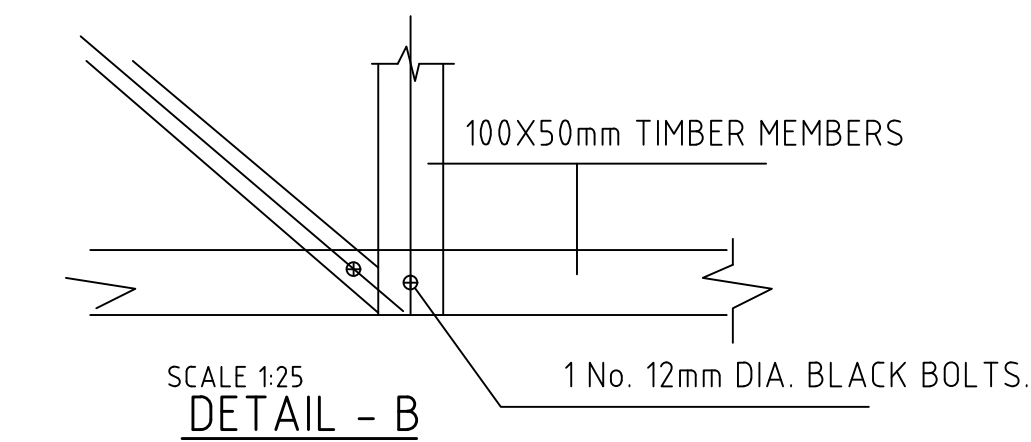
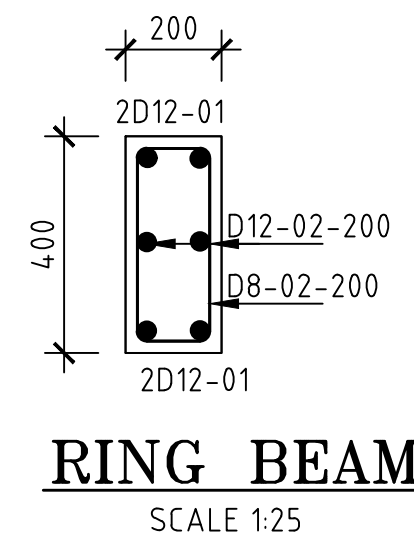
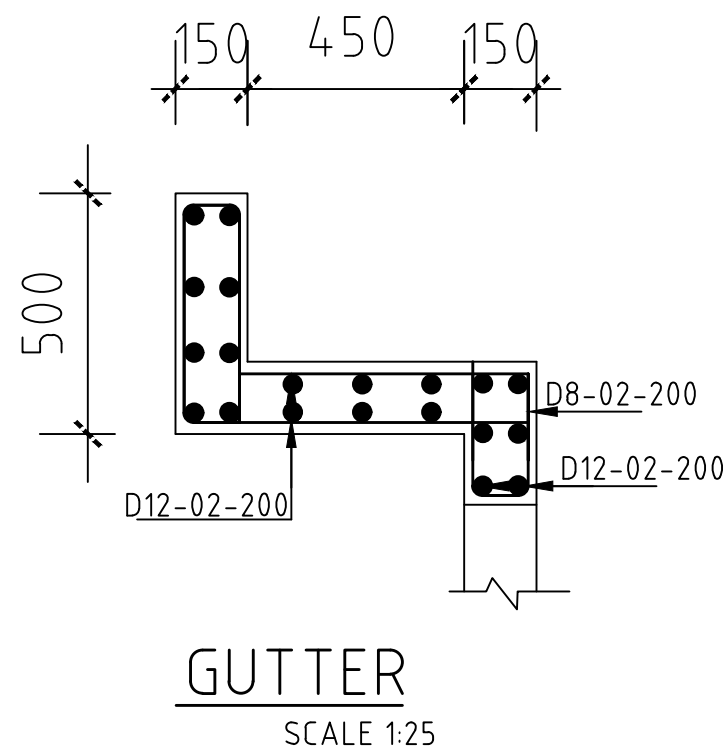
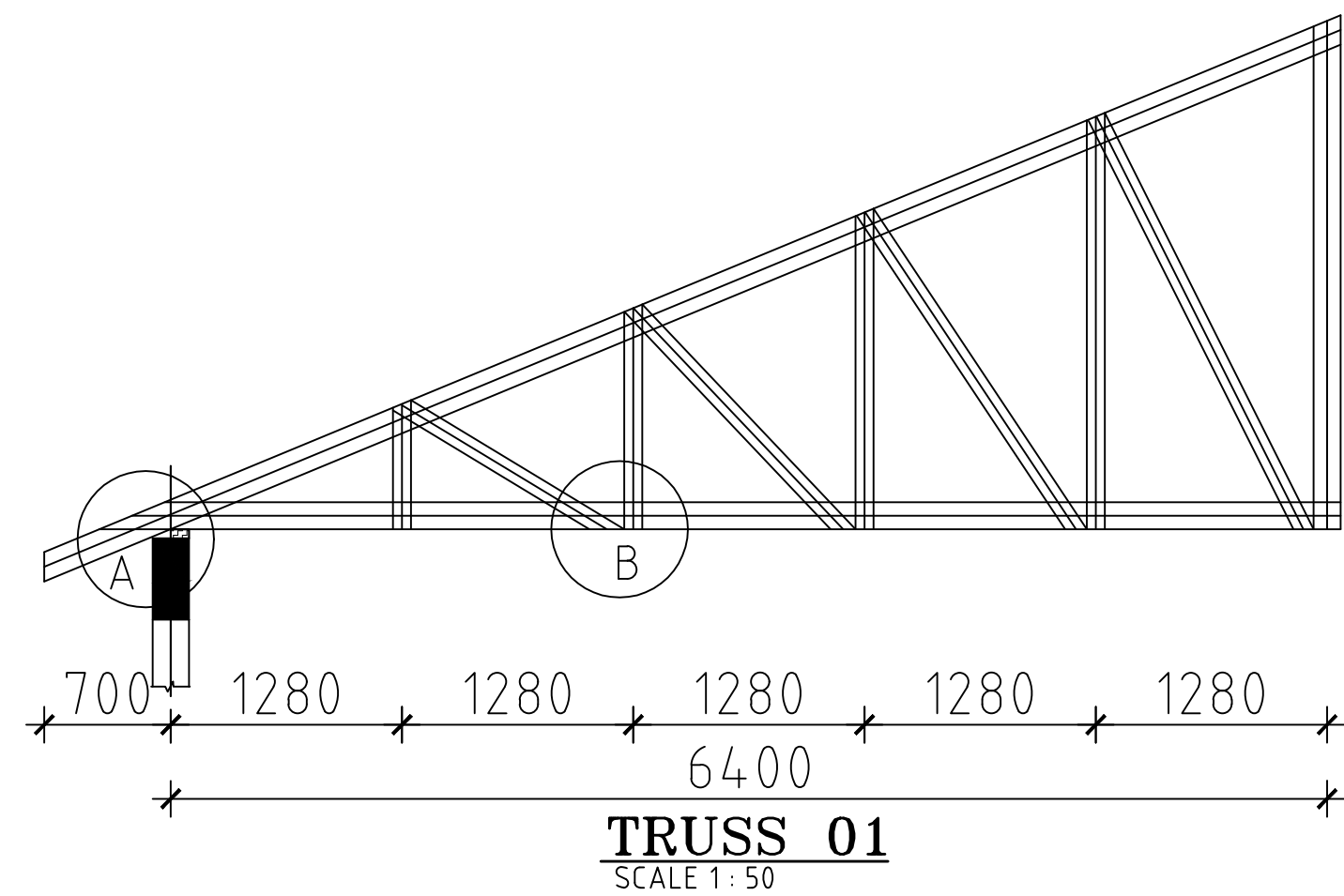
Drawing Title:

JITUME DIGITAL LAB - STANDARD
OPTION

Drawing No.

KSTVET-2023-001-002

Revision No.



GENERAL NOTES

- THIS DRAWING SHALL BE READ IN CONJUNCTION WITH RELEVANT ARCHITECTURAL DRAWINGS AND ANY DISCREPANCY REFERRED TO THE ENGINEER.
- ALL DIMENSIONS ARE IN MILLIMETRES.
- DO NOT SCALE THIS DRAWING USE INDICATED DIMENSIONS.
- UNLESS OTHERWISE STATED CONCRETE MIX SHALL BE AS FOLLOWS:-
- UNLESS OTHERWISE SHOWN CONCRETE COVERS TO MAIN REINFORCEMENTS SHALL BE AS FOLLOWS:-
- ALL REINFORCEMENT BARS TO BE IN ACCORDANCE WITH B.S. 4449 AND MESH FABRIC TO BE MADE FROM COLQ WORKED STEEL BARS IN ACCORDANCE WITH B.S. 4483.
- SAFE BEARING CAPACITY IS TAKEN AS 500N/mm² I.e. SUB-SOIL IS TAKEN AS ROCK.
- FOUNDATION DEPTHS TO BE FIXED BY THE ENGINEER AND SHALL NOT BE BLINDED BEFORE HIS APPROVAL.
- LAPS TO ALL BARS TO BE 50 x DIAMETER OF THE BAR.
- ALL REINFORCEMENT BARS TO BE CUT ON CONFIRMING THE DIMENSIONS AND ANY DIFFICULTY REFERRED TO THE ENGINEER.
- ALL PLACEMENTS TO BE INSPECTED BY THE ENGINEER AND SHALL NOT BE CONCRETED BEFORE HIS APPROVAL.

A _ BLINDING CLASS 15 (1:4:8)
B _ SLAB & BEAMS AND COLUMNS CLASS 20 (1:1:2)
C _ BEAMS AND SLAB CLASS 25 (1:1:4:3)

D _ STAIRCASE _ 20mm
E _ BEAMS _ 25mm
F _ SLABS _ 20mm

MAXIMUM TOLERANCE TO CONCRETE COVERS IS + 5mm
MAXIMUM TOLERANCE TO CONCRETE COVERS IS + 5mm

PROJECT

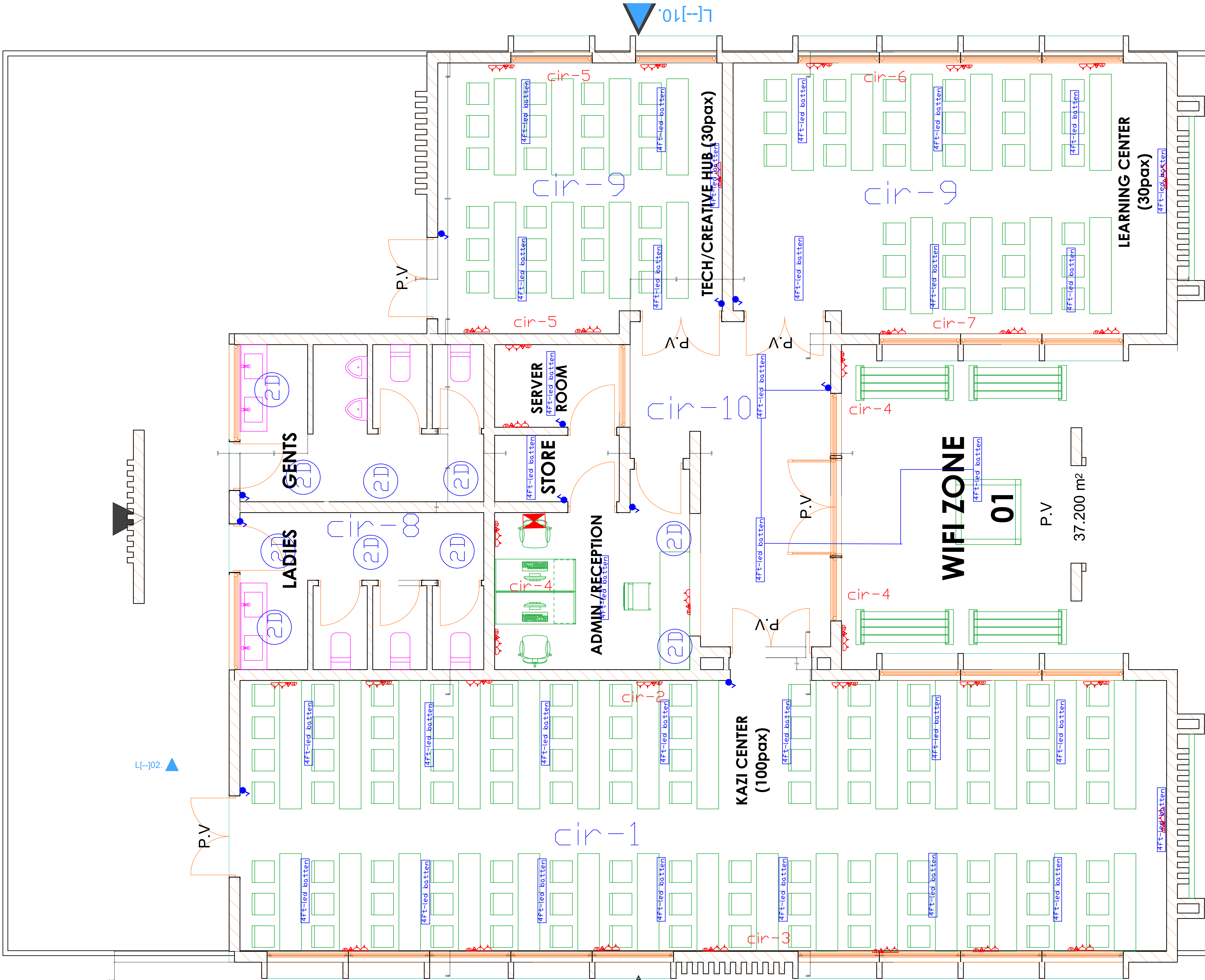
Proposed Jitume Digital Hub

STRUCTURAL DETAILS

CLIENT

Ministry of Information
Communication And Technology

DRAWN	P.M
DESIGN	O.P
SCALE	AS SHOWN
DATE	OCT' 2023
P/J NO.	DWG NO.
720/023	01



ALL DIMENSIONS AND LEVELS ARE TO BE VERIFIED ON SITE BY THE CONTRACTOR BEFORE COMMENCING ANY WORK.
THE COPYRIGHT IN THIS DRAWING, INCLUDING THE DESIGN AND DETAILS SHOWN HEREON, IS RESERVED BY THE ENGINEERS

NOTES

- All dimensions are in millimeters unless otherwise stated.
- All lighting switches shall be mounted at a height of 1350mm f.f.f.l unless otherwise stated.
- All socket outlets shall be mounted at a height of 350mm f.f.f.l unless otherwise stated.
- All distribution boards and consumer units shall be mounted at a height of 1800mm f.f.f.l unless otherwise stated.
- All lighting circuit cables shall be 2x1.5mm² pvc sc + 1.5mm² e.c.c cables unless otherwise specified.
- All ring main circuits shall have 2x2.5mm² pvc sc + 2.5mm² e.c.c unless otherwise stated.
- All conduits shall be black rigid super impact heavy gauge class 'A' PVC
- Conduits shall be installed buried in building fabric except when run on wooden or metal surface when they will be installed supported with saddles every 600mm.
- All fire Alarm cables used to be fire proof.
- Fire Alarm cables to be segregated from the cables of other electrical systems

Project

Client

Title
ELECTRICAL LIGHTING AND POWER

	Name	Signature	Date
Drawn			
Designed	KT VET		
Checked:	KT VET		

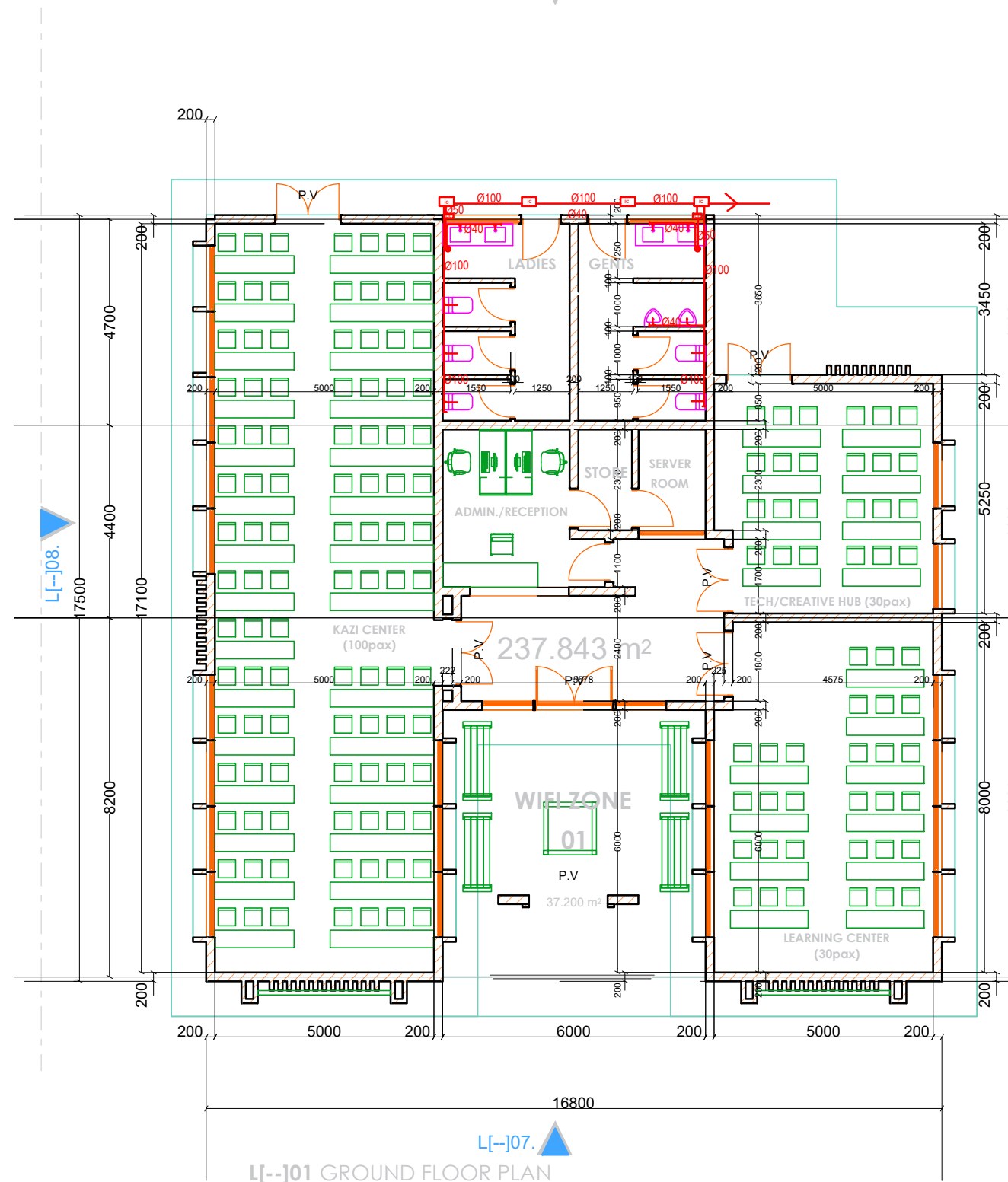
Approved Date

CHIEF ENGINEER (ELECTRICAL)

Scale N.T.S	Date OCTOBER, 2023	Drawing No. E - 1
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KT VET
THE GOVERNMENT OF THE REPUBLIC OF KENYA

L[-]-J01 GROUND FLOOR PLAN



NOTES

1. All dimensions in millimetres unless otherwise stated.
2. All valves to be of brass /bronze heavy pattern construction as 'pegler'
3. Water pipes under floor slab/driveway, walkway,carpark etc to be sleeved in heavy duty pvc pipe and encased in 150mm concrete surround
4. All plumbing pipes shall be PPR-PN20 pipes.
5. All drainage pipework shall be medium grade(class D).

LEGEND

- fa/gv From above & gatevalve
 tb To below
 ofp Overflow pipe
 fb From below
 wm/gv Water meter & gatevalve
 SVP Stack vent pipe
 Booster pump
 Non return valve
 Isolating/gate valve

REVISIONS

DATE	DESCRIPTION	INITIALS

Project
**PROPOSED JITUME DIGITAL HUB
 PROJECT OPTION 2**

Client
**PRINCIPAL SECRETARY STATE
 DEPARTMENT OF HOUSING AND
 URBAN DEVELOPMENT**

Title:
OPTION 2 DRAINAGE LAYOUT

	NAME	SIGN	DATE
Drawn	KENYA SCH OF TVET		
Designed			
Checked by			
Date	OCTOMBER 2023		

Approved _____ Date _____
MECHANICAL ENGINEER
KENYA SCHOOL OF TVET
P.O BOX 44600-00100
NAIROBI.

Drawing No: M Scale: NTS

**BILL OF QUANTITIES AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION TO
COMPLETION OF SABOTI CONSTITUENCY DIGITAL HUB**

Item	Description	Qty	Unit	Rate	Amount
	<u>ELEMENT NO. 1:</u>				
	<u>SUBSTRUCTURES (All Provisional)</u>				
	<u>Site Preparation</u>				
A	Clear site of grass, bushes, shrubs and small trees not exceeding 300mm girth including grubbing up roots, burn or cart away arisings.	294	SM		
	<u>EXCAVATIONS AND EARTHWORKS:</u>				
B	Mass excavation commencing from ground level depth not exceeding 1.5 metres and cart away as directed by the project manager.	276	CM		
C	Excavate trench for strip footing not exceeding 1.50 metres deep commencing at reduced levels.	21	CM		
D	Excavate pit for column bases not exceeding 1.50 metres deep commencing at reduced level.	11	CM		
E	Allow for keeping excavations free from water and mud by pumping, bailing or other approved method.	1	ITEM		
F	Allow for maintaining and supporting sides of all excavations and keeping same free from fallen material.	1	ITEM		
	<u>Disposal:</u>				
G	Load and cart away excavated materials from site to a dumping site approved by the Local Authority.	308	CM		
	<u>Filling:</u>				
H	300mm Thick Approved hand packed hardcore: compacted in layers not exceeding 150mm Thick : to the satisfaction of the Structural Engineer.	238	SM		
I	Approved Imported murram fillings / or selected excavated fillings to make up levels : compacted in layers not exceeding 150mm Thick: to the satisfaction of the Structural Engineer.	143	CM		
J	50 mm Thick Quarry dust blinding to surfaces of hardcore filling, levelled and compacted to approval.	238	SM		
	Total C/F				

**BILL OF QUANTITIES AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION TO
COMPLETION OF SABOTI CONSTITUENCY DIGITAL HUB**

Item	Description	Qty	Unit	Rate	Amount
	B/F				
	<u>Anti-Termite Treatment:</u>				
A	Insecticide treatment on top of hardcore filling and over foundation walls applied as per manufacturer's instruction with a 10 year guarantee .	238	SM		
	<u>Damp proof mebrane</u>				
B	Single layer of 1000 gauge polythene sheeting laid on blinded hardcore with 150 mm side laps to receive concrete.	238	SM		
	<u>CONCRETE WORKS:</u>				
	<u>Plain concrete class 15 mix 1:4:8 as described in:-</u>				
C	50 mm Thick blinding in column bases.	14	SM		
D	Ditto: Strip footing.	77	SM		
	<u>Vibrated Reinforced Concrete Class 20 mix 1:2:4 in:-</u>				
E	Column bases	6	CM		
F	Foundation strip footing	21	CM		
G	Foundation Columns.	1	CM		
H	150 mm Thick horizontal floor bed	238	SM		
I	Access Ramp	4	CM		
	<u>REINFORCEMENT STEEL (Provisional):</u>				
	<u>Deformed high yield steel ribbed bars reinforcement to KS 573: 2014 for cutting, bending, hoisting and fixing including all necessary tying wires, distance blocks, spacers, templates and stools</u>				
I	8 mm bars.	255	KG		
J	12 mm ditto.	734	KG		
	<u>B.R.C. Mesh</u>				
K	Mesh fabric reinforcement complying with B. S 1483Ref A142 embedded in floor slab (measured net with no allowance for minimum of 225mm. laps) including tying wire and supporting as required.	238	SM		
	<u>FORMWORK</u>				
	<u>Sawn timber formwork to:</u>				
L	Sides of column bases.	15	SM		
M	Vertical sides of strip footing	20	SM		
N	Vertical sides of Foundation Columns.	15	SM		
	Total C/F				

**BILL OF QUANTITIES AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION TO
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Item	Description	Qty	Unit	Rate	Amount
	B/F				
A	Edges of floor bed girth 75 - 150 mm high	82	LM		
B	Edges of risers girth 75 - 150 mm girth for the Entrance steps.	8	LM		
C	Edges of ramp girth 150-225 mm girth.	21	LM		
	<u>Foundation Walling</u> <u>200mm Thick approved natural stone; local; roughly squared to foundation walling; bedding and jointing in cement sand (1:3) mortar and reinforced with 25mm wide x 20 gauge hoop iron in alternate courses as described in:</u>				
D	200 mm Thick.	125	SM		
	<u>PLINTH FINISHES</u> <u>12 mm Thick cement and sand (1:3) wood float render on: to rendered plinths</u>				
E	Dressed stone wall and concrete surfaces of plinths.	81	SM		
	<u>Prepare and apply three coats bituminous paint</u>				
F	Rendered plinth surfaces.	81	SM		
	<u>External works</u>				
G	600 x 600 mm paving slab round the slab and and wifi area	81	SM		
H	60 N cabro at wifi area	38	SM		
I	Mass excavation commencing from stripped level depth not exceeding 1.5 metres and cart away as directed by the project manager.	49	CM		
J	Approved Imported murram fillings to make up levels : compacted in layers not exceeding 150mm Thick : to the satisfaction of the Structural Engineer.	49	CM		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>ELEMENT NO. 2:</u> <u>REINFORCED CONCRETE WORKS:</u> <u>CONCRETE WORK:</u> <u>Vibrated reinforced concrete Class 20 as described in:</u>				
A	Columns	3	CM		
B	Ring Beams	12	CM		
C	Gutters	13	CM		
	<u>REINFORCEMENT STEEL (All Provisional):</u> <u>Deformed high yield steel ribbed bars reinforcement to KS 573: 2014 for cutting, bending, hoisting and fixing including all necessary tying wires, distance blocks, spacers, templates and stools</u>				
D	8 mm diameter bars	437	KG		
E	12 mm ditto	598	KG		
F	Assorted diameters	1040	KG		
	<u>FORMWORK:</u> <u>Sawn timber formwork to:</u>				
G	Sides of columns	2	SM		
H	Sides and soffits of beams	111	SM		
I	Sides and soffits of Gutters	210	SM		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>ELEMENT NO.3</u> <u>WALLING</u>				
	<u>EXTERNAL WALLING</u>				
	<u>Approved Natural local stone of the approved colour; squared ; bush hammered ; in 200mm course heights, bedded and jointed in cement sand mortar (1:3), reinforced with 20 gauge x 25mm wide hoop iron reinforcement and column wall ties in every alternate course</u>				
A	200 mm Thick walling.	209	SM		
B	Ditto Parapet walling.	70	SM		
C	Eave filling to 200mm Thick walls extreme height 300mm	82	LM		
	<u>Three- ply bituminous felt damp proof course bedded in cement and sand (1:3) mortar (measured nett allow for 300mm laps):-</u>				
D	200mm wide under walls	83	LM		
	<u>INTERNAL WALLING</u>				
	<u>Machine cut local stone walling in 200mm course heights, bedded and jointed in cement sand mortar (1:3), reinforced with 20 gauge x 25mm wide hoop iron reinforcement and column wall ties in every alternate course</u>				
E	200 mm Thick walling.	129	SM		
F	150mm Thick walls.	15	SM		
	<u>Three- ply bituminous felt damp proof course</u>				
G	200mm wide under walls	43	LM		
H	150mm ditto.	5	LM		
	<u>Coping</u>				
	<u>Precast concrete (class 20/20) coping : maximum vertical height 75mm High : edges 40mm High : weathered and throated to approval : bedded, jointed and pointed in cement sand (1:4) mortar : all to detail as described :</u>	85	LM		
I	375mm wide coping to walls	85	LM		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>ELEMENT NO.4</u> <u>ROOFING AND RAINWATER DISPOSAL (All Provisional)</u> <u>Roof Covering</u> <u>Supply and fix 0.50mm thick 28 Gauge "ZAS" IT5 box-profile and prepainted sheets laid with 94mm minimum side laps and 200mm minimum end laps to steel purlins with and including steel hook bolts with rubber capping, washers and nuts all as per Manufacturer's instructions</u>				
A	Roof covering at 8 from the horizontal including all necessary fixtures	273	SM		
	<u>Accessories, fixing as necessary to roof sheets</u>				
B	300 mm Girth matching plain sheet ridge capping thrice bent and dressed over covering	12	LM		
C	Extra over roofing sheets for raking cutting	34	LM		
	<u>Grade II Well seasoned cypress with an optimum moisture content of 13%-15% to KS- 02:1997in; Structural timber Grade II pressure impregnated sawn cypress in; Framed timberwork</u>				
	<u>The following including scarfed or dovetailed jointing, hoisted 3.5m above the ground floor slab</u>				
D	150 x 50 mm Rafter	344	LM		
E	150 x 50 mm Tie beam	194	LM		
F	150 x 50 mm king post	111	LM		
G	150 x 50 mm Struts or ties	63	LM		
H	150 x 25 mm Timber purlins	518	LM		
I	150x50mm Ridge board	17	LM		
J	100 x 50 mm Wall plate fixed with and including 200mm long x 12 mm diameter anchor bolts cast into beam at 1800mm centres, provide for all necessary drilling, threading, nuts and washers	95	LM		
	Total C/F				

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Item	Description	Qty	Unit	Rate	Amount
	B/F				
	<u>Supply and fix the following Unplasticised PVC rainwater pipes and fittings;solvent welded joints)</u>				
A	100 mm Diameter downpipe fixed to masonry wall with and including all matching brackets and clips	35	LM		
B	Extra over gutters for 100 mm diameter outlet	10	NO		
C	Extra over down pipe for 100 mm swan- neck bend	10	NO		
D	Ditto for 100 mm shoe	10	NO		
E	Rainwater anti-splash shoe	10	NO		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>ELEMENT NO.5</u> <u>WINDOWS:</u>				
	<u>Window Cill</u>				
A	Supply and Fix 275x50mm Thick window cill once rebated and throated laid and jointed in cement and sand (1:3) mortar.	40	LM		
	<u>Window Board</u>				
	<u>Supply and Fix Mahogany: selected and kept clean</u>				
B	200 x 25 mm Window board; plugged	40	LM		
C	35 x 35 mm decorated beading	40	LM		
	<u>Supply, assemble and fix the following purpose-made welded mild steel casement windows complete with hinges and building lugs to masonry or concrete and incorporating louvered permanent ventilation panels infilled with approved mosquito gauze wire netting, primed with onecoat or re-oxide primer, comprising standard T-section framing, SHS 50x25X3mm and Intermediate members 25x25x3mm MS T-Section including all necessary couling mulions, transomes, metal gauge permanent vents and afterwards easing and oiling and adjusting opening lights on : -Notes Steel; for glazing with putty, lugs to two jambs, cutting and pinning to concrete or blockwork, fixing to head and sill with screws; plugging</u>				
D	Window overall size 1500 X 2100mm High.	22	NO		
E	Ditto: 1800 X600mm High.	2	NO		
	<u>Glass and glazing</u>				
	<u>Supply and fix 4 mm Thick clear sheet glass and glazing with linseed oil based putty to metal as described in:</u>				
F	Panes not exceeding 0.09 square meters.	70	SM		
	<u>Supply and fix 6 mm Thick obscure sheet glass and glazing to metal with putty as before described in:</u>				
G	Panes not exceeding 0.09 square meters.	3	SM		
	Total C/F				

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Item	Description	Qty	Unit	Rate	Amount
	B/F Prepare, prime with one coat of rust-inhibiting primer and Spray one undercoat and two finishing coats of gloss oil paint as described on:				
A	General metal surfaces(measured over one side) <u>Window Fin</u>	144	SM		
	<u>Supply and Fix 300 x 150mm Thick concrete window fin.</u>				
B	Concrete	8	CM		
C	Assorted Bars- 8 mm	715	KG		
D	Form work	51	SM		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>ELEMENT NO.6</u> <u>DOORS</u>				
	<u>Frames & Finishings</u>				
	<u>Supply and Fix Wrot Cypress; plugged, screwed and pellated</u>				
A	150 x 50mm frame with three labours : moulded screwed and pelleted.	35	LM		
B	Architrave to detail size, 75 x 25mm	35	LM		
C	Quadrant bead, diameter 25mm	35	LM		
D	20 x 25 mm glazing beading.	15	LM		
	<u>Solid Flush doors</u>				
	<u>Supply and Fix 45 mm (finished) solid core flush door faced on both sides with 5mm Thick mahogany veneer and 15 mm x 15 mm hardwood beadings pinned and glued to door on both faces to form grids to architect's details and approval: hardwood lipped on all edges to approval:</u>				
E	Single leaf door size 900 x 2400mm High.	6	NO		
	<u>Steel Doors</u>				
	<u>Supply, Assemble and fix Mild steel pannelled doors; 100 x 50 x 3mm Thick frame plugged to concrete or blockwork with 100mm long fishtailed 25 x 25 x 2mm Thick angle section, 50 x 50 x 3mm Thick hollow section stiles, top, bottom and middle rails at 600mm centres vertical and 1016mm centers horizontal, angles cut, mitred and welded; grilled upper panel infilled with 50 x 50 x 4mm Thick mild steel square hollow sections; lower panel infilled with 16 gauge mild steel plate complete with 'multi - lock ' 4 way lock model 285, high security multi lock cylinder protector with stainless steel door handles as 'Union' or equal and approved, one coat manufacturer's primer; all welding ground to smooth finish, all to the satisfaction of the Project Manager</u>				
F	Double door overall size 1800 X 2400mm High.	6	NO		
G	Single; 900 X 2400mm High.	4	NO		
	Total C/F				

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Item	Description	Qty	Unit	Rate	Amount
	B/F				
	<u>Glazing to fanlights</u> <u>4mm Thick clear sheet glass and glazing to and including timber beads in panes in;-</u>				
A	Panes not exceeding 0.5m square metre	5	SM		
	<u>Ironmongery</u> <u>Supply and fix the following ironmongery including all necessary matching screws.</u>				
B	Heavy duty stainless steel hinges with washers	9	PRS		
C	40mm Diameter rubber door stops	6	NO		
D	3 -lever mortice lock complete with pair of brass lever handle.	5	NO		
E	240 x 50mm door signage in printed vinyls	11	NO		
	<u>Painting and Decorating</u> <u>Touch up primer, prepare and apply one undercoat and two finishing coats gloss oil paint on as described</u>				
F	General surfaces of glazed metal doors internally (measured on both side over glass)	140	SM		
	<u>Prepare and apply one undercoat and two finishing coats high quality polyurethane clear lacquer to wooden surfaces as supplied by an approved Manufacturer : internally and/or externally : to</u>				
G	General surfaces of wood work (m.o.b.s)	26	SM		
H	Frames; over 100mm-200mm girth;	35	LM		
I	Frames not exceeding 100mm girth; internal.	35	LM		
	<u>Prime backs of wood before fixing with aluminium or other approved primer on:</u>				
J	Surfaces exceeding 100- 200 mm girth	35	LM		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>ELEMENT NO.7</u> <u>FINISHES:</u> <u>INTERNAL FINISHES:</u> <u>FLOOR FINISHES</u> <u>Cement and sand (1:3) as described in:</u>				
A	40mm Thick steel trowel smooth and mixed with red oxide <u>To washroom</u> <u>Cement and sand (1:3) as described in:</u>	238	SM		
B	32 mm Thick to receive Ceramic floor tiles(measured seperately) <u>Ceramic Tiles</u> <u>Supply and lay Rustic Non-slip Italian ceramic Tiles:</u> <u>400 x 400 x 10mm Thick: from approved supplier:</u> <u>fixed with 'sealmaster 101' or equal and approved tile</u> <u>adhesive; jointed and pointed in 'sealmaster</u> <u>201"grout; clean with approved detergent and apply</u> <u>'Johnson wax' polish: allow for tiles spacers: in</u>	27	SM		
C	Floors.	27	SM		
D	100mm high skirting <u>12 mm (minimum) two-coat plaster; 9 mm first coat</u> <u>of cement and sand (1:6), 3 mm second coat of</u> <u>cement and lime putty (1:10); steel trowelled</u> <u>smooth to:</u>	52	LM		
E	Walls ,beam and columns	527	SM		
F	Reveals not exceeding 100mm girth <u>Supply and fix 8mm Thick suspended Gypsum board</u> <u>ceiling affixed to and including 53 x 32 mm U-</u> <u>section galvanised steel studs (brandering)with</u> <u>rounded, smooth compound sanded edges, edge</u> <u>trims, plastered and finished in whitewater based</u> <u>SILK VINYL "to approval</u>	138	LM		
G	Ceiling; horizontal	238	SM		
	Total C/F				

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Item	Description	Qty	Unit	Rate	Amount
	B/F				
A	Extra over for forming 600 x 600mm access door trap; 25 x 100mm wrot cypress frame and 20 x 50mm wrot cypress stopper: piano hinges, door catch	3	NO		
B	Supply and fix 75 mm Thick wrot cypress cornice with 2 labours	136	LM		
	<u>Wall tiles</u> <u>Backing; cement and sand 1:3 with approved integral dust proofing additive wood floated</u>				
C	15 mm Thick to receive ceramic tiles(m/s) <u>200 x 200 x 8 mm Thick coloured Ceramic wall tiles or other equal and approved: jointed and pointed with matching cement mortar as described on:</u>	16	SM		
D	Walls to urinal and wash hand basin area <u>Painting & Decoration</u> <u>Skimming</u>	16	SM		
E	Carefully prepare the plastered surface by sanding and skimming with gysum powder to achieve the smooth surface. <u>Apply three coats of premium quality silk vinyl paint to Plastered:-</u>	527	SM		
F	Walls,beams and collumn	527	SM		
G	Reveals not exceeding 100mm girth	138	LM		
H	Chip board ceiling surfaces	238	SM		
	<u>EXTERNAL WALL FINISHES</u> <u>Render; 18mm Thick, 1 No. coatwork of cement and sand (1:3); wood floated to concrete or stone work base generally to: -</u>				
I	Walling for key pointing externally; patterns to Architect's approval	243	SM		
	Total C/F				

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Item	Description	Qty	Unit	Rate	Amount
	B/F				
	<u>12 mm (minimum) two-coat plaster; 9 mm first coat of cement and sand (1:6), 3 mm second coat of cement and lime putty (1:10); steel trowelled smooth to:</u>				
A	Beams.	25	SM		
B	Columns.	11	SM		
	<u>Painting and Decorating</u> <u>Prepare and apply exterior quality "marmoran" wall coating; "permacrete" with 2mm Thick marmoran top coat: colours and patterns as specified by the Architect : to manufacturers specifications and Architects approval : on rendering (m.s.); to</u>				
C	Rendered stone wall and concrete surfaces	36	SM		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>B. ELECTRICAL INSTALLATION WORKS</u>				
	<u>REAR WING</u>				
	<u>Supply, install, test and commission the</u>				
	<u>Lighting point wired in 3x1.5 mm² single core PVC cables drawn in 20mm heavy gauge conduits concealed in walls and floors,1&2-way switched but excluding other accessories.</u>				
A	a) one way switching	47	NO		
	Lighting fittings, complete with lamps of specified wattage and appropriate colour rendering :-				
B	a) Standard circular surface luminaire with polycarbonate body and white trim, polycarbonate opal diffuser and integral control gear for 28 W 2D compact LED lamp (at reception desk)	2	NO		
C	b) 4FT LED batten fitting with 30Watts twin tubes, 4000 lm,50,000 hours, 4000K color temprature, 230- 240V AC complete with all installation accesorries.	33	NO		
D	c) Ball light fitting with IP66 specification for the bathroom	8	NO		
	10Amps, White ivory switch plate as CLIPSAL, BG NEXUS or approved equivalent as				
E	(a) 1-gang 1-way	11	NO		
F	(b) 2-gang-1-way	2	NO		
G	200mm x 50mm,3 compartment powder coated 'CLIP-ON' metal type trunking as Power Technics manufacture to approved colour and complete with cover continuity bonding and all accessories.(ICT TEAM will install)	42	LM		
H	13 Amps power socket outlet points in 3x2.5 mm sq. single core PVC copper cables drawn in steel Trunking/in-wall concealed conduits or floor conduits of 25mm HG PVC	40	NO		
	<u>13A switched white moulded case socket outlet plates as MK, Clipsal, BG, Crabtree or an approved equivalent.</u>				
I	a) twin.	40	NO		
	Total C/F				

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Item	Description	Qty	Unit	Rate	Amount
	B/F				
A	4 ways TPN flush mounted distribution unit complete with 100A integral isolator as HAGER or approved equivalent complete with all accessories including lockable cover complete with Main RCD but excluding MCBs. <u>Supply and install the following miniature circuit breakers (MCB'S) rated at 500Vac for the above Distribution boards.</u>	1	NO		
B	(a) 10A, SP	4	NO		
C	(b) 30A, SP	8	NO		
D	(c) 100W, LED wall mounted IP66 floodlight	4	NO		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>C. MECHANICAL WORKS</u> <u>SPECIFICATION FOR PLUMBING & DRAINAGE INSTALLATION WORKS</u> <u>BILL No. 1: SANITARY APPLIANCES</u> Supply, deliver, install, test and commission the following sanitary appliances complete with all the accessories including all connections to the services, waste, jointing to water supply overflows, supports and all plugging and screwing to walls and floors. <u>Note:</u> (i) All sanitary fittings shall be in approved colour. (ii) The Model and Ref No. indicated is only a guide to the type and quality of fittings. (iii) Equivalent & Approved models may be acceptable. <u>Water Closet (WC)</u> A Squating Asian Ceramic Toilet with a plastic cistern wall hung top flush cistern suite in approved colour complete ref SKU: ABL10175 The unit shall come complete with back entry cisten flush one and half inch low pressure flush valve ref # 01021500, all other necessary accessories. equal and approved. <u>Toilet Roll Holder</u> B U-shaped chrome plated wall mounted toilet roll holder as 'Duravit, D-Code #0099261000'. Or approved equivalent <u>Toilet Brush And Holder</u> C Wall mounted toilet brush holder and brush of approved colour as Tapis or approved equivalent.				
	Total C/F				-

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Item	Description	Qty	Unit	Rate	Amount
	B/F				
	<u>Wash hand basin (WHB)</u>				
A	Wash hand basin size 560 x 500mm with overflow, one tap hole, 32mm diameter chrome plated chain waste, chain stay hole, Single lever basin mixer with pop up waste as Hansgrohe Logis E 70 ref LH1072A or equivalent and heavy-duty plastic bottle trap (32mm 'P' trap) with 75mm seal. Wash Hand Basin (WHB) to be as Nova Eros Item Code BWHNOER012 equal and approved.	4	NO		
	<u>Flexible Tubing</u>				
B	15mm diameter x 300mm long flexible connectors complete with chrome plated angle valve.	11	NO		
	<u>Foam Soap Dispenser- Wall Mounted</u>				
C	0.6 Litre wall mounted manual press action foam soap dispenser with satin finish spout and glass bottle. Dispenser to be wall mounted and to be as 'Duravit, D-Code # 0099161000' or approved equivalent.	2	NO		
	<u>Mirror</u>				
D	6mm thick polished plate glass silver backed mirror with beveled edges, size 510 x 610mm, Plugged and screwed to wall with 4No. chrome plated dome capped screws. The mirror shall rest against a layer of 5mm thick foam.	4	NO		
	<u>Urinal Bowl</u>				
E	450x300x375 mm white Ceramic urinal bowl set complete with, spreaders, 40mm heavy duty plastic bottle traps and 40mm diameter chrome plated outlets with grating firmly fixed on the wall with chrome plated screws. pipework to be provided with adequate fasteners to the wall. The fittings shall be as Orient or equal and approved.	2	NO		
	Total C/F				

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Item	Description	Qty	Unit	Rate	Amount
	B/F				
A	<u>Urinal flush valve- Manual push Button</u> manual push button action back inlet top flush valve with 150ml per flush. The valve to have chrome plated connections with synthetic diaphragm and adjustable tailpipe. Valve to be as "sloan Royal 137-1.6" or approved equivalent.	2	NO		
B	<u>Urinal Bowl Division</u> Urinal bowl division to be as white Ceramic to be fasten to the wall with stainless steel fasteners. The fittings shall be as Orient or approved equivalent	2	NO		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>BILL No. 2: INTERNAL PLUMBING</u>				
	Supply and Install the following Plumbing installation as described and shown on the drawing. All pipework and fittings in this installation to be to PP-R. Tenderers must allow for jointings, couplings, plugging, clampings, reducers, mortices, hangers, clippings etc necessary for the proper functioning of the installation when pricing.				
	PPR Pipework				
A	25mm diameter pipework	22	LM		
B	32mm diameter pipework	18	LM		
	Bends				
C	25mm diameter bend	10	NO		
D	32mm diameter bend	6	NO		
	Valves				
E	32 mm gate valves	4	NO		
F	25 mm gate valves	6	NO		
	Reducers				
G	32x25mm diameter reducer	6	NO		
	Tees				
H	32 mm equal tee	6	NO		
I	25mm equal tee	12	NO		
	Unions				
J	25mm diameter pipe unions	9	NO		
K	32mm diameter pipe unions	6	NO		
	Adaptor / Brass Threaded				
L	25X32mm brass threaded male adapter	12	NO		
	Adaptor / Brass Female Threaded				
M	25mm brass threaded adapter	8	NO		
N	32mm brass threaded adapter	6	NO		
	Water Storage - 10,000L				
O	Supply, deliver and install vertical close end plastic moulded tank of capacity 10,000 litres and diameter 216cm and of height 198cm. Model CCV600 The tank to be assembled complete with 25mm medium pressure ball valve, cover and having screwed connections for inlet, outlet, overflow, drain pipes and any other necessary item for its proper functioning. The tank shall be mounted on a flat roof slab and shall be as KENTANK Model or approved equivalent. including fittings and platform	1	NO		
	Total Carried To Summary				

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Item	Description	Qty	Unit	Rate	Amount
	<u>BILL No. 3: FOUL WATER DRAINAGE</u>				
	Supply and fix uPVC soil system to BS 4660 and BS 4515 and MuPVC waste systems to BS 5255 with screwed and socketed joints to BS 21. Solvent welded joints shall be as per the system's manufacturer's written instructions. Tenderers must allow in their pipework prices for all the couplings, clippings, connectors, joints etc. for the proper and satisfactory functioning of the system.				
	<u>MuPVC and uPVC Waste and Soil pipework</u>				
A	100mm diameter heavy gauge grey mUPVC pipe	35	LM		
B	50mm ditto	12	LM		
C	40mm ditto	8	LM		
	<u>Traps</u>				
D	100 x 50mm diameter floor trap and grating	2	NO		
	<u>Bends</u>				
E	100mm diameter long radius bend	6	NO		
F	100mm diameter sweep bend	8	NO		
G	50mm ditto	3	NO		
H	40mm ditto	3	NO		
	<u>Tees</u>				
I	100mm diameter sweep tee	5	NO		
J	50mm diameter sweep tee	2	NO		
K	40mm ditto	3	NO		
	<u>Access Caps</u>				
L	100mm diameter access cap	6	NO		
M	50mm ditto	3	NO		
N	40mm ditto	2	NO		
	<u>Boss Connectors</u>				
O	100 x 50mm diameter boss connector	5	NO		
	<u>WC Connectors</u>				
P	100mm diameter WC connector	5	NO		
	<u>Double branches</u>				
Q	100mm diameter double branch	4	NO		
	Total C/F				

BILL OF QUANTITIES AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION TO COMPLETION OF SABOTI CONSTITUENCY DIGITAL HUB

Item	Description	Qty	Unit	Rate	Amount
	B/F				
A	<u>Plumbing and Drainage</u> Allow for connection of sanitary fittings to the plumbing and drainage pipework including construction of soak pit as per the specifications of the Engineer	1	ITEM		
B	<u>Testing and commissioning</u> Allow for testing and commissioning of both drainage and plumbing systems	1	ITEM		
C	<u>Manhole</u> 600x450mm manhole with heavy duty cover. Manual depth to be determined on site but to minimum of 600mm	2	NO		
D	<u>Excavation</u> Excavate trench for 100mm pipe not exceeding 1500mm deep and average 250mm deep, part return in, fill & surplus cart away.	15	CM		
	Total Carried To Summary				

**BILL OF QUANTITIES AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION TO
COMPLETION OF SABOTI CONSTITUENCY DIGITAL HUB**

Item	Description	Qty	Unit	Rate	Amount
	<u>BILL No. 4: PORTABLE FIRE EXTINGUISHERS</u>				
	Supply, deliver, install, test and commission the following portable fire extinguishers and conforming to BS EN 3 / BS 1449.				
	<u>Water/Carbon Dioxide Gas Fire Extinguisher</u>				
A	9 litres water/carbon dioxide gas portable fire extinguisher completes with pressure gauge, initial charge and mounting brackets.	3	NO		
	<u>Carbon dioxide Extinguisher</u>				
B	5 Kg carbon dioxide gas portable fire extinguisher complete with pressure gauge, initial charge and mounting brackets.	2	NO		
	<u>Dry Chemical Powder Fire Extinguisher</u>				
C	6kg dry chemical powder portable fire extinguisher complete with pressure gauge, initial charge and mounting brackets.	3	NO		
	<u>Manual Alarm Bell</u>				
D	9" (225mm) manual operated alarm bell	3	NO		
	<u>Fire Notices and Signages</u>				
E	Allow for fire signage for the fire exits and fire instructions as directed by the Project Engineer.	4	NO		
	<u>Sweep Fan</u>				
	<u>Commercial Sweep fans with triple blades with a sweep diameter of 900mm, min speed of 350rpm capacity</u>				
F	8761m ³ /hr, 2 speed, Power Rating 50Watts, overall drop height of 375/750mm. To be complete with control remote switch capable of reversible operation. It shall be as Xpelair model whispair NWAN36 or an equal and approved equivalent	10	NO		
G	Allow for all electrical works including wiring and switches from the local isolator	1	ITEM		
	Total Carried To Summary				

**BILL OF QUANTITIES AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION TO
COMPLETION OF SABOTI CONSTITUENCY DIGITAL HUB**

Item	Description	Qty	Unit	Rate	Amount
	<u>PROVISIONAL SUMS</u> The following provisional sums to be spent/ deducted in whole or in part at the discretion of the Architect.				
	<u>LAN INFRASTRUCTURE</u> <u>Internet Connection & Associated accessories and equipment</u>				
A	Allow a provisional Sum of Kenya Shillings Three Hundred and Fifty Thousand (Kshs. 350,000.00) only for internet connection services, including trancking, access points, routers, patch cable, UPS, and other necessary electronic accessories, including test run and commissioning of the service	1	ITEM		
	<u>Sewer connection</u>				
B	Allow a provisional Sum of Kenya Shillings one Hundred and twenty Thousand (Kshs. 120,000.00) Only for sewer connection including construction of soak pit	1	ITEM		
	<u>Hoarding</u>				
C	Hoarding and fencing off the site and providing barricades, safety nets and proper signage and marking of the site to ascertain safety of public	1	ITEM		
	<u>Existing Underground Services</u>				
D	Ascertain the exact position, depth and level of all existing services in the area and make provisions for support, maintenance and protection of such services.	1	ITEM		
E	Allow for a prime cost sum of Kenya Shillings One Hundred Thousand (Kshs 100,000) only for the Project Management team (State Department of Public Works)	1	ITEM		
F	Contegency Sum for the builder's works to be spent at the descration and approval of the architect	1	ITEM		
	Total Carried To Summary				

**BILL OF QUANTITIES AND SPECIFICATIONS FOR THE PROPOSED CONSTRUCTION TO
COMPLETION OF SABOTI CONSTITUENCY DIGITAL HUB**

Item	Description	Qty	Unit	Rate	Amount
	<u>GRAND SUMMARY:</u>				
	<u>A. BUILDER'S WORKS.</u>				
A	ELEMENT No. 1: SUBSTRUCTURES		Shs		
B	ELEMENT No. 2: REINFORCED CONCRETE WORKS		Shs		
C	ELEMENT No. 3: WALLING		Shs		
D	ELEMENT No. 4: ROOFING AND RAINWATER DISPOSAL		Shs		
E	ELEMENT No. 5: WINDOWS		Shs		
F	ELEMENT No. 6: DOORS		Shs		
G	ELEMENT No. 7: FINISHES		Shs		
	Total				
H	B. ELECTRICAL WORKS		Shs		
I	C. MECHANICAL WORKS				
	BILL No.1:		Shs		
	BILL No.2:		Shs		
	BILL No.3:		Shs		
	BILL No.4:		Shs		
	Total				
J	P.C Sum		Shs		
	Sub-Total				
K	Add 16% VAT				
	GRAND TOTAL				

BILL NO. 1: WORK ITEMS

Bill No 2 - (Name of Section e.g. Foundations).

<i>Item no.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity</i>	<i>Rate</i>	<i>Amount</i>
Total for Bill No. 2 (carried forward to Summary, p. __)					_____

Bill No. 2: Schedule of Daywork Rates - Labor

Item no.	Description	Unit	Nominal quantity	Rate	Amount
	Subtotal				
	Allow ____ percent ^a of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 3 (b) above.				
	Total for Daywork (carried forward to Daywork Summary, p. _____)				

a. To be entered by the Tenderer.

Bill No. 3: Schedule of Daywork Rates - Materials

Item no.	Description	Unit	Nominal quantity	Rate	Extended amount
	Subtotal				
	Allow ____ percent a. of Subtotal for Contractor's overhead, profit, etc., in accordance with paragraph 4 (b) above.				
	Total for Daywork: Materials (carried forward to Daywork Summary, p. _____)				

a. To be entered by the Tenderer.

SECTION VI - SPECIFICATIONS

Notes for preparing Specifications

1. Specifications must be drafted to present a clear and precise statement of the required standards of materials, and workmanship for tenderers to respond realistically and competitively to the requirements of the NG-CDF Saboti and ensure responsiveness of tenders. The Specifications should require that all materials, plant, and other supplies to be permanently incorporated in the Works be new, unused, of the most recent or current models, and incorporating all recent improvements in design and materials unless provided otherwise in the Contract. Where the Contractor is responsible for the design of any part of the permanent Works, the extent of his obligations must be stated.
2. Specifications from previous similar projects are useful and may not be necessary to re-write specifications for every Works Contract.
3. There are considerable advantages in standardizing **General Specifications** for repetitive Works in recognized public sectors, such as high ways, urban housing, irrigation and water supply. The General Specifications should cover all classes of workmanship, materials and equipment commonly involved in constructions, although not necessarily to be used in a particular works contract. Deletions or addenda should then adapt the General Specifications to the particular Works.
4. Care must be taken in drafting Specifications to ensure they are not restrictive. In the

Specifications of standards for materials, plant and workmanship, existing Kenya Standards should be used as much as possible, otherwise recognized international standards may also be used.

5. The NG-CDF Saboti should decide whether technical solutions to specified parts of the Works are to be permitted. Alternatives are appropriate in cases where obvious (and potentially less costly) alternatives are possible to the technical solutions indicated in tender documents for certain elements of the Works, taking into consideration the comparative specialized advantage of potential tenderers.
6. The NG-CDF Saboti should provide a description of the selected parts of the Works with appropriate reference to Drawings, Specifications, Bills of Quantities, and Design or Performance criteria, stating that the alternative solutions shall be at least structurally and functionally equivalent to the basic design parameters and Specifications.
7. Such alternative solutions shall be accompanied by all information necessary for a complete evaluation by the NG-CDF Saboti, including drawings, design calculations, technical specifications, breakdown of prices, proposed construction methodology, and other relevant details. Technical alternatives permitted in this manner shall be considered by the NG-CDF Saboti each on its own merits and independently of whether the tenderer has priced the item as described in the NG-CDF Saboti's design included with the tender documents.

SECTION VII - DRAWINGS

NG
CDF

PART III - THE CONDITIONS OF CONTRACT AND CONTRACT

SECTION VIII - GENERAL CONDITIONS OF CONTRACT (GCC)

NG-CDF Saboti]

[Name of Contract]

[Address]

General Conditions of Contract

1. GENERAL PROVISIONS

1.1 Definitions

In this Contract, except where context otherwise requires, the following terms shall be interpreted as indicated below. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

“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.

“Base Date” means a date 30 day prior to the submission of tenders.

“Bill of Quantities” means the priced and completed Bill of Quantities forming part of the

tender. **“Completion Date”**

meansthe date of completion of the Works ascertified by the Engineer.

“Contract Price” means the price defined in the contract and there after as adjusted in accordance with the provisions of the Contract.

“Contract” means the agreement entered into between the NG-CDF Saboti and the Contractor as recorded in the Agreement Form and signed by the parties including all attachments and appendices thereto and all documents incorporated by reference therein to execute, complete, and maintain the Works.

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

“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, NG-CDF Saboti's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.

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

“Contractor's Representative” means the person named by the Contractor in the Contractor appointed from time to time by the Contractor who acts on behalf of the Contractor.

“Contractor” means the person(s) named as contractor in the Form of Tender accepted by the NG-CDF Saboti.

“Cost” means 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.

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

“Dayworks” means Work inputs subject to payment on a time basis for labour and the associated materials and plant.

“Defect” means any part of the Works not completed in accordance with the Contract.

“Defects Liability Certificate” means the certificate issued by Architect upon correction of defects by the Contractor.

“Defects Liability Period” means the period named in the Special Conditions of Contract and calculated from the Completion Date, within which the contractor is liable for any defects that may develop in the handed over works.

“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 the days stated in the Special Conditions of Contract.

“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 NG-CDF Saboti in accordance with the Contract.

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

“Final Statement” means the statement defined in Sub-Clause 14.11

[Application for Final Payment Certificate]. **“Force Majeure”** is defined in Clause 19 [Force Majeure].

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

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

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

“Laws” means all national legislation, statutes, ordinances, and regulations and by-laws of any legally constituted public authority.

“Letter of Acceptance” means the letter of formal acceptance of a tender, signed by NG-CDF Saboti, including any annexed memoranda comprising agreements between and signed by both Parties.

“Local Currency” means the currency of Kenya.

“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.

“Party” means the NG-CDF Saboti or the Contractor, as the context requires.

“Payment Certificate” means a payment certificate issued under Clause 14 [Contract Price and Payment]. **“Performance Certificate”** means the certificate issued under Sub-Clause 11.9 [Performance Certificate]. **“Performance Security”** means the security (or securities, if any) under Sub-Clause 4.2 [Performance Security]. **“Permanent Works”** means the permanent works to be executed by the Contractor under the Contract.

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

“NG-CDF Saboti's Personnel” means the Engineer, the Engineer, the assistants and all other staff, labor and other employees of the Architect and of the NG-CDF Saboti; and any other personnel notified to the Contractor, by the NG-CDF Saboti or the Engineer, as NG-CDF Saboti's Personnel.

“Procuring Entity” means the Entity named in the Special Conditions of Contract.

“Engineer” is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the NG-CDF Saboti and notified to the Contractor, to act in replacement of the Engineer) who is responsible for supervising the execution of the Works and administering the Contract and shall be an “Architect” or a “Quantity Surveyor” registered under the Architects and Quantity Surveyors Act Cap 525 or an “Engineer” registered under Engineers Registration Act Cap 530.

“Engineer” means the person appointed by the NG-CDF Saboti to act as the Architect for the purposes of the Contract and named in the Special Conditions of Contract, or other person appointed from time to time by the NG-CDF Saboti and notified to the Contractor

“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].

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

“Schedules” means the document(s) entitled schedules, completed by the Contractor and submitted with the Form of Tender, as included in the Contract.

“Section” means a part of the Works specified in the Special Conditions of Contract as a Section (if any)

“Site Investigation Reports” are those reports that may be included in the tendering documents which a ref actual and interpretative about the surface and sub-surface condition sat the Site.

“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.

“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.

“Start Date” or “Commencement Date” is the 101st date when the Contractor shall commence execution of the Works. It does not necessarily coincide with the Site possession date(s).

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

“Subcontractor” means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Works.

“Taking-Over Certificate” means a certificate issued under Clause 10 [NG-CDF Saboti's Taking Over].

“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.

“Temporary works” means works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the Works.

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

“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 NG-CDF Saboti.

“Testson Completion” means the tests which are specified in the Contractor 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 NG-CDF Saboti.

“Time for Completion” means the time for completing the Works or a Section (as the case may be) as stated in the Special Conditions of Contract (with any extension calculated from the Commencement Date.

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

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

“Works” means the items the NG-CDF Saboti requires the Contractor to undertake as defined in the Appendix to Conditions of Contract. **“Works”** may also mean the Permanent Works and the Temporary Works, or either of them as appropriate.

1.3 Contract Agreement

The Parties shall enter into a Contract Agreement within 14 days after the Contractor receives the Contract Agreement, unless the Special Conditions establish otherwise. The Contract Agreement shall be based upon the formannexed to the Special 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 NG-CDF Saboti.

1.4 Assignment

The Contractor shall not assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, the contractor:

- a) May as sign the whole or any part with the prior consent of the NG-CDF Saboti, and
- b) may, as security in favor of a bank or financial institution, assign its right to moneys due, or to become due, under the Contract.

1.5 Care and Supply of Documents

1.5.1 The Specifications and Drawings shall be in the custody and care of the NG-CDF Saboti. Unless

otherwise stated in the Contract, two copies of the Contract and of each subsequent Drawings and Bills of Quantities shall be supplied to the Contractor, who may make or request further copies at the cost of the Contractor.

- 1.52 Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the NG-CDF Saboti. Unless otherwise stated in the Contract, the Contractor shall supply to the Architect two copies of each of the Contractor's Documents.
- 1.53 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 NG-CDF Saboti's Personnel shall have the right of access to all these documents at all reasonable times.
- 1.54 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.

1.6 Timely provision of Drawings or Instructions

- 1.61 The Contractor shall give notice to the Architect 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.
- 1.62 If the Contractor suffers delay and/or incurs Cost as a result of a failure of the Architect 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 Architect 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 other associated costs accrued, which shall be included in the Contract Price.

1.7 NG-CDF Saboti's Use of Contractor's Documents

- 1.71 As agreed between the Parties, the Contractor shall retain the copyright and other intellectual property rights in the Contractor's Documents and other design documents made by (or on behalf of) the Contractor.
- 1.72 The Contractor shall be deemed (by signing the Contract) to give to the NG-CDF Saboti a non-terminable transferable non-exclusive royalty-free license to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This license shall:
- a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Works,
 - b) entitle any person in proper possession of the relevant part of the Works to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Works, and
 - c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.

- 1.73 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 NG-CDF Saboti for purposes other than those permitted under Sub-Clause 1.10.2.

1.8 Contractor's Use of NG-CDF Saboti's Documents

As agreed between the Parties, the NG-CDF Saboti shall retain the copyright and other intellectual property rights in the Specification, the Drawings and other documents made by (or on behalf of) the NG-CDF Saboti. 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 NG-CDF Saboti's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.9 Confidential Details

- 1.9.1 The Contractor's and the NG-CDF Saboti's Personnel shall ensure confidentiality at all times. The confidentiality shall survive termination or completion of the contract. They 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.
- 1.9.2 The Contractor's and the NG-CDF Saboti's Personnel shall also 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.

1.10 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. Unless otherwise stated in the Special Conditions of Contract:

- a) The NG-CDF Saboti 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 Specifications as having been (or to be) obtained by the NG-CDF Saboti; and the NG-CDF Saboti 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, licenses 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 NG-CDF Saboti 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.

1.11 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 NG-CDF Saboti for the performance of the Contract;
- b) these persons shall notify the NG-CDF Saboti 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 NG-CDF Saboti.

1.12 Inspections and Audit by the NG-CDF Saboti

Pursuant to paragraph 2.2(e). of Appendix B to the General Conditions, the Contractor shall permit and shall cause its subcontractors and sub-consultants to permit, the Public Procurement Regulatory Authority, NG-CDF Saboti and/or persons appointed or designated by the Government of Kenya to inspect the Site and/or the accounts and records relating to the procurement process, selection and/or contract execution, and to have such accounts and records audited by auditors appointed by the NG-CDF Saboti if requested by the NG-CDF Saboti. The Contractor's and its Subcontractors' and sub-consultants' attention is drawn to Sub-Clause 15.6 (Fraud and Corruption) which provides, inter alia, that acts intended to materially impede the exercise of the NG-CDF Saboti's inspection and audit rights constitute a prohibited practice subject to contract termination (as well as to a determination of ineligibility pursuant to the NG-CDF Saboti's prevailing sanctions procedures).

2 THE NG-CDF SABOTI

2.1 Right of Access to the Site

- 2.1.1 The NG-CDF Saboti shall give the Contractor right of access to, and possession of, all parts of the Site within the time (or times) stated in the **Special Conditions of Contract**. The right and possession may not be exclusive to the Contractor. If, under the Contract, the NG-CDF Saboti is required to give (to the Contractor) possession of any foundation, structure, plant or means of access, the NG-CDF Saboti shall do so in the time and manner stated in the Specification. However, the NG-CDF Saboti may withhold any such right or possession until the Performance Security has been received.
- 2.1.2 If no such time is stated in the Special Conditions of Contract, the NG-CDF Saboti 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].
- 2.1.3 If the Contractor suffers delay and/or incurs Cost as a result of a failure by the NG-CDF Saboti to give any such right or possession within such time, the Contractor shall give notice to the Architect 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.
- 2.1.4 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

2.2 Permits, Licenses or Approvals

- 2.2.1 The NG-CDF Saboti 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 Kenya which are relevant to the Contract but are not readily available, and
 - b) any permits, licenses or approvals required by the Laws of Kenya:
 - 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 NG-CDF Saboti's Personnel

The NG-CDF Saboti shall be responsible for ensuring that the NG-CDF Saboti's Personnel and the NG-CDF Saboti's other contractor son the Site:

- a) co-operate with the Contractor's efforts under Sub-Clause 4.6 [Co-operation], and
- b) take action ssimilar to those which the Contractor is required to take under sub-paragraphs (a), (b) and (c) ofSub-Clause 4.8 [Safety Procedures] and under Sub-Clause 4.18 [Protection of the Environment].

2.4 NG-CDF Saboti's Financial Arrangements

The NG-CDF Saboti shall make and maintain all necessary financial arrangements which will enable the NG-CDF Saboti to pay the Contract Price punctually (as estimated at that time) in accordance with Clause14 [Contract Price and Payment].

3 THE ENGINEER

3.1 Architect Duties and Authority

- 3.1.1 The NG-CDF Saboti shall appoint the Architect who shall carry out the duties as signed to him in the Contract. The Architect staff shall include suitably qualified Assistants and other professionals who are competent to carry out these duties. The Architect Name and Address shall be provided in the **Special Conditions of Contract**.
- 3.1.2 The Architect shall have no authority to amend the Contract.
- 3.1.3 The Architect May exercise the authority attributable to the Architect as specified in or necessarily to be implied from the Contract. If the Architectis required to obtain the approval of the NG-CDF Saboti before exercising a specified authority, the requirements shall be as stated in the **Special Conditions of Contract**. The NG-CDF Saboti shall promptly inform the Contractor of any change to the authority attributed to the Engineer.
- 3.1.4 However, whenever the Architect exercises a specified authority for which the NG-CDF Saboti's approvalis required, then (for the purposes of the Contract) the contractor shall require the Architect toprovideevidence of such approval before complying with the instruction.
- 3.1.5 Except as otherwise stated in these Conditions:
 - a) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Architect shallbedeemedtoactfortheNG-CDF Saboti;
 - b) the Architect 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 Architect (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) anyact by the Architect in response to a Contractor's request shall be notified in writing to the Contractor within 14 days of receipt.

3.1.6 The following provisions shall apply:

The Architect shall obtain the specific approval of the NG-CDF Saboti 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 **Special Conditions of Contract**.
- c) Approving a proposal for Variation submitted by the Contractor i
- d) Specifying the amount payable in each of the applicable three currencies.

3.1.7 Notwithstanding the obligation, as set out above, to obtain approval, if, in the opinion of the Engineer, an emergency occurs affecting the safety of life or of the Works or of adjoining property, he may, without relieving the Contractor of any of his duties and responsibility under the Contract, instruct the Contractor to execute all such work or to do all such things as may, in the opinion of the Engineer, be necessary to abate or reduce the risk. The Contractor shall forth with comply, despite the absence of approval of the NG-CDF Saboti, with any such instruction of the Engineer. The Architect 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 NG-CDF Saboti.

3.2 Delegation by the Engineer

3.2.1 The Architect 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 Architect shall not delegate the authority to determine any matter in accordance with Sub-Clause 3.5 [Determinations].

3.2.2 Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized 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 Architect to reject the work, Plant or Materials;
- b) If the Contractor questions any determination or instruction of an assistant, the Contractor may refer the matter to the Engineer, who shall promptly confirm, reverse or vary the determination or instruction.

3.3 Instructions of the Engineer

3.3.1 The Architect 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

- 332 The Contractor shall comply with the instructions given by the Architect or delegated assistant, on any matter related to the Contract. Whenever practicable, their instructions shall be given in writing. If the Architect 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 Architect or delegated assistant (as the case may be).

3.4 Replacement of the Engineer

If the NG-CDF Saboti intends to replace the Engineer, the NG-CDF Saboti shall, in 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 person to replace the Engineer.

3.5 Determinations

- 35.1 Whenever these Conditions provide that the Architect shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the Architect shall consult with each Party in an endeavor to reach agreement. If agreement is not achieved, the Architect shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.
- 3.5.1 The Architect shall give notice to both Parties of each agreement or determination, with supporting particulars, within 30 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

- 4.1.1 The Contractor shall design (to the extent specified in the Contract), execute and complete the Works in accordance with the Contract and with the Architect instructions, and shall remedy any defects in the Works.
- 4.1.2 The Contractor shall provide the Plant and Contractor's Documents specified in the Contract, and all Contractor's Personnel, Goods, consumables and other things and services, whether of a temporary or permanent nature, required in and for this design, execution, completion and remedying of defects.
- 4.1.3 All equipment, material, and services to be incorporated in or required for the Works shall have their origin in any eligible source country.
- 4.1.4 The Contractor shall be responsible for the adequacy, stability and safety of all Site operations and of all methods of construction. Except to the extent specified in the Contract, the Contractor (i) shall be responsible for all 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.
- 4.1.5 The Contractor shall, whenever required by the Engineer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alteration to these arrangements and methods shall be made without this having previously been notified to the Engineer.

- 4.1.6 If the Contract specifies that the Contractor shall design any part of the Permanent Works, then unless otherwise stated in the Special Conditions:
- a) The Contractor shall submit to the Architect 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 Architect 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, befit 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 Architect the "as-built" documents and, if applicable, operation and maintenance manuals in accordance with the Specification and in sufficient detail for the NG-CDF Saboti 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

- 4.2.1 The Contractor shall obtain (at his cost) a Performance Security for proper performance, in the amount stated in the **Special Conditions of Contract** and denominated in the currency (ies) of the Contract or in a freely convertible currency acceptable to the NG-CDF Saboti. If an amount is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.
- 4.2.2 The Contractor shall deliver the Performance Security to the NG-CDF Saboti within 30 days after receiving the Notification of Award and shall send a copy to the Engineer. The Performance Security shall be issued by a reputable bank selected by the Contractor and shall be in the form annexed to the Special Conditions, as stipulated by the NG-CDF Saboti in the Special Conditions of Contract, or in another form approved by the NG-CDF Saboti.
- 4.2.3 The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 30 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.
- 4.2.4 The NG-CDF Saboti shall not make a claim under the Performance Security, except for amounts to which the NG-CDF Saboti is entitled under the Contract.
- 4.2.5 The NG-CDF Saboti 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 NG-CDF Saboti was not entitled to make the claim.
- 4.2.6 The NG-CDF Saboti shall return the Performance Security to the Contractor within 14 days after receiving a copy of the Taking-Over Certificate.
- 4.2.7 Without limitation to the provisions of the rest of this Sub-Clause, whenever the Architect 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 Architect 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

- 431 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. The Contractor's Representative's Name and Address shall be provided in the **Special Conditions of Contract**.
- 432 Unless the Contractor's Representative **is named in the Contract**, the Contractor shall, prior to the Commencement Date, submit to the Architect 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 an other suitable person for such appointment.
- 433 The Contractor shall not, without the prior consent of the Engineer, revoke the appointment of the Contractor's Representative or appoint a replacement.
- 434 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 Architect prior consent, and the Architect shall be notified accordingly.
- 435 The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.3 [Instructions of the Engineer].
- 436 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 Architect has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.
- 437 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 interpreter available during all working hours in a number deemed sufficient by the Engineer.

4.4 Sub-contractors

- 441 The Contractor shall not subcontract the whole of the Works. The contractor may, however, subcontract the works as provided in Clause 34.2.
- 442 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 Special 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 NG-CDF Saboti shall be obtained to other proposed Subcontractors;
 - c) the Contractor shall give the NG-CDF Saboti not less than 14 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 NG-CDF Saboti to require the subcontract to be assigned to the NG-CDF Saboti under Sub-Clause 4.5 [Assignment of Benefit of Subcontract] (if or when applicable) or in the event of termination
- 443 The Contractor shall ensure that the requirements imposed on the Contractor apply equally to each Subcontractor.

444 Where practicable, the Contractor shall give fair and reasonable opportunity for contractors from Kenya 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 NG-CDF Saboti, then the Contractor shall do so. Unless otherwise stated in the assignment, the Contractor shall have no liability to the NG-CDF Saboti for the work carried out by the Subcontractor after the assignment takes effect.

4.6 Co-operation

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

- a) The NG-CDF Saboti's Personnel,
- b) Any other contractors employed by the NG-CDF Saboti, 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.

462 Any such instruction shall constitute a Variation if and to the extent that it cause sthe 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.

463 If, under the Contract, the NG-CDF Saboti 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 Architect in the time and manner stated in the Specification.

4.7 Setting Out of the Works

471 The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contractor 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.

472 The NG-CDF Saboti 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.

473 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 Architect 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 costs accrued, which shall be included in the Contract Price.

4.7.4 After receiving this notice, the Architect 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.

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 [NG-CDF Saboti'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.

49 Quality Assurance

- 49.1 The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Architect shall be entitled to audit any aspect of the system.
- 49.2 Details of all procedures and compliance documents shall be submitted to the Architect or 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 itself shall be apparent on the document itself.

4.10 Site Data

- 4.10.1 The NG-CDF Saboti shall have made available to the Contractor for his information, prior to the Base Date, all relevant data in the NG-CDF Saboti's possession on sub-surface and hydrological conditions at the Site, including environmental aspects. The NG-CDF Saboti shall similarly make available to the Contractor all such data which come into the NG-CDF Saboti's possession after the Base Date. The Contractor shall be responsible for interpreting all such data.

4.11 Sufficiency of the Accepted Contract Amount

- 4.11.1 The Contractor shall be deemed to:
 - a) Have satisfied itself 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].
- 4.11.2 Unless otherwise stated in the Contract, the Accepted Contract Amount covers all the Contractor's obligations under the Contract (including those under Provisional Sums, if any) and all things necessary for the proper execution and completion of the Works and the remedying of any defects.

4.12 Unforeseeable Physical Conditions

- 4.12.1 In this 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.
- 4.12.2 If the Contractor encounters adverse physical conditions which he considers to have been Unforeseeable, the Contractor shall give notice to the Architect as soon as practicable.

- 4.12.3 This notice shall describe the physical conditions, so that they can be inspected by the

Architect 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 Architect may give. If an instruction constitutes a Variation, Clause 13 [Variations and Adjustments] shall apply.

- 4.124 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.
- 4.125 Upon receiving such notice and inspecting and/or investigating these physical conditions, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) whether and (if so) to what extent these physical conditions were Unforeseeable, and (ii) the matters described in sub-paragraphs (a) and (b) above related to this extent.
- 4.126 However, before additional Cost is finally agreed or determined under sub-paragraph (ii), the Architect may also review whether other physical conditions in similar parts of the Works (if any) were more favorable than could reasonably have been foreseen when the Contractor submitted the Tender. If and to the extent that these more favorable conditions were encountered, the Architect may proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the reductions in Cost which were due to these conditions, which may be included (as deductions) in the Contract Price and Payment Certificates. However, the net effect of all adjustments under sub-paragraph (b) and all these reductions, for all the physical conditions encountered in similar parts of the Works, shall not result in a net reduction in the Contract Price.
- 4.127 The Architect 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 NG-CDF Saboti shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works. The Contractor shall obtain, at his risk and cost, any additional rights of way or facilities outside the Site which he may require for the purposes of the Works.

4.14 Avoidance of Interference

- 4.14.1 The Contractor shall not interfere unnecessarily or improperly with:
- a) The convenience of the public, or
 - b) The access to and use and occupation of all roads and foot paths, irrespective of whether they are public or in the possession of the NG-CDF Saboti or of others.
- 4.14.2 The Contractor shall indemnify and hold the NG-CDF Saboti harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

- 4.14.3 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 NG-CDF Saboti shall not be responsible for any claims which may arise from the use or otherwise of any access route;
- d) the NG-CDF Saboti does not guarantee the suitability or a 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.

4.15 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.

4.16 Protection of the Environment

- 4.16.1 The contractor shall comply with the applicable environmental laws, regulations and policies.
- 4.16.2 The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and to limit damage and nuisance to people and property resulting from pollution, noise and other results of his operations.
- 4.16.3 The Contractors shall ensure that emissions, surfaced is charges and effluent from the Contractor's activities shall not exceed the values stated in the Specification or prescribed by applicable Laws.

4.17 NG-CDF Saboti's Equipment and Free-Issue Materials

- 4.17.1 The NG-CDF Saboti shall make the NG-CDF Saboti'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 NG-CDF Saboti shall be responsible for the NG-CDF Saboti's Equipment, except that
 - b) the Contractor shall be responsible for each item of NG-CDF Saboti's Equipment whilst any of the Contractor's Personnel is operating it, driving it, directing it or in possession or control of it.
- 4.20.1 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 NG-CDF Saboti of liability for any shortage, defect or default not apparent from a visual inspection.

4.21 Progress Reports

- 4.21.1 Unless otherwise stated in the Special Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Architect in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.

- 4.21.2 Reporting shall continue until the Contractor has completed all work which is known

to be outstanding at the completion date stated in the Taking-Over Certificate for the Works. 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 [NominatedSubcontractors]),
- 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 [NG-CDF Saboti's Claims] and notices
- g) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- h) comparison so factual and planned progress, with details of any events or circumstances which may jeopardize 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 Special Conditions:

- a) The Contractor shall be responsible for keeping unauthorized persons off the Site, and
- b) authorized persons shall be limited to the Contractor's Personnel and the NG-CDF Saboti's Personnel; and to any other personnel notified to the Contractor by the NG-CDF Saboti or the Engineer, as authorized personnel of the NG-CDF Saboti's other contractors on the Site.

4.23 Contractor's Operations on Site

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

4.24 Fossils

- 424.1 All fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site shall be placed under the care and authority of the NG-CDF Saboti. The Contractor shall take reasonable precautions to prevent Contractor's Personnel or other persons from removing or damaging any of these findings.
- 424.2 The Contractor shall, upon discovery of any such finding, promptly give notice to the Engineer, who shall issue instructions for dealing with it. If the Contractor suffers delay and/or incurs Cost from complying with the instructions, the Contractor shall give a further notice to the Architect 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 Architect 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 this Contract, "nominated Subcontractor" means a Subcontractor:

- a) Who is nominated by the NG-CDF Saboti, or
- b) The Contractor has nominated 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 NG-CDF Saboti 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 NG-CDF Saboti 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 NG-CDF Saboti payments for sums due under the Subcontract

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 Architect certifies to be due in accordance with the subcontract. These amounts plus other charges shall be included in the Contract Price in accordance with sub-paragraph (b) of Sub-Clause 13.5 [Provisional Sums], except as stated in Sub-Clause 5.4 [Evidence of Payments].

6 PLANT, MATERIALS AND WORKMANSHIP

6.1 Manner of Execution

The Contractor shall carry out the manufacture/assemble 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 workman like and careful manner, in accordance with recognized good practice, and
- c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract.

6.2 Samples

The Contractor shall submit the following samples of Materials, and relevant information, to the Architect for consent prior to using the Material sin 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 Architect as a Variation.

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

6.3 Inspection

6.3.1 The NG-CDF Saboti'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.

6.3.2 The Contractor shall give the NG-CDF Saboti'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.

6.3.3 The Contractor shall give notice to the Architect whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Architect shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Architect 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 there after reinstate and make good, all at the Contractor's cost.

7 COMMENCEMENT, DELAYS, AND SUSPENSION

7.1 Commencement of Works

7.1.1 Except as otherwise specified in the Special Conditions of Contract, the Commencement Date shall be the date at which the following precedent conditions have all been fulfilled and the Architect 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 Kenya;
- b) except if otherwise specified in the Special Conditions of Contract, 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.

- c) Receipt by the Contractor of the Advance Payment under Sub-Clause 14.2 [Advance Payment] provided that the corresponding bank guarantee has been delivered by the Contractor.

7.12 If the said Architect 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

7.13 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.

7.2 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 Test 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 Extension of Time for Completion

8.4.1 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 NG-CDF Saboti, the NG-CDF Saboti's Personnel, or the NG-CDF Saboti's other contractors.

8.4.2 If the Contractor considers itself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Architect in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Architect shall review previous determinations and may increase, but shall not decrease, the total extension of time.

8.5 Rate of Progress

8.5.1 If, at anytime:

- 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 Architect 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.

852 Unless the Architect 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 NG-CDF Saboti to incur additional costs, the Contractor shall, subject to notice under Sub-Clause 2.5 [NG-CDF Saboti's Claims] pay these costs to the NG-CDF Saboti, in addition to delay damages (if any)

853 Additional costs of revised methods, including acceleration measures, instructed by the Architect to reduce delays resulting from causes listed under Sub-Clause 8.4 [Extension of Time for Completion] shall be paid by the NG-CDF Saboti, without generating, however, any other additional payment benefit to the Contractor.

8.6 Delay Damages

861 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 [NG-CDF Saboti's Claims] pay delay damages to the NG-CDF Saboti for this default. These delay damages shall be the sum stated in the **Special Conditions of Contract**, which shall be paid for everyday 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 Special Conditions of Contract.

862 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 NG-CDF Saboti] 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.

8.7 Suspension of Work

871 The Architect may at anytime 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.

872 The Architect 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.

8.8 Consequences of Suspension

881 If the Contractor suffers delay and/or incurs Cost from complying with the Architect instructions under Sub-Clause 8.8 [Suspension of Work] and/or from resuming the work, the Contractor shall give notice to the Architect 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.

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

883 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].

8.9 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 30 days, and
- b) the Contractor has marked the Plant and/or Materials as the NG-CDF Saboti's property in accordance with the Architect instructions.

8.10 ProlongedSuspension

If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days, the Contractor may request the Architect permission to proceed. If the Architect does not give permission within 30 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].

8.11 Resumption of Work

After the permission or instruction to proceed is given, the Contractor and the Architect 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 receivingf rom the Architec tan instruction to this effect under Clause 13 [Variations and Adjustments].

8 TESTS ON COMPLETION

8.1 Contractor's Obligations

- 8.1.1 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].
- 8.1.2 The Contractor shall give to the Architect 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 Architect shall instruct.
- 8.1.3 In considering the results of the Tests on Completion, the Architect shall make allowances for the effect of any use of the Works by the NG-CDF Saboti 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 resultsof these Tests to the Engineer.

8.2 Delayed Tests

- 8.2.1 If the Tests on Completion are being unduly delayed by the NG-CDF Saboti, Sub-Clause 7.4 [Testing] (fifth paragraph) and/ or Sub-Clause 10.3 [Interference with Tests on Completion] shall be applicable.
- 8.2.2 If the Tests on Completion are being unduly delayed by the Contractor, the Architect may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Testson such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer.
- 8.2.3 If the Contractor fails to carryout the Tests on Completion within the period of 21 days, the NG-CDF Saboti's Personnel may proceed with the Test sat 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.

8.3 Retesting of related works

If the Works, or a Section, fail to pass the Tests on Completion, Sub-Clause 7.5 [Rejection] shall apply, and the Architect 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.

8.4 Failure to Pass Tests on Completion

8.4.1 If the Works, or a Section, fail to pass the Tests on Completion repeated under Sub-Clause 9.3 [Retesting], the Architect shall be entitled to:

- a) Order further repetition of Tests on Completion under Sub-Clause 9.3; or
- b) if the failure deprives the NG-CDF Saboti of substantially the whole benefit of the Works or Section, reject the Works or Section (as the case may be), in which event the NG-CDF Saboti shall have the same remedies as are provided in sub-paragraph (c) of Sub-Clause 1.4 [Failure to Remedy Defects].

9 DEFECTS LIABILITY

9.1 Completion of Outstanding Work and Remedying Defects

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

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

9.1.2 If a defect appears or damage occurs, the Contractor shall be notified accordingly by the Engineer.

9.2 Cost of Remedying Defects

9.2.1 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.

9.2.2 If and to the extent that such work is attributable to any other cause, the Contractor shall be notified promptly by (or on behalf of) the NG-CDF Saboti, and Sub-Clause 13.3 [Variation Procedure] shall apply.

9.3 Extension of Defects Notification Period

9.3.1 The NG-CDF Saboti shall be entitled subject to Sub-Clause 2.5 [NG-CDF Saboti'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.

- 932 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 defect or damage occurring more than two years after the Defects Notification Period for the Plant and/ or Materials would otherwise have expired.

9.4 Failure to Remedy Defects

- 941 If the Contractor fails to remedy any defect or damage within a reasonable time, a date may be fixed by the Engineer, on or by which the defect or damage is to be remedied. The Contractor shall be given reasonable notice of this date.
- 942 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 NG-CDF Saboti may (at his option):
- (a) Carry out the work itself 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 [NG-CDF Saboti's Claims] pay to the NG-CDF Saboti the costs reasonably incurred by the NG-CDF Saboti in remedying the defect or damage;
 - (b) Require the Architect 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 NG-CDF Saboti 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 otherwise, the NG-CDF Saboti 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.

9.5 Removal of Defective Work

If the defect or damage cannot be remedied expeditiously on the Site and the NG-CDF Saboti 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.

9.6 Further Tests

- 961 If the work of remedying of any defect or damage may affect the performance of the Works, the Architect may require the repetition of any of the tests described in the Contract. The requirement shall be made by notice within 14 days after the defect or damage is remedied.
- 962 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.

9.7 Right of Access

Until the Completion 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 NG-CDF Saboti's reasonable security restrictions.

9.8 Completion Certificate

- 981 Performance of the Contractor's obligations shall not be considered to have been completed until the Architect has issued the Completion Certificate to the Contractor, stating the date on which the Contractor completed his obligations under the Contract.

- 982 The Architect shall issue the Completion Certificate within 30 days after the latest of the expiry dates of the Defects Liability Period, 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 Completion Certificate shall be issued to the NG-CDF Saboti.
- 983 Only the Completion Certificate shall be deemed to constitute acceptance of the Works.

9.9 Unfulfilled Obligations

After the Completion 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.

9.10 Clearance of Site

- 9.10.1 Upon receiving the Completion Certificate, the Contractor shall remove any remaining Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works from the Site.
- 9.10.2 If all these items have not been removed within 30 days after receipt by the Contractor of the Completion Certificate, the NG-CDF Saboti may sell or otherwise dispose of any remaining items. The NG-CDF Saboti shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.
- 9.10.3 Any balance of the moneys from the sale shall be paid to the Contractor. If these moneys are less than the NG-CDF Saboti's costs, the Contractor shall pay the outstanding balance to the NG-CDF Saboti.

10. MEASUREMENT AND DEVALUATION

10.1 Works to be Measured

- 10.1.1 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.
- 10.1.2 Whenever the Architect 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 Architect in making the measurement, and
 - b) supply any particulars requested by the Engineer.
- 10.1.3 If the Contractor fails to attend or send a representative, the measurement made by the Architect shall be accepted as accurate.

10.2 Evaluation

- 10.2.1 Except as otherwise stated in the Contract, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine the value of work done 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.
- 10.2.2 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contractor, if there is no such item, specified for similar work.

- 1023 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.
- 1024 However, for a new item of work, a new rate or price shall be appropriate for such item of work if:
- a) The work is instructed under Clause 13 [Variations and Adjustments],
 - b) no rate or price is specified in the Contract for this item, and
 - c) 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.
- 1025 Each new rate or price shall be derived from any relevant rates or prices in the Contract. If no rates or prices are relevant for the new item of work, it shall be derived from the reasonable Cost of executing such work, prevailing market rates, together with profit, taking account of any other relevant matters.

10.3 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 Architect accordingly, with supporting particulars. Upon receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine this cost, which shall be included in the Contract Price.

11. VARIATIONS AND ADJUSTMENTS

11.1 Right to Vary

11.1.1 Variations may be initiated by the Architect 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. No Variation instructed by the Architect under this Clause shall in any way vitiate or invalidate the Contract.

11.1.2 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.

11.1.3 The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Architect instructs after obtaining approval of the NG-CDF Saboti.

13.2 Variation Order Procedure

13.2.1 Prior to any Variation Order under Sub-Clause 13.1.4 the Architect shall notify the Contractor

of the nature and form of such variation. As soon as possible after having received such notice, the Contractor shall submit to the Engineer:

- a) A description of work, if any, to be performed and a programme for its execution, and
- b) the Contractor's proposals for any necessary modifications to the Programme according to Sub-Clause 8.3 or to any of the Contractor's obligations under the Contract, and
- c) the Contractor's proposals for adjustment to the Contract Price.

Following the receipt of the Contractor's submission the Architect shall, after due consultation with the Employer and the Contractor, decide as soon as possible whether or not the variation shall be carried out. If the Architect decides that the variation shall be carried out, he shall issue a Variation Order clearly identified as such in accordance with the Contractor's submission or as modified by agreement.

13.2.2 Disagreement on Adjustment of the Contract Price

If the Contractor and the Architect are unable to agree on the adjustment of the Contract Price, the adjustment shall be determined in accordance with the rates specified in the Bills of Materials or Schedule of Daywork Prices. If the rates contained in the Bills of Materials or Daywork Prices are not directly applicable to the specific work in question, suitable rates shall be established by the Architect reflecting the level of pricing in the Daywork Prices. Where rates are not contained in the said Prices, the amount shall be such as is in all the circumstances reasonable, reflecting a market price. Due account shall be taken of any over- or under-recovery of overheads by the Contractor in consequence of the variation. The Contractor shall also be entitled to be paid:

- a) The cost of any partial execution of the Work rendered useless by any such variation,
- b) The cost of making necessary alterations to Plant already manufactured or in the course of manufacture or of any work done that has to be altered in consequence of such a variation,
- c) any additional costs incurred by the Contractor by the disruption of the progress of the Works as detailed in the Programme, and
- d) the net effect of the Contractor's financial costs, including interest, caused by the variation.

The Architect shall on this basis determine the rates or prices to enable on-account payment to be included in certificates of payment.

13.2.3 Contractor to Proceed

On receipt of a Variation Order, the Contractor shall forthwith proceed to carry out the variation and be bound to these Conditions in so doing as if such variation was stated in the Contract. The work shall not be delayed pending the granting of an extension of the Time for Completion or an adjustment to the Contract Price under Sub-Clause 13.3.

13.3 Value Engineering

13.3.1 The Contractor may, at any time, submit to the Architect written proposal which (in the Contractor's opinion) will, if adopted, (i) accelerate completion, (ii) reduce the cost to the NG-CDF Saboti of executing, maintaining or operating the Works, (iii) improve the efficiency or value to the NG-CDF Saboti of the completed Works, or (iv) otherwise be of benefit to the NG-CDF Saboti.

13.3.2 The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Sub-Clause 13.3 [Variation Procedure]

13.4 Variation Procedure for Value Engineering proposal

13.4.1 If the Architect 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.

1342 The Architect shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [Value Project Engineering] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work whilst waiting a response.

1343 Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Architect to the Contractor, who shall acknowledge receipt.

1344 Each Variation shall be evaluated in accordance with Clause 12 [Measurement and Evaluation], unless the Architect instructs or approves otherwise in accordance with this Clause.

135 Provisional Sums

135.1 Each Provisional Sum shall only be used, in whole or in part, in accordance with the Architect 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 Architect shall have instructed. For each Provisional Sum, the Architect 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 **Special Conditions of Contract** shall be applied.

136 Dayworks

136.1 For work of a minor or incidental nature, the Architect 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.

136.2 Before ordering Goods for the work, the Contractor shall submit quotations to the Engineer. When applying for payment, the Contractor shall submit invoices, vouchers and accounts or receipts for any Goods.

136.3 Except for any items for which the Daywork Schedule specifies that payment is not due, the Contractor shall deliver each day to the Architect 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.

137 One copy of each statement will, if correct, or when agreed, be signed by the Architect 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

- 13.7.1 The Contract Price shall be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of Kenya (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.
- 13.7.2 If the Contractor suffers (or will suffer) delay and/or incurs (or will incur) additional Cost as a result of these changes in the Laws or in such interpretations, made after the Base Date, the Contractor shall give notice to the Architect 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.
- 13.7.3 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.
- 13.7.4 Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time if the relevant delay has already been taken into account in the determination of a previous extension of time and such Cost shall not be separately paid if the same shall already have been taken into account in the indexing of any inputs to the table of adjustment data in accordance with the provisions of Sub-Clause 13.8 [Adjustments for Changes in Cost].

12 CONTRACT PRICE AND PAYMENT

12.1 The Contract Price

- 12.1.1 Unless otherwise stated in the Special Conditions:
- a) The value of the payment certificate 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 30 days after the Commencement Date, a proposed breakdown of each lump sum price in the Schedules. The Architect may take account of the break down when preparing Payment Certificates but shall not be bound by it.
- 12.1.2 Notwithstanding the provisions of subparagraph (b), Contractor's Equipment, including essential spare parts there for, imported by the Contractor for the sole purpose of executing the Contract shall not be exempt from the payment of import duties and taxes upon importation.

12.2 Advance Payment

- 12.2.1 The NG-CDF Saboti shall make an advance payment, as an interest-free loan for mobilization and cashflow support, when the Contractor submits a guarantee in accordance with this 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 **Special Conditions of Contract**.

- 12.2.2 Unless and until the NG-CDF Saboti receives this guarantee, or if the total advance payment

is not stated in the Special Conditions of Contract, this Sub-Clause shall not apply.

- 1223 The Architect shall deliver to the NG-CDF Saboti 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 NG-CDF Saboti 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 institutions elected by the Contractor and shall be in the form annexed to the Special Conditions or in another form approved by the NG-CDF Saboti.
- 1224 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 30 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.
- 1225 Unless stated otherwise in **the Special Conditions of Contract**, the advance payment shall be repaid through percentage deductions from the interim payments determined by the Architect 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 amortization rate stated in the **Special Conditions of Contract** 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.
- 1226 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 NG-CDF Saboti], 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 NG-CDF Saboti], except for Sub-Clause 14.2.7 [NG-CDF Saboti's Entitlement to Termination for Convenience], payable by the Contractor to the NG-CDF Saboti.

12.3 Application for Interim Payment Certificates

- 123.1 The Contractor shall submit a Statement (in number of copies indicated in the **Special Conditions of Contract**) to the Architect after the end of each month, in a form approved by the Engineer, showing in detail the amounts to which the Contractor considers itself to be entitled, together with supporting documents which shall include there portion the progress during this month
- 1232 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]

- c) any amount to be deducted for retention, calculated by applying the percentage of retention stated in **the Special Conditions of Contract** to the total of the above amounts, until the amount so retained by the NG-CDF Saboti reaches the limit of Retention Money (if any) stated in **the Special Conditions of Contract**;
- 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 Contractor otherwise, including those under Clause 20 [Claims, Disputes and Arbitration]; and
- g) the deduction of amounts certified in all previous Payment Certificates.

12.4 Schedule of Payments

- 124.1 If the Contract includes a schedule of payments specifying the instalments in which the Contract Price will be paid, then unless otherwise stated in this schedule:
- a) The instalments quoted in this schedule of payments shall be the estimated contract values for the purposes of 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 Architect 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.
- 124.2 If the Contract does not include a schedule of payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.

12.5 Issue of Interim Payment Certificates

- 125.1 No amount will be certified or paid until the NG-CDF Saboti has received and approved the Performance Security. Thereafter, the Architect shall, within 30 days after receiving a Statement and supporting documents, deliver to the NG-CDF Saboti and to the Contractor an Interim Payment Certificate which shall state the amount which the Architect fairly determines to be due, with all supporting particulars for any reduction or withholding made by the Architect on the Statement if any.
- 125.2 However, prior to issuing the Taking-Over Certificate for the Works, the Architect 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 Special Conditions of Contract**. In this event, the Architect shall give notice to the Contractor accordingly.
- 125.3 An Interim Payment Certificate shall not be withheld for any other reason, although:
- a) if anything supplied or work done by the Contractor is not in accordance with the Contract, the cost of rectification or replacement may be withheld until rectification or replacement has been completed; and
 - 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.

- 4.6.4 The Architect 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 Architect acceptance, approval, consent or satisfaction.

14.7 Payment

- 14.7.1 The NG-CDF Saboti shall pay to the Contractor:

- a) The advance payment shall be paid within 60 days after signing of the contract by both parties or within 60 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 60 days after the Architect Issues Interim Payment Certificate; and
- c) the amount certified in the Final Payment Certificate within 60 days after the NG-CDF Saboti Issues Interim Payment Certificate; or after determination of any disputed amount shown in the Final Statement in accordance with Sub-Clause 16.2 [Termination by Contractor].

- 14.7.2 Payment of the amount due in each currency shall be made into the bank account, nominated by the Contractor, in the payment country (forth is currency) specified in the Contract.

14.8 Delayed Payment

- 14.8.1 If the Contractor does not receive payment in accordance with Sub-Clause 14.7 [Payment], the Contractor shall be entitled to receive financing charges (simple interest) 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.

- 14.8.2 These financing charges shall be calculated at the annual rate of three percentage points above the mean rate of the Central Bank in Kenya of the currency of payment, or if not available, the inter bank offered rate, and shall be paid in such currency.

- 14.8.3 The Contractor shall be entitled to this payment without formal notice and certification, and without prejudice to any other right or remedy.

14.9 Payment of Retention Money

- 14.9.1 When the Taking-Over Certificate has been issued for the Works, the first half of the Retention Money shall be certified by the Architect 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.

- 14.9.2 Promptly after the latest of the expiry dates of the Defects Liability Periods, the outstanding balance of the Retention Money shall be certified by the Architect 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.

- 14.9.3 However, if any work remains to be executed under Clause 11 [Defects Liability], the Architects shall be entitled to withhold certification of the estimated cost of this work until it has been executed.

- 14.9.4 Unless otherwise stated in the Special 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 Retention Money Security

guarantee, in the form annexed to the Special Conditions or in another form approved by the NG-CDF Saboti and issued by a reputable bank or financial institution selected by the Contractor, for the second half of the Retention Money.

- 14.95 The NG-CDF Saboti shall return the Retention Money Security guarantee to the Contractor within 14 days after receiving a copy of the Completion Certificate.

14.10 Statement at Completion

- 14.10.1 Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Architect three 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.

- 14.10.2 The Architect shall then certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates].

14.11 Application for Final Payment Certificate

- 14.11.1 Within 60 days after receiving the Completion 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 Contractor otherwise.

- 14.11.2 If the Architect disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the Architect may reasonably require within 30 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 Architect the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

- 14.11.3 However, if, following discussions between the Architect and the Contractor and any changes to the draft final statement which are agreed, it becomes evident that a dispute exists, the Architect shall deliver to the NG-CDF Saboti (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 NG-CDF Saboti (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 out standing balance of this total, in which event the discharge shall be effective on such date.

14.13 Issue of Final Payment Certificate

14.13.1 Within 30 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 Architect shall deliver, to the NG-CDF Saboti 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 NG-CDF Saboti for all amounts previously paid by the NG-CDF Saboti and for all sums to which the NG-CDF Saboti is entitled, the balance (if any) due from the NG-CDF Saboti to the Contractor or from the Contractor to the NG-CDF Saboti, as the case may be.

14.13.2 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 Architect shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 30 days, the Architect shall issue the Final Payment Certificate for such amount as he fairly determines to be due.

14.14 Cessation of NG-CDF Saboti's Liability

14.14.1 The NG-CDF Saboti 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].

14.14.2 However, this Sub-Clause shall not limit the NG-CDF Saboti's liability under his in demnification obligations, or the NG-CDF Saboti's liability in any case of fraud, deliberate default or reckless misconduct by the NG-CDF Saboti.

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 Special Conditions of Contract, shall be made in the currencies and proportions specified in the Schedule of Payment Currencies;
- c) other payments to the NG-CDF Saboti by the Contractor shall be made in the currency in which the sum was expended by the NG-CDF Saboti, or in such currency as may be agreed by both Parties;
- d) if any amount payable by the Contractor to the NG-CDF Saboti in a particular currency exceeds the sum payable by the NG-CDF Saboti to the Contractor in that currency, the NG-CDF Saboti 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 Kenya.

13. TERMINATION BY NG-CDF SABOTI

13.1 Notice to correct any defects or failures

If the Contractor fails to carry out any obligation under the Contract, the Architect may by notice require the Contractor to make good the failure and to remedy it within 30 days.

13.2 Termination by NG-CDF Saboti

- 13.2.1 The NG-CDF Saboti shall be entitled to terminate the Contract if the Contractor breaches the contract based on following circumstances which shall include but not limited to:
- 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 30 days after receiving it,
 - d) subcontracts the major part or whole of the Works or assigns the Contract without the consent of the NG-CDF Saboti,
 - 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 induce mentor reward:
 - i) for doing or for bearing to do any action in relation to the Contract, or
 - ii) for showing or for bearing to show favor or disfavor to any person in relation to the Contract, or
 - iii) if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give (directly or indirectly) to any person any such induce mentor reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination, or
 - g) If the contract or repeatedly fails to remedy delivers defective work,
 - h) based on reasonable evidence, has engaged in Fraud and Corruption as defined in paragraph 2.2 of the Appendix B to these General Conditions, incompeteting for or in executing the Contract.
- 13.2.2 In any of these events or circumstances, the NG-CDF Saboti 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) or (g) or (h), the NG-CDF Saboti may by notice terminate the Contract immediately.
- 13.2.3 The NG-CDF Saboti's election to terminate the Contract shall not prejudice any other rights of the NG-CDF Saboti, under the Contract or otherwise.

- 1324 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.
- 1325 After termination, the NG-CDF Saboti may complete the Works and/ or arrange for any other entities to do so. The NG-CDF Saboti and these entities may then use any Goods, Contractor's Documents and other design documents made by or on behalf of the Contractor.
- 1326 The NG-CDF Saboti 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 NG-CDF Saboti, these items may be sold by the NG-CDF Saboti in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

13.3 Valuation at Date of Termination

As soon as practicable after a notice of termination under Sub-Clause 15.2 [Termination by NG-CDF Saboti] has taken effect, the Architect 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.

13.4 Payment after Termination

After a notice of termination under Sub-Clause 15.2 [Termination by NG-CDF Saboti] has taken effect, the NG-CDF Saboti may:

- a) Proceed in accordance with Sub-Clause 2.5 [Procurin Entity'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 NG-CDF Saboti, have been established, and/ or
- c) recover from the Contractor any losses and damages incurred by the NG-CDF Saboti 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 NG-CDF Saboti shall pay any balance to the Contractor.

13.5 NG-CDF Saboti's Entitlement to Termination for Convenience

The NG-CDF Saboti shall be entitled to terminate the Contract, at any time at the NG-CDF Saboti's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 30 days after the later of the dates on which the Contractor receives this notice or the NG-CDF Saboti returns the Performance Security. The NG-CDF Saboti shall not terminate the Contract under this Sub-Clause in order to execute the Works itself 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].

13.6 Fraud and Corruption

The Contractor shall ensure compliance with the Kenya Government's Anti-Corruption Laws and its prevailing sanctions.

13.7 Corrupt gifts and payments of commission

13.7.1 The Contractor shall not;

- a) Offer or give or agree to give to any person in the service of the NG-CDF Saboti any gift or consideration of any kind as an inducement or reward for doing or for bearing to door for having done or for borne to do any act in relation to the obtaining or execution of this or any other Contract for the NG-CDF Saboti or for showing or for bearing to show favor or disfavor to any person in relation to this or any other contract for the NG-CDF Saboti.
- b) Enter into this or any other contract with the NG-CDF Saboti in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment there of have been disclosed in writing to the NG-CDF Saboti.

13.7.2 Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement and Asset Disposal Act (2015) and the Anti-Corruption and Economic Crimes Act (2003) of the Laws of Kenya.

14 SUSPENSION AND TERMINATION BY CONTRACTOR

14.1 Contractor's Entitlement to Suspend Work

14.1.1 If the Architect fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or Sub-Clause 14.7 [Payment], or not receiving instructions that would enable the contractor to proceed with the works in accordance with the program, the Contractor may, after giving not less than 30 days' notice to the NG-CDF Saboti, 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.

14.1.2 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].

14.1.3 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.

14.1.4 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 Architect 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.

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

14.3 Termination by Contractor

14.3.1 The Contractor shall be entitled to terminate the Contract if:

- a) the Architect fails, within 60 days after receiving a Statement and supporting documents,

to issue the relevant Payment Certificate,

- b) the Contractor does not receive the amount due under an Interim Payment Certificate within 90 days after the expiry of the time stated in Sub-Clause 4.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [NG-CDF Saboti's Claims]),
- c) the NG-CDF Saboti 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,
- d) a prolonged suspension affects the whole of the Works as described in Sub-Clause 8.11 [Prolonged Suspension], or
- e) the NG-CDF Saboti 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.
- f) the Contractor does not receive the Architect 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].

1432 In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the NG-CDF Saboti, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.

1433 The Contractor's election to terminate the Contract shall not prejudice any other rights of the Contractor, under the Contract otherwise.

14.4 Cessation of Work and Removal of Contractor's Equipment

After a notice of termination under Sub-Clause 15.5 [NG-CDF Saboti'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 Architect 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.

15 RISK AND RESPONSIBILITY

15.1 Indemnities

15.1.1 The Contractor shall indemnify and hold harmless the NG-CDF Saboti, the NG-CDF Saboti'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 what so ever 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, willful actor breach of the Contract by the NG-CDF Saboti, the NG-CDF Saboti'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, willful act or breach of the Contract by the NG-CDF

Saboti, the NG-CDF Saboti's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

- 15.12 The NG-CDF Saboti 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, willful act or breach of the Contract by the NG-CDF Saboti, the NG-CDF Saboti'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], unless and to the extent that any such damage or loss is attributable to any negligence, willful actor breach of the Contract by the contractor, the contractor's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

15.2 Contractor's Care of the Works

- 15.21 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 NG-CDF Saboti. 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 NG-CDF Saboti.
- 15.22 After responsibility has accordingly passed to the NG-CDF Saboti, 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.
- 15.23 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 [NG-CDF Saboti's Risks], the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that the Works, Goods and Contractor's Documents conform with the Contract.
- 15.24 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.

15.3 NG-CDF Saboti's Risks

The risks referred to in Sub-Clause 17.4 [Consequences of NG-CDF Saboti's Risks] below, in so far as they directly affect the execution of the Works in Kenya, are:

- a) War hostilities (whether war be declared or not),
- b) rebellion, riot, commotion or disorder, terrorism, sabotage by persons other than the Contractor's Personnel,
- c) explosive materials, ionizing gradiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such explosives, radiation or radio-activity,
- d) pressure waves caused by aircraft or other aerial devices traveling at sonic or supersonic speeds,
- e) use or occupation by the NG-CDF Saboti of any part of the Permanent Works, except as may be specified in the Contract,
- f) design of any part of the Works by the NG-CDF Saboti's Personnel or by others for whom the NG-CDF Saboti is responsible, and
- g) 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.

15.4 Consequences of NG-CDF Saboti's Risks

- 15.4.1 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 Architect and shall rectify this loss or damage to the extent required by the Engineer.
- 15.4.2 If the Contractor suffers delay and/ or incurs Cost from rectifying this loss or damage, the Contractor shall give a further notice to the Architect 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 subparagraphs (e) and (g) of Sub-Clause 17.3 [NG-CDF Saboti's Risks], Accrued Costs shall be payable.
- 15.4.3 After receiving this further notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

15.5 Intellectual and Industrial Property Rights

- 15.5.1 In this Sub-Clause, "infringement" shall refer to 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" shall refer to a claim (or proceedings pursuing a claim) alleging an infringement.
- 15.5.2 Whenever a Party does not give notice to the other Party of any claim within 30 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.
- 15.5.3 The NG-CDF Saboti 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 NG-CDF Saboti:
 - 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.
- 15.5.4 The Contractor shall indemnify and hold the NG-CDF Saboti 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.
- 15.5.5 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.
- 15.5.6 For operation and maintenance of any plant or equipment installed, the contractor shall grant a non-exclusive and non-transferable license to the NG-CDF Saboti under the patent, utility models, or other intellectual rights owned by the contractor or a third party from whom the contract or has received the rights to grant sub-licenses and shall also grant to the

NG-CDF Saboti a non-exclusive and non-transferable rights (without the rights to sub-license) to use the know how and other technical information disclosed to the contract or under the contract. Nothing contained here-in shall be construed as transferring ownership of any patent, utility model, trademark, design, copy right, know-how or other intellectual rights from the contractor or any other third party to the NG-CDF Saboti.

15.6 Limitation of Liability

- 15.6.1 Neither Party shall be liable to the other Party for loss of use of any Works, loss of profit, loss of any contractor for any in director 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 NG-CDF Saboti's Risks] and Sub-Clause 17.5 [Intellectual and Industrial Property Rights].
- 15.6.2 The total liability of the Contractor to the NG-CDF Saboti, under or in connection with the Contract other than under Sub-Clause 4.19 [Electricity, Water and Gas], Sub-Clause 4.20 [NG-CDF Saboti'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 Special Conditions of Contract**, or (if such multiplier or other sum is not so stated) the Accepted Contract Amount.
- 15.6.3 This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the defaulting Party.

15.7 Use of NG-CDF Saboti's Accommodation/Facilities

- 15.7.1 The Contractor shall take full responsibility for the care of the NG-CDF Saboti 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).
- 15.7.2 If any loss or damage happens to any of the above items while the Contractor is responsible for their care arising from any cause whatsoever other than those for which the NG-CDF Saboti is liable, the Contractor shall, at his own cost, rectify the loss or damage to the satisfaction of the Engineer.

16 INSURANCE

16.1 General Requirements for Insurances

- 16.1.1 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.
- 16.1.2 Wherever the Contractor is the insuring Party, each insurance shall be effected with insurers and in terms approved by the NG-CDF Saboti. 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.
- 16.1.3 Wherever the NG-CDF Saboti 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.
- 16.1.4 If a policy is required to indemnify joint insured, the cover shall apply separately to each

insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the NG-CDF Saboti shall act for NG-CDF Saboti'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.

- 16.1.5 Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage.
- 16.1.6 The relevant insuring Party shall, within the respective periods stated in **the Special Conditions of Contract** (calculated from the Commencement Date), submit to the other Party:
- a) Evidence that the insurances described in this Clause have been affected, 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].
- 16.1.7 When each premium is paid, the insuring Party shall submit evidence of payment to the other Party. Whenever evidence or policies are submitted, the insuring Party shall also give notice to the Engineer.
- 16.1.8 Each Party shall comply with the conditions stipulated in each of the insurance policies. The insuring Party shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.
- 16.1.9 Neither Party shall make any material alteration to the terms of any insurance without the prior approval of the other Party. If an insurer makes (or attempts to make) any alteration, the Party first notified by the insurer shall promptly give notice to the other Party.
- 16.1.10 If the insuring Party fails to effect and keep in force any of the insurances it is required to effect and maintain under the Contractor 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.
- 16.1.11 Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor or the NG-CDF Saboti, under the other terms of the Contractor otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor and/or the NG-CDF Saboti.

16.2 Insurance for Works and Contractor's Equipment

- 16.2.1 The insuring Party shall insure the Works, Plant, Material and Contractor's Documents for not less than the full reinstatement cost including the costs of demolition, removal of debris and professional fees and profit. This insurance shall be effective from the date by which the evidence is to be submitted under sub-paragraph (a) of Sub-Clause 18.1 [General Requirements for Insurances], until the date of issue of the Taking-Over Certificate for the Works.
- 16.2.2 The insuring Party shall maintain this insurance to provide cover until the date of issue of the Performance Certificate, for loss or damage for which the Contractor is liable arising from a cause occurring prior to the issue of the Taking-Over Certificate, and for loss or damage caused by the Contractor in the course of any other operations

- 1623 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.
- 1624 Unless otherwise stated in the Special 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 [NG-CDF Saboti's Risks],
 - d) shall also cover, to the extent specifically required in the tendering documents of the Contract, loss or damage to a part of the Works which is attributable to the use or occupation by the NG-CDF Saboti 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 [NG-CDF Saboti'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 Special Conditions** of Contract (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 NG-CDF Saboti, except to the extent that the Contractor is liable for the loss or damage, and
 - iv) Goods while they are not in Kenya, subject to Sub-Clause 14.5 [Plant and Materials intended for the Works].
- 1625 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 NG-CDF Saboti, with supporting particulars. The NG-CDF Saboti shall then (i) be entitled subject to Sub-Clause 2.5 [NG-CDF Saboti'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].

16.3 Insurance against Injury to Persons and Damage to Property

- 163.1 The insuring Party shall insure against each Party's liability for any loss, damage, death or bodily injury which may occur to any physical property (except things insured under 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.
- 163.2 This insurance shall be for a limit per occurrence of not less than the amount stated in **the Special Conditions of Contract**, with no limit on the number of occurrences. If an amount is not stated in the **Special Conditions of Contract**, this Sub-Clause shall not apply.
- 163.3 Unless otherwise stated in the Special 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 NG-CDF Saboti'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 NG-CDF Saboti's right to have the Permanent Works executed on, over, under, in or
 - ii) through any land, and to occupy this land for the Permanent Works,
 - iii) damage which is an unavoidable result of the Contractor's obligations to execute the
 - iv) Works and remedy any defects, and
 - v) a cause listed in Sub-Clause 17.3 [NG-CDF Saboti's Risks], except to the extent that cover is available at commercially reasonable terms.

16.4 Insurance for Contractor's Personnel

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

17. FORCE MAJEURE

17.1 Definition of Force Majeure

- 17.1.1 In this Clause, "Force Majeure" means an exceptional event or circumstance:
 - a) Which is beyond a Party's control,
 - b) Which such Party could not reasonably have provided against before entering into the Contract,
 - c) which, having arisen, such Party could not reasonably have avoided or overcome, and
 - d) which is not substantially attributable to the other Party.
- 17.1.2 Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:
 - 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,
 - c) riot, commotion, disorder, strike or lock out by persons other than the Contractor's Personnel,
 - d) munitions of war, explosive materials, ionizing 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
 - e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

17.2 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavors to minimize 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.

17.3 Consequences of Force Majeure

- 173.1 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]
- 173.2 After receiving this notice, the Architect shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

17.4 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.

17.5 Optional Termination, Payment and Release

- 175.1 If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under 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].
- 175.2 Upon such termination, the Architect shall determine the value of the work done and issue a Payment Certificate which shall include:
- a) the amount 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 NG-CDF Saboti when paid for by the NG-CDF Saboti, and the Contractor shall place the same at the NG-CDF Saboti'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 lab or employed wholly in connection with the Works at the date of termination.

18 SETTLEMENT OF CLAIMS AND DISPUTES

18.1 Contractor's Claims

- 18.1.1 If the Contractor considers itself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give Notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 30 days after the Contractor became aware, or should have become aware, of the event or circumstance.
- 18.1.2 If the Contractor fails to give notice of a claim within such period of 30 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the NG-CDF Saboti shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.
- 18.1.3 The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.
- 18.1.4 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at an other location acceptable to the Engineer. Without admitting the NG-CDF Saboti's liability, the Architect 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 Architect to inspect all these records and shall (if instructed) submit copies to the Engineer.
- 18.1.5 Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Architect 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:
- This fully detailed claim shall be considered as interim;
 - The Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/ or amount claimed, and such further particulars as the Architect may reasonably require; and
 - The Contractor shall send a final claim within 30 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.
- 18.1.6 Within 42 days after receiving a Notice of a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Architect and approved by the Contractor, the Architect 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.
- 18.1.7 Within the above defined period of 42 days, the Architect 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.
- 18.1.8 Each Payment Certificate shall include such additional payment for any claim as has been reasonably substantiated as due under ~~14.4~~ 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.

18.19 If the Architect does not respond within the time frame defined in this Clause, either Party may consider that the claim is rejected by the Architect and any of the Parties may refer the dispute for amicable settlement in accordance with Clause 20.3.

18.1.10 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.

18.2 NG-CDF Saboti's Claims

18.2.1 If the NG-CDF Saboti considers itself 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 NG-CDF Saboti or the Architect 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 [NG-CDF Saboti's Equipment and Free-Issue Materials], or for other services requested by the Contractor.

18.2.2 The notice shall be given as soon as practicable and no longer than 30 days after the NG-CDF Saboti 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.

18.2.3 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 NG-CDF Saboti considers itself to be entitled in connection with the Contract. The Architect shall then proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine (i) the amount (if any) which the NG-CDF Saboti 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].

18.2.4 This amount may be included as a deduction in the Contract Price and Payment Certificates. The NG-CDF Saboti 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.

18.3 Amicable Settlement

Where a notice of a claim has been given, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both Parties agree otherwise, the Party giving a notice of a claim in accordance with Sub-Clause 20.1 above should move to commence arbitration after 60 days from the day on which a notice of a claim was given, even if no attempt at an amicable settlement has been made.

18.4 Matters that may be referred to arbitration

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

- a) Whether or not the issue of an instruction by the Architect is empowered by these Conditions.
- b) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.
- c) Any dispute arising in respect risks arising from matters referred to in Clause 17.3 and

Clause 19.

- e) All other matters shall only be referred to arbitration after the completion or alleged completion of the Works or termination or alleged termination of the Contract, unless the NG-CDF Saboti and the Contractor agree otherwise in writing.

18.5 Arbitration

- 18.5.1 Any claim or dispute between the Parties arising out of or in connection with the Contract not settled amicably in accordance with Sub-Clause 20.3 shall be finally settled by arbitration.
- 18.5.2 No arbitration proceedings shall be commenced on any claim or dispute where notice of a claim or dispute has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.
- 18.5.3 Notwithstanding the issue of a notice as stated above, the arbitration of such a claim or dispute shall not commence unless an attempt has in the first instance been made by the parties to settle such claim or dispute amicably with or without the assistance of third parties. Proof of such attempt shall be required.
- 18.5.4 The Arbitrator shall, without prejudice to the generality of his powers, have powers to direct such measurements, computations, tests or valuations as may in his opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 18.5.5 The Arbitrator shall, without prejudice to the generality of his powers, have powers to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision require prior notice had been given.
- 18.5.6 The arbitrators shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, relevant to the dispute. Nothing shall disqualify representatives of the Parties and the Architect from being called as a witness and giving evidence before the arbitrators on any matter whatsoever relevant to the dispute.
- 18.5.7 Neither Party shall be limited in the proceedings before the arbitrators to the evidence, or to the reasons for dissatisfaction given in its Notice of Dissatisfaction.
- 20.5.7 Arbitration may be commenced prior to or after completion of the Works. The obligations of the Parties, and the Architect shall not be altered by reason of any arbitration being conducted during the progress of the Works.
- 20.5.8 The terms of the remuneration of each or all the members of Arbitration shall be mutually agreed upon by the Parties when agreeing the terms of appointment. Each Party shall be responsible for paying one-half of this remuneration.

20.6 Arbitration with National Contractors

- 20.6.1 If the Contract is with national contractors, arbitration proceedings will be conducted in accordance with the Arbitration Laws of Kenya. In case of any claim or dispute, such claim or dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed, on the request of the applying party, by the Chairman or Vice Chairman of any of the following professional institutions;
- i) Architectural Association of Kenya

- ii) Institute of Quantity Surveyors of Kenya
- iii) Association of Consulting Engineers of Kenya
- iv) Chartered Institute of Arbitrators (Kenya Branch)
- v) Institution of Engineers of Kenya

20.6.2 The institution written to first by the aggrieved party shall take precedence over all other institutions.

20.7 Failure to Comply with Arbitrator's Decision

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

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

20.8 Contract operations to continue

Notwithstanding any reference to arbitration herein,

1.1.1 the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and

1.1.2 the NG-CDF Saboti shall pay the Contractor any monies due the Contractor.

SECTION X - CONTRACT FORMS

FORM No. 1 - NOTIFICATION OF INTENTION TO AWARD

FORM NO. 2 – REQUEST FOR REVIEW

FORM No. 3-LETTER OF AWARD

FORM No. 4 - CONTRACT AGREEMENT

FORM No. 5 - PERFORMANCE SECURITY

FORM No. 6- PERFORMANCE SECURITY

FORM No. 7 - ADVANCE PAYMENT SECURITY

FORM No. 8 - RETENTION MONEY SECURITY



FORM No 1: NOTIFICATION OF INTENTION TO AWARD OF CONTRACT

This Notification of Award shall be sent to each Tenderer that submitted a Tender and was not successful. Send this Notification to the Tenderer's Authorized Representative named in the Tender Information Form on the format below.

FORMAT

1. For the attention of Tenderer's Authorized Representative

- i) Name:
- ii) Address:
- iii) Telephone:
- iv) Email Address:

2. Date of transmission:

This Notification is sent by (*Name and designation*) _____

3. Notification of Award

- i) NG-CDF Saboti:
- ii) Project:
- iii) Contract title:
- iv) Contract No:

4. Request a debriefing in relation to the evaluation of your tender by submitting a Procurement-related Complaint in relation to the decision to award the contracts.

a) The successful tenderers

i) Name of successful Tender _____

ii) Address of the successful Tender _____

iii) Contract price of the successful Tender Kenya Shillings _____
(in words _____)

b) The reasons for your tender being unsuccessful are as follows:

c) Other Tenderers

Names of all Tenderers that submitted a Tender. If the Tender's price was evaluated include the evaluated price as well as the Tender price as read out.

SNo	Name of Tender	Tender Price as read out	Tender's evaluated price (Note a)	One Reason Why Not Evaluated
1				
2				
3				
4				
5				

5. How to request a debriefing

- a) DEADLINE: The dead line to request a debriefing expires at midnight on *[insert date]* (local time).
- b) You may request a debriefing in relation to the results of the evaluation of your Tender. If you decide to request a debriefing your written request must be made within three (5) Business Days of receipt of this Notification of Intention to Award.
- c) Provide the contract name, reference number, name of the Tenderer, contact details; and address the request for debriefing as follows:
 - i) Attention:
 - ii) Title/position:
 - iii) Agency:
 - iv) Email address:
- d) If your request for a debriefing is received within the 3 Days deadline, we will provide the debriefing within five (3) Business Days of receipt of your request. If we are unable to provide the debriefing within this period, the Standstill Period shall be extended by five (3) Days after the date that the debriefing is provided. If this happens, we will notify you and confirm the date that the extended Standstill Period will end.
- e) The debriefing may be in writing, by phone, video conference call or in person. We shall promptly advise you in writing how the debriefing will take place and confirm the date and time.
- f) If the deadline to request a debriefing has expired, you may still request a debriefing. In this case, we will provide the debriefing as soon as practicable, and normally no later than fifteen (15) Days from the date of publication of the Contract Award Notice.

6. How to make a complaint

- a) Period: Procurement-related Complaint challenging the decision to award shall be submitted by midnight, *[insert date]* (local time).
- b) Provide the contract name, reference number, name of the Tenderer, contact details; and address the Procurement-related Complaint as follows:
 - i) Attention:
 - ii) Title/position:
 - iii) Agency:
 - iv) Email address:

You should read these documents before preparing and submitting your complaint.

- c) There are four essential requirements:
 - i) You must be an 'interested party'. In this case, that means a Tenderer who submitted a Tender in this tendering process and is the recipient of a Notification of Intention to Award.
 - ii) The complaint can only challenge the decision to award the contract.
 - iii) You must submit the complaint within the period stated above.
 - iv) You must include, in your complaint, all of the information required to support your complaint.

7. Standstill Period

- i) DEADLINE: The Standstill Period is due to end at midnight on [*insert date*] (local time).
- ii) The Standstill Period lasts ten (14) Days after the date of transmission of this Notification of Intention to Award.
- iii) The Standstill Period may be extended as stated in paragraph Section 5(d) above.

If you have any questions regarding this Notification please do not hesitate to contact us. On behalf of the NG-CDF Saboti:

Signature: _____

Name: _____

Title/position: _____

Telephone: _____

FORM NO. 2- REQUEST FOR REVIEW

FORM FOR REVIEW (r.203(1))

PUBLIC PROCUREMENT ADMINISTRATIVE REVIEW BOARD

APPLICATION NO.....OF.....20.....

BETWEEN

.....

APPLICANT AND

.....

RESPONDENT (NG-CDF Saboti)

Request for review of the decision of the..... (Name of the NG-CDF Saboti of dated the...day of 20.....in the matter of Tender No.....of 20..... for (Tender description).

REQUEST FOR REVIEW

I/We.....,the above named Applicant(s), of address: Physical address.....P. O. Box No..... Tel. No.....Email, hereby request the Public Procurement Administrative Review Board to review the whole/part of the above mentioned decision on the following grounds , namely:

- 1.
 - 2.
- By this memorandum, the Applicant requests the Board for an order/orders that:

- 1.
- 2.

SIGNED(Applicant) Dated on.....day of/...20.....

FOR OFFICIAL USE ONLY Lodged with the Secretary Public Procurement Administrative Review Board on.....day of 20.....

SIGNED

Board Secretary

FORM NO 3: LETTER OF AWARD

letterhead paper of the NG-CDF Saboti

[date]

To: *[name and address of the Contractor]*

This is to notify you that your Tender dated *[date]* for execution of the *[name of the Contract and identification number, as given in the Contract Data]* for the Accepted Contract Amount *[amount in numbers and words] [name of currency]*, as corrected and modified in accordance with the Instructions to Tenderers, is here by accepted by..... *(name of NG-CDF Saboti)*.

You are requested to furnish the Performance Security within in accordance with the Conditions of Contract, using, for that purpose, one of the Performance Security Forms included in Section VIII, Contract Forms, of the Tender Document.

Authorized Signature:

Name and Title of Signatory:
.....

Name of NG-CDF Saboti:

Attachment: *Contract Agreement*:

FORM NO 4: CONTRACT AGREEMENT

THIS AGREEMENT made the day of..... 20.....,
between.....
.....of..... (hereinafter “the
Procuring
Entity”), of the one part, and _____ of
_____(hereinafter “the Contractor”), of
the other part:

WHEREAS the NG-CDF Saboti desires that the Worksknownas _____ should
be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and
completion of these Worksand the remedying of any defects there in,

The NG-CDF Saboti and the Contractor agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other Contract documents.
 - a) theNotification of Award
 - b) the Form of Tender
 - c) the addenda Nos _____(if any)
 - d) the Special Conditions of Contract
 - e) the General Conditions of Contract;
 - f) the Specifications
 - g) the Drawings; and
 - h) the completed Schedules and any other documents forming part of the contract.
3. In consideration of the payments to be made by the NG-CDF Saboti to the Contractor as specified in this Agreement, the Contractor here by covenants with the NG-CDF Saboti to execute the Works and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The NG-CDF Saboti here by covenants to pay the Contractor in consideration of the execution and completion of the Works and the remedying of defects there in, 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.

INWITNESS where of the parties here to have caused this Agreement to be executed in accordance with the Laws of Kenya on the day, month and year specified above.

Signed and sealed by _____(for the NG-CDF Saboti)

Signed and sealed by _____(for the Contractor).

FORM NO. 5 - PERFORMANCE SECURITY

[Option 1 - Unconditional Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: *[insert name and Address of NG-CDF Saboti]*

Date: _____ *[Insert date of issue]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. We have been informed that _____ (hereinafter called "the Contractor") has entered into Contract No. _____ dated _____ with (name of NG-CDF Saboti) _____ (the NG-CDF Saboti as the Beneficiary), for the execution of _____ (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.
3. At the request of the Contractor, we as Guarantor, here by irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of _____ (in words),¹ such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.
4. This guarantee shall expire, no later than the Day of, 20.....², and any demand for payment under it must be received by us at the office indicated above on or before that date.
5. 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."
.....

[Name of Authorized Official, signature(s) and seals/stamps]

FORM No. 6- PERFORMANCE SECURITY

[Option 2– Performance Bond]

[Note: Procuring Entities are advised to use Performance Security – Unconditional Demand Bank Guarantee in stead of Performance Bond due to difficulties involved in calling Bond holder to action]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary:

[insert name and Address of Procuring Entity]

Date: _____ *[Insert date of issue]*

PERFORMANCE BOND No.: _____

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

1. By this Bond _____ as Principal (hereinafter called “the Contractor”) and _____] as Surety (hereinafter called “the Surety”), are held and firmly bound unto _____] as Oblige (hereinafter called “the NG-CDF Saboti”) in the amount of _____ for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
2. WHEREAS the Contractor has entered into a written Agreement with the NG-CDF Saboti dated the _____ day of _____, 20____, for _____ in accordance with the documents, plans, specifications, and amendments there to, which to the extent here in provided for, are by reference made part here of and are here in after referred to as the Contract.
3. NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto), then this obligation shall be null and void; otherwise, it shall remain in full force and effect. Whenever the Contractor shall be, and declared by the NG-CDF Saboti to be, in default under the Contract, the NG-CDF Saboti having performed the NG-CDF Saboti's obligations there under, the Surety may promptly remedy the default, or shall promptly:
 - a) Complete the Contract in accordance with its terms and conditions; or
 - b) Obtain a tender or tenders from qualified tenderers for submission to the NG-CDF Saboti for completing the Contract in accordance with its terms and conditions, and upon determination by the NG-CDF Saboti and the Surety of the lowest responsive Tenderers, arrange for a Contract between such Tenderer, and NG-CDF Saboti and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term “Balance of the Contract Price,” as used in this paragraph, shall mean the total amount payable by NG-CDF Saboti to Contractor under the Contract, less the amount properly paid by NG-CDF Saboti to Contractor; or
 - c) Pay the NG-CDF Saboti the amount required by NG-CDF Saboti to complete the Contract in accordance with its terms and conditions upto a total not exceeding the amount of this Bond.

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____

SIGNED ON _____ on behalf of _____

By _____ in the capacity of _____

In the presence of _____



FORM NO. 8 – RETENTION MONEY SECURITY

[Demand Bank Guarantee]

[Guarantor letterhead]

Beneficiary: _____ *[Insert name and Address of NG-CDF Saboti]*

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]*

1. We have been informed that _____ *[insert name of Contractor, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Contractor") has entered into Contract No. _____ *[insert reference number of the contract]* dated _____ with the Beneficiary, for the execution of _____ *[insert name of contract and brief description of Works]* (hereinafter called "the Contract").
2. Furthermore, we understand that, according to the conditions of the Contract, the Beneficiary retains moneys upto 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, and payment of *[insert the second half of the Retention Money]* is to be made against a Retention Money guarantee.
3. At the request of the Contractor, we, as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* _____ *([insert amount in words] _____)*¹ upon receipt by us of the Beneficiary's complying demands 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 Contractor is in breach of its obligation(s) under the Contract, without your needing to prove or show grounds for your demand or the sum specified there in.
4. A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the second half of the Retention Money as referred to above has been credited to the Contractor on its account number _____ at _____ *[insert name and address of Applicant's bank]*.
5. This guarantee shall expire no later than the Day of ², and any demand for payment under it must be received by us at the office indicated above on or before that date.
6. 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.

[Name of Authorized Official, signature(s) and seals/stamps]

FORM NO. 9 BENEFICIAL OWNERSHIP DISCLOSURE FORM
(Amended and issued pursuant to PPRA CIRCULAR No. 02/2022)

Tender Reference No.: _____ [insert identification no]
Name of the Tender Title/Description: _____ [insert name of the assignment] to: _____ [insert complete name of NG-CDF Saboti]

In response to the requirement in your notification of award dated __ [insert date of notification of award] to furnish additional information on beneficial ownership: __ [select one option as applicable and delete the options that are not applicable]

I) We here by provide the following beneficial ownership information.

Details of Beneficial ownership

Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
1.	Full Name	Directly--- ----- % of shares Indirectly- ----- % of shares	Directly.....% of voting rights Indirectly----- ----% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----No---- 2. Is this right held directly or indirectly?: Direct..... Indirect.....	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No---- 2. Is this influence or control exercised directly or indirectly? Direct..... Indirect.....
	National identity card number or Passport number				
	Personal Identification Number (where applicable)				
	Nationality				
	Date of birth [dd/mm/yyyy]				
	Postal address				
	Residential address				
	Telephone number				
	Email address				

	Details of all Beneficial Owners		% of shares a person holds in the company Directly or indirectly	% of voting rights a person holds in the company	Whether a person directly or indirectly holds a right to appoint or remove a member of the board of directors of the company or an equivalent governing body of the Tenderer (Yes / No)	Whether a person directly or indirectly exercises significant influence or control over the Company (tenderer) (Yes / No)
	Occupation or profession					
2.	Full Name		Directly--- ----- % of shares	Directly.....% of voting rights	1. Having the right to appoint a majority of the board of the directors or an equivalent governing body of the Tenderer: Yes ----No----	1. Exercises significant influence or control over the Company body of the Company (tenderer) Yes ----No----
	National identity card number or Passport number		Indirectly- ----- % of shares	Indirectly----- ----% of voting rights	2. Is this right held directly or indirectly?: Direct.....	2. Is this influence or control exercised directly or indirectly? Direct.....
	Personal Identification Number (where applicable)				Indirect.....	Indirect.....
	Nationality(ies)					
	Date of birth [dd/mm/yyyy]					
	Postal address					
	Residential address					
	Telephone number					
	Email address					
	Occupation or profession					
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- II) Am fully aware that beneficial ownership information above shall be reported to the Public Procurement Regulatory Authority together with other details in relation to contract awards and shall be maintained in the Government Portal, published and made publicly available pursuant to Regulation 13(5) of the Companies (Beneficial Ownership Information) Regulations, 2020.(Notwithstanding this paragraph Personally Identifiable Information in line with the Data Protection Act shall not be published or made public).
- III) In determining who meets the threshold of who a beneficial owner is, the Tenderer must consider a natural person who in relation to the company:

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent of the voting rights in the company either directly or indirectly;
- (c) holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) exercises significant influence or control, directly or indirectly, over the company.

IV) What is stated to herein above is true to the best of my knowledge, information and belief.

Name of the Tenderer:[insert complete name of the Tenderer]*

*Name of the person duly authorized to sign the Tender on behalf of the Tenderer: ** [insert complete name of person duly authorized to sign the Tender]*

Designation of the person signing the Tender: [insert complete title of the person signing the Tender]

Signature of the person named above: [insert signature of person whose name and capacity are shown above]

Date this [insert date of signing] day of..... [Insert month], [insert year]

Bidder Official Stamp